

# The Situation of Detainees in Gulag System (*Kwan-li-so*) of the Democratic People's Republic of Korea

Petition for Relief

Submitted To:

UN Working Group on Arbitrary Detention  
UN Special Rapporteur on Human Rights in the Democratic People's Republic of Korea  
UN Working Group on Enforced or Involuntary Disappearances  
UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Execution  
UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment  
UN Special Rapporteur Special Rapporteur on Violence Against Women  
UN Special Rapporteur on Human Rights Defenders  
UN Special Rapporteur on Freedom of Expression  
UN Special Rapporteur on Rights to Freedom of Peaceful Assembly and Association  
UN Special Rapporteur on Freedom of Religion or Belief  
UN Special Rapporteur on Independence of Judges and Lawyers  
UN Special Rapporteur on Right of Everyone to Highest Attainable Standard of Physical or Mental Health

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## Executive Summary

On December 19, 2011, state-run television in the Democratic People's Republic of North Korea (DPRK) announced the death of its leader Kim Jong-il. His youngest son, Kim Jong-eun, immediately assumed power. It has been an important time of transition in the DPRK, but it remains unclear whether this will have an appreciable effect on the people of the country or on how the country engages with the international community. On February 29, 2012, the United States and DPRK announced a deal under which North Korea had agreed to stop nuclear tests, uranium enrichment, long-range missile launches, and to allow checks by nuclear inspectors in exchange for 240,000 tons of food. But a short-time later, Pyongyang announced it intended to launch a satellite into orbit, which would be in violation of Security Council Resolution 1874, which prohibits the DPRK from conducting any launch using ballistic missile technology.

Once again, the world has focused intensely on a provocative act by the DPRK and is seeking to defuse rising tensions on the Korean peninsula. But as has often been the case, what gets lost in these debates is the ongoing and profound suffering of the North Korean people.

The global movement pressing for human rights and humanitarian improvements in the DPRK has made important strides in the last decade, but the impact of this work has been highly limited relative to the size of the challenge. Specifically, the United Nations, governments, and non-governmental organizations (NGOs), have been unable to do much more than provide detailed reporting on the abuses, and, on a limited basis, respond to immediate humanitarian needs of those who escape from DPRK and provide targeted relief inside the country. Even with such efforts, there has been no appreciable impact on the DPRK's leadership, governmental structure, or policies.

Some of the most horrific abuses committed against the people by the DPRK government officials have been through its operation of a gulag system (*kwan-li-so*), which is estimated to imprison some 150,000-200,000 persons in six massive camps in the country. It is also estimated that more than 400,000 prisoners have died in these camps over the past few decades. These atrocities have been documented by various organs of the United Nations and reputable NGOs over many years – and have been flatly denied by DPRK government officials. Nevertheless, the ongoing operation of this system constitutes crimes against humanity under international law.

The prisoners in the gulag system are mainly real or alleged political dissenters – persons who have committed or are perceived to have committed a political crime. A wide range of activities are considered political crimes, including: expressing anti-socialist sentiment, having “unsound ideology,” criticizing the regime in any manner, reading a foreign newspaper, expressing exasperation with the difficulty of life in North Korea, and practicing any religion inconsistent with the state's self-reliance *juche* ideology. The accused is neither given a factual basis for his crime nor provided counsel or a formal trial through the judicial system. Instead, the accused is kidnapped, placed in an interrogation facility, and typically tortured until a confession is elicited. When the accused is declared guilty, he or she is either immediately executed or sent to the gulag. Perhaps most shocking, under North Korea's guilt-by-association

system initiated by Kim Il-sung, three generations of the accused's family are incarcerated with the accused.

Once imprisoned, prisoners face impediments to their survival so powerful that the gulag system can only be described a death camp. Prisoners, including children, are subjected to back-breaking labor, such as mining, logging, and farming, seven days a week for twelve or more hours a day. The labor is often dangerous and approximately twenty to twenty-five percent of the prison population dies each year as a result of prison labor. In addition to enduring back-breaking labor, prisoners are forced to survive on starvation-level food rations. One defector described the daily ration as approximately twenty grains of corn per inmate, a ration so meager that, to stave off death, prisoners had to dig through cow dung in search of undigested grain. Although pneumonia, tuberculosis, pellagra, and other diseases run rampant in the camp, there is no medical treatment available for prisoners. They are forced to work through illness, with those who are no longer physically able to work sent to sanatoriums to await death. Alongside the hard labor and starvation, prisoners must also face the routine occurrence of torture, rape, and extra-judicial killing.

New North Korean leader Kim Jong-eun has a decision to make. By choosing to do nothing and continuing the operations of the gulag system, he is responsible for the ongoing crimes against humanity being committed in the DPRK. Alternatively, he can shut down the gulag system and close a terrible chapter in the history of his country. Either way, this is a question that needs to be posed to him and his government directly by the international community.

The International Coalition to Stop Crimes Against Humanity in North Korea (“Coalition”) is submitting this petition to the UN Human Rights Council to engage the full range of UN “Special Procedures”<sup>3</sup> to investigate and report on the gulag system, consistent with the precedent established in its joint study entitled *Situation of Detainees at Guantánamo Bay*.

Through the initiation of this process, the Special Procedures can try to engage directly with DPRK authorities about this mass detention situation and even have the opportunity to visit the gulag to observe conditions themselves. Regardless of whether this is possible, the Coalition requests the United Nations to declare the operations of the North Korean gulag system to be in violation of international law and to make recommendations about how the situation can be comprehensively addressed. In parallel with this petition, counsel is contemporaneously filing petitions to the UN Working Group on Arbitrary Detention on behalf family members of Kang Cheol-hwan and Shin Dong-hyuk, prominent survivors of the gulag system who both escaped to South Korea and who remained behind. Highlighting their stories is intended to bring to life the impact of the North Korean gulag system on two families.

To summarize, the Coalition's research finds the following:

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<sup>3</sup> “Special Procedures” is “the general name given to the mechanisms established by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Currently, there are 33 thematic and eight country mandates. The Office of the High Commissioner for Human Rights provides these mechanisms with personnel, policy, research, and logistical support for the discharge of their mandates.” Special Procedures of the Human Rights Council, *available at* <http://www2.ohchr.org/english/bodies/chr/special/index.htm>.

- The DPRK is operating a gulag system that imprisons an estimated 150,000-200,000 people;
- The DPRK has a responsibility to protect its own citizens from crimes against humanity being committed against them, let alone not commit those crimes;
- Through its ongoing operation of the gulag system, the DPRK is committing crimes against humanity against the prisoners in this system through widespread and systematic acts such as imprisonment, enslavement, extermination, torture, persecution based on political and religious grounds, and other inhumane acts designed to cause great suffering or death;
- The DPRK is also violating its obligations under treaties such as the International Covenant on Civil and Political Rights, International Covenant on Economic, and Social Rights, Convention on the Elimination of Discrimination Against Women, and Convention on the Rights of the Child.

Based on the Coalition's research, the following recommendations are supported by our membership for important possible next steps to rectify this situation:

- The DPRK should shut down its gulag system, and immediately and unconditionally free all those persons currently imprisoned;
- The DPRK should initiate a process to hold perpetrators accountable for the commission of crimes against humanity and other violations of international and domestic law;
- The DPRK should provide appropriate reparations to victims and their families affected by the gulag system;
- The United Nations, acting through the General Assembly or Human Rights Council, should initiate a commission of inquiry into the crimes against humanity being undertaken in the DPRK for the purpose of holding the state and individual perpetrators to account for the ongoing commission of these crimes;
- The full range of UN organs should engage with the DPRK regarding its ongoing operations of the gulag system until the system is shut down.

This is an extremely grave situation, and we therefore request the Special Procedures immediately initiate an investigation into the operation of the gulag system in the DPRK with the following scope and characteristics:

- The investigation should include having the Special Procedures request an opportunity to visit the six camps in the DPRK gulag system;
- The investigation should include consultations with victims of the gulag system who have escaped as well as relevant international experts;
- The investigation should assess and apply the DPRK's obligations in relation to the gulag system under relevant international law, including treaties to which the country is a party;
- The investigation should make both conclusions of fact and conclusions of law regarding the situation in the DPRK gulag system;
- The investigation should issue recommendations regarding the implications of these findings of fact and law.

Based on outcome of their investigations, the Special Procedures should develop a joint report and deliver it to the Human Rights Council for consideration and potential further action.

## I. Precedent for Investigation by Special Procedures of UN Human Rights Council

There is direct precedent to engage the full range of Special Procedures in a situation of mass detentions. On February 15, 2006, a group of Special Procedures issued a joint study entitled *Situation of Detainees at Guantánamo Bay*.<sup>4</sup> Led by the then Chairperson of the UN Working Group on Arbitrary Detention, Leila Zerrougui, a group of five Special Procedures<sup>5</sup> examined the actions of the United States in imprisoning numerous detainees after the terrorist attacks directed against the United States on September 11, 2001.

In that case, the joint study was initiated *sua sponte* by the Special Procedures, who reported they had been following the situation of detainees held at the U.S. Naval Base at Guantánamo Bay, Cuba, since January 2002. In June 2004, they decided to continue this task as a group because the situation fell within the scope of each of their mandates. They concluded they could better discharge their reporting obligations by submitting one joint report rather than five individual reports. Similarly, a group of Special Procedures also have the authority to initiate such a process based on an outside request for them to consider such an approach.<sup>6</sup>

In describing the procedural history of their activities regarding Guantánamo Bay, the Special Procedures reported they had continuously sought the cooperation of the United States authorities including having exchanged letters about a possible visit by several of them to the prison itself. They did not accept the exclusion of private interviews with detainees, as that would contravene the terms of reference for fact-finding missions by Special Procedures. They also noted they felt this would undermine the purpose of an objective and fair assessment of the situation of detainees. The Special Procedures cancelled the visit, however, when the U.S. government refused to provide assurances it would comply with their terms of reference, including allowing private visits with detainees.<sup>7</sup>

Despite their inability to visit, the Special Procedures proceeded to complete their joint study by an examination of such materials as: (1) a questionnaire concerning the detention system replied to by the United States; (2) interviews with former detainees and responses from lawyers representing some detainees; and (3) information in the public domain, including reports by non-governmental organizations (NGOs), declassified documents, and media reports. In accordance with their usual practice, the Special Procedures provided a draft of the joint study to the United States, considered its reply in developing its conclusions, and attached its reply to their final report.<sup>8</sup>

The comprehensive report, which was some 50 pages with more than 100 footnotes,

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<sup>4</sup> UN Comm'n on Human Rights, *Situation of Detainees at Guantánamo Bay*, E/CN.4/2006/120, Feb. 15, 2006.

<sup>5</sup> The other mandate holders included Leandro Despouy, Special Rapporteur on the Independence of Judges and Lawyers; Manfred Nowak, Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; Asma Jahangir, Special Rapporteur on Freedom of Religion or Belief; and Paul Hunt, Special Rapporteur on the Right of Everyone to Enjoyment of the Highest Attainable Standard of Physical and Mental Health. *See id.*

<sup>6</sup> *Id.* at ¶ 2.

<sup>7</sup> *Id.* at ¶ 3.

<sup>8</sup> *Id.* at ¶ 4.

examined a range of issues relevant to the mass detentions in Guantánamo Bay, including the legal framework governing U.S. obligations under international law; issues relating to arbitrary detention; reported incidents of torture as well as other cruel, inhuman, and degrading treatment; reported incidents of religious intolerance; and reported incidents of the violation of the right of everyone to the highest standards of physical and mental health. The joint report concluded that the United States was in violation of international law in its treatment of detainees.<sup>9</sup> Furthermore, the report made a series of recommendations<sup>10</sup> that are being followed up on through the Human Rights Council.

The Coalition is requesting 12 Special Procedures of the UN Human Rights Council replicate the process undertaken in the examination of the situation of detainees in Guantánamo Bay, Cuba, for the mass detentions in the gulag system in the DPRK. As was the case with detainees in Guantánamo Bay, the various Special Procedures can better discharge their reporting obligations to the Human Rights Council by submitting one joint report on this subject rather than 12 individual reports. The Coalition strongly believes the issuance of a joint report by the United Nations would help bring the human rights situation in DPRK to public attention in ways that it has never been before. A joint approach by the Special Procedures to the DPRK would also increase the likelihood of obtaining access to the gulag system. Ultimately, such a joint study would create greater momentum for the international community to take further action. The time is ripe for this approach because for at least a decade the United Nations has spoken out about the severe violations of international law being committed in the gulag system and yet the DPRK has not only denied any wrongdoing, it continues to ignore or reject repeated recommendations by various parts of the United Nations system to remedy the situation.

## **II. UN Response to Gulag System in DPRK**

### **A. *United Nations Organs and Subsidiary Bodies***

Several United Nations bodies – including the General Assembly, Commission on Human Rights, Human Rights Council, and Special Rapporteur on human rights in North Korea – have all condemned the gulag system. The government’s response has been a mixture of denial, rejection, and outright hostility.

#### 1. General Assembly

The United Nations General Assembly has adopted annual resolutions since 2005 expressing concern and urging the DPRK to respect human rights.<sup>11</sup> In 2005, the General Assembly “[e]xpress[ed] its serious concern at . . . [c]ontinuing reports of systemic, widespread, and grave violations of human rights in the Democratic People’s Republic of Korea, including: . . . the existence of a large number of prison camps and the extensive use of forced labour” and

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<sup>9</sup> *Id.* at ¶¶ 83-94.

<sup>10</sup> *Id.* at ¶¶ 95-104.

<sup>11</sup> G.A. Res. 60/173, A/RES/60/173, Dec. 16, 2005; G.A. Res. 61/174, A/RES/61/174, Dec. 16, 2006; G.A. Res. 62/167, A/RES/62/167, Dec. 18, 2007; G.A. Res. 63/190, A/RES/63/190, Dec. 18, 2008; G.A. Res. 64/175, A/RES/64/175, Dec. 18, 2009; G.A. Res. 65/225, A/RES/65/225, Dec. 21, 2010; G.A. Res. 66/174, A/RES/66/174, Dec. 19, 2011.

“urge[d] the Government . . . to respect fully all human rights and fundamental freedoms.”<sup>12</sup> This language has been echoed every year since, the only alteration being the change to “expresses *very* serious concern” and “*strongly* urges” starting in 2006.<sup>13</sup> The issue of impunity was added to the resolution in 2008. There, the General Assembly “strongly urge[d]” the Government to “address the issue of impunity and ensure that those responsible for violations of human rights are brought to justice before an independent judiciary.”<sup>14</sup> The 2009 resolution added “collective punishment” to the list of violations that concerned the General Assembly.<sup>15</sup>

Beginning in 2006, the General Assembly has annually requested that the Secretary-General submit a comprehensive report on the situation in the DPRK including findings and recommendations.<sup>16</sup> As requested, the Secretary-General began making reports on the situation starting in 2007.<sup>17</sup> Since then, the reports have become increasingly specific and concerned. To illustrate, in the initial 2007 report, the Secretary-General “outline[d] the limited progress made in implementing the measures set out in previous resolutions,” including the lack of cooperation with various human rights bodies and special procedures; however, the report did not specifically mention the prisons or detention system.<sup>18</sup> By 2008, the Secretary-General’s report stated that, “[r]eports emanating from the country continue to indicate trends of arbitrary arrests, absence of due process and the rule of law, torture, inhuman conditions of detention . . . and forced labour.”<sup>19</sup> Two years later, the Secretary-General detailed reports of political prison camps and provisions of the Criminal Code that punish “listening to radio broadcasts and retaining or disseminating information perceived as opposing the state” with “up to two years in a ‘labour training camp’ or, in more serious cases, five years of ‘corrective labour.’”<sup>20</sup> According to this 2010 report, “reports indicate that there has been no change in policy or practice . . . since [the] previous report.”<sup>21</sup> In the most recent 2011 report of the Secretary-General, the reports of political prisoners “held in harsh prison conditions” continued and the Secretary-General, once again, urged the Government to “improve conditions in prisons and detention centres [and] release political prisoners.”<sup>22</sup>

## 2. Commission on Human Rights

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<sup>12</sup> G.A. Res. 60/173, *supra* note 11, at ¶¶ 1(b)(1), 5.

<sup>13</sup> G.A. Res. 61/174, *supra* note 11, at ¶¶ 1, 4 (emphasis added).

<sup>14</sup> G.A. Res. 63/190, *supra* note 11, at ¶ 5(b).

<sup>15</sup> G.A. Res. 64/175, *supra* note 11, at ¶ (1)(a)(i).

<sup>16</sup> G.A. Res. 61/174, *supra* note 11, at ¶¶ 5.

<sup>17</sup> Situation of Human Rights in the Democratic People’s Republic of Korea, *Report of the Secretary-General*, A/62/318, Sept. 4, 2007.

<sup>18</sup> *Id.* at ¶ 42, pts. II-III.

<sup>19</sup> Situation of Human Rights in the Democratic People’s Republic of Korea, *Report of the Secretary-General*, A/63/332, Aug. 26, 2008, at ¶ 4.

<sup>20</sup> Situation of Human Rights in the Democratic People’s Republic of Korea, *Report of the Secretary-General*, A/65/391, Sept. 24, 2010, at ¶¶ 16, 18, 33.

<sup>21</sup> *Id.* at ¶ 17.

<sup>22</sup> Situation of Human Rights in the Democratic People’s Republic of Korea, *Report of the Secretary-General*, A/66/343, Sept. 7, 2011, at ¶¶ 15, 74 [hereinafter 2011 Secretary-General Report].

The United Nations Commission on Human Rights was a subsidiary organ of the Economic and Social Council, one of the six principal organs of the United Nations.<sup>23</sup> During its existence, the Commission was “considered to be the central architect of the work of the United Nations in the field of human rights.”<sup>24</sup> Before it was replaced by the Human Rights Council in 2006,<sup>25</sup> the Commission adopted three annual resolutions expressing concern about the “systemic, widespread, and grave violations of human rights in the Democratic People’s Republic of Korea,” including the detention system.<sup>26</sup> In 2003, the Commission “expresse[d] its deep concern about reports of . . . the existence of a large number of prison camps and the extensive use of forced labour.”<sup>27</sup> The Commission’s 2004 and 2005 resolutions repeated the 2003 language and added reports of “extrajudicial and arbitrary detention” to the list of concerning human rights violations.<sup>28</sup> In 2004, the Commission “call[ed] upon the Government to . . . put an immediate end to maltreatment and infanticide in prison and labour camps.”<sup>29</sup>

The Commission’s 2004 resolution also requested that the Chairperson of the Commission appoint a Special Rapporteur on the situation of human rights in the DPRK.<sup>30</sup> The resolution requested that the Special Rapporteur establish contact with the Government, visit the country, and investigate and report on the human rights situation.<sup>31</sup> The Special Rapporteur was directed to report his or her findings to the General Assembly and the Commission.<sup>32</sup>

### 3. Human Rights Council

The Human Rights Council replaced the former Commission on Human Rights in 2006.<sup>33</sup> The Council is a subsidiary organ of the General Assembly and is responsible for promoting and protecting human rights and addressing violations.<sup>34</sup> In performing these important tasks, the Council utilizes a number of procedures, including the Universal Periodic Review, a Complaint Procedure, and Special Procedures.<sup>35</sup> The Universal Periodic Review procedure was created at the same time as the Council in 2006.<sup>36</sup> The Special Rapporteur was established by the Commission for Human Rights in 2004; however, the Council has extended the mandate every year since it replaced the Commission.<sup>37</sup>

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<sup>23</sup> *UN Commission on Human Rights*, UN REFUGEE AGENCY, available at <http://www.unhcr.org/refworld/publisher/UNCHR.html> (last visited Mar. 21, 2012).

<sup>24</sup> *Id.*

<sup>25</sup> See G.A. Res. 60/251, A/RES/60/251, Mar. 15, 2006.

<sup>26</sup> UN Comm’n on Human Rights Res. 2003/10, E/CN.4/RES/2003/10, Apr. 16, 2003, at pmb. [hereinafter Comm’n 2003 Resolution]; UN Comm’n on Human Rights Res. 2004/13, E/CN.4/RES/2004/13, Apr. 15, 2004, at pmb. [hereinafter Comm’n 2004 Resolution]; UN Comm’n on Human Rights Res. 2005/11, E/CN.4/RES/2005/11, Apr. 15, 2005, at pmb. [hereinafter Comm’n 2005 Resolution].

<sup>27</sup> Comm’n 2003 Resolution, *supra* note 26, at ¶ 1(a).

<sup>28</sup> Comm’n 2004 Resolution, *supra* note 26, at ¶ 1(a); Comm’n 2005 Resolution, *supra* note 26, at ¶ 1(a).

<sup>29</sup> Comm’n 2004 Resolution, *supra* note 26, at ¶ 2(e).

<sup>30</sup> *Id.* at ¶ 5.

<sup>31</sup> *Id.* at ¶ 6.

<sup>32</sup> *Id.* at ¶ 10; see Part II.A.4, *infra*.

<sup>33</sup> G.A. Res. 60/251, *supra* note 25.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Human Rights Council Decision 1/102, June 30, 2006; see also Human Rights Council Res. 7/15, A/HRC/7/L.28, Mar. 24, 2008, at ¶ 2 [hereinafter HRC Res. 7/15].

The first Council resolution on the DPRK was in 2008. There, the Council said it was deeply concerned about the “systematic, widespread and grave violations of civil [and] political ... rights” in the Country and “deplor[ed] the grave human rights situation.”<sup>38</sup> The Council adopted additional annual resolutions from 2009-2011 that specifically mention the gulag system, saying that it “deplor[ed] . . . the use of torture and labour camps against political prisoners.”<sup>39</sup> These resolutions were met with rejection by the DPRK Government.<sup>40</sup> In March 2012, the UN Human Rights Council adopted a resolution condemning North Korea’s human rights violations, and North Korea’s allies, for the first time, silently let the resolution pass by consensus. In response, North Korea lambasted the measure in its state media, claiming UN member states were launching a politically motivated attack on its sovereignty and using the “banner of human rights” as an excuse to inflict “aggression and intervention” against North Korean sovereignty.<sup>41</sup>

a. Public Comments

Both the Commission and Council received a number of public comments on the DPRK gulag system from non-governmental organizations with special consultative status. In February 2004, the International Federation of Human Rights Leagues wrote to the Commission that there are “six large camps or colonies for political prisoners and 30 forced labour centres” and “the most serious human rights abuses occur in the political detention camps/colonies.”<sup>42</sup> Two years later, Freedom House wrote that it had included the DPRK in its report entitled, “The Worst of the Worst: The World’s Most Repressive Societies,” and, in fact, the DPRK was one of eight countries in the “absolute worst” category.<sup>43</sup> In summarizing the reasons for this designation, Freedom House said that, “as many as 200,000 people are detained in some fourteen known political gulags. Most likely there are more.”<sup>44</sup> The Jubilee Campaign issued a written statement to the Council in 2010 that cast doubt on the Government’s overall stance on human rights, saying:

The DPRK’s belligerence toward the Special Rapporteur’s role calls into question its sincerity and its willingness to be part of the international community. There is ample evidence that the most grave human rights violations are taking place in North Korea, and the DPRK’s repeated claims that this is not the case are disingenuous.<sup>45</sup>

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<sup>38</sup> HRC Res. 7/15, *supra* note 37.

<sup>39</sup> Human Rights Council Res. 10/16, A/HRC/10/29, Mar. 26, 2009, at pmb.; Human Rights Council Res. 13/14, A/HRC/RES/13/14, Apr. 15, 2010, at pmb.; Human Rights Council Res. 16/8, A/HRC/RES/16/8, Apr. 8, 2011, at pmb.

<sup>40</sup> See *infra* text accompanying notes 91-98.

<sup>41</sup> Human Rights Council Res. 19/13, A/HRC/19/L.2, Mar. 19, 2012; UN Human Rights Council’s “Resolution” against DPRK Assailed, *Korean Central News Agency*, (March 26, 2012), <http://www.kcna.co.jp/index-k.htm> (Title translated from original Korean, 조선외무성 유엔인권리사회 《결의》 배격).

<sup>42</sup> International Federation of Human Rights Leagues, *Written Statement: Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World*, E/CN.4/2004/NGO/166, Mar. 10, 2004.

<sup>43</sup> Freedom House, *Written Statement: Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World*, E/CN.4/2006/NGO/204, Mar. 7, 2006.

<sup>44</sup> *Id.*

<sup>45</sup> Jubilee Campaign, *Written Statement*, A/HRC/13/NGO/103, Feb. 24, 2010.

These written communications reaffirm the international community has been concerned about and called for change to the situation in the DPRK. Unfortunately, these communications have not led to any change.

b. Universal Periodic Review

One of the Council's procedures is the Universal Periodic Review process. Under this process, the Council reviews "the fulfillment by each State of its human rights obligations."<sup>46</sup> The DPRK's quadrennial review took place during the sixth Universal Periodic Review Session in 2009. During its review, the Government submitted a national report, the Office of the High Commissioner submitted a compilation report, the Working Group on the Universal Periodic Review submitted a report on the proceedings, and the Human Rights Council adopted a decision on the outcome.

The DPRK national report demonstrates the paramount importance that the Government attaches to state sovereignty when it says, "any attempt to interfere with others' internal affairs, overthrow the governments and change the systems on the pretext of human rights issues constitutes violations of human rights. In this sense, the DPRK holds that human rights immediately mean national sovereignty."<sup>47</sup> The report claims that the DPRK maintains a fair trial system and does not arrest or detain a person "unless he/she has committed a very serious crime."<sup>48</sup> Additionally, it alleges that the Government cooperates and makes "sincere efforts" when it comes to human rights and that the international community has insisted on "tarnishing the image of the DPRK" for the "political purpose of eliminating the ideas and system that the Korean people have chosen for themselves and defended."<sup>49</sup>

The Office of the High Commissioner prepared a compilation report that detailed the Special Rapporteur's reports and United Nations treaty bodies' recommendations on detention centers.<sup>50</sup> Thereafter, the DPRK made a state presentation and engaged in an interactive dialogue with 52 participating States.<sup>51</sup> Many States expressed concern about the political detention and prison camps.<sup>52</sup> The Government's response was one of total denial, stating that "the term 'political prisoner' does not exist in DPRK's vocabulary and therefore the so-called political prisoners' camps do not exist."<sup>53</sup> Additionally, the Government pointed to its laws and regulations as evidence that human rights violations are "not systematic" and said that allegations to the contrary are "based on distorted facts or fabrication" and "misinformation fabricated by those who betrayed their country."<sup>54</sup>

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<sup>46</sup> G.A. Res. 60/251, *supra* note 25, at ¶ 5(e).

<sup>47</sup> Democratic People's Republic of Korea, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1*, A/HRC/WG.6/6/PRK/1, Aug. 27, 2009, at ¶ 15.

<sup>48</sup> *Id.* at ¶¶ 15, 38.

<sup>49</sup> *Id.* at ¶¶ 78, 85.

<sup>50</sup> Working Group on the Universal Periodic Review, *Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(b) of the Annex to Human Rights Council Resolution 5/1, Democratic People's Republic of Korea*, A/HRC/WG.6/6/PRK/2, Sept. 18, 2009.

<sup>51</sup> Report of the Working Group on the Universal Periodic Review, *Democratic People's Republic of Korea, submitted to the Human Rights Council*, A/HRC/13/13, Jan. 4, 2010 at ¶ 17.

<sup>52</sup> *Id.* at ¶¶ 18 (Brazil), 19 (Japan), 22 (United States of America), 23 (Belgium), 32 (France).

<sup>53</sup> *Id.* at ¶ 45.

<sup>54</sup> *Id.* at ¶ 89.

Many States and international bodies welcomed the Government's cooperation with the Universal Periodic Review process; however, the Government's dismissive responses demonstrate that this exercise had no impact on the human rights situation in the country. As Human Rights Watch noted in 2011, "the Democratic People's Republic of Korea had demonstrated neither the political commitment nor the requisite understanding of what it meant to comply with international human rights standards."<sup>55</sup>

#### 4. Special Rapporteur

In response to the Commission's 2004 resolution, Professor Vitit Muntarbhorn from Thailand was appointed in July 2004 as the Special Rapporteur on the situation of human rights in the DPRK.<sup>56</sup> Professor Muntarbhorn submitted his first report to the Commission on January 10, 2005.<sup>57</sup> In it, he expressed concern about many reports of arrested individuals being "sent to a variety of prisons . . . under appalling conditions compounded by wide-ranging allegations of torture, forced labour and lack of access to legal help" and the "disconcerting practice" of "collective punishment based on 'guilt by association.'"<sup>58</sup> Professor Muntarbhorn recommended that the DPRK reform justice administration and improve the prison system.<sup>59</sup>

Despite the Government's lack of cooperation and refusal to invite him into the country, Professor Muntarbhorn continued to make two annual reports until his term expired in 2010. These reports were based on meetings with governmental, non-governmental, and intergovernmental entities and field visits to nearby countries to assess the impact of the human rights situation on these countries. With each year, Professor Muntarbhorn's reports grew increasingly critical of the human rights situation, including the gulag system, and made constant calls for improvement and reform.

In his 2006 report, Professor Muntarbhorn expressed continuing concern about the treatment of prisoners and "appalling" prison conditions.<sup>60</sup> This report provided a description of the incarceration system, which included official correctional facilities, political concentration camps, collection points, and labour training camps.<sup>61</sup> Professor Muntarbhorn's report detailed a communication he sent to the Government jointly with five other Special Rapporteurs three months earlier in December 2005.<sup>62</sup> The communication raised a number of concerns, including the "harsh treatment of prisoners in political and re-education labour camps," and appealed to the

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<sup>55</sup> Report of the Human Rights Council on its Thirteenth Session, A/HRC/13/56, Feb. 8, 2011, at ¶ 634.

<sup>56</sup> Press Release, Vitit Muntarbhorn Appointed UN Special Rapporteur on Situation of Human Rights in Democratic People's Republic of Korea, U.N. Press Release HR/4786 (Aug. 6, 2004).

<sup>57</sup> The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Vitit Muntarbhorn, *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World: Situation of Human Rights in the Democratic People's Republic of Korea*, E/CN.4/2005/34, Jan. 10, 2005.

<sup>58</sup> *Id.* at ¶¶ 34, 36.

<sup>59</sup> *Id.* at ¶ 68(e).

<sup>60</sup> The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Vitit Muntarbhorn, *Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World: Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, E/CN.4/2006/35, Jan. 23, 2006, at ¶ 11 [hereinafter Special Rapporteur Jan. 2006 Report].

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at ¶ 39.

Government to end this practice.<sup>63</sup> The Government rejected the communication.<sup>64</sup> Finally, the 2006 report called on the Government to reform the prison system and the international community to assist in doing so.<sup>65</sup>

Professor Muntarbhorn's 2007 report said that there were continuing reports of detention centers and detailed the various names for them as follows:

There are a large variety of detention centres ranging from those for political dissidents to those for criminals, as well as re-education camps and forced labour camps. They have various names, such as *gwanliso* (political labour camp), *gyohwaso* (long-term prison labour camp), *jipgyulso* (detention facility) and *rodongdanryundae* (labour facility).<sup>66</sup>

Human rights violations affecting people in these detention centers were confirmed by the Special Rapporteur's interviews with refugees and "extensively documented" in non-governmental publications released that year.<sup>67</sup> The Special Rapporteur called on the international community to "mobilize the totality of the United Nations system to promote and protect human rights in the country and support processes which concretize the responsibility and accountability of the authorities of the Democratic People's Republic of Korea for human rights violations in order to bring an end to impunity."<sup>68</sup>

The Special Rapporteur's reports grew increasingly critical in 2008, saying, "[o]verhaul of the prison system is long overdue, and the harsh conditions imposed by the criminal justice system and related detention give rise to a plethora of abuses" and those abuses are "ubiquitous."<sup>69</sup> The prison conditions were described as "abhorrent," and many as a "death trap for inmates" in the 2009 report.<sup>70</sup> After detailing the various categories of human rights violations, the 2009 report said, "the above analysis offers a bleak picture of the state of human rights in the country concerned. There are widespread, systematic, and reprehensible human rights violations of a long-standing and insidious nature."<sup>71</sup>

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<sup>63</sup> *Id.*

<sup>64</sup> The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Vítit Muntarbhorn, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/HRC/4/15, Feb. 7, 2007, at ¶ 43 [hereinafter Special Rapporteur Feb. 2007 Report].

<sup>65</sup> Special Rapporteur Jan. 2006 Report, *supra* note 60, at ¶¶ 81(d), 82.

<sup>66</sup> Special Rapporteur Feb. 2007 Report, *supra* note 64, at ¶ 13.

<sup>67</sup> The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Vítit Muntarbhorn, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/62/264, Aug. 15, 2007, at ¶ 22.

<sup>68</sup> *Id.* at ¶ 59.

<sup>69</sup> The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Vítit Muntarbhorn, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/63/322, Aug. 22, 2008, at ¶ 31.

<sup>70</sup> The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Vítit Muntarbhorn, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/HRC/10/18, Feb. 24, 2009, at ¶ 24.

<sup>71</sup> *Id.* at ¶ 50.

Professor Muntarbhorn's last report in 2010 offered the most scathing review of the human rights situation in the DPRK, describing it as "*sui generis* ('in its own category')"<sup>72</sup> and the many human rights violations as "harrowing and horrific."<sup>73</sup> While reflecting on his six years observing the human rights situation, the Special Rapporteur stated, "It is clear . . . that the abuses against the general population for which the authorities should be responsible are both egregious and endemic."<sup>74</sup> In fact, he said that the crime which is "most closely related" to what was occurring in the country was crimes against humanity.<sup>75</sup>

The 2010 report went into detail when discussing the gulag system in the country. For example, the report discussed two specific methods of torture, "pigeon torture" and "airplane torture," and collective punishment as one of the "[rampant] practices to instill fear among the population."<sup>76</sup> Additionally, the report gave the names of six of the "camps of infamy" where the "lives of inmates are lost only too easily to hunger and slave labour, brutality and atrocity."<sup>77</sup>

This report pointed out that the international response to date had been largely based on pressure through Human Rights Council and General Assembly resolutions; however, despite that pressure, "the sufferings of the ordinary people of the country continue every day, waiting for light at the end of a long and dark tunnel."<sup>78</sup> Thus, even the Special Rapporteur who dedicated six years to studying the situation and the international response pointed out the ineffectiveness of the efforts to date and called for "both the national and international environments to take constructive and tangible actions . . . more effectively."<sup>79</sup>

On August 1, 2010, Marzuki Darusman from Indonesia assumed responsibility for the mandate of the Special Rapporteur.<sup>80</sup> Mr. Darusman designated an entire section of his first substantive report in February 2011 to the country's detention and correctional facilities.<sup>81</sup> The 2011 report described human rights violations that "are committed in all correctional centres," such as beatings of inmates, deaths, and dire living conditions.<sup>82</sup> The report said, "these are serious allegations of issues that need to be investigated and rectified immediately."<sup>83</sup>

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<sup>72</sup> The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Vítit Muntarbhorn, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/HRC/13/47, Feb. 17, 2010, at summary.

<sup>73</sup> *Id.* at ¶ 86.

<sup>74</sup> *Id.* at ¶ 8.

<sup>75</sup> *Id.* at ¶ 60.

<sup>76</sup> *Id.* at ¶ 11.

<sup>77</sup> *Id.* at ¶ 31.

<sup>78</sup> *Id.* at summary.

<sup>79</sup> *Id.* at ¶ 87.

<sup>80</sup> The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Marzuki Darusman, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/651/634, Sept. 14, 2010, at note by Secretary-General.

<sup>81</sup> The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Marzuki Darusman, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/HRC/16/58, Feb. 21, 2011, at § III.G.

<sup>82</sup> *Id.* at ¶ 53.

<sup>83</sup> *Id.*

Mr. Darusman's August 2011 report continued to single out the gulag system as a particular area for concern.<sup>84</sup> Since his February report, human rights groups had published satellite images of political prison camps that, when compared with 2001 images, indicated the camps had significantly increased in scale.<sup>85</sup> The report detailed the harsh conditions in the camps, including thirty to forty political prisoners housed in a room of about fifty square meters with no clothing provided and required to perform manual labor for long hours.<sup>86</sup>

In his 2011 and 2012 reports, Special Rapporteur Darusman called for the release of political prisoners.<sup>87</sup> In particular, the February 2012 report pointed out that there were several key events coming up in the country, including the late Kim Jong-il's birthday in February, the centennial birthday of Kim Il-Sung in April, and the anniversary of the founding of the Korean Workers' Party in October.<sup>88</sup> In the past, amnesties were often granted during national festivities.<sup>89</sup> Despite the fact that previous grants of amnesty were unclear and potentially not carried out, Mr. Darusman encouraged the authorities to use the upcoming important events to provide "amnesties, pardons, and sentence reductions" for prisoners.<sup>90</sup>

The DPRK Government response to the 2004 establishment and annual mandate extensions of the Special Rapporteur has been hostile. The Permanent Representative of the DPRK submitted numerous letters to the Commission on Human Rights and Human Rights Council stating that the Government "resolutely and categorically" rejected the Special Rapporteur.<sup>91</sup> Further, the Government has said that it "shall remain unmoved even if dozens or hundreds of such special rapporteurs . . . are to be fabricated and . . . strongly strike back at these relentless maneuvers."<sup>92</sup>

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<sup>84</sup> The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Marzuki Darusman, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/66/322, Aug. 24, 2011, at § III.G.

<sup>85</sup> *Id.* at ¶ 60.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*; The Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea—Marzuki Darusman, *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, A/HRC/19/65, Feb. 13, 2012, at ¶ 40 [hereinafter Special Rapporteur Feb. 2012 Report].

<sup>88</sup> Special Rapporteur Feb. 2012 Report, *supra* note 87, at ¶ 15.

<sup>89</sup> *Id.* at ¶ 40.

<sup>90</sup> *Id.*

<sup>91</sup> *See, e.g.*, Letter Dated 28 February 2005 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations Office at Geneva Addressed to the High Commissioner for Human Rights, E/CN.4/2005/G/13, Mar. 2, 2005; Letter Dated 8 June 2007 Addressed to the President of the Human Rights Council by the Ambassador and Permanent Representative of the Democratic People's Republic of Korea to United Nations Office in Geneva, A/HRC/5/G/5, June 12, 2007 [hereinafter June 8, 2007 Letter]; Letter Dated 18 June 2007 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations Office at Geneva Addressed to the President of the Human Rights Council, A/HRC/5/G/11, June 18, 2007 [hereinafter June 18, 2007 Letter]; Letter from the Democratic People's Republic of Korea Concerning the Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, Geneva, 29 January 2009, A/HRC/10/G/6, Mar. 10, 2009 [hereinafter Jan. 29, 2009 Letter]; Letter Dated 21 January 2010 From the Permanent Mission of the Democratic People's Republic of Korea to the United Nations Office at Geneva Addressed to the President of the Human Rights Council, A/HRC/13/G/7/Rev.1, Feb. 11, 2010 [hereinafter Jan. 21, 2010 Letter].

<sup>92</sup> June 18, 2007 Letter, *supra* note 91.

The Government's hostility emanates from the alleged "conspiracy" that it believed surrounded the resolution establishing the Special Rapporteur.<sup>93</sup> According to the Permanent Representative, the United States, Japan, and the European Union had a "plot" to adopt the resolution which involved "pressing, threatening and blackmailing" other countries.<sup>94</sup> These tactics were condemned by the Permanent Representative as a manifestation of selectivity, double standards, politicization, and hypocrisy.<sup>95</sup>

The Permanent Representative generally avoided addressing the human rights situation within the DPRK. Instead, starting in 2009, the Permanent Representative started calling out human rights abuses committed by other countries, such as the Japanese occupation of Korea, the invasions of Afghanistan and Iraq, and violations in Arab territories.<sup>96</sup> The only time the Permanent Representative vaguely addressed the internal situation is in 2010 when rejecting comments made by the President of Timor-Leste.<sup>97</sup> In this statement, the Permanent Representative demonstrates the conspiracy-filled suspicion that plagues the country, stating that the Timor-Leste President's comments were:

[B]ased on information fabricated and distorted by those hostile forces as part of their attempts, constantly made for more than half a century, to eliminate the Democratic People's Republic of Korea. These references completely contradict the reality of my country and, moreover, some of them have no relevance to issues under discussion by the Council.<sup>98</sup>

The Government's responses demonstrate the futility of even the most committed international efforts to end the suffering in the DPRK. Clearly, the international community's resolutions, reports, and calls for change have been rejected and ignored.

## **B. Human Rights Treaty Bodies**

The DPRK is a party to the International Covenant on Civil and Political Rights ("ICCPR"),<sup>99</sup> the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"),<sup>100</sup> Convention on the Rights of the Child ("CRC"),<sup>101</sup> and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR").<sup>102</sup> It has submitted periodic

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<sup>93</sup> June 8, 2007 Letter, *supra* note 91.

<sup>94</sup> *See id.*

<sup>95</sup> *See id.*; Jan. 21, 2010 Letter, *supra* note 91.

<sup>96</sup> Jan. 29, 2009 Letter, *supra* note 91; Jan. 21, 2010 Letter, *supra* note 91.

<sup>97</sup> Letter Dated 11 March 2010 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations Office at Geneva Addressed to the President of the Human Rights Council, A/HRC/13/G/18, Mar. 15, 2010.

<sup>98</sup> *Id.*

<sup>99</sup> The DPRK acceded to the ICCPR on September 14, 1981. *See* MULTILATERAL TREATIES, UNITED NATIONS TREATY COLLECTION ch. IV § 4, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en> (last visited Mar. 13, 2012) [hereinafter UNTC]. The Government sent a notification of withdrawal from the Covenant on August 23, 1997; however, because the Covenant does not contain a withdrawal provision, the Secretariat was of the opinion that withdrawal is not possible unless all States Parties agree to it. *Id.*

<sup>100</sup> The DPRK acceded to CEDAW on February 27, 2001. *See* UNTC, *supra* note 99, at § 8.

<sup>101</sup> The DPRK acceded to the CRC on September 21, 1990. *See* UNTC, *supra* note 99, at § 11.

<sup>102</sup> The DPRK acceded to the ICESCR on September 14, 1981. *See* UNTC, *supra* note 99, at § 3.

(but often late) reports to all of the related treaty bodies, which have frequently responded by raising the issue of the detention centers and prison system, usually with an unsatisfactory response from the Government. Moreover, it has unsuccessfully sought to withdraw from the ICCPR.<sup>103</sup>

### 1. International Covenant on Civil and Political Rights

The ICCPR commits State Parties to respect the civil and political rights of individuals, including the right to self-determination, life, liberty, and security of person.<sup>104</sup> The Human Rights Committee is the treaty body which monitors implementation of the ICCPR and considers reports submitted by State Parties on their compliance with the rights recognized in the Covenant.<sup>105</sup>

The DPRK submitted its periodic report to the Human Rights Committee in December 1999. In its report, the Government claimed that torture, cruel and inhumane punishment, and forced or compulsory labor are forbidden in the country.<sup>106</sup> Additionally, the Government claimed that forced or compulsory labor is “never used as a means of political coercion.”<sup>107</sup> In fact, the Government claimed that there were only six complaints in the country in the period between 1998 and 2000 of ill-treatment in custody or detention.<sup>108</sup>

Despite the positive image the Government’s report and replies conveyed, the Human Rights Committee remained “deeply concerned about consistent and substantiated allegations of violations” of the Covenant by law enforcement.<sup>109</sup> The Committee found the claim that there were only six complaints in two years “difficult to accept as a reflection of the actual situation, in light of the material available to the Committee.”<sup>110</sup> Regarding the conditions of detention, the Committee noted the Government’s information; however, it “remain[ed] concerned about the many allegations of cruel, inhuman and degrading treatment and conditions . . . in reform institutions, prisons, and prison camps.”<sup>111</sup>

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<sup>103</sup> On 25 August 1997, the Secretary-General received from the Government of the Democratic People's Republic of Korea a notification of withdrawal from the Covenant, dated 23 August 1997. As the Covenant does not contain a withdrawal provision, the Secretariat of the United Nations forwarded on September 23, 1997, an aide-mémoire to the Government of the Democratic People's Republic of Korea explaining the legal position arising from the above notification. As elaborated in this aide-mémoire, the Secretary-General is of the opinion that a withdrawal from the Covenant would not appear possible unless all States Parties to the Covenant agree with such a withdrawal. The above notification of withdrawal and the aide-mémoire were duly circulated to all States Parties under cover of C.N.467.1997.TREATIES-10 of 12 November 1997.

<sup>104</sup> INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976 [hereinafter ICCPR].

<sup>105</sup> *Id.* at art. 40.

<sup>106</sup> Second Periodic Report of the Democratic People’s Republic of Korea on its Implementation of the International Covenant on Civil and Political Rights, CCPR/C/PRK/2000/2, May 4, 2000, at ¶¶ 41, 42, 54.

<sup>107</sup> *Id.* at ¶ 55.

<sup>108</sup> Replies Submitted by the Government of the Democratic People’s Republic of Korea, CCPR/CO/72/PRK/Add.1, Aug. 5, 2002, at ¶ 1.

<sup>109</sup> Concluding Observations of the Human Rights Committee, *Democratic People’s Republic of Korea*, CCPR/CO/72/PRK, Aug. 27, 2001, at ¶ 15.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at ¶ 16.

The Human Rights Committee made a number of recommendations to the Government, including that it should allow for independent internal and international oversight and improve conditions of detention facilities.<sup>112</sup> Since the 2001 report, the DPRK has not submitted another periodic report despite the fact that one has been due since January 2004.<sup>113</sup>

## 2. Convention on the Elimination of All Forms of Discrimination Against Women

CEDAW commits States Parties to implement a number of measures to end discrimination against women and grant them equal rights.<sup>114</sup> Similar to the Human Rights Committee, the United Nations Committee on the Elimination of Discrimination Against Women monitors implementation of the Convention through national reporting.<sup>115</sup>

The DPRK submitted its national report to the Committee in 2002.<sup>116</sup> One issue raised by the Committee was reports by the Special Rapporteur of violence against women in prison.<sup>117</sup> The Government's response was that these reports are groundless and that the country does not have prisons but "labor reform institutions."<sup>118</sup> The Committee also raised a question about the number and situation of women in detention or prison.<sup>119</sup> The Government again claimed that there are not prisons, but labor reform institutions in the country and that, as of March 2005, there were just seven women in pre-trial detention and forty in reform institutions.<sup>120</sup> According to the Government, female convicts performed "labor proper to their technical ability" and got paid according to the work accomplished.<sup>121</sup> In fact, the female convicts were "given a prize" if they conducted themselves well.<sup>122</sup>

The Committee did not accept the Government's answers to these questions. In fact, it labeled the explanations as "insufficient" and encouraged the Government to provide information in its next report.<sup>123</sup> That subsequent report was due in March 2006 but the Government still has not submitted it.<sup>124</sup>

## 3. Convention on the Rights of the Child

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<sup>112</sup> *Id.* at ¶¶ 15, 16.

<sup>113</sup> 2011 Secretary-General Report, *supra* note 22, at ¶ 37.

<sup>114</sup> See CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46), at 193, A/34/46 (1979), 1249 U.N.T.S. 13, *entered into force* Dec. 18, 1979 [hereinafter CEDAW].

<sup>115</sup> *Id.* at art. 18.

<sup>116</sup> See Consideration of Reports Submitted by States Parties Under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, *Initial Report of States Parties: Democratic People's Republic of Korea*, CEDAW/C/PRK/1, Sept. 11, 2002.

<sup>117</sup> Responses to the List of Issues and Questions for Consideration of the Initial Report, CEDAW/PSWG/2005/II/CRP.2/Add.3, Apr. 15, 2005, at ¶ 9.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at ¶ 10.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Report of the Committee on the Elimination of Discrimination of Women, A/60/38, Jan. 28, 2005, at ¶¶ 67, 68.

<sup>124</sup> 2011 Secretary-General Report, *supra* note 22, at ¶ 37

The CRC obligates State Parties to “respect and ensure” certain rights to children, including the right to life, freedom of expression, and to be free of arbitrary or unlawful interference with his or her privacy, family, or correspondence.<sup>125</sup> The Committee on the Rights of the Child monitors implementation and reviews States Parties’ reports two years after accession and thereafter every five years.<sup>126</sup>

The DPRK submitted reports to the Committee in 1996, 2003, and 2008. In 1996, the Government claimed that there were no juvenile inmates in its “institutions for reform through labour.”<sup>127</sup> Despite this claim, the Committee expressed concern about the rights of the child to “legal assistance, judicial review, and periodic review of placement.”<sup>128</sup> In its 2003 report, the Government discussed “public education measures” that it used for juvenile offenders and maintained that children were not arrested or detained except for in serious cases.<sup>129</sup> In fact, the country claimed that “no punishment for a criminal offence was applied to a child during the reporting period.”<sup>130</sup> The Committee responded with concern about reports of institutional violence, especially in detention and social institutions, and recommended that the State continue to prevent and eliminate such violence.<sup>131</sup>

Finally, in 2008, the Government continued to claim that no juveniles were in reformatories, but rather “committed to public education.”<sup>132</sup> The Government also said that, “[p]rotecting human rights in the handling of criminal cases is the consistent policy of the Government. No person may be arrested or confined without following the legal procedures stipulated in the Criminal Procedure Law.”<sup>133</sup> Despite these claims, the Committee still responded with concern about information it received that children are subject to ill-treatment while in detention.<sup>134</sup>

#### 4. International Covenant on Economic, Social, and Cultural Rights

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<sup>125</sup> CONVENTION ON THE RIGHTS OF THE CHILD, G.A. Res. 44/25, 44 UN GAOR Supp. (No. 49), at 166, A/44/49 (1989), 1577 U.N.T.S. 3, entered into force Nov. 20, 1989 [hereinafter CRC].

<sup>126</sup> *Id.* at art. 44.

<sup>127</sup> Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, *Initial Report of States Parties Due in 1992: Democratic People’s Republic of Korea*, CRC/C/3/Add.41, June 17, 1996 at ¶ 87.

<sup>128</sup> Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, *Concluding Observations of the Committee on the Rights of the Child: Democratic People’s Republic of Korea*, CRC/C/15/Add.88, June 24, 1998 at ¶¶ 19, 34.

<sup>129</sup> Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, *Second Periodic Reports of States Parties Due in 1997: Democratic People’s Republic of Korea*, CRC/C/65/Add.24, Nov. 5, 2003 at ¶ 56.

<sup>130</sup> *Id.* at ¶ 214.

<sup>131</sup> Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, *Concluding Observations of the Committee on the Rights of the Child: Democratic People’s Republic of Korea*, CRC/C/15/Add.239, July 1, 2004, at ¶¶ 34-35.

<sup>132</sup> Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, *Combined Third and Fourth Periodic Reports of States Parties Due in 2007: Democratic People’s Republic of Korea*, CRC/C/PRK/4, Jan. 15, 2008, at ¶ 95.

<sup>133</sup> *Id.* at ¶ 235.

<sup>134</sup> Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, *Concluding Observations of the Committee on the Rights of the Child: Democratic People’s Republic of Korea*, CRC/C/PRK/CO/4, Mar. 27, 2009, at ¶ 31.

The ICESCR requires State Parties to protect economic, social, and cultural rights, including the right to work, physical and mental health, and education.<sup>135</sup> The Committee on Economic, Social, and Cultural Rights monitors this treaty's implementation by considering regular reports of States Parties. The DPRK submitted a report to the Committee in 2002; however, the report and Committee response did not discuss the gulag system.<sup>136</sup> Nonetheless, the DPRK is clearly not fulfilling its obligations under the ICESCR.<sup>137</sup> A subsequent report has been overdue since 2008.<sup>138</sup>

### III. Life in the North Korean Gulag

#### A. Atrocities of the Gulag System

The North Korean government operates a massive political prison system comprised of large prison camps, known as the gulag system or *kwan-li-so*. There are currently six known gulags, although it is believed that there were once twelve in existence and that six have since been closed.<sup>139</sup> The gulags are spread across “valleys of mountainous areas of north and north-central North Korea” where each one spans four-hundred square miles or more.<sup>140</sup> These sprawling colonies are made up of several self-contained villages.<sup>141</sup> With the exception of one or two gulags, these encampments do not feature revolutionizing zones where prisoners are “re-educated” and permitted to return to society.<sup>142</sup> Rather, the majority of prisoners are expected to remain in the camps until their deaths.<sup>143</sup>

There are currently between 150,000 and 200,000 prisoners in the gulag system.<sup>144</sup> These prisoners are mainly real or alleged political dissenters – persons who have committed or are perceived to have committed a political crime.<sup>145</sup> A wide range of activities are considered political crimes, including: “expressing anti-socialist sentiment, having ‘unsound ideology,’ criticizing the regime in any manner, reading a foreign newspaper, expressing exasperation with the difficulty of life in North Korea,” and practicing any religious inconsistent with the state authorized *juche* ideology.<sup>146</sup> Once accused of committing a political crime, the accused is never

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<sup>135</sup> INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS, G.A. Res. 2200, 21 UN GAOR Supp. (No. 16), at 49, A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976 [hereinafter ICESCR].

<sup>136</sup> See Second Periodic Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, *Democratic People's Republic of Korea*, E/1990/6/Add.35, May 15, 2002.

<sup>137</sup> See *infra* Part III.B.2.b.

<sup>138</sup> 2011 Secretary-General Report, *supra* note 22, at ¶ 37.

<sup>139</sup> DLA Piper US LLP & US Committee for Human Rights in North Korea, *Failure to Protect: A Call for the UN Security Council to Act in North Korea* 34 (2006) [hereinafter *Failure to Protect*].

<sup>140</sup> David Hawk, *The Hidden Gulag- Exposing North Korea's Prison Camps*, U.S. Committee for Human Rights in North Korea, at 10, available at [http://hrnk.org/download/The\\_Hidden\\_Gulag.pdf](http://hrnk.org/download/The_Hidden_Gulag.pdf) [hereinafter *Hidden Gulag*].

<sup>141</sup> Christian Solidarity Worldwide, *North Korea: A Case to Answer, A Call to Act* (2007), at 26 [hereinafter *A Case to Answer*].

<sup>142</sup> *Hidden Gulag*, *supra* note 140, at 25.

<sup>143</sup> *Id.*

<sup>144</sup> David Hawk, *The Hidden Gulag- Second Edition*, U.S. Committee for Human Rights in North Korea [forthcoming 2012] at 28.

<sup>145</sup> *Failure to Protect*, *supra* note 139, at 30.

<sup>146</sup> Kjell Magne Bondevik and Kristen Abrams, *Democratic People's Republic of Korea*, in *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time*, 346, 351 (Jared Genser and Irwin Cotler ed., 2011) [hereinafter “DPRK”].

informed of what crime he or she allegedly committed nor is the accused processed through the judicial system.<sup>147</sup> There is no access to a lawyer and no trial.<sup>148</sup> Instead, the accused is kidnapped, placed in an interrogation facility, and typically tortured until a confession is elicited.<sup>149</sup> When the State Security Protection Agency declares the accused guilty, the accused is either immediately executed or sent to a gulag.<sup>150</sup> Perhaps most shocking, however, is that three generations of the accused's family are imprisoned with the accused.<sup>151</sup> North Korea demands "collective responsibility" – *yeonjwa je* – whereby "the mother and father, sisters and brothers, and sometimes grandchildren of the political prisoner are imprisoned in a three-generation practice."<sup>152</sup> Family members are kidnapped and deposited at the camps, often without being told why they have been imprisoned and if they will ever be released.<sup>153</sup>

Once in a gulag, prisoners face impediments to their survival so powerful that the gulags can only be described as death camps. The camps are primitive and prisoners are subjected to dangerous labor and miniscule food rations, with no access to healthcare. Torture and executions are routine and forced abortions and infanticide are commonplace.

### 1. Camp Conditions: Labor, Malnutrition, and Lack of Health Care

Prisoners, including children, are subjected to back-breaking labor, such as mining, logging, and farming, seven days a week for twelve or more hours a day.<sup>154</sup> The labor is often dangerous and approximately twenty to twenty-five percent of the prison population dies each year as a result of prison labor.<sup>155</sup> For example, escapee An Hyuk stated that scores of inmates died or lost fingers and toes from frostbite when ordered to break ice and wade through a frozen stream for a construction project.<sup>156</sup> Kang Chol-Hwan, a defector, explained that mining work is especially dangerous because no protective gear is provided and cave-ins are common.<sup>157</sup> He described witnessing a cave-in where a group of children who had been ordered to excavate an area at an impossible pace were inevitably trapped and slowly crushed to death while the guards stood by and observed.<sup>158</sup> Exacerbating this situation are unrealistic daily work quotas for prisoners who are severely punished when their quotas are not met.<sup>159</sup>

In addition to enduring back-breaking labor, prisoners are forced to survive on "'starvation-level' food rations."<sup>160</sup> One defector described the daily ration as approximately twenty grains of corn per inmate, a ration so meager that to stave off death, prisoners would dig

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<sup>147</sup> *Failure to Protect*, *supra* note 139, at 30.

<sup>148</sup> *A Case to Answer*, *supra* note 141 at 25.

<sup>149</sup> *See Failure to Protect*, *supra* note 139, at 30; *A Case to Answer*, *supra* note 141, at 25.

<sup>150</sup> *See Failure to Protect*, *supra* note 139, at 30; *A Case to Answer*, *supra* note 141, at 25.

<sup>151</sup> *Hidden Gulag*, *supra* note 140, at 24.

<sup>152</sup> *Id.*

<sup>153</sup> *See Failure to Protect*, *supra* note 139, at 35; *Hidden Gulag*, *supra* note 140, at 25.

<sup>154</sup> *Hidden Gulag*, *supra* note 140, at 25.

<sup>155</sup> *Failure to Protect*, *supra* note 139, at 37.

<sup>156</sup> *Hidden Gulag*, *supra* note 140, at 31.

<sup>157</sup> *Failure to Protect*, *supra* note 139, at 37.

<sup>158</sup> *Id.* at 37-38.

<sup>159</sup> DPRK, *supra* note 146, at 352.

<sup>160</sup> *Failure to Protect*, *supra* note 139, at 35.

through cow dung in search of undigested grain.<sup>161</sup> Keeping prisoners on the verge of starvation is a method of control employed by the guards; the threat of reduced food rations motivates prisoners to follow camp rules and attempt to fulfill their daily work quotas.<sup>162</sup> Similarly, prisoners are prohibited from eating unauthorized food, an infraction punishable by beatings and execution.<sup>163</sup> Not surprisingly then, illness and death from malnutrition are overwhelmingly common.<sup>164</sup> A former prison guard from one of the larger camps reported that approximately 1,500 to 2,000 prisoners died annually from malnutrition.<sup>165</sup>

Only adding to the problem is the fact that living conditions in the camps are extremely primitive and access to healthcare is virtually non-existent.<sup>166</sup> Although pneumonia, tuberculosis, pellagra, and other diseases run rampant in the camp, there is no medical treatment available for prisoners.<sup>167</sup> Prisoners are forced to work through illness,<sup>168</sup> with those who are no longer physically able to work sent to sanatoriums to await death.<sup>169</sup>

## 2. Punishment, Torture, and Executions

Violence is commonplace in the gulag system. Prisoners are tortured and executed routinely; as a former North Korean intelligence agent put it, “[p]risoners are like pigs or dogs. You could kill them without caring whether they lived or died . . . .”<sup>170</sup> Physical torture is the primary method of punishment used in the camps. Prisoners are tortured for a variety of “infractions,” including not working fast enough, forgetting innocuous prison rules, and even for failing to demonstrate sufficient enthusiasm when responding to a guard’s orders.<sup>171</sup> Vicious beatings in response to infractions are common, and are often so brutal that defectors have reported a prisoner’s eye might be ripped out or leg bone be exposed.<sup>172</sup> Alternatively, prisoners may be subjected to what is called “motionless sitting” torture, where they are forced to squat motionlessly for hours on end.<sup>173</sup> Some defectors have reported that those who move are punished by having to “put their hands through the bars of the door, where the guards have beaten or stamped on them until they are bleeding and the skin is shredded.”<sup>174</sup> Another common form of punishment is confinement in a tiny prison cell for months at a time. These cells are so small that prisoners must crouch, causing eventual cutting off of their circulation.<sup>175</sup> Food rations are decreased so significantly that prisoners in cells mainly survive by eating bugs

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<sup>161</sup> DPRK, *supra* note 146, at 352.

<sup>162</sup> *Failure to Protect*, *supra* note 139, at 36.

<sup>163</sup> *Id.* at 37.

<sup>164</sup> *Id.* at 36.

<sup>165</sup> DPRK, *supra* note 146, at 352.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *A Case to Answer*, *supra* note 141, at 26.

<sup>169</sup> DPRK, *supra* note 146, at 352.

<sup>170</sup> *Failure to Protect*, *supra* note 139, at 32.

<sup>171</sup> DPRK, *supra* note 146, at 352; *Failure to Protect*, *supra* note 139, at 39.

<sup>172</sup> *Failure to Protect*, *supra* note 139, at 39.

<sup>173</sup> *A Case to Answer*, *supra* note 141, at 49; *Failure to Protect*, *supra* note 139, at 39.

<sup>174</sup> *A Case to Answer*, *supra* note 141, at 49.

<sup>175</sup> *Id.*

crawling through their cells.<sup>176</sup> One defector explained that survival is possible but “the cost is often crippling and the after effects almost always permanent.”<sup>177</sup>

Public executions are also common.<sup>178</sup> Prisoners are most frequently hung or shot, unless the prisoner has been caught eating unauthorized food or attempting to escape in which case more creative methods of execution are often crafted.<sup>179</sup> One former prisoner, Lee Young Kuk, witnessed the murder of an attempted escapee who was publicly dragged behind a car until he died.<sup>180</sup> After public executions, prisoners are frequently required to either observe or participate in the mutilation of the dead body.<sup>181</sup> Among other similar atrocities, prisoners have been forced to place their hands on a bloody corpse or throw stones at a body after a hanging.<sup>182</sup>

### 3. Forced Abortions and Infanticide

With very few exceptions, reproduction is strictly prohibited in the gulag system and female prisoners fear pregnancy because it is severely punished.<sup>183</sup> Reports from defectors and former guards suggest, however, that some portion of camp pregnancies result from rape of female prisoners by prison guards.<sup>184</sup> As Ayn Myeong-Cheol, a former guard put it, “[p]robably camps are the worst places for sexual abuse of women . . . [the guards] face a period of lassitude, getting bored, so they take it out on the girls like that. The girls have to do whatever is told to them to do.”<sup>185</sup> Sexual exploitation is also widespread; women desperate to survive commonly trade sexual favors in return for food or less dangerous work assignments.<sup>186</sup> Punishment, however, eludes neither rape victims nor those coerced into trading sexual favors; women are subject to punishment for pregnancy regardless of whether or not they engaged in intercourse willingly.<sup>187</sup> In fact, there are reports suggesting that many raped women are killed or subjected to forced abortions.<sup>188</sup>

North Korean women also arrive at the camps already pregnant. Human trafficking has increased along the North Korean-Chinese border, and traffickers sell destitute North Korean boarder-crossers to Chinese men seeking wives for semi-voluntary live-in arrangements.<sup>189</sup> If these women become pregnant, their purchasers are free to send them back to North Korea, where they are detained and sent to the gulags.<sup>190</sup> Because these women are assumed to be pregnant with half-Chinese babies, they are subjected to forced abortions if less than eight months pregnant or, if more than eight months pregnant, they are forced to give up their babies

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<sup>176</sup> *Id.*

<sup>177</sup> *Failure to Protect*, *supra* note 139, at 39.

<sup>178</sup> *Id.* at 40.

<sup>179</sup> *Hidden Gulag*, *supra* note 140, at 35.

<sup>180</sup> *Id.* at 35.

<sup>181</sup> *Failure to Protect*, *supra* note 139, at 35.

<sup>182</sup> *Id.* at 40.

<sup>183</sup> *A Case to Answer*, *supra* note 141, at 26.

<sup>184</sup> *Id.* at 52.

<sup>185</sup> *A Case to Answer*, *supra* note 141, at 51.

<sup>186</sup> *Id.* at 52.

<sup>187</sup> *A Case to Answer*, *supra* note 141, at 51.

<sup>188</sup> *Hidden Gulag*, *supra* note 140, at 72.

<sup>189</sup> *Failure to Protect*, *supra* note 139, at 40.

<sup>190</sup> *Id.* at 41.

to be murdered or abandoned upon delivery.<sup>191</sup> Witnesses have reported instances where babies are killed amidst hateful anti-Chinese slurs.<sup>192</sup> One defector reported that, after forcing the victim's sister to come to the prison to observe, a guard kicked a twenty-year old pregnant girl in the stomach repeatedly until she fell unconscious and the fetus, referred to by the guard as "the Chink," was aborted.<sup>193</sup> Another defector reported watching a twenty-year old girl give birth to a baby that was subsequently smothered to death in the mother's presence because, as the nurse put it, no half-Chinese babies would be tolerated.<sup>194</sup>

## ***B. Violations of International Law Implicated by Gulag System***

### 1. Crimes Against Humanity

The operation of the gulag system and the atrocities committed therein violate the international category of crimes known as crimes against humanity. Article 7(1) of the Rome Statute<sup>195</sup> enumerates several prohibited acts which are considered crimes against humanity, virtually all of which the North Korean government commits through its operation of the gulag system.<sup>196</sup> These acts include: murder, extermination, enslavement, torture, persecution, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, and enforced disappearance.<sup>197</sup>

For the aforementioned acts to be considered crimes against humanity in violation of international law, they must be committed in a widespread or systematic manner.<sup>198</sup> Although it is not required that the crimes be both widespread and systematic, the gulag system is in fact both widespread and systematic.<sup>199</sup> The gulag system is massive, necessitating thousands of military and police personnel and imprisoning thousands of victims.<sup>200</sup> Furthermore, a system of such size requires organization and planning to run and therefore the crimes are committed in a systematic fashion.<sup>201</sup>

#### a. Murder

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<sup>191</sup> *Failure to Protect*, *supra* note 139, at 41.

<sup>192</sup> *A Case to Answer*, *supra* note 141, at 40.

<sup>193</sup> *Failure to Protect*, *supra* note 139, at 41.

<sup>194</sup> *A Case to Answer*, *supra* note 141, at 39.

<sup>195</sup> The Rome Statute of the International Court, *opened for signature*, Jul. 17, 1998, A/CONF.183/9 (1998), 2187 U.N.T.S. 90, at art. 7 § 1 (k) [hereinafter Rome Statute].

<sup>196</sup> North Korea is not a signatory to the Rome Statute. The Rome Statute does however provide the most comprehensive definition of international crimes which broadly reflect customary international law; therefore, this analysis refers to the Rome Statute for definitional purposes. *See A Case to Answer*, *supra* note 141, at 32.

<sup>197</sup> Rome Statute, *supra* note 195, at Art. 7(1).

<sup>198</sup> *See id.*

<sup>199</sup> David Hawk, *Concentrations of Inhumanity: An Analysis of the Phenomena of Repression Associated with North Korea's Kwan-li-so Political Penal Camps According to the Terms and Provisions of Article 7 of the Rome Statute of the International Criminal Court and the Parallel Provisions of Customary International Law on Crimes Against Humanity*, Freedom House (2007), at 14 [hereinafter *Concentrations of Inhumanity*].

<sup>200</sup> *Concentrations of Inhumanity*, *supra* note 199, at 14.

<sup>201</sup> DPRK, *supra* note 146, at 361.

The crime against humanity of murder is defined as “a death resulting from the act or omission of another which was motivated by the intention to kill the victim or to cause grievous bodily harm likely to result in death.”<sup>202</sup> An exception is made for the death penalty, as long as it is reserved for the most egregious offenses and is carried out pursuant to a fair trial.<sup>203</sup> Murder need not be premeditated however to constitute a crime against humanity.<sup>204</sup> Instead, “the mental element is satisfied where the perpetrator causes ‘grievous bodily harm in the reasonable knowledge that the attack was likely to result in death.’”<sup>205</sup> Murder, both premeditated and not, occurs routinely in the gulag system and takes countless forms, including: executions and killings, torture resulting in death, death as a result of prison conditions; and forced abortion and infanticide.

Witness testimony suggests that executions occur in the gulag system and are carried out as a means of instilling fear and maintaining control.<sup>206</sup> Prisoners are executed for offenses such as: “stealing or foraging for food, fighting, assaulting guards, engaging in sexual relations, refusing to abandon religious beliefs, criticizing the North Korean regime, or attempting to escape.”<sup>207</sup> None of these acts are serious enough to warrant the death penalty under international standards.<sup>208</sup> Furthermore, there are reports of prisoners being killed arbitrarily and at the whim of the guards.<sup>209</sup> Not surprisingly then, there are no trials and there is no judicial oversight in the camps; executions and killings are entirely subject to the guards’ discretion.<sup>210</sup>

Murder that is not premeditated is common as well. Guards are taught that prisoners are not human beings.<sup>211</sup> Reports suggest that they engage in torture so brutal that their victims either die during the torture itself or later on from injuries sustained during torture.<sup>212</sup> Similarly, guards and prison authorities also maintain and support camp conditions that invite death.<sup>213</sup> Because death is obviously a foreseeable consequence of camp conditions consisting of back-breaking labor, malnutrition, lack of access to healthcare, and unsafe working conditions, it is clear that guards are aware that camp conditions commonly lead to death.<sup>214</sup> They are therefore responsible both for their actions, such as forcing prisoners to engage in dangerous work, and their omissions, such as failing to provide sufficient food for survival.<sup>215</sup>

Lastly, pregnancy in the gulag system is prohibited and punished.<sup>216</sup> If a woman is in her more than eight months pregnant, she is either murdered or forced to deliver the baby to be killed

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<sup>202</sup> *Id.*; *A Case to Answer*, *supra* note 141, at 36.

<sup>203</sup> *A Case to Answer*, *supra* note 141, at 37.

<sup>204</sup> *Id.* at 38.

<sup>205</sup> *Id.* at 38.

<sup>206</sup> DPRK, *supra* note 146, at 360.

<sup>207</sup> *Id.*

<sup>208</sup> *A Case to Answer*, *supra* note 141, at 37.

<sup>209</sup> *Id.* at 36.

<sup>210</sup> *Id.* at 37.

<sup>211</sup> DPRK, *supra* note 146, at 361.

<sup>212</sup> *A Case to Answer*, *supra* note 141, at 37.

<sup>213</sup> *Id.* at 38.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> DPRK, *supra* note 146, at 361.

upon birth.<sup>217</sup> Infanticide as well as the killing of the mother clearly constitutes murder. Women who have not yet reached their last trimester are punished and subjected to forced abortions, which may constitute murder as well.<sup>218</sup>

b. Extermination

It is estimated that well over 10,000 prisoners die each year as a result of direct killings, malnutrition, back-breaking labor, lack of access to health care, and primitive camp conditions.<sup>219</sup> This mortality rate and its various causes are well known, yet no efforts have been made to improve camp conditions to increase the likelihood of survival.<sup>220</sup> Instead, the gulag system appears to be run for the purpose of slowly killing “political enemies.”<sup>221</sup> As a former guard stated, “[t]he purpose of the camps was to kill the prisoners. Instead of killing them by shooting, the intention was to force them to work to the last minute . . . the purpose was to kill, the method was just different. None of the prisoners in the camp survive.”<sup>222</sup> Similarly, former prisoner Kang Cheol-Hwan explained “[t]he camps are death camps. It is systematic killing, not arbitrary killing . . . it is a slow process of death, starvation and pain; a long-drawn-out process in which the prisoners are whittled down to the bones.”<sup>223</sup>

These death camps not only work to kill “political enemies,” but also forbid pregnancies, force abortions, and engage in infanticide in order to, as a former prisoner put it, prevent the rise of “another generation of counter-revolutionaries.”<sup>224</sup> This prevention of births seems to be in accordance with the Kim Il-sung’s command to “desiccate the seedlings of counter-revolution. Pull them out by their roots. Exterminate every last one of them.”<sup>225</sup>

The prevention of births coupled with the overwhelming mortality rate due to camp conditions constitute the crime against humanity of extermination. Extermination is “the intentional infliction of conditions of life, *inter alia*, the deprivation of access to food . . . calculated to bring about the destruction of a part of the population.”<sup>226</sup> Intentional, in this context, means that the “perpetrator must intend to kill or inflict serious injury and must have done so ‘being aware that his act or omission forms part of a mass killing event.’”<sup>227</sup> International law, however, presumes “that persons who commit acts or omissions do so intentionally, absent indications to the contrary.”<sup>228</sup> Consequently, the well-known camp conditions imposed upon a specific portion of the population, the so-called “political enemies,” which cause rampant death and prevent birth are themselves sufficient evidence of extermination in North Korea.

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<sup>217</sup> *Failure to Protect*, *supra* note 139, at 41.

<sup>218</sup> DPRK, *supra* note 146, at 361.

<sup>219</sup> *A Case to Answer*, *supra* note 141, at 43.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* at 28.

<sup>224</sup> *Concentrations of Inhumanity*, *supra* note 199, at 58.

<sup>225</sup> *Id.* at 59.

<sup>226</sup> DPRK, *supra* note 146, at 359.

<sup>227</sup> *A Case to Answer*, *supra* note 141, at 43.

<sup>228</sup> DPRK, *supra* note 146, at 360.

c. Enslavement

Enslavement is the “exercise of any or all of the powers attaching to the rights of ownership over a person . . . .”<sup>229</sup> The International Criminal Tribunal for the former Yugoslavia (“ICTY”) has defined powers attaching to the rights of ownership over a person to 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 labor.”<sup>230</sup>

Essentially all of these factors are present in the gulag system. Prisoners, including children, are forced to perform difficult and often dangerous labor seven days a week under deplorable conditions.<sup>231</sup> Their typical workday lasts twelve hours during which they are required to meet virtually impossible production quotas or face beatings and other punishments.<sup>232</sup> Guards control when prisoners are allowed to speak or take breaks, sometimes forcing prisoners to urinate or defecate in their clothing if they need to use the toilet before a designated break.<sup>233</sup> Prisoners are forced to keep up this manic pace despite receiving only starvation-level food rations. Furthermore, not only are attempts to escape from the camp punishable by death, but Kang Cheol-Hwan, a former child prisoner, described a three time a day roll call system in which prisoners who “fail more than twice to be counted during roll call . . . are treated as having attempted to escape and are killed.”<sup>234</sup> The forced slave labor of the gulag system and the conditions under which it occurs constitute enslavement.

d. Torture

The crime against humanity of torture is defined as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused . . . not arising from, inherent in or incidental to, lawful sanctions.”<sup>235</sup> The ICTY and International Criminal Tribunal for Rwanda (“ICTR”) state that the torture need be inflicted for a particular purpose, such as to interrogate, punish, or discriminate.<sup>236</sup> Brutal torture occurs routinely in the gulag system, whether as part of an interrogation, punishment, or simply as a form of discrimination against political enemies. Torture also takes a variety of forms, from violent beatings that commonly lead to permanent disfigurement or death, to more creative forms of misery such as confinement in a tiny cell in which one cannot sit or stand for months.<sup>237</sup>

e. Persecution

As previously discussed, the North Korean government abducts and confines both those persons whose political beliefs are perceived as threatening as well as their families. Persons

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<sup>229</sup> Rome Statute, *supra* note 195, at Art. 7(2)(c).

<sup>230</sup> DPRK, *supra* note 146, at 359.

<sup>231</sup> *Failure to Protect*, *supra* note 139, at 92.

<sup>232</sup> *A Case to Answer*, *supra* note 141, at 44-45.

<sup>233</sup> *Id.* at 45.

<sup>234</sup> *Id.* at 44.

<sup>235</sup> Rome Statute, *supra* note 187, at Art. 7(2)(e).

<sup>236</sup> *A Case to Answer*, *supra* note 141, at 48.

<sup>237</sup> *Failure to Protect*, *supra* note 139, at 92-3.

practicing any religion other than the monolithic *juche* ideology are likewise abducted and sent to the gulags along with their families.<sup>238</sup> Reports suggest that Christians are targeted most harshly and are often subjected to especially brutal treatment in the camps since guards view them as deranged due to their religious beliefs.<sup>239</sup>

The practice of detaining, imprisoning, and enslaving large portions of the population on the basis of their political or religious ideology constitutes persecution. Persecution is defined as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”<sup>240</sup> Furthermore, persecution on political or religious grounds are specifically identified and prohibited under the Rome Statute.<sup>241</sup>

f. Arbitrary Imprisonment or Other Severe Deprivation of Physical Liberty

A state commits the crime against humanity of arbitrary imprisonment or other severe deprivation of physical liberty when the state “imprisons or severely deprives physical liberty of one or more persons” in violation of the fundamental rules of international law.<sup>242</sup> A person is considered “imprisoned” in violation of the fundamental rules of international law when: (1) a person is deprived of his or her liberty; and (2) the deprivation is imposed arbitrarily, or without due process of law.<sup>243</sup> The ICCPR defines due process of law to include such features as the right to a fair and public hearing by an independent and impartial tribunal, the right to counsel, the right to presumption of innocence, and the right to appeal.<sup>244</sup>

Persons imprisoned in the gulag system have no physical liberty; they understand that attempts to escape usually result in public execution.<sup>245</sup> In fact, Freedom House said in a 2007 report that “there are few situations in today’s world with a more ‘severe deprivation of physical liberty’ than DPRK’s political penal labor colonies.”<sup>246</sup> Furthermore, political enemies incarcerated in the gulags are deprived of all of aspects of due process.<sup>247</sup> They are incarcerated without access to any independent judicial process, an attorney, or a right to appeal.<sup>248</sup> This constitutes arbitrary imprisonment and other severe deprivation of physical liberty.

g. Enforced Disappearance

The Rome Statute defines enforced disappearance as “the arrest, detention, or abduction of persons by, or without the authorization, support, or acquiescence of, a State or political organization, followed by a refusal to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them

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<sup>238</sup> DPRK, *supra* note 146, at 358.

<sup>239</sup> *A Case to Answer*, *supra* note 141, at 53.

<sup>240</sup> Rome Statute, *supra* note 195, at Art. 7(2)(g).

<sup>241</sup> *Id.* at art. 7(1)(h).

<sup>242</sup> *A Case to Answer*, *supra* note 141, at 47.

<sup>243</sup> DPRK, *supra* note 146, at 358.

<sup>244</sup> *Id.*

<sup>245</sup> *Concentrations of Inhumanity*, *supra* note 140, at 43.

<sup>246</sup> *Id.*

<sup>247</sup> *Failure to Protect*, *supra* note 139, at 30.

<sup>248</sup> DPRK, *supra* note 146, at 358.

from the protection of the law for a prolonged period of time.”<sup>249</sup> North Korea’s practice of removing “political enemies” and three generations of their families from their homes and depositing them in the gulag system falls squarely within this definition. Not only is there no formal arrest or judicial process, a person may be held incommunicado without notice of the criminal allegations he faces or without any information on the length or location of his detention.<sup>250</sup> Furthermore, state policy dictates that no information regarding a prisoner’s whereabouts is provided to anyone who inquires about a disappearance because the state does not officially acknowledge the existence of the gulag system.<sup>251</sup> Similarly, prisoners are severed from all contact with the outside world.<sup>252</sup> Disappearances are intended to remove political enemies from the protection of the law for prolonged periods of time, usually the remainder of their lives.<sup>253</sup>

## 2. Violations of Treaties to which the DPRK is a Party

North Korea’s operation of the gulag system constitutes crimes against humanity. In addition, numerous features of the system implicate flagrant violations of four treaties to which North Korea is a party. North Korea maintains the gulag system in direct violation of the (1) ICCPR;<sup>254</sup> (2) ICESCR;<sup>255</sup> (3) CEDAW;<sup>256</sup> and (4) CRC.<sup>257</sup>

### a. International Covenant on Civil and Political Rights

North Korea is a state party to the ICCPR, and, as such, must undertake “to respect and ensure all individuals . . . the rights recognized in the present Covenant” and must “take the necessary steps . . . to adopt such laws or other measures as may become necessary to give effect to [these] rights.”<sup>258</sup> The practice of abducting and imprisoning a large segment of the population for their real or perceived political or religious beliefs, without access to judicial process, and subsequently subjecting them to forced labor, torture, starvation, and other atrocities violates several provisions of the ICCPR. These violations are systematic and widespread.<sup>259</sup>

Specifically, the gulag system violates the following provisions of the ICCPR: (1) the right to life expressed in Article 6; (2) the right not to be subjected to torture or cruel, inhuman or degrading treatment expressed in Article 7; (3) the right not to be held in arbitrary detention, expressed in Article 9; (4) the right for all persons deprived of liberty to be treated with dignity, expressed in Article 10; (5) the right to free movement, expressed in Article 12; (6) the right to due process and elements thereof, including the right to a fair and public hearing by an independent and impartial tribunal, right to counsel, right to presumption of innocence, and right

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<sup>249</sup> *Concentrations of Inhumanity*, *supra* note 140, at 40.

<sup>250</sup> DPRK, *supra* note 146, at 357.

<sup>251</sup> *A Case to Answer*, *supra* note 141, at 56.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *See* ICCPR, *supra* note 104.

<sup>255</sup> *See* ICESCR, *supra* note 135.

<sup>256</sup> *See* CEDAW, *supra* note 114.

<sup>257</sup> *See* CRC, *supra* note 125.

<sup>258</sup> *See* ICCPR, *supra* note 104, at pmb1.

<sup>259</sup> *Failure to Protect*, *supra* note 139, at 31.

to appeal a conviction, as expressed in Article 14; (7) the right to recognition as a person, as expressed in Article 16; (8) the right to not be subjected to arbitrary interference with privacy, family, home, or correspondence, expressed in Article 17; (9) the right to freedom of thought, conscience, and religion, expressed in Article 18; (10) the right to hold opinions without interference, expressed in Article 19; (11) the right to peaceful assembly expressed in Article 21; (12) the right to freedom of association, expressed in Article 22; and (13) the right to equal protection and non-discrimination, including on the grounds of political or other opinion, birth, or other status, as expressed in Article 26.<sup>260</sup>

b. International Covenant on Economic, Social and Cultural Rights

The ICESCR requires that all parties “promote universal respect for, and observance of, human rights and freedoms.”<sup>261</sup> North Korea, however, denies a large segment of its own population a number of the rights enumerated in the ICESCR, including: (1) the right to self-determination expressed in Article 1; (2) the right to non-discrimination expressed in Article 2; (3) the right to enjoyment of just and favorable conditions of work, including safe and healthy working conditions as well as rest, leisure, and reasonable limitation of working hours, as expressed in Article 7; (4) the right to special protection for mothers for a reasonable period before and after childbirth as well as for children as expressed in Article 10; (5) the right to an adequate standard of living, including adequate food, clothing, and housing, and to the continuous improvement of living conditions, as expressed in Article 11; (6) the right to be free from hunger, as expressed in Article 11; (7) the right to the highest attainable standard of physical and mental health, as expressed in Article 12; (8) the right of everyone to an education as expressed in Article 13; and (9) the right to take part in cultural life and enjoy the benefits of scientific progress as expressed in Article 15.<sup>262</sup> North Korea has also not fulfilled several of its obligations under the ICESCR, including: (1) promotion of the realization of the right of self-determination, as expressed in Article 1; (2) the obligation to guarantee that the rights enunciated in the Covenant are exercised without discrimination, as expressed in Article 2; (3) the obligation to take steps to ensure that the rate of infant mortality is reduced; to create conditions that assure medical attention in times of sickness; and to prevent, treat, and control disease; as expressed in Article 12.<sup>263</sup>

c. Convention on the Elimination of Discrimination Against Women

Although North Korea is a party to CEDAW, North Korea’s treatment of female prisoners in the gulag system operates in direct contravention of many of CEDAW’s provisions. As previously discussed, pregnancy is forbidden in the gulag system, and female prisoners who are found pregnant are subjected to forced abortions or, if more than eight months pregnant, they are killed or forced to deliver the baby to be murdered upon birth.<sup>264</sup> Several testimonies report that women who were subjected to forced abortions or whose babies were murdered upon birth

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<sup>260</sup> *Id.*

<sup>261</sup> *See* ICESCR, *supra* note 135, at pmbl.

<sup>262</sup> *See id.* at art. 1-2, 7, 10-13, and 15.

<sup>263</sup> *See id.* at art 1-2 and 12.

<sup>264</sup> *Failure to Protect, supra* note 139, at 41.

were forced to return to work immediately and were given no special treatment.<sup>265</sup> Furthermore, although sexual intercourse is forbidden, there have been several reports suggesting that guards commonly rape or sexually assault female prisoners.<sup>266</sup> These practices violate numerous CEDAW provisions, including: (1) the obligation to refrain from engaging in any practice of discrimination against women as well as to take all appropriate measures to eliminate discrimination against women, as expressed in Article 2; (2) the right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction, expressed in Article 11; (3) the prohibition on the imposition of sanctions on the ground of pregnancy, expressed in Article 11; and (4) the obligation to provide special protection to women during pregnancy in types of work proved to be harmful to them, expressed in Article 11.<sup>267</sup>

d. Convention on the Rights of the Child

Children are provided no special treatment in the gulags. They are subjected to the same back-breaking and dangerous labor as their adult counterparts, despite their obvious differences in size, strength, and stamina.<sup>268</sup> In fact, Kang Cheol-Hwan noted “children have to endure more brutal labor than adults . . . they are driven hard at work and they have malnutrition.”<sup>269</sup> Not surprisingly then, children have the highest death rate in the camps and are the most vulnerable.<sup>270</sup> Equally harrowing, reports suggest that children are subjected to brutal mental and physical torture.<sup>271</sup> Furthermore, babies born in the camps are usually given no opportunity to grow into children and are instead murdered upon birth.<sup>272</sup>

This treatment of children is in direct violation of North Korea’s obligations under the CRC. In particular, North Korea has violated the following CRC provisions through its treatment of children in the gulag system: (1) the requirement that the best interests of the child be a primary consideration, that the State ensure children have the protection and care necessary for their well-being, and that the State ensure that institutions, services, and facilities responsible for the care and protection of children meet certain standards of safety, health, and suitability of staff, as expressed in Article 3; (2) a child’s right to life, expressed in Article 6; (3) the obligation to ensure to the maximum extent possible the survival and development of the child, expressed in Article 6; (4) the obligation to ensure that a child is not separated from the child’s parents against the parents’ will, and, in the case of separation due to the imprisonment of the parent(s), the obligation to inform family members of the whereabouts of the parent(s), expressed in Article 9; (5) the right to freedom of expression, expressed in Article 13; (6) the right to freedom of thought, conscience, and religion, expressed in Article 14; (7) the right to freedom of association and peaceful assembly, expressed in Article 15; (8) the prohibited against arbitrary or unlawful interference with a child’s privacy, family, or correspondence, as well as to unlawful attacks on the child’s honor and reputation, expressed in Article 16; (9) the requirement that the State take all appropriate measures to protect the child from all forms of violence, neglect or negligent

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<sup>265</sup> *Id.* at 39-40.

<sup>266</sup> *Id.* at 52.

<sup>267</sup> See CEDAW, *supra* note 114, at art. 2, 11.

<sup>268</sup> *A Case to Answer*, *supra* note 141, at 45.

<sup>269</sup> *Id.* at 44.

<sup>270</sup> *Id.* at 28.

<sup>271</sup> *Id.* at 48.

<sup>272</sup> *Id.* at 39.

treatment, and maltreatment or exploitation, as expressed in Article 19; (10) the right of the child to enjoy the highest attainable standard of health and to have access to treatment for illness, expressed in Article 24; (11) the right of the child to a standard of living adequate for the child's development, expressed in Article 27; (12) the right to education and related responsibilities imposed on the State, as expressed in Articles 28 and 29; (13) the right to rest and leisure, play and recreational activities, expressed in Article 31; (14) the right to be protected by the State from economic exploitation and from performing any work that is hazardous or harmful to the child's health, expressed in Article 32; (15) the obligation on the State to protect the child from all forms of exploitation, expressed in Article 36; (16) the obligation on the State to ensure that children are not subjected to torture or other cruel treatment or punishment, that children are not deprived of their liberty arbitrarily or unlawfully, and that every child deprived of liberty be treated with respect and be provided access to legal assistance, as expressed in Article 38; and (17) the obligations on the state enumerated in Article 40 for the protection of children's rights when the child has been accused of infringing on a penal law.<sup>273</sup>

#### **IV. Conclusion and Recommendations**

The international community knows and understands the crimes against humanity being committed against some 150,000-200,000 North Koreans in the gulag system in the country. Yet, to date, no effective measures have been taken to ameliorate the suffering of those imprisoned in this system. Therefore the Coalition makes the following recommendations: To summarize, the Coalition's research finds the following:

- The DPRK is operating a gulag system that imprisons an estimated 150,000-200,000 people;
- The DPRK has a responsibility to protect its own citizens from crimes against humanity being committed against them, let alone not commit those crimes;
- Through its ongoing operation of the gulag system, the DPRK is committing crimes against humanity against the prisoners in this system through widespread and systematic acts such as imprisonment, enslavement, extermination, torture, persecution based on political and religious grounds, and other inhumane acts designed to cause great suffering or death;
- The DPRK is also violating its obligations under treaties such as the International Covenant on Civil and Political Rights, International Covenant on Economic, and Social Rights, Convention on the Elimination of Discrimination Against Women, and Convention on the Rights of the Child.

Based on the Coalition's research, the following recommendations are supported by our membership for important possible next steps to rectify this situation:

- The DPRK should shut down its gulag system, and immediately and unconditionally free all those persons currently imprisoned;
- The DPRK should initiate a process to hold perpetrators accountable for the commission of crimes against humanity and other violations of international and domestic law;

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<sup>273</sup> See CRC, *supra* note 125, at art. 3, 6, 9, 13-16, 19, 24, 27-29, 31-32, 36, 38, 40.

- The DPRK should provide appropriate reparations to victims and their families affected by the gulag system;
- The United Nations, acting through the General Assembly or Human Rights Council, should initiate a commission of inquiry into the crimes against humanity being undertaken in the DPRK for the purpose of holding the state and individual perpetrators to account for the ongoing commission of these crimes;
- The full range of UN organs should engage with the DPRK regarding its ongoing operations of the gulag system until the system is shut down.

This is an extremely grave situation, and we therefore request the Special Procedures immediately initiate an investigation into the operation of the gulag system in the DPRK with the following scope and characteristics:

- The investigation should include having the Special Procedures request an opportunity to visit the six camps in the DPRK gulag system;
- The investigation should include consultations with victims of the gulag system who have escaped as well as relevant international experts;
- The investigation should assess and apply the DPRK's obligations in relation to the gulag system under relevant international law, including treaties to which the country is a party;
- The investigation should make both conclusions of fact and conclusions of law regarding the situation in the DPRK gulag system;
- The investigation should issue recommendations regarding the implications of these findings of fact and law.

Based on outcome of their investigations, the Special Procedures should develop a joint report and deliver it to the Human Rights Council for consideration and potential further action. In sum, the goal of these efforts is to close the North Korean gulag system and, in the meantime, maximize the use of the UN system for the benefit of those imprisoned within the gulag.

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