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A Call for Aggressive Media Campaign Regarding DPRK Prison Camps

Hannah Lee

¶1 Shin Dong-hyuk considered himself lucky when a prison guard chopped off the tip of his finger. Born and raised an inmate of a North Korean prison camp, Shin had not expected to receive a punishment other than execution for breaking a sewing machine, albeit by accident.¹ Later, Shin got even luckier. In 2005, he was able to successfully escape the prison camp, becoming the only known North Korean defector who was born in prison.

¶2 Most would hope to believe that “gulags,” the mass incarceration systems used by Socialist countries to suppress anti-state political factions, are a thing of the past. However, unbeknownst to many, their dark legacy lives on in the Democratic People’s Republic of Korea (“DPRK” or “North Korea”) in the form of *kwan-li-so*, an extensive system of state-authorized concentration camps.

¶3 It is estimated that nearly 200,000 people are being held in *kwan-li-so* and related systems, often without due process and in brutal conditions, in flagrant violation of international human rights conventions.² Over 400,000 prisoners have died in these camps over the past thirty years, from causes including starvation, death by labor, torture, executions, and more.³

¶4 This issue is particularly noteworthy today, as political tensions mount in the Korean peninsula and beyond. As recently as January 2014, North Korean leader Kim Jong-Un repeatedly declared a state of war with South Korea and threatened to attack the U.S. with atomic weapons.⁴ North Korea remains one of the most militarily menacing nations in the world, and therefore is subject to vast media coverage about its military schemes, weapon development, and war threats. Meanwhile, however, little attention has been paid to its serious domestic issues, including its failure to comply with international human rights standards.

¶5 In particular, the dearth of scholarship addressing North Korean prison camps is disproportionate to the gravity of the issue. Such notable silence may be a result of

¹ Choe Sang-Hun, *North Korean Defectors Tell U.N. Panel of Prison Camp Abuses*, N.Y. TIMES (Aug. 20, 2013), <http://www.nytimes.com/2013/08/21/world/asia/north-korean-defectors-tell-un-panel-of-prison-camp-abuses.html>.

² James S. Robbins, *Got Gulag? North Korea Does*, NATIONAL REVIEW ONLINE (June 9, 2005, 7:45 AM), <http://www.nationalreview.com/articles/214647/got-gulag/james-s-robbins>.

³ DLA PIPER & U.S. COMM. FOR HUM. RTS. IN NORTH KOREA, FAILURE TO PROTECT: A CALL FOR THE UN SECURITY COUNCIL TO ACT IN NORTH KOREA 30, 34 (Oct. 30, 2006), <http://www.cfr.org/un/failure-protect-call-un-security-council-act-north-korea/p11903> [hereinafter DLA PIPER].

⁴ Jack Kim, *North Korea Threats: Pyongyang Steps up Rhetoric Against U.S. Bases in Japan and Guam*, THE HUFFINGTON POST (Mar. 21, 2013), http://www.huffingtonpost.com/2013/03/21/north-korea-threats_n_2920984.html; Sam Kim, *North Korea Reportedly Entering 'State Of War' Against South Korea*, THE HUFFINGTON POST (Mar. 30, 2013), http://www.huffingtonpost.com/2013/03/29/north-korea-state-of-war_n_2982025.html.

general diplomatic and political sensitivities towards North Korea and fear of military retaliation. Moreover, an aggravating factor is the Kim regime's notorious policy of secrecy.

¶6 This note is based on the notion that raising awareness is the first step towards redress and setting the record straight about what is and is not acceptable in the eyes of the international community. While these "soft measures" may seem modest in light of the imminent need to stall the mass detainment, suffering, and deaths in North Korea, they are also precisely what are necessary to serve as a catalyst for further action.

¶7 Applying political pressure on the North Korean government through extensive and proactive media campaign implemented by the most powerful United Nations branches is an unprecedented approach. Being a novel agenda, it does carry some risks, such as the possibility of eliciting no response from North Korea, or, worse yet, provoking a negative response whereby tensions will heighten. However, the aspiration is that a long-term change in awareness and attitude towards the preservation and dignity of human life will nudge North Korea in the right direction. As the international community increasingly participates in discussions about the North Korean prison systems, it will apply pressure on North Korea to increase transparency in its criminal prosecutions and detainment as well as compliance with the customary international laws governing the protection of human rights.

¶8 It is important that the media coverage of North Korean prisoners arouse sympathy among the audience. This is because any media campaign must inspire action and mobilize a movement toward meaningful change in order to be effective. However, what is more important is that the coverage be a respectable, objective, and factually accurate narrative, rather than one that merely sensationalizes the issue.

¶9 The media campaign must have the long-term goal of establishing a universal norm for how humans treat each other. Doing so will lend legitimacy to future tribunals that may try those accountable for crimes against humanity in North Korea. More importantly, however, these conciliatory and diplomatic efforts will pave the road towards demilitarization of North Korea as well as a peaceful reunification of the two Koreas.

¶10 This note proposes to close the information gap regarding North Korean prison camps by calling upon the United Nations, the most prominent international organ, to initiate, monitor, and sustain aggressive global media coverage of *kwan-li-so*. The scope of this note does not cover criminal prosecution of North Korean officials responsible for the existence and operation of *kwan-li-so*. Contemplation of various forums for redress for the North Korean victims has been covered in depth elsewhere.⁵ Rather, the goal of this note is to propose a more subdued and long-term, yet equally crucial process of transforming political attitudes and priorities of the international community surrounding the issue of North Korean prison camps.

¶11 In pursuing this particular form of humanitarian intervention, there are several practical considerations, not least of which is the limitation of resources, including funding and staffing. There is also the on-going issue of sustainability, consistency, and objectivity in application on an international scale. Given these challenges, this note proposes and evaluates two potential entities to spearhead the coordination and

⁵ See Morse H. Tan, *Finding A Forum for North Korea*, 65 SMU L. Rev. 765 (2012).

monitoring of the concerted worldwide media campaign: the United Nations Working Group on Arbitrary Detainment and the United Nations Security Council.

¶12 The note will begin by presenting the state of North Korean political prisons and the North Korean government's detainment policy as they are known today. Next, the note will provide an overview of the international response thus far, mainly through the mechanisms of the United Nations former Commission on Human Rights, the Special Rapporteur for Human Rights in North Korea, the United Nations General Assembly, and, most recently, the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea. The note will also outline the legal framework that governs the gross human rights violations that exist in the North Korean prison camps. References will be made to specific provisions of two of the most relevant international human rights laws, the International Covenant on Civil and Political Rights and the Rome Statute.

I. WHAT IS KNOWN ABOUT *KWAN-LI-SO* TODAY

¶13 *Kwan-li-so* are prison-labor camps that house political prisoners on a large scale and impose forced labor upon thousands of North Koreans. They are arbitrary and extra-judicial facilities that incarcerate not only the accused, but up to three generations of the accused's family.⁶ Moreover, the prisoners are kept at starvation-level and forced to engage in severe physical labor.

¶14 The 2004 report by the Committee on Foreign Affairs of the U.S. House of Representatives states, "the terrible human rights situation inside North Korea . . . has remained largely hidden from the outside world until the past several years."⁷ For example, the topic of the prison camp system is not even mentioned in North Korea's country report issued by the Amnesty International in 2005.⁸ To this day, there is not much known about *kwan-li-so*, and even the scant information available is based on anecdotes of escapees, which are practically unverifiable. This omission and information vacuum form a vicious cycle, whereby silence reinforces apathy towards the issue. Lack of interest, in turn, leads to lack of media coverage and discussion. This has been a substantial challenge for the international human rights organizations and governments.

¶15 Of the scant sources available, the most reliable are reports by North Korean defectors. In the mid-1990s, a severe nationwide famine forced an unprecedented number of North Koreans to attempt to flee the country. One positive outcome of this tragic circumstance is that those who successfully defected were able to relay information to the outside world about the North Korean government's human rights abuses and the prison camp system.⁹

¶16 Today, with the help of North Korean defectors' testimony, it is understood that there are six *kwan-li-so* in existence.¹⁰ It is estimated that each camp contains from 5,000 to as many as 50,000 people.¹¹ The North Korean prison camps originated in 1947, the

⁶ DLA PIPER, *supra* note 3, at 34.

⁷ H.R. REP. 109-478 (2004), at 11.

⁸ Robbins, *supra* note 2.

⁹ DLA PIPER, *supra* note 3, at 34.

¹⁰ *Id.*

¹¹ *Id.*

first prisoners being landowners, religious persons, and those who supported Japan in its occupation of Korea.

¶17 From the beginning, the North Korean government used prison camps as a means of ideological control and oppression. The North Korean State Security Department is the official agency in charge of investigating and punishing real and alleged political offenses within North Korea.¹² The agency has full authority to employ secret police to locate those who slander the regime and punish offenders, including by imprisonment.¹³

¶18 In the 1950s through the late 1960s, Kim Il-Sung's regime targeted political opponents, who were declared "dangerously deluded in their political beliefs" and separated from the rest of the population through imprisonment.¹⁴ The crimes that warranted a prison term were both real and imagined. Some were incarcerated for minor disturbances such as expressing exasperation with the difficulty of life generally, or minor acts of defiance like singing a South Korean song.

¶19 When Kim Jong-Il succeeded his father as the country's leader in 1994, he expanded the political prison camps to accommodate opponents to his new regime. By 1982, the North Korean government had sentenced over 100,000 political opponents.¹⁵ In the late 1980s, the government feared that reform in Eastern Europe and the collapse of communism threatened North Korea's political system. As a consequence, it further utilized the political prison camps to quash dissidents.

¶20 The parallel between North Korea and other communist states is undeniable. *Kwan-li-so* has often been compared to Stalinist gulags, and North Korea described as a "bona fide Soviet state."¹⁶ North Korean *kwan-li-so* resembles Soviet gulags in their size, scope, and purpose of political suppression. In some aspects, the North Korean system is even more coercive than the Soviet counterpart, as it ignores due process and *pro forma* trials.¹⁷ In North Korea, suspects are not given any notice or opportunity to defend their innocence. State officials simply abduct them without informing them of the offense and use interrogation and torture to force "confession" to the crime. Suspects are incarcerated without due process of trial, or being given any information as to when, if ever, they may be released.

¶21 The North Korean State Security Department will incarcerate up to three generations of the accused's family, including mother, father, sisters, brothers, children, and grandchildren.¹⁸ This practice is rooted in Kim Il-Song's theory that the "seeds" of the accused must be eliminated through three generations.¹⁹ Families are often arrested for a family member's "crime of high treason" without being given the specific allegations.

¶22 Moreover, the prisoners are provided starvation-level food rations, despite being forced to engage in demanding physical labor.²⁰ As a result, prisoners' physical

¹² *Id.* at 30.

¹³ *Id.*

¹⁴ DLA PIPER, *supra* note 3, at 33.

¹⁵ *Id.*

¹⁶ Robbins, *supra* note 2.

¹⁷ *Id.*

¹⁸ DLA PIPER, *supra* note 3, at 34.

¹⁹ *Id.* at 34-35.

²⁰ *Id.* at 35-36.

conditions deteriorate from over-exertion and under-nourishment.²¹ Death and disease such as diarrhea are common due to malnutrition.²² Keeping the prisoners in such conditions serves the purpose of diminishing their morale, thereby turning these prisoners into more manageable subjects from the perspective of the North Korean government.²³ Food ration depends on the prisoner's completion of work assignments, which results in a vicious cycle of food deprivation leading to the exhaustion, and inability to complete work leading to further deprivation of food.²⁴

¶23 Nearly twenty to twenty-five percent of the North Korean prisoners are worked to death each year.²⁵ This figure does not include those who survived but became ill or disabled. Moreover, the deceased include children, who, at their tender age, were forced to engage in intense labor beyond their capacity, including farming, sewing, mining, and timber-cutting.

¶24 Prison camp authorities make these tasks even more dangerous by failing to provide even the most basic safety gear, such as hard hats during mining. There is no protection against harsh weather, often causing severe frostbite that requires amputation. Casualties and deaths are common from work-place accidents such as cave-ins during mining and fallen timber during tree cutting.²⁶

¶25 The prison camps routinely employ torture as a means of interrogation and punishment. Prison guards engage in fierce beatings that cause eyes to fall out or leg bones to be exposed.²⁷ As punishment, prisoners are severely restricted in their bodily movements, sometimes cutting off circulation to the point of crippling or death.²⁸

¶26 There is gross disregard for life in general. Prisoners are executed for trivial reasons, including eating unauthorized food. Moreover, Kim Jong-Il instituted a perverse incentive system rewarding guards who killed prisoners during an attempted escape.²⁹ In one disturbing instance, a prison guard forced a prisoner to pretend to escape and then shot him in order to claim his reward.³⁰

¶27 Finally, forced abortion and infanticide are common practice in the prison camps.³¹ Women are often trafficked across borders to China for sex trade. When they become pregnant, these women are sometimes returned to North Korea and forced to go under abortion to prevent the crossover between North Korean and Chinese races. Babies carried for more than eight months are birthed and immediately suffocated or abandoned in front of the mother.³² As illustrated by these examples, the physical and mental well-being of countless North Koreans is devastated in the prison camps, on a daily basis.

¶28 Lately, North Korea has gone through significant changes, most notably the death of Kim Jong-Il, and the succession of his son Kim Jong-Un. Since coming into power,

²¹ *Id.*

²² *Id.*

²³ *See id.*

²⁴ *See* DLA PIPER, *supra* note 3, at 35-36.

²⁵ *Id.* at 37.

²⁶ *Id.* at 37-38.

²⁷ *Id.* at 39.

²⁸ *Id.*

²⁹ *Id.* at 40.

³⁰ DLA PIPER, *supra* note 3, at 40.

³¹ *Id.*

³² *Id.*

Kim Jong-Un has made repeated declarations of war and ultimatums of nuclear attack against South Korea and the U.S.³³ Judging by his conduct thus far, Kim Jong-Un seems to continue his predecessors' history of nuclear threats and aversion to foreign diplomacy. At the same time, South Korea and the U.S. continue to support the agenda of peace in the Korean peninsula. *Kwan-li-so* continues to exist against this backdrop of fear and hope, war and diplomacy.

II. THE INTERNATIONAL COMMUNITY REACTS

¶29 The international community has made some effort to voice their concern regarding the deplorable conditions in North Korean prison camps. The discussions began with Six-Party Talks in August 2003 involving North Korea, South Korea, the United States, China, Russia, and Japan, where the parties discussed various issues from disarmament to human rights violations in prison camps.³⁴ Also, in 2003 the U.N.'s former Commission on Human Rights ("Commission") passed its first resolution pointing out several human rights violations, including prison camps.³⁵

¶30 The same Commission also called on North Korea to allow NGOs access to the country to ensure that humanitarian assistance was delivered to those in need. They also requested that the U.N. High Commissioner for Human Rights engage in a dialogue with the North Korean government.³⁶

¶31 In 2004, the Commission passed a second resolution regarding North Korea expressing "deep concern at the precarious humanitarian situation in the country."³⁷ In an attempt to involve North Korea directly in the dialogue about human rights, the 2004 Resolution requested that a Special Rapporteur be appointed, and urged the North Korean government to grant him full access to the government and the people of North Korea.

¶32 Vitit Muntarbhorn, the Special Rapporteur for Human Rights in North Korea, issued his first report in January 2005. In addition to commending North Korea for taking positive steps towards cooperating with the U.N., the report broadly suggested that North Korea abide by international human rights conventions and reform its laws accordingly. However, on March 2, 2005 the North Korean government stated its "resolute rejection" of the 2004 Resolution claiming that the U.N. Resolution was politically motivated.³⁸

¶33 The Special Rapporteur issued his second report in August 2005, elaborating on the issues raised in his January 2005 report and requesting that the North Korean government take "immediate action to prevent abuses and provide redress."³⁹ The Commission passed

³³ Jack Kim, *North Korea Threats: Pyongyang Steps up Rhetoric Against U.S. Bases in Japan and Guam*, THE HUFFINGTON POST (Mar. 21, 2013), http://www.huffingtonpost.com/2013/03/21/north-korea-threats_n_2920984.html; Sam Kim, *North Korea Reportedly Entering 'State Of War' Against South Korea*, THE HUFFINGTON POST (Mar. 30, 2013), http://www.huffingtonpost.com/2013/03/29/north-korea-state-of-war_n_2982025.html.

³⁴ DLA PIPER, *supra* note 3, at 68.

³⁵ Comm'n on Hum. Rts. Res. 2003/10, 51st Sess., U.N. Doc. E/CN.4/2003/L.11 (Apr. 16, 2003).

³⁶ *Id.*

³⁷ Comm'n on Hum. Rts. Res. 2004/13, 60th Sess., U.N. Doc. E/2004/23 – E/CN.4/2004/127 (Apr. 15, 2004), at 61.

³⁸ Letter dated 28 Feb. 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, 61st Sess., U.N. Doc. E/CN.4/2005/G/13 (Mar. 2, 2005).

³⁹ *Id.* at 74.

a third resolution regarding the North Korea situation in April 2005, reiterating its deep concern about the “continuing reports of systematic, widespread and grave violations of human rights.”⁴⁰ The resolution voiced the Commission’s concern that the North Korean government had refused to cooperate with any U.N. body, including the Commission and the Special Rapporteur.⁴¹

¶34 The Special Rapporteur issued his third report on January 23, 2006, in which he described his numerous attempts to obtain an invitation to visit North Korea.⁴² Finally, he issued his fourth report on September 27, 2006, stating that human rights abuses in North Korea remained “rampant” and that the North Korean government had been “uncooperative” with respect to his communications with them.⁴³ As illustrated by the five reports by the Special Rapporteur, North Korea has generally been unreceptive to outside communication with regards to its human rights conditions.

¶35 The U.N. General Assembly adopted its own resolution echoing the concerns of the Commission on Human Rights and the Special Rapporteur, expressing its disappointment with the North Korean government’s refusal to recognize the mandate of the Special Rapporteur and about the “reports of systematic, widespread, and grave violations of human rights.”⁴⁴

¶36 Notwithstanding these efforts, North Korea has continued to refuse to engage in dialogue with the United Nations regarding its human rights violations.⁴⁵

III. NORTH KOREA’S POSITION

¶37 Examining North Korea’s criminal law sheds light on its official policy regarding detainment. The 1974 Criminal Law was guided by the policy of suppressing “anti-revolutionary elements.”⁴⁶ “Anti-revolutionary offenses” were categorized as the most pernicious offense to the socialist regime, and were punishable by death. Although the language has been softened through reform, the basic ideology of protecting the status quo remains.

¶38 Consistent with its policy of denial, the North Korean Criminal Law fails to even mention *kwan-li-so*, suggesting that the institution lacks legal basis in North Korean

⁴⁰ G.A. Res. 60/173, U.N. GAOR, 60th Sess., U.N. Doc. A/RES/60/173 (Dec. 16, 2005).

⁴¹ *See id.*

⁴² Comm’n on Hum. Rts., *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*, U.N. Doc. E/CN.4/2006/35 (Jan. 23, 2006).

⁴³ *Id.* at 75.

⁴⁴ G.A. Res. 60/173, *supra* note 40.

⁴⁵ In March 2013, a three-member Commission of Inquiry was established by the United Nations Human Rights Council. The Commission had a one-year mandate to investigate allegations of systematic, widespread and grave violations of human rights, including possible crimes against humanity, by the North Korean government. In February 2014, the Commission published their report documenting human rights abuses, driven by “policies established at the highest level of State,” committed in North Korea. The report also calls for urgent action to address the rights situation in the country. *UN-Mandated Human Rights Inquiry on DPR Korea Documents ‘Widespread, Systematic Abuses*, U.N. NEWS CENTRE (Apr. 17, 2014), <http://www.un.org/apps/news/story.asp?NewsID=47160#.UxlqAvldX01>.

⁴⁶ In Sup Han, *The 2004 Revision of Criminal Law in North Korea: A Take-off?*, 5 SANTA CLARA J. INT’L L. 122, 127 (2006).

law.⁴⁷ Instead, the Criminal Procedure Law and Criminal Law mention *kyo-hwa-so*, which are prisons for standard criminals.⁴⁸ Since it lacks basis even in domestic legislation, *kwan-li-so* should be characterized as truly extra-judicial, lacking any procedural guidance or guarantees of basic human rights.

¶39 North Korea has gone so far as to deny that there are any human rights violations in the country. In 1994 it proclaimed through its official publication, *The People's Korea*, that “there is no ‘human rights problem’ in our Republic either from the institutional or from the legal point of view.”⁴⁹

¶40 North Korea has maintained its position that the principle of non-interference and protection of national sovereignty must be observed over humanitarian intervention. Furthermore, North Korea has rejected the U.N.’s outreach, claiming the U.N. is motivated by “a plot of propaganda fabricated and persistently pursued by hostile forces” as part of a campaign of psychological warfare to “overthrow the State system of [North Korea].”⁵⁰

IV. INTERNATIONAL LEGAL FRAMEWORK

¶41 Before discussing how to address the gross violation of human rights at North Korean prison camps, it is critical to examine the legal instruments that are available. What is the customary international law regarding fundamental civil and political rights of every human being, including those of North Korean detainees?

¶42 The forcible detention, punishment, and imprisonment of the North Korean political prisoners violates several key international human rights principles, such as those contained in the twin instruments of the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social, and Cultural Rights (“ICESCR”), which prohibit torture and persecution of vulnerable groups, as well as the Rome Statute of the International Criminal Court (“Rome Statute”).⁵¹ Below is a discussion of the applicable provisions.

¶43 The North Korean prison camp situation violates the following provisions of the ICCPR: right to life (Article 6); right not be subjected to torture or to cruel, inhuman, or degrading treatment (Article 7); right not to be held in slavery or servitude (Article 8); right not be held in arbitrary detention (Article 9); right for all persons deprived of liberty to be treated with humanity (Article 10); right to free movement (Article 12); right to recognition as a person before the law (Article 16); right not to be subjected to arbitrary interference with privacy, family, home or correspondence (Article 17); right to freedom of thought, conscience and religion (Article 18); right to hold opinion without interference (Article 19); right to peaceable assembly (Article 21); right to freedom of

⁴⁷ *Id.* at 128.

⁴⁸ *Id.*

⁴⁹ DLA PIPER, *supra* note 3, at 10.

⁵⁰ Han, *supra* note 46, at 131.

⁵¹ DAVID HAWK, *THE HIDDEN GULAG: THE LIVES AND VOICES OF “THOSE WHO ARE SENT TO THE MOUNTAINS” EXPOSING NORTH KOREA’S VAST SYSTEM OF LAWLESS IMPRISONMENT* (2d. ed. 2012), http://www.hrnk.org/uploads/pdfs/HRNK_HiddenGulag2_Web_5-18.pdf; International Covenant on Civil and Political Rights, art. 6, Dec. 16, 1966, 999 U.N.T.S. 17; International Covenant on Economic, Social and Cultural Rights, art. 11(1), Dec. 16, 1966, 993 U.N.T.S. 3; Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9 (July 17, 1998) [hereinafter Rome Statute].

association (Article 22); and rights to equal protection and non-discrimination, including on grounds of political or other opinion, birth, or other status (Article 26).⁵²

¶44 The forcible transfer, detainment, torture and cruel treatment of North Korean citizens for alleged anti-state conduct or expression are clear violations of the above ICCPR provisions. The lack of due process in the initial arrest, for example, goes against Articles 9, 12, 16, and 17. The fact that the citizens are charged with and punished for holding an opinion (“wrong-thinking”) or forming alliances that are frowned upon by the state, are violations of Articles 18, 19, 21, and 26. Finally, the systematic tortures through physical punishment and forced starvation, as well as punishments that include execution for attempted escape, violate the protections guaranteed by Articles 6, 7, and 10.

¶45 In addition to treaties like the ICCPR, reference must be made to authoritative international documents such as the Standard Minimum Rules and the Basic Principles for the Treatment of Prisoners, which are promulgated by the United Nations.⁵³ It is also helpful to look at various interpretations by the Human Rights Committee.

¶46 For instance, in *Larossa v. Uruguay*,⁵⁴ the Committee found that the prison conditions in which the plaintiff was placed, with cement beds, no windows, and artificial light around the clock, violated Articles 7 and 10(1) of the ICCPR. In this case, even solitary confinement for a period of a month was found to be a violation of international standards. By this logic, the prison conditions in North Korea, which involve more extreme forms of human rights violations such as torture, physical violence, forced labor, and indefinite prison terms, are in violation of Articles 7 and 10(1) of the ICCPR.

¶47 The Rome Statute, which established the International Criminal Court, was adopted on July 17, 1998, and entered into force on July 1, 2002. Today the Rome Statute is recognized as customary international law, with 139 signatories and 118 ratifications.⁵⁵ However, unfortunately, North Korea is conspicuously absent in the list of signatories. This fact complicates the issue of ICC jurisdiction over North Korean conduct.

¶48 Nonetheless, argument can be made that the Rome Statute still applies to North Korea because, as mentioned above, the ICC creates customary international law, which is recognized as a primary source of international law by the International Court of Justice, the United Nations, and member states. Furthermore, although North Korea is not a party to the Rome Statute, the ICC may have jurisdiction over crimes committed by DPRK citizens, through any one of three ways: (1) the U.N. Security Council refers a case to it, acting under Chapter VII of the U.N. Charter; (2) a State Party refers the situation to the ICC; or (3) the prosecutor initiates an investigation *proprio motu*, pursuant to Article 13 of the Rome Statute.⁵⁶

¶49 Further, what makes the Rome Statute pertinent to the issue of prison camps in North Korea is the fact that it identifies “crimes against humanity” as a new development in defining gross violations of the standards set forth by established legal frameworks, such as the ICCPR. The language defining this new category of “crimes

⁵² HAWK, *supra* note 51, at 160.

⁵³ Jeff Vize, *Torture, Forced Confessions, and Inhuman Punishments: Human Rights Abuses in the Japanese Penal System*, 20 UCLA PAC. BASIN L.J. 329, 348 (2003).

⁵⁴ Comm. on Hum. Rts., *Gustavo Raul Larrosa Bequio v. Uruguay, Communication, No. 88/1981*, U.N. Doc. A/38/40, at 180 (1983).

⁵⁵ *World Signatories and Ratifications*, COAL. FOR THE INT’L CRIM. CT., <http://www.iccnw.org/?mod=romesignatures>.

⁵⁶ *Id.* at 63-64.

against humanity” under the Rome Statute removes any doubt that the Rome Statute applies to the North Korean *kwan-li-so*. Indeed, the definition of “crimes against humanity” under the Rome Statute is reasonably flexible to extend to even non-signatory nations like North Korea, which makes it a powerful instrument to enforce international criminal standards.

¶50 The Rome Statute allows a more complex understanding of the degrees of violation by filling the gap that existed between what are called “serious violations of the standards of the ICCPR” and “genocide” as defined in international law. For instance, arbitrary detainment and torture are more atrocious than “violations,” but fall short of “genocide.” The Rome Statute also provides a new and more workable definition of “crimes against humanity”⁵⁷ than previous definitions, with specific and comprehensive sub-categories. Owing to these new developments, the arbitrary incarceration in North Korea falls squarely into the new definition of “crimes against humanity” under the Rome Statute.

¶51 First, *kwan-li-so* is part of a widespread or systematic attack directed against the civilian population of North Korea, and the known consequences include murder, enslavement or forced labor, imprisonment, forcible transfer of population, torture, and sexual violence. Also applicable are the categories of persecution due to political orientation, enforced disappearance of persons, and causing of great suffering or serious injury to physical and mental health. The fact that the majority of the defined circumstances that constitute crimes against humanity are met by the operation of *kwan-li-so* is alarming.

¶52 An additional factor that is relevant under the Rome Statute analysis is the potential criminal liability of the North Korean government itself. For instance, there is an argument that under Article 53 of the Rome Statute, there is “a reasonable basis to believe that a crime within the jurisdiction of the [International Criminal Court] has been or is being committed.”⁵⁸ According to the facts established above, there is a reasonable

⁵⁷ For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- a. Murder;
 - b. Extermination;
 - c. Enslavement;
 - d. Deportation or forcible transfer of population;
 - e. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - f. Torture;
 - g. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - h. Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, . . . or other grounds that are universally recognized as impermissible under international law in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - i. Enforced disappearance of person;
 - j. The crime of apartheid;
 - k. Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.
- Rome Statute, art. 7.

⁵⁸ Grace M. Kang, Esq., *A Case for the Prosecution of Kim Jong Il for Crimes Against Humanity, Genocide, and War Crimes*, 38 COLUM. HUM. RTS. L. REV. 51, 78 (2006).

basis upon which to hold the North Korean regime criminally liable for crimes against humanity, genocide, and war crimes.

¶53 The North Korean government has a policy of committing crimes against humanity, as defined by the Rome Statute. Moreover, due to the highly centralized and controlled governing structure of the Kim regime, the top political officials in North Korea are highly likely to have knowledge of the severe abuse of the prisoners, which satisfies criminal intent under customary international law. Furthermore, there is neither accountability nor rule of law in North Korea, since its domestic laws fail to correct the criminal conduct of its government in carrying out the detainment policy. This satisfies the Article 17 requirement that domestic remedies be unavailable or inadequate before the International Criminal Court takes the case under its jurisdiction.

V. A CASE FOR INTERVENTION

¶54 One scholar speculates that, notwithstanding North Korea's attitude of non-cooperation, the "diplomatic ping-pong"⁵⁹ between the U.N. and North Korea holds promise of yielding some progress in the future. For example, North Korea revised its Criminal Law in 2004, which is a step forward in the direction of North Korea's eventual adoption of the rule of law. North Korea's revised Criminal Law articulates the principle of legality, with specific articles that go beyond vague analogies and retroactive language. For instance, Article 6 says, "[o]nly offenses which are clarified under the provisions of Criminal Law shall be criminally accountable by the state."⁶⁰ In the revised Criminal Law of North Korea, the ideological tone is softened, and there is heightened focus on the control of economic and social, rather than political, offenses.⁶¹

¶55 In addition, North Korea has shown some respect for international human rights standards, albeit nominally. The Special Rapporteur noted several other positive actions that North Korea has taken, including becoming a signatory to four key human rights treaties, occasionally allowing U.N. agencies and NGOs to enter the country, warming relations between North Korea and other countries, and having some legal and operations infrastructure that can help promote and protect human rights.⁶² As a party to the treaties, the North Korean government has submitted country reports to the U.N. monitoring committees such as the former Human Rights Commission.⁶³

¶56 Moreover, as insulated and secretive as North Korea is, it is still susceptible to pressures from the outside. For example, North Korea has been denying the existence of prison camps for years. However, when faced with commercial satellite photos of the prisons and testimonials from ex-prisoners, North Korea reportedly closed or otherwise downsized or moved some camps into other remote areas.⁶⁴ Yet another example of the DPRK's awareness of outside pressures is its revision of its Criminal Law.

¶57 Nonetheless, the fact remains that North Korea is ruled under a dictatorship and is hostile toward other nations. While it is a signatory to key international conventions, it

⁵⁹ Han, *supra* note 46, at 132.

⁶⁰ *Id.* at 124; The 1950 Criminal Law, art. 6 (1950) (N. Korea).

⁶¹ Han, *supra* note 46, at 124.

⁶² DLA PIPER, *supra* note 3, at 72.

⁶³ Han, *supra* note 46, at 130-131.

⁶⁴ *Id.* at 132.

has not complied with their terms. There is a need for a politically viable alternative to coercion, such as unilateral sanctions, in order to bring North Korea in line with international human rights standards. At the same time, given the non-cooperation by the North Korean government, the solution should not require exhaustion of domestic remedies, and instead have far-reaching jurisdiction and enforceability.

¶58 Presumably, no one can predict North Korea's reaction to intervention, whether it be forceful or diplomatic. Therefore, the international community must take a process-oriented approach, whereby success is measured in terms of moving forward in the right direction, rather than in terms of the unlikely prospect of DPRK's swift abolishment of *kwan-li-so*. In this regard, the most practical measure is to apply public pressure and make known to North Korea that there will be political consequences if there is inaction on their part to increase compliance with the ICCPR and the Rome Statute. In the long-term, international oversight and intervention will pressure North Korea to further revise its criminal law and increase compliance with the above-mentioned standards.

¶59 Specifically, the first and necessary step is spreading information to countries other than North Korea about the very existence of *kwan-li-so* and its deplorable conditions, as well as providing updates on any developments. This is a collaborative process which requires utilizing news networks, the Internet, and other media sources. Moreover, to increase effectiveness of an aggressive media campaign, there needs to be a centralized monitoring mechanism, one that is reputable and financially equipped.

VI. CONVENTIONAL MEDIA CAMPAIGN THROUGH U.N. BODIES

¶60 In today's world, it is difficult to envision a global media campaign that does not use the Internet as its main platform. Why involve a U.N. agency when the dialogue can develop organically through user-generated content? The role of the Internet has expanded with the technological change over the past ten years. For example, social media has a growing presence in progressive political change.⁶⁵ The term "Twitter revolution" refers to user-generated, spontaneous interaction on the social networking site Twitter.com to organize web-based, coordinated activism. As an example, the American Red Cross used Twitter to raise over \$8 million U.S. dollars for Haitian relief.⁶⁶ Today, more than ever, any media campaign must use the web in order to be relevant.

¶61 In the case of North Korea, however, web-based media and user-generated social media are not the best option. To begin with, North Korea severely limits Internet access to the most elite members of society.⁶⁷ Furthermore, as Malcom Gladwell has argued, social media is ill-suited for long-term social or political change for a number of reasons.⁶⁸ Social networking sites are known to create weak ties and low-risk activism that is often short-lived. In other words, while user-generated content may inspire rapid

⁶⁵ Sarah Joseph, *Social Media, Political Change, and Human Rights*, 35 B.C. INT'L & COMP. L. REV. 145 (2012).

⁶⁶ Mary Kate Cary, *5 Ways New Media Are Changing Politics*, U.S. NEWS & WORLD REPORT (Feb. 4, 2010), <http://www.usnews.com/opinion/articles/2010/02/04/5-ways-new-media-are-changing-politics>.

⁶⁷ Martyn Williams, *North Korea Moves Quietly Onto the Internet*, COMPUTER WORLD (June 10, 2010), http://www.computerworld.com/s/article/9177968/North_Korea_moves_quietly_onto_the_Internet?taxonomyId=18&pageNumber=2.

⁶⁸ Malcolm Gladwell, *Small Change: Why the Revolution Will Not Be Tweeted*, THE NEW YORKER (Oct. 4, 2010), http://www.newyorker.com/reporting/2010/10/04/101004fa_fact_gladwell.

exchange of information, it is not a forum for lasting, meaningful dialogue that will bring about change in North Korea.

¶62 Having a U.N. agency coordinate a centralized and deliberate campaign, on the other hand, lends legitimacy, credibility, and longevity to the cause of raising awareness about *kwan-li-so*. While information may not be as easily retransmitted as user-generated content via the Internet, the U.N., as a prominent international peace-keeping entity, will nonetheless attract a large audience. Moreover, the U.N. is equipped to provide access to information as well as serve as an established platform for conversation and debate.

¶63 Given the new leader Kim Jong-Un's recent nuclear threats and the mounting tension in the Korean peninsula, it is vital that any media coverage of North Korea be tactful. In carrying out a media campaign, there must be use of politically sensitive language that describes the situation accurately but also neutrally. Involving the U.N. organs mentioned above will allow centralized control over the quality and content of information exchange.

VII. WORKING GROUP ON ARBITRARY DETENTION AND THE U.N. SECURITY COUNCIL

¶64 While North Korea has refused to answer to its main organs, including the U.N. General Assembly, former Commission on Human Rights, and Special Rapporteur on Human Rights in North Korea, the U.N. remains the most prominent international body to police violations of human rights. The goal of protecting human rights is explicitly stated in the U.N. Charter: “[t]he U.N. shall promote universal respect for, and observance of, human rights and fundamental freedoms for all.”⁶⁹ This principle was reinforced in the Millennium Declaration, and specified in the High-Level Panel report in 2004: “A More Secure World: Our Shared Responsibility.” The report expanded on the responsibility to protect doctrine, affirming the “obligation of a state to protect welfare of its own people.”⁷⁰

¶65 One possible solution to the North Korean prisons camps is to involve the United Nations Working Group on Arbitrary Detention (“WGAD”). WGAD is a body within the U.N. Human Rights Council that issues opinions regarding the detention of individuals in various countries. The WGAD works by utilizing global institutions and “soft law,” its methods being quasi-judicial and its opinions non-binding.⁷¹

¶66 Because of its informal nature, the WGAD largely depends on civil society to carry out its recommendations. In doing so, it establishes and maintains regulatory networks or “global administration,” affecting international rule of law and standards of conduct. While it lacks enforcement power, WGAD can act as a catalyst for countries to adhere to international human rights treaties and conventions.⁷² It can facilitate information sharing among civil society and nations, encouraging a momentum for change in North Korea. The WGAD also has the procedural advantage of not requiring the exhaustion of

⁶⁹ U.N. Charter art. 55 (c).

⁷⁰ Secretary-General, *Report of the Security-General's High-level Panel on Threats, Challenges and Change, A More Secure World: Our Shared Responsibility*, ¶ 29, U.N. Doc. A/59/565 (Dec. 2, 2004), <http://www.un.org/secureworld/report2.pdf>.

⁷¹ Jared M. Genser & Margaret K. Winterkorn-Meikle, *The Intersection of Politics and International Law: The United Nations Working Group on Arbitrary Detention in Theory and in Practice*, 39 COLUM. HUM. RTS. L. REV. 687, 690 (2008).

⁷² *Id.* at 688, 690.

domestic remedies to file a case.⁷³ This allows WGAD to circumvent North Korean government's resistance or stalling tactics.

¶67 Some speculate that the WGAD, like most U.N. entities, is politically motivated in its case selection. For example, WGAD investigated the situation of detainees held by the U.S. government in Guantánamo Bay, while ignoring other similar detention facilities like the North Korean *kwan-li-so*.⁷⁴ Commissioning the WGAD to resolve the issue of arbitrary detainment in North Korea would allow it to overcome its appearance of political bias.

¶68 Scholars Jared Genser and Margaret Winterkorn-Meikle conclude from four case studies that the success of WGAD's involvement is affected by various factors including the country in question and the individuals who are detained.⁷⁵ For instance, the more compelling the personal profile of the detained and the facts surrounding the arrest, such as the involvement of torture and foreign citizenship, the more likely it is that the case will attract international attention. The sensitivity of the detaining country to international pressures may also affect the outcome. The case studies suggest, however, that even intransigent countries like China and North Korea can be susceptible to pressure.⁷⁶

¶69 Applying this to the situation in North Korea, the prospect of U.N. intervention is greater when it involves foreign nationals. A case that was first filed to the Working Group in 1995 involved a South Korean, Shin Sook Ja, who was detained against her will in North Korea since 1985.⁷⁷ Recently in March 2012, WGAD called on North Korea to inquire about the fate of Shin. Shin was reportedly interned in the notorious *Yodok* concentration camp with her two daughters, Oh Hae Won and Oh Kyu Won. The North Korean government responded in April, saying that Shin died of hepatitis, but refused to provide detailed information about the current situation of the two daughters or rationale for their detention. In Opinions adopted on May 2, 2012, the WGAD declared the years-long detention as arbitrary and in violation of international law.⁷⁸

¶70 The WGAD also acknowledged that it was "aware of the disturbing reports from non-governmental organizations and other sources in the public domain alleging widespread arbitrary detention and links to forced labour" in North Korea, and noted that under certain circumstances, "widespread or systematic imprisonment or other severe deprivation of liberty in violation of the fundamental rules of international law may constitute crimes against humanity."⁷⁹ Involving the WGAD is advantageous because of its history of interest in the North Korean prison camps issue.

¶71 Involving the WGAD is further advantageous because of its pre-existing ties to international civil society and news groups. WGAD's participation in addressing the North Korean prison camp issue will help frame it as humanitarian crisis and increase further dialogue and information-sharing. Going through the WGAD will open ways to involve the North Korean government in the dialogue as well. Because humanitarian crimes is a serious allegation and a politically sensitive issue, there needs to be a

⁷³ *Id.* at 696.

⁷⁴ *Id.* at 713.

⁷⁵ *Id.* at 736-39.

⁷⁶ *See id.* at 736.

⁷⁷ Hum. Rts. Council Working Group on Arbitrary Detention, April 30, 2012-May 4, 2012, U.N. WGAD, 63d Sess., Supp. No. 4, Doc.A/HRC/WGAD/2012/4 (2012).

⁷⁸ *Id.*

⁷⁹ *Id.*

politically neutral organization to objectively, accurately, and credibly research the situation and make a balanced recommendation.

¶72 A second approach is to involve the U.N. Security Council under the international legal doctrine of a nation's responsibility to protect its people. A 2006 report commissioned by former President of the Czech Republic Vaclav Havel, former Prime Minister of Norway Kjell Magne Bondevik, and Nobel Peace Prize laureate Elie Wiesel, makes this proposal.⁸⁰ The report, authored jointly by the international law firm DLA Piper and the U.S. Committee for Human Rights in North Korea, calls for Security Council's intervention in the situation in North Korea, where the government failed in its responsibility to protect its own citizens in two major areas, food policy and treatment of political prisoners.⁸¹

¶73 The U.N. Security Council is charged with maintaining peace, and is legally mandated to make binding decisions regarding human rights. Therefore, the report alleges, the Security Council assumes the duty to protect the North Korean population, since its own government has failed to do so by inflicting serious suffering, harm, and repression upon its people. This principle rests on the concept that sovereignty involves both rights and responsibilities, and that failure to uphold sovereign responsibilities may warrant humanitarian intervention.⁸²

¶74 On September 20, 2005, during the World Summit, the leaders in the U.N. General Assembly adopted a statement in which they said: ". . . [W]e are prepared to take collective action, in a timely and decisive manner, through the Security Council . . . [if] national authorities are manifestly failing to protect their populations from . . . crimes against humanity."⁸³ Subsequently, this statement was unanimously endorsed in Resolution 1674 by the Security Council.⁸⁴ These principles comport with the ideals of the U.N. Secretary-General Kofi Annan in his Millennium Report to the General Assembly, whereby each member state has a responsibility to protect both their own citizens and those of other states.⁸⁵

¶75 Given these mandates, the U.N. Security Council is an appropriate entity to publicize the issue of *kwan-li-so* in North Korea. The Security Council has the authority to engage in dialogue with North Korea regarding its detainment policy. For instance, it may adopt a non-punitive resolution that outlines North Korea's failure to protect their people, and request that North Korea embrace the U.N.'s humanitarian assistance and release political prisoners who are wrongfully detained.⁸⁶ Moreover, in case North Korea fails to comply with the non-punitive resolution, the Security Council can always resort to adopting a binding resolution under Chapter VII of the U.N. Charter. In addition to having these powers, the Security Council also has the advantage of having established relations with the global community and media channels.

⁸⁰ DLA PIPER, *supra* note 3.

⁸¹ *See id.*

⁸² *See* 2005 World Summit Outcome, G.A. Res. 60/1 (Oct. 24, 2005).

⁸³ *Id.* at ii.

⁸⁴ *See* S.C. Res. 1674, U.N. SCOR, Doc. S/RES/1674 (Apr. 20, 2006).

⁸⁵ Secretary-General, *We the Peoples: The Role of the United Nations in the Twenty-First Century*, ¶ 43, UN Doc. No. A/54/2000 (Apr. 3, 2000).

⁸⁶ *Id.* at v.

VIII. CONCLUSION

¶76 The very existence of state-instituted mass concentration camps in North Korea is offensive to the principles of international human rights. What is more alarming is that the human rights violations are not isolated incidents, but rather form a systematic pattern, exposing all North Korean citizens to the risk of inhumane treatment at the whim of the government.

¶77 The North Korean prisoners, arrested without warrants, are unduly deprived of physical liberty in violation of due process protections of humanitarian treaties such as the ICCPR. The shock multiplies when considering the fact that the prisoners, including children, are often worked to death in unsafe conditions and are intentionally kept undernourished and tortured as a means of control.

¶78 In order to address this issue, the world must acknowledge that the operation of the political prison camps in North Korea constitutes “crimes against humanity” as defined in Article 7 of the Rome Statute. Furthermore, foreign states can exert pressure on North Korea to comply with the international rule of law through coordinated media campaigns designed by U.N. bodies such as the WGAD or the Security Council. Historically, news media has served an important role in giving a voice to the voiceless. By connecting individuals, NGOs, and states to build an informal network of information-sharing and dialogue on the issue, the global community will be better equipped to apply political pressure on North Korea’s detainment policy, which remains the most egregious form of human rights violation that exists today.