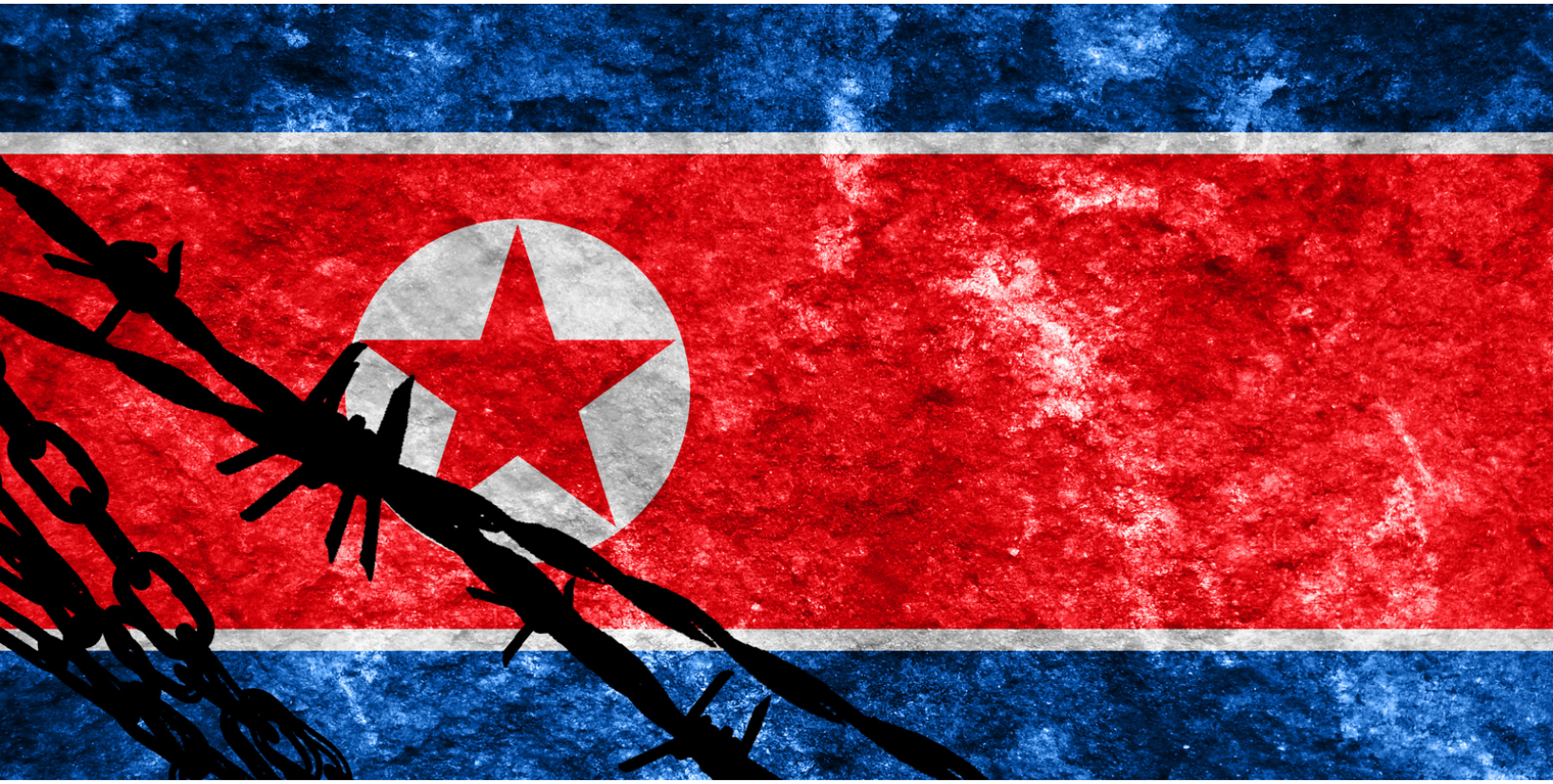
Report: Inquiry on Crimes Against Humanity in North Korean Detention Centers



A report by:

War Crimes Committee of the International Bar Association (IBA)
and The Committee for Human Rights in North Korea (HRNK)

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Acknowledgments

The organizers of this civil society-led Inquiry into Crimes Against Humanity in North Korean Detention Centers (the "Inquiry"), the War Crimes Committee of the **International Bar Association** ("IBA") and **The Committee for Human Rights in North Korea (HRNK)**, wish to express enormous gratitude to the Inquiry panel ("Panel") comprised of four renowned international jurists, **Navanethem 'Navi' Pillay** (*Chair*), **Dame Silva Cartwright**, **Silvia Fernández,** and **Wolfgang Schomburg**, who presided over an all-day hearing on 4 March 2022 ("Hearing"). These extraordinary judges devoted countless hours to carefully reviewing the evidence and drafting the instant Inquiry report. Together they brought with them many decades of experience as judges and leaders of some of the most consequential international criminal tribunals of the last half century, including the International Criminal Court, the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Tribunal for the former Yugoslavia (ICTY), and the Extraordinary Chambers in the Courts of Cambodia (ECCC). It would be hard to imagine assembling a more distinguished Panel to oversee this Inquiry.

The IBA and HRNK particularly wish to thank the international law firm of **Debevoise & Plimpton, LLP** ("**Debevoise**") and its team of over a dozen attorneys and paralegals for the firm's truly extraordinary *pro bono* contributions to this Inquiry. Put simply, this Inquiry could not have been conducted without their remarkable contribution of nearly 2,000 *pro bono* hours over the course of this Inquiry, the single largest *pro bono* contribution the IBA has received in its roughly 75-year history, and also the largest ever received by HRNK. In particular, the IBA and HRNK would like to recognize the following individuals for their contributions to the Inquiry: **Natalie Reid** (Lead Partner), **Nawi Ukabiala**, **Moeun Cha**, **Sarah Lee**, **Sol Czerwonko**, **Sara Ewad** and **Gabrielle McKenzie**. The Debevoise team conducted exhaustive research on crimes against humanity, including detailed reviews of legal opinions issued by international criminal tribunals, beginning with the Nuremberg Tribunal. This research was incorporated into the Legal Brief that Counsel presented to the Panel prior to the Hearing on 4 March 2022. The IBA and HRNK wish to further recognize the efforts of **Mr. Ukabiala**, **Ms. Cha** and **Ms. Lee** for their role in skillfully presenting evidence and examining witnesses at the Hearing. Debevoise also played an indispensable role in the Inquiry's post-Hearing work by, among other things, reviewing all the evidence amassed in connection with the Inquiry and assisting the Panel with drafting this Report. Finally, the IBA and HRNK also wish to recognize former IBA President and Senior Partner at Debevoise, **David Rivkin**, for facilitating Debevoise's involvement in this Inquiry.

The IBA and HRNK wish to recognize the following War Crimes Committee officers and members for their tireless efforts, creativity and commitment of time to this undertaking: **Greg Kehoe**, and **Kirsty Sutherland,** who acted as Counsel to the Inquiry and so ably examined witnesses and marshaled evidence of crimes against humanity at the Hearing, alongside the Debevoise team referenced above. The Committee also wishes to acknowledge **Federica D'Alessandra, Shannon Raj Singh, Steven Powles QC**, **Natalie**

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The IBA and HRNK wish to thank **James Victory** and **Eunyoung Lee** for providing expert Korean language interpretation at the Hearing.

The IBA and HRNK wish to thank the Executive Directors of the IBA and HRNK, **Dr. Mark Ellis** and **Greg Scarlatoiu**, respectively, for their support and leadership in advancing this civil society-led Inquiry. The IBA and HRNK also wish to extend their sincere gratitude to **Michael Maya**, Director of IBA–North America, for helping to conceive of and secure funding for this Inquiry, as well as helping to oversee the IBA's efforts in carrying out the Inquiry. He and his IBA colleagues, particularly **Ashna Basnet**, as well as **Talitha Adnet, Scott Reid** and **Begum Tiritoglu**, played an instrumental role in the Inquiry. The IBA and HRNK wish to acknowledge members of the entire HRNK team, including **Raymond Ha**, **Lauren Morrison**, and **Rosa Park-Tokola**, for their very significant contributions, and particularly **Amanda Mortwedt Oh**, who, working with **Mr. Scarlatoiu**, helped secure funding for the Issssnquiry and together brought to bear their extraordinary substantive expertise. The IBA and HRNK were co-equal partners throughout this Inquiry, at all times working collegially to advance the goal of achieving accountability for widespread crimes against humanity in North Korean detention centers.

The IBA and HRNK wish to thank **Grace Warwick** for conducting research and facilitating interviews of North Korean escapees in South Korea, as well as **Huiwon Yun** and **Hangyun Kim** for providing interpretation during said interviews. The IBA and HRNK wish to thank **Audrey Gregg** for her assistance in coordinating and executing translation work from English to Korean and back.

The IBA and HRNK wish to thank gifted filmmaker, **Malachi Gillihan**, whose short documentary on the Inquiry captured the efforts of North Koreans and leading lights in the legal and NGO communities to bring greater attention to crimes against humanity being committed in North Korean detention centers and the quest for accountability for these crimes. The IBA and HRNK also wish to recognize HRNK Board member **Ambassador Lee Jung-hoon** for providing key guidance throughout the Inquiry, and for facilitating former UN Secretary-General **Ban Ki-moon**'s participation in the documentary. The IBA and HRNK also wish to thank IBA Interns **Shara Madan** and **Maddie Reiser** for their assistance in editing the documentary.

The IBA and HRNK wish to express special gratitude to **Justice Michael Kirby (Ret.)**, who chaired the United Nations Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea and was the lead author of its landmark Commission of Inquiry (COI) report. The IBA's first Inquiry on Crimes Against Humanity in North Korean Political Prisons was inspired by the COI report and relied heavily on its findings. So, too, did the instant Report. Justice Kirby also provided compelling testimony at the Hearing.

The IBA and HRNK wish to recognize the fine work and dedication of North Korean human rights NGOs and individual activists with whom the IBA and HRNK have collaborated on this Inquiry. These advocates have kept the spotlight on the suffering of the North Korean people, advocating on behalf of North Korean human rights in various legislative bodies around the world, the United Nations (New York, Seoul and Geneva) and beyond. These activists and NGOs seek to fulfill the promise made by the international community in the wake of World War II and the liberation of Nazi Germany's concentration camps. As this Inquiry and the IBA's Inquiry on North Korean political prisons make clear, that promise – encapsulated in the solemn vow "*Never Again*" – remains unfulfilled 77 years after the liberation of Auschwitz.

Finally, the IBA and HRNK wish to express their *most* heartfelt gratitude to the roughly 50 North Korean escapees who provided written testimony about their experiences in North Korean detention centers, with several of them also providing in-person and livestreamed testimony at the Hearing. Some also agreed to be interviewed for the documentary referenced above. This entire Inquiry is dedicated to them, their bravery, their sacrifices. The emotional and physical toll associated with recounting their experiences to advance the aims of this Inquiry should not be underestimated. Notably, many felt compelled to testify anonymously out of fear that the North Korean regime might track down and punish family members who remain in North Korea. The sacrifices they made and the risks they

took to contribute to this Inquiry were motivated by a desire to galvanize the international community to address, once and for all, the ongoing crimes against humanity being committed against innocent North Koreans. For decades, the world community has sat on its hands, aware such crimes were being committed. To date, there has been no meaningful attempt to hold anyone accountable for these now well-documented crimes. In fact, there has not been a single indictment, much less a conviction, during the Kim dynasty's reign of terror, a reign that continues many decades after "*Never Again*" was first uttered.

REPORT – INQUIRY ON CRIMES AGAINST HUMANITY IN NORTH KOREAN DETENTION CENTERS

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LIST OF DEFINED TERMS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
DPRK	Democratic People's Republic of Korea
HRNK	Committee for Human Rights in North Korea
ECCC	Extraordinary Chambers in the Courts of Cambodia
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILC	International Law Commission
KINU	Korea Institute for National Unification
KWP	Korean Workers' Party
MPS	Ministry of People's Security, previously known as the Ministry of Public Security and currently known as the Ministry of Social Security
MSS	Ministry of State Security, previously known as the State Security Department
NDC	National Defense Commission
OGD	Organization and Guidance Department
PAD	Propaganda and Agitation Department
Rome Statute	Rome Statute of the International Criminal Court
SAC	State Affairs Commission

SSD	State Security Department, alternatively known as the Ministry of State Security
UN	United Nations
UN COI Detailed Findings	Report of the Detailed Findings on the UN Commission of Inquiry on Human Rights in the DPRK to the Human Rights Council dated 7 February 2014
UN COI Report	2014 Report of the UN Commission of Inquiry on Human Rights in the DPRK
UN Commission of Inquiry	UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, as established by the United Nations Human Rights Council during its 22nd session on 21 March 2013
UN OHCHR Report	United Nations Office of the High Commissioner for Human Rights Report on Human Rights Violations against Women Detained in the DPRK

I. Executive Summary

Brief Synopsis:

This Inquiry (as defined below) finds that there are reasonable grounds to conclude that crimes against humanity have been, and continue to be, committed on a massive scale in detention centers of the Democratic People's Republic of Korea (the "**DPRK**," "**North Korea**," or the "**State**").

This Inquiry finds that there are reasonable grounds to conclude that the following ten of the eleven crimes against humanity listed in the Rome Statute of the International Criminal Court adopted in 1998 ("**Rome Statute**") have been, and continue to be, committed: (*1*) murder, (*2*) extermination, (*3*) enslavement, (*4*) forcible transfer, (*5*) imprisonment or severe deprivation of physical liberty, (*6*) torture, (*7*) sexual violence, (*8*) persecution, (*9*) enforced disappearance, and (*10*) other inhumane acts.

Based on the evidence presented and reviewed, this Inquiry finds that there are reasonable grounds to conclude that the following classes of individuals may be subject to prosecution for some or all of the above referenced crimes, including:

- Kim Jong-un in his capacity as Head of State;
- Members of the Organization and Guidance Department ("**OGD**");
- Members of the State Affairs Commission ("**SAC**");
- Members of the Ministry of Social Security ("**MPS**," formerly known as the Ministry of People's Security);[1] and
- Members of the Ministry of State Security ("**MSS**").

We observe at the outset that crimes are committed by individuals, not by a State or its agencies. The legal basis for holding the above individuals accountable for crimes against humanity under the Rome Statute may include modes of individual criminal responsibility, under Article 25(3)(a) (*i.e.*, direct perpetration, co-perpetration, indirect perpetration, and indirect co-perpetration), or superior responsibility under Article 28 (*i.e.*, liability of military commanders and civilian superiors for the failure to prevent or punish the crimes of their subordinates).

Recommendations: This Inquiry calls on the DPRK and the international community to urgently take all necessary actions to ensure the cessation of crimes against humanity in the detention centers and to ensure compliance with the obligations contained in human rights treaties to which DPRK is a party. This Inquiry also calls for accountability of those responsible for crimes against humanity

[1] This report refers to the Ministry of Social Security as the MPS, the acronym for its former title, to ensure the distinction between the MPS and the Ministry of State Security.

in the DPRK using all possible avenues, including investigation and prosecution before the International Criminal Court ("**ICC**"), a special international tribunal, or national courts through the exercise of universal jurisdiction. Other recommendations include a call for targeted sanctions against persons responsible for past or ongoing crimes against humanity in North Korea's detention centers and beyond and non-judicial transitional justice mechanisms that can play a role in a comprehensive approach to address gross human rights violations, such as national consultations, truth and reconciliation commissions, and reparations programs.

This Inquiry represents the culmination of an initiative spanning over two years, entitled **Inquiry on Crimes Against Humanity in North Korean Detention Centers** ("**Inquiry**"). The Inquiry sought to advance the following goals:

1. Increase public awareness of grave human rights violations in North Korea's detention centers;

2. Explore the practical and legal options of holding the architects and overseers of North Korea's detention system accountable for alleged crimes against humanity if the evidence demonstrates that there are reasonable grounds to conclude such crimes have been committed; and

3. Further develop a model for conducting inquiries that other civil society organizations may wish to replicate when accountability for past or ongoing human rights violations has proven elusive due to inaction by the international community or otherwise.

The War Crimes Committee of the International Bar Association (the "**IBA**") organized the Inquiry, with the support of partner organizations including the Committee for Human Rights in North Korea ("**HRNK**"), and of lead pro bono counsel, Debevoise & Plimpton LLP.

This Inquiry is preceded by the inquiry the IBA conducted in 2017 on crimes against humanity in North Korean political prisons ("**2017 Inquiry**"), which found that "there is ample evidence to support the finding that crimes againssst humanity have been—and continue to be—committed on a massive scale in political prisons of [the DPRK]." [2] The 2017 Inquiry also called upon the United Nations ("**UN**") Security Council to refer the matter to the ICC or another international tribunal with jurisdiction to "appropriately investigate, punish and remedy the crimes against humanity chronicled by this Inquiry."[3] Unfortunately, the Security Council has not made this referral to date.

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[2] International Bar Association, "Report: Inquiry on Crimes Against Humanity in North Korean Political Prisons," December 2017 ("**IBA Report 2017**"), at 2.

[3] *Id.*

Unlike the 2017 Inquiry, which focused on crimes against humanity in DPRK political prisons (*kwan-li-so*), the focus of this Inquiry is crimes against humanity that were, or continue to be, committed in the DPRK detention system, which is comprised of three main categories of detention facilities: pre-trial detention centers (*ku-ryu-jang*), holding centers (*jip-kyul-so*), and labor training camps (*ro-dong-dan-ryeon-dae*).[4] The conditions under which the weakest members of a society live often mirrors the overall human rights situation in a country. For this reason, we believe it is important to explore the conditions detainees are subjected to.

Both this Inquiry and the prior 2017 Inquiry organized by the IBA are unofficial follow-ups to the UN Human Rights Council's Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (the "**Commission of Inquiry**").[5] In 2014, the UN Commission of Inquiry, chaired by former justice of the High Court of Australia, Michael Kirby, issued a seminal report and detailed findings ("**UN COI Report**" and "**UN COI Detailed Findings**") chronicling the systematic, widespread and gross human rights violations committed by the DPRK, including violations constituting crimes against humanity based on State policies.[6] The UN Commission of Inquiry recommended that the UN Security Council refer the situation in the DPRK to the ICC to ensure that those most responsible for the crimes against humanity are held accountable.[7]

Subsequently, the UN Human Rights Council designated independent experts to focus on accountability for gross human rights violations in the DPRK, in particular where such violations amount to crimes against humanity, as found by the UN Commission of Inquiry.[8] In 2017, the group of independent experts on accountability also issued a report recommending that UN Member States take further steps toward achieving accountability of those responsible for human rights violations in the DPRK, including through referral by the UN Security Council of the situation to the ICC and consideration of the establishment of an *ad hoc* international tribunal.[9] As noted by the group of independent experts, "the crimes described in the report of the commission of

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4 *See infra* Section IV.B.

5 IBA Report 2017, at 3; *see* Human Rights Council, "Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea," 7 February 2014 ("**COI Report**"), ¶¶ 3-6; Human Rights Council, "Report of the Detailed Findings on the Commission of Inquiry on Human Rights in the DPRK to the Human Rights Council," 7 February 2014 ("**UN COI Detailed Findings**"), ¶¶ 1-5.

6 COI Report,¶ 24.

7 *Id.,* ¶¶ 87, 94(a).

8 Human Rights Council, "Report of the Group of Independent Experts on Accountability," 24 February 2017 ("**Accountability Report**"), ¶ 1.

9 *Id.,* ¶ 84(a); *see also id.* ¶¶ 75–77.

inquiry are of a gravity rarely seen, involving systems of abuse that have been operating for decades. These crimes are of international concern and cannot go unpunished."[10]

Despite such repeated calls and recommendations for accountability for human rights violations in the DPRK, grave human rights violations and crimes against humanity in the DPRK have continued with impunity, necessitating further efforts such as this Inquiry to document and raise awareness of these crimes and to continue to call for accountability.[11]

This Inquiry relied on a variety of sources, including testimony from 25 former detainees and seven experts, scholarly works, reports, and testimony given to the UN Commission of Inquiry. Notably, the written evidence obtained for this Inquiry included an affidavit from Thae Yong-ho, the DPRK's former Deputy Ambassador to the United Kingdom and one of its highest-ranking defectors. This Inquiry conducted a detailed review of international criminal law jurisprudence, including decisions rendered by the ICC. The Inquiry also draws on evidence introduced at a day-long hearing conducted at DACOR Bacon House in Washington, D.C., on 4 March 2022 (the "**Hearing**").[12] At the Hearing, the authors of this Inquiry report—Judges Navi Pillay (Chair), Dame Silvia Cartwright (participating remotely), Silvia Fernández de Gurmendi, and Wolfgang Schomburg heard testimony from six experts and six former detainees. Four of the experts and four of the former detainees provided live testimony, with the others testifying virtually.

The DPRK was invited to take part in the Inquiry, but declined.[13]

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10 *Id.*, ¶ 76.

11 *See, e.g.*, HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 30 May 2019, A/HRC/40/66, ¶ 27 ("Torture and ill-treatment remains widespread and systematic in detention facilities operated by the Ministry of State Security and the Ministry of People's Security."); HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 2 July 2021, A/HRC/46/51, ¶¶ 15–16 ("[A]nalysis of available information continued to confirm that there were reasonable grounds to believe that crimes against humanity had been committed and could be ongoing in the Democratic People's Republic of Korea . . . . There are still no signs that the Democratic People's Republic of Korea has overcome the entrenched culture of impunity to hold accountable individuals who are responsible for human rights violations.").

12 Hearing Video, https://youtu.be/NmJ_mgToGY4 (last accessed 17 June 2022).

13 *See* HRNK Response to March 1 Statement by the DPRK Ministry of Foreign Affairs, 1 March 2022, https://www.hrnk.org/events/announcements-view.php?id=86 (last accessed 17 June 2022).

A. Summary of Findings

Since the early years of its establishment, the DPRK has been a single-party State ruled by a family dynasty, with a system of governance built on an absolute guiding ideology, or cult of personality, of the Supreme Leader (*suryong*).[14] The *suryong* system demands absolute obedience to the Supreme Leader, who exercises total control over the country; no other political ideology, belief system, or independent thought is allowed.[15] The current Head of State, or Supreme Leader, of the DPRK is Kim Jong-un.[16]

The Kim regime exercises absolute power and control over the population through the state security apparatus, which maintains complete surveillance over the citizenry and a system of arbitrary detention, violence, and harsh punishments for non-compliance with the State's dictates.[17] As reported by the UN Special Rapporteur on the situation of human rights in the DPRK, "[f]undamental to the effective control of the population is a system of arbitrary detention, lack of fair trial guarantees and a judiciary that serves the interests of the Government."[18] As such, the DPRK criminal justice system and its facilities do not

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14 *See infra* Section IV.A.

15 UN COI Detailed Findings, ¶¶ 110, 259–260, 1183; *see also* R. Collins, "Pyongyang Republic," HRNK (2016) ("**Pyongyang Republic**"), at 18–22; Collins and A. Mortwedt Oh, "From Cradle to Grave, The Path of North Korean Innocents," HRNK (2017) ("**Collins and Mortwedt Oh**"), at 3.

16 Kim Jong-un, the current Supreme Leader of the DPRK, was elected as the General Secretary of the Korean Workers' Party ("**KWP**") in January 2021. Ruediger R. Frank, "Key Results of the Eighth Party Congress in North Korea (Part 2 of 2)," 38 North (19 January 2021), https://www.38north.org/2021/01/key-results-of-the-eighth-party-congress-in-north-korea-part-2-of-2/ (last accessed 17 June 2022). During his tenure as Supreme Leader, he has also served as Director of the KWP OGD, Supreme Commander of the Korean People's Army ("**KPA**"), Chairman of the KWP Executive Policy Bureau, Chairman of the KWP Central Military Committee, and Chairman of the DPRK SAC. Additionally, the Supreme Leader has held membership positions in the Standing Committee of KWP Politburo, which organizes and directs party work on behalf of the party's Central Committee between plenary meetings; the KWP Central Committee, which oversees party affairs; and the DPRK Supreme People's Assembly, a legislative body. *See* Robert R. Collins, "Kim Jong-un's Hats: the Concept of Authority in North Korea," HRNK Insider (2016), https://www.hrnkinsider.org/2016/10/kim-jong-uns-hats-concept-of-authority.html (last accessed 17 June 2022).

17 D. Hawk and A. Mortwedt Oh, "The Parallel Gulag: North Korea's 'An-jeon-bu' Prison Camps," 2017 ("**The Parallel Gulag**"), at 7 ("[T]he Kim regime . . . rest[s] on three foundations. The first is the attempt at complete control of the knowledge and information that the populace is allowed access to. The second is effectively omnipresent and even overlapping systems of surveillance over the citizenry. The third foundation is the certainty of harsh punishment for non-compliance with the totalitarian dictates of the regime."); *see also* HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 30 May 2019, A/HRC/40/66, ¶¶ 26–27, 30 .

18 HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, March 2022, A/HRC/49/74, ¶ 9.

serve a legitimate purpose; instead, they form an integral part of a State system to maintain the population's absolute obedience to the political system and its leadership.[19]

The detention center and prison systems operated by the State security apparatus are central components of this political structure to eliminate and preempt, through a climate of fear, any threat to the current system of government and to the State ideology.[20] These systems allow the Kim regime to exercise constant control over all of its citizens through fear, punishment and coercion.[21] There is such "widespread fear of arbitrary arrest and mistreatment in detention,"[22] and the fear of State authorities, surveillance, and the detention center and prison systems is "so deeply ingrained in the society of the Democratic People's Republic of Korea" that one escapee concluded: "The whole country is a prison."[23]

The State security agencies operate detention centers throughout North Korea as part of the State policy to investigate and punish those considered to pose a threat to the country's political system and leadership, including people who commit "crimes" consisting of exercising fundamental human rights such as attempting to leave the country or practicing religion.[24] In furtherance of that policy, members of the population are systematically imprisoned without due process and intentionally subjected to severe physical and mental suffering and severe deprivation of fundamental rights while in detention.[25] At the detention centers, the DPRK systematically uses torture, sexual violence, forced labor,

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19 *See* UN COI Detailed Findings, ¶¶ 801, 1082.

20 *See* COI Report, ¶ 56; UN COI Detailed Findings, ¶ 1082 ("In the DPRK, the criminal justice system and its prisons serves not merely to punish common crimes. They also form an integral part of the state's systematic and widespread attack against anyone considered a threat to the political system and its leadership. Many inmates of ordinary prisons in the DPRK are, in fact, political prisoners."); *see also* HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 30 May 2019, A/HRC/40/66, ¶ 26.

21 *See* HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 30 May 2019, A/HRC/40/66, ¶ 30; HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, March 2022, A/HRC/49/74, ¶ 9.

22 HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, March 2022, A/HRC/49/74, ¶ 9.

23 HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 30 May 2019, A/HRC/40/66, ¶¶ 26, 30.

24 *See* HRC, Report of the UN High Commissioner for Human Rights, Promoting Accountability in the Democratic People's Republic of Korea, 11 January 2021, A/HRC/46/52, ¶¶ 44–45, 63; Office of the UN High Commissioner for Human Rights, *Human Rights Violations against Women Detailed in the Democratic People's Republic of Korea* (2020) ("**UN OHCHR Report**"), at 5; The Committee for Human Rights in North Korea, "North Korea's Short Term Detention Facilities in Google Earth: 'HRNK-IBA Project,'" HRNK, 8 June 2021 ("**HRNK-IBA Project**"), *available at* https://earth.google.com/earth/d/1YarRZdRUW_-60FxUpVKuN9skbMr3TB0a?usp=sharing.

25 HRC, Report of the UN High Commissioner for Human Rights, Promoting Accountability in the Democratic People's Republic of Korea, 11 January 2021, A/HRC/46/52, ¶¶ 44, 49, 51.

inhumane detention conditions, and deliberate starvation as means of interrogation, control, and punishment.[26]

To assess the possibility of criminal liability resulting from the operation and oversight of North Korea's detention facilities, this Inquiry examined all eleven crimes against humanity listed in the Rome Statute. Crimes against humanity involve the widespread or systematic commission of these crimes against a civilian population. The eleven substantive crimes are as follows: (*1*) murder; (*2*) extermination; (*3*) enslavement; (*4*) forcible transfer; (*5*) imprisonment; (*6*) torture; (*7*) sexual violence; (*8*) persecution; (*9*) enforced disappearances; (*10*) apartheid; and (*11*) other inhumane acts. **This Inquiry finds reasonable grounds to conclude that ten of the eleven crimes against humanity enumerated in Article 7 of the Rome Statute, have been and continue to be committed in the DPRK, with only the crime of apartheid deemed inapplicable under the facts presented.**

Facts gathered by and testimony provided to this Inquiry support a conclusion fully consistent with that of the UN Commission of Inquiry—that is, crimes against humanity have been and continue to be, committed. Some of the crimes chronicled in this Inquiry report include the following:

- *Arbitrary executions, infanticide, and forced abortions are commonplace in detention centers*.
    - Witnesses have testified to repeated instances of infanticide and forced abortions at detention centers, particularly targeting "impure," half-Chinese babies.[27]

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[26] *See* UN COI Detailed Findings, ¶¶ 411, 412, 421–423, 689, 704, 1083–1085; HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 30 May 2019, A/HRC/40/66, ¶ 27; HRC, Report of the UN High Commissioner for Human Rights, Promoting Accountability in the Democratic People's Republic of Korea, 11 January 2021, A/HRC/46/52, ¶¶ 55, 57, 61, 65; HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, March 2022, A/HRC/49/74, ¶ 10; Human Rights Watch, "Worth Less Than an Animal: Abuses and Due Process Violations in Pretrial Detention in North Korea," 19 October 2020 ("**HRW, Worth Less Than an Animal, 2020**")., https://www.hrw.org/report/2020/10/19/worth-less-animal/abuses-and-due-process-violations-pretrial-detention-north (last accessed 17 June 2022).

[27] *See*, *e.g.*, Hearing Witness Testimony, Witness i3, at 2:28:06–3:21:15; Affidavit i25, at 4 (explaining that pregnant female detainees were targeted and "[i]n many instances, there was a live birth and the baby was killed on the spot"); Affidavit i39, at 3 (stating that at Onsong *Bo-wi-bu ku-ryu-jang*, a pregnant woman was detained because she was determined to be carrying a "Chinese seed." She was forced to work outside under difficult conditions and was not provided any medical assistance when her baby was born. According to the witness, the baby died as a result of the lack of treatment); Korea Institute for National Unification, "White Paper on Human Rights in North Korea," 2017 ("**KINU 2017 North Korea White Paper**"), at 420–421 (detailing one witness's account of a forced abortion in October 2016 while being held at the Chongjin *jip-kyul-so*); UN COI Detailed Findings, ¶ 1105.

- Detainees are executed for trying to find food or escape.[28]

- *Detainees are intentionally deprived of food as a "weapon of punishment and control."*[29]

  - Nearly all witnesses have reported an intentional deprivation of food to detainees causing severe illnesses, malnutrition, and often death by starvation.[30] One of the witnesses detained at the Musan *Ro-dong-dan-ryeon-dae* between 1997 and 2004 explained that deaths from starvation occurred on a near daily basis in the detention center.[31]

  - One witness detained at the Hyesan *Bo-wi-bu ku-ryu-jang* stated that they were fed "mostly skin of corn or potatoes mixed in with stones and coal."[32] Others described food rations of a few kernels of corn.[33] Detainees

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[28] *See, e.g.*, Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05; Hearing Witness Testimony of Witness i3 at 2:28:06–3:21:15; Affidavit i3, at 4–5 (explaining how guards would shoot inmates with complete impunity for trying to find food or running away); Affidavit i22, at 3 (describing having witnessed "quite a few people die through the death penalty" and stating that detainees were shot multiple times by *An-jeon-bu* agents); Affidavit i23, at 3 (explaining having "heard that several people in the detention centers had been executed for trying to escape, without any due process or proceedings under law"); Affidavit of Roberta Cohen, ¶ 30 (describing testimony of detainees who witnessed executions of detainees who stole food to survive).

[29] Affidavit of Roberta Cohen, ¶ 26; *see also* Hearing Testimony of Roberta Cohen, at 4:38:36–5:00:25 (describing a policy of denial of food to detainees even when food is available, rather than just a scarcity of food).

[30] *See, e.g.*, Hearing Witness Testimony, Witness i58, at 6:03:00–6:27:49 (testifying detainees were given a cup of maize that was so insufficient in quantity that she could count the individual kernels); Hearing Testimony of Roberta Cohen, at 4:38:36-5:00:25; Affidavit of Roberta Cohen, ¶ 23; Affidavit i26, at 2–3; Affidavit i8, at 1; Affidavit i19, at 3; Affidavit i25, at 3; Affidavit i38, at 2; Affidavit i37, at 2–3; Affidavit i42, at 4; UN COI Detailed Findings, ¶¶ 770–772.

[31] *See, e.g.*, Affidavit i26, at 2–3 (explaining that while detained at the Musan *ro-dong-dan-ryeon-dae* between 1997–2004, the detainee witnessed many inmates suffering from malnutrition, untreated diseases, "terrible medical care," and overwork resulting in death and stating that "death from hunger was part of everyday life in the detention centre").

[32] Affidavit i39, at 2.

[33] *See, e.g.*, Hearing Witness Testimony, Witness i58, at 6:03:00–6:27:49; Affidavit i21, at 2 (testifying that detainees were given very little food, such as "three or four spoonfuls" each of corn); *see also* Korea Institute for National Unification, "White Paper on Human Rights in North Korea," 2020 ("**KINU 2020 North Korea White Paper**"), at 121 ("Another testifier detained in a detention center (*guryujang*) Hyesan City MPS in Yanggang Province in May 2017 testified that a meal only included 50 corns that smelled like fungus.").

described the food as "inedible," "rotten," or "waste" that was "intended to sicken detainees."[34]

- Former detainees testified to catching and eating rodents, frogs, or snakes to survive detention.[35] One witness detained at the Chongjin *jip-kyul-so* in 2002 stated that "one of the other detainees was so driven by hunger that he ate his ears."[36]

- Witnesses testified to reductions in food rations—which were already inadequate—for detainees who failed to meet work quotas in the course of their forced labor, which led to further malnourishment and continued failures to meet work quotas, and eventually death by starvation.[37]

- *Detainees are regularly subjected to beatings and other forms of torture*.

  - Witnesses consistently testified to beatings by detention center officials.[38] At the Hearing, Mr. Gwangil Jung described being beaten so severely at an underground MSS detention facility that all of his lower teeth were broken.[39] He was also subjected to waterboarding and electric shocks.[40]

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[34] Affidavit of Roberta Cohen, ¶ 24; KINU 2020 North Korea White Paper, at 122 (describing "rotten corn with fungus and cabbage soup" and "corn rice that had a fungus smell"); Hearing Testimony of Roberta Cohen, at 4:38:365:00:25.

[35] *See, e.g.*, Hearing Witness Testimony, Witness i3, at 2:28:06–3:21:15; Hearing Testimony of Roberta Cohen, at 4:38:36-5:00:25; *see also* Affidavit i3, at 4; Affidavit of Roberta Cohen, ¶ 18; UN COI Detailed Findings, ¶ 805; "Basic Facts about the Prison Camps," Committee for Human Rights in North Korea ("**HRNK, Basic Facts about the Prison Camps**"), https://www.nkhiddengulag.org/about-the-camps.html (last accessed 17 June 2022).

[36] Affidavit i5, at 2.

[37] *See, e.g.*, Hearing Witness Testimony, Witness i56, Mr. Jung Gwang-il, at 1:48:15-2:28:05; Hearing Witness Testimony, Witness i51 at 5:39:36–6:02:58; *see also* "Who are the Victims?" Committee for Human Rights in North Korea ("**HRNK**, **Who are the Victims?**"), https://www.nkhiddengulag.org/victims.html (last accessed 17 June 2022) (describing starvation serves as a method of control as meager food rations are further reduced when detainees fail to meet their strict and often unrealistic work quotas, and that the threat of food reduction thereby incentivizes productivity).

[38] *See, e.g.*, Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05; Hearing Witness Testimony, Witness i3, at 2:28:06–3:21:15; Hearing Witness Testimony, Witness i36, at 4:04:48–4:38:06; Hearing Witness Testimony, Witness i55, Ms. Park Ji Hyun, at 5:00:26-5:30:08; Hearing Witness Testimony, Witness i58, at 6:03:00-6:27:49; Affidavit i51, at 2–3.

[39] Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

[40] Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

- One witness testified to having been beaten by a guard with a wooden stick covered in nails.[41] Another detainee described being beaten with a club and an electric shock baton until she passed out.[42]

- Detainees were regularly subjected to stress positions,[43] including "pigeon torture"—a stress position where the detainee's hands are handcuffed behind the back and hung so the detainee can neither stand nor sit down for days—which Mr. Jung Gwang-il described as the most painful of all tortures that he was subjected to.[44]

- *Sexual violence against detainees was common*.

  - Witnesses testified that it was "very common" for female detainees to be sexually assaulted and that it occurred "virtually every day."[45]

  - At the Hearing, Witness i3 testified to being brutally beaten and raped by the deputy head of a detention facility, who also raped most of the young

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41 *See, e.g.*, Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05; Hearing Witness Testimony, Witness i3, at 2:28:06-3:21:15; Hearing Witness Testimony, Witness i36, at 4:04:48–4:38:06; Hearing Witness Testimony, Witness i55, Ms. Park Ji Hyun, at 5:00:26-5:30:08; Hearing Witness Testimony, Witness i58, at 6:03:00–6:27:49; Affidavit i51, at 2–3.

42 *See, e.g.*, Affidavit i16, at 23.

43 *See, e.g.*, COI Report, ¶ 713 ("[I]nmates held in detention and interrogation facilities run by the secret police] who are not undergoing interrogations or who are not at work, are forced to sit or kneel the entire day in a fixed posture in often severely overcrowded cells. They are not allowed to speak, move, or look around without permission. Failure to obey these rules is punished with beatings, food ration cuts or forced physical exercise. Punishment is often also imposed collectively on all cellmates."); UN OHCHR Report, ¶¶ 42-43; HRW, Worth Less than an Animal, 2020; KINU White Paper 2020, at 114 (citing testimony by NKHR2019000069 2019-08-26 that they were forced to remain in a fixed posture, with even slight movements such as scratching not allowed); *id*., 115 (describing testimony by NKHR2016000094 2016-06-14 that another witness held at the Yanggang *Jip-kyul-so* in 2014 was forced to remain in a fixed posture).

44 Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05; UN COI Detailed Findings, ¶¶ 715, 717; *see also, e.g.*, HRW, Worth Less than an Animal, 2020; KINU White Paper 2020, at 114 (citing testimony by NKHR2019000069 2019-08-26 that they were forced to remain in a fixed posture, with even slight movements such as scratching not allowed); *id.* at 115 (describing testimony by NKHR2016000094 2016-06-14 that another witness held at the Yanggang *Jip-kyul-so* in 2014 was forced to remain in a fixed posture); COI Report, ¶ 713 ("[I]nmates [held in detention and interrogation facilities run by the secret police] who are not undergoing interrogations or who are not at work, are forced to sit or kneel the entire day in a fixed posture in often severely overcrowded cells. They are not allowed to speak, move, or look around without permission. Failure to obey these rules is punished with beatings, food ration cuts or forced physical exercise. Punishment is often also imposed collectively on all cellmates.").

45 *See, e.g.*, Affidavit i37, at 4; Affidavit i39, at 3; *see also* UN OHCHR, ¶ 60 (citing witness testimony of KOR/19/0004, KOR/18/0058, KOR/19/0036, KOR/19/0044, KOR/18/0032, KOR/18/0031, KOR/17/0045, KOR/17/0019, KOR/17/0048, KOR/17/0062).

women detained in the facility.[46] Ms. Park Ji Hyun also recalled female detainees had "different daily routines," according to which they were forced to perform sexual acts on officers.[47]

- *Many detainees were arrested and detained for the exercise of basic human rights, such as attempting to leave the country or practicing religion*.
    - Many of the witnesses were detained for attempting to leave the country or forcibly transferred to North Korea.[48]
    - Witness i53 testified that, "[i]n North Korea, anyone accused of practicing religion is sent to the *Bo-wi-bu* interrogation/detention facility and treated as a political prisoner."[49]
    - Witnesses reported that the "only way to survive in North Korea . . . is to hide or deny one's religious belief [because] those who revealed their religious belief suffered terrible reprisals," including being tortured or killed.[50]
- *Christians, in particular, were targeted for detention and particularly grave treatment in detention*.

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46 Hearing Witness Testimony of Witness i3, at 2:28:06–3:21:15; Affidavit i3, at 3.

47 Hearing Witness Testimony of Witness i55, at 5:00:26–5:30:08.

48 *See, e.g.*, Hearing Witness Testimony of Witness i3, at 2:28:06–3:21:15; Hearing Witness Testimony, Witness i58, at 6:03:00–6:27:49; Hearing Witness Testimony of Witness i55, at 5:00:26–5:30:08; Hearing Witness Testimony of Witness i36, at 4:04:48–4:38:06; Affidavit i51, at 2.

49 Affidavit i53, at 4. *See also* KINU White Paper 2020, at 148 (citing NKHR2016000102 2016-06-28) (stating that any North Korean forcibly transferred back to the country "who received education in Christianity [was] categorized as [a] political offender and sent to political prison (*kwanliso*) without going through a trial process").

50 Affidavit i4; *see, e.g.*, Affidavit i36, ¶ 2 ("I asked [Young-nam, a fellow detainee's] relatives what he looked like before he was buried, and they told me that Young-nam looked decades older than he was, with hair that had turned white and his face had very little flesh. When they last saw him they said that he looked like he was more than 80 years old, due to the torture he had received in the *Bo-wi-bu* because he was a Christian."); Affidavit i19 at 3 ("When I was returned to North Korea, I had to hide my commitment to Christianity, as the consequences would be terrible. I saw people who were Christians receive very bad treatment and one had to hide their Christianity or they would suffer a lot. I had to beg the Chinese authorities not to tell the North Korean border guards that I was a Christian as I would have been treated very badly. Being a Christian was not possible in North Korea and to survive, I hid my religious beliefs."); Affidavit i36, at 2 ("I can attest that Christians in North Korea are treated very severely.").

- One detainee estimated that between 50-60% of their fellow detainees at Onsong Shorter-Term Labor Detention Facility (*Jip-kyul-so*) had attended some form of Christian service in China.[51]

- Detention periods have been documented as being longer for Christians than other groups,[52] and witnesses have reported that "[i]dentified Christians are interrogated for longer periods, usually under torture"[53] and subjected to some of the worst forms of torture to force them to incriminate others during interrogation.[54]

- *Detainees were subjected to grueling forced labor and abhorrent living conditions in detention facilities*.

  - At the Hearing, witnesses testified that detainees were treated like "animals" and forced to work from dawn to past 11:00 pm at night.[55] A number of detainees described being subjected to extreme working conditions, with working days exceeding 10 hours per day and some detainees being worked to death.[56] For example, one witness detained at

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51 Affidavit of Benedict Rogers, ¶ 18(f) (citing Korea Future,"Persecuting Faith: Documenting Religious Freedom Violations in North Korea," ("**Korea Future Report**"), https://static1.squarespace.com/static/608ae0498089c163350e0ff5/t/6185747b98a32923b43b7de8/1636136111825/Persecuting+Faith+-+Documenting+religious+freedom+violations+in+North+Korea+%28Volume+2%29.pdf (last accessed 17 June 2022), at 44).

52 *Id.*, ¶ 18(c) (citing Korea Future Report, at 41).

53 U.S. State Dept. DPRK Human Rights Report (2020), at 7.

54 Hearing Expert Testimony of Benedict Rogers, at 3:42:41–4:04:26; *see also, e.g.*, Hearing Expert Testimony of Roberta Cohen, at 4:38:36–5:00:25; IBA Report 2017, ¶ 254; UN COI Detailed Findings, ¶ 254 (finding the MSS "makes concerted efforts to identify Christians," including systematically interrogating persons forcibly transferred to North Korea from China to identify practicing Christians among them and to identify other members of underground Christian churches).

55 *See* Hearing Witness Testimony, Witness i55, Ms. Park Ji Hyun, at 5:00:26–5:30:08; Hearing Witness Testimony, Witness i58, at 6:03:00–6:27:49.

56 *See* Affidavit of Roberta Cohen, ¶ 22; Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15-2:28:05; KINU 2020 North Korea White Paper, at 80–81 (citing testimony by NKHR2019000010 2019-04-08, a witness detained in the Chongjin Jip-kyul-so in 2018 who was forced to do farm work, construction site work, and livestock work from 5:00am to 8:00pm, including carrying blocks on their back in 40 °C heat at a construction site and being beaten by a manager for trying to drink water); Affidavit i39, at 3 (detainee at the Chongjin *jip-kyul-so* in 2008 describing being forced to do very hard labor, which included digging holes in the ground in temperatures reaching minus 37 °C); Affidavit i42, at 4 (testifying that detainees were forced to work at twice the rate of a normal worker and for sustained periods, with very limited food, which together led to the death of detainees).

Nongpo *Jip-kyul-so* in 2015 was forced to produce 20 tons of cement and 3,000 precast pavers a day, working around 15-16 hours per day.[57]

- A witness detained at the Chongjin *Jip-kyul-so* in 2003 described seeing detained children as young as seven being forced to do hard labor, including cutting large trees on the mountain.[58]

- Witnesses testified to being detained in overcrowded, unsanitary living conditions.[59] Several former detainees have described "being covered by different types of bugs, including lice, bedbugs, and fleas."[60] A number of witnesses testified to being denied the use of bathroom facilities and therefore being forced to soil themselves.[61]

- Even though temperatures can reach below minus 20 degrees Celsius in winter, detainees have described living in cells with no heat during wintertime, which caused frostbite.[62]

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57 KINU 2020 North Korea White Paper, at 81 (citing testimony by NKHR2019000089 2019-10-19).

58 Affidavit i37, at 3; *see also* U.S. State Dept. DPRK Human Rights Report (2020), at 1, 6 (reporting children being subjected to hard labor for up to 12 hours a day).

59 *See, e.g.*, Affidavit i38, ¶ 5.2 (stating that in the Hoeryong *Bo-an-so*, the witness was put in a single cell with 40 or more people and a single toilet within the cell); Affidavit i21, at 3 (stating that the witness was kept in an overcrowded cell with 40 people in a 13m^2 room); Affidavit i22, at 2 (describing being detained in the Hyesan *Bo-wi-bu ku-ryu-jang* for over two months in a cell with "about 40 other people"); Affidavit i19, at 2 (describing having witnessed others being put in cages with up to 30 other people with no space to lie down); Affidavit i25, at 3 (stating that detainees were placed in a small cell with 50 other detainees); Affidavit i37, at 3 (explaining that a defector was put into a confined space with 70 other women); *id.,* ¶ 5.8 (stating that in the Chongjin *jip-kyul-so*, 300 people slept in one room).

60 HRW, Worth Less Than an Animal, 2020 ("All the former detainees that spoke with Human Rights Watch said that the detention and interrogation facilities did not provide any basic needs like soap, clothes, or bedding and did not have adequate heating or cooling systems or running water, so detainees could not wash or shower properly. They explained that in the large detention and interrogation facilities the toilet was an open space in the corner of the cell, sometimes with a low partition up to the chest or neck when squatting. Sometimes guards brought in a basin with water, and in some cases, there was a water tap for washing. Small detention and interrogation facilities had toilets in a separate building or room. Four former detainees and two former police officers described detainees being covered by different types of bugs, including lice, bedbugs, and fleas, and detainees still not being allowed to move.").

61 *See, e.g.*, Hearing Witness Testimony, Witness i51, at 5:39:36–6:02:58; Hearing Witness Testimony, Witness i58, at 6:03:00–6:27:49; Affidavit i51, at 2–3 (witness detained at the *Samjiyeon Bo-an-so* in 2014 describing that detainees were forced to defecate on themselves because they were not allowed to use a toilet)

62 HRW, Worth Less Than an Animal, 2020 (recounting one witness testimony as follows: "The conditions were terrible, especially as the detention and interrogation facility was up north in a remote area. The cells didn't have metal bars, they were wooden, and there was no heating … the floor was made of cement, and it was so cold, the wall was covered with white ice. That's why the detainees' foot froze, mine did too. The bowibu office had a heater but not in the detention and interrogation facility

This Inquiry finds that there are reasonable grounds to conclude that the following individuals or classes of individuals may be subject to prosecution for perpetrating some or all of the ten crimes against humanity listed above:

- Kim Jong-un in his capacity of Head of State;
- Members of the Organization and Guidance Department ("**OGD**");
- Members of the State Affairs Commission ("**SAC**");
- Members of the Ministry of People's Security ("**MPS**"); and
- Members of the Ministry of State Security ("**MSS**").

B. Summary of Conclusions

This Inquiry concludes that there are reasonable grounds to establish that the individuals or classes of individuals listed above—from the Head of State to the detention centers' guards—have committed, and continue to commit, crimes against humanity in DPRK detention centers.

The individuals who perpetrated the crimes may be held accountable for crimes against humanity pursuant to individual responsibility (*i.e.*, direct perpetration, co-perpetration, indirect perpetration, and indirect co-perpetration) and/or superior responsibility (holding military commanders and non-military or civilian superiors accountable for the failure or omission to prevent or punish the crimes of their subordinates).[63]

Given the gravity and extent of the crimes against humanity committed in the DPRK detention centers,[64] this Inquiry makes the following recommendations to hold the perpetrators of these crimes accountable and provide redress to victims:[65]

- **Cessation of crimes against humanity**: This Inquiry calls upon the DPRK to immediately cease the perpetration of crimes against humanity in connection with the detention system, including murder, extermination, enslavement, forcible transfer, imprisonment or severe deprivation of physical liberty, torture, sexual violence, persecution, enforced disappearance, and other inhumane acts. This Inquiry calls upon the DPRK to abolish the current detention system that has enabled the continued commission of crimes against humanity. Further, this Inquiry calls for the development of a new detention system that guarantees detainees their fundamental human rights.

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cell. There were six female detainees, but only two blankets. We slept all together, but we still froze. The man was at the end cell, it must have been colder there, so his frostbite was more severe."); UN COI Detailed Findings, ¶ 773.

63 *See infra* Sections V.C, VII.

64 *See infra* Section VI.

65 *See infra* Section VIII.

- **Public acknowledgment of the perpetration of crimes**: This Inquiry calls upon the DPRK to publicly acknowledge that crimes against humanity have been committed in the DPRK detention centers.

- **Criminal Prosecutions***:*

    - *International Criminal Prosecutions at the ICC:* This Inquiry calls on the UN Security Council to refer the case to the ICC pursuant to Article 13(b) of the Rome Statute.

    - *Ad Hoc Tribunal:* This Inquiry calls upon the international community to pursue accountability through the establishment of an *ad hoc* tribunal, established by an international or regional organization or by treaty.

    - *Domestic Prosecutions and Exercise of Universal Jurisdiction:* This Inquiry calls upon other States to exercise universal jurisdiction over individuals who committed, or may have committed, crimes against humanity in the DPRK detention centers.

- **Compliance with UN Human Rights Treaties**: This Inquiry calls for the UN Security Council to issue a resolution calling upon the DPRK to comply with its international obligations under treaties that it has ratified, including the International Covenant on Civil and Political Rights ("**ICCPR**"), the International Covenant on Economic, Social and Cultural Rights ("**ICESCR**"), the Convention on the Elimination of all Forms of Discrimination Against Women ("**CEDAW**"), and the Convention on the Rights of the Child ("**CRC**").

- **Non-Judicial Transitional Justice Mechanisms**: This Inquiry calls upon the international community to develop a plan to address the legacy of atrocities in the DPRK detentions systems if and when the opportunity for transitional justice presents itself.

    - *Reparations*: This Inquiry calls upon the international community to develop a plan for victims to obtain fair redress. If the DPRK perpetrators are criminally prosecuted, the tribunal may award reparations to the victims of the crimes. Alternatively, the international community may, at its own initiative, develop channels to help victims obtain reparation.

    - *National Consultations*: This Inquiry calls upon national actors and civil society to ensure that transitional justice considers the victims of crimes against humanity.

    - *Truth and Reconciliation Commissions*: This Inquiry calls upon the international community to develop a restorative justice approach, documenting the atrocities. This would not only serve as evidence for

potential prosecutions, but will also allow victims to receive public acknowledgement for their help in uncovering the truth.

- **Targeted Sanctions***:* This Inquiry calls upon the UN Security Council to adopt targeted sanctions against those who appear to be the most responsible for the crimes committed in the DPRK detention centers.

II. Introduction and Mandate

1. On 21 March 2013, the UN Human Rights Council established the UN Commission of Inquiry to investigate the systematic, widespread and grave violations of human rights in the DPRK, in particular, violations that may amount to crimes against humanity.[66] The UN Human Rights Council appointed Michael Kirby of Australia, Sonja Biserko of Serbia, and Marzuki Darusman of Indonesia to serve as members of the UN Commission of Inquiry, with Mr. Kirby designated to serve as chair.[67]

2. The mandate of the UN Commission of Inquiry was to investigate "the systematic, widespread and grave violations of human rights in the Democratic People's Republic of Korea."[68] In 2014, after extensive gathering and analysis of evidence, the UN Commission of Inquiry published a report finding that "crimes against humanity have been committed in the Democratic People's Republic of Korea, pursuant to policies established at the highest level of the State."[69] Among its principal findings, the UN Commission of Inquiry found that:

   (a) the crimes against humanity in the DPRK entail crimes of extermination, murder, enslavement, torture, imprisonment, rape, and other sexual violence, persecution on political, religious, racial, and gender grounds, the forcible transfer of populations, the enforced disappearance of persons, and the inhumane act of knowingly causing prolonged starvation;

   (b) these crimes against humanity are ongoing in the DPRK because of the policies, institutions, and patterns of impunity that lie at their heart remain in place;

   (c) persons detained in political and other prison camps, those who attempt to flee the State, Christians and others considered to introduce subversive influences are the primary targets of the DPRK's widespread or systematic attack against all populations that are considered to pose a threat to the political system and leadership of the DPRK;

   (d) this attack is embedded in the larger patterns of politically motivated human rights violations experienced by the general population of North Korea, including the discriminatory system of classification of persons based on social class (*songbun*);

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66 COI Report, ¶ 1.

67 *Id.*, ¶ 2.

68 *Id.*, ¶ 3.

69 *Id.*, ¶ 75.

(e) crimes against humanity have been committed against starving populations, particularly during the 1990s, and these crimes arose from decisions and policies violating the right to food, which were applied for the purposes of sustaining the present political system, in full awareness that such decisions would exacerbate starvation and related deaths;

(f) crimes against humanity are being committed against persons from other countries whom DPRK officials systematically abducted or denied repatriation, in order to benefit from their labor and other skills.[70]

3. In 2016, two years after the publication of the UN Commission of Inquiry's report, the UN Special Rapporteur on the situation of human rights in the DPRK, Marzuki Darusman, observed that "[r]epression remains unabated" and the "totalitarian governing structure in North Korea absolutely denies rights to its people and its unchecked power appears as strongly entrenched as ever throughout the whole country."[71]

4. Subsequently in March 2016, the UN Human Rights Council, which was "[d]eeply concerned at the systematic, widespread and gross human rights violations in the Democratic People's Republic of Korea that, in many instances, constitute crimes against humanity, and at the impunity of perpetrators, as described in the report of the commission of inquiry," established a group of independent experts on accountability to explore appropriate approaches to seek accountability for human rights violations in the DPRK.[72] In March 2017, the group of independent experts presented a report, including the recommendation that civil society organizations should "continue raising awareness, specifically through regional initiatives and professional networks, reporting on human rights violations committed in the Democratic People's Republic of Korea" and "consider innovative initiatives by regional networks, such as mock trials and tribunals led by civil society on specific issues or groups of victims . . . to enable discussions on reported violations in the Democratic People's Republic of Korea and means of seeking accountability."[73]

5. Building on the UN Commission of Inquiry's findings and in furtherance of the UN Human Rights Council's efforts, an IBA-led inquiry took place in 2016-2017 and focused on crimes against humanity in North Korean political prisons. The 2017 Inquiry culminated with the issuance of a report finding reasonable grounds to

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70 *Id.*, ¶¶ 76-79.

71 "Efforts To Hold DPRK's Leadership Accountable Must Continue – UN Expert Urges in Last Report," OHCHR, 14 March 2016, https://www.ohchr.org/en/press-releases/2016/03/efforts-hold-dprks-leadership-accountable-must-continue-un-expert-urges-last (last accessed 17 June 2022).

72 Human Rights Council Resolution 31/18, Situation of Human Rights in the Democratic People's Republic of Korea, 23 March 2016, A/HRC/RES/31/18.

73 Accountability Report, ¶ 88.

conclude that crimes against humanity have been, and continue to be, committed on a massive scale in North Korean political prisons.[74] The 2017 Inquiry found reasonable grounds to conclude that ten of the eleven crimes against humanity enumerated in the Rome Statute have been and continue to be committed in political prisons in the DPRK, with only the crime of apartheid deemed inapplicable under the facts presented. Based on the evidence presented and reviewed, the 2017 Inquiry concluded that several classes of individuals may be subject to prosecution for some or all of the above referenced crimes, including the Supreme Leader, members of the Korean Worker's Party, members of the State Affairs Commission, and members of the State Security Department.[75]

6. Despite calls for accountability by the international community, recent accounts from former detainees evidence continuing and systematic perpetration of crimes against humanity, particularly with regard to the detention system in the DPRK.[76]

7. As stated by the UN Commission of Inquiry, "[w]here so much suffering has occurred, and is still occurring, action is the shared responsibility of the entire international community."[77] To contribute to these efforts to guarantee the fundamental rights of all peoples and to ensure accountability for those responsible for crimes against humanity, the War Crimes Committee of the IBA and HRNK, with assistance from Debevoise & Plimpton LLP as lead pro bono counsel, organized this present Inquiry.

8. While the 2017 Inquiry focused on crimes against humanity committed in political prisons, the inquiry reported instances of violations "that took place in other facilities that detain North Koreans for offenses not permitted under contemporary international law, such as interrogation units that are feeder facilities for the political prison camps."[78] As documented by the UN Commission of Inquiry, crimes against humanity, including torture, sexual violence and other inhumane acts, are established features of an "interrogation" process in such detention centers, where detainees are vulnerable to some of the worst abuses in an effort to

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74 IBA Report 2017, at 2.

75 *Ibid.*

76 *See, e.g.*, HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 2 July 2021, A/HRC/46/51, ¶¶ 15–16; HRC, Report of the UN High Commissioner for Human Rights, Promoting Accountability in the Democratic People's Republic of Korea, 11 January 2021, A/HRC/46/52, ¶¶ 46, 51; *see also* HRC, Report of the United Nations High Commissioner for Human Rights, Promoting Accountability in the Democratic People's Republic of Korea, 7 March 2019, ¶¶ 37–43; "Oral Update on the Situation of Human rights in the Democratic People's Republic of Korea by the United Nations Deputy High Commissioner for Human Rights," OHCHR, 12 March 2019, https://www.ohchr.org/en/statements/2019/03/oral-update-situation-human-rights-democratic-peoples-republic-korea-united (last accessed 17 June 2022).

77 COI Report, ¶ 94.

78 IBA Report 2017, at 3.

extract confessions.[79] Compelled by such accounts of systematic, widespread, and gross human rights violations committed in the North Korean detention system that remains in place, this Inquiry focuses on crimes against humanity in the DPRK's short-term detention centers.

9. Through this Inquiry, the authors of this report hope to contribute to the protection of the fundamental human rights of those who are most vulnerable and to the dismantlement of the detention center system where crimes against humanity are being perpetrated.

10. Consistent with the UN COI Report, the practice of UN fact-finding bodies, and the 2017 Inquiry, this Inquiry adopted a "reasonable grounds" standard of proof in its factual determinations. This "reasonable grounds" standard refers to the establishment that "an incident or pattern of conduct had occurred whenever [this Inquiry] was satisfied that it had obtained a reliable body of information, consistent with other material, based on which a reasonable and ordinarily prudent person would have reason to believe that such an incident or pattern of conduct had occurred."[80] While lower than the standard of proof required in criminal proceedings in order to sustain an indictment, it is sufficiently high to indicate that further investigations are warranted.[81] This is also consistent with Article 15(3) of the Rome Statute, which provides that "[i]f the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit [] a request for authorization of an investigation."[82]

11. Similarly, the findings in this Inquiry report are based on the "reasonable grounds" standard of proof, even when the expression is not necessarily expressly used in the text of this report.

III. Description of the Proceedings

12. This Inquiry held a day-long Hearing at DACOR Bacon House, 1801 F Street, NW, Washington D.C. on 4 March 2022. The Hearing was open to the public and also

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79 *See, e.g.*, UN COI Detailed Findings, ¶¶ 411–423, 707, 710; HRW, Worth Less Than an Animal, 2020 ("Twenty-two former detainees and eight former government officials told Human Rights Watch that mistreatment of detainees is especially harsh in the early stages of questioning in pretrial detention and interrogation facilities (*kuryujang*)."); HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 30 May 2019, A/HRC/40/66, ¶¶ 29, 34.

80 COI Report, ¶ 22; *see also* Human Rights Council, "Detailed findings of the independent international fact-finding mission on the Bolivarian Republic of Venezuela," UN Doc. A/HRC/45/CRP.11, ¶ 11 ("factual information has been collected which would satisfy an objective and ordinarily prudent observer that the incident has occurred as described, with a reasonable degree of certainty").

81 Human Rights Council, "Detailed findings of the independent international fact-finding mission on the Bolivarian Republic of Venezuela," UN Doc. A/HRC/45/CRP.11, ¶ 11.

82 Rome Statute, art. 15(3).

live-streamed online over Zoom. Attendees at the hearing included representatives of leading non-governmental organizations, lawyers, academics, government officials, representatives of embassies, journalists, and students. A copy of the Hearing Agenda is attached hereto as Appendix 2.

13. We, as the four judges presiding over the Hearing and the authors of this Inquiry report—Navenethem Pillay (Chair), Silvia Fernández de Gurmendi, Wolfgang Schomburg and Dame Silvia Cartwright (participating remotely)—collectively drew on our experience as judges on various international and domestic courts and tribunals, including the ICC, International Criminal Tribunal for the former Yugoslavia ("**ICTY**"), International Criminal Tribunal for Rwanda ("**ICTR**"), and the Extraordinary Chambers in the Courts of Cambodia ("**ECCC**"). However, we are mindful that we are not sitting as judges on a criminal court rendering a verdict in this Inquiry. Rather, consistent with the goals of the Inquiry, we have reviewed the evidence presented to ascertain whether there are reasonable grounds to conclude that crimes against humanity were committed in the DPRK detention centers so as to warrant further investigation and prosecution of individuals most responsible for the alleged crimes against humanity.

14. The legal team assembled by this Inquiry's organizers provided this Inquiry with a legal brief containing documentary evidence of alleged crimes against humanity in the DPRK detention centers, which we examined prior to the Hearing.

15. With respects to witness evidence, the Inquiry received 25 affidavits from former detainees. The former detainee affidavits were completed after interviews with each witness, conducted by representatives of HRNK. Each affidavit provides the former detainees' personal information, information on their assailants, where and when the survivors were detained, why and how they were first apprehended, a description of the treatment they received while detained, when and how they were released, and the impact of detention on their lives. Affidavits were prepared in Korean and translated into English, with both original and translated versions sworn by the witness before a notary. We note that certain of the affidavits had identifying information redacted in order to protect the survivors.

16. South Korean Assemblyman Thae Yong-ho, the DPRK's former Deputy Ambassador to the United Kingdom who defected in 2016, also provided an affidavit describing his personal knowledge of the North Korean political apparatus and detention system.

17. The Inquiry was also provided with expert evidence on the North Korean detention system in the form of notarized, written affidavits from:

    i. Dr. Nicholas Eberstadt, the Henry Wendt Chair in Political Economy at the American Enterprise Institute and Senior Adviser to the National Bureau of Asian Research;

ii. Mr. Joseph S. Bermudez Jr., Senior Fellow for Imagery Analysis at the Center for Strategic and International Studies and a Senior Adviser to HRNK;

iii. Mr. Benedict Rogers, Senior Analyst for East Asia at Christian Solidarity Worldwide;

iv. Ms. Roberta Cohen, Co-Founder of the Brookings-LSE Project on Internal Displacement and former HRNK co-chair;

v. Mr. Kenneth Gause, Director of the International Affairs Group, CAN Analysis & Solutions;

vi. Ms. Felice Gaer, Director of American Jewish Committee's Jacob Blaustein Institute for the Advancement of Human Rights and former independent expert member of the UN Committee against Torture; and

vii. Reverend Tim Peters, founder of Helping Hands Korea.

18. In developing the legal brief, the legal team also analyzed a variety of sources on the DPRK and its detention centers, including books, reports, and satellite imagery. The legal team also conducted an exhaustive review of relevant case law, particularly the decisions of the ICC, ICTY, and ICTR.

19. At the Hearing, counsel with extensive specialized experience in international criminal and human rights law presented evidence of violations in detention centers. The counsel team included Mr. Gregory Kehoe (member and former co-chair of the IBA's War Crimes Committee and partner at Greenberg Traurig LLP); Ms. Kirsty Sutherland (member of the IBA's War Crimes Committee, barrister, 9 Bedford Row, London); and attorneys Nawi Ukabiala, Moeun Cha, and Sarah Lee from Debevoise & Plimpton LLP ("**Counsel**").

20. The Hearing featured live testimony (in person and over video link) from six North Korean individuals who were formerly detained and had since escaped the DPRK:

i. Mr. Jung Gwangil (witness i56), who was detained in two detention facilities for about nine months;

ii. Witness i3, who was detained in four detention facilities over two years (and who asked that their name be withheld);

iii. Witness i36, who was detained twice and held in three detention facilities (and who asked that their name be withheld);

iv. Ms. Park Ji Hyun (witness i55), who was detained in four detention facilities over four months;

v. Witness i51, who was detained twice and held in six detention facilities over three years (and who asked that their name be withheld); and

vi. Witness i58, who was detained twice and held in seven detention facilities over two years (and who asked that their name be withheld).

21. At the Hearing, Counsel also presented testimony from the aforementioned experts who submitted written affidavits for this Inquiry, with the exceptions of Ms. Felice Gaer and Reverend Tim Peters, who were unable to attend.[83] All of the experts have written extensively on the DPRK and are regarded as among the world's leading experts on the DPRK's political, penal, and detention systems.

22. In reaching its factual findings and legal views, this Inquiry also adopted and incorporated by reference relevant testimony and witness statements given in connection with the UN Commission of Inquiry and the 2017 Inquiry. The following sections set forth the factual findings and legal views relating to this Inquiry.

23. While we have not relied on the remarks featured at the Hearing from the following participants as evidence in reaching our findings, we note and thank the participation of: The Honorable Scott Busby, Acting Principal Deputy Assistant Secretary in the Bureau of Democracy, Human Rights and Labor of the U.S. Department of State; The Honorable Robert R. King, former Special Envoy for North Korean Human Rights Issues at the U.S. Department of State; Mr. David Tolbert, Registrar of the Special Tribunal for Lebanon and former Deputy Chief Prosecutor at the ICTY; and His Excellency Seong-Ho Ji, National Assemblyman of South Korea, who himself had been formerly detained in the DPRK while a child there.

24. Finally, we also note that DPRK was invited to but declined to take part in the Inquiry. Instead, a few days before the Hearing, the DPRK Ministry of Foreign Affairs posted an article on its website titled "The Disgraceful Behavior of a Fake Human Rights Organization," claiming that HRNK is raising issues of human rights in North Korea because it is "directly controlled by the U.S. government under the guise of a non-governmental organization to slander the dignity of our country and overthrow our institutions."[84] The DPRK Ministry of Foreign Affairs provided no factual support for these claims.

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83 *See supra* ¶ 17.

84 *See* "HRNK Response to March 1 Statement by the DPRK Ministry of Foreign Affairs," The Committee for Human Rights in North Korea, 1 March, 2022, https://www.hrnk.org/events/announcements-view.php?id=86 (last accessed 17 June, 2022).

IV. Findings: DPRK Detention System

A. DPRK Regime

25. The DPRK is an authoritarian state that has been led by the Kim family since 1949[85] and is based on a regime that places no limits on the Supreme Leader's powers, allowing the Kim family to exercise absolute authority over the country.[86] As described by Dr. Nicholas Eberstadt at the Hearing, the DPRK regime is "perhaps the most perfectly totalitarian command and control structure on this planet today."[87]

26. Kim Jong-un serves as the third-generation leader of the Kim dynasty.[88] Kim Jong-un holds the title of Head of State or Supreme Leader and is also the Chairman of the SAC, the highest government entity in the country.[89] Furthermore, he also is General Secretary of the Korean Workers' Party and Chairman of the Central Military Commission.[90]

27. The Kim regime maintains absolute power over the country through the loyalty and obedience mandated for all North Korean citizens.[91] Announced in 1974 by Kim Jong-il, the "Ten Principles in Establishing the Monolithic Ideological System" provide the basis of the *Suryong* system.[92] Loyalty to the Supreme Leader constitutes the cornerstone of that system.

28. The Korean Workers' Party ("**KWP**"), the sole political party in North Korea, controls the propagation of the Monolithic Ideological System through the state

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85 *See* "DPRK 2020 Human Rights Report," U.S. Dept. of State, Bureau of Democracy, Human Rights and Labor, 2020 ("**U.S. State Dept. DPRK Human Rights Report (2020)**"), at 1, https://www.state.gov/wp-content/uploads/2021/10/KOREA-DEM-REP-2020-HUMAN-RIGHTS-REPORT.pdf (last accessed 17 June 2022).

86 IBA Report 2017, ¶ 28.

87 Hearing Testimony of Nicholas Eberstadt, at 1:01:21-1:14:00.

88 *See* UN COI Detailed Findings, ¶¶ 149–150.

89 *See* J. Grisafi, "North Korea creates new lead government body headed by Kim," NK News.org (30 June 2016) ("**Grisafi**"), https://www.nknews.org/2016/06/north-korea-creates-new-lead-government-body-headed-by-kim/ (last accessed 18 June, 2022).

90 Affidavit of Robert Collins, ¶ 13(b), 13(g).

91 *See* R. Collins and A. Mortwedt Oh, "From Cradle to Grave, The Path of North Korean Innocents," HRNK (2017) ("**Collins and Mortwedt Oh**"), at 3; *see also* K. Gause, "Coercion, Control, Surveillance, and Punishment, An Examination of the North Korean Police State," HRNK (2012) ("**Gause**"), at 109 ("The system guaranteed that loyalty to the ruling family determined every individual's place in society, and thereby assured that power would stay in the hands of Kim Il-sung's family.").

92 *See* UN COI Detailed Findings, ¶ 131.

propaganda system.[93] Specifically, the Propaganda and Agitation Department ("**PAD**") within the Central Committee of the KWP is in charge of issuing propaganda directives.[94] "[P]ropaganda units" in workplaces and schools then disseminate and reinforce the regime's messages based on the PAD's directives.[95]

29. To ensure and enforce citizens' continued adherence to the State ideology and obedience to the regime, the regime relies on its security apparatus, including the Ministry of People's Security ("**MPS**," also referred to as the Ministry of Public Security and Ministry of Social Security),[96] and Ministry of State Security ("**MSS**," also referred to as the State Security Department ("**SSD**")).[97]

1. Monolithic Ideological System

30. The DPRK only permits one political ideology, the Monolithic Ideological System.[98] No exception to this ideology is allowed. Neither the North Korean Constitution nor the national laws recognize or protect freedom of thought and conscience.[99] As such, any ideology that does not support the *Suryong* is considered a "serious threat" to the system.[100]

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93 *See* Collins and Mortwedt Oh, at 3; UN COI Detailed Findings, ¶ 194 ("Apart from the state-controlled media, they are also exposed to inescapable propaganda broadcasts in their homes and in public spaces.").

94 *See* UN COI Detailed Findings, ¶ 187.

95 *Id.*, ¶ 188.

96 *See* "Ministry of Social Security," South Korean Ministry of Unification ("**South Korean Ministry of Unification, MPS**"), https://nkinfo.unikorea.go.kr/nkp/term/viewNkKnwldgDicary.do?pageIndex=1&dicaryId=309&menuId=NK_KNWLDG_DICARY (last accessed 20 June 2022); "N. Korea seems to have renamed ministry in charge of policing," Yonhap News (3 June 2020), https://en.yna.co.kr/view/AEN20200603001000325 (last accessed 17 June 2022).

97 "Ministry of State Security," Johns Hopkins SAIS, Korea Data and History Initiative, https://www.kdhi.org/dprk-institution/ministry-of-state-security (last accessed 17 June 2022) ("The MSS is alternatively known as the State Security Department [SSD] or the National Security Agency [NSA], the latter only in older publications."); "National Security," South Korean Ministry of Unification, https://www.uniedu.go.kr/uniedu/home/brd/bbsatcl/NKNOW/view.do?id=31940 (last accessed 17 June 2022) (stating that, with the 2016 constitutional revision establishing the SAC, the name of the organization changed to MSS).

98 *See* Pyongyang Republic, at 18–22; *see also* Gause, at 109–116.

99 *See* Korea Institute for National Unification, "White Paper on Human Rights in North Korea," 2019 ("**KINU 2019 North Korea White Paper**"), at 182; *see also* Korea Institute for National Unification, "White Paper on Human Rights in North Korea," 2017 ("**KINU 2017 North Korea White Paper**"), at 180.

100 KINU 2017 North Korea White Paper, at 180.

31. The Monolithic Ideological System is embodied in the Ten Principles, which are unconditionally mandated, imbued with superiority over the Constitution and essentially govern the standards that safeguard the dictatorship.[101] Thae Yong-ho (previously the DPRK's Deputy Ambassador to the UK) testified that the Ten Principles also provide the ideological underpinning for the incarceration of many detainees in the DPRK's detention facilities.[102]

32. The Ten Principles, which were enacted in April 1974 and revised in June 2013,[103] are listed below:

    i. Struggle with all your life to paint the entire society with the one color of the Great Leader Kim Il-sung's revolutionary thought;

    ii. Respect and revere highly and with loyalty the Great Leader Kim Il-sung;

    iii. Make absolute the authority of the Great Leader Kim Il-sung;

    iv. Accept the Great Leader Comrade Kim Il-sung's revolutionary thought as your belief and take the Great Leader's instructions as your creed;

    v. Observe absolutely the principle of unconditional execution in carrying out the instructions of the Great Leader Kim Il-sung;

    vi. Rally the unity of ideological intellect and revolutionary solidarity around the Great Leader Kim Il-sung;

    vii. Learn from the Great Leader Kim Il-sung and master communist dignity, the methods of revolutionary projects, and the people's work styles;

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101 KINU 2019 North Korea White Paper, at 182; "Political Bureau of C.C. WPK Adopts Resolution," KCNA Watch (13 February 2015), https://nkleadershipwatch.wordpress.com/2015/02/13/wpk-political-bureau-meeting-resolves-to-meaningfully-celebrate-the-partys-70th/ (last accessed 20 June 2022) ("The great Comrade Kim Jong-il formulated Comrade Kim Il-sung's revolutionary ideology as Kimilsungism and developed our Party into an ideologically pure and organizationally integrated body in which monolithic ideological and leadership systems are firmly established, into a motherly party which has formed a harmonious whole with the masses and serves them, into a seasoned and experienced party which is possessed of a high level of leadership art and into a promising party which has definitely been assured of the leadership being inherited.").

102 *See* Affidavit of Thae Yong-ho, ¶ 19.

103 KINU 2019 North Korea White Paper, at 183 ("In June 2013, North Korea revised the Ten Principles of Unitary Ideology for the first time in the thirty-nine years since it was enacted on April 14, 1974. The name was changed [from Ten Principles for the Establishment of the Unitary Ideology System] to 'the Ten Principles to Firmly Establish the Party's Unitary Leadership System.").

viii. Preserve dearly the political life the Great Leader Kim Il-sung has bestowed upon you, and repay loyally for the Great Leader's boundless political trust and consideration with high political awareness and skill;

ix. Establish a strong organizational discipline so that the entire Party, the entire people, and the entire military will operate uniformly under the sole leadership of the Great Leader Kim Il-sung; and

x. The great revolutionary accomplishments pioneered by the Great Leader Kim Il-sung must be succeeded and perfected by hereditary successions until the end.[104]

33. Given that obedience is a core element of the DPRK regime, these principles are taught to all citizens, including children, on a regular basis to ensure their loyalty.[105] One former senior DPRK official has stated: "[n]ot only do the Ten Principles of Monolithic Ideology serve as the guidebook for all party members, security services, government leaders, and personnel with regards to violations of loyalty and political ideology, it is also used as a standard to which every leader, manager, and department Director is held in the performance of their respective duties."[106] In turn, the Ten Principles "guide[] those who run the detention centers as well as those who provide administrative and/or logistical support to those centers."[107]

34. The DPRK has instituted a "life-long system of ideological propagation and indoctrination," starting with classroom education for children and continuing into adulthood with mandatory education in workplaces.[108] Moreover, the DPRK continuously uses the state-controlled press to "strengthen the ideology and mobilize the population to idolize Kim Il Sung, Kim Jong Il and Kim Jong Un." All newspapers in North Korea are "mouthpieces" for the Kim regime.[109]

35. The DPRK's elaborate socio-political classification system, or *songbun*, permeates every aspect of North Korean life and is a significant motivating force for the

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104 R. Collins, "Denied from the Start," HRNK (2018), n. 96 (citing "Ten Great Principles of the Establishment of the Unitary Ideology System," Citizens' Alliance for North Korean Human Rights (29 June 2012)).

105 *See, e.g.*, UN COI Detailed Findings, ¶¶ 166–171 (describing DPRK's indoctrination of children).

106 *See* Affidavit of Thae Yong-ho, ¶ 20.

107 *Id.*, ¶ 21.

108 D. Hawk, "Thank You Father Kim Il Sung," U.S. Commission on International Religious Freedom, November 2005, at 8.

109 KINU 2019 White Paper, at 198.

country's detention system.[110] A person's *songbun* is assigned at birth and "determines all aspects of his or her life," providing extensive privileges for some and "pervasive disadvantages" for others.[111] The concept emerged following a series of citizen registration programs carried out after Korea's liberation from Japanese rule, after which the DPRK divided its citizens into three classes and approximately 56 categories, and then separately into 25 types of backgrounds.[112] According to Robert Collins, "this party-directed "caste system" is the root cause of discrimination and humanitarian abuses" in North Korea.[113]

36. The three main classes are: (*i*) the "core" (*haeksim*) class, or the most loyal members of DPRK society; (*ii*) the "wavering" (*dongyo*) class, or those whose loyalty to the regime is questionable; and (*iii*) the "hostile" (*choktae*) class, or those who are perceived as disloyal to the regime.[114] Members of the "hostile" class are harshly discriminated against in their education, employment, military service, medical care, housing, access to food, and other aspects of life. Their activities are extensively monitored and regulated due to their perceived threat to the regime.[115]

37. While there are relatively few opportunities to improve one's *songbun*, it can be downgraded in many ways, both by the conduct of an individual or their relative and especially if that conduct constitutes the commission of a "crime."[116] These "crimes" include the exercise of basic human rights such as expressing political

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110 *See* HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 30 May 2019, A/HRC/40/66, ¶ 19 ("Discrimination and inequality based on *songbun* is a reality for the people of the Democratic People's Republic of Korea. *Songbun* plays an important role in all aspects of citizens' lives, determining whether they are able to join the Korean Worker's Party, the amount of their food rations, whether they receive social services, whether they can acquire government jobs, their access to higher education, their assigned work and even where they can live.").

111 R. Collins, "Marked for Life: *Songbun*, North Korea's Social Classification System," Committee for Human Rights in North Korea (2012) ("**Marked for Life**"), at 2, 5 (stating, for example, that those with lower *songbun* are assigned to menial and heavy-labor jobs and lower class housing and are provided with poor diet and medical care and that those with high *songbun* are the ones who "make[] policy or make[] critical decisions"). *See also* KINU 2020 North Korea White Paper, at 265–267 (explaining how discrimination based on one's *songbun* has implications for someone's residence, admission to university, employment, marriage, and more); UN COI Detailed Findings, ¶ 271 ("Decisions about residency, occupation, access to food, health care, education and other services have been contingent on *songbun*.").

112 KINU 2020 North Korea White Paper, at 258; *see also* UN COI Detailed Findings, ¶ 271.

113 Marked for Life, at 1.

114 IBA Report 2017, ¶¶ 35-37; Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, HRC, 30 May 2019, A/HRC/40/66, ¶ 19 n.17 ("Songbun is a social classification system based on perceived loyalty to the regime, linked to family, social and economic factors. There are three main categories (loyal class, wavering class and hostile class).").

115 IBA Report 2017, ¶ 37.

116 UN COI Detailed Finding, ¶ 283.

dissent, practicing religion, or attempting to leave the country. Within the North Korean detention system, an individual's *songbun* permeates their entire experience. It plays a critical role in determining whether an individual is targeted for detention, as well as the type of detention facility they are sent to, the degree and type of punishment they are subject to, their treatment and living conditions while detained, and the length of their detainment.[117]

2. Head of State

38. Kim Jong-un has been the Head of State, or "Supreme Leader," since 2011,[118] preceded by Kim Jong-il, his father, and Kim II-sung, his grandfather.[119] Believed to have been less than 30 years old when he succeeded as the DPRK Supreme Leader,[120] Kim Jong-un inherited and fully assumed the authority and policies of the *Suryong*.[121]

39. As the Supreme Leader, Kim Jong-un holds the most important titles in the DPRK regime, including Chairman of the SAC, Commander-in-Chief, and Chairman of the KWP.[122] His orders supersede and abrogate laws or the decisions of any other State organs.[123] As described by Dr. Eberstadt at the Hearing, "all decisions must conform with the dictates set by the Supreme Leader."[124]

3. State Affairs Commission ("SAC")

40. Established in 2016 to replace the military-based National Defense Commission ("**NDC**"), the SAC is the DPRK's highest decision-making institution.[125]

41. Compared to the NDC, which had an official mandate limited to security and national defense, the SAC is defined in the DPRK Constitution as "the supreme

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117 *See id.*, ¶ 789; Gause, at 109.

118 *See* UN COI Detailed Findings, ¶¶ 149–150.

119 Pyongyang Republic, at 5; *see also* Gause, at 156.

120 UN COI Detailed Findings, ¶ 150.

121 Pyongyang Republic, at 28; *see also* Gause, at 156.

122 *See* "Organizational Chart of North Korean Leadership," South Korea Ministry of Unification (June 2022) ("**North Korean Leadership Chart (June 2022)**"), https://nkinfo.unikorea.go.kr/nkp/theme/getPowerStructureDang.do (last accessed 20 June 2022); J. Smith, "North Korea changes constitution to solidify Kim Jong Un's rule," Reuters, 29 August 2019, https://www.reuters.com/article/us-north-korea-constitution/north-korea-changes-constitution-to-solidify-kim-jong-uns-rule-idUSKCN1VJ1JQ (last accessed 18 June 2022).

123 UN COI Detailed Findings, ¶ 1191.

124 Hearing Testimony of Nicholas Eberstadt, at 1:01:21-1:14:00.

125 *See* Grisafi.

policy-oriented leadership body of State power."[126] Commentators view the replacement of the NDC with the SAC as part of Kim Jong-un's efforts toward the normalization of state administration away from the "*Songun*" or "military-first" policy of Kim Il-sung.[127]

42. Kim Jong-un has been Chairman of the SAC since its establishment.[128] As Chairman of the SAC, Kim Jong-un is empowered to command all armed forces of the State, declare a state of emergency, direct State businesses, ratify or abolish treaties, and appoint and dismiss key personnel.[129] The DPRK Constitution empowers the SAC to abrogate any decisions of state organs.[130] While the Cabinet holds some limited power in setting economic and social policies, the SAC directly controls all matters related to security.[131]

43. The SAC consists of the Chairman, First Vice Chairman, Vice Chairman, and ten Members. As of June 2022, the membership of the SAC includes the Chairman Kim Jong-un, First Vice Chairman Choe Ryong-hae, Vice Chairman Kim Tok-hun, and members Cho Yong-won, Pak Chung-chun, Kim Yong-chol, Jun Hyun-chol, Ri Son-gwon, Ri Yong-gil, Kim Sung-nam, Kim Yo-jong, Pak Soo-il, and Ri Chang-dae.[132]

The State Affairs Commission (SAC)	
Chairman	Kim Jong-un

126 *See* Constitute Project, "DPRK Constitution of 1972 with Amendments Through 2016," 21 May 2021 ("**DPRK Constitution**"), art. 106, https://www.constituteproject.org/constitution/Peoples_Republic_of_Korea_2016.pdf?lang=en (last accessed 18 June 2022); "North Korea Dictionary, State Affairs Commission," Korea Ministry of Unification, 31 December 2016 ("**North Korea Dictionary, SAC**"), https://www.uniedu.go.kr/uniedu/home/brd/bbsatcl/nknow/view.do?id=31942 (last accessed 18 June 2022).

127 North Korea Dictionary, SAC; "North Korea Dictionary, Songbun Policy," South Korea Ministry of Unification (31 December 2016), https://www.uniedu.go.kr/uniedu/home/brd/bbsatcl/NKNOW/view.do?id=31842 (last accessed 18 June 2022).

128 *Id.*; *see also* "National Defense Commission," North Korea Leadership Watch (2009), https://nkleadershipwatch.wordpress.com/dprk-security-apparatus/national-defense-commission/ (last accessed 18 June 2022).

129 North Korea Dictionary, SAC.

130 UN COI Detailed Findings, ¶ 1190.

131 *Id.*, ¶¶ 1184, 1190; *see also* Gause, at 131.

132 North Korean Leadership Chart (June 2022).

The State Affairs Commission (SAC)		
First Vice Chairman	Choe Ryong-hae	
Vice Chairman	Kim Tok-hun	
Members	Cho Yong-won Park Chung-chun Kim Yong-chol Jun Hyun-chol Ri Son-gwon	Ri Yong-gil Kim Sung-nam Kim Yo-jong Pak Soo-il and Ri Chang-dae

44. While the current membership of the SAC consists of the members named in the chart above, the Inquiry covers acts committed in the DPRK detention facilities in prior decades. By naming the current officeholders, the Inquiry report does not mean to discount the responsibility of previous officeholders or suggest that they are not also susceptible to investigation.

4. Organization and Guidance Department ("OGD")

45. Known as the DPRK regime's "control tower" and "the heart of the North Korean political system," the OGD is the department of the Central Committee of the KWP directly responsible for overseeing the KWP's operations and for controlling the political affairs and personnel appointments of the KWP's main party organizations.[133] The OGD exerts authority at all levels of life in the country and controls the central party system, provincial party committees, city and county party committees, and many of North Korea's factories, mines, and farms.

46. The OGD has primary responsibility for ideological indoctrination, party organization, and political appointments and is responsible for monitoring and regulating the membership status and activities of the estimated three million KWP party members in the country.[134] "Highly secretive" and wielding absolute authority, the OGD ensures obedience to party ideology by controlling ideological education, monitoring attendance at rallies, and directing participation in civic endeavors such as construction and public works projects, among other things.[135] This expansive system allows members of the core leadership of the regime to

133 R. Collins, "North Korea's Organization and Guidance Department: The Control Tower of Human Rights Denial," Committee for Human Rights in North Korea (2019) ("**Control Tower**"), at 1–4.

134 *Id.*

135 *Id.*, at 2.

communicate key policies and ideological instruction throughout the country and regulate the North Korean workforce.

47. One expert witness has stated: "[t]he OGD's mission is to guarantee the continuity and survival of the Supreme Leader and the KWP. The OGD Party Life Guidance Section evaluates every leader of every organization as to their demonstration of loyalty to the Supreme Leader and fealty to the [Ten Principles]. Those charged with overseeing detention centers do so in accordance with OGD orders and directives which, by definition, must be in conformity with the [Ten Principles]. Thus, the actions and tasks of every leadership position within North Korea's network of detention centers are sanctioned politically by the OGD, and by extension Kim Jong-un."[136]

48. Furthermore, the OGD collects information on each party member, which it maintains in "Party Life" files. These are used to determine eligibility for promotions, social welfare benefits, and school admissions.[137] The OGD also maintains the personal and *songbun* records of party members and is responsible for punishing party members for any offenses, such as those described at party self-criticism sessions.[138] Since its authority covers all party members, the OGD is able to surveil even the most senior-level officials, including the most senior military officers.[139]

49. In addition to its surveillance and regulation of party members, the OGD is also responsible for appointments, dismissals, demotions, and terminations of officials in the party, army, and government, and for supervising the protection of the Kim family.[140] This role gives the OGD immense power in the DPRK political system.

50. Kim Jong-un served as director from 2012 to 2018. Though the ultimate leader of the OGD is "unquestionably" Kim Jong-un, Jo Yong-won is currently believed to

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136 Affidavit of Thae Yong-ho, ¶¶ 24–26.

137 "Organization Guidance Department and WMD Program," North Korea Leadership Watch, https://nkleadershipwatch.wordpress.com/dprk-security-apparatus/national-defense-commission/ (last accessed 20 June 2022).

138 Control Tower, at 17–18. *See also id.*, at 112 ("In determining punishment, those that gave self-criticism are given a warning, a severe warning, or even Party disqualification. They could be punished with labor with no pay for a month or several months. They may even receive revolutionary re-education, be demoted or banished to the countryside, face legal sanctions, or even be arrested by the MSS.").

139 *Id.*, at xiv.

140 *Id.*, at xiv, 17–18.

be the director of the OGD.[141] As of 2022, the leadership of the OGD reportedly included the following individuals:[142]

The Organization and Guidance Department (OGD)	
Director	Jo Yong-won **<u>Past Directors:</u>** 2020–2022: Kim Jae-ryong 2019–2020: Ri Man-gon 2018–2019: Choi Ryong-hae 2012–2018: Kim Jong-un 1973–2011: Kim Jong-il
First Vice-Directors	Kim Kyong-ok Kim Jo-guk Ri Byong-chol
Vice-Directors	Hwang Pyong-so Jo Yong-won Min Byong-chol
Chief of Kim Jong-un's Personal Secretariat	Kang Sang-chun

51. The Inquiry report does not mean to discount the responsibility of previous officeholders not identified in the chart above, or suggest that they are not also susceptible to investigation.

5. Security Apparatus

52. The DPRK security apparatus plays a critical role in maintaining the regime through a system of constant surveillance, total control, and harsh punishments for non-compliance with the dictates of the totalitarian regime.[143] Three agencies

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141 *Id.*, at xvi; North Korean Leadership Chart (June 2022).

142 North Korean Leadership Chart (June 2022); Control Tower, at 148–164 (information on the First Vice-Directors, Vice-Directors, and Chief of Kim Jong-un's Personal Secretariat as of 2019).

143 *See, e.g.*, COI Report, ¶ 56 ("The police and security forces of the Democratic People's Republic of Korea systematically employ violence and punishments that amount to gross human rights violations in order to create a climate of fear that preempts any challenge to the current system of government and to the ideology underpinning it."); The Parallel Gulag at 7 ("[T]he Kim regime . . . rest[s] on three foundations. The first is the attempt at complete control of the knowledge and information that the

oversee internal security: the MPS (currently known as the Ministry of Social Security), the MSS, and the Military Security Command. The MPS and the MSS are particularly relevant to detention centers and, having aided Kim Jong-il's rise and consolidation of power, remain powerful in his regime.[144] Apart from the Ministry of People's Armed Forces, the MPS and MSS are the only ministries that report directly to the SAC and not through the Cabinet.[145] The Military Security Command is an investigative unit of the armed forces that monitors the high command.

(a) Ministry of People's Security

53. The MPS (now Ministry of Social Security) is responsible for national policing and general population control, including the investigation and preliminary examination of crimes that are not considered "political."[146] The MPS also engages in surveillance, maintaining the citizen registration system with extensive files on each citizen and a large network of informants to surveil the populace, and issues internal travel documents to control the movement of citizens.[147]

54. To carry out its functions, the MPS is equipped with a force of 300,000, including police officers, investigators, administrative staff, and Pre-Trial Examination Agency employees at the provincial, county, district, city, and village levels.[148] The MPS maintains a headquarters in each province and 200 police stations throughout the country.[149]

55. Ri Thae-sop is identified as the current Minister of People's Security.[150] He is also a member of the KWP Political Bureau and Party Central Military Commission.[151]

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populace is allowed access to. The second is effectively omnipresent and even overlapping systems of surveillance over the citizenry. The third foundation is the certainty of harsh punishment for non-compliance with the totalitarian dictates of the regime.").

144 *See* Gause, at 13; *see also* South Korean Ministry of Unification, "MSS" ("**South Korean Ministry of Unification, MSS**"), https://nkinfo.unikorea.go.kr/nkp/term/viewNkKnwldgDicary.do?pageIndex=1&dicaryId=242&menuId=NK_KNWLDG_DICARY (last accessed 18 June 2022).

145 *See* North Korean Leadership Chart (June 2022).

146 *See* U.N. Human Rights, Office of the High Commissioner, *Human Rights Violations against Women Detailed in the Democratic People's Republic of Korea* (2020) ("**UN OHCHR Report**"), ¶¶ 24–26. "Political" suspects are remanded to the MSS for processing. *See* Gause, at 26; The Parallel Gulag, at 6.

147 *See* The Parallel Gulag, at 6.

148 *See, e.g.*, Pyongyang Republic, at 121; Gause, at 27.

149 *See* South Korean Ministry of Unification, MPS.

150 North Korean Leadership Chart (June 2022).

151 *Id*.

Vice ministers and a chief of staff oversee several divisions and approximately 40 bureaus and offices.[152]

56. The MPS Security Department reports directly to the Minister of People's Security.[153] The department reportedly oversees the Prisons Bureau, which manages detention facilities for detainees not suspected of political crimes.[154] These facilities include pre-trial detention centers (*ku-ryu-jang*),[155] holding centers (*jip-kyul-so*), and short-term labor camps (*ro-dong-dan-ryeon-dae*).[156]

(b) Ministry of State Security ("MSS")

57. The MSS (also referred to as the SSD, its predecessor name), or the "secret police," conducts counterintelligence and internal security functions.[157] The MSS enforces the Monolithic Ideological System maintaining the Kim regime through surveillance and investigations of political crimes considered to be "anti-state, anti-regime, or counter revolutionary."[158] In particular, the MSS runs political prisons (*Kwan-li-so*) and monitors activities against the regime to identify "anti-state" criminals, such as those "accused of anti-government and dissident activities, economic crimes, and disloyalty to the political leadership," through mass-surveillance networks.[159]

58. In particular, the Investigations Bureau investigates and arrests those suspected of political crimes.[160] The Border Security Bureau locates and captures North Korean escapees at the border and in China.[161] The Prisons Bureau (or Farm Bureau) manages political prisoners and political prisoner confinement facilities.[162]

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152 Gause, at 28–29.

153 *Id.*, at 28.

154 *Id.*, at 31, 53.

155 *See* UN OHCHR Report, ¶ 23.

156 *See id.*, ¶¶ 24–26, 38; *see also* Pyongyang Republic, at 121; Gause, at 26.

157 *See* Gause, at 17–18; *see also* IBA Report 2017, ¶ 42.

158 "State Security Department," North Korea Leadership Watch, https://nkleadershipwatch.wordpress.com/dprk-security-apparatus/state-security-department/ (last accessed 18 June 2022); Committee for Human Rights in North Korea, "Development of the Ministry of State Security of the Democratic People's Republic of Korea," 30 March 2021 ("**Development of the Ministry of State Security**"), at 1.

159 Gause, at 17–18; *see also* IBA Report 2017, ¶ 42.

160 Gause, at 22.

161 *Id.*

162 *Id.* The Prisons Bureau is run by Director Kang Song-nam. Development of the Ministry of State Security, at 5.

59. Each bureau is run by a chief, with managers and section chiefs, with the latter controlling the MSS agents in the field.[163] The MSS also maintains an office in each province headed by a chief and deputy chief overseeing a number of section chiefs and approximately 200 to 300 personnel.[164] MSS personnel are dispatched throughout the DPRK, including within the military, government entities, KWP bodies, and state enterprises.[165] The MSS has approximately 50,000 personnel overall.[166]

60. The MSS runs various facilities, including pre-trial detention centers (*ku-ryu-jang*) and holding centers (*jip-kyul-so*), for detainees suspected of political crimes.[167] Additionally, the MSS runs various secret detention facilities, euphemistically described as "guest houses."[168]

61. The MSS reports directly to the SAC.[169] The Minister of State Security is Jeong Kyong-thaek, who is a member of the KWP Political Bureau and Party Central Military Commission.[170] There are six vice ministers for organization, propaganda, personnel, inspection, rear "logistics" services, and security that oversee over 20 bureaus.[171]

B. The Detention System

62. There are three main categories of detention facilities in the DPRK that have been in operation since at least the mid-1990s: (*a*) pre-trial detention centers (*ku-ryu-jang*); (*b*) holding centers (*jip-kyul-so*); and (*c*) labor training camps (*ro-dong-dan-ryeon-dae*). Though these categories reflect different purposes and types of detainees, the designations of particular facilities are not fixed, and witnesses have at times used different terms to refer to the same facility.[172] Moreover, as testified

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163 Gause, at 25.

164 *Id.*

165 "Ministry of State Security," South Korea Ministry of Unification, https://www.uniedu.go.kr/uniedu/home/brd/bbsatcl/NKNOW/view.do?id=31940&mid=SM00000536 (last accessed 23 June 2021).

166 Gause, at 17; *see also* Pyongyang Republic, at 120.

167 UN COI Detailed Findings, ¶ 700.

168 *Id.*

169 North Korean Leadership Chart (June 2022).

170 *Id.*

171 Gause, at 20–21.

172 *See generally* The Parallel Gulag, at 1–2.

to by Mr. Joseph S. Bermudez Jr. at the Hearing, detention center structures may be reconfigured over time.[173]

63. These detention facilities are strategically located throughout the country, and many are clustered in remote mountainous areas near the Chinese border or along the coast. As Mr. Joseph S. Bermudez Jr. explained at the Hearing, this is intended to make it more difficult to escape and to isolate "impure" persons from the rest of the population.[174] HRNK has identified the location of 27 detention facilities.[175]

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[173] Hearing Testimony of Joseph S. Bermudez Jr., at 1:14:00-1:48:12.

[174] Hearing Testimony of Joseph S. Bermudez Jr., at 1:14:00-1:48:12.

[175] The Committee for Human Rights in North Korea, "North Korea's Short Term Detention Facilities in Google Earth: 'HRNK-IBA Project,'" HRNK, 8 June 2021 ("**HRNK-IBA Project**"). These facilities include: Onsong Mobile Labor Brigade; Onsong Ministry of Social Security Interrogation/Detention Facility; Onsong Ministry of State Security Interrogation/Detention Facility; Hoeryong Shorter-Term Labor Detention Facility; Hoeryong Mobile Labor Brigade; Hoeryong Ministry of State Security Interrogation / Detention Facility; Hoeryong Ministry of Social Security Detention Facility; Hoeryong City Yuseon-gu Police Station; Re-education through Labor Camp No. 3, Jongo-ri; Saetgol-ri Ministry of State Security Interrogation/Detention Facility; Musan County Ministry of State Security Interrogation/Detention Facility; Musan County Ministry of Social Security Interrogation/Detention Facility; Musan Mobile Labor Brigade; Chongjin Ministry of State Security Interrogation/Detention Facility; Chongjin City Shorter-Term Labor Detention Facility; Samjiyeon Police Station; Samjiyeon Detention Facility; Hyesan City Detention Facility; Hyesan Mobile Labor Brigade; Hyesan Detention Facility; Kilju Police Station; Kilju County Labor Training Camp; Danchun (Tanchon) Mobile Labor Brigade; Danchun (Tanchon) City Gumdeok District Ministry of Social Security Detention Facility; Chŭngsan No. 11 Detention Facility Headquarters; "Foreigner Prison"; and Re-education through Labor Camp Sungho - Prisons 2 and 3 at Pokchong-ni. i. *See also* Committee for Human Rights in North Korea, Video, "Six Years After the UN COI Report: A Discussion with Justice Michael Kirby," 17 June 2020 ("**Discussion with Justice Kirby**"), at 1:11:34–1:13:49, https://www.youtube.com/watch?v=IVQU6A19XmY (explaining that satellite images exactly confirm the testimony of witnesses interviewed for the COI Report and that the DPRK refused to allow a neutral third party to inspect the areas identified by satellite imagery of prison camps) (last accessed 18 June 2022).

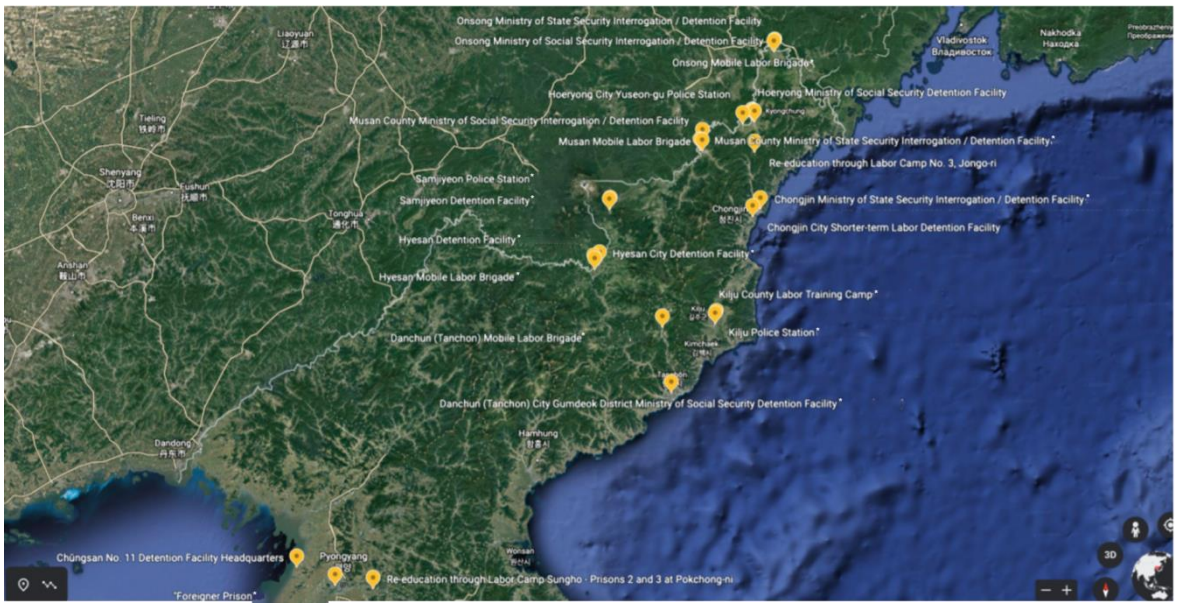

Figure 1: Map of Detention Facilities in the DPRK.[176] There is credible evidence that sites marked with an asterisk (*) are detention centers, but further investigation is required to confirm with certainty.

64. The DPRK regime has repeatedly denied that these detention facilities are anything but labor-reform institutions where individuals are held for "reform through labor", and are "remunerated for their efforts."[177] Moreover, the regime repeatedly denied requests by the UN Commission of Inquiry for access to the country, including its detention centers.[178]

65. Although Article 30 of the North Korean penal code makes a passing reference to pre-trial detention in labor camps,[179] no known North Korean law governs the establishment and maintenance of the detention facilities.[180] However, various directives from the Supreme Leader, regarded as the "highest law in North Korea,"

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176 HRNK-IBA Project. *See* **Appendix 3** for images of all 27 detention facilities.

177 *See, e.g.*, UN Human Rights Council, "Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea" (2010), ¶ 45; HRW, Worth Less Than an Animal; A. Taylor, "Did North Korea really admit to its horrific forced labor camps? Not exactly," Washington Post, 9 October 2014, https://www.washingtonpost.com/news/worldviews/wp/2014/10/09/did-north-korea-really-admit-to-its-horrific-forced-labor-camps-not-exactly/ (last accessed 18 June 2022).

178 *See* COI Report, ¶¶ 9-10; *see also* UN COI Detailed Findings, ¶ 1086.

179 The Criminal Law of the Democratic People's Republic of Korea (2009), https://www.hrnk.org/uploads/pdfs/The%20Criminal%20Law%20of%20the%20Democratic%20Republic%20of%20Korea_2009_%20(1).pdf (last accessed 18 June, 2022).

180 R. Collins, "South Africa's Apartheid & North Korea's *Songbun*: Parallels in Crimes Against Humanity," HRNK, 2021 ("**Apartheid and *Songbun***"), at 46.

are issued to guide the MSS.[181] On 19 November 2005, Kim Jong-il issued the directive titled "Commanding General Comrade Kim Jong- il's Words to Senior Cadre of the State Security Department" (now known as the MSS), stating:

> My dear comrades, you are being called to uphold the revolutionary spirit, resist the yellow wind of capitalism, and ensure that not a single citizen defects from North Korea. We have steadily reformed the ideology of the people since we won liberation from Japan. We have done enough of it. Now we must give traitors a taste of the proletarian dictatorship. The roots of poisonous grasses must be pulled up. Any compromise means death in the class struggle.
>
> We must show the people that the last of traitors are eliminated even at the cost of gun-shots in public. We must expand camps for political prisoners in strategic locations and maintain strict control over them. Now, we are fighting an invisible war with class foes. The confused elements at home are more dangerous than the enemy outside. My dear comrades, you are fighters at the forefront of the revolution. I sleep comfortably because all of you are out there.[182]

66. This directive was "a clear order to the Ministry of State Security to establish and maintain political prison camps."[183] By 2020, it was estimated that 160,000 individuals were being detained in political prisons for "political crimes."[184] Under the system of *yeon-jwa-je*, or guilt-by-association, up to three generations of a family can be imprisoned in these camps along with the accused.[185] Depending on the crime, prisoners can serve up to a life sentence in these camps, with some prisoners born into the system.[186]

67. The detention system is distinct from the political prison (*Kwan-li-so*) system, which was investigated in the IBA War Crime Committee's 2017 inquiry.[187]

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181 *Id.*

182 *Id.*

183 *Id.*, at 47 (citing K. Hi-tae and P. Jung, "The Persecuted Catacomb Christians of North Korea," Seoul: Justice for North Korea, 2014, quoted in Collins and Mortwedt Oh, at 25).

184 *Id.*, at 44.

185 Development of the Ministry of State Security of the Democratic People's Republic of Korea, at 2. *See also* HRNK, Who are the Victims? ("Former prisoners and guards align this practice with the 1972 statement by 'Great Leader' Kim Il-sung: 'Factionalists or enemies of class, whoever they are, their seed must be eliminated through three generations.").

186 HRNK, Basic Facts about the Prison Camps.

187 *See* IBA Report 2017, at 2.

However, the two systems are similar and related: they are both integral parts of official State efforts to suppress opposition, highly secretive, and managed by a chain of command that traces its way to the very top of the DPRK leadership.[188] As testified to by Dr. Nicholas Eberstadt at the Hearing, the political system in the DPRK could not exist without the constant use of terror and violence against its population. As such, political prisons and detention centers are an integral part of and a reflection of the DPRK regime's apparatus of control over the entire population.[189] Many detainees are transferred to detention centers for investigation of political crimes and, subsequently, transferred to political prisons.

68. Some political prisons and detention centers share the same facility, as is allegedly the case for Chŭngsan No. 11 Detention Facility, which has been reported to comprise both a *ro-dong-dan-ryeon-dae* (mobile labor brigade) and a *Kwan-li-so*.[190]

69. The MSS plays a critical role in managing both the political prison and detention systems. While the MSS chiefly operates political prisons, it also maintains detention facilities such as interrogation centers and holding centers where it holds persons suspected of political crimes for investigation.[191] For example, the MSS maintains detention centers in provinces bordering China, where it holds individuals who have been arrested for illegal border-crossings.[192] Possession of media material not produced by the State and KWP, or contact with Christian churches operating in the border region, are other crimes for which persons are frequently detained.[193] The MSS directs "non-political" cases to the MPS.[194]

70. The MPS is responsible for managing prisons, pre-trial detention centers, holding centers, and labor training camps for non-political offenses.[195] The MPS holds suspects in detention centers for investigations and, after investigation, the MPS can imprison individuals in labor training camps for minor offenses or direct serious offenders to the judiciary to be sentenced for long-term "correctional" punishment.[196]

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188 *See* UN COI Detailed Findings, ¶¶ 1082, 1084.

189 Hearing Testimony of Dr. Nicholas Eberstadt, at 1:01:21-1:14:00.

190 J. Bermudez et al., "Chŭngsan No. 11 Detention Facility," HRNK, 21 December 2020 ("**Chŭngsan No. 11**"), at 4.

191 Affidavit of Thae Yong-ho, ¶ 15.

192 *See* UN OHCHR Report, ¶ 25.

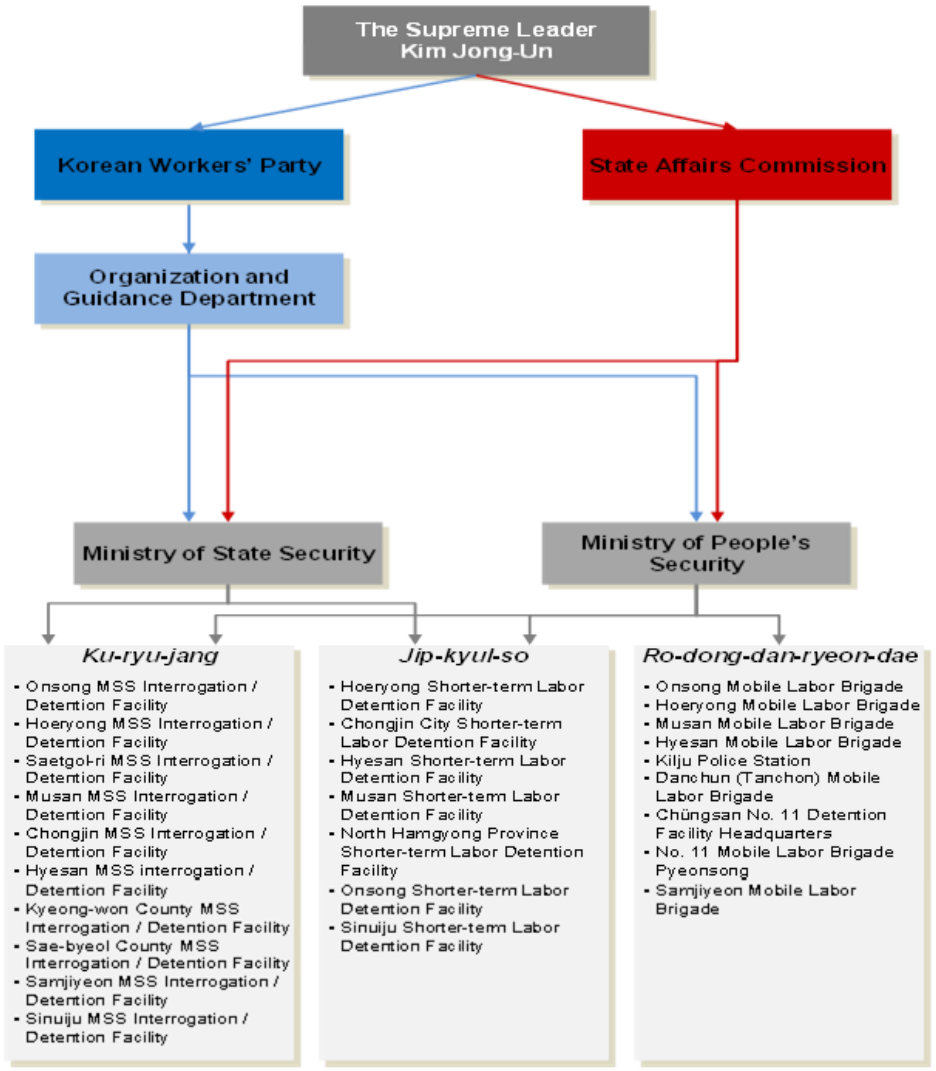
193 The Parallel Gulag, at 4, 18–22; *see, e.g.*, Affidavit of Felice Gaer, ¶ 14; Affidavit of Benedict Rogers.

194 *See* UN COI Detailed Findings, ¶ 723.

195 *See* UN OHCHR Report, ¶ 25; *see also* Pyongyang Republic, at 121.

196 *See* UN COI Detailed Findings, ¶¶ 724–28.

71. The MSS and the MPS report to the SAC, which in turn reports to the Supreme Leader.[197] The graphic below depicts the organizational structure of the detention system.[198]



72. Many of the persons in detention centers are North Koreans suspected of crimes under the North Korean Criminal Code. While the DPRK acceded to the International Covenant on Civil and Political Rights ("**ICCPR**"), which includes

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197 *See* HRNK-IBA Project; North Korean Leadership Chart (June 2022). *See also* Affidavit i3, at 1; Affidavit i16, at 1; Affidavit i22, at 1; Affidavit i23, at 1; Affidavit i25, at 1; Affidavit i38, at 1; Affidavit i51, at 1; Hearing Testimony of Mr. Ken Gause, at 5:30:25-5:39:36.

198 *See*, *supra* ¶¶ 25–61 (citing sources).

the Article 9 protections from arbitrary arrest and unlawful detention,[199] detainees in the DPRK generally are not informed of their offense under the DPRK Criminal Code, provided with an attorney, afforded an opportunity to defend themselves, or given the rights to confront any evidence presented against them.[200] Individuals are "simply picked up, taken to an interrogation facility and frequently tortured to 'confess' before being deported to the political penal-labor colony."[201] Moreover, neither the DPRK Criminal Code nor the DPRK Criminal Procedure Code contains any provisions allowing for judicial review of detention at the investigation or preliminary examination phases.[202]

73. As the UN Commission of Inquiry concluded based on extensive witness and expert testimony, "inhumane acts [across different detention facilities] follow regular patterns that victimize tens of thousands of inmates at any point in time."[203] Detainees are forcibly transferred to detention facilities, often without any legal basis or notification to family members, where they are subjected to deliberate starvation, inadequate medical care, and poor hygienic conditions. At the facilities, guards regularly beat and kill detainees, force them to perform labor under brutal conditions, and systematically subject them to torture and sexual violence as a means of interrogation, control, and punishment.[204] Expert evidence confirms that detainees are frequently targeted for harsh treatment specifically because of their gender, religion, political allegiance, or ethnic background.[205]

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199 *See* United Nations Treaty Collection, Depository, Status of Treaties: International Covenant on Civil and Political Rights, https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND#8 (showing the date of accession of the DPRK as 14 September 1981 and noting "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 23 September 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.") (last accessed 18 June 2022).

200 HRNK, Basic Facts about the Prison Camps.

201 HRNK, Who are the Victims?

202 HRW, Worth Less Than an Animal, 2020.

203 *See* UN COI Detailed Findings, ¶ 1083.

204 *See infra* Section VI; *see also* UN COI Detailed Findings, ¶ 689 ("The DPRK systematically uses deliberate starvation as a means of control and punishment in detention facilities. Cuts in rations have been part of guards training and described in prison documents. This has resulted in the deaths of many political and ordinary citizens."); *id.*, ¶¶ 1084–1085.

205 *See generally*, Affidavit of Benedict Rogers, ¶ 16; Affidavit of Thae Yong-ho, ¶¶ 11–12; Affidavit of Felice Gaer, ¶¶ 10–11; Affidavit of Tim Peters, ¶ 11.

1. Pre-trial Detention Centers (*Ku-ryu-jang*)[206]

74. Following arrest, suspects are detained for investigation in centers operated by the MPS and MSS.[207] The MPS and MSS run separate centers at the provincial, city, county, and village levels.[208] According to the North Korean Criminal Code, while MPS investigators and preliminary examination officers are in charge of general crimes, MSS investigators and preliminary examination officers are in charge of political crimes.[209] After its investigation, the MSS decides whether the detainee should be categorized as a political prisoner or whether the case is "non-political" and should be referred to the MPS.[210]

75. Pre-trial detention and interrogation can last for months in these facilities, where detainees are kept in overcrowded and unsanitary conditions with grossly inadequate food rations and are subjected to beatings, systematic torture, and forced abortions.[211] Once interrogation is complete, detainees are often sent to holding facilities for trial and sentencing or directly to labor-training camps without judicial process.[212]

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206 *See* UN OHCHR Report, ¶ 23.

207 *See id.*, ¶¶ 23–26; *see also* KINU 2019 North Korea White Paper, at 100. Apart from *ku-ryu*-jang, holding centers in local police stations are known as *bo-an-so*.

208 UN OHCHR Report, ¶¶ 23–26.

209 *See* KINU 2019 North Korea White Paper, at 100. Detainees can minimize state sanctioned torture through the payment of bribes, and through connections to Detention Facility staff in positions of authority. *See* Affidavit of Benedict Rogers, ¶ 18(r) (citing "Persecuting Faith: Documenting Religious Freedom Violations in North Korea," Korea Future, https://static1.squarespace.com/static/608ae0498089c163350e0ff5/t/6185747b98a32923b43b7de8/1636136111825/Persecuting+Faith+-+Documenting+religious+freedom+violations+in+North+Korea+%28Volume+2%29.pdf (last accessed 18 June 2022), ("**Korea Future Report**") at 41), and ¶ 20 (citing HRW, Worth Less Than an Animal, 2020, at 50–51); Hearing Witness Testimony, Witness i58, at 6:03:00-6:27:49 (testifying that her husband had to sell the house in order to pay bribes to a guard and his superiors to be released).

210 *See* UN COI Detailed Findings, ¶ 723.

211 The Parallel Gulag, at 12–13.

212 *Id.*, at 13; D. Hawk, "The Hidden Gulag, Second Edition," HRNK, 2012, at 85; "Forced Labour in North Korean Prison Camps," Anti-Slavery International, 2007 ("**Forced Labour in Prison Camps**"), at 21–23.

76. The HRNK-IBA Project identifies six pre-trial detention facilities, or *ku-ryu-jang*, run by the MSS.[213]

[213] *Supra*, ¶ 69; HRNK-IBA Project.

Name of *Ku-ryu-jang*	Managing Parties[214]	Information About the Facility
Onsong Ministry of State Security Interrogation/ Detention Facility	MSS and MPS; SAC; Supreme Leader	Senior advisor and imagery analyst for HRNK, Mr. Joseph S. Bermudez Jr.: "This is a walled security/detention or government compound with approximately 16 buildings and a single entrance/checkpoint. There are no guard towers visible on the security wall, however, the two parallel buildings with connecting passageways is suggestive of a detention facility. Minor infrastructure developments have been observed since 2004. Immediately adjacent to this facility, on the north side, is another government or security compound."[215] This facility has been in operation at least since 2000.[216] **Witnesses i3, i8, i21, i25, i53, and i55 were detained here.**[217]
Hoeryong Ministry of State Security Interrogation/ Detention Facility	MSS and MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "Semi-enclosed government or security compound that has undergone minor infrastructure developments between 2002-2008 that increased the size of the facility. Only minor infrastructure developments noted between 2008-2019. The compound has a primary entrance/checkpoint and appears to be functionally divided into two major compounds. The northern compound appears to have its own entrance/checkpoint."[218] **Witnesses i6, i21, i25, i42, and i56 were detained here.**[219]
Saetgol-ri Ministry of State Security Interrogation/ Detention Facility	MSS and MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "Small non-descript building. No infrastructure changes since 2008."[220] This facility has been in operation at least since 1998.[221] **Witness i36 was detained here.**[222]

214 *Supra*, ¶¶ 52, 69–71.

215 HRNK-IBA Project.

216 HRNK-IBA Project.

217 HRNK-IBA Project; Affidavit i3, at 1; Affidavit i8, at 1; Affidavit i21, at 1; Affidavit i25, at 1; Affidavit i53, at 1; Affidavit i56 (Ms. Park Ji Hyun), at 1.

[218] HRNK-IBA Project.

[219] HRNK-IBA Project; Affidavit i6, at 1; Affidavit i21, at 1; Affidavit i25, at 1; Affidavit i42, at 1; Affidavit i56 (Mr. Gwangil Jung), at 1.

[220] HRNK-IBA Project.

[221] *See* Affidavit i36, at 1.

[222] *Id.*; HRNK-IBA Project.

Musan County Ministry of State Security Interrogation/ Detention Facility	MSS and MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "A small non-descript walled collection of about six buildings. No significant infrastructure developments are noted from 2007–present."[223] This facility has been in operation at least since 2002.[224] **Witnesses i5, i36, and i37 were detained here.**[225]
Chongjin Ministry of State Security Interrogation/ Detention Facility	MSS and MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "Non-descript walled compound with no significant infrastructure developments 2006-2012. Between 2012-2016 the existing buildings were razed and replaced by a large modern building and several support buildings. No significant infrastructure developments have been observed from 2016 to present."[226] This facility has been in operation at least since 2001.[227]
Hyesan Detention Facility	MSS and MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "This also appears to be a small walled detention facility with a single entrance/checkpoint and small guard positions on all four corners of the wall. No significant infrastructure changes are observed between 2003-2020."[228] This facility has been in operation at least since 1996.[229] **Witnesses i5, i16, i22, i33, i39 i51, and i58 were detained here.**[230]

223 HRNK-IBA Project.

224 HRNK-IBA Project; *see Affidavit* i5, at 1.

225 Affidavit i5, at 1; Affidavit i36, at 1; Affidavit i37, at 1.

226 HRNK-IBA Project.

227 *Id*.

228 HRNK-IBA Project.

229 *See* HRNK-IBA Project.

230 Affidavit i5; Affidavit i16, at 1; Affidavit i22, at 1; Affidavit i33, at 1; Affidavit i39, at [1]; Affidavit i51, at 1; Affidavit i58 at 1.

77. The Onsong *Bo-wi-bu ku-ryu-jang* (MSS Interrogation/Detention Facility building), where witnesses i3, i8, i21, i23, i25, and i53 testify to being detained and tortured, is pictured below.[231]

Figure 2: Satellite Imagery Depicting the Onsong *Bo-wi-bu ku-ryu-jang*

78. Witnesses also stated that they had been detained at various other *ku-ryu-jang*:

Name of *Ku-ryu-jang*	**Managing Parties**[232]	**Information About the Facility**
Kyeong-won County *Bo-wi-bu ku-ryu-jang*	MSS and MPS; SAC; Supreme Leader	This facility has been in operation at least since 2008.[233] **Witness i3 was detained here.**[234]
Sae-byeol County *Bo-wi-bu ku-ryu-jang*	MSS and MPS; SAC; Supreme Leader	This facility has been in operation at least since 2008.[235]

231 HRNK-IBA Project. *See* Affidavit i3, date redacted, at 1; Affidavit i8, at 1; Affidavit i21, date redacted, at 1; Affidavit i23, dated 24 May 2020, at 1; Affidavit i25, at 1; Affidavit i53, dated 15 August 2020, at 1.

232 *Supra*, ¶¶ ¶¶ 52, 69–71.

233 *See* Affidavit i3, at 1.

234 *Id.*

235 *Id.*

Name of *Ku-ryu-jang*	Managing Parties[232]	Information About the Facility
		Witness i3 was detained here.[236]
Samjiyeon *Bo-wi-bu ku-ryu-jang*	MSS and MPS; SAC; Supreme Leader	This facility has been in operation at least since 2014.[237] **Witness i51 was detained here.**[238]
Sinuiju *Bo-wi-bu ku-ryu-jang*	MSS and MPS; SAC; Supreme Leader	This facility has been in operation at least since 2009.[239] **Witnesses i25 and i38 was detained here.**[240]

2. Holding Centers (*Jip-kyul-so*)

79. Holding centers are facilities used to detain (*i*) defectors forcibly transferred to North Korea, (*ii*) individuals suspected of violating travel restrictions by traveling outside of their designated regions or overstaying their authorized duration, *(iii)* homeless children, and (*iv*) individuals transferred from interrogation facilities awaiting trial and sentencing.[241] The individuals are subsequently moved to prison or other detention facilities.[242] According to Human Rights Watch, "the use of these facilities as a place for punishment does not appear to have any legal standing or clear time limits on how long a person may be detained."[243]

80. The MPS runs at least one holding center in each of North Korea's nine provinces, meaning there are at least nine holding centers in the country.[244] Additional holding centers under the MSS's jurisdiction are located across North Korea, including in the border region.[245] These centers are typically used to detain

236 *Id.*

237 *See* Affidavit i51, at 1.

238 *Id.*

239 *See* Affidavit i38, at 1.

240 *Id.*; Affidavit i25, at 1.

241 *See* UN OHCHR Report, ¶ 24; KINU 2020 North Korea White Paper, at 105.

242 Gause, at 80.

243 HRW, Worth Less Than an Animal, 2020.

244 *See* UN OHCHR Report, at glossary.

245 KINU 2020 North Korea White Paper, at 105; *see also* HRW, Worth Less Than an Animal, 2020.

individuals who attempt to cross the border illegally to defect to China or South Korea.[246]

81. The HRNK-IBA Project identifies two *jip-kyul-so* or holding centers:

Name of *Jip-kyul-so*	**Managing Parties[247]**	**Information About the Facility**
Hoeryong Shorter-Term Labor Detention Facility	MSS and MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "This is a small non-descript building with no significant infrastructure developments 2002-2020."[248] This facility has been in operation at least since 2002.[249] **Witness i21 was detained here.**[250]
Chongjin City Shorter-Term Labor Detention Facility	MSS and MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "Small walled government or security compound divided into three sub-compounds, each with its own entrance. Only minor infrastructure development (i.e., roofs replaced, etc.) are noted from 2006-present."[251] **Witnesses i5, i6, i16, i23, i37, i39, and i55 were detained here.**[252]

82. Witnesses i6 and i37 testify to being detained, tortured, beaten, and starved at the Chongjin City *jip-kyul-so*, depicted below.[253]

246 KINU 2019 North Korea White Paper, at 100.

247 *Supra*, ¶¶ ¶¶ 52, 69–71.

248 HRNK-IBA Project.

249 *See* Affidavit i21, at 1.

250 *Id.*

251 HRNK-IBA Project.

252 Affidavit i5; Affidavit i5, at 1; Affidavit i6, at 1; Affidavit i16, at 1; Affidavit i23, at 1; Affidavit i37, at 1; Affidavit i39, at 1; Affidavit i56 (Ms. Park Ji Hyun), at 1.

253 HRNK-IBA Project; Affidavit i6, dated 15 March 2020, at 2–3; Affidavit i37, at 4.

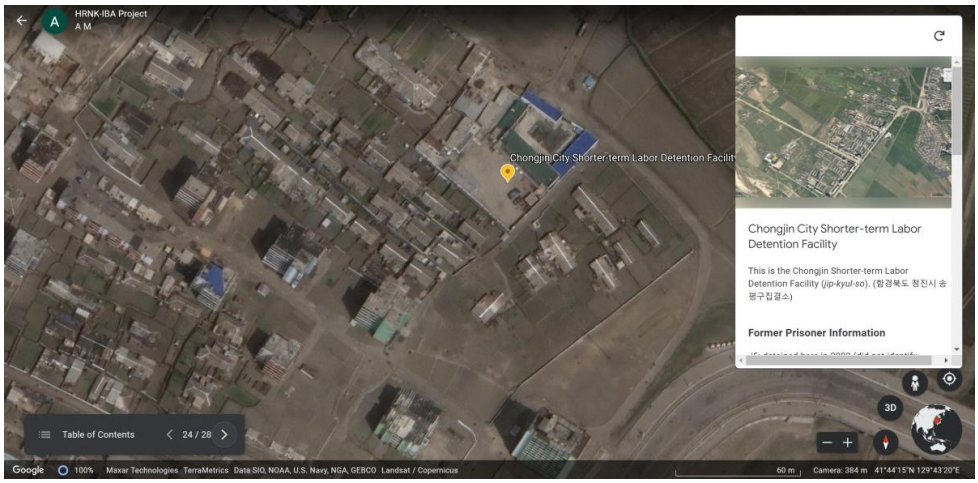

Figure 3: Satellite Imagery Depicting the Chongjin City *jip-kyul-so*

83. Witnesses also testified to being held at various other *Jip-kyul-so*:

Name of *Jip-kyul-so*	**Managing Parties**[254]	**Information About the Facility**
Hyesan *jip-kyul-so*	MSS and MPS; SAC; Supreme Leader	This facility has been in operation at least since 1999.[255] **Witnesses i16, i22, and i51 were detained here.**[256]
Musan *jip-kyul-so*	MSS and MPS; SAC; Supreme Leader	This facility has been in operation at least since 2005.[257] Witness i5 was detained here.[258]
North Hamgyong Province *jip-kyul-so*	MSS and MPS; SAC; Supreme Leader	This facility has been in operation at least since 2004.[259]
Onsong *jip-kyul-so*	MSS and MPS; SAC; Supreme Leader	This facility has been in operation at least since 2001.[260] **Witness i25 was detained here.**[261]
Sinuiju *jip-kyul-so*	MSS and MPS; SAC; Supreme Leader	This facility has been in operation at least since 1998.[262] **Witnesses i25 and i38 were detained here.**[263]

254 *Supra*, ¶¶ 52, 69–71.

255 *See* Affidavit i16, at 1.

256 Affidavit i16, at 1; Affidavit i22, at 1; Affidavit i51, at 1.

257 *See* HRNK-IBA Project; Affidavit i5, at 1.

258 Affidavit i5, at 1.

259 *See* HRNK-IBA Project.

260 *See* Affidavit i25, at 1.

261 *Id.*

262 *See* Affidavit i26, at 1.

263 Affidavit i25; Affidavit i38, at 1.

3. Labor Training Camps (*Ro-dong-dan-ryeon-dae*)

84. Labor training camps hold individuals arrested or convicted for lesser offenses for generally up to one year.[264] According to the Korea Institute for National Unification ("**KINU**"), those sentenced to labor training punishment are detained in labor camps under the MPS's control, while individuals sentenced to "re-educational labor discipline" are detained in labor training camps under the control of the Labor Mobilization Division of the People's Committee.[265] Additionally, the military operates its own internal labor training camps.[266]

85. In a 2012 study, the Database Center for Human Rights in North Korea identified 49 labor training camps administered by the MPS.[267] The UN COI Report estimates the actual number may be higher because these facilities have been established at the level of every county.[268]

86. Some camps are in fixed locations, while others operate as mobile forced-labor brigades attached to local municipalities.[269] The type of forced labor varies with the facility and the needs of the local municipality, such as farming, logging, road works, quarrying of stones, coal mining, and construction.[270]

87. Prisoners in short-term labor training camps have a few more privileges compared to prisoners in ordinary prisons, and the facilities have less stringent security measures. However, prisoners in short-term labor training camps also face hard and dangerous labor, brutal treatment, inhumane living conditions, and grossly inadequate food provisions.[271]

88. The HRNK-IBA Project identifies seven *ro-dong-dan-ryeon-dae* or short-term labor training camps:

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264 KINU 2020 North Korea White Paper, at 104.

265 KINU 2019 North Korea White Paper, at 99; *see also* Gause, at 81.

266 KINU 2019 North Korea White Paper, at 99.

267 UN COI Detailed Findings, ¶ 818.

268 *Id.*

269 The Parallel Gulag, at 12.

270 *Id.*

271 *See* The Parallel Gulag, at 12; Forced Labour in Prison Camps, at 14–19.

Name of *Ro-dong-dan-ryeon-dae*	Managing Parties[272]	Information About the Facility
Onsong Mobile Labor Brigade	MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "This is a non-descript partially-walled compound with a single entrance/checkpoint on its northeast corner. There are no guard towers visible or positions readily visible in the available imagery. The compound has undergone minor infrastructure developments (e.g., construction or razing of small sheds or buildings) during 2004- 2020."[273] The earliest satellite imagery of this facility is from 2003.[274] **Witnesses i19 and i55 were detained here.**[275]
Hoeryong Mobile Labor Brigade	MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "Small undefined partially walled compound with no minor infrastructure developments 2006-2012. Between 2012-2016 the existing buildings were razed and replaced by a large modern building and several support buildings. Minor infrastructure developments have been observed from 2002 to 2019. Most notably the compound was only partially walled from 2002-2008 when it was observed with a wall and single entrance. By 2016 the wall had been partially razed. It has remained this way as of 2019."[276] The earliest satellite imagery of this facility is from 2001.[277] **Witnesses i19, i25, and i42 were detained here.**[278]

272 *Supra*, ¶¶ ¶¶ 52, 69–71.

273 HRNK-IBA Project.

274 *See* Affidavit i23, at 1.

275 Affidavit i19, at 1; Affidavit i56 (Ms. Park Ji Hyun), at 1.

276 HRNK-IBA Project.

277 *See* Affidavit i25, at 1.

278 *Id.*; Affidavit 19, at 1; Affidavit i42; at 1.

Musan Mobile Labor Brigade	MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "Two small individually enclosed but attached facilities. Each with two entrances/checkpoints and several functional subcomponents. The western facility appears to be primarily for warehouse, storage and small light industrial shops. The eastern facility appears to be for housing of some type and vehicle maintenance. There may be a small guard position on the southeast corner of this facility, however, none are seen on the western facility. Minor infrastructure development is noted during 2008-2019."[279] The earliest satellite imagery of this facility is from 1997.[280] **Witness i26 was detained here.**[281]
Hyesan Mobile Labor Brigade	MPS; SAC; Supreme Leader	Joseph S. Bermudez Jr.: "Undefined enclosed compound with a single entrance/checkpoint. Only minor infrastructure developments noted between 2004-2019. During 2019-2020 a medium-sized building was added and several existing buildings were re-roofed."[282] The earliest satellite imagery of this facility is from 2005.[283] **Witness i33 was detained here.**[284]
Kilju Police Station[285]	MPS; SAC; Supreme Leader	Mr. Joseph S. Bermudez Jr.: "This appears to be a small walled detention facility with a single entrance/checkpoint and small guard positions on the four corners of the perimeter wall. No significant infrastructure changes are observed between 2004-2019."[286] The earliest satellite imagery of this facility is from 2004.[287] **Witness i6 was detained here.**[288]
Danchun (Tanchon) Mobile Labor Brigade	MPS; SAC; Supreme Leader	The earliest satellite imagery of this facility is from 2012.[289] **Witness i22 was detained here.**[290]
Chŭngsan No. 11 Detention Facility Headquarters[291]	MPS; SAC; Supreme Leader	The earliest satellite imagery of this facility is from 2003.[292] **Witness i1 was detained here.**[293]

89. The *ro-dong-dan-ryeon-dae* pictured below is the Musan Mobile Labor Brigade, where witness i26 testified to being detained in 1997, 2004, and 2009.[294]

Figure 4: Satellite Imagery Depicting the Musan *ro-dong-dan-ryeon-dae*

90. Chŭngsan No. 11 is pictured below. According to HRNK, "it is highly probable that Chŭngsan No. 11 Detention Facility is either a re-education through forced

279 HRNK-IBA Project.

280 *See* Affidavit i26, at 1.

281 Affidavit i26, at 1.

282 HRNK-IBA Project.

283 HRNK-IBA Project.

284 Affidavit i33, at 1.

285 Witness i6 stated that the facility includes a *ro-dong-dan-ryeon-dae*.

286 HRNK-IBA Project.

287 *See* Affidavit i6, at 1.

288 *Id.*

289 *See* Affidavit i22, at 1.

290 *Id.*

291 This facility has also been identified as *kyo-hwa-so* and *kwan-li-so*. *See generally* Chŭngsan No. 11.

292 HRNK-IBA Project.

293 *See* Affidavit i1, at 1.

294 HRNK-IBA Project; *see* Affidavit i26, at 1.

labor camp (*kyo-hwa-so*) or the base for a short-term mobile labor brigade/labor detention center (*ro-dong-dan-ryeon-dae*)."[295] Preliminary imagery analysis suggests a minimum number of 1,500 to 2,500 detainees, though the number "likely ranges higher."[296] According to HRNK:

> Satellite imagery analysis of the facility, combined with former detainee interviews, indicate that the Chŭngsan No. 11 Detention Facility is a large dispersed operational detention facility in Chŭngsan-gun (Chŭngsan County), P'yŏngannam-do (South P'yŏngan Province/평안남도). Chŭngsan No. 11 Detention Facility is operational and well maintained by North Korean standards as is indicated by well-established and developing agricultural and livestock activities and ongoing maintenance or expansion of both the camp's facilities and other facilities within its generally assessed boundaries.[297] As Mr. Joseph S. Bermudez testified to at the Hearing, the Chŭngsan No. 11 Detention Facility has existed since at least the 1960s.[298]

Figure 02: Overview of the Chŭngsan No. 11 Detention Facility showing the various facilities and villages, as seen in an image collected on May 30, 2020 (Courtesy European Space Agency)

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295 HRNK, "The Committee for Human Rights in North Korea (HRNK) Launches The First Report Based on Satellite Imagery of North Korea's Chŭngsan No. 11 Detention Facility" (21 December 2020), https://www.hrnk.org/events/announcements-view.php?id=78 (last accessed 18 June 2022).

296 Chŭngsan No. 11, at 4.

297 *Id.*

298 Hearing Testimony of Mr. Joseph S. Bermudez, at 1:14:00-1:48:12.

Figure 5: Satellite Imagery Depicting the Chŭngsan *ro-dong-dan-ryeon-dae*

91. Additionally, witnesses testify to being held at other short term labor training camps:

Name of *Ro-dong-dan-ryeon-dae*	**Managing Parties[299]**	**Information About the Facility**
No. 11 *Ro-dong-dan-ryeon-dae* Pyeonsong	MPS; SAC; Supreme Leader	This facility has been in operation at least since 2005.[300] **Witness i23 was detained here.**[301]
Samjiyeon *Ro-dong-dan-ryeon-dae*	MPS; SAC; Supreme Leader	This facility has been in operation at least since 2017.[302] **Witness i51 was detained here.**[303]

299 *Supra*, ¶¶ ¶¶ 52, 69–71.

300 *See* Affidavit i23, at 1.

301 *Id.*

302 *See* Affidavit i51, at 1.

303 *Id.*

V. Legal Framework

92. This Inquiry adopts the legal framework of the Rome Statute, including the Statute's definition of crimes against humanity and principles of criminal responsibility. By adopting the legal framework of the Rome Statute, the authors of this Inquiry report are not suggesting that the ICC is the sole or the most appropriate venue for any future investigation and prosecution of perpetrators of crimes against humanity in DPRK detention centers. However, the codification of crimes against humanity in the Rome Statute is authoritative and, for the most part, is generally considered to form part of customary international law.[304] As many international courts and tribunals regularly draw on the jurisprudence of other courts in cases involving crimes against humanity, so too does this Inquiry report draw on decisions from various courts in addition to the ICC.

A. Definition of Crimes Against Humanity

93. After extensive negotiations by States Parties and various drafts by the International Law Commission ("**ILC**") in the 1990s,[305] the parties to the Rome Statute adopted a formulation of crimes against humanity that is similar to those in the ICTY and ICTR Statutes and reads as follows:

> Article 7: Crimes against Humanity
>
> (1) 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;

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304 *See* "Crimes Against Humanity: Background," UN Office on Genocide Prevention and the Responsibility to Protect, https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml (last accessed: 15 June 2022). A new multilateral treaty codifying the prohibition of crimes against humanity is in its final stages; a draft text is now before the U.N. General Assembly. The International Law Commission's Draft Articles on Prevention and Punishment of Crimes Against Humanity's definition of "crimes against humanity" mirrors the definition provided in the Rome Statute. *Compare* Draft Articles on Prevention and Punishment of Crimes Against Humanity (2019), art. 2(1), https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_7_2019.pdf, *with* Rome Statute of the International Criminal Court 1998 ("**Rome Statute**"), art. 7(1).

305 W. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2d ed., 2016) ("**Schabas**"), at 148–152.

(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) Persecutions 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 . . . ;

(i) Enforced disappearance of persons;

(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.[306]

94. Article 7(2) adds further clarifications to the crimes listed in Article 7(1). In particular, Article 7(2)(a) clarifies that an "attack directed against any civilian population" is to be understood as a "course of conduct involving the multiple commission of acts referred to in [Article 7(1)] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack."[307] An attack consists of a "course of conduct involving the commission of acts of violence."[308] It includes any mistreatment of civilians[309] and does not require any use of armed force[310] or a nexus with an armed conflict, as an attack

306 Rome Statute, art. 7(1).

307 *See* Schabas, at 157–158.

308 *The Prosecutor v. Dragoljub Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, Trial Judgment, 22 February 2001 ("**ICTY *Kunarac et al.* Trial Judgment**"), ¶ 415; *The Prosecutor v. Vidoje Blagojevic*, IT-02-60-T, Trial Judgment, 17 January 2005 ("**ICTY *Blagojevic* Trial Judgment**"), ¶ 543; *The Prosecutor v. Momčilo Perišić*, IT-04-81-T, Trial Judgment, 6 September 2011 ("**ICTY *Perišić* Trial Judgment**"), ¶ 82.

309 ICTY *Kunarac et al.* Appeal Judgment, ¶ 86; ICTY *Blagojevic* Trial Judgment, ¶ 543; ICTY *Perišić* Trial Judgment, ¶ 82; *The Prosecutor v. Radovan Karadžić*, IT-95-5/18-T, Trial Judgment, 24 March 2016 ("**ICTY *Karadžić* Trial Judgment**"), ¶ 473.

310 ICC Elements of Crimes, art. 7, ¶ 3; ICTY *Kunarac et al.* Appeal Judgment, ¶ 86; ICTY *Perišić*, Trial Judgment, ¶ 82; ICTY *Karadžić* Trial Judgment, ¶ 473.

may precede, outlast, or continue during the armed conflict but need not be part of it.[311]

95. Therefore, crimes against humanity are established when a perpetrator: (*i*) knowingly; (*ii*) commits any of the acts listed in Article 7(1) of the Rome Statute as part of an attack against a civilian population; when (*iii*) the attack is widespread or systematic; and (*iv*) the attack is committed pursuant to or in furtherance of a State or organizational policy.[312]

96. The analysis of the elements of crimes against humanity in this Inquiry has been supplemented by reference to the ICC's "Elements of Crimes" that, as adopted by the Assembly of State Parties to the Rome Statute, assists "in the interpretation and application of articles 6, 7 and 8, consistent with the [Rome] Statute."[313]

97. Finally, for the crime of torture, the definition of the term as set out in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (the "Convention against Torture" or "CAT") has also been taken into account.[314]

B. Mental Elements

98. Article 30 of the Rome Statute, which sets forth the *mens rea* requirement for most crimes provides as follows:

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311 International Law Commission, "ILC Report 1996," UN Doc. A/51/10,1996, at 96; *Tadić*, *The Prosecutor v. Duško Tadić*, IT-94-1-T, Trial Judgment, 7 May 1997 ("**ICTY *Tadić* Trial Judgment**"), ¶ 627; *The Prosecutor v. Duško Tadić*, IT-94-1-A, Appeal Judgment, 15 July 1999 ("**ICTY *Tadić* Appeal Judgment**"), ¶¶ 282–288; ICTY, *The Prosecutor v. Milorad Krnojelac*, IT-97-5-T, Trial Judgment, 15 March 2002 ("**ICTY *Krnojelac* Trial Judgment**"), ¶ 54; ICTY *Perišić* Trial Judgment, ¶ 82; *The Prosecutor v. Jadranko Prilć et al.*, IT-04-74-T, Trial Judgment, 29 May 2013, ¶ 35; ICTY *Karadžić* Trial Judgment, ¶ 473.

312 *The Prosecutor v. Dragoljub Kunarac et al*., IT-96-23 & IT-96-23/1-A, Appeal Judgment, 12 June 2002, ("**ICTY *Kunarac et al* Appeal Judgment**"), ¶ 85; *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to Article 74 of the Statute, 7 March 2014 ("**ICC *Katanga* Judgment**"), ¶¶ 1097–1099.

313 ICC, "Elements of Crimes," 2011 ("**ICC Elements of Crimes**"), General Introduction, at 1, ¶ 1; Rome Statute, art. 9(1).

314 Article 1 of CAT provides that the term "torture" means "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

> 1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
>
> 2. For the purposes of this article, a person has intent where:
>
> (a) In relation to conduct, that person means to engage in the conduct;
>
> (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
>
> 3. For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.[315]

99. Intent and knowledge can be inferred from relevant facts.[316] Where the element of a crime contains a value judgement, such as references to "'inhumane' or 'severe,' it is not necessary that the perpetrator personally completed a particular value judgement, unless otherwise indicated."[317]

C. Modes of Criminal Liability

100. Under international law, criminal responsibility for crimes against humanity committed within and through a state institutional framework extends from direct perpetrators to the highest levels of the organizational structure.[318]

101. Article 25(3)(a) of the Rome Statute and the jurisprudence of the ICC recognize criminal responsibility for direct perpetrators, co-perpetrators, indirect perpetrators, and indirect co-perpetrators, as set out in Section V.C.1 below.[319]

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315 Rome Statute, art. 30.

316 ICC Elements of Crimes, General Introduction, ¶ 3.

317 ICC Elements of Crimes, General Introduction, ¶ 4.

318 *See, e.g.*, ICTY *Tadić* Appeal Judgment, ¶ 248; Schabas, at 569 ("Case law of the International Criminal Court supports a broad approach to the concept of commission, so as to encompass leaders and organizers who do not physically perpetrate the criminal acts. It is not necessary for the co-perpetrators to carry out the crime personally and directly. Indeed, direct perpetration tends to be charged more as the exception than as the rule, perhaps with the exception of offences against the administration of justice. The nature of the situations dealt with by the International Criminal Court makes it almost inevitable that it will focus on situations of mass atrocity crime where the accused tends to be a leader or commander and the physical acts are committed by subordinates.").

319 *See* Rome Statute, art. 25(3)(a); *The Prosecutor v. Thomas Lubanga*, ICC-01/04-01/06, Appeal Judgment, 1 December 2014 ("**ICC *Lubanga* Appeal Judgment**"), ¶¶ 458, 462–466.

102. Additionally, Article 28 of the Rome Statute holds military commanders and non-military or civilian superiors accountable for the failure to prevent or punish the crimes of their subordinates under the doctrine of superior responsibility. Superior responsibility is thus distinct from the individual responsibility a superior incurs on the basis of his or her active contributions to the commission of a crime.[320] The requisite elements for superior responsibility are set out in Section V.C.2.[321]

1. Individual Criminal Responsibility under the Rome Statute

103. Under Article 25(3)(a) of the Rome Statute, an individual is responsible for crimes against humanity if he or she "[c]ommits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that person is criminally responsible[.]"[322] All participants need not carry out a crime personally and directly. Individual responsibility also extends to "those who, in spite of being removed from the scene of the crime, control or mastermind its commission because they decide whether and how the offense will be committed."[323]

104. The Rome Statute and ICC jurisprudence identify four modes of perpetration: (*a*) direct perpetration ("as an individual"); (*b*) co-perpetration ("jointly with another"); (*c*) indirect perpetration ("through another person");[324] and (*d*) indirect co-perpetration, a mode of liability recognized in ICC jurisprudence for instances where a perpetrator commits a crime jointly as well as through another person.[325]

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320 *See* Schabas, at 563 ("[O]mission is at the heart of the concept of superior responsibility, which is addressed in article 28 . . . This does not mean that in specific circumstances, probably largely dependent upon the position of authority of the accused person, failure to act may amount to more than a violation of article 28 and may indeed be prosecuted under the provisions of article 25.").

321 *See* Rome Statute, art. 28.

322 Rome Statute, art. 25(3)(a).

323 *The Prosecutor v. Thomas Lubanga*, ICC-01/04-01/06. Decision on the Confirmation of Charges, 2 February 2007 ("**ICC *Lubanga* Decision on the Confirmation of Charges**"), ¶ 330; *see also* ICC *Katanga* Judgment, ¶¶ 1391–1396 ("A configuration such as that laid down in article 25(3)(a) of the Statute—which provides for a form of indirect commission—requires the definition of the perpetrator to encompass both the physical perpetrators of the crimes and the persons who direct their realization without executing them themselves . . . under article 25(3)(a) of the Statute, the perpetrators of a crime are those who control its commission and who are aware of the factual circumstances allowing them to exert such control"); Schabas, at 569.

324 Rome Statute, art. 25(3)(a).

325 *See, e.g.*, *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Decision on the Confirmation of Charges, 12 October 2008 ("**ICC *Katanga* Decision on the Confirmation of Charges**"), ¶ 492; *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, ICC-01/09-01/11, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012 ("**ICC *Ruto* Decision on the Confirmation of Charges**"), ¶ 292; *The Prosecutor v.*

(a) Direct Perpetration

105. Under Article 25(3)(a), individuals who physically carry out the objective elements of the offense with the requisite intent and knowledge for the crime are liable as direct perpetrators.[326]

(b) Co-perpetration

106. Under Article 25(3)(a), an individual that commits a crime "jointly with another" is liable as a co-perpetrator.[327] Based on the notion of "control over the crime," co-perpetrators have joint control over the crime on the basis of a joint agreement or common plan and ability to frustrate the commission of the crime.[328] Broadly speaking, under this mode of liability, "any person making a contribution can be held vicariously responsible for the contributions of all the others and, as a result, can be considered as a principal to the whole crime."[329]

107. In construing and applying this provision of the Statute, ICC Chambers have confirmed that co-perpetration requires (*i*) a common plan between two or more persons, and (*ii*) the coordinated essential contribution by each co-perpetrator resulting in the fulfilment of the material elements of the crime.[330]

108. The common plan need not be explicit and can be inferred from circumstantial evidence, such as "subsequent concerted action of the co-perpetrators."[331] The

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Francis Muthaura et al., ICC-01/09-02/11, Decision on the Confirmation of Charges, 28 January 2012, ¶ 297; ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 350.

326 ICC *Lubanga* Decision on the Confirmation of Charges, ¶ 332. *See also* ICC *Katanga* Decision on the Confirmation of the Charges, ¶ 488; *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09, Decision on the Prosecution's Application for a Warrant of Arrest, 4 March 2009 ("**ICC PTC *Al Bashir* Decision on the Prosecution's Application for a Warrant of Arrest**"), ¶ 210.

327 Rome Statute, art. 25(3)(a).

328 *The Prosecutor v.Thomas Lubanga*, ICC-01/04-01/06, Trial Judgment, 14 March 2012 ("**ICC *Lubanga* Trial Judgment**"), ¶ 994.

329 ICC *Katanga* Decision on the Confirmation of the Charges, ¶ 520 (citing ICC *Lubanga* Decision on the Confirmation of Charges, ¶ 325).

330 ICC *Lubanga* Trial Judgment, ¶¶ 994, 1000–1001, 1003–1005 ("In the view of the Majority what is decisive is whether the co-perpetrator performs an essential role in accordance with the common plan, and it is in this sense that his contribution, as it relates to the exercise of the role and functions assigned to him, must be essential."); *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor, 21 March 2016 ("**ICC *Bemba* Decision on the Charges of the Prosecutor**"), ¶ 350; *The Prosecutor v. Bahar Idriss Abu Garda*, ICC-02/05-02/09, Decision on the Confirmation of Charges, 8 February 2010 ("**ICC *Abu Garda* Decision on the Confirmation of Charges**"), ¶ 160.

331 ICC *Lubanga* Decision on the Confirmation of Charges, ¶ 345; ICC *Abu Garda* Decision on the Confirmation of Charges, ¶ 180.

common plan may be to commit a crime or to undertake action that, in the ordinary course of events, would lead to the commission of a crime. That is, the crime need not be the overarching or specific goal of the common plan.[332]

109. An individual has an essential task if he or she "has the power to frustrate the commission of the crime, in the way it was committed, by not performing his or her tasks."[333] The essential contribution can take place not only at the crime's execution, but also at its planning or preparation stages.[334]

110. Each co-perpetrator must be aware that the implementation of the common plan would result in the realization of the objective elements of the crime, and undertake such activities with the intent to bring about the objective elements of the crime or with awareness that the realization of the objective elements will be a consequence of their acts in the ordinary course of events.[335]

(c) Indirect Perpetration

111. Under Article 25(3)(a) of the Rome Statute, an individual that commits a crime "through another person" is criminally responsible as an indirect perpetrator.[336] This mode of liability encompasses individuals who "control the will of those who carry out the objective elements of the offense."[337] Indirect perpetrators possess "control over the crime," through their control over the will of their agent, in maintaining the ability to determine whether and how a crime is committed.[338] Indirect perpetrators are liable regardless of the criminal responsibility of the direct actor that carries out the offense.[339]

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332 ICC *Lubanga* Decision on the Confirmation of Charges, ¶ 343.

333 *The Prosecutor v. Banda Abakaer Nourain*, ICC-02/05-03/09, Corrigendum of the Decision on the Confirmation of Charges, 13 March 2011, ¶ 136.

334 ICC *Lubanga* Appeal Judgment, ¶¶ 7, 469, 473.

335 ICC *Lubanga* Appeal Judgment, ¶¶ 445–446; *see also* ICC *Katanga* Decision on the Confirmation of Charges, ¶ 533 ("The Chamber finds that the co-perpetration of a crime requires that both suspects: (a) are mutually aware that implementing their common plan will result in the realisation of the objective elements of the crime; (b) undertake such activities with the specific intent to bring about the objective elements of the crime, or are aware that the realisation of the objective elements will be a consequence of their acts in the ordinary course of events.").

336 Rome Statute, art. 25(3)(a).

337 ICC *Lubanga* Decision on the Confirmation of Charges, ¶ 332; *see also* ICC *Katanga* Decision on the Confirmation of the Charges, ¶ 488; ICC PTC *Al Bashir* Decision on the Prosecution's Application for a Warrant of Arrest, ¶ 210.

338 *See* ICC *Lubanga* Appeal Judgment, ¶ 469.

339 Rome Statute, art. 25(3)(a) ("[A] person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) Commits such a crime . . . through another person, regardless of whether that other person is criminally responsible[.]"); *see also* ICC *Katanga*

112. Control over the direct actor can be exerted by means of an organization.[340] In those instances, the organization must be hierarchically organized, leading to general compliance with orders given by leadership.[341] The indirect perpetrator need not control the entire organization. Indirect perpetrators possess the requisite control over organizations or their sub-parts if they possess the capacity to mobilize their authority and power to secure compliance with their orders.[342] Indirect perpetrators may make an essential contribution by "activating the mechanisms which lead to the automatic compliance with their orders and, thus, the commission of the crimes."[343]

113. Indirect perpetration features the same subjective elements of intent and knowledge as co-perpetration, with an additional requirement that "the suspects are aware of the factual circumstances enabling them to exercise control over the crime through another person."[344]

(d) Indirect Co-Perpetration

114. Indirect co-perpetration applies when some or all of the co-perpetrators carry out their respective essential contributions to the common plan through another person.[345] This mode of liability, which combines "individual responsibility for committing crimes through other persons . . . with the mutual attribution among the co-perpetrators at the senior level," allows adjudicators to "assess the blameworthiness of 'senior leaders' adequately."[346] That is, the criminal acts of

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Decision on the Confirmation of Charges, ¶ 499 ("[A]ssigning the highest degree of responsibility for commission of a crime — that is, considering him a principal — to a person who uses another, individually responsible person to commit a crime, is not merely a theoretical possibility in scarce legal literature, but has been codified in article 25(3)(a) of the [Rome] Statute.").

340 ICC *Katanga* Decision on the Confirmation of Charges, ¶ 512 ("[T]he organisation must be based on hierarchical relations between superiors and subordinates. The organisation must also be composed of sufficient subordinates to guarantee that superiors' orders will be carried out, if not by one subordinate, then by another. These criteria ensure that orders given by the recognised leadership will generally be complied with by their subordinates.").

341 *Id.*

342 *Id.*; ICC PTC *Al Bashir* Decision on the Prosecution's Application for a Warrant of Arrest, ¶ 211.

343 ICC *Katanga* Decision on the Confirmation of Charges, ¶ 525.

344 *Id.*, ¶ 534 ("Regarding this last [subjective] requirement, the suspects must be aware of the character of their organisations, their authority within the organisation, and the factual circumstances enabling near-automatic compliance with their orders.").

345 *Id.*, ¶ 493 ("An individual who has no control over the person through whom the crime would be committed cannot be said to commit the crime by means of that other person. However, if he acts jointly with another individual—one who controls the person used as an instrument—these crimes can be attributed to him on the basis of mutual attribution."); *id.*, ¶¶ 492–539; ICC PTC *Al Bashir* Decision on the Prosecution's Application for a Warrant of Arrest, ¶ 213.

346 ICC *Katanga* Decision on the Confirmation of Charges, ¶ 492.

direct perpetrators can be imputed to the leaders that acted with a common plan, even if not all direct perpetrators of the crime fall directly under the control of each leader. Indirect perpetration requires the objective and subjective elements of co-perpetration and indirect perpetration.[347]

2. Superior Responsibility

115. The doctrine of superior responsibility holds military commanders as well as non-military or civilian superiors accountable for failing to prevent or punish the criminal acts of their subordinates. While it has its origins in military and humanitarian law,[348] the doctrine as recognized in the jurisprudence of the *ad hoc* tribunals and codified in Article 28 of the Rome Statute covers relationships that are not military in nature.[349]

116. Article 28 requires: (*i*) the existence of a superior-subordinate relationship; (*ii*) the subjective element or *mens rea*; and (*iii*) the failure to take all necessary and reasonable measures to prevent or punish the crimes.[350]

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347 ICC *Ruto* Decision on the Confirmation of Charges, ¶ 292 ("The Chamber consequently recalls that the mode of participation of indirect co-perpetration consists of the following objective and subjective elements: (i) the suspect must be part of a common plan or an agreement with one or more persons; (ii) the suspect and the other co-perpetrator(s) must carry out essential contributions in a coordinated manner which result in the fulfillment of the material elements of the crime; (iii) the suspect must have control over the organisation; (iv) the organisation must consist of an organised and hierarchal apparatus of power; (v) the execution of the crimes must be secured by almost automatic compliance with the orders issued by the suspect; (vi) the suspect must satisfy the subjective elements of the crimes; (vii) the suspect and the other co-perpetrators must be mutually aware and accept that implementing the common plan will result in the fulfillment of the material elements of the crimes; and (viii) the suspect must be aware of the factual circumstances enabling him to exercise joint control over the commission of the crime through another person(s).").

348 *See, e.g.*, Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1977, art. 86, 87 (duty of superiors to "ensure that members of the armed forces under their control are aware of their obligations" and to "prevent and repress breaches undertaken by subordinates").

349 Rome Statute, art. 28(b); *see also The Prosecutor v. Zdravko Mucić et al.*, IT-96-21-T, Trial Judgment, 16 November 1998 ("**ICTY *Mucić et al.* Trial Judgment**"), ¶¶ 354, 378 (recognizing effective control could exist in both "civilian and within military structures); *The Prosecutor v. Zdravko Mucić et al.*, IT-96-21-A, Appeal Judgment, 20 February 2001 ("**ICTY *Mucić et al.* Appeal Judgment**"), ¶ 195; *The Prosecutor v. Ferdinand Nahimana et al.*, ICTR-99-52-A, Appeal Judgment, 28 November 2007 ("**ICTR *Nahimana* Appeal Judgment**"), ¶ 605 ("[E]very civilian superior exercising effective control over his subordinates, that is, having the material ability to prevent or punish the subordinates' criminal conduct, can be held responsible under Article 6(3) of the Statute."); *The Prosecutor v. Zlatko Aleksovski*, IT-95-14/1-A, Appeal Judgment, 24 March 2000, ¶ 76 (rejecting argument that appellant did not have effective control over guards as a civilian prison warden appointed by the Ministry of Justice).

350 Rome Statute, art. 28.

117. Unlike the modes of individual criminal responsibility under Article 25 for forms of participation in a crime, the doctrine of superior responsibility imposes liability on the basis of inaction, that is, for the failure to prevent crimes by subordinates before they occur, or for the failure to punish the subordinates for committing the crimes after they have occurred.[351] Accordingly, no direct causal link or "but for" causation needs to be established between the superior's omission and the crime committed by his or her subordinates.[352] Under ICC jurisprudence, it is sufficient to establish that the superior's omission increased the risk of the commission of the crimes.[353]

(a) Superior-Subordinate Relationship

118. Superior responsibility applies to both military and civilian contexts in which a superior-subordinate relationship exists.[354] This mode of liability extends to those at the highest levels of leadership as well as superiors with only a few subordinates under their control.[355] Formal designation as a commander or superior is not necessary for superior responsibility to attach. Persons exercising *de facto* command may also be held accountable.[356] It is also not necessary for the superior to be the direct superior of or in the direct chain-of-command of the subordinate who commits the crime, as long as "effective control" can be established.[357]

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351 *See* ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 405 ("[A] superior may be held responsible for the prohibited conduct of his subordinates for failing to fulfil his duty to prevent or repress their unlawful conduct or submit the matter to the competent authorities."); *see also* ICTY *Mucić et al.* Trial Judgment, ¶ 334.

352 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶¶ 425–426; *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, 21 March 2016 ("**ICC *Bemba* Judgment**"), ¶¶ 211–212 ("[P]ractical and legal considerations militate against imposing a standard which would be incapable of consistent and objective application, bearing in mind the hypothetical assessment required in cases of omission.").

353 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 425.

354 Rome Statute, art. 28; ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 406; *see also* ICTY *Mucić et al.* Trial Judgment, ¶ 646; *The Prosecutor v. Ignace Bagilishema*, ICTR-95-1A, Appeal Judgment, 3 July 2002, ¶ 50.

355 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 408 ("The concept [of military commander] embodies all persons who have command responsibility within the armed forces, irrespective of their rank or level. In this respect, a military commander could be a person occupying the highest level in the chain of command or a mere leader with few soldiers under his or her command."); *see also* ICTY, *Popović* Appeal Judgment, ¶ 1898 ("[T]here is no minimum number of subordinates that are required to be involved in the commission of crimes in order to trigger a commander's responsibility.").

356 ICTY *Mucić et al.* Trial Judgment; ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 409.

357 *See* O. Triffterer and K. Ambos (eds.), *Rome Statute of the International Criminal Court: A Commentary* (3d ed., 2018) ("**Triffterer and Ambos**"), at 1093–1094; *see also* ICTY *Mucić et al.* Appeal Judgment, ¶¶ 251–252; ICTY *Popović* Appeal Judgment, ¶ 1892 ("[T]o the extent that more than one person is found to have effective control over the subordinates who have committed a crime,

119. Effective control manifests in the superior's "material ability to prevent or repress the commission of the crimes or to submit the matter to the competent authorities" for investigation and prosecution.[358] The indicators of "effective control" are case-specific but include the official position of the suspect, the power to issue orders, the capacity to ensure compliance with orders issued, the suspect's position within the organizational structure and the actual tasks carried out, and the power to promote, replace, remove, or discipline subordinates.[359] For non-military superiors, the activities of subordinates outside of work or work-related activities are generally not considered to be within the effective control of the superior.[360]

(b) Superior's Knowledge of Subordinate's Crime

120. For superior responsibility to attach, the superior must have knowledge of the subordinate's involvement.

121. Knowledge may be established by direct or circumstantial evidence.[361] Relevant factors include "the number of illegal acts, their scope, whether their occurrence is widespread, the time during which the prohibited acts took place, the type and number of forces involved, the means of available communication, the modus operandi of similar acts, the scope and nature of the superior's position and responsibility in the hierarchical structure, the location of the commander at the time and the geographical location of the acts."[362]

122. Article 28(a)(i) of the Rome Statute extends criminal responsibility to military commanders or persons effectively acting as military commanders who "should

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they may all incur criminal responsibility. Thus, the exercise of effective control by one commander does not necessarily exclude effective control being exercised by a different commander.").

358 ICC *Bemba* Judgment, ¶ 183; *The Prosecutor v. Naser Orić*, Case No. IT-03-68-A, Appeal Judgment, 3 July 2008, ¶ 20 ("[W]hat matters [for effective control] is whether the superior has the material ability to prevent or punish the criminally responsible subordinate."); ICTY *Mucić et al.* Appeal Judgment, ¶ 256 (same).

359 ICC *Bemba* Judgment, ¶ 188; ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 417. *See, e.g.*, *Prosecutor v. Enver Hadžihasanović & Amir Kubura*, IT-01-47-A, Appeal Judgment, 22 April 2008, ¶¶ 21, 199; ICTY *Blaškić* Appeal Judgment, ¶ 69; *The Prosecutor v. Pavle Strugar*, IT-01-42-A, Appeal Judgment, 17 July 2008, ¶ 256; ICTY *Mucić et al.* Appeal Judgment, ¶ 197.

360 *Cf.* Rome Statute, art. 28(b)(ii) ("The crimes concerned activities that were within the effective responsibility and control of the superior[.]").

361 ICC *Bemba* Judgment, ¶ 191; ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 430; *The Prosecutor v. Rasim Delić*, IT-04-83-T, Trial Judgment, 15 September 2008 ("**ICTY *Delić* Trial Judgment**"), ¶ 64.

362 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 431; ICC *Bemba* Judgment, ¶ 193; *see also The Prosecutor v. Augustin Ndindiliyimana et al.*, ICTR-00-56-T, Trial Judgment, 17 May 2011, ¶ 1197 (identifying indicia relevant to determining whether a superior possessed requisite knowledge).

have known that the forces were committing or about to commit such crimes[.]"[363] The commander has an active duty "to take the necessary measures to secure knowledge of the conduct of his troops and to inquire, *regardless* of the availability of information at the time on the commission of the crime."[364] Thus, Article 28(a)(i) imposes criminal responsibility where the superior has "merely been negligent in failing to acquire knowledge of his subordinates' illegal conduct."[365] Article 28(b)(i) imposes a different standard for civilian superiors, who only incur liability if they "knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes[.]"[366]

(c) Superior's Failure to Prevent or Punish

123. International law imposes liability if the superior has failed "to take all reasonable measures within his or her power to prevent or repress" the commission of the crime "or to submit the matter to the competent authorities for investigation and prosecution."[367] The superior's specific *de jure* and *de facto* ability to take actions will determine what constitutes reasonable and necessary measures in each instance.[368] For example, "reasonable" measures will vary based on the operational realities on the ground, the superior's material ability to take certain measures, and the knowledge of the superior at the time.[369]

124. The duties to prevent before, repress during, and report after the commission of the crime arise at different stages in the commission of the crime. A superior's duty to prevent is triggered before the commission of a crime. Superiors must fulfil their duty to prevent when they have knowledge of criminal behavior or imminent criminal behavior by subordinates.[370] The duty to repress encompasses both the

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363 Rome Statute, art. 28(a)(i).

364 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 433 (emphasis added); *see also* ICTR *Kayishema* Trial Judgment, ¶ 227 (stating the imposition of "a more active duty upon the [military] superior to inform himself of the activities of his subordinates" under Article 28).

365 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 432; *id.*, ¶ 429 ("The second, which is covered by the term 'should have known,' is in fact a form of negligence.").

366 Rome Statute, art. 28(b)(i).

367 *Id.*, arts. 28(a)(ii), 28(b)(iii).

368 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 443 ("[W]hat constitutes a reasonable and necessary measure will be assessed on the basis of the commander's de jure power as well as his de facto ability to take such measures."). *See also* ICTY *Blaškić* Trial Judgment, ¶ 302.

369 *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Appeal Judgment, 8 June 2018, ¶¶ 167–170. *See also* ICTY *Blaškić* Trial Judgment, ¶ 302; ICTY *Halilović* Trial Judgment, ¶¶ 73–74.

370 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 437; *see also* ICTY *Delić* Trial Judgment, ¶ 72.

obligation to stop ongoing crimes from continuing and the obligation to punish forces after the commission of crimes.[371]

125. If superiors do not themselves have the ability to punish subordinates, they must refer matters to the competent authorities to investigate and prosecute.[372] In particular, a non-military superior may have more limited disciplinary powers. Reasonable measures may be to issue orders for the subordinate to cease activities, dismiss the subordinate, and submit the matter to competent civil or criminal authorities for investigation. However, fulfilling the duty to punish after the fact does not absolve a superior of criminal responsibility for his or her failure to prevent and/or repress crimes of which he or she had knowledge.[373]

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371 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 439; *see also The Prosecutor v. Enver Hadžihasanović & Amir Kubura*, IT-01-47-T, Trial Judgment, 15 March 2006, ¶ 127.

372 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 442 ("The duty to submit the matter to the competent authorities, like the duty to punish, arises after the commission of the crimes. Such a duty requires that the commander takes active steps in order to ensure that the perpetrators are brought to justice."); *see also* ICTY *Delić* Trial Judgment, ¶ 74.

373 ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 436; *see also* ICTY *Delić* Trial Judgment, ¶ 69.

VI. Legal Analysis: Crimes Against Humanity

126. The UN COI Report and UN fact-finding bodies employ a "reasonable grounds" standard of proof in making factual determinations. This "reasonable grounds" standard refers to the establishment that "an incident or pattern of conduct had occurred whenever [the fact-finder] was satisfied that it had obtained a reliable body of information, consistent with other material, based on which a reasonable and ordinarily prudent person would have reason to believe that such an incident or pattern of conduct had occurred."[374]

127. There are reasonable grounds to conclude that DPRK officials have committed and continue to be commit ten of the eleven crimes against humanity enumerated in Article 7 of the Rome Statute in DPRK detention centers, with only the crime of apartheid deemed inapplicable under the facts presented. The crimes against humanity enumerated in Article 7 of the Rome State are:

> Article 7: Crimes against Humanity
>
> (1) 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) Persecutions 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 …;

374 COI Report, ¶ 22; IBA Report 2017, ¶ 14.

(i) Enforced disappearance of persons;

(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.[375]

A. Murder

128. Under the Rome Statute, murder is the intentional killing of a human being.[376]

1. Elements of Murder

129. The elements of murder are: (*i*) the "perpetrator killed one or more persons;" (*ii*) the conduct was committed "as part of a widespread or systematic attack directed against a civilian population;" (*iii*) the "perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population."[377] The *mens rea* for murder is: (*i*) the intention to kill; or (*ii*) the knowledge or awareness that the act will cause death in the ordinary course of events.[378]

2. Prior Cases

130. International tribunals have held perpetrators accountable for the crime against humanity of murder where the perpetrator's unlawful acts or omissions caused the death of detainees. For example, in the 2010 decision in *Kaing Guek Eav*, the ECCC Chamber found that the defendant was responsible for murder because a number of detainees died "as a result of unlawful omissions known to be likely to lead to their death and as a consequence of the conditions of detention imposed upon them."[379] The act or omission that results in the death of the victim can be carried out personally and directly, but also indirectly through others. For instance, in *Akayesu*, the ICTR Chamber found that the perpetrator committed the crime of murder by ordering members of the militia to kill the victims.[380]

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375 Rome Statute, art. 7(1).

376 *Id*., 7(1)(a), 30; ICC Elements of Crimes, art. 7(1)(a).

377 *See* ICC Elements of Crimes, art. 7(1)(a).

378 Rome Statute, art. 30.

379 *The Prosecutor v. Kaing Guek Eav*, 001/18-07-2007-ECCC/TC, Trial Judgment, 26 July 2010 ("**ECCC *Kaing Guek Eav* Trial Judgment**"), ¶ 339.

380 *See The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Trial Judgment, 2 September 1998 ("**ICTR *Akayesu* Trial Judgment**"), ¶ 656 (finding "beyond a reasonable doubt that on 19 April 1994, the Accused took eight detained refugees . . . and handed them over to the local militia, known as the Interahamwe with orders that they be killed."). *See also* Schabas, at 569 ("Case law of the International

3. The Evidence Presented

131. Counsel has presented significant evidence—including eye witness testimony by former detainees, expert evidence, the UN COI Report, and the Reports of the Special Rapporteur on the situation of Human Rights in the DPRK and the United Nations Office of the High Commissioner for Human Rights Report on Human Rights Violations against Women detained in DPRK ("**UN OHCHR Report**")—demonstrating that authorities in detention centers intentionally commit murder by, *inter alia*, arbitrarily executing detainees, carrying out a policy of infanticide, and starving detainees.[381]

(a) Arbitrary Executions

132. At the Hearing, witness i3 testified that guards shot detainees who attempted to escape and showed their bodies to other detainees as a warning.[382] Mr. Jung Gwang-il (witness i56) testified that soldiers would shoot detainees who approached barbed wire fences surrounding the facility where he was detained and that he witnessed two such killings.[383] Witness affidavits similarly show that detainees are executed for trying to escape or for no apparent reason at all.[384] Witness i22 reported that "quite a few people die through the death penalty,"[385] a penalty that, as witness i23 explains, is regularly imposed with no due process.[386] Lee Yong Kuk, a former detainee, stated that one detainee who attempted to escape was executed by being tied behind a car and dragged to death.[387] A detainee who witnessed the execution and "shouted out against this atrocity" was shot and killed immediately.[388]

Criminal Court supports a broad approach to the concept of commission, so as to encompass leaders and organizers who do not physically perpetrate the criminal acts. It is not necessary for the co-perpetrators to carry out the crime personally and directly").

381 *See, e.g.*, UN OHCHR Report, ¶¶ 40, 48, 66–67; UN COI Detailed Findings, ¶¶ 1103–1105, 1114.

382 *See* Hearing Witness Testimony, Witness i3, at 2:28:06–3:21:15.

383 Hearing Witness Testimony, Mr. Jung Gwang-il, Witness i56, at 1:48:15–2:28:05.

384 *See* Affidavit i3, at 4–5 (explaining how guards would shoot inmates with complete impunity for trying to find food or running away); Affidavit i23, at 3 (explaining having "heard that several people in the detention centers had been executed for trying to escape").

385 Affidavit i22, at 3.

386 Affidavit i23, at 3 (explaining having "heard that several people in the detention centers had been executed for trying to escape, without any due process or proceedings under law").

387 HRNK, Who are the Victims?

388 *Id.*

(b) Starvation

133. At the hearing, Mr. Jung Gwang-il (witness i56) testified that many detainees died of malnutrition.[389] He described a vicious cycle in which a detainee who failed to meet daily work quotas received a reduced food ration. [390] As a result, the detainee would not have the energy to meet the work quota the following day, and so on, causing detainees to die of starvation.[391] He estimated that he had buried over 200 detainees who had died in this way. [392] Another witness described seeing many people die of starvation.[393] In her testimony during the hearing, expert witness Roberta Cohen corroborated this account, stating that there is a policy of food deprivation in the detention centers.[394] She explained that many children in the detention facilities, who are particularly vulnerable because they have no money to pay bribes for food, die from lack of nourishment.[395]

(c) Infanticide

134. Witnesses testify that guards engage in infanticide in the detention centers.[396] Even when babies were not directly killed by guards at their birth, they often died as a result of lack of medical care. One eye witness described seeing a woman in full-term pregnancy forced to work outside in harsh conditions at Onsong *Bo-wi-bu ku-ryu-jang*.[397] She was given no assistance when she was due to give birth and had to crawl back to her cell to give birth on her own.[398] The witness stated that the woman's baby died from a lack of medical attention.[399] In the UN OHCHR report, a woman explained that during her detention in an MPS detention center in 2012, she witnessed a woman, who delivered a baby in her cell, ordered to wrap the baby and leave it outside in freezing winter temperature. The witness believed the baby

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389 Hearing Witness Testimony, Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

390 Hearing Witness Testimony, Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

391 Hearing Witness Testimony, Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

392 Hearing Witness Testimony, Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

393 Affidavit i23, at 4.

394 Hearing Witness Testimony, Roberta Cohen, at 4:38:36–5:00:25.

395 Hearing Witness Testimony, Roberta Cohen, at 4:38:36–5:00:25.

396 Affidavit i53, at 5 ("The guards will unconditionally kill babies if they are born to women in detention. I have never witnessed it by myself, but I have heard so many times that half-Chinese babies were killed generally in every facility."); Affidavit i25, at 4 (explaining that pregnant female detainees were targeted and "[i]n many instances, there was a live birth and the baby was killed on the spot").

397 Affidavit i39, at 3.

398 Affidavit i39, at 3.

399 Affidavit i39, at 3.

was left outside to die.[400] Another woman, who was detained in 2011 in an MPS detention center, witnessed a woman detainee give birth to a child that was later killed by guards.[401]

(d) Torture

135. Evidence presented by Counsel establishes that authorities in detention centers torture detainees to death. One witness testifying in the 2014 COI described deaths caused by injuries inflicted by torture committed in interrogation centers, including the death of a 17-year-old boy, who was arrested for watching South Korean movies and died from brain hemorrhage shortly after his release as a result of beatings sustained during his detention.[402] Another witness described a fellow inmate in an SSD interrogation center in North Hamgyong Province dying from injuries sustained when guards smashed his head against a wall.[403] In another case, a witness described seeing two detainees at an MPS detention center being beaten to death while carrying out forced labor because they had not reached their work target.[404]

4. Analysis of Findings

136. The evidence shows that personnel in the detention centers engage in summary executions, maintain a food policy causing death by starvation, and engage in infanticide. Specifically, witnesses i3 and i56 (Mr. Jung Gwang-il) at the hearing and in their affidavits, as well as witnesses i22, i23, i25, i39, and i53 in their affidavits, describe a number of murders they directly witnessed. These accounts are corroborated by the expert testimony of Roberta Cohen at the hearing and in her affidavit, and the expert affidavits of Felice Gaer, Rev. Timothy Peters, Benedict Rogers, Roberta Cohen, and David Hawk.[405]

137. The evidence presented in Part VI.K below establishes that the common elements of the crime against humanity of murder have been met.

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400 UN OHCHR Report, ¶ 66.

401 *Id.*, ¶ 67.

402 UN COI Detailed Findings, ¶ 716 (describing witness accounts of family members having died as a result of torture).

403 *Id.*

404 *Id.*, ¶ 717.

405 *See* Hearing Witness Testimony, Roberta Cohen at 4:38:36–5:00:25; Affidavit of Felice Gaer, ¶ 8; Affidavit of Timothy Peters, ¶ 10; Affidavit of David Hawk, ¶ 10.

5. Conclusion

138. Based on the evidence set forth above, this Inquiry finds reasonable grounds to conclude that the crime against humanity of murder may have been, and may continue to be, committed in the DPRK detention centers.

B. Extermination

139. Extermination is a crime against humanity involving "the intentional infliction of conditions of life, *inter alia*, the deprivation of access to food and medicine, calculated to bring about the destruction of part of the population."[406]

1. Elements of Extermination

140. The elements of extermination are: (*i*) the "perpetrator killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population;" (*ii*) the "conduct constituted, or took place as part of, a mass killing of members of a civilian population;" (*iii*) the "conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (*iv*) the "perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[407] The *mens rea* for extermination is: (*i*) the intention to kill on a large scale; or (*ii*) the knowledge that, in the ordinary course of events, the conduct will cause death on a large scale.[408]

141. Extermination "shares the same core elements of murder as a crime against humanity but has the additional requirement that it results in the death of persons on a large or massive scale."[409] Although, extermination requires mass killing as a surrounding circumstance, it is not required that the perpetrator be responsible for a

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406 ICC Elements of Crimes, art. 7(2)(b).; *see also* Rome Statute, art. 7(1)(b).

407 ICC Elements of Crimes, art. 7(2)(b).

408 Rome Statute, art. 30.

409 *The Prosecutor v. Issa Hassan Sesay et al.*, SCSL-04-15-T, Trial Judgment, 2 March 2009 ("**SCSL *Sesay et al.* Trial Judgment**"), ¶ 130; *see also* ICC, Elements of Crimes, art. 7(1)(b) (requiring that (*i*) the perpetrator killed one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population; (*ii*) the conduct constituted, or took place as part of, a mass killing of members of a civilian population; (*iii*) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (*iv*) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population).

large number of killings.[410] However, the perpetrator must know that the murder is part of a mass killing.[411]

2. Prior Cases

142. International jurisprudence reflects the requirement that the perpetrator has acted with "the inten[t] to kill persons on a massive scale or to subject a large number of people to conditions of living that would lead to their deaths."[412] While one or a limited number of killings may not be sufficient to constitute extermination,[413] there is no minimum threshold for the number of victims targeted.[414] In *Stakić,* the ICTY Chamber stated that the requirement of scale is assessed on a case-by-case basis taking into account all relevant circumstances.[415] For the accused to be held liable for extermination, it is sufficient that he or she participated in measures indirectly causing death on a large scale.[416] Tribunals have previously found that imposing living conditions aimed at destroying part of a population, including withholding food or medicine, constituted extermination.[417]

3. The Evidence Presented

143. Counsel has presented evidence showing that authorities in detention centers may have committed the crime of extermination. The evidence demonstrates large-scale deaths in the detention facilities. For example, HRNK has positively identified various crematories located at detention facilities by cross-referencing the statements of former detainees with satellite imagery.[418] Facilities that do not have crematories often bury corpses in mass graves. For instance, witnesses testified

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410 ICC Elements of Crimes, art. 7(1)(b) (requiring that the "perpetrator killed one or more persons").

411 *The Prosecutor v. Milomir Stakić*, IT-97-24-T, Trial Judgment, 31 July 2003 ("**ICTY *Stakić* Trial Judgment**"), ¶¶ 260–261.

412 *The Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-T, Trial Judgment, ¶ 2191.

413 *The Prosecutor v. Mitar Vasiljević,* IT-98-32-T, Trial Judgment, 29 November 2002, ¶ 227.

414 *The Prosecutor v. Elizaphan Ntakirutimana et al*., ICTR-96-10-A & ICTR96- 17-A, Appeal Judgment, 13 December 2004, ¶ 516; *The Prosecutor v. Milomir Stakić*, IT-97-24-A, Appeal Judgment, 22 March 2006 ("**ICTY *Stakić* Appeal Judgment**"), ¶ 260.

415 *The Prosecutor v. Milomir Stakić*, IT-97-24-T, Trial Judgment, 31 July 2003 ("**ICTY *Stakić* Trial Judgment**"), ¶ 640; *Blagojevic* Trial Judgment, ¶ 573.

416 *The Prosecutor v. Athanase Seromba*, ICTR-2001-66-A, Appeal Judgment, 12 March 2008, ¶ 189; *The Prosecutor v. Emanuel Ndindabahizi*, ICTR-01-71-A, Appeal Judgment, 16 January 2007, ¶ 123 n. 268.

417 *The Prosecutor v. Radoslav Brđanin*, IT-99-36-T, Trial Judgment, 1 September 2004, ¶ 389; *The Prosecutor v. Radislav Krstić*, IT-98-33-T, Trial Judgment, 2 August 2001, ¶ 498.

418 Video, "North Korea's Chŭngsan No. 11 Detention Facility," (22, December 2020) ("**Video, Chŭngsan No. 11**"), at 12:31–12:40, https://www.youtube.com/watch?v=Lpgem-PpGNs ("The fact that you have crematories in so many of [the detention facilities captured on satellite images] indicates a large loss of life.").

that, at Chŭngsan No. 11 Detention Facility, bodies were buried on "Flower Hill," named as such because "the bodies are buried in shallow graves here and during the spring and summer, the hill blossoms with a great number of flowers . . . because of the decaying bodies and the fertilizer they provide."[419] One witness reports the mass grave housing over 5,000 bodies and that "they had to dig holes for the dead that were so small and shallow that the bodies had to be bent to fit. On some occasions the deceased person's knees stuck out of the ground."[420] Pictured below is satellite imagery showing the reported location of "Flower Hill."

Figure 6: **Satellite Imagery Depicting "Flower Hill"**

(a) Small Scale Killings Committed With Knowledge of the Context of Mass Killing

144. The evidence shows that arbitrary executions are a regular feature of the detention centers. As set forth above in section VI.A.3.a, witness testimony demonstrates that guards in the detention centers regularly shoot detainees who try to escape. In addition to the hearing testimony of witness i3 and Mr. Jung Gwang-il (witness

419 Video, Chŭngsan No. 11, at 20:05–21:09; *see also* Chŭngsan No. 11, at 32 ("A former prisoner has stated that the hill west of the hospital was called 'flower hill' by locals and prisoners because the bodies of prisoners were buried here.").

420 Chŭngsan No. 11, at 142.

i56),[421] witness affidavits show the regularity with which guards execute detainees for trying to escape. For example, witness i23 testifies that, while detained, the witness learned that several detainees who tried to escape were executed without due process.[422]

(b) Infanticide

145. As set forth above in section VI.A.3.c, the evidence demonstrates a practice of infanticide in the detention centers. Witness i25, who was detained at the Sinuiju *Bo-wi-bu ku-ryu-jang*, testifies that newborn babies would be "killed on the spot."[423] Similarly, witness i53 testifies that guards would unconditionally kill babies if they are born to women in detention."[424]

146. Former Detainee #24, a grandmother who was assigned to care for pregnant detainees, stated that she helped deliver multiple babies, all of whom were killed.[425] After she delivered the healthy baby of a woman named Lim, who had been married to a Chinese man,

> a guard grabbed the newborn by one leg and threw him in a large, plastic-lined box. A doctor explained that since North Korea was short on food, the country should not have to feed the children of foreign fathers. When the box was full of babies, Former Detainee #24 later learned, it was taken outside and buried.[426]

Detainee #24 also recounted that she had delivered seven babies in two days, all of whom were placed in the box. Five of the seven were premature and died two days later, but two babies survived. An agent, upon noticing that they had not yet died, "stabbed them with forceps at a soft spot in their skulls."[427]

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421 *See* Hearing Witness Testimony, Witness i3, at 2:28:06–3:21:15 (testifying that guards regularly shoot detainees that try to escape); Hearing Witness Testimony, Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05 (testifying that guards regularly shoot detainees that approach the barbed wire fence surrounding detention facilities).

422 Affidavit i23, at 3 (explaining having "heard that several people in the detention centers had been executed for trying to escape, without any due process or proceedings under law").

423 Affidavit i25, at 4 (explaining that pregnant female detainees were targeted and "[i]n many instances, there was a live birth and the baby was killed on the spot").

424 Affidavit i53, at 5.

425 HRNK, Who are the Victims?

426 *Id.*

427 *Id.*

147. In his expert affidavit, Benedict Rogers testifies that in the North Hamgyong Province Shorter-Term Labor Detention Facility (*Jip-kyul-so*), "when a prisoner was forced into an induced abortion and gave birth to a live born infant, MSS officers would tear a thin plastic bag and cover the infant's face with the torn plastic. The infant would then be wrapped tightly in a cloth blanket. After a short while, the infant would suffocate and die. Bodies of dead infants were stored in a closet that was used for chlorine and maintenance tools. Later the bodies of the infants were buried. Mothers of the aborted infants were forced to resume manual labor the day after the abortion and without medicine or rest."[428]

148. The large scale of infanticide in the detention centers is confirmed by the UN COI Detailed Findings. The UN Commission of Inquiry found that "there is widespread prevalence of . . . infanticide," the "vast majority" of which are committed "at holding centres (*jipkyulso*) and interrogation and detention centres (*kuryujang, SSD facilities*)."[429] As recognized by the UN Commission of Inquiry, and set forth in further detail below in section VI.H.3.b, "testimony points to DPRK authorities' disdain for ethnically mixed children – specifically children conceived to Chinese men – as the driver of . . . infanticide."[430]

(c) Extermination Through the Infliction of Conditions of Life Calculated to Cause Large Scale Death

149. Witness and expert testimony,[431] as well as the COI Detailed Finding,[432] establish that inadequate food supply, denial of medical care, and crippling forced labor conditions contribute to the massive death toll in the detention centers.[433]

150. Detainees are denied adequate food, leading to large-scale death. Almost all witnesses have reported lack of food or water provided to detainees causing severe illnesses, malnutrition, and ultimately death by starvation.[434] The evidence indicates that DPRK officials use food deprivation as an instrument of control and corruption in the detention facilities. Detainees are punished for failing to meet

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428 Affidavit of Benedict Rogers, ¶ 18(gg) (citing Korea Future Report, at 61).

429 UN COI Detailed Findings, ¶ 425.

430 UN COI Detailed Findings, ¶ 426.

431 *See* Affidavit of Felice Gaer, ¶ 8; Affidavit of Timothy Peters, ¶ 10; Affidavit of David Hawk, ¶ 10.

432 UN COI Detailed Findings, ¶¶ 1103, 1113–1114.

433 As stated above, Thae Yong-ho has testified that "it is simply impossible for well-documented patterns of practice in detention centers (widespread torture, rape, food deprivation, murder, infanticide etc.) to be anything other than officially sanctioned behavior; *see* Affidavit of Thae Yong-ho, at 9.

434 *See, e.g.*, Affidavit of Roberta Cohen, ¶ 23; Affidavit i26, at 2–3; Affidavit i8, at 1; Affidavit i19, at 3; Affidavit i25, at 3; Affidavit i38, at 2; Affidavit i37, at 2–3; Affidavit i42, at 4; UN COI Detailed Findings, ¶¶ 770–772 (quoting Seoul Public Hearing, 24 August 2013, afternoon (03:31:30).

work quotas or belonging to the "wrong" social class.[435] Detainees are punished severely for attempting to supplement their inadequate food rations, unless they do so by paying bribes to detention officials.

151. At the Hearing, Witness i58 testified that one food ration was a cup of maize approximately 10cm in diameter; the quantity was so little, the witness could count the individual kernels of corn.[436] The witness and expert affidavits are consistent with the Hearing testimony. A witness detained at the Hyesan *Bo-wi-bu ku-ryu-jang* stated that detainees were fed "mostly skin of corn or potatoes mixed in with stones and coal"[437] or an extremely small amount of corn noodles, such as "2 kilograms for 200 people," which caused the witness to lose 10 kg in 15 days.[438] Similarly, another witness recalls that "there were a few grains of corn for the meals. Officers put a few grains in a black bowl. There was also soup, but it was not proper soup. It was made of the leaves and stems of radish and salt. There were 3 to 4 tablespoons of sand in the soup. Then we washed our dishes with the toilet water."[439] Another witness detained at the Musan *Bo-wi-bu ku-ryu-jang* reported that detainees were given inedible food that consisted of a few noodles or some wheat or barley, without any protein or vegetables.[440] A witness testified that, at one MSS interrogation facility in 2017, "[m]eals were carried in a bucket and the bucket was never cleaned and smelled terrible . . . . I was unable to eat it."[441] At many other detention facilities and over many years, detainees repeatedly characterized the food as "rotten," "inedible," and causing "bad side effects . . . . The only food that we were given was essentially waste . . . animal feed."[442]

152. The inadequate food rations and poor food quality cause malnourishment, illness and, ultimately, death. The evidence shows that detainees lose considerable weight from lack of food, making them malnourished and vulnerable to death from disease.[443] At the Hearing, witness i56 testified to losing over half the witness's

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435 *See* Affidavit i37, at 2; HRNK, Who are the Victims? (asserting that starvation serves as a method of control as meager food rations are further reduced when detainees fail to meet their strict and often unrealistic work quotas, and that the threat of food reduction thereby incentivizes productivity); Hearing Witness Testimony, Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

436 Hearing Witness Testimony, Witness i58, at 6:03:00–6:27:49.

437 Affidavit i39, at 2.

438 *Id.*, 3–4.

439 *See* Affidavit of Benedict Rogers, ¶ 18(s) (citing Korea Future Report, at 45).

440 *See* Affidavit i37, at 2 (stating that the witness and other detainees at Musan *Bo-wi-bu ku-ryu-jang* were provided insufficient and inedible food, such as a few noodles or some wheat or barley, and that the witness's menstrual cycle stopped after her first month in the *ku-ryu-jang* due to starvation).

441 *See* Affidavit of Roberta Cohen, ¶ 24 (citing UN OHCHR Report, Annex 2, VI).

442 *Id.* (citing HRNK 2020).

443 *See* Affidavit of Roberta Cohen, ¶ 33 (citing UNOHCHR Report).

body weight during detention due to malnutrition.[444] Some detainees described how they were reduced to "skin and bones," with one stating, "I weighed only 32 kilograms [70.5 pounds]."[445] Another, who "lost half his body weight" after three months in detention in Sinuiji *Bo-wi-bu*, collapsed from malnutrition and beatings.[446] One detainee was reported to be so severely malnourished that they required assistance to support their own body weight.[447]

153. The poor quality of the food caused many detainees to suffer from diarrhea and other sicknesses such as enteritis, an inflammation of the small intestine commonly caused by food or drink contaminated with microbes.[448] At Onsong *Bo-wi-bu*, "a number of the detainees suffered from enteritis and starved to death."[449] One former detainee became malnourished while detained in 2009 stated in 2015 that "I caught tuberculosis [then] and have to take medicine now."[450] Pellagra, a vitamin deficiency that causes chronic diarrhea, dermatitis, and dementia, is common among detainees due to malnutrition and contributes to their "greatly reduced lifespans."[451]

154. Women and children are particularly vulnerable to food deprivation in the detention centers. As Robert Cohen testifies, the "grossly inadequate quantity and poor quality of food" fed to women detainees "led to high levels of malnutrition."[452] At Sinuiji *Bo-wi-bu*, between 2008-2009, one witness stated, "hunger and starvation were rampant, particularly for children. Many children and young people were emaciated."[453] One witness testified that all children at the Musan *Bo-wi-bu ku-ryu-jang* were suffering from malnutrition and witnessed both children and adults dying from starvation.[454] Between 2003–2004, at Hyesan Detention Facility, one witness recalled that "more than 10 children died of starvation . . . other children survived but were suffering from extreme hunger and malnutrition."[455] At

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444 *See* Hearing Witness Testimony, Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

445 Affidavit of Roberta Cohen, ¶ 34 (citing HRNK 2020).

446 *Id.*, ¶ 34 (citing Hawk, Hidden Gulag 2012, p.127).

447 *See* Affidavit of Benedict Rogers, ¶ 18(ff) (citing Korea Future Report, at 59).

448 Affidavit of Roberta Cohen, ¶ 24 (citing HRNK 2020).

449 *Id.*, ¶ 25 (citing HRNK 2020).

450 *Id.*, ¶ 38.

451 HRNK, Basic Facts about the Prison Camps.

452 *See* Affidavit of Roberta Cohen, ¶ 33 (citing UN OHCHR Report).

453 *Id.*

454 *See* Affidavit i37, at 2.

455 *See* Affidavit of Roberta Cohen, ¶ 35 (citing HRNK 2020).

Musan *Bo-wi-bu* in that same year, "almost all of the children were suffering from malnutrition, with a number of them dying from starvation."[456]

155. The evidence shows that death from food deprivation occurs in the detention centers on a large scale. A witness detained at the Musan *Ro-dong-dan-ryeon-dae* between 1997 and 2004 explained that deaths from starvation occurred on a near daily basis in the detention center.[457] One witness testified that "there was at least one person dying every day from malnutrition - it was like an epidemic."[458] Similarly, a former detainee described numerous detainees becoming ill at multiple detention centers in North Hamgyong and Ryanggang provinces in 2004-2005, stating that he "witnessed a large number of people die as a result."[459] A former guard at Prison Camp No. 22 reported that 1,500 to 2,000 detainees of the approximately 50,000 detainees detained at the camp died from malnutrition each year.[460]

156. Chŭngsan No. 11 Detention Facility, in particular, is notorious for large-scale death from malnourishment. A witness detained at the Chŭngsan No. 11 Detention Facility reported that severe malnutrition and harsh working conditions resulted in the deaths of "two to three [persons] . . . every day."[461] Another former detainee at the Chŭngsan No. 11 Detention Facility reported that authorities had "[run] out of land to bury the bodies because so many people die."[462] A former Ministry of Public Security official corroborated these accounts, stating that the Chŭngsan No. 11 Detention Facility was "notorious because many more inmates die there than at any other concentration camp[s] due to the unbearably hard labor and malnutrition."[463]

157. Food deprivation in the detention centers is employed as an instrument of control and corruption. As discussed above in Section VI.A.3.b, multiple witnesses testified that food was not only nutritionally inadequate, but also withheld from

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456 *Id.*

457 Affidavit i26, at 2–3 (explaining that while detained at the Musan *ro-dong-dan-ryeon-dae* between 1997–2004, the detainee witnessed many inmates suffering from malnutrition, untreated diseases, "terrible medical care," and overwork resulting in death and stating that "death from hunger was part of everyday life in the detention centre").

458 Affidavit of Roberta Cohen, ¶ 38.

459 *Id.*, ¶ 25 (citing HRNK 2020).

460 HRNK, Who are the Victims?

461 *Id.*; Chŭngsan No. 11, at 141.

462 Chŭngsan No. 11, at 141; *see also* HRW, Worth Less Than an Animal, 2020 (recounting the following witness testimony: "In February 2010, one woman was [accused of] killing and eating her child because of hunger, right after the currency reform [2009] when many people suffered. She died of starvation, she was only skin and bone").

463 *Id.*

detainees who failed to meet work quotas, leading to a vicious cycle of malnutrition and death.[464] In her testimony during the hearing, expert witness Roberta Cohen confirmed that DPRK officials maintain a policy of food deprivation in the detention facilities, leading to the death of scores of detainees, who are carted away and buried in mass graves.[465] Detainees who steal food to survive, especially while working on farms, are punished severely and often executed. Guards at Onsong *Bo-wi-bu ku-ryu-jang* were reported to have "executed" "dozens" for eating stolen oxen.[466] Similarly, at Chongjin Shorter-Term Labor Detention Facility, a former detainee said that "I have also seen individuals executed for stealing a pig."[467] Numerous witnesses testified that paying bribes was the only way to supplement food rations without being subject to possibly fatal reprisals.[468] Roberta Cohen testified that bribes were one of the only ways detainees managed to survive in detention centers.[469] She further testified that this practice leaves children in the detention centers, who are typically orphans with no resources, particularly vulnerable.[470]

158. Detainees also die in the detention facilities on a large scale due to lack of medical care. For example, at the Hearing, Mr. Jung Gwang-il testified that he was denied medical care while suffering from an infectious disease,[471] witness i3 testified that she received no medical attention after suffering a forced abortion,[472] and Ms. Park Ji Hyun testified that she received no medical care for an injury to her leg she suffered during forced labor, causing fever and causing the leg to turn black and attract flies.[473] One detainee, who suffered from an inflamed gall bladder received no medical help (at Hoeryong City yuseon-gu Police Station).[474] Witnesses reported regular deaths due to the practice of withholding medical care in the detention centers.[475] One witness reported that "many people also died from

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464 *See* Hearing Witness Testimony, Witness i51, at 5:39:36–6:02:58.

465 Hearing Witness Testimony, Roberta Cohen, at 4:38:36–5:00:25.

466 Affidavit of Roberta Cohen, ¶ 30 (citing HRNK 2020).

467 *Id.*

468 Affidavit i3, at 4; UN COI Detailed Findings, ¶ 805 (citing Seoul Public Hearing, 22 August 2013, morning (00:37:42)). In one labor detention center in South Sinuiji in 2000, food was so scarce that detainees ate grass and other plants to survive. *See* Affidavit of Roberta Cohen, ¶ 17 (citing Hawk, Hidden Gulag 2012, p.123).

469 Hearing Witness Testimony, Roberta Cohen, at 4:38:36–5:00:25.

470 Hearing Witness Testimony, Roberta Cohen, at 4:38:36–5:00:25.

471 *See* Hearing Witness Testimony, Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

472 *See* Hearing Witness Testimony, Witness i3 at 2:28:06-3:21:15.

473 Hearing Witness Testimony, Witness i55, Ms. Park Ji Hyun, at 5:00:26–5:30:08.

474 Affidavit of Roberta Cohen, ¶ 25 (citing HRNK 2020).

475 Affidavit i39, at 2–4.

diseases including diarrhea, since no medicine other than a few [medicinal] herbs [were] available."[476] At Hyesan *Bo-wi-bu* in 2008, a detainee testified that "at least two people in my cell . . . died from diarrhea or enteritis . . . . I witnessed their deaths, and the prison authorities did nothing to help them."[477]

159. Finally, as set forth below in Section VI.C.2, detainees are forced to perform labor under dangerous conditions, often leading to death. One witness testified that detainees were forced to work at twice the rate of a normal worker and for sustained periods, with very limited food, which led to the death of detainees.[478] Another witness, detained at the Chungsan No. 11 Detention Facility, stated that detainees forced to harvest salt often died from the work.[479]

4. Analysis of Findings

160. Witness and expert testimony indicate that detainees die in the detention facilities on a massive scale. Affidavits i5, i8, i19, i23, i25, i26, i37, i38, i39, i42, and i53, Hearing testimony from witness i3, i51, i55, i56, the expert affidavits of Felice Gaer, Timothy Peters, Benedict Rogers, Roberta Cohen, Thae Yong-ho and David Hawk, and human rights reports demonstrate that State practices such as arbitrary executions, infanticide, and detention in deplorable conditions—including inadequate access to food, lack of medical care, and dangerous forced labor—make up a great part of this massive death toll.

161. The evidence presented in Section VI.K below establishes that the common elements of the crime against humanity of extermination have been met.

5. Conclusion

162. Based on the evidence presented above, this Inquiry finds reasonable grounds to conclude that the crime against humanity of extermination may have been, and may continue to be, committed in the DPRK detention centers.

C. Enslavement

163. The Rome Statute defines enslavement as "the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."[480]

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476 Chŭngsan No. 11, at 141.

477 *See* Affidavit of Roberta Cohen, ¶ 25 (citing HRNK 2020).

478 *See* Affidavit i42, at 4.

479 Chŭngsan No.11, at 58.

480 Rome Statute, art. 7(2)(c).

1. Elements of Enslavement

164. The elements of enslavement are: (*i*) the "perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty;" (*ii*) the "conduct was committed as part of a widespread or systematic attack directed against a civilian population;" (*iii*) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.[481] The *mens rea* requirements of intent and knowledge set forth in Article 30 of the Rome Statute apply to the crime of enslavement.[482]

165. The ICC Elements of Crimes, states that deprivation of liberty such as "exacting forced labor or otherwise reducing a person to a servile status," may be sufficient to constitute enslavement.[483] Thus, the definition of enslavement under the Rome Statute is broader than formulations other international tribunals have adopted.[484]

2. Prior Cases

166. In the context of detention centers, international tribunals have established that living conditions "so coercive as to exclude any possibility of consent by the workers" constitute enslavement.[485] For example, in *Krnojelac*, the ICTY ruled that the perpetrator had committed the crime of enslavement where detainees were forced to work under appalling conditions, including overcrowded cells, deplorable sanitation, insufficient food, frequent beatings, psychological abuse, and other appalling living conditions.[486] Similarly, in *Kaing Guek Eav*, the ECCC found that "forced or involuntary labor, coupled with . . . detention, amounted to enslavement."[487] In that case, detainees were constantly monitored; deprived of adequate food; detained in deplorable, unsanitary living conditions; and denied medical care.[488]

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481 ICC Elements of Crimes, art. 7(1)(c).

482 Rome Statute, art. 30.

483 ICC Elements of Crimes, art. 7(1)(c) & n. 11.

484 *See, e.g.*, *Prosecutor v. Kunarac*, Case No. IT-96-23-T; IT-96-23/1-T, Judgment, paras. 539, 541 (Int'l Crim. Trib. for the Former Yugoslavia 22 Feb. 2001).

485 *See The Prosecutor v. Milorad Krnojelac*, IT-97-25-A, Appeal Judgment, 17 September 2003 ("**ICTY *Krnojelac* Appeal Judgment**"), ¶¶ 193, 195; ICTY *Kunarac et al* Appeal Judgment, Section XII Disposition.

486 *Id.*, ¶ 195.

487 *See* ECCC *Kaing Guek Eav* Trial Judgment, ¶ 344.

488 *See id.*, ¶ 372.

167. In *Kunarac,* the Trial Chamber noted that the exaction of forced or compulsory labor without remuneration and involving physical hardship are indications of enslavement.[489] According to the *Kunarac* Appeal Chamber, since "enslavement flows from claimed rights of ownership . . . lack of consent does not have to be proved by the Prosecutor as an element of the crime."[490] Consistent with *Kunarac*, scholars have explained that in the context of crimes against humanity, where the "circumstances are inherently coercive," consent is not relevant.[491]

3. The Evidence Presented

168. Evidence before the panel establishes that DPRK officials force detainees to perform dangerous, unremunerated labor, under appalling conditions. Key indicators of enslavement that international tribunals have recognized, such as control of movement and forced labor, are present in the detention centers.

(a) Control of Movement

169. Witnesses and experts confirm that guards exercise total control over detainees' movement and the conditions of their physical environment.[492] Moreover, guards use force to keep victims in captivity.[493] At the Hearing, Witness i3 described how detainees who tried to escape were shot by the guards and their bodies shown to the other detainees as an example.[494] Extensive evidence shows that detainees are subject to the use of force or threats of force, both in the form of physical or mental coercion, to achieve total control.[495]

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489 ICTY *Kunarac et al.* Trial Judgment, ¶ 542.

490 ICTY *Kunarac et al* Appeal Judgment, ¶ 120.

491 Wolfgang Schomburg and Ines Peterson, *Genuine Consent to Sexual Violence under International Criminal Law*, THE AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol 101:121, p. 128 ("Domestic criminal law covering ordinary crimes is meant to apply in peacetime situations and does not specifically address conduct amounting to genocide, crimes against humanity, or war crimes. The most distinctive feature of the latter crimes is their "international element," which presumes that they are committed in the context of a systematic or large-scale use of force. Consequently, the international element requires the establishment of circumstances that are inherently coercive and make the question of consent redundant."); *see also id.,* p. 123 ("rape should be viewed in the same way as other violations of international criminal law, such as torture and enslavement, as to which the prosecution is not required to prove nonconsent.") (citing to *Prosecutor v. Gacumbitsi*, Appellant's Brief, No. ICTR-2001-64 -A, ¶¶ 159, 182 (28 Sept. 2004)).

492 *See* Affidavit i6, ¶ 5; Affidavit i8, at 3–5; Affidavit i25, at 2; Affidavit i26, at 3; Affidavit i37, at 2; Affidavit i39, at 3–4; Affidavit i42, ¶ 5.1; Affidavit i51, at 3–4.

493 *See* Affidavit i6, ¶ 5; Affidavit i8, at 4; Affidavit i16, ¶ 5.3.

494 Hearing Witness Evidence of Witness i3, at 2:28:06–3:21:15.

495 *See* Affidavit i2, at 2–3; Affidavit i3, at 2–5; Affidavit i6, at 2–3; Affidavit i16, at 2–3; Affidavit i19 at 2–3; Affidavit i21, ¶ 5; Affidavit i22, at 2–3; Affidavit i25, at 2–5; Affidavit i26, at 2–3; Affidavit i33, dated 23 March 2020, ¶ 5; Affidavit i36, dated 24 May 2020, at 2–3; Affidavit i37, at 2–5;

(b) Forced Labor

170. There is ample evidence that DPRK officials force detainees to perform unremunerated labor in the detention centers. For example, at the Hearing, Ms. Park Ji Hyun testified that detainees were forced to work like animals from dawn to dusk in poor conditions, regardless of the detainees' age or gender.[496] Likewise, at the Hearing, Witness i58 testified that detainees, including the witness, were forced to perform construction works and guards punished them for unsatisfactory performance by pouring cement on their bodies.[497] Mr. Jung Gwang-il described at the Hearing that, in the winter months, detainees were forced to log trees that were 40 cm in diameter and 4 meters high with just an axe.[498] Mr. Jung Gwang-il and Witness i51 also explained that guards punished detainees for failing to meet work quotas by cutting their food rations, aggravating the malnourishment from which so many detainees perish—the guards literally work the detainees to death.[499]

171. A witness detained in the Chongjin *Jip-kyul-so* in 2018 described doing farm work, construction site work, and livestock work from 5:00am to 8:00pm. The witness described carrying blocks on their back in 40 °C heat at a construction site and being beaten by a manager for trying to drink water.[500] Another witness detained at Nongpo *Jip-kyul-so* in 2015 was forced to produce 20 tons of cement and 3,000 precast pavers a day, working around 15-16 hours per day. According to the witness, they had to manually run a machine that cast precast pavers when the electricity was off, and although the tips of their fingers were chapped and severely bleeding, they could not get treatment and had to work continuously.[501]

172. The UN OHCHR Report states that "[w]omen detained in short-term labour camps (*ro-dong-dan-ryeon-dae*), as well as holding centers (*jip-kyul-so*), were required to perform forced manual labour, often in the construction or agricultural sectors, in contravention of international standards. This was particularly exhausting due to

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Affidavit i38, at 2–4; Affidavit i39, at 3–4; Affidavit i42, ¶¶ 5.3–5.5; Affidavit i51, at 2–3; Affidavit i53, at 4–7. *See also* KINU White Paper 2020, at 79–80 ("A North Korean defector who was detained in a holding center (*jipkyulso*) in Chongjin, North Hamgyeong Province for 20 days in 2017 said that he/she was mobilized to build factory fences and harvest in the field . . . . Another North Korean defector who was in a holding center (*jipkyulso*) of Ranam district in Chongjin, North Hamgyeong Province, from May to July in 2015 said that he/she was mobilized to cast the pavement blocks for about 12 hours a day.").

496 *See* Hearing Witness Testimony, Witness i55, Ms. Park Ji Hyun, at 5:00:26–5:30:08.

497 *See* Hearing Witness Testimony, Witness i58, at 6:03:00–6:27:49.

498 *See* Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

499 *See* Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05; Hearing Witness Testimony of Witness i51, at 5:39:36–6:02:58.

500 KINU 2020 North Korea White Paper, at 80–81 (citing testimony by NKHR2019000010 2019-04-08).

501 *Id.*, 81 (citing testimony by NKHR2019000089 2019-10-19).

insufficient and inadequate food rations. Detainees were not compensated for their work."[502] Furthermore, evidence shows that authorities in charge of detention centers imposed forced labor on children. One witness detained at the Chongjin *Jip-kyul-so* in 2003 reported that children as young as seven years old were forced to perform hard labor, including cutting large trees on a mountain.[503] Another witness reported that children worked long hours harvesting rice.[504] Other reports indicate that authorities subject children to forced labor for up to 12 hours per day.[505]

4. Analysis of Findings

173. The evidence, including, the affidavits of witnesses i2, i3, i6, i8, i16, i19, i21, i22, i23, i25, i26, i33, i36, i37, i38, i39, i42, and i51, i53, Hearing testimony from witness i3, i55, i56, i58, the expert testimony of Felice Gaer, Rev. Timothy Peters, Nicholas Eberstadt, and David Hawk, and human rights reports demonstrate that DPRK officials exercise absolute control over the detainees and force them to perform hard and dangerous labor under deplorable conditions.[506]

174. The evidence presented in Part VI.K below establishes that the common elements of the crime against humanity of enslavement have been met.

5. Conclusion

175. Based on the evidence set forth above, this Inquiry finds reasonable grounds to conclude that the crime against humanity of enslavement may have been, and may continue to be, committed in the DPRK detention centers.

D. Forcible Transfer

176. The Rome Statute defines forcible transfer as "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."[507]

1. Elements of Forcible Transfer

177. The elements of forcible transfer are: (*i*) the "perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more

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502 UN OHCHR Report, ¶ 47.

503 *See* Affidavit i37, at 3.

504 *See id.*, 4.

505 U.S. State Dept. DPRK Human Rights Report (2020), at 1, 6.

506 *See* Affidavit of Felice Gaer, ¶ 8; Affidavit of Timothy Peters, ¶ 10; Affidavit of David Hawk, ¶ 10.

507 Rome Statute, art. 7(2)(d).

persons to another State or location, by expulsion or other coercive acts;" (*ii*) such "person or persons were lawfully present in the area from which they were so deported or transferred;" (*iii*) the "perpetrator was aware of the factual circumstances that established the lawfulness of such presence;" (*iv*) the "conduct was committed as part of a widespread or systematic attack directed against a civilian population;" and (*v*) the "perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[508]

178. As the ICC Elements of Crimes explains, "the term 'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment."[509] The *mens rea* requirements of intent and knowledge set forth in Article 30 of the Rome Statute apply to the crime of forcible transfer.[510]

2. Prior Cases

179. According to international jurisprudence, the crime of forcible transfer does not require that the perpetrator intended to displace individuals on a permanent basis.[511] In *Krnojelac,* the ICTY Appeal Chamber found that the crime of forcible transfer or displacement "aims at safeguarding the right and aspiration of individuals to live in their communities and homes without outside interference."[512] In *Krajišnik*, the ICTY Appeals Chamber found that acts of forcible transfer were of similar gravity to deportations as they involved a forced departure from the residence and the community, without guarantees of the possibility to return in the future, invariably leading serious mental harm.[513]

3. The Evidence Presented

180. Counsel has presented extensive evidence, including witness testimony by former detainees, demonstrating that government officials forcibly transfer persons to the detention facilities. A 2012 report by the Korean Bar Association found that only 18.1% of respondents saw an arrest warrant or other document justifying their detention at the time of their arrest, and the majority never received any

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508 *See* ICC Elements of Crimes, art. 7(1)(d).

509 *See* ICC Elements of Crimes, art. 7(1)(d), n. 12.

510 Rome Statute, art. 30.

511 *The Prosecutor v. Momčilo Krajišnik*, IT-00-39-A, Appeal Judgment, 17 March 2009 ("**ICTY *Krajišnik* Appeal Judgment**"), ¶ 304; *Stakić* Appeal Judgment, ¶¶ 278, 317.

512 ICTY *Krnojelac* Appeal Judgment, ¶ 218.

513 ICTY *Krajišnik* Appeal Judgment, ¶ 331.

information concerning the reason of their arrest.[514] None of the witnesses who testified at the Hearing received a trial. Authorities coercively transferred many detainees to detention centers for illegitimate reasons, including attempting to escape North Korea, practicing religion, or for no reason at all.[515] For example:

- At the Hearing, Witness i58 testified to being detained in various detention facilities for a total of seven months after being arrested for attempting to cross the border into China.[516]

- Witness i51 testified at the Hearing that after the witness was forcibly transferred to a detention facility for attempting to illegally cross the border into China, the witness was unable to return to her home in Samjiyeon,[517] a region from which it is relatively easy to cross a river into China.[518] In 2015, authorities forcibly transferred around 200 households from Samjiyeon "and in order to ensure effective control over defectors, the existing houses were demolished."[519]

- Witness i33 was arrested in the middle of the night in a private dwelling where Witness i33 was staying with their son to attempt to escape to China. They were sent to an interrogation center and subsequently to Hyesan *Bo-wi-bu ku-ryu-jang*.[520]

- Another North Korean defector testified that their spouse was arrested by an MSS agent and transferred to the MSS detention center in Hyesan, Yanggang Province, without being notified of the reason for his arrest.[521] The spouse was released after 15 days after paying a bribe of 15,000 yuan.[522]

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514 UN COI Detailed Findings ¶ 695 (citing KBA, 2012 White Paper on Human Rights in North Korea (2013) ("**KBA White Paper**"), at 202).

515 *See* Affidavit i3, at 2, 3; Affidavit i8, at 2; Affidavit i21, at 2, 3; Affidavit i26, at 2; Affidavit i36, at 2; Affidavit i38, at 2; Affidavit i33, at 1–3.

516 Hearing Witness Testimony, Witness i58, at 6:03:00–6:27:49.

517 Hearing Witness Testimony, Witness i51, at 5:39:36-6:02:58; *see* Affidavit i51, at 2, 3.

518 KINU 2020 North Korea White Paper, at 139-140.

519 KINU 2020 North Korea White Paper, at 139.

520 *See* Affidavit i33, at 2.

521 KINU 2020 North Korea White Paper, at 90, 523.

522 KINU 2020 North Korea White Paper, at 90, 523.

- At the Hearing, expert Benedict Rogers testified to numerous accounts of individuals arrested and detained for practicing Christianity or even coming into contact with persons practicing a religion.[523]

181. Family members of those who were deemed to have committed a crime, especially serious political crimes, are also forcibly transferred to detention facilities.[524] The crime of the family member affects the *songbun* status of the entire family, whom authorities systematically transfer from their homes in the capital to detention facilities or remote provinces where the socio-economic conditions are harsher.[525] For example, one witness from Hyesan in Yanggang Province testified that her son was "dragged away" to an MSS detention facility based on his sister's defection in 2016.[526]

182. Witnesses, including witnesses who appeared at the hearing, also testified that they were forcibly transferred between detention facilities.[527]

4. Analysis of Findings

183. Extensive evidence, including Affidavits i33, i37, i39, and i42, Hearing testimony from witnesses i51 and i58, together with the expert testimony of Benedict Rogers and Timothy Peters and human rights reports, demonstrates that DPRK authorities forcibly transfer individuals to detention facilities, for no legitimate reason, on a large scale.[528]

184. The evidence presented in Part VI.K below establishes that the common elements of the crime against humanity of forcible transfer have been met.

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523 Hearing Expert Testimony of Benedict Rogers, at 3:42:41–4:04:26; Expert Affidavit of Benedict Rogers, ¶¶ 17–20.

524 UN COI Detailed Findings, ¶ 488.

525 UN COI Detailed Findings, ¶ 488; Affidavit i37, at 2 (explaining that defector and family were forcibly moved by *Bo-wi-bu* from their hometown to Baek-am County, a mining area with little food, when she was 11 years old (likely around 1983), after authorities accused her Korean Japanese father of "bad *songbun*" status for doing business and earning money); KINU 2020 North Korea White Paper, at 138 ("North Korean authorities have been using forced deportation as a policy to control political reactionaries, anti-government individuals, and their families. In particular, people with disreputable backgrounds (*songbun*) have been expelled from Pyongyang to remote provinces.").

526 KINU 2020 North Korea White Paper, at 90, 561.

527 *See, e.g.* Affidavit i56 (Mr. Gwangil Jung); Affidavit i3; Affidavit i36; Affidavit i56 (Ms. Park Ji Hyun); Affidavit i51; Affidavit i58.

528 *See* Affidavit of Timothy Peters, ¶ 10.

5. Conclusion

185. Based on the above-referenced evidence, this Inquiry finds reasonable grounds to conclude that the crime against humanity of forced transfer may have been, and may continue to be, committed in the DPRK detention centers.

E. Imprisonment

186. The Rome Statute classifies "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law" as a crime against humanity.[529]

1. Elements of Imprisonment

187. The elements of imprisonment are: (*i*) the "perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty;" (*ii*) the "gravity of the conduct was such that it was in violation of fundamental rules of international law;" (*iii*) the "perpetrator was aware of the factual circumstances that established the gravity of the conduct;" (*iv*) the "conduct was committed as part of a widespread or systematic attack directed against a civilian population;" and (*v*) the "perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[530] The *mens rea* requirements of intent and knowledge set forth in Article 30 of the Rome Statute apply to the crime of imprisonment.[531]

2. Prior Cases

188. It is established in the jurisprudence of international tribunals, including in *Kaing Guek Eav* and *Krnojelac*, that unlawful imprisonment involves the arbitrary deprivation of an individual's liberty without due process of law and where no legal basis can be invoked to justify the deprivation of liberty.[532] If national law is relied upon as justification, the relevant provisions must not violate international law.[533] In particular, the national law itself must not be arbitrary, and the enforcement of this law in a given case must not take place arbitrarily.[534]

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529 Rome Statute, art. 7(2)(e).

530 *See* ICC Elements of Crimes, art. 7(1)(e).

531 Rome Statute, art. 30.

532 ECCC *Kaing Guek Eav* Trial Judgment, ¶ 347–348; *The Prosecutor v. Simić et al*., IT-95-9-T, Trial Judgment, 17 October 2003, ¶ 64; *Prosecutor v. Kordić et al*., IT-95-14/2-T, Trial Judgment, 26 February 2001, ¶ 302; ICTY *Krnojelac* Trial Judgment, ¶¶ 113, 115.

533 ICTY *Krnojelac* Trial Judgment, ¶ 114.

534 *Id*., ¶ 114.

189. A justified deprivation of physical liberty may be considered arbitrary if there is a serious disregard of fundamental procedural rights of the detained under international law. For instance, Article 9 of the International Covenant on Civil and Political Rights ("**ICCPR**") guarantees the right to liberty and security of persons, including freedom from arbitrary arrest and unlawful detention.[535] It encompasses the right to be informed of the reasons for any arrest and any criminal charges, to be brought promptly before a judge, to take proceedings for release from unlawful or arbitrary detention, and to be compensated for arbitrary or unlawful arrest or detention.[536] Article 14 of the ICCPR guarantees the right to equality before courts and tribunals through the requirement of fair and public hearings by a competent, independent, and impartial tribunal, and the presumption of innocence.[537] It serves as a procedural means to safeguard the rule of law and thereby aims to ensure the proper administration of justice, regardless of the domestic laws of State parties. The full text of Articles 9, 12, 14, and 15 of the ICCPR can be found in Appendix 4.

3. The Evidence Presented

190. Counsel has presented extensive evidence demonstrating that DPRK officials detain individuals for illegitimate reasons, such as exercising basic human rights, with no due process, in facilities with abhorrent living conditions.

191. Extensive evidence, including the testimony of Mr. Ken Gause and Dr. Nicholas Eberstadt, demonstrates that North Korea is a "police state" in which those who present a threat to the system are imprisoned or deprived of their physical liberty, often by being transferred to detention centers, without due process.[538] It is for this reason that so many are imprisoned in the detention centers.

192. Consistent with the evidence set forth above in Section VI.D.3, a 2012 report by the Korean Bar Association found that only 18.1% of respondents saw an arrest warrant or other document justifying their detention at the time of their arrest, and the majority never received any information concerning the reason of their arrest.[539] As reflected in the UN OHCHR Report, a majority of detainees are victims of

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535 *See* ICCPR, art. 9.

536 *Id.*

537 *Id.*, art. 14.

538 *See* Affidavit of Nicholas Eberstadt, dated 9 December 2020, ¶¶ 14–15 ("[B]ased on my own research, the UN COI Report, as well as the relevant literature, North Korea is a police state. Those not conforming to regime directives are considered suspicious and a potential enemy of the state and often find themselves in detention or political prisons without any semblance of due process of law."); Hearing Testimony, Mr. Ken Gause, at 5:30:25–5:39:36.

539 *Id.*, ¶ 695 (citing KBA, 2012 White Paper on Human Rights in North Korea (2013) ("**KBA White Paper**"), at 202).

arbitrary detention, that is, they are detained for extended periods without trial or on the basis of a trial that failed to guarantee due process and fair trial guarantees.[540] These individuals are, in fact, detained for political reasons with no penal justification compatible with international law.[541]

193. These findings are confirmed by extensive evidence.[542] At the Hearing, Mr. Jung Gwangil testified that he was beaten and tortured to confess to being a spy for eight months in an underground detention facility. At the last stage of the interrogation process, he met with the prosecutor, who told him he was guilty and would be sent to a labor camp for a few years.[543] Neither Mr. Jung Gwangil, nor any of the other witnesses that testified at the hearing received a trial.

194. As confirmed by the UN COI Detailed Findings, even when detainees do receive a trial, it often "does not meet the basic requirements of a fair trial under international law."[544] A senior law officer at the Supreme Court of the DPRK confirmed as much when he publicly stated that "[m]ost defendants are those whose crime has already been revealed, before indictment, through investigation by the police. When a person comes to court, we do not think of them as innocent."[545] The judiciary itself is under the effective control of the KWP, SAC, and the Supreme Leader.[546] It is "highly involved in carrying out human rights violations" and functions to protect state power by "staunchly combat[ing] class enemies."[547] "[T]he law and the justice system serve to legitimize violations, there is a rule *by* law in the DPRK, but no rule *of* law, upheld by an independent and impartial

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540 UN OHCHR Report, Section 4.7.

541 UN OHCHR Report, Section 4.7.

542 *See, e.g.*, UN OHCHR Report, Section 4.7. Moreover, they were subject to punishment, including capital punishment, in an arbitrary manner, often without being informed of the charges against them. Reported periods of interrogation have varied between 15 days 60 days, 100 days, 4 months, and a year; see Affidavit of Benedict Rogers, ¶¶ 18(m) (citing Korea Future Report, at 50), 18(q) (citing Korea Future Report, at 39), 18(cc) (citing Korea Future Report, at 57), 18(u) (citing Korea Future Report, at 53), and 18(r) (citing Korea Future Report, at 41). Arbitrary variation has been reported to reflect the alleged crime against the Monolithic Ideological System, *see* Affidavit of Benedict Rogers, ¶ 18(u) (citing Korea Future Report, at 53); *see also* Affidavit i6, at 2–3 (stating that, to their knowledge, some people were sent directly to a *ro-dong-dan-ryeon-dae* if they were caught attempting to escape North Korea).

543 *See* Hearing Witness Testimony, Witness i56, Mr. Jung Gwang-il, at 1:48:15–2:28:05.

544 UN COI Detailed Findings, ¶¶ 694, 703, 1091, 1100; *see also id.*, ¶¶ 123–124 (explaining that the political function of the judiciary requiring courts to protect state power and the socialist system and "to staunchly combat class enemies.").

545 *Id.*, ¶¶ 793–795 (citing "Building Bridges not Walls: The Case for Constructive, Critical Engagement with North Korea," United Kingdom All Party Parliamentary Group for North Korea, October 2010, at 23).

546 UN COI Detailed Findings, ¶¶ 123–124, 1167–1168.

547 UN COI Detailed Findings, ¶¶ 123–124, 1167–1168.

judiciary. Even where relevant checks have been incorporated into statutes, these can be disregarded with impunity."[548]

195. Detention is often noncompliant with requirements under the DPRK's own laws.[549] While the Criminal Procedure Law of the DPRK contains some fair trial guarantees, the penal system in practice denies due process and fair trial guarantees.[550] Evidence shows that domestic laws providing for a right to defense counsel do not provide due process protections in practice. The UN Special Rapporteur on the situation of human rights in the DPRK reports that detainees did not have access to lawyers; rather, the payment of bribes to police and party officials is "common" in order to avoid arrest, dismiss the allegations, or secure leniency in charges, sentencing, or treatment in detention centers.[551] Even when individuals were provided with a trial and defense counsel, a number of witnesses testified before the UN Commission of Inquiry that their state-assigned defense counsel "said nothing or even joined the judge and the prosecutor in berating them for their conduct."[552] Additionally, the KBA report found that only 19% of respondents who underwent criminal trial had interacted with their defense counsel before their trial.[553]

196. Witness and expert evidence demonstrates that individuals are detained for the exercise of basic human rights, including the right to leave any country and freedom of religion. Articles 12 and 18 of the ICCPR guarantee freedom of religion and the right of a person to leave any country, including their own.[554] Yet,

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548 *Id.*, ¶ 123.

549 UN COI Detailed Findings, ¶ 695.

550 *See* HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 30 May 2019, A/HRC/40/66, ¶¶ 29, 34; KINU 2020, at 16 ("arbitrary or illegal arrests and detentions are still carried out in North Korea, and the Criminal Procedure Law does not have any provision related to informing the suspect of the reasons for his/her arrest and the facts of the charge. It also does not include a system to review the validity of a warrant by a judge."); UN COI Detailed Findings ¶¶ 695–696.

551 *See* HRC, Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, 30 May 2019, A/HRC/40/66, ¶ 27; HRC, Report of the UN High Commissioner for Human Rights, Promoting Accountability in the Democratic People's Republic of Korea, 11 January 2021, A/HRC/46/52, ¶ 65 ('Many interviewees paid bribes for better conditions, less demanding work or to be released, pointing to rampant corruption and the arbitrary nature of the forced labour system."); HRW, Worth Less Than an Animal, 2020 ("Four former government officials, including two former police officers, told Human Rights Watch that most crimes that could be considered minor would not even lead to an investigation if the offender paid a bribe or had enough connections.").

552 UN COI Detailed Findings, ¶ 796.

553 *Id.*, ¶ 798 (citing KBA White Paper, at 210).

554 ICCPR, art. 12 ("Everyone shall be free to leave any country, including his own"); *id.*, art. 18 ("Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in

Benedict Rogers described countless examples of individuals arrested and detained for practicing Christianity or even being associated with persons practicing religion.[555] Individuals are also often detained for months for suspicion of crossing or attempting to cross the border into China.[556] At the Hearing, Witness i58 testified to being detained for a total of seven months the first time the witness was arrested for attempting to cross the border into China. Witness i58 later attempted a second crossing where the witness was caught again, leading to a further period of detention of a month during which time the witness was relentlessly beaten, almost to death.[557] The right to leave any country takes on special importance in the context of a population in which persons are suffering from persecution for political or religious reasons, economic hardship, lack of food, systematic class stigmatization, and guilt by association.[558]

197. The evidence also demonstrates the severe conditions under which detention occurs. Witnesses testified to shocking abuse such as starvation, forced labor, executions, torture, rape, and abhorrent living conditions in the detention centers.[559] Moreover, children are regularly detained—one of the witnesses testified to being sentenced to one year in a *ro-dong-dan-ryeon-dae* in 2005 while still a minor at the time.[560] Another witness detained at the Chongjin *Jip-kyul-so* in 2003 described seeing children as young as seven years old detained there forced to do hard labor.[561] Further, a report found that a mother and child were incarcerated for 70 days,[562] alongside another child of three years.[563]

4. Analysis of Findings

198. The evidence—including Affidavits i23, i37, and i51, hearing witnesses i58 and i56 (Mr. Jung Gwang-il), together with the expert testimony of Felice Gaer, Timothy Peters, David Hawk, Nicholas Eberstadt, Benedict Rogers, and human

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community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.").

555 Hearing Expert Testimony of Benedict Rogers, at 3:42:41–4:04:26; Expert Affidavit of Benedict Rogers, ¶¶ 17–20.

556 *See, e.g.*, Affidavit i51, at 2.

557 Hearing Witness Testimony, Witness i58, at 6:03:00–6:27:49.

558 UN COI Detailed Findings, ¶¶ 391–392.

559 *See* Sections IV.A.3; IV.B.3; IV.C.3; IV.F.3: IV.G.3; IV.J.3.

560 *See* Affidavit i23, at 3.

561 *See* Affidavit i37, at 3 (describing that children held in Chongjin *jip-kyul-so* were forced to do hard labor, including cutting large trees on the mountain, and that these children were as young as seven, with most under 10 years old).

562 *See* Affidavit of Benedict Rogers, ¶ 18(r) (citing Korea Future Report, at 41).

563 *Id.*, ¶ 16(g) (citing Korea Future Report).

rights reports—demonstrates that DPRK authorities imprison persons and severely deprive persons of their liberty in the detention centers.[564]

199. The evidence presented in Part VI.K below establishes that the common elements of the crime against humanity of imprisonment or severe deprivation of physical liberty have been met.

5. Conclusion

200. Based on the evidence set forth above, this Inquiry finds reasonable grounds to conclude that the crime against humanity of imprisonment or severe deprivation of physical liberty may have been, and may continue to be, committed in the DPRK detention centers.

F. Torture

201. Under the Rome Statute, torture means "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; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions."[565] This definition is consistent with the Convention against Torture, which provides:

> For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.[566]

1. Elements of Torture

202. The elements of torture are: (*i*) "[t]he perpetrator inflicted severe physical or mental pain or suffering upon one or more person;" (*ii*) "[s]uch person or persons

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564 *See, e.g.*, Affidavit of Felice Gaer, ¶ 8; Affidavit of Timothy Peters, ¶ 10; Affidavit of David Hawk, ¶ 10.

565 Rome Statute, art. 7(2)(e).

566 Convention against Torture 1985, art. 1.

were in the custody or under the control of the perpetrator;" (*iii*) "[s]uch pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions;" (*iv*) "[t]he conduct was committed as part of a widespread or systematic attack directed against a civilian population;" and (*v*) "[t]he perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[567] The *mens rea* requirements of intent and knowledge set forth in Article 30 of the Rome Statute apply to the crime of torture.[568]

2. Prior Cases

203. In *Kunarac*, the ICTY Appeals Chamber defined torture as an act or an omission giving rise to "severe pain or suffering, whether physical or mental," but observed that there are "no more specific requirements which allow an exhaustive classification or enumeration of acts which may constitute torture [and] case-law has not determined the absolute degree of pain required for an act to amount to torture."[569] The ICTY Appeals Chamber further explained that the suffering does not need to be visible and, for instance, sexual violence necessarily gives rise to severe pain or suffering, even without a "medical certificate" of such pain.[570] In the *Akayesu* Trial Judgment, the ICTR Trial Chamber noted that the CAT "does not catalogue specific acts in its definition of torture, focusing rather on the conceptual framework of state sanctioned violence. This approach is more useful in international law."[571] As noted above, the forcible context in which crimes of humanity are committed "make[s] the question of consent redundant."[572]

3. The Evidence Presented

204. Counsel has presented evidence of shocking acts of torture in the detention facilities. This evidence includes survivor accounts of, *inter alia*, severe beatings;

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567 *See* ICC Elements of Crimes, art. 7(1)(f).

568 Rome Statute, art. 30.

569 ICTY *Kunarac et al* Appeal Judgment, at ¶ 149.

570 *Id.*, ¶ 150.

571 ICTR *Akayesu* Trial Judgment, at ¶597.

572 Wolfgang Schomburg and Ines Peterson, *Genuine Consent to Sexual Violence under International Criminal Law*, THE AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol 101:121, 128 ("Domestic criminal law covering ordinary crimes is meant to apply in peacetime situations and does not specifically address conduct amounting to genocide, crimes against humanity, or war crimes. The most distinctive feature of the latter crimes is their "international element," which presumes that they are committed in the context of a systematic or large-scale use of force. Consequently, the international element requires the establishment of circumstances that are inherently coercive and make the question of consent redundant."); *see also* ICTY *Kunarac et al* Appeal Judgment, at ¶ 120 (since "enslavement flows from claimed rights of ownership . . . lack of consent does not have to be proved by the Prosecutor as an element of the crime.").

electric shock; strangulation; starvation; sleep deprivation; prolonged periods of exposure to the elements; humiliation such as public nudity; being hung on a cross; burning; solitary confinement, including confinement for up to several weeks in small "punishment cells" in which detainees are unable to stand upright or lie down; being forced to kneel or sit immobilized for long periods (up to 12 hours a day); being bound to sticks; being hung by the wrists and legs; being forced to kneel with a wooden bar inserted between their knee hollows; water torture; having a liquid made with red pepper powder forcibly poured into their nostrils; being forced to stand up and sit down thousands of times to the point of collapse; being forced to witness the execution or torture of other detainees; being forced to ingest polluted food; and being forced to repeatedly squat and stand.[573]

(a) Infliction of Severe Physical or Mental Pain or Suffering

205. Numerous witnesses reported guards inflicting severe physical and mental pain on detainees in the detention facilities. For instance, at the Hearing, Mr. Jung Gwang-il described being beaten so severely at an underground MSS detention facility that all of his lower teeth were broken.[574] He was also subjected to waterboarding and electric shocks.[575] He also testified to having experienced beatings that lasted for six hours straight.[576] Another witness at the hearing described daily beating by guards, who would force detainees to place their arms through the cell bars and walk alongside the cells beating them with clubs.[577] The same witness testified that, in one MSS facility, guards beat the witness so severely for one month that the witness was close to death.[578]

206. The Hearing testimony is consistent with written testimonies containing countless accounts of beatings and other forms of torture.

- A witness detained at the Sae-byeol county *Bo-wi-bu gu-chi-so* (jail) between 2008 and 2010 reported that she was beaten by a guard with a wooden stick covered in nails, had her finger nails destroyed, and was forced to stay in stress positions for an extended period of time while being interrogated.[579]

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573 *See* U.S. State Dept. DPRK Human Rights Report (2020), at 4; *see* Affidavit of Benedict Rogers, at 18(y) (citing Korea Future Report, at 55).

574 Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15-2:28:05.

575 Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15-2:28:05.

576 Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15-2:28:05.

577 Hearing Witness Testimony of Witness i58, at 6:03:00-6:27:49.

578 Hearing Witness Testimony of Witness i58, at 6:03:00-6:27:49.

579 *See* Affidavit i3, at 2.

- Kim Keum Chul, who reported being beaten by six guards for up to three to four hours stated, "I lost consciousness after being beaten for an hour. I woke up and I was in the questioning room. I opened my eyes, but I was hit so much, I couldn't see anything. I thought it was incredible how much a person could be beaten."[580] Another witness suffered hearing loss due to severe beatings.[581]

- Another witness who was detained at the Hyesan *Bo-wi-bu ku-ryu-jang* in 2005 testified that a guard broke one of the witness's legs to prevent the witness from running away, and ruthlessly beat the witness with a club and an electric shock baton until the witness passed out.[582]

- A detainee at North Hamgyong Province Shorter-Term Labor Detention Facility (*Jip-kyul-so*) reported than an MSS officer instructed her "to crawl backwards out of their cell on their hands and knees. The MSS officer then beat the victim with an angled wooden club."[583]

207. Evidence reflects that detainees are often subject to brutal beatings during interrogation. One witness reported, "I was hit in the face and my skin ruptured and I bled a lot. MSS officers told me to wipe the blood, so I cleaned it. I wept a lot when they hit me again. Blood and discharge ruptured during my next pre-trial examination."[584] Another witness in North Hamgyong Province Shorter-Term Labor Detention Facility (*Jip-kyul-so*) was "physically kicked by MSS officers with boots and struck with a wooden stool and tree branches during interrogation. The victim was unable to walk following the assaults and was dragged along the floor by MSS officers into a cell."[585] Benedict Rogers described the violence inflicted during interrogations as being "treated like an animal."[586]

208. There are also numerous reports of detainees being tortured for using unauthorized mobile phones. In 2009, one witness who was caught using a mobile phone was accused of espionage and detained in Hyesan, Ryanggang Province, where guards "took turns beating him with a piece of wood," causing him to lose his lower teeth.[587] Another witness reported that a man who was arrested for using a Chinese

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580 *See* Affidavit of Benedict Rogers, at ¶ 20 (citing HRW, Worth Less than an Animal, 2020, at 50–51).

581 *Id.*, ¶ 18(z) (citing Korea Future Report, at 55).

582 *See* Affidavit i16, at 2–3.

583 *See* Affidavit of Benedict Rogers, at ¶ 18(a) (citing Korea Future Report, at 34).

584 Affidavit of Benedict Rogers, at ¶ 18(bb) (citing Korea Future Report, at 56).

585 *See* Affidavit of Benedict Rogers, at ¶ 18(o) (citing Korea Future Report, at 53).

586 *Id.*, ¶ 18(n) (citing Korea Future Report, at 53). Glaring at guards is punishable by beating; *see* Affidavit of Benedict Rogers, at ¶ 18(o) (citing Korea Future Report, at 53).

587 UN COI Detailed Findings, at ¶ 220.

mobile phone was "severely tortured" by the MSS, "resulting in head injuries and fractured bones."[588]

209. Evidence reflects that personnel in the detention facilities are even issued instruments of torture. Benedict Rogers testifies that an *oseungogakja* is an angled wooden club, a standard issue weapon for torture in the detention facilities.[589] One victim detained at North Hamgyong Province Shorter-Term Labor Detention Facility (*Jip-kyul-so*) was forced to crawl close to the bars of their cell on their knees. "The perpetrator put their arm through the cell bars and repeatedly struck the prisoner with an *oseungogakja* in their stomach."[590] Another detainee reported: "[t]hey hung my body by my limbs and beat me with an *oseungogakja.* This was called 'airplane torture'"[591] A former detainee at Hoeryong Shorter-Term Labor Detention Facility (*Jip-kyul-so*) reported that the facility had a steel cage and its bars were heated with an electric current. The victim was placed in the cage and could only pray before urinating on themselves and losing consciousness after 12 hours. After regaining consciousness, the respondent recognized that they had been physically assaulted while unconscious and had suffered severe injuries to their face and right leg.[592] If victims cry or refuse to speak to guards, they are subject to further assaults.[593]

210. Witnesses also report frequent instances of positional torture and use of stress positions.

- One detainee described undergoing "pigeon torture;" their handcuffed hands were tied behind their back to a lattice so they could neither stand nor sit down.[594] Eventually, they felt like their whole body was paralyzed.

- At the Hearing, Mr. Jung Gwang-il described being subject to pigeon torture for four to five days at a time, over a period of seven months, causing him to lose half his body weight.[595]

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588 UN COI Detailed Findings, at ¶ 220.

589 Affidavit of Benedict Rogers, at ¶ 18(z) (citing Korea Future Report, at 55).

590 *Id.*, ¶ 18(j) (citing Korea Future Report, at 46).

591 *Id.*, ¶ 18(aa) (citing Korea Future Report, at 56).

592 *See id.*, ¶ 18(dd) (citing Korea Future Report, at 57).

593 *Id.*, ¶ 18(bb) (citing Korea Future Report, at 56), and at ¶ 18(m) (citing Korea Future Report, at 50).

594 *See* Affidavit i56, at 3.

595 Hearing Witness Testimony of Witness i56, Mr. Jung Gwang-il, at 1:48:15-2:28:05.

- Witness i58 testified at the Hearing that upon returning to their cells after suffering forced labor from 5AM until at least 11PM, detainees would be forced to walk on their knees.[596]

- Several witnesses have told Human Rights Watch that they were "forced to sit still on the floor, kneeling or with their legs crossed, fists or hands on top of their laps, heads down, with their eyesight directed to the floor for 7–8 hours or, in some cases, 13–16 hours."[597]

- A defector detained at the Yanggang *ku-ryu-jang* in 2016 said that they were forced to maintain a fixed posture so painful, that they would rather be beaten instead.[598]

- One witness at a *ku-ryu-jang* near the Ryanggangin South Hwanghae province reported being forced to stay standing for five days with no sleep.[599]

- A defector who was detained in the Onsong *ku-ryu-jang* in February 2015 described that they routinely were forced to maintain a fixed posture from dawn to night; if they made even the slightest movement, they were forced to stand staring at the wall for three hours.[600]

211. Detainees are punished severely for failing to maintain fixed postures. One witness at the Yanggang *ku-ryu-jang*, who was forced to remain in a fixed posture, recounted being beaten with an oak club if they moved even slightly. [601] The witness reported sometimes fainting as a result of the beatings.[602] Other reported punishments for breaking the fixed posture include striking detainees with a thick

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596 Hearing Witness Testimony, Witness i58, at 6:03:00-6:27:49.

597 *See* HRW, Worth Less than an Animal, 2020; *see also* KINU White Paper 2020, at 114 (citing testimony by NKHR2019000069 2019-08-26 that they were forced to remain in a fixed posture, with even slight movements such as scratching not allowed); *id.* at 115 (describing testimony by NKHR2016000094 2016-06-14 that another witness held at the Yanggang *Jip-kyul-so* in 2014 was forced to remain in a fixed posture); COI Report, at ¶ 713 ("[I]nmates [held in detention and interrogation facilities run by the secret police] who are not undergoing interrogations or who are not at work, are forced to sit or kneel the entire day in a fixed posture in often severely overcrowded cells. They are not allowed to speak, move, or look around without permission. Failure to obey these rules is punished with beatings, food ration cuts or forced physical exercise. Punishment is often also imposed collectively on all cellmates.").

598 KINU White Paper 2020, at 118 (citing testimony by NKHR2018000058 2018-07-02).

599 HRW, Worth Less Than an Animal, 2020.

600 KINU 2020 North Korea White Paper, at 117 (citing testimony by NKHR2018000074 2018-07-30).

601 KINU 2020 North Korea White Paper, at 120 (citing testimony by NKHR2016000078 2016-05-31).

602 KINU 2020 North Korea White Paper, at 120 (citing testimony by NKHR2016000078 2016-05-31).

wooden stick, a leather belt, or other objects; kicking them; and making them sit down and stand up, do push-ups, or run in circles in a yard for extended periods of time.[603]

212. There is also ample witness evidence of detainees experiencing physical and mental pain or suffering as a result of the deplorable living conditions in the detention centers, which fall well below international human rights standards.[604] One witness attested to contemplating suicide because the conditions were so unbearable.[605] Evidence shows that detainees were held in solitary confinement in cells so small that they could not move and only survived by eating any bugs they could find.[606] Further, numerous witnesses have described grave overcrowding in detention centers.[607] Witness i37, who was detained at the Chongjin *jip-kyul-so* for 15 days in 2003, described that 300 people were detained in one room with no space for them to lie down.[608] Another witness detained in the Onsong *ku-ryu-jang* reported that there was no heating despite winter time temperatures so severe that some detainees suffered frost bite on their feet.[609] Witness i51, who was detained at the Samjiyeon *Bo-an-so* in 2014, testified that detainees were forced to defecate on themselves because they were not allowed to use a toilet.[610] Similarly, it was reported that in Hyesan MSS Interrogation/Detention Facility (Ku-ryu-jang), "some people defecated themselves. They were beaten for that. Even though the toilet was right behind us, we were not allowed to use it without permission."[611] Other

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603 HRW, Worth Less Than an Animal, 2020.

604 *Compare* ICCPR, art. 10 (requiring that all persons deprived of their liberty be treated with humanity and with respect for the inherent dignity of the human person), *with* Affidavit i8, at 3–5 (describing the facility's poor conditions, including overcrowded and unsanitary cells where detainees had "no privacy when using the toilet facilities"); *see also* Affidavit i19 at 2 (stating that "there were no sanitary napkins" at the Onsong *Bo-wi-bu ku-ryu-jang*, and Defectors "had to use strips of towels as a substitute"); Affidavit i51, at 3 (stating that during witness' two-and-a-half month detention in 2014 at the Samjiyeon *Bo-an-so*, male detainees were not allowed to use a toilet and were forced to defecate in their pants).

605 *See* Affidavit of Benedict Rogers, at ¶ 18(cc) (citing Korea Future Report, at 57).

606 *Id.*

607 *See* Affidavit of Benedict Rogers, at ¶ 18(g) (citing Korea Future Report, at 43-44).

608 Affidavit i37, at 5 (describing that in Chongjin *jip-kyul-so*, 300 people slept in one room, and guards would make them sit and stand 50–100 times if they tried to move. The guards would also club and stomp on the detainees.); *see also* Affidavit i22, at 3 (explaining that while at the Danchun City, Gumdeok District *An-jeon-bu*, affiant was placed in solitary confinement "in a tiny room, no bigger than a small storage room with no windows for around two months." The lack of windows and lighting meant that the affiant "had no idea if it was morning, afternoon, or nighttime," causing distress).

609 KINU 2020 North Korea White Paper, at 121 (citing testimony by NKHR2018000074 2018-07-30).

610 *See* Affidavit i51, at 2–3; *see* Affidavit of Benedict Rogers, at ¶ 18(h) (citing Korea Future Report, at 44).

611 *Id.*

witnesses detained at the Onsong *Bo-wi-bu ku-ryu-jang* in 2004 testified that they were forced to use a hole in the ground as a toilet, which was only accessible by crawling over the bodies of other detainees.[612]

213. Moreover, extensive evidence shows that detainees were denied medical treatment, often leading to death. In one incident, a detainee reported another detainee's religious practices at Onsong Shorter-Term Labor Detention Facility (*Jip-kyul-so*). As a result, "MSS officials entered the victim's cell and began to repeatedly kick the victim and strike them with an *oseungogakja*. A large pool of the victim's blood formed on the cell floor. The victim was denied medical care."[613] Another witness, who was beaten severely every day while detained in the Onsong *ku-ryu-jang* in 2017, reported that they were not provided proper treatment for wounds on their waist and back, leading to the contraction of tetanus.[614]

214. Witnesses also describe various acts of psychological torture. For example, witnesses testified that guards often forced detainees to mutilate or perform other acts on the corpses of detainees whose murder they were forced to bear witness to.[615] Lee Yong Kuk, a former detainee, stated that he witnessed the execution of a detainee that attempted to escape, who was tied behind a car and dragged to death. The detainee witnesses were then required to place their hands on the bloody body of the dead man.

(b) Custody or Control

215. It is clear that detainees are in the custody or control of the DPRK authorities that inflict the severe physical and mental pain described above. In all of these accounts, witnesses have reported the infliction of severe physical and mental suffering after arrest prior to being transferred to a detention center or while being detained in a detention center,[616] including during interrogations.[617]

(c) Pain or Suffering Did Not Arise Only From and Was Not Inherent in or Incidental to, Lawful Sanctions.

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612 Affidavit i19, at 2.

613 *See* Affidavit of Benedict Rogers, at ¶ 18(ii) (citing Korea Future Report, at 68).

614 KINU 2020 North Korea White Paper, at 121 (citing testimony by NKHR2019000075 2019–08–26).

615 HRNK, Who are the Victims?

616 *See, e.g.*, Affidavit i3, at 2; Affidavit i16, at 2–3 (describing how guards deliberately broke the witness's leg to prevent her from running away, beat her with clubs or an "electric shock ruler" until she lost consciousness, and imposed stress positions, namely that "guards forced us to sit on our knees.").

617 *See, e.g.*, Affidavit i3, at 2; Affidavit i16, at 2–3 (describing how guards deliberately broke the witness's leg to prevent her from running away, beat her with clubs or an "electric shock ruler" until she lost consciousness, and imposed stress positions, namely that "guards forced us to sit on our knees.").

216. The evidence presented by Counsel belies any suggestion that authorities are inflicting mental pain or suffering on detainees that is merely inherent in, or incidental to, lawful sanctions. As a matter of international law, pain and suffering arising from beatings with a wooden stick covered in nails, destruction of finger nails, extended imposition of stress positions during interrogation,[618] and being subjected to inhumane living conditions has no possible investigative or criminal justice justification.

4. Analysis of Findings

217. Witness affidavits i3, i8, i16, i19, i22, i23, i37, i45, and i51, hearing testimony from witnesses i56 (Mr. Jung Gwang-il) and i58, as well as the expert affidavit of Benedict Rogers and human rights reports, provide extensive evidence of torture in the detention centers. The evidence also shows that guards and inspectors tortured a large number of detainees using methods that are often unspeakable. The evidence demonstrates that torture is not only routine in the detention centers, but, also integral to a totalitarian system of control.[619]

218. The evidence presented in Part VI.K below establishes that the common elements of the crime against humanity of torture have been met.

5. Conclusion

219. Based on the evidence set forth above, this Inquiry finds reasonable grounds to believe that the crime against humanity of torture has been, and continues to be, committed in DPRK detention centers.

G. Sexual and Gender-Based Crimes

220. The Rome Statute sets forth a broad range of sexual and gender-based crimes, perhaps the broadest in the history of international law. It forbids "[r]ape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity."[620]

1. Rape

221. The elements of rape are: (*i*) "the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body;" (*ii*) "the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of

618 *See* Affidavit i3, at 2.

619 *See* Affidavit i23, at 3.

620 Rome Statute, art. 7(2)(g).

violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent;" (*iii*) "the conduct was committed as part of a widespread or systematic attack directed against a civilian population;" and (*iv*) "the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[621] The *mens rea* requirements of intent and knowledge set forth in Article 30 of the Rome Statute apply to the crime of rape.[622]

222. The victim's lack of consent is not a required element of the crime of rape.[623] The question of consent is redundant in the context of crimes against humanity, where the "circumstances are inherently coercive."[624] ICC jurisprudence reflects that any act of penetration amounts to rape when committed under coercive circumstances.[625] Physical force is not required to establish coercion. Coercive circumstances can be established by threats, intimidation, extortion, or other forms of duress which create fear or desperation.[626]

2. Sexual Violence

223. The elements of sexual violence are: (*i*) the "perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking

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621 ICC Elements of Crimes, art. 7(1)(g)-1.

622 Rome Statute, art. 30.

623 *See* ICC *Ntaganda* Judgment, ¶ 934 (stating "the Elements of Crimes do not refer to the victim's lack of consent, and therefore this need not be proven"); *see also* ICC *Katanga* Judgment ¶ 965 (stating, "the Elements of Crimes do not refer to the victim's lack of consent, and therefore this need not be proven").

624 Wolfgang Schomburg and Ines Peterson, *Genuine Consent to Sexual Violence under International Criminal Law*, THE AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol 101:121, at 128 ("Domestic criminal law covering ordinary crimes is meant to apply in peacetime situations and does not specifically address conduct amounting to genocide, crimes against humanity, or war crimes. The most distinctive feature of the latter crimes is their 'international element,' which presumes that they are committed in the context of a systematic or large-scale use of force. Consequently, the international element requires the establishment of circumstances that are inherently coercive and make the question of consent redundant."); *see also id.*, 123 ("rape should be viewed in the same way as other violations of international criminal law, such as torture and enslavement, as to which the prosecution is not required to prove nonconsent.") (citing to *Prosecutor v. Gacumbitsi*, Appellant's Brief, No. ICTR-2001-64 -A, ¶¶ 159, 182 (Sept. 28, 2004)).

625 ICC *Ntaganda* Judgment, ¶ 934 ("The Elements of Crimes clearly punish any act of penetration when committed under threat of force or coercion."); ICC *Katanga* Judgment, ¶ 965.

626 ICC *Ntaganda* Judgment, ¶ 935.

advantage of a coercive environment or such person's or persons' incapacity to give genuine consent;" (*ii*) such "conduct was of a gravity comparable to the other offences in article 7, paragraph 1 (g), of the Statute; (*iii*) "the perpetrator was aware of the factual circumstances that established the gravity of the conduct;" (*iv*) the "conduct was committed as part of a widespread or systematic attack directed against a civilian population;" (*v*) the "perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[627] The *mens rea* requirements of intent and knowledge set forth in Article 30 of the Rome Statute apply to the crime of sexual violence.[628]

3. Sexual Slavery

224. The elements of sexual slavery are: (*i*) "the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty;" (*ii*) "the perpetrator caused such person or persons to engage in one or more acts of a sexual nature;" (*iii*) "the conduct was committed as part of a widespread or systematic attack directed against a civilian population;" and (*iv*) "the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[629] The *mens rea* requirements of intent and knowledge set forth in Article 30 of the Rome Statute apply to the crime of sexual slavery.[630]

4. Prior Cases

(a) Rape

225. As the ICTY Trial Chamber in *Kunarac* recognized, in the context of rape, "factors such as use of force" "negate" the possibility of "true consent."[631]

(b) Sexual Violence

226. In *Prosecutor v. Kvocka et al*., the ICTY tribunal observed that "[s]exual violence would also include such crimes as sexual mutilation, forced marriage, and *forced abortion* as well as the gender related crimes explicitly listed in the ICC Statute as war crimes and crimes against humanity, namely 'rape, sexual slavery, enforced

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627 *See* ICC Elements of Crimes, art. 7(1)(g)-6.

628 Rome Statute, art. 30.

629 ICC Elements of Crimes, art. 7(1)(g)-1.

630 Rome Statute, art. 30.

631 ICTY *Kunarac et al.* Trial Judgment, ¶¶ 457–458.

prostitution, forced pregnancy, enforced sterilization" and other similar forms of violence.'"[632]

(c) Sexual Slavery

227. As confirmed in *Ntaganda*, there is no exhaustive list of situations or circumstances relevant to establishing the exercise of a power of ownership.[633] According to *Ntaganda*, "[i]n determining whether the perpetrator exercised such a power, the Chamber must take into account various factors, such as control of the victim's movement, the nature of the physical environment, psychological control, measures taken to prevent or deter escape, use of force or threats of use of force or other forms of physical or mental coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality, forced labor, and the victim's vulnerability."[634]

5. The Evidence Presented

228. Counsel has presented substantial evidence of rape, sexual slavery, and sexual violence in the detention centers.

(a) Rape

229. Counsel has presented sufficient evidence to establish each of the elements of the crime of rape in the detention centers.

230. *First*, the evidence demonstrates that authorities and guards in the detention centers subject detainees to bodily invasion resulting in penetration. At the hearing, Witness i3 gave a ghastly account of the rape the witness suffered by the general manager of the Sae-byeol-*gun Da-gi-so* while detained there.[635] Witnesses detained at a *jip-kyul-so* alleged that it was "very common for [guards and the leaders of the detention facility] to attack and rape/sexually abuse female detainees during the night hours"[636] and that a senior guard raped young women and girl detainees "virtually every day."[637] One witness reported that the witness was

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632 *Prosecutor v. Kvocka*, Case No. ICTY-98-30/1-T, Judgment, ¶ 182, 343 (emphasis added).

633 *The Prosector v. Bosco Ntaganda*, ICC-01/04-02/06, Trial Judgment, 8 July 2019 ("**ICC *Ntaganda* Judgment**"), ¶ 952 (citing ICTY *Kunarac et al.* Appeal Judgment, ¶¶ 119, 121; ICC *Katanga* Judgment, ¶ 976; SCSL *Sesay et. al* Trial Judgment, ¶ 160; *The Prosecutor v. Charles Ghankay Taylor,* SCSL-03-01-T, Trial Chamber II Judgment, 18 May 2012 ("**SCSL *Taylor* Trial Judgment**"), ¶ 420.

634 *Id*.

635 *See* Hearing Witness Testimony, Witness i3, at 2:28:06-3:21:15; Affidavit i3, at 3.

636 *See* Affidavit i37, at 4.

637 Affidavit i39, at 3; HRW, Worth Less Than an Animal, 2020 ("Some female detainees reported that they experienced or observed sexual violence, including rape in detention and interrogation facilities.").

sexually assaulted in a *jip-kyul-so* in July 2016 by a correctional officer who said that "this did not constitute a sexual assault because you are dead here and a dead person cannot say she is assaulted."[638]

231. Witnesses also described being subjected to penetrative vaginal cavity searches.[639] Witnesses described such "vagina searches" occurring at the Sinuiju *Bo-wi-bu ku-ryu-jang*, the Musan *ku-ryu-jang*, the North Hamgyong Province Shorter-Term Labor Detention Facility (*Jip-kyul-so*), and the Onsong *Bo-wi-bu ku-ryu-jang*.[640] Several women who were forcibly transferred to North Korea also testified that they were subjected to cavity searches at *ku-ryu-jang* and *jip-kyul-so* centers.[641] One witness testified that she was subjected to a vaginal search by an individual responsible for filing documents, who had no apparent security or medical function.[642] Another respondent recalled that the vagina and anus of a three-year old girl were examined.[643] Another witness testified that, during a vaginal search conducted by another woman, a male officer watched and stated, "you and your ugly body served the Chinese."[644]

232. Second, witnesses confirm that these invasions were committed by force or the threat of force, or were facilitated by a coercive environment.[645] At the Hearing, Witness i3 testified that deputy head of the facility the witness was detained in threatened to send the witness to a prison camp if the witness refused to comply with his orders; nevertheless, the witness attempted (but was unable) to fight off the assailant, becoming "bloodied" in the process.[646] Another former detainee reported being taken to a room by an officer and, when the detainee tried to defend against the sexual abuse, "[h]e threatened that he was [an officer] … so that I would be humiliated if I rejected him. He even told me he could help me to be released

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638 KINU 2020 North Korea White Paper, at 422 (citing testimony by NKHR2017000045 2017-07-03).

639 *See* Affidavit i21, at 3.

640 *See* OCI Detailed Findings, at 118 (citing London Public Hearing, 23 October 2013, session 1 (with additional details provided by the witness in a confidential interview)) ("[A witness] observed from his cell at the Musan MPS Interrogation Centre how 10 women who had been repatriated from China were lined up in a row before a female officer inserted her hand into their vaginas one after the other."); *id.* at 119 (citing witness TBG013 ("[A] witness also described a single glove being repeatedly used when a guard at the SSD Interrogation Centre in Onsong conducted vaginal searches on her and other women repatriated from China. The women were also subjected to nude squats."); Affidavit of Benedict Rogers, ¶ 18 (citing Korea Future Report, at 61-62).

641 *See* KINU 2020 North Korea White Paper, at 422.

642 *Id.*

643 *See* Affidavit of Benedict Rogers, ¶ 18(hh).

644 KINU 2020 North Korea White Paper, at 422–423 (citing testimony from NKHR2017000130 2017-12-18).

645 *See* ICC *Ntaganda* Judgment, ¶ 935.

646 Hearing Witness Testimony, Witness i3, at 2:28:06-3:21:15.

sooner if I did as he said."[647] Other evidence, such as the UN OHCHR Report, confirms that detainees who talked about or somehow reported experiencing sexual abuse were punished with beatings and deprivation of food.[648]

(b) Forced Abortions

233. Counsel has presented evidence demonstrating that forced abortions are common in DPRK detention facilities. Witnesses and experts testify to incidents of forced abortions in the detention centers, including the Sinuiju *Bo-wi-bu ku-ryu-jang* and the North Hamgyong Province Shorter-Term Labor Detention Facility.[649] According to an HRNK report, the fetuses of women who were less than eight months pregnant were aborted with a syringe of salt water injected into the uterus, while the infants of those women that were more than eight months pregnant were delivered then killed or abandoned.[650] In his expert affidavit, Benedict Rogers explains that investigators for the Korea Future Initiative documented 32 incidents of forced abortions.[651] One defector, Kim Myong Suk, was 20 years old and five months pregnant when she was forcibly transferred to North Korea. After she refused to abort her own pregnancy as ordered, a prison guard repeatedly kicked her in the stomach until she was unconscious and the fetus was aborted. The guard forced her sister to watch.[652] One witness described guards and prison agents severely beating multiple pregnant detainees in the Chongjin *Jip-kyul-so* in order to cause miscarriages.

234. According to the UN COI Report, witnesses testified that DPRK authorities conduct forced abortions because they disapprove of children with mixed ethnicities.[653] For instance, a woman testified that "if you get pregnant in China, the assumption is that you have been impregnated by a Chinese man, therefore women returning to the DPRK pregnant are subject to forced abortions."[654] Another witness who was a midwife described an instance where she was forced to give a pregnant woman a labor-inducing shot. After the baby was delivered, it was

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647 *See* UN OHCHR Report, at ¶ 60 (citing KOR/17/0003).

648 *See, e.g.*, UN OHCHR Report, ¶¶ 60–62 ("At the pre-trial detention facility, there was a [female] smuggler who was victim of sexual harassment by an MPS officer. She shared it with other detainees. One detainee who heard the story shared it with officers during her interrogation. As a result, all detainees were punished by being denied food.").

649 *See*, Affidavit i38, at 2; Affidavit of Benedict Rogers, at 18(gg) (citing Korea Future Report, at 61).

650 HRNK, Who are the Victims?

651 *See* Affidavit of Benedict Rogers, ¶ 18(gg) (citing Korea Future Report, at 61).

652 HRNK, Who are the Victims?

653 UN COI Detailed Findings, ¶ 426.

654 UN COI Detailed Findings, at ¶ 426 (citing to TAP0003).

suffocated with a wet towel in front of its mother because "no half-Han (Chinese) babies would be tolerated."[655]

(c) Sexual Slavery

235. The evidence before the panel demonstrates the incidence of sexual slavery in the detention centers.[656]

236. As set forth above, in Section VI.C.3, discussing the crime of enslavement, there is ample evidence that authorities in the DPRK's detention centers exercise powers attaching to the right of ownership over the detainees. Witness testimony confirms that guards exercising these powers force detainees to engage in sexual acts. At the Hearing, Witness i3 testified to being brutally beaten and raped by the general manager of a detention facility, who threatened to send the witness to a *kyo-hwa-so* if the witness resisted and also raped most of the young women detained in the facility.[657] Ms. Park Ji Hyun also recalled female detainees with "different daily routines" that were called by officers in the morning and forced to engage in sexual acts.[658] Witnesses subject to psychological control by the very fact of their detention, have described being subject to sexual abuse. More specifically, a witness detained at Chongjin *jip-kyul-so* and Musan *Bo-wi-bu ku-ryu-jang* testified that women and children held in those facilities were forced to perform sexual acts on high-level officials.[659]

6. Analysis of Findings

237. Evidence shows the prevalence of sexual violence, rape, and sexual slavery in the detention centers. This includes Affidavits i3, i21, i37, i39 and i55, Hearing testimony from witnesses i3 and i55, and the expert testimony of Felice Gaer, Timothy Peters, Benedict Rogers, and David Hawk, as well as human rights reports.[660]

238. The evidence presented in Part VI.K below establishes that the common elements of the crime against humanity of sexual violence have been met.

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655 HRNK, Who are the Victims?

656 While sexual slavery constitutes enslavement, it is treated separately for purposes of clarity and to analyze this crime in a manner conforming to the structure of ICC Elements of Crimes. *See* ICC Elements of Crimes, art. 7(1)(g).

657 Hearing Witness Testimony of Witness i3, at 2:28:06-3:21:15; Affidavit i3, at 3.

658 Hearing Witness Testimony of Witness i55, at 5:00:26-5:30:08.

659 *See* Affidavit i37, at 4.

660 *See* Affidavit of Felice Gaer, at ¶ 8; Affidavit of Timothy Peters, at ¶ 10; Affidavit of David Hawk, at ¶ 10; Affidavit of Benedict Rogers.

7. Conclusion

239. Based on the evidence set forth above, this Inquiry finds reasonable grounds to conclude that the crimes against humanity of rape, sexual slavery, and sexual violence in the form of forced abortions have been committed, and continue to be committed in the DPRK detention centers.

H. Persecution

240. Under the Rome Statute, persecution "means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."[661]

1. Elements of Persecution

241. The elements of persecution are: (*i*) "the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights;" (*ii*) "the perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such;" (*iii*) "such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law;" (*iv*) "the conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court;" (*v*) "the conduct was committed as part of a widespread or systematic attack directed against a civilian population;" (*vi*) "the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[662] The *mens rea* elements of persecution require the perpetrator to "know" that the individual identifies with a "group or collectivity" and intend to target the individual on that basis.[663]

2. Prior Cases

242. According to international jurisprudence, persecutory acts may include the other underlying offenses for crimes against humanity such as murder, extermination, enslavement, imprisonment and torture, "as well as other acts which rise to the same level of gravity or seriousness, including acts which are not necessarily crimes in and of themselves."[664] Acts need to be examined in their context and

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661 Rome Statute, art. 7(2)(g).

662 ICC Elements of Crimes, art. 7(1)(h).

663 *See* Rome Statute, art. 30.

664 *The Prosecutor v. Nuon Chea & Khieu Samphan*, 002/19-09-2007/ECCC/TC, Trial Judgment, 7 August 2014 ("**ECCC *Nuon & Khieu* Trial Judgment**"), ¶ 433; *See also* ECCC *Kaing Guek Eav* Trial

with consideration of their cumulative effect in determining whether this threshold is met.[665]

243. Although persecution may be identical to other crimes against humanity, "what distinguishes the crime of persecution is that it is committed on discriminatory grounds."[666] International jurisprudence has established that persecution can occur where discrimination has been "effected pursuant to political motivations or a political agenda against a group which itself may not hold any political views."[667]

244. The ICTY Appeals Chamber in *Krnojelac* held that forcible transfers, taken separately or cumulatively, can constitute a crime of persecution of equal gravity to other crimes against humanity listed in the ICTY Statute.[668] The Appeals Chamber concluded that displacements within a state, for reasons not permitted under international law, are crimes punishable under customary international law, and if committed with the requisite discriminatory intent, constitute crimes of persecution under the ICTY Statute.[669]

3. The Evidence Presented

245. Counsel has presented evidence showing that the DPRK authorities persecute individuals based on religion, ethnicity, and political beliefs. For instance, the evidence demonstrates that persecution against Christians in the DPRK detention centers is particularly egregious;[670] and those suspected of being Christians are often detained for investigation of their religious beliefs.[671] Also, Counsel has

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Judgment, ¶ 378; *The Prosecutor v. Radoslav Brđanin*, IT-99-36-A, Appeal Judgment, 3 April 2007, ¶ 296.

665 *See The Prosecutor v. Tihomir Blaškić*, IT-95-14-A, Appeal Judgment, 29 July 2004 ("**ICTY *Blaškić* Appeal Judgment**"), ¶ 135; ICTY *Krnojelac* Appeal Judgment, ¶¶ 199, 221.

666 ICTY, *The Prosecutor v. Kupreškić et al.*, IT-95-16-T, Trial Judgment, 14 January 2000 ("**ICTY *Kupreškić et al.* Trial Judgment**"), at ¶ 607.

667 ECCC *Nuon & Khieu* Trial Judgment, at ¶ 430. *See also The Prosecutor v. Miroslav Kvočka et al.*, IT-98-30/1-A, Appeal Judgment, 28 February 2005 ("**ICTY *Kvočka et al.* Appeal Judgment**"), ¶ 456; ICTY *Tadić* Trial Judgment, ¶ 714.

668 ICTY *Krnojelac* Appeal Judgment, ¶ 221.

669 *Id*. ¶¶ 221–222; ICTY *Blaškić* Appeal Judgment, ¶ 152.

670 *See* Affidavit of Benedict Rogers, ¶ 11; Hearing Expert Testimony of Benedict Rogers, at 3:45:25-3:45:40.

671 *See* Affidavit of Benedict Rogers, at 18(f) (citing Korea Future Report, at 44).

provided evidence demonstrating that individuals were persecuted for identifying with the Chinese group or collectivity,[672] or based on *songbun*.[673]

(a) Religious Persecution

246. Extensive evidence demonstrates that DPRK officials persecute individuals on religious grounds in the detention centers.

247. Counsel has presented extensive evidence that perpetrators severely deprived persons of fundamental rights—including the rights to life, liberty, and bodily security—based on their identification with a Christian group or collectivity, and have targeted the Christian group or collectivity as such.

248. North Korea is motivated to oppress religion, and in particular Christianity, because religion is considered incompatible with, and hostile to, the State-sponsored personality cult of the Kim regime.[674] Christianity is seen as a threat to the *Suryong*.[675] Due to "the sense that the one-person dictatorship can be undermined by religious faith,"[676] Christians are "regarded as tools of imperialist invasion,"[677] with "supposed connections" to the U.S.[678] As such, religious oppression has been a consistent feature of the DPRK regime since its establishment to the present regime.[679] "[T]here is almost complete denial of the right to freedom of thought, conscience and religion as well as the right to freedom of opinion, expression, information and association" in the DPRK.[680] Expert witness, Benedict Rogers, opined both in his affidavit and in his testimony at the Hearing that persecution against Christians in the DPRK is the worst in the world.[681] The UN Commission of Inquiry found that people found to be engaging in religious activities are

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672 *See, e.g., id.*; Affidavit i37, at [5]; Affidavit i8, at 3; UN OHCHR Report, ¶ 64.

673 Apartheid and *Songbun*, at xii.

674 UN COI Detailed Findings, ¶¶ 243, 254, 258; IBA Report 2017, ¶ 255.

675 *Id*.

676 KINU White Paper 2019, at 187 (quoting NKHR2015000034 2015-02-10). *See also* Affidavit of Benedict Rogers, ¶ 5. *See also* UN COI Detailed Findings, ¶¶ 243, 254, 258.

677 *Id.*, 189.

678 UN COI Detailed Findings, ¶ 242 (quoting Washington Public Hearing, 30 October 2014 (02:45:50)); *id.*, ¶¶ 244–246.

679 UN COI Detailed Findings, ¶ 245; Hearing Expert Testimony of Benedict Rogers, at 3:42:41-4:04:26.

680 COI Report, at ¶ 259.

681 *See* Affidavit of Benedict Rogers, ¶ 11; Hearing Expert Testimony of Benedict Rogers, at 3:45:25-3:45:40.

regularly detained, tortured, sent to prison camps, and even murdered on account of their adherence to their faith.[682]

249. The COI Detailed Findings state that "the messaging from the state to the people regarding Christianity clearly suggests that ordinary citizens in the DPRK are not permitted to practice Christianity. It has been described as a drug, a sin, and a tool of Western and capitalist invasion. Christians are portrayed as the product of USA capitalism and akin to vampires."[683] There are reports of "children being encouraged to tell their teachers if they suspect Christianity is being practiced in their home."[684]

250. One North Korean defector explained that "when it comes to religion, North Koreans just shudder because the punishment is very severe."[685] In fact, some maintain their faith with such secrecy that there are credible accounts of individuals not knowing for years that they and their spouse were both Christian.[686] One witness reported that the "only way to survive in North Korea . . . is to hide or deny one's religious belief [because] those who revealed their religious belief suffered terrible reprisals," including being tortured, killed, or incarcerated in prison camps.[687]

251. Although the DPRK Constitution formally provides for freedom of religion and the practice of Christianity is not explicitly criminalized, state authorities effectively consider it a political crime.[688] In practice, suspected religious observers are arrested and sent to detention facilities for investigation under what the North

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682 COI Report, ¶¶ 1087–1088.

683 IBA Report 2017, at 253 (quoting "2012 White Paper on Human Rights in North Korea," KBA, at 255, n. 3).

684 See Affidavit of Benedict Rogers, at 12 (citing Open Doors USA, World Watch List 2021).

685 *See id*., ¶ 9.

686 *Id.*, ¶ 12 (citing Open Doors USA, World Watch List, 2021).

687 Affidavit i4; Affidavit i36, ¶ 2 ("I asked [Young-nam, a fellow detainee's] relatives what he looked like before he was buried, and they told me that Young-nam looked decades older than he was, with hair that had turned white and his face had very little flesh. When they last saw him they said that he looked like he was more than 80 years old, due to the torture he had received in the *Bo-wi-bu* because he was a Christian."); *see also id.* ("I can attest that Christians in North Korea are treated very severely."). *See also* Affidavit i19, at 3 ("When I was returned to North Korea, I had to hide my commitment to Christianity, as the consequences would be terrible. I saw people who were Christians receive very bad treatment and one had to hide their Christianity or they would suffer a lot. I had to beg the Chinese authorities not to tell the North Korean border guards that I was a Christian as I would have been treated very badly. Being a Christian was not possible in North Korea and to survive, I hid my religious beliefs.").

688 UN COI Detailed Findings, ¶¶ 243, 254, 258.

Korean Criminal Code terms "anti-state and anti-people crimes."[689] Witnesses have testified that "being Christian is de facto illegal and treated as a crime."[690] Individuals are arrested for being Christian, and charged with other crimes such as political crimes when in reality "the true reason why [they] were imprisoned was [because] they were Christian."[691] Benedict Rogers testified that individuals are detained for suspicion of possession of a religious item, attending a place of worship, or even contact with a religious person.[692]

252. Witness i53 testified that, "[i]n North Korea, anyone accused of practicing religion is sent to the *Bo-wi-bu* interrogation/detention facility and treated as a political prisoner, which means after interrogation by the *Bo-wi-bu* . . . the person would be sent to a political prison."[693] Benedict Rogers testified that a group of families were detained in North Pyongan Provincial MSS pre-trial detention center. The group had formed an underground church comprising both adults and children, with ages ranging from 10–80 years. They were all sent to Chongjin *Kwan-li-so*.[694] This is consistent with the testimony of a former high-level official, who described a state policy of sending those who attempted to reach South Korea using Christian channels to political prison camps, while those using other channels might be sent to ordinary prisons.[695] In some cases, "simply reciting verses from the Bible or being exposed to Christianity outside of the country resulted in imprisonment in the political prison system—and more specifically, within the 'total control zones' of individual prisons."[696] A policy of guilt by association applies, meaning that the

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689 UN COI Detailed Findings, ¶ 1091. *See also* Hearing Expert Testimony of Benedict Rogers, at 3:46:18-3:46:30.

690 Affidavit i23, at 3 (stating that individuals were "charged with 'shooting at reservoirs'" but that "the true reason that they [were] imprisoned was [because] they were Christian"); *see also* Affidavit i53, at 4 ("North Koreans are punished because we are never allowed to practice any form of religion in North Korea."); IBA Report 2017, ¶ 254 ("Although the practice of Christianity is not explicitly criminalized, effectively the authorities consider it a political crime.").

691 Affidavit i23 at [3] (stating that individuals were "charged with 'shooting at reservoirs'" but that "the true reason that they [were] imprisoned was [because] they were Christian"); *see also* Affidavit i53, at 4 ("North Koreans are punished because we are never allowed to practice any form of religion in North Korea."); IBA Report 2017, ¶ 254 ("Although the practice of Christianity is not explicitly criminalized, effectively the authorities consider it a political crime.").

692 *See* Affidavit of Benedict Rogers, ¶ 17(b).

693 Affidavit i53, at 4. *See also* KINU White Paper 2020, at 148 (citing NKHR2016000102 2016-06-28).

694 *See* Affidavit of Benedict Rogers, ¶ 18(d) (citing Korea Future Report, at 42).

695 IBA Report 2017, ¶ 315.

696 IBA Report 2017, ¶ 326.

relatives of Christians are also often detained regardless of whether they share the Christian belief.[697]

253. Benedict Rogers testifies that "MSS officers were principally responsible for arrests of Christian adherents, while MPS officers typically arrested persons who adhered to Shamanism."[698] One witness testified that a suspected Christian was interrogated by an MSS Director at Sinpa County MSS *Ku-ryu-jang*. The Director asked "[h]ow many times did you go to church?" and told the detainees, you [n]eed to die."[699] The same victim underwent further interrogation at Ryanggang Provincial MSS *Ku-ryu-jang* for 15 consecutive days, where they were asked, "[h]ow many times did you go to church? Where is the church located? How many people attend the church?"[700] At one stage, and following the persistent denials of the victim, a male dressed as a pastor entered the interrogation room to elicit confessions while the victim, who had been forcibly sleep deprived, had their hands tied behind their back and was made to kneel. When the respondent refused to answer the questions of the interrogator and "pastor," they were beaten with an *oseungogakja* (a wooden club).[701]

254. Persons suspected of practicing Christianity make up a great proportion of detainees. One detainee estimated that between 50-60% of their fellow detainees at Onsong Shorter-Term Labor Detention Facility (*Jip-kyul-so*) had attended some form of Christian service in China.[702] Pre-trial detention periods are also longer for Christians than other groups.[703] One Christian practitioner was detained for over a year after someone reported to the authorities that they had smuggled pages from the Bible into the DPRK.[704] Suspected Christians are also interrogated for longer periods, usually under torture and subjected to more intense torture, including to force them to incriminate others during interrogation.[705]

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697 *Id.*, ¶ 10 (citing CSW Report: 'Total Denial: Violations of Freedom of Religion or Belief in North Korea – 2016', 2016, p.3).

698 *See* Affidavit of Benedict Rogers, at ¶ 17(i).

699 *Id.*

700 *Id.*, ¶ 18(m), (citing Korea Future Report, at 50).

701 *Id.*

702 *Id.*, ¶ 18(f) (citing Korea Future Report, at 44).

703 *Id.*, ¶ 18c (citing Korea Future Report, at 41).

704 See Affidavit of Benedict Rogers, ¶ 18(c).

705 IBA Report 2017, ¶ 254; *see also* Hearing Expert Testimony of Benedict Rogers, at 3:42:41-4:04:26; Hearing Expert Testimony of Roberta Cohen, at 4:38:36-5:00:25; UN COI Detailed Findings ¶ 254 (finding the MSS "makes concerted efforts to identify Christians," including systematically interrogating persons forcibly transferred to North Korea from China to identify practicing Christians among them and to identify other members of underground Christian churches).

255. Evidence presented by Counsel also shows that Christians in the detention centers are tortured and killed on account of their adherence to Christianity. Witnesses have reported that authorities subject Christian detainees to "harsher punishments" than others.[706] One witness interviewed by the National Human Rights Commission of Korea reported that "North Korean authorities render the heaviest punishment on [people detained for the crime of going to church], treating them like dogs … Christians received more torture and punishment for their beliefs. The authorities would strike them with a stick while asking, 'Does God give you food? Do you think God gives you food?'[707] In 2016, the Database Center for North Korean Human Rights reported alleged disappearances of persons who were found to be practicing religion in detention facilities.[708]

256. Benedict Rogers testifies to various forms of torture Christian detainees suffer. He recounts "documented incidents . . . includ[ing] being hung on a cross over a fire, crushed under a steamroller, herded off bridges, and trampled underfoot."[709] Based on the findings of investigators from the Korea Future Initiative, he testifies to the widespread incidence of forced abortions in detention centers inflicted against persons charged for their religious beliefs.[710] He also describes accounts of detainees "being forced to hang on steel bars while being beaten with an *oseungogakja*; being hung by their legs; having their body tightly bound with sticks; being forced to perform "squat jumps;" being forced to sit and stand hundreds of thousands of times each day; having liquid made with red pepper powder forcibly poured into their nostrils; being forced to kneel with a wooden bar inserted between their knee hollows; strangulation; being forced to witness the execution or torture of other detainees; starvation; being forced to ingest polluted food; being forced into solitary confinement; being deprived of sleep; and being forced to remain seated and still for over 12 hours a day."[711] He also explains that guards sometimes force other inmates to administer the beating of Christian detainees.[712] One victim at Musan County MSS Detention Facility (*Ku-ryu-jang*) was caught praying in their cell. Upon the order of an MSS correctional officer, fellow detainees physically assaulted the victim.[713]

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706 U.S. State Dept. DPRK Human Rights Report (2020), at 7.

707 Marked for Life, at 81 (quoting National Human Rights Commission of Korea, "Survey on North Korean Human Rights Conditions—December 2008" (2008), at 252).

708 U.S. State Dept. DPRK Human Rights Report (2020), at 7.

709 Affidavit of Benedict Rogers, at ¶ 10 (citing CSW Report: 'Total Denial: Violations of Freedom of Religion or Belief in North Korea – 2016', 2016, at 3).

710 *Id.*, ¶ 18(gg) (citing Korea Future Report, at 61).

711 *Id.*, ¶ 18(y) (citing Korea Future Report, at 55).

712 *Id.*, ¶ 18(i) (citing Korea Future Report, at 47).

713 *Id.*, ¶ 18(i) (citing Korea Future Report, at 47).

257. Benedict Rogers recounts the experience of one Christian detained at North Hamgyong Province Shorter-Term Labor Detention Facility who "was forced to crawl close to the bars of their cell on their knees. The perpetrator put their arm through the cell bars and repeatedly struck the prisoner with an *oseungogakja* in their stomach. The prisoner later cried and asserted, 'I am God's daughter. I am crying because I am worried that God will be in pain seeing his daughter being assaulted in prison.'"[714] Another witness who had practiced Christianity recalled waking each day at Pukchong County MSS pre-trial detention center and thinking, "I am still alive. I wish I had died already. How can I bear more torture?" One victim "who had experienced over 100 days of detention and torture told an investigator, "I prayed from morning until night for my children, and for God to punish Kim Jong-un."[715] Yet another victim committed suicide after 15 days of interrogation following arrest for receiving a Christian education in China.[716] Guards also subject Christians to other forms of ill-treatment including being forced by MSS officers to recite passages of the Bible for the amusement of officers.[717]

(b) Persecution Based on Ethnicity

258. Counsel has presented extensive evidence that DPRK officials persecute individuals in the detention centers based on their ethnicity.

259. Evidence demonstrates that perpetrators severely deprived women of fundamental rights because they were suspected of carrying babies fathered by Chinese men.[718] Specifically, the evidence demonstrates a policy of DPRK officials forcibly ending pregnancies that would result in half-Chinese babies.

260. Mistreatment of women impregnated by Chinese men is "driven by official ideology that emphasizes the importance of maintaining the purity of the Korean race at all costs" and protecting it from what is considered an "impure" baby.[719] The U.S. State Dept. DPRK Human Rights Report reports that "state security officials subjected women to forced abortions for political purposes, to . . . 'protect' ethnic purity."[720] Roberta Cohen explains that women impregnated by Chinese men are called "traitors" and often subjected to worst treatments in detention

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714 *Id.*, ¶ 18(j) (citing Korea Future Report, at 46).

715 *Id.*, ¶ 18(cc) (citing Korea Future Report, at 57).

716 *Id.*, ¶ 18(w) (citing Korea Future Report, at 53).

717 *Id.*, ¶ 18(v) (citing Korea Future Report, at 53).

718 *See, e.g.*, Affidavit i39, at 3; Affidavit i37, at 5; Affidavit i8, at 3; UN OHCHR Report, ¶ 64.

719 UN COI Detailed Findings, at ¶ 1105.

720 U.S. State Dept. DPRK Human Rights Report (2020), at 20.

centers.[721] Witness i39 reported that a woman was detained because she was suspected of carrying a Chinese baby, subjected to forced labor, and denied necessary health treatments.[722]

261. Witnesses have observed women pregnant from Chinese partners are subjected to forced abortions, including by being beaten and kicked. At the Hearing, witness i3 testified that a detainee who had become pregnant while in China was forced to undergo an abortion as the guards believed she was carrying a half-Chinese baby.[723] Witness i3 also testified in their affidavit that other pregnant women were subjected to reprisals because they were suspected of carrying a "Chinese seed."[724] One detainee was forced to work outside under difficult conditions, was not provided with any medical assistance when the baby was born and the baby ultimately died, as a result of lack of medical attention.[725] A witness detained in a MPS *jip-kyul-so* in 2015 reported that:

> [A] woman had become pregnant in China so the guards knew that her baby had Chinese blood. This was an issue as the local laws prevented any North Korean woman from giving birth to a mixed-race baby. The doctor in the MPS center told her to get an abortion despite the fact that she wanted to keep the baby. She was eventually forced to have an abortion and sent to a *kyohwaso* [prison for long-term detention] …[726]

(c) Political Persecution

262. Evidence demonstrates that DPRK officials persecute people on the basis of their *songbun* class in the detention centers, which is effectively a form of political persecution because *songbun* class is based on perceived loyalty to the DPRK regime.

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721 Hearing Expert Testimony of Roberta Cohen, at 4:38:36-5:00:25.

722 Affidavit i39, at 3.

723 Hearing Witness Testimony, Witness i3, at 2:28:06-3:21:15. *See* also UN OHCHR Report, ¶ 64; *see also* KINU 2017 North Korea White Paper, at 420–421 (detailing one witness's account of a forced abortion in October 2016 while being held at the Chongjin *jip-kyul-so*).

724 Affidavit i39, at 3.

725 *See id*.

726 UN OHCHR Report, at ¶ 64 (citing KOR/19/0001).

263. Discrimination based on *songbun* pervades North Korean society.[727] Individuals are often transferred to detention centers based on their *songbun* and persons of low *songbun* often suffer graver ill-treatment.

- Witness i37 explained that authorities starved children to death because they were identified with the "'wrong'" *songbun,* or their families did not support the government.[728] Witness i37 explained that almost all children in *Bo-wi-bu ku-ryu-jang* suffered from malnutrition and many children and adults there died of starvation, allegedly because they did not support the regime or belonged to the "'wrong'" social class.[729]

- Witness i36 and their family stated that they suffered severe discrimination based on the *songbun* system due to their father being considered a "political criminal."[730] Witness i36 testified that because of the father's "bad background (*songbun*)" the guards would severely beat him, step on him, subject him to "water torture," and attach wooden sticks to his hands and feet for up to twelve hours at a time.[731] Witness i36 said it felt like "South Africa during the *apartheid* era."[732]

- Witness i39 reported that their family was sent to the Onsong *Bo-wi-bu* after the death of his father—a South Korean prisoner of war from the Korean War—because they were "considered to be low class/low *songbun*."[733] The witness was detained in a small space with 60 other persons, beaten, and forced to do hard labor.[734]

264. This evidence is consistent with the conclusions of the UN Commission of Inquiry, finding the existence of political persecution in the form of "severe socio-economic deprivation because . . . of a low *songbun* social class" and the torture, arbitrary detention, enforced disappearance, and summary execution subjected to those

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727 Apartheid and *Songbun*, at xii.

728 Affidavit i37, at 2.

729 Affidavit i37, at 2.

730 *See* Affidavit i36, at 2.

731 Affidavit i36, at 2–3.

732 *Id*.

733 Affidavit i39, at 2.

734 Affidavit i39, at 2.

forcibly transferred to the DPRK.[735] Those who speak out about this kind of persecution are reportedly at significant risk of assassination by DPRK officials.[736]

4. Analysis of Findings

265. Counsel has presented witness and expert testimony, as well as human rights reports, providing reasonable grounds to conclude that authorities in detention centers persecute individuals based on religion, *songbun* status, and suspicion of being impregnated by a Chinese man. This includes Affidavits i3, i4, i8, i19, i23, i36, i37, i39, i53, and the expert affidavits of Thae Yong-ho, Felice Gaer, Rev. Timothy Peters, Benedict Rogers, Roberta Cohen and David Hawk demonstrate that DPRK authorities target religious observers and political dissenters for detention.[737]

266. The evidence presented in Part VI.K below establishes that the common elements of the crime against humanity of persecution in the forms of (*i*) religious persecution, (*ii*) political persecution, and (*iii*) persecution based on ethnicity have been met.

5. Conclusion

267. Based on the evidence set forth above, this Inquiry finds reasonable grounds to conclude that the crime against humanity of persecution has been committed, and continues to be committed in the DPRK detention centers.

I. Enforced Disappearance

268. Under the Rome Statute, enforced disappearance is defined as:

> [T]he arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.[738]

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735 UN COI Detailed Findings, at ¶ 446.

736 *See* Affidavit of Thae Yong-ho, ¶ 5.

737 Affidavit of Felice Gaer, ¶ 8; Affidavit of Timothy Peters, ¶ 10; Affidavit of Benedict Rogers, ¶ 11; Affidavit of David Hawk, ¶ 10.

738 *See* Rome Statute, art. 7(2)(i).

1. Elements of Enforced Disappearance

269. The elements of enforced disappearance are:

1. The perpetrator:

(a) Arrested, detained, or abducted one or more persons; or

(b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.

2. (a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or

(b) Such refusal was preceded or accompanied by that deprivation of freedom.

3. The perpetrator was aware that:

(a) Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or

(b) Such refusal was preceded or accompanied by that deprivation of freedom.

4. Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.

5. Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization.

6. The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.

7. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

8. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.[739]

270. The *mens rea* requirements of intent and knowledge set forth in Article 30 of the Rome Statute apply.[740] In the case of a perpetrator that maintains an existing detention, it is sufficient for the perpetrator to know that a refusal to acknowledge the deprivation of freedom has already occurred.[741]

2. Prior Cases

271. International authorities have recognized that the crime of enforced disappearance violates a number of human rights. The ICTY Trial Chamber in *Kupreskic* characterized enforced disappearance as a violation of several human rights and was prohibited under the UN Declaration for the Protection of All Persons from Enforced Disappearances.[742] The ICTY in *Kvocka* later cited the *Kupreskic* decision with approval.[743] In *Velasquez Rodrigues v. Honduras* the Inter-American Court of Human Rights held that enforced disappearances violate the right to liberty, the right to humane treatment, and the right to life in numerous cases.[744] Similarly, in *Sarma v. Sri Lanka,* the UN Human Rights Committee, citing the Rome Statute definition of enforced disappearance, stated "[a]ny act of such disappearance constitutes a violation of many of the rights enshrined in the [ICCPR], including the right to liberty and security of personal (article 9), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7), and the right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (article 10). It also violates or constitutes a grave threat to the right to life (article 6)."[745]

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739 *See* ICC Elements of Crimes, art. (7)(1)(i).

740 Rome Statute, art. 30.

741 *See* ICC Elements of Crimes, art. (7)(1)(i), nn. 25, 28.

742 *The Prosecutor v. Kupreskic et al.*, IT-95-16-T, Judgment, 14 January 2000, ¶ 566.

743 *The Prosecutor v. Kvocka*, I-98-30/1-T, Judgment, 2 November 2001, ¶¶ 206–209.

744 *See, e.g.*, *Velasquez Rodrigues v. Honduras*, Inter-American Court of Human Rights, Judgment, 29 July 1988 (finding Honduras responsible for the involuntary disappearance of an individual and declaring Honduras violated the right to personal liberty, right to humane treatment, and right to life under the American Convention on Human Rights); *Castillo-Paez v. Peru*, Inter-American Court of Human Rights, Judgment, 3 November 1997 (finding Peru violated, *inter alia*, the right to personal liberty, the right to humane treatment, and the right to life under the American Convention on Human Rights for the forced disappearance of an individual).

745 *Sarma v. Sri Lanka*, Human Rights Committee, Communication, 16 July 2003, UN Doc. CCPR/C/78/D/950/2000, ¶ 9.3; *see id*. ¶¶ 9.4–9.5 (finding violations of articles 7 and 9 of the ICCPR

272. In authorizing an investigation into the situation in Burundi, the ICC Pre-Trial Chamber stated that the term "arrest, detention or abduction" in Article 7(2)(i) of the Rome Statute "cover[s] comprehensively any form of deprivation of liberty of a person against his or her will," including "the scenario in which a victim, initially arrested and detained lawfully, may be 'disappeared' in custody."[746] It maintained that the refusal to acknowledge or give information "encompasses outright denial or the giving of false information about the fate or whereabouts of the victim."[747] As to the intent of the perpetrator to remove persons from the protection of the law, the Pre-Trial Chamber observed that "oftentimes the manner in which the person is deprived of his or her liberty allows the Chamber to infer the intention to remove the victim from the protection of law, such as the lack of a court order for detention; abduction in cars without license plates and with tinted windows; detention in secret, unofficial prisons; non-registration of names of the detainees in official records; or capture in desolate areas."[748] A "period of several months or years certainly fulfills" the requirement of being removed from the protection of the law for a prolonged period of time."[749]

3. The Evidence Presented

273. The evidence before this Inquiry demonstrates regular enforced disappearances in connection with the detention centers.

274. Under article 183 of the DPRK Code of Criminal Procedure, a suspect's family must be notified within 48 hours of the reasons for the arrest and the place of the suspect's detention.[750] In reality, however, this requirement is often not respected; according to a 2013 survey by the Korean Bar Association, respondents' families were only notified of the detention around 49.4% of the time.[751] Benedict Rogers testifies that DPRK officials often transfer persons to detention facilities and withhold information about their whereabouts from their loved ones indefinitely.[752]

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with respect to the disappearance of the author's son); *see also* Schabas, at 203 n. 456 (citing other Human Rights Committee cases).

746 *Situation in the Republic of Burundi*, ICC-01/17-X, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi, 25 October 2017, ¶ 118.

747 *Id.*

748 *Id.*, ¶ 120.

749 *Id.*

750 UN COI Detailed Findings, ¶ 697.

751 KBA, "2012 White Paper on Human Rights in North Korea" (2013), at 203.

752 *See* Affidavit of Benedict Rogers, ¶ 18(p) (citing Korea Future Report, at 36).

275. One witness testified that people frequently "disappear" if they are "accused of being a human trafficker" and that "[w]hen the Onsong *Bo-wi-bu* suddenly takes people, they do not let anybody know. They do not tell anyone where the person has gone, and so people just quietly disappear."[753] Another witness that was incarcerated in four different detention facilities and suffered mistreatment from DPRK officials for years, gave a detailed account of being disappeared.[754] The witness described being initially arrested in China, after which the witness passed through various Chinese and later DPRK detention and/or interrogation facilities before ending up at Kilju *ro-dong-dan-ryeon-dae*.[755] While at the Hoeryong *Bo-wi-bu ku-ryu-jang*, the family was not informed of the witness' detention.[756] These events took place during a prolonged period of three months.[757]

276. The UN Commission of Inquiry found that disappearance to detention centers is common.[758] Consistent with this finding, witnesses provide testimony establishing that enforced disappearances are a commonly used method of punishing suspected dissenters, such as Christians, defectors or persons with low *songbun* status. Although evidence demonstrates that suspected dissenters,[759] and Christians in particular,[760] make up a great number of detainees, because of the nature of the crime of enforced disappearance, the witnesses cannot confirm that the disappeared person was transferred to a detention facility. One witness who escaped North Korea in 1998 with her younger brother testified that North Korean soldiers arrested her younger brother in China and sent him to a military prison camp.[761] To date, the witness has been unable to obtain information about whether her brother is alive, and if so, where he is detained.[762] Additionally, this witness described watching DPRK authorities "put [a family of five] in a car" and take them "elsewhere" after their son returned home on military leave.[763] No one knew where the family had been taken and they were ultimately "forgotten."[764] Another witness

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753 Affidavit i53, at 6.

754 *See generally* Affidavit i6.

755 *See id*., 1.

756 *Id*., 3.

757 *Id.* ("When I was at the Hoeryong *Bo-wi-bu* facility my family was not informed of my being detained for three months.").

758 UN COI Detailed Findings, ¶ 446.

759 *See* Section VI.H.3.

760 *Id.*, ¶ 18(f) (estimating that 50-60% detainees at Onsong Shorter-Term Labor Detention Facility (*Jip-kyul-so*) had attended some form of Christian service in China).

761 Affidavit i56 (Ms. Park Ji Hyun), at 2.

762 *Id.*

763 *Id.*, ¶ 5.8.1.

764 *Id.*

testified that their parents, Christian missionaries, were arrested and "disappeared" by DPRK authorities at some point between 2001 and 2003.[765] The witness has been unable to obtain information about their whereabouts or whether they are even alive.[766]

4. Analysis of Findings

277. Witness and expert testimony, including from Affidavits i6, i8, i23, i25, and i53, i55 and experts Felice Gaer, Benedict Rogers, Timothy Peters, and David Hawk, as well as and human rights reports show widespread enforced disappearance in connection with North Korean detention centers.[767]

278. The evidence presented in Part VI.K below establishes that the common elements of the crime against humanity of enforced disappearance have been met.

5. Conclusion

279. Based on the evidence set forth above, this Inquiry finds reasonable grounds to conclude that the crime against humanity of enforced disappearance has been committed, and continues to be committed in the DPRK detention centers.

J. Other Inhumane Acts

280. The crime against humanity of "other inhumane acts" constitutes a limited catch- all provision within the Rome Statute, providing a means by which to ascribe liability where actions or omissions violate tenets of human dignity but do not fall neatly within one of the other crimes set forth in paragraph 1 of the Statute.[768] The "other inhumane acts" category of offenses ensures that the capacity to prosecute wrongdoers is not limited by the inability of drafters to

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765 Affidavit i23, at 2–4.

766 *Id.*; *See also* Affidavit i8, at 5 (testifying that the witness does not know the location of her father, his cousin, or his cousin's family of eight people who were all captured in China and sent to various detention centers, labor camps, and prison camps in the DPRK); Affidavit i25, at 2 (describing an incident where DPRK authorities from the MSS appeared at her home in the middle of the night, put her family into a truck and "forcibly sent" to North Hamgyong Province).

767 *See* Affidavit of Felice Gaer, ¶ 8; Affidavit of Timothy Peters, ¶ 10; Affidavit of David Hawk, ¶ 10; *see also* HRNK, Who are the Victims?

768 *Cf.,* ICTY *Kupreškić et al.* Trial Judgment, ¶¶ 562–566 (stating that "[t]he phrase 'other inhumane acts' was deliberately designed as a residual category, as it was felt to be undesirable for this category to be exhaustively enumerated. An exhaustive categorization would merely create opportunities for evasion of the letter of the prohibition.").

envisage and enumerate all treatment so inhumane as to be comparable in gravity to acts that are specifically prohibited under statutory and case law.[769]

1. Elements of Inhumane Acts

281. The elements of inhumane acts are: (*i*) "the perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act;" (*ii*) "such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute;" (*iii*) "the perpetrator was aware of the factual circumstances that established the character of the act;" (*iv*) "the conduct was committed as part of a widespread or systematic attack directed against a civilian population;" and (*v*) "the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."[770] The *mens rea* requirements of intent and knowledge set forth in Article 30 of the Rome Statute apply.[771]

2. Prior Cases

282. According to international jurisprudence, "other inhumane acts" functions as a residual category,[772] criminalizing conduct which meets the criteria of a crime against humanity but "does not fit within one of the other specified underlying

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769 Report of the Comm'n to the Gen. Assembly on the Work of Its Forty-Eighth Session, 1996 2 Y.B. of the Int'l L. Comm'n 50, U.N. Doc. A/CN.4/SER.A/ 1996/Add.1 (Part 2) [hereinafter "Report of the I.L.C"]. When tasked with drafting a statute defining criminal offenses under international law, the International Law Commission included the category of "other inhumane acts" in its draft Code of Crimes Against the Peace and Security of Mankind, which draft was referred by the U.N. General Assembly to the Committee on the Establishment of an International Criminal Court for consideration. See Report of the I.L.C. at 47–50; Int'l L. Comm'n Rep. on the Work of Its Forty-Eighth Session, G.A.Res. 51/160, paras. 1–3 (16 Dec. 1996). In commenting on its decision to include "other inhumane acts" in the draft Code, the International Law Commission noted that it "recognized that it was impossible to establish an exhaustive list of the inhumane acts which might constitute crimes against humanity. It should be noted that the notion of other inhumane acts is circumscribed by two requirements. First, this category of acts is intended to include only additional acts that are similar in gravity to those listed in the preceding subparagraphs. Secondly, the act must in fact cause injury to a human being in terms of physical or mental integrity, health or human dignity. . . . The Charter of the Nürnberg Tribunal (art. 6, subpara. (c)), Control Council Law No. 10 (art. II, subpara. (c)), the statute of the International Tribunal for the Former Yugoslavia (art. 5) and the statute of the International Tribunal for Rwanda (art. 3) as well as the Nurnberg Principles (Principle VI) also included 'other inhumane acts.'" Report of the I.L.C., at 50.

770 ICC Elements of Crimes, art. 7(1)(k).

771 Rome Statute, art. 30.

772 *See* ECCC *Nuon & Khieu* Trial Judgment, ¶ 437; ECCC *Kaing Guek Eav* Trial Judgment, ¶ 367; ICTY *Stakić* Appeal Judgment, ¶¶ 315–316 (referring to ICTY *Kupreškic et al.* Trial Judgment, ¶ 563.).

crimes."[773] Under international law, the severity of the act is assessed on a case-by-case basis with regard to the individual circumstances of the case, including the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim, as well as the impact of the act upon the victim.[774] There is no requirement that the act have long-term effects, "although this may be relevant to the determination of the seriousness of the act."[775]

3. The Evidence Presented

283. There is substantial evidence before the panel of DPRK officials subjecting detainees to gravely inhumane treatment.

284. *Unsanitary and inhumane conditions*. Nearly all witnesses reported deplorable living conditions, detrimental to the health of detainees in the detention centers. Witness testimony demonstrates it is not uncommon for 30 to 300 individuals to be detained together in a single small, unsanitary cell.[776] One witness testified that "there were no sanitary napkins" at the detention centers and defectors "had to use strips of towels as a substitute."[777] The U.N. Human Rights Report confirmed the unsanitary and inhumane conditions of detention centers, stating that "[w]omen interviewed . . . consistently recounted that they were held in pre-trial detention centres, holding centres and prisons in inhumane conditions, which included overcrowding and unsanitary conditions."[778] Several former detainees have described "being covered by different types of bugs, including lice, bedbugs, and fleas,", and living in cells without running water or toilets.[779] Others have

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773 ECCC *Kaing Guek Eav* Trial Judgment, ¶ 367. *See also The Prosecutor v. Dario Kordić & Mario Čerkez*, IT-95-14/2-A, Appeal Judgment, 17 December 2004 ("**ICTY *Kordić & Čerkez* Appeal Judgment**"), ¶ 117.

774 *See The Prosecutor v. Mitar Vasiljević*, IT-98-32-A, Appeal Judgment, 25 February 2004 ("**ICTY *Vasiljević* Appeal Judgment**"), ¶ 165; *The Prosecutor v. Alex Tamba Brima et al.*, SCSL-2004-16-A, Appeal Judgment, 22 February 2008, ¶ 184; *see also* ECCC *Kaing Guek Eav* Trial Judgment, ¶ 369.

775 ECCC *Kaing Guek Eav* Trial Judgment, ¶ 369. *See also* ICTY *Vasiljević* Appeal Judgment, ¶ 165.

776 Affidavit i38, ¶ 5.2 (stating that in the Hoeryong *Bo-an-so*, the witness was put in a single cell with 40 or more people and a single toilet within the cell); Affidavit i21, at 3 (stating that the witness was kept in an overcrowded cell with 40 people in a 13m^2 room); Affidavit i22, at 2 (describing being detained in the Hyesan *Bo-wi-bu ku-ryu-jang* for over two months in a cell with "about 40 other people"); Affidavit i19 at 2 (describing having witnessed others being put in cages with up to 30 other people with no space to lie down); Affidavit i25, at 3 (stating that detainees were placed in a small cell with 50 other detainees); Affidavit i37, at 3 (explaining that a defector was put into a confined space with 70 other women); *id.*, ¶ 5.8 (stating that in the Chongjin *jip-kyul-so*, 300 people slept in one room).

777 Affidavit i19 at 2.

778 UN OHCHR Report, at ¶ 32.

779 HRW, Worth Less Than an Animal, 2020 ("All the former detainees that spoke with Human Rights Watch said that the detention and interrogation facilities did not provide any basic needs like soap, clothes, or bedding and did not have adequate heating or cooling systems or running water, so detainees could not wash or shower properly. They explained that in the large detention and interrogation

described living in cells with no heat during wintertime, which caused frostbite and in some cases amputation of frozen limbs.[780]

285. *Food deprivation*. Consistent with the evidence set forth above in Section VI.A.3.b, expert evidence demonstrates a policy of food deprivation in detention facilities, with detainees being provided only "a dangerously small fraction of what adults require for minimum dietary energy" despite being forced to do hard labor.[781] For example, former detainees, in both written affidavits and in oral testimony at the Hearing, describe rations of mere kernels of corn or spoonsful of soup and only surviving their detention because they were among the fortunate that received food brought by their families.[782] The quality of food provided in detention facilities was regularly described by detainees as "rotten," "waste," causing "bad side effects," or "intended to sicken detainees."[783] Detainees were also denied water.[784] Expert witness Roberta Cohen testifies that this deprivation of food and water in detention facilities is widespread, deliberate, systematic, and often used as a form of punishment and control by detention authorities.[785]

286. Desperate to find anything edible, detainees are forced to consume rodents, bugs, tree bark, grass, and lizards despite knowing that they may be beaten or killed by

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facilities the toilet was an open space in the corner of the cell, sometimes with a low partition up to the chest or neck when squatting. Sometimes guards brought in a basin with water, and in some cases, there was a water tap for washing. Small detention and interrogation facilities had toilets in a separate building or room. Four former detainees and two former police officers described detainees being covered by different types of bugs, including lice, bedbugs, and fleas, and detainees still not being allowed to move.").

780 *Id.* (recounting one witness testimony as follows: "The conditions were terrible, especially as the detention and interrogation facility was up north in a remote area. The cells didn't have metal bars, they were wooden, and there was no heating … the floor was made of cement, and it was so cold, the wall was covered with white ice. That's why the detainees' foot froze, mine did too. The bowibu office had a heater but not in the detention and interrogation facility cell. There were six female detainees, but only two blankets. We slept all together, but we still froze. The man was at the end cell, it must have been colder there, so his frostbite was more severe.").

781 Affidavit of Roberta Cohen, at ¶ 15.

782 Hearing Witness Testimony of Witness i58, at 6:03:00-6:27:49; Affidavit of Roberta Cohen, ¶¶ 16, 21–23; *see also* KINU 2020 North Korea White Paper, at 121 ("Another testifier detained in a detention center (guryujang) Hyesan City MPS in Yanggang Province in May 2017 testified that a meal only included 50 corns that smelled like fungus.").

783 Affidavit of Roberta Cohen, ¶ 24; *see also* KINU 2020 North Korea White Paper, at 122 (describing "rotten corn with fungus and cabbage soup" and "corn rice that had a fungus smell").

784 KINU 2020 North Korea White Paper, at 122 ("Everyday, people had to carry water in a 30 liter bucket, and used the water to flush the toilet and to wash dishes. They consistently suffered from lack of water, and if they used too much water, they were criticized and punished.").

785 Affidavit of Roberta Cohen, ¶¶ 15, 28–30, 50.

prison guards for doing so.[786] Witnesses testify that detainees survived by hunting for rats and snakes.[787] At the Hearing, Witness i3 testified that detainees would eat rats in the restrooms in the facility and attempt to catch snakes and frogs to eat while doing forced labor at the facility. [788] In other facilities, detainees caught and ate mice.[789] Another witness testified to being forced to scavenge to find sources of foods, including rats, snakes and frogs.[790] One witness detained at the Chongjin *jip-kyul-so* in 2002 stated that "one of the other detainees was so driven by hunger that he ate his ears."[791]

4. Analysis of Findings

287. The evidence, including Affidavit i19, Hearing testimony from i58, the expert testimony of Felice Gaer, Rev. Timothy Peters, Roberta Cohen, and David Hawk, and human rights reports, demonstrates that detainees in the DPRK detention centers were subject to deplorable living conditions and food deprivation.[792]

288. The evidence presented in Part VI.K below establishes that the common elements of other inhumane acts have been met.

5. Conclusion

289. Based on the evidence set forth above, this Inquiry finds reasonable grounds to conclude that DPRK officials have committed inhumane acts in the detention centers.

K. Common Elements

290. Counsel has presented sufficient evidence to demonstrate that the authorities and government officials responsible for the DPRK's detention centers commit acts satisfying the common elements of crimes against humanity.

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786 HRNK, Basic Facts about the Prison Camps.

787 Affidavit i3, at 4; UN COI Detailed Findings, ¶ 805 (citing Seoul Public Hearing, 22 August 2013, morning (00:37:42)). In one labor detention center in South Sinuiji in 2000, food was so scarce that detainees ate grass and other plants to survive. *See* Affidavit of Roberta Cohen, ¶ 17 (citing Hawk, Hidden Gulag 2012, p.123).

788 Hearing Witness Testimony, Witness i3, at 2:28:06-3:21:15.

789 *See* Affidavit of Roberta Cohen, ¶ 18 (citing Hawk, Parallel Gulag, 2017, pp.12–13).

790 *See* Hearing Witness Testimony, Witness i3, at 2:28:06-3:21:15.

791 Affidavit i5, at 2.

792 *See* Affidavit of Roberta Cohen, ¶ 6; Affidavit of Felice Gaer, ¶ 8; Affidavit of Timothy Peters, ¶ 10; Affidavit of David Hawk, ¶ 10.

291. In order to qualify as a crime against humanity, the enumerated acts set forth in Article 7(1) of the Rome Statute must be performed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."[793] There is extensive evidence that the authorities and government officials responsible for the DPRK's detention centers:

- Knowingly commit acts listed in Article 7(1) of the Rome Statute against civilian detainees;
- Knowingly commit those acts as part of widespread or systematic attacks; and
- Knowingly commit those acts in order to further the wrongful State purpose that the detention centers fulfill.

1. DPRK Government Officials Are Knowingly Committing Prohibited Acts as Part of Attacks Against Civilians.

292. The evidence before the panel provides reasonable grounds to conclude that government authorities maintaining the detention centers are knowingly committing appalling crimes as part of ongoing attacks against civilians.

293. The acts in Article 7(1)(a)–(k) of the Rome Statute must occur as part of a broader attack against civilians.[794]

294. The evidence of the atrocities suffered by civilians—which make up most of the population in the detention centers—is overwhelming.[795] The evidence demonstrates that guards perform the attacks against detainees set forth above in Sections VI.A-J[796] with not only the knowledge but the authorization of

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793 Rome Statute, art. 7(1).

794 Rome Statute, art. 7(1).

795 *See* History of the United Nations War Crimes Commission, at 193; Affidavit of Felice Gaer ¶ 14 ("[T]hese crimes were committed against a civilian population[.]"); Affidavit of Timothy Peters, ¶ 12 ("[T]hese violations have been carried out on civilians[.]").

796 *See, e.g.*, Affidavit i3, at 4–5 (explaining how guards would shoot inmates with complete impunity for trying to find food or running away); Affidavit i22, at 3 (describing having witnessed "quite a few people die through the death penalty" and stating that detainees were shot multiple times by *An-jeon-bu* agents); Affidavit i23 at 3 (explaining witness "heard that several people in the detention centers had been executed for trying to escape, without any due process or proceedings under law."); Affidavit i3, at 2 (describing beatings with a wooden stick covered in nails; "destruction" of fingernails; use of stress positions which, if the detainee failed to adhere to, would lead to beating with the use of iron hooks); Affidavit i16, at 2–3 (describing how one witness's legs were deliberately broken to prevent her from running away, that guards would beat her with clubs or an "electric shock ruler" until she lost consciousness, and the use of stress positions, namely that "guards forced us to sit on our knees"); Affidavit i39, at 1 (stating that a senior guard raped young women and girl detainees "nearly every day."). For the requisite *mens rea* for rape, *see* ICC *Bemba* Decision on the Charges of the Prosecutor, ¶ 163 ("[T]he perpetrator must have committed the act of rape with intent and knowledge within the

government authorities.[797] As described above, the detention system is supervised by high-level authorities in the DPRK's military and security apparatus. Organs of the DPRK such as the MPS and the MSS are responsible for overseeing pre-trial detention centers, holding centers, and short-term labor camps. One former senior DPRK official and expert witness stated, "grave crimes committed by guards and other personnel against detainees are treated as necessary and appropriate to protect the regime."[798] Because perpetrators commit these crimes pursuant to official government policy, the notion that they do not know their acts are part of a broader attack on civilians is inconceivable.

2. DPRK Government Officials Have Knowledge of Widespread or Systematic Attacks Against Civilians.

295. The Inquiry finds reasonable grounds to conclude that government officials are knowingly committing crimes in detention centers as part of attacks that are widespread or systematic.

296. This requirement is disjunctive: showing that an attack is *either* widespread *or* systematic is sufficient. Assessing whether an attack is widespread or systematic is fact-specific and relative in that it depends upon the civilian population being attacked.[799]

297. Generally, the term "widespread" refers to the quantitative aspect of the conduct in question, implying a large-scale attack perpetrated against a number of victims.[800] In *Akayesu*, the ICTR defined "widespread" as "massive, frequent, large scale

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meaning of article 30 of the [Rome] Statute."); ICC *Katanga* Judgment, ¶ 970 (holding that the perpetrator must also be aware that the invasion was committed by force, threat of force, coercion, or by taking advantage of a coercive environment, or that "the invasion was committed against a person incapable of giving genuine consent") (quoting Rome Statute, art. 30(3)).

797 Affidavit of Timothy Peters, ¶ 13; *see also supra* Section IV.B.

798 *See* Affidavit of Thae Yong-ho, ¶ 28.

799 ICTY *Kunarac et al*. Appeal Judgment, ¶ 95; Triffterer and Ambos, at 168–170; *The Prosecutor v. Laurent Semanza*, ICTR-97-20-T, Trial Judgment, 15 May 2003, ¶ 329; *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR-95-1-T, Trial Judgment, 21 May 1999 ("**ICTR *Kayishema* Trial Judgment**"), ¶¶ 123–124 ("The attack must contain one of the alternative conditions of being widespread or systematic."). *See* COI Report, ¶ 77 ("Persons detained in political and other prison camps, those who try to flee the State, Christians and others considered to introduce subversive influences are the primary targets of a systemic and widespread attack against all populations that are considered to pose a threat to the political system and leadership of the Democratic People's Republic of Korea.").

800 ICTY *Kunarac et al.* Appeal Judgment, ¶ 94; *The Prosecutor v. Jovica Stanišić and Franko Simatović*, IT-03-69-T, Trial Judgment, 30 May 2013, ¶ 963; ICTY *The Prosecutor v Radovan Karadžić*, IT-95-5/18-T, Trial Judgment, 24 March 2016, ¶ 477.

action, carried out collectively with considerable seriousness and directed against a multiplicity of victims."[801]

298. In this case, witness evidence confirms that DPRK officials have perpetrated violent conduct against a large number of civilians in connection with the detention centers. The majority of witnesses described being subjected to deliberate starvation, forced labor, and beatings, and testified that they were forced to live in squalid conditions during their detention. Witnesses also confirmed that almost all children held in detention suffered from malnutrition,[802] and that a large number of people died from illness, starvation, and ill treatment.[803] Experts corroborate these accounts:

- The expert affidavit of David Hawk confirms that documented crimes occur in detention centers in many parts of the DPRK against "many multitudes of people."[804] He further testifies that, particularly in the Onsong *Bo-wi-bu ku-ryu-jang* and the Hoeryong *Bo-wi-bu ku-ryu-jang*, crimes were "committed over and over again against a range of victims."[805]

- Similarly, the affidavit of Felice Gaer finds that the crimes occur "in various locations over a large geographical area and affecting a significant number of victims."[806]

- In his affidavit, Rev. Timothy Peters provides still further support, stating that "these abuses and crimes have involved multitudes of people, including within detention centers throughout the country. Moreover, these violations have been carried out on civilians … in detention facilities throughout North Korea with great frequency."[807]

299. In addition, extensive evidence demonstrates that the attacks in the DPRK's detention centers are systematic. For an attack to be systematic, the evidence must show "the organised nature of the acts of violence and the improbability of their

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801 ICTR *Akayesu* Trial Judgment, ¶ 580; *The Prosecutor v. Athanase Seromba*, ICTR-2001-66-T, Trial Judgment, 13 December 2006, ¶ 356; ICC *Ruto* Decision on the Confirmation of Charges, ¶¶ 176–177.

802 Affidavit i37, at 2–3.

803 Affidavit i25, at 4 (stating that "death was rampant in all facilities because of willful starvation to killings"); Affidavit i37, at 2–3 (stating that in Chongjin *jip-kyul-so*, at least one person died every day from malnutrition, many children died from malnutrition and starvation, and the witness saw at least 15 children die during detention); Affidavit i42, at 4; Affidavit i26, at 2 (testifying that death from starvation and overwork was a widespread and daily occurrence).

804 Affidavit of David Hawk, ¶ 11.

805 *Id.*, ¶ 13, (stating that crimes were "committed over and over again against a range of victims.").

806 Affidavit of Felice Gaer, ¶ 12.

807 Affidavit of Timothy Peters, ¶ 12.

random occurrence."[808] Tribunals have viewed the highly organized nature of an attack as strong evidence that it is systematic.[809] In *Prosecutor v. Blaškić*, the ICTY determined the level of organization required by looking at factors such as: (*i*) a plan or objective; (*ii*) a large-scale or continuous commission of linked crimes; (*iii*) significant resources; and (*iv*) the implication of high-level authorities.[810] Another relevant factor is whether the violence follows a pattern.[811] Tribunals have treated all of these factors as relevant to the inquiry but not as a rigid set of criteria.[812]

300. As described above in Section IV.B, the detention facilities are a government system in which authorities deliberately inflict grievous harm and suffering as part of the ordinary course of government business. The detention system and the crimes occurring therein are conducted to deter and punish political dissent. Witnesses confirmed that crimes in detention centers occurred systematically: "guards unconditionally killed babies if they are born to women in detention,"[813] guards would engage in "constant beatings" of the detainees,[814] and female detainees were subjected to assaults and rape as well as "constant sexual insults and taunts."[815]

301. Here, the knowledge requirement is satisfied because all the perpetrators in the hierarchy from guards to the Head of State knew that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack. In examining this requirement, international tribunals have found that the accused must have

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808 ICTR *Nahimana* Appeal Judgment, ¶ 920; ICC PTC *Al Bashir* Decision on the Prosecution's Application for a Warrant of Arrest, ¶ 81; SCSL *Taylor* Trial Judgment, ¶ 511.

809 The "improbability of random occurrence" is also inherent in the word "attack"; otherwise, random but widespread crimes would amount to a crime against humanity. Further, the satisfaction of the improbability of a random occurrence is consequent on evidence showing a high level of organization.

810 *The Prosecutor v. Goran Jelisić*, IT-95-10-T, Trial Judgment, 14 December 1999, ¶ 53; ICTY *Blaškić* Trial Judgment, ¶ 203. The trend in recent cases toward the definition supplied suggests that these are evidentiary criteria, each of which may show the highly organized nature of the violence. These conditions, however, are not necessary.

811 *See* ICTR *Akayesu* Trial Judgment, ¶ 580; ICTY *Tadić* Trial Judgment, ¶ 648.

812 *See, e.g.*, ICTY *Blaškić* Trial Judgment, ¶ 207.

813 Affidavit i53, at 5; *see also* Affidavit i25, at 4.

814 Affidavit i19 at 3 ("There were constant beatings of the detainees for minor offenses or for no reason at all. These were very harsh and sustained beatings. I and other detainees were hit directly in the face, often and repeatedly. There was one woman who was beaten by the guards brutally. I heard her screaming from the pain that was being inflicted by the guards."); *see also* Affidavit i22, at 3 (stating that while the witness was held at the Danchun *ro-dong-dan-ryeon-dae*, he or she was "beaten and hit by… guards repeatedly, causing great pain and distress").

815 *See, e.g.*, Affidavit i25, at 4; Affidavit i37, at 4; Affidavit i39, at 3; *see also* Affidavit i3, at 3 (stating that the general manager of the security department at Sae-byeol County Kim Hyun-cheol raped "most of the women in the facility").

been aware "of the broader context in which his actions occur."[816] This will be satisfied by awareness, willful blindness, or knowingly taking the risk that one's act may be part of an attack.[817] The ICC Elements of Crimes also support a broad approach to this *mens rea* requirement; it is not required that "the perpetrator had knowledge of all the characteristics of the attack or the precise details of the plan or policy of the State or organization."[818]

302. Expert evidence confirms the existence of official knowledge of widespread or systematic attacks. For example, Rev. Timothy Peters and David Hawk both assert that "these crimes have been ordered or directed by very senior political and military leaders of North Korea, at the highest political levels."[819] As Thae Yong-ho explains in his affidavit, "it is simply impossible for well-documented patterns of practice in detention centers (widespread torture, rape, food deprivation, murder, infanticide etc.) to be anything other than officially sanctioned behavior."[820] He further states, "[t]hat these crimes are known to have been committed systematically over the course of many decades and during the rule of successive Supreme Leaders renders it absolutely impossible that they were not an intentional, integral part of official state policy."[821] Felice Gaer adds that the fact that these crimes have been carried out with "complete impunity for many years strongly suggests that senior North Korean officials with the capacity to exercise control over the direct perpetrators of these crimes are aware of these crimes and have taken no action to curb their commission, nor made any effort to take disciplinary action for these violations."[822] At the Hearing, Mr. Ken Gause testified that, to his knowledge, there had never been an investigation by DPRK officials of what takes place in detention centers.[823]

303. For the same reasons, the subjective requirements are satisfied at all levels of the DPRK command structure. The MSS and MPS both report to the SAC, "while daily reporting and management of the Minister of State Security is conducted through the KWP Administration."[824] Kim Jong-un is Chairman of the SAC and

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816 ICTY *Tadić* Appeal Judgment, ¶ 239; *Augustin Ndindiliyimana et al. v. The Prosecutor*, ICTR-00-56-Appeals Judgment, 11 February 2014 ("**ICTR *Ndindiliyimana et al.* Appeal Judgment**"), ¶ 260.

817 ICTY *Tadić* Trial Judgment, ¶ 657; ICTY *Kunarac et al.* Appeal Judgment, ¶ 102, *The Prosecutor v. Tihomir Blaškić,* IT-95-14-T, Trial Judgment, 3 March 2000 ("**ICTY *Blaškić* Trial Judgment**"), ¶ 251; ICTY *Knrojelac* Trial Judgment, ¶ 59; ICTR *Ndindiliyimana et al.* Appeal Judgment, ¶ 250.

818 ICC Elements of Crimes, Crimes Against Humanity, Introduction, at 5, ¶ 2.

819 Affidavit of Timothy Peters, ¶ 13; Affidavit of David Hawk, ¶ 12.

820 Affidavit of Thae Yong-ho, ¶ 9.

821 *Id.*, ¶ 30.

822 Affidavit of Felice Gaer, ¶ 14.

823 Hearing Testimony, Mr. Ken Gause, at 5:30:25–5:39:36.

824 IBA Report 2017, ¶ 401.

First Secretary of the KWP. The hierarchical and organized nature of the regime thus convincingly indicates that senior leadership, including the Head of State, have regular access to information and reports regarding conditions within the detention facilities.

304. The UN Commission of Inquiry found in 2014 that:

> [T]he inner workings of the state and relevant chains of command are deliberately and systematically obfuscated, especially in those areas where the state engages in the most egregious human rights violations. Orders to commit human rights violations are often only transmitted orally. Where they are put in writing, relevant documents are only available to selected officials and protected by special safeguards to preclude their divulgence to outsiders. These institutionalised precautionary measures further indicate knowledge and approval of human rights violations at the central level.[825]

3. DPRK Government Officials Are Knowingly Committing Prohibited Acts in the Detention Centers in Furtherance of a State or Organizational Policy.

305. The evidence establishes reasonable grounds to conclude that DPRK government officials knowingly maintain the detention centers in furtherance of a State or organizational policy.[826]

306. While not all international criminal tribunals have required this element,[827] the Rome Statue requires that "State or organization actively promote or encourage such an attack against a civilian population."[828] Although it is doubtful that this more restrictive standard is a requirement of international law, it is satisfied here.

307. State or organizational policy may in some circumstances "be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack," though "the existence of such a policy cannot be inferred solely from the

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825 COI Report, ¶ 1180 (stating, at footnote 1647, that "[f]ormer DPRK officials told the Commission that documents considered sensitive were handled by special documents safekeeping departments and officials could only gain access to numbered copies that they had to hand back. Other officials indicated that written information revealing human rights violations and other sensitive conduct was systematically destroyed").

826 *See* COI Report, ¶ 77.

827 Schabas, at 157–158.

828 ICC Elements of Crimes, Crimes Against Humanity, Introduction, at 5, ¶ 3.

absence of governmental or organizational action."[829] The ICTY expressly included toleration as a possible method for implementation of a policy in *Prosecutor v. Kupreškić*.[830] Moreover, "there is no requirement that this policy must be adopted formally as the policy of a state,"[831] and the policy or plan need not "necessarily be declared expressly or even stated clearly and precisely."[832]

308. As described by Dr. Nicholas Eberstadt, the North Korean system cannot exist without the constant use of terror and violence against its population to maintain absolute obedience, and the detention centers are an integral part of that North Korean apparatus of control.[833] The situation of detainees mirrors the situation of the general populace because the detention system is but one part in a framework of large-scale oppression.

309. The detention facilities, political prison camps, and state-mandated practices of *songbun*-based socioeconomic discrimination operate together to suppress and punish, revealing an organized and overarching state policy of violence against any individual who might oppose the DPRK regime. As explained in the UN COI Report,

> [p]ersons detained in political and other prison camps … are the primary targets of a systematic and widespread attack against all populations that are considered to pose a threat to the political system and leadership of the Democratic People's Republic of Korea. This attack is embedded in the larger patterns of politically motivated human rights violations experienced by the general population, including the discriminatory system of classification of persons based on *songbun*.[834]

310. The detention camps and political prison camps work symbiotically to maintain a larger pattern of abuse. As stated by Justice Michael Kirby, the Chair of the UN Commission of Inquiry,

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829 *Id.* at 5, ¶ 3 n.6.

830 ICTY *Kupreškić et al.* Trial Judgment, ¶ 552 ("The need for crimes against humanity to have been at least tolerated by a State, Government or entity is also stressed in national and international case-law."); *see also id.* ¶ 555 ("[S]ome sort explicit or implicit approval or endorsement by State or governmental authorities is required.").

831 ICTR, *Akayesu* Judgment, ¶ 580.

832 ICTY, *Blaškić* Trial Judgment, ¶ 204.

833 Hearing Testimony of Expert Nicholas Eberstadt, at 1:01:21–1:14:00.

834 COI Report, ¶ 77.

> [t]hose [political prison] camps still remain with the public execution system as a warning to the people of North Korea: do not cross the line, you do not have a right to change your government; you do not have a right to change your society; you have a *songbun*; you are classified as a person who may be an enemy of the state and if you are then caught, you will be put into a detention camp. And this is a crime against humanity.[835]

311. As the COI Detailed Findings confirmed, the detention system, and the crimes that occur therein, are part of a state policy to attack "populations considered to pose a threat to the political system and leadership of the DPRK."[836] Counsel presented expert evidence in support of this conclusion. For example, Felice Gaer explains that crimes are:

> committed against a civilian population according to policies directed by senior officials at the highest levels of the North Korean regime aimed at eliminating conduct that is perceived as subverting the regime's authority[.][837]

Likewise, in the Rev. Timothy Peters' view, the crimes in question "have been ordered or directed by very senior political and military leaders of North Korea, at the highest political levels."[838]

312. The testimony of detainees is consistent with evidence that the detention program is part of a government policy of punishing civilians that are suspected of disloyalty to the Kim regime. An expert witness has testified that showing sympathy to detainees runs contrary to state policy.[839] One of the witnesses stated that in the Hoeryong *Bo-wi-bu ku-ryu-jang* interrogation center, where they were detained for a month in winter 2012, detainees were often killed as they were seen as "political prisoners."[840] According to witness i21, detainees were treated as "betrayers of the Kim family."[841]

313. The evidence of food deprivation in virtually all detention facilities, in particular, demonstrates that grave mistreatment in connection with the detention centers is

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835 Discussion with Justice Kirby, at 1:13:08–1:13:49.

836 UN COI Detailed Findings, ¶ 1109; *see also id.* ¶¶ 1084–1085, 1103, 1105, 1110–1114.

837 Affidavit of Felice Gaer, ¶ 14.

838 Affidavit of Timothy Peters, ¶ 13.

839 *See* Affidavit of Thae Yong-ho, ¶ 27

840 Affidavit i6, at 2.

841 Affidavit i21, at 3.

official State policy. Counsel has demonstrated that the State consistently fails to provide even subsistence levels of food to detainees, resulting in malnutrition, sickness, and countless deaths.[842] The diet provided at different facilities over a period of two decades consisted of a dangerously small fraction of what adults require for minimum dietary energy.[843] Even during periods when food was available, the authorities also distributed substandard amounts to persons in detention centers, especially to those being held on political grounds.[844] One witness has testified "I have . . . witnessed many people in the detention centers [Musan, Chongjin, Hyesan, Onsong, Pyeongsong] die of starvation even though the state has food that could be distributed."[845]

314. The detention system uses food as a weapon of punishment and control. Witnesses believed that guards and DPRK authorities were responsible for *willfully* starving people in detention as a punishment for not supporting the regime and/or belonging to the "wrong" social class.[846] Some detainees reported "having to drink dirty, contaminated water as collective punishment."[847] Others reported "not being allowed to receive the dinner meal" as a form of punishment at Chongjin Mobile Labor Brigade.[848] At a police interrogation/detention center in 2014, one detainee stated, "I was starved on a few occasions . . . the MSS wanted to punish and pressure me, and therefore they did not allow me to get the meals [brought by family members]."[849] During interrogation, especially involving for suspicion of

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842 *See* Affidavit of Roberta Cohen, ¶ 46. The NKDB compiled more than 500 cases of violations of the right to food in short-term detention facilities and found them to be "prevalent" in such facilities throughout the country; *see* Affidavit of Roberta Cohen, ¶ 41 (citing NKDB White Paper 2017, p.353). The UN OHCHR Report also described a "consistent pattern" of violations, including "grossly inadequate" food for women detainees in short-term as well as long-term facilities, ¶37.

843 Affidavit of Roberta Cohen, ¶ 15 (citing Appendix, Human Rights Watch, A Matter of Survival, 4 May 2006, p.35; and UN estimates in COI report, ¶¶539, 804, n. 1200. For those who had to do hard labor – up to 10 or more hours a day – food was essential but not often provided. "Even when we were forced to do very hard labor," the guards "barely provided food" (at Hoeryong *Ro-dong-dan-ryeon-dae*). The combination of inadequate food with forced labor added to the likelihood that detainees would fall ill. "I was hungry all the time," said a former detainee at the Hyesani *Bo-wi-bu* in 2012-13. "[W]e received only very limited food . . . [while] we were made to do hard labor, including working on cleaning the railroads", *see* Affidavit of Roberta Cohen, ¶ 22.

844 Affidavit of Roberta Cohen, ¶ 15. She further quotes a detainee as stating that "[a]fter a month or two of imprisonment" at a Hamhung *Ro-dong-dan-ryeon-dae*, where detainees were given starvation rations, "a lot of inmates died", Affidavit of Roberta Cohen, ¶ 38 (citing COI report, ¶ 822).

845 Affidavit of Roberta Cohen, ¶ 15.

846 Affidavit i37, at 2; *See* Affidavit of Roberta Cohen, ¶ 15.

847 *See* Affidavit of Roberta Cohen, ¶ 26 (citing 2004, Hawk, Hidden Gulag 2012, at 135).

848 *See* Affidavit of Roberta Cohen, ¶ 26 (citing HRNK 2020).

849 *Id.*, ¶ 26 (citing UN OHCHR Report, Annex 2, VII).

political crimes, "starvation" was "deliberately imposed on suspects to increase the pressure on them to confess and to incriminate other persons."[850]

315. Food was also reportedly withheld from certain types of detainees as punishment—pregnant women, for example, especially those impregnated by Chinese "husbands," were reportedly denied food and water in Nongpo (Chongjin) labor detention facility.[851] Pregnant women suspected of carrying fetuses fathered by Chinese men were reportedly treated even more severely than other detainees because they were considered "traitors of the State."[852] In 2010, women detainees forcibly transferred to North Korea from China were told by prison guards that they were "traitors who deserved to die," so they received little food and an absence of medical treatment while at South Hamgyong *Ku-ryu-jang*.[853]

316. These regular patterns of deliberate starvation and forced labor in DPRK detention facilities led the COI to conclude that it was "likely" such acts were based on "orders originating at the central level."[854] DPRK authorities are aware of the denial of food in long-term prisons as evidenced by findings that "starvation levels are regularly measured in prisons."[855] The same is true for short-term facilities. A former administrator of a short-term mobile labor brigade reported that administrators were expected to count the number of deaths caused by starvation.[856]

317. The conclusion that gravely mistreating detainees is promoted and encouraged is supported by the fact that the existence of these abuses is well known, but deliberately ignored by their superiors. According to one witness, weekly inspections at the police station were merely a formality, as inspectors turned a blind eye to obvious signs of torture.[857] Other witnesses confirmed that guards were not held accountable for the beatings they inflicted on detainees.[858]

318. Official complicity is also evident from the concerted steps to conceal the crimes committed in the detention centers from the DPRK population and the international community. For example, the DPRK repeatedly rejected requests for the UN

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850 *Id.*, (citing COI report Summary, ¶ 58).

851 *See* Affidavit of Roberta Cohen, ¶ 27 (citing Hawk, Hidden Gulag 2012, p.138). The UN OHCHR Report stated, "the deprivation of food was at times so severe that detainees reportedly starved to death" *see* Affidavit of Roberta Cohen, ¶ 38 (citing UN OHCHR Report 2020, ¶ 40).

852 Affidavit i37, at 4 ¶ 5.7.

853 *See* Affidavit of Roberta Cohen, ¶ 29 (citing NKDB White Paper 2017, at 356-7).

854 *Id.*, ¶ 42 (citing COI report, ¶ 1084).

855 *Id.*, ¶ 42 (citing COI report, ¶ 1084).

856 *Id.*

857 Affidavit i51, dated 24 July 2020, ¶ 3.

858 Affidavit i3, at 2–5; Affidavit i26, at 3; Affidavit i53, at 2–3.

Commission of Inquiry to have access to the country, including its detention centers, and to information on the human rights situation.[859] Witnesses have confirmed the practice of burning bodies and using mass graves to dispose of the bodies of deceased detainees.[860] The COI Detailed Findings confirmed that this was to prevent family members from discovering the fate of their incarcerated relatives and to conceal the regime's violations from the population and the international community.[861]

VII. Categories of Responsibility and Liability

A. Liability of Perpetrators

319. There are reasonable grounds to conclude the Head of State and government officials within the OGD, the SAC, the MPS, and the MSS may be subject to prosecution for crimes against humanity. The DPRK government claims total control over the lives of its citizens and operates an "all-encompassing indoctrination machine" to manufacture absolute obedience to the Supreme Leader.[862] The operation of detention centers is an essential component of the program of control and internal repression that maintains the totalitarian regime.[863] As the UN COI Report described:

> The police and security forces of the Democratic People's Republic of Korea systematically employ violence and punishments that amount to gross human rights violations in order to create a climate of fear that pre-empts any challenge to the current system of government and to the ideology underpinning it. The institutions and officials involved are not held accountable. Impunity reigns.[864]

320. Authority and decision-making in that regime are dominated by the Supreme Leader and a small group of people that lead the SAC and the central organs of the KWP, particularly the OGD. These individuals also occupy key positions in the military and security apparatus.[865]

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859 *See* COI Report, ¶¶ 9-10; *see also* UN COI Detailed Findings, ¶ 1086.

860 Affidavit i25, at 3 (witnessing daily deaths and bodies being thrown into a hole while detained in a mobile labor brigade).

861 UN COI Detailed Findings, ¶ 1086.

862 COI Report, ¶¶ 26–27.

863 *See id.* ¶¶ 25, 62, 80; UN COI Detailed Findings, ¶ 1132.

864 COI Report, ¶ 56.

865 *See* North Korean Leadership Chart (June 2022); COI Report, ¶ 1183.

321. The crimes against humanity committed in DPRK detention centers are matters of State policy and established practice, and include the routine use of starvation, other forms of torture, arbitrary detentions, and executions.[866] The highly centralized system of the DPRK, the high degree of centralized coordination between different parts of the security apparatus, and the widespread or systematic nature of the crimes against humanity committed against detainees evidence a common plan, control, knowledge, and intent at all levels of the command structure.[867]

322. Moreover, the widespread human rights violations and crimes against humanity in DPRK detention centers are committed with impunity.[868] Not only have authorities failed to establish proper and effective mechanisms to prevent or punish such crimes, they have also used the legal system to entrench and perpetuate their occurrence.

1. Head of State

323. There are reasonable grounds to conclude that the Head of State may be criminally responsible for crimes against humanity committed in the DPRK detention centers as an indirect perpetrator, as well as under the doctrine of superior responsibility.

324. As Head of State and Supreme Leader, Kim Jong-un possesses absolute authority and control over all state organs, including the security apparatus that is central to maintaining his regime.[869] Senior DPRK officials have corroborated the fundamental importance of detention centers as an intergenerational political apparatus for the Kim Dynasty.[870] Both the MPS and MSS formally report to the SAC and, thereby, Chairman Kim Jong-un.[871] The Supreme Leader also has the constitutional power to issue orders that supersede and abrogate laws or decisions of any other state organs,[872] and the power to appoint and replace officials, including the heads of the MSS and MPS.[873]

325. Former DPRK officials have testified that a number of operations involving gross human rights violations amounting to crimes against humanity were directly

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866 *See supra* Sections IV.B, VI; *see also* Affidavit of Felice Gaer, ¶¶ 8, 14; COI Report, ¶¶ 42, 58, 63, 64, 77, 1109, 1179.

867 *See supra* Section IV.A; COI Report, ¶ 57.

868 COI Report, ¶ 56.

869 North Korean Leadership Chart (June 2022); COI Report, ¶ 24.

870 *See* Affidavit of Thae Yong-ho, ¶ 18.

871 North Korean Leadership Chart (June 2022); Affidavit of Thae Yong-ho, ¶ 23.

872 COI Report, ¶ 1191.

873 *Id.* ¶ 1192.

ordered by the Supreme Leader.[874] Expert testimony from Thae Yong-ho states that "approval is provided at every level in the chain of command, culminating with Supreme Leader Kim Jong-Un."[875] At the Hearing, Nicholas Eberstadt also provided expert evidence that the daily operations of the detention centers reflect the intentions and directives of the leadership of the North Korean government, which is organized into what is perhaps the most perfect approximation of totalitarian control possible with absolute authority residing in the Supreme Leader.[876]

326. Consistent with this evidence, the UN Commission of Inquiry recommended referral to the International Criminal Court "to render accountable all those, including possibly [the Supreme Leader], who may be responsible for . . . crimes against humanity."[877] Similarly, the IBA War Crimes Committee's 2017 inquiry into political prisons found that "sufficient evidence exists to conclude that Kim Jong-un is responsible for the crimes against humanity of murder, extermination, enslavement, forcible transfer, imprisonment, torture, sexual violence, persecution, enforce disappearance and other inhumane acts."[878] These findings support the inference that the Head of State may also bear responsibility for crimes committed in DPRK detention centers. The impunity with which the crimes against humanity have been committed also indicates that the crimes were based on decisions and policies approved at the highest levels.[879]

327. There are two bases upon which it may be possible to establish liability.

328. *First*, the Rome Statute establishes the liability of an individual that commits a crime through another as an indirect perpetrator. Whether by his own control or jointly with the heads of the MPS and MSS, the Supreme Leader exercises complete authority and control over the members of the security apparatus in the highly centralized and hierarchical DPRK regime. There are reasonable grounds to conclude that the Supreme Leader contributed to the realization of the systematic violence against North Korean citizens in detention by the MPS and MSS to create a climate of fear and maintain total control over the population.[880] One witness has stated that the Supreme leader has personally ordered that all unofficial ideologies

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874 *Id.*

875 *See* Affidavit of Thae Yong-ho, ¶ 9.

876 Hearing Expert Testimony of Nicholas Eberstadt, at 1:01:21–1:14:00.

877 COI Report, Letter to His Excellency Mr. Kim Jong-un, Supreme Leader, DPRK, dated 20 January 2014, at 3.

878 IBA Report 2017, ¶ 421.

879 COI Report, ¶ 1199.

880 *See* South Korean Ministry of Unification, MPS.

"be rooted out," a message disseminated by the People's Units and through mobile lectures.[881]

329. *Second*, the Supreme Leader may be subject to prosecution under the doctrine of superior responsibility for the failure to prevent or punish the widespread crimes that his subordinates were committing in the detention centers. The Supreme Leader has total control over the MPS and MSS, including the power to issue orders that will be complied with and the power to remove or discipline subordinates. There are reasonable grounds to conclude that the Supreme Leader knew or consciously disregarded information about these crimes given the widespread or systematic nature of the crimes across the DPRK detention system and his complete authority and control of the DPRK security apparatus. In light of the continued widespread commission of crimes and the reports of impunity with which these crimes have been committed, there are reasonable grounds to conclude that the Supreme Leader failed to take reasonable measures to prevent, repress, and punish the commission of such crimes.

2. Organization and Guidance Department ("OGD") Officials

330. The OGD, which reports directly to the Supreme Leader, is the control tower of the DPRK regime and is responsible for implementing the Supreme Leader's directives.[882] Under the DPRK Constitution, the DPRK "shall conduct all activities under the leadership of the [KWP]."[883] As the main body responsible for overseeing KWP activities, the OGD serves as the "center mass for control of the entire party-state."[884]

331. The OGD has authority over all law enforcement agencies and institutions responsible for counter-regime investigations through its 7th Section (formerly the KWP Administration Department), which provides political oversight of the MSS, the MPS, and the judicial system.[885] The officials of the OGD 7th Section report to the chief of the OGD headquarters, First Vice-Director Kim Kyong-ok, who in turn

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881 *See* Affidavit of Benedict Rogers, ¶ 19(a) (citing Korea Future Report, at 69).

882 *See generally* Control Tower.

883 DPRK Constitution, art. 11.

884 Affidavit of Robert Collins, ¶ 11.

885 R. Collins & A. Mortwedt Oh, "From Cradle to Grave: The Path of North Korean Innocents," HRNK (2017) ("**Cradle to Grave**"), at 13. *See also* HRW, Worth Less Than an Animal ("While there is a clear official chain of command within the main security agencies, there is also control and guidance by special bodies in the party, which also have surveilling and investigative roles over senior officials or security agencies. For example, the WPK's Central Committee's Organization Guidance Department (OGD) is in charge of implementing the Supreme Leader's directives. The OGD has oversight and a guiding role over the police, MSS and MSC.").

reports to the Supreme Leader.[886] Expert witness Robert Collins describes the chain of command as follows:

> [The internal security agencies, including the MSS and MPS] are under the political direction of the OGD, which reports directly to Kim Jong-un. Political action officers belonging to the OGD Party Life Guidance Section are assigned to provide guidance to all security agencies under the 7th Section's political control. These officers provide monthly guidance to organizations including the MSS Prison Bureau and Ministry of Social Security (formerly MPS) Correctional Management Bureau. This guidance is then passed to the organizational secretary of each camp's Party committee for execution. The secretary subsequently files a report on how effectively the camp responds to the said guidance and whether it continues to abide by the [Ten Principles]. Every official in a leadership position within the camp—administrators, shift supervisors, section chiefs—must follow the guidance within the [Ten Principles], which calls for complete obedience to the Supreme Leader's guidance and directives. Their actions at the camp are sanctioned by the OGD, which reports to the Supreme Leader.[887]

332. There are reasonable grounds to conclude that members of the OGD may be subject to prosecution for crimes against humanity committed in the DPRK detention centers as indirect perpetrators and indirect co-perpetrators, as well as under the doctrine of superior responsibility.

333. *First*, the OGD members may be subject to prosecution as indirect perpetrators because they exercised authority and control over the members of the MPS and MSS running the DPRK detention system. The leaders of the MPS and MSS, as KWP party members, are under the direct political control of the OGD.[888] They carry out OGD directives and operate according to the guidance issued by the OGD 7th Section.[889] Moreover, under the indirect co-perpetration mode of liability, the criminal acts of direct perpetrators can be imputed to each distinct OGD member, even if not all direct perpetrators of the crime fall directly under the control of each member.

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886 *Id.*, 41.

887 Affidavit of Robert Collins, ¶ 11.

888 *Id.,* ¶ 13.

889 *Id.,* ¶ 14.

334. *Second*, OGD officials may be subject to prosecution under the superior responsibility doctrine. The OGD exercises political oversight over the MPS and MSS and constantly monitors and surveils the activities of all party members.[890] The continuing widespread or systematic commission of crimes against humanity in the DPRK detention system, coupled with the rigorous monitoring of all party activities by the OGD, could establish the requisite knowledge of the OGD members as well as their failure to take reasonable measures within their powers as the highest political oversight body in the DPRK to prevent, repress, and punish the commission of these crimes.

3. State Affairs Commission ("SAC") Officials

335. According to the DPRK Constitution, the SAC is "the supreme policy-oriented leadership body of State power."[891] The SAC outranks the Cabinet and has the power to abrogate any decisions and directives of state organs that are counter to its own directives.[892]

336. The MSS and MPS directly report to the SAC.[893] The head of the MSS is Jong Kyong-thaek.[894] The head of the MPS is Ri Thae-sop.[895]

337. There are reasonable grounds to conclude that members of the SAC may be subject to prosecution for crimes against humanity committed in the DPRK detention centers as indirect perpetrators and indirect co-perpetrators, as well as under the doctrine of superior responsibility.

338. *First*, the SAC members may be subject to prosecution as indirect perpetrators because they exercised authority and control over the members of the MPS and MSS while running the DPRK detention system. Under the indirect co-perpetration mode of liability, the criminal acts of direct perpetrators can be imputed to each SAC member, even if not all direct perpetrators of the crime fall directly under the control of each member. There are reasonable grounds to conclude that the SAC members had control and oversight of the security apparatus with the power to secure compliance with their orders through or jointly with the heads of the MPS and MSS and contributed to commission of crimes in DPRK prisons.

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890 Cradle to Grave, at 15.

891 DPRK Constitution, art. 106.

892 COI Report, ¶ 1190.

893 North Korean Leadership Chart (June 2022).

894 *Id.*

895 *Id.*

339. *Second*, SAC officials may be subject to prosecution under the superior responsibility doctrine. The MPS and MSS directly report to the SAC, which exercises *de jure* and *de facto* control over the two organizations. In addition, the impunity with which crimes are committed on a widespread or systematic basis in the DPRK detention system could establish the requisite knowledge of the SAC members as well as their failure to take reasonable measures within their powers as the highest decision-making institution in DPRK to prevent, repress, and punish the commission of such crimes.

4. Security Apparatus

(a) Ministry of People's Security ("MPS")

340. The Prisons Bureau of the MPS operates most detention centers for non-political prisoners.[896] These include pre-trial detention centers, holding centers, and labor camps.[897] Through a vertical chain of command, the MPS leadership from the Minister, to the MPS Security Department head, and officers of the Prisons Bureau maintain control over the prison guards at MPS facilities.[898]

341. There are reasonable grounds to conclude that MPS officers and guards may be subject to prosecution for crimes against humanity as direct perpetrators, indirect perpetrators, and indirect co-perpetrators as well as under the doctrine of superior responsibility.

342. *First*, MPS officers and guards at the detention facilities may be directly responsible for physically carrying out the objective elements of the crimes with the requisite intent and knowledge.[899] As the witness testimony indicates, there are reasonable grounds to conclude that the MPS officers and guards at the detention centers may be the direct perpetrators of most of the crimes, including murder, extermination, enslavement, imprisonment, torture, sexual violence, persecution, and other inhumane acts.[900]

343. *Second,* MPS leadership, directly or jointly, may be subject to prosecution as indirect perpetrators or indirect co-perpetrators for the crimes by virtue of their

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896 *See supra* Section IV.A.5.a.

897 *See* UN OHCHR Report, at 3 (outlining categories of places of detention in the DPRK); *see also* Pyongyang Republic, at 121; COI Report, ¶¶ 700, 816–819.

898 Gause, at 28, 31, 53.

899 ICC *Lubanga* Decision on the Confirmation of Charges, ¶ 332. *See also* ICC *Katanga* Decision on the Confirmation of the Charges, ¶ 488; ICC PTC *Al Bashir* Decision on the Prosecution's Application for a Warrant of Arrest, ¶ 210; *supra* Section V.

900 *See* Section VI.

control over the direct perpetrators through the MPS chain of command.[901] All members of the MPS leadership with the authority to secure compliance with their orders and power to frustrate the commission of the crimes, including at the planning stages, may be subject to prosecution as indirect co-perpetrators regardless of whether the direct perpetrators fall directly under their control within the MPS organizational hierarchy.

344. *Finally*, the MPS leadership may be subject to prosecution under the doctrine of superior responsibility through their effective control over the MPS officers and guards that were the direct perpetrators of the crimes. There are reasonable grounds to conclude that the leadership knew or consciously disregarded information about the widespread abuses and commission of the crimes at MPS facilities. Witness and expert testimony provide evidence of the impunity with which these crimes have been committed and can establish the failure of the MPS leadership to take reasonable measures to prevent, repress, and punish the ongoing abuses at MPS facilities.

(b) Ministry of State Security ("MSS")

345. The MSS operates a number of detention centers, including pre-trial detention centers and holding centers in provinces bordering China.[902] Reports estimate that the MSS has 30,000-100,000 agents with a small number that have decision-making authority.[903] The MSS agents operate within a tightly controlled chain of command from the Minister of State Security to the vice ministers, bureau chiefs, managers, and section chiefs who directly control agents in the field.[904]

346. For the same reasons as there are reasonable grounds to conclude that MPS members may be subject to prosecution, there are reasonable grounds to conclude that the MSS leadership, officers, and agents may be subject to prosecution for crimes against humanity perpetrated in MSS facilities as direct perpetrators, indirect perpetrators, and indirect co-perpetrators as well as under the doctrine of superior responsibility.[905]

B. Summary of Perpetrators' Accountability

347. Applying the Rome Statute to the facts as demonstrated by the affidavits and other evidence, this Inquiry has established that there are reasonable grounds to conclude that crimes against humanity as set forth in the Article 7 of the Rome Statue have

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901 *See supra* Section IV.A.5; *see also supra* Section VI.

902 *See* UN OHCHR Report, at 3; UN COI Detailed Findings, ¶¶ 700, 816, 819.

903 COI Report, ¶ 1169, n.1643.

904 Gause, at 19, 25.

905 *See supra* Section V.C.2.

been committed in DPRK's detention centers. The following chart summarizes the classes of individuals for which there are reasonable bases to proceed with an investigation with respect to the enumerated crimes against humanity perpetrated in the DPRK's detention centers.

Accountability Chart

The following chart lists the eleven (11) Crimes Against Humanity enumerated in the **Rome Statute**, the treaty that gave rise to the **International Criminal Court (ICC).** Additionally, this chart lists the ten (10) classes of individuals who may be subject to investigation and prosecution for committing crimes associated with North Korea's pre-trial detention centers known as *ku-ryu-jang*, holding centers known as *jip-kyul-so*, and labor training camps known as *ro-dong-dan-ryeon-dae*.

	Kim Jong-un	Korean Workers' Party (KWP)	Organization and Guidance Department	State Affairs Commission	Ministry of People's Security (MPS)[1]	Ministry of State Security (MSS)[2]	MPS Officers	MSS Officers	MSS Agents and Prison Guards	MPS Agents and Prison Guards
1. Murder	●	●	●	●	●	●	●	●	●	●
2. Extermination	●	●	●	●	●	●	●	●	●	●
3. Enslavement	●	●	●	●	●	●	●	●	●	●
4. Forcible Transfer	●	●	●	●	●	●	●	●		
5. Imprisonment	●	●	●	●	●	●	●	●	●	●
6. Torture	●	●	●	●	●	●	●	●	●	●
7. Sexual Violence	●	●	●	●	●	●	●	●	●	●
8. Persecution	●	●	●	●	●	●	●	●	●	●
9. Enforced Disappearance	●	●	●	●	●	●	●	●		
10. Other Inhumane Acts	●	●	●	●	●	●	●	●	●	●
11. Apartheid										

[1] The MPS has a force of approximately 300,000 and is responsible for policing and general population control, including the investigation and preliminary examination of crimes that are not considered "political." The MPS also engages in surveillance, maintains the citizen registration system, and issues internal travel documents to monitor and control the movement of citizens. The MPS is currently known as the Ministry of Social Security.

[2] The MSS has approximately 50,000 personnel. It conducts counterintelligence and internal security functions, enforces the Monolithic Ideological System through surveillance and investigations of political crimes, and monitors activities against the regime to identify "anti-state" criminals through mass surveillance networks.

VIII. Call For Action

348. In light of the factual findings and the legal conclusions set forth above, we make the following recommendations.

A. Cessation of Crimes Against Humanity

349. We call on the DPRK and the international community to urgently take all necessary action to ensure the cessation of the following crimes against humanity, which we find there are reasonable grounds to believe have been committed, and continue to be committed in the detention centers: murder; extermination (including through starvation); enslavement; forcible transfer; imprisonment / severe deprivation of physical liberty; torture; sexual violence (including rape and sexual slavery); persecution (including persecution of persons on religious grounds, especially persons holding the Christian faith), enforced disappearances, and other inhumane acts.

350. It is of the utmost importance that the DPRK address the conditions and circumstances that led to the existence of the detention centers, including the culture of totalitarianism and the repressive state security apparatus that dominate its society. As described above, the detention system in the DPRK is the result of intentional acts by individuals, ranging from the Supreme Leader to low-level prison guards. These acts are intended to perpetuate the absolute control of the Kim family over every aspect of North Korean society by instilling mortal fear and brutally punishing dissent, association with dissent, and even the suspicion of dissent.

351. This call to action requires the DPRK to immediately dismantle the detention system and to free the detainees, with appropriate notice to international humanitarian organizations to provide medical and other relief for the released detainees. Moreover, to ensure that the detention system does not reemerge or take on another form, the DPRK must commit to a system of fair and transparent justice, administered by regularly constituted courts in accordance with internationally recognized due process standards.

B. Acknowledgement and Accounting

352. As the UN General Assembly has recognized, persons that have suffered atrocities, living and dead, as well as their families, are entitled to acknowledgement of the atrocities they have suffered.[906] Families and friends are entitled to know the fate of the loved ones that they have lost, how they perished, and where their remains

[906] *See* G.A. Res. 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, paras. 22(e), 22(h), (21 Mar. 2006).

are located. To the extent that records containing such information are available, the DPRK should ensure that it is shared with victims' families. If possible, remains should be returned to families to afford the deceased the dignity of a proper burial and to afford their families the accompanying consolation.

353. The dignity of victims' and their families demands *public* acknowledgement of wrongdoing, which is also critical to genuine and lasting reform. The DPRK should create public memorials to the victims of the detention centers and, if the families permit, publish the identities of those who died in the detention centers to ensure that their lives, and the events leading to their demise, are ingrained in the collective memory of the society.

C. Criminal Prosecutions

354. Under international law, states have an obligation to prosecute perpetrators of crimes against humanity.[907] The goals of international criminal justice include deterrence, punishment, the establishment of the historical record, and the empowerment of victims. Surveys of North Korean defectors reveal a strong preference to see those responsible for international crimes held criminally accountable.[908]

355. Although the DPRK detention system is an instrument of a totalitarian system of State control, a State cannot be prosecuted and incarcerated. It is individuals that maintain the detention centers and commit or direct the crimes that occur within them. In order to uphold international law and achieve the goals that are critical to the common project of humanity, it is imperative that those individuals are held responsible for their crimes, even if accountability cannot be achieved until many years after the crimes were committed. By explicitly identifying the Supreme Leader and an additional four classes of individuals who maintain and administer the DPRK detention centers, this Inquiry makes clear that individual criminal accountability applies on all levels of the chain of command.

356. Although the judges in this Inquiry have collectively served on many of the most notable international criminal tribunals since Nuremberg (*e.g.* ICC, ICTY, ICTR,

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907 *See, e.g.*, I/A Court H.R., *Gelman v. Uruguay*, Judgment of February 24, 2011. Series C No. 221, ¶ 213 ("when an agent of the State is accused of [serious human rights violations] . . . the criminal proceedings and judgment should not be obstructed, and the granting of amnesty is not permitted"); UNGA Res. 3074 (XXVIII) 1973, ¶ 1 ("War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation, and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment"); *see also* UNGA Res. 2712 1970; UNGA Res. 2840 1971.

908 Transitional Justice Working Group, "Crimes Against Humanity in North Korea: Three Options for Accountability," FOCUS (2017) ("**Transitional Justice Working Group**"), https://www.hurights.or.jp/archives/focus/section3/2017/06/crimes-against-humanity-in-north-korea-three-options-for-accountability.html (last accessed 17 June 2022).

ECCC), this is a civil-society driven Inquiry lacking any jurisdictional title or binding authority. Therefore, we respectfully call on the international community and the UN Security Council to ensure that perpetrators of crimes against humanity in DPRK detention centers are investigated and prosecuted.

357. There are multiple avenues for individual criminal accountability, including prosecutions before the ICC, an *ad hoc* international tribunal, and/or domestic courts.

1. Prosecutions Before the ICC

358. The DPRK is not a party to the Rome Statute. However, pursuant to Article 13(b) of the Rome Statute, the ICC can exercise jurisdiction over crimes against humanity in the DPRK's detention centers if the UN Security Council refers the situation to the ICC under Chapter VII of the UN Charter. We join the UN Commission of Inquiry and the 2017 Inquiry in respectfully calling upon the UN Security Council to do so.

359. In addition to our conclusion set forth above, that there are reasonable grounds to believe that crimes against humanity have been and continue to be committed in the DPRK's detention centers, we find reasonable grounds to conclude that the admissibility requirements under Article 17 of the Rome Statute are satisfied. For decades, persons responsible for crimes against humanity in the DPRK's detention centers have evaded investigation and prosecution although, as set forth above in Section VII, those crimes are of the utmost gravity.[909]

2. *Ad Hoc* International Tribunal

360. Criminal accountability for crimes against humanity in DPRK detention centers can also be achieved through the establishment of an *ad hoc* international criminal tribunal by the UN Security Council or by treaty.

361. One advantage this route has over prosecution before the ICC is that an *ad hoc* international criminal tribunal could be granted temporal jurisdiction over crimes against humanity committed prior to 1 July 2002.[910] This is of particular import in the context of the DPRK's detention system given the extensive evidence that it has been the theatre of crimes against of humanity for decades.[911]

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909 *Id.* preamble, art. 1 (stating that ICC jurisdiction is "complementary to national criminal jurisdictions").

910 Kim, at 103–105.

911 *See*, *e.g.*, COI Report, ¶ 1204 ("The Commission's findings… indicate that a Member State of the United Nations has committed crimes against humanity over a span of several decades[.]").

3. Domestic Prosecutions and the Exercise of Universal Jurisdiction

362. Consistent with the complementarity principle established in Article 17 of the Rome Statute, national criminal courts have an important role to play in ensuring accountability for international crimes through their exercise of universal jurisdiction. We call upon states who find within their borders DPRK officials, who are known or suspected to have commissioned or committed crimes against humanity in DPRK detention centers, to bring these individuals to justice.

D. Compliance with UN Human Rights Treaties to Which the DPRK is a Party

363. We call on the DPRK to comply with the obligations contained in human rights treaties to which it is a party and on the UN Security Council to adopt a resolution demanding that the DPRK do so. The DPRK has ratified the ICCPR, ICESCR, CEDAW, and CRC, all of which require the humane treatment of individuals. For the reasons set forth in Section VI above, there are reasonable grounds to conclude that the DPRK has violated and continues to violate its treaty obligations by maintaining a detention system in which murder, extermination, enslavement, imprisonment, torture, rape and other grave sexual violence, and persecution are commonplace.[912]

E. Non-Judicial Transitional Justice Mechanisms

364. Non-judicial transitional justice mechanisms play a vital role in addressing legacies of mass atrocity. States have the obligation to act on behalf of victims in addition to acting against perpetrators. As reflected in the name, transitional justice mechanisms are typically only available in the context of a political transition. We observe that, absent a drastic transformation and reconstitution of the DPRK political system as it presently exists, transitional justice remains out of reach. However, political transitions sometimes occur suddenly and unexpectedly. Therefore, we believe it is appropriate to present avenues by which transitional justice can be achieved in the DPRK if and when the opportunity presents itself, including (*i*) truth and reconciliation commissions; (*ii*) national consultations; and (*iii*) reparations.

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912 COI Report, ¶ 1057 ("Persecution" under international law 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 . . . [and] must be committed with the specific intent of discriminating against the victim.").

1. Reparations

365. Reparation for harm is a fundamental principle of international law.[913] Reparations may take the form of monetary compensation, rehabilitation (including medical and psychological care, as well as legal and social services), satisfaction (including public apology, acknowledgment, and acceptance of responsibility), and guarantees of non-repetition.[914] The responsibility to provide redress to victims of international crimes lies primarily with the State of nationality of the victims. However, the international community may also establish means for victims of crimes against humanity to obtain reparation. For example, the UN General Assembly created in 1981 the Voluntary Fund for Victims of Torture, which is managed by the Office of the UN High Commissioner for Human Rights and provides humanitarian assistance to victims of torture.[915] We observe that victims of the DPRK detention system are entitled to reparation for the harms they have suffered.

2. National Consultations

366. National consultations involve a process of dialogue with national actors and civil society to ensure that transitional justice takes into account the views and wishes of the population affected by grave international crimes.[916] The principal goals of national consultations are to create a strong sense of local ownership of transitional justice approaches, promote stakeholder participation, and facilitate strategies that reflect the particular needs of a given population.[917] As the Security Council has recognized, "most successful transitional justice experiences owe a large part of their success to the quantity and quality of public and victim consultation carried out."[918] In order to achieve adequate redress for victims of crimes against humanity in the DPRK's detention centers, it will be critical to ensure that the systems for

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913 *See, e.g.*, ICCPR, art. 2(3); International Convention on the Elimination of All Forms of Racial Discrimination 1965, art. 6; Convention against Torture 1985, art. 14; CRC, art. 39. *Cf.* Rome Statute, arts. 19(3), 68(3).

914 UN Report on Transitional Justice, ¶ 54.

915 UNGA Res. 31/151 1981; Evans, at 54; "FAQs: United Nations Voluntary Fund for Victims of Torture," United Nations Office of the High Commissioner for Human Rights, ("**OHCHR FAQ**"), https://www.ohchr.org/en/about-us/ohchrs-funding-and-budget/trust-funds/united-nations-voluntary-fund-victims-torture/faqs-united-nations-voluntary-fund-victims-tortureproviding-direct-assistance-over-50000-victims (last accessed 20 June 2022). Contributions come primarily from UN Member States exclusively on a voluntary basis (in 2015, donors gave US$9 million).

916 Office of the United Nations High Commissioner for Human Rights, "Rule-of-law Law Tools for Post-Conflict States: National Consultations on Transitional Justice," 2009 ("**National Consultations**"), at 2.

917 *Id.*

918 United Nations Security Council, "Report of the Secretary-General on the Rule of Law and Transitional Justice in Societies in Conflict and Postconflict," UN Doc. S/2004/616, 23 August 2004 ("**UN Report on Transitional Justice**").

remediating harm "take into account their experiences and identify their needs and entitlements."[919]

3. Truth and Reconciliation Commissions

367. Truth and reconciliation commissions are "official, non-judicial bodies of a limited duration established to determine the facts, causes, and consequences of past human rights violations."[920] Criminal trials alone cannot account for the psychological needs of traumatized witnesses, nor can they promote the direct reconciliation of social groups.[921] Moreover, resource constraints often render impractical the prosecution of all perpetrators involved in large-scale atrocities such as those in the DPRK detention system. Truth and reconciliation commissions adopt a restorative justice approach by placing emphasis on public "truth-telling" by victims, perpetrators, and members of the affected community.[922] Given the societal trauma the DPRK's detention system has inflicted for decades, we are of the view that a truth and reconciliation commission can be an appropriate avenue for securing restorative justice.

F. Targeted Sanctions of Persons Responsible

368. Both the UN Commission of Inquiry and the 2017 Inquiry called upon the UN Security Council to adopt targeted sanctions against those who appear the most responsible for international crimes in the DPRK.[923] This Inquiry observes, with regret, that the UN Security Council is yet to implement this recommendation.

369. Consequently, we reiterate our recommendation that "issuers of convertible currencies adopt carefully targeted, coordinated, and multilateral sanctions against persons they jointly agree to be responsible for crimes against humanity in the DPRK."[924] Sanctions, however, should not target the DPRK's population or the

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919 Office of the United Nations High Commissioner for Human Rights, "Rule-of-law Law Tools for Post-Conflict States: National Consultations on Transitional Justice," 2009, at 2.

920 E. González & H. Varney (eds.), "Truth Seeking: Elements of Creating an Effective Truth Commission," 2013, at 9, https://www.ictj.org/publication/truth-seeking-elements-creating-effective-truth-commission (last accessed 17 June 2022).

921 D. K. Androff, "Truth and Reconciliation Commissions (TRCs): An International Human Rights Intervention and its Connection to Social Work," 40 BJSQ 1960 (2010), at 1961.

922 E. B. Mawhinney, "Restoring Justice: Lessons from Truth and Reconciliation in South Africa and Rwanda," HAMLINE UNIV.'S SCHOOL OF L.'S J. PUB. L. & POL. 22 (2015), at 29.

923 2017 Inquiry, ¶ 463.

924 *Id.*

economy as a whole in light of the dire social and economic situation of the DPRK's general population.[925]

[925] COI Report, ¶ 94(a).

IX. Conclusion

370. This Inquiry finds that there are reasonable grounds to conclude that the Supreme Leader and members of the OGD, the SAC, the MPS, and the MSS operating and supervising the DPRK detention system may have committed crimes against humanity, including the crimes of (*1*) murder, (*2*) extermination, (*3*) enslavement, (*4*) forcible transfer, (*5*) imprisonment or severe deprivation of physical liberty, (*6*) torture, (*7*) sexual violence, (*8*) persecution, (*9*) enforced disappearance, and (*10*) other inhumane acts.

371. In addition to criminal prosecution for these crimes, the full range of mechanisms for accountability and redress should be considered to achieve a comprehensive set of objectives.

372. Ultimately, justice should be pursued in the most comprehensive and victim-oriented manner as possible, in line with the wide range of human rights and international humanitarian law violations that have been and continue to be committed in the DPRK.

Appendix 1: Judicial Biographies

Navanethem Pillay (Chair of Inquiry and Hearing)

Navanethem (Navi) Pillay served as the United Nations High Commissioner for Human Rights from 2008-2014, when the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea was established. In 2003, Judge Pillay was elected to the first panel of judges of the International Criminal Court. In 1995, Pillay was elected by the UN General Assembly to be a judge on the International Criminal Tribunal for Rwanda, and the last four years as President. She was the first woman to start a law practice in Natal, South Africa, providing legal assistance for activists from different political organizations detained by the apartheid government. Pillay holds a B.A. and a LLB. from Natal University South Africa, and an LL.M. and a Doctorate of Juridical Science from Harvard University.

Dame Silvia Cartwright

Dame Silvia Cartwright is a New Zealand jurist who served as the 18th Governor-General of New Zealand (2001-2006). Also, Dame Cartwright was an international trial judge on the Khmer Rouge Tribunal. She was the first female High Court Judge (1993) and New Zealand's first female Chief District Court Judge (1989). In 1988, she presided over the Cartwright Inquiry related to cervical cancer and its treatment at Auckland's National Women's Hospital. Dame Cartwright holds an LL.B. from the University of Otago.

Dr. Silvia Fernández de Gurmendi

Dr. Silvia Fernández de Gurmendi is currently the President of the Assembly of State Parties to the Rome Statute of the International Criminal Court (ICC) and Chair of the Global Action Against Mass Atrocities Crimes (GAAMAC). She is a career diplomat and former ICC judge and president with over thirty-year experience in international criminal law, humanitarian and human rights law. Dr. Fernandez was involved in the creation, set up, and functioning of the ICC in various capacities for most of her career. As a diplomat she was a legal advisor to the Permanent Mission of Argentina to the United Nations and Director General for Human Rights of the Ministry of Foreign Affairs. She represented Argentina before universal and regional human rights bodies and in cases before the Inter-American Commission on Human Rights and Inter-American Court of Justice. Until December 2021, she was the Special Representative of Argentina to the International Holocaust Remembrance Alliance (IHRA). She previously was Chair of the Global Action Against Mass Atrocities Crimes (GAAMAC), and President of the Latin American Society of International Law (LASIL-SLADI).

Wolfgang Schomburg

Wolfgang Schomburg was the first German Judge at the International Criminal Tribunal for the former Yugoslavia (2001-2008) and the International Criminal Tribunal for

Rwanda. After a career as Senior Public Prosecutor, Judge, Senior Legal Officer at German Parliament and the Federal Office of the Prosecutor, he was appointed Judge at the German Federal High Court (1995). Since 1983, he has been editor of the German leading commentary on International Cooperation in Criminal Matters. Judge Schomburg specializes in International Criminal Law, Transnational Criminal Law, Human Rights and International Cooperation in Criminal Matters, working worldwide as counsel, mediator, and speaker.

Appendix 2: Hearing Agenda

Inquiry on Crimes Against Humanity in North Korean Detention Centers
March 4, 2022
9:00am-5:30pm EST

Counsel
Greg Kehoe, Greenberg Traurig, Tampa, Florida, USA
Kirsty Sutherland, 9 Bedford Row Chambers, London, UK
Nawi Ukabiala, Debevoise & Plimpton, New York, New York, USA
Moeun Cha, Debevoise & Plimpton, New York, New York, USA
Sarah Lee, Debevoise & Plimpton, New York, New York, USA

Experts
Joseph S. Bermudez Jr.
Roberta Cohen
Nicholas Eberstadt
Ken Gause (virtual)
The Honorable Michael Kirby (pre-recorded)
Benedict Rogers

8:30-9:00am	**Registration**
9:00-9:10am	**Welcoming Remarks** • Greg Scarlatoiu, Executive Director of the Committee for Human Rights in North Korea (HRNK) • Michael Maya, Director of the North America Office, International Bar Association (IBA)
9:10-9:30am	**Keynote Speaker** – The Honorable Scott Busby, Acting Principle Deputy Assistant Secretary in the Bureau of Democracy, Human Rights and Labor, U.S. Department of State
9:30-9:45am	**Opening Statement by Judges** Navanethem "Navi" Pillay (Chair) Silvia Cartwright (participating remotely) Silvia Fernández Wolfgang Schomburg
9:45-10:00am	**Opening Remarks by Counsel** – Summary of Law and Evidence
10:00-10:20am	**Expert Testimony** – Nicholas Eberstadt
10:25-10:45am	**Expert Testimony** – Joseph S. Bermudez Jr.

10:45-11:15am	**Testimony by Former Detainee** – "i56," Mr. Gwang-il JUNG
11:15-11:35am	Break
11:35am-12:05pm	**Testimony by Former Detainee (virtual)** – "i3"
12:10-12:30pm	**Expert Testimony** – Benedict Rogers
12:35-1:35pm	**Remarks (virtual)** – by The Honorable Robert R. King, former Special Envoy for North Korean Human Rights Issues, U.S. Department of State **Remarks (pre-recorded)** – by His Excellency Seong-ho Ji, National Assemblyman, Republic of Korea **Remarks** – by Mr. David Tolbert, former Deputy Chief Prosecutor, International Criminal Tribunal for the former Yugoslavia; former President, International Center for Transitional Justice; currently, Registrar, Special Tribunal for Lebanon (The Hague)
1:35-2:05pm	**Testimony by Former Detainee** – Ms. "i36"
2:05-2:25pm	**Expert Testimony** – Roberta Cohen
2:35-3:05pm	**Testimony by Former Detainee (virtual)** – "i55," Mrs. Jihyun PARK
3:05-3:25pm	Break
3:25-3:45pm	**Expert Testimony (virtual)** – Ken Gause
3:45-4:10pm	**Testimony by Former Detainee** – "i51"
4:10-4:40pm	**Testimony by Former Detainee** – "i58,"
4:45-5:05pm	**Expert Remarks (pre-recorded)** – Michael Kirby
5:05-5:25pm	**Closing Statement by Counsel**
5:25-5:30pm	**Closing Remarks by Judges**

Appendix 3: Images of 27 North Korean Short-Term Detention Facilities in Google Earth ("HRNK-IBA Project")

X. 1. Kilju County Labor Training Camp

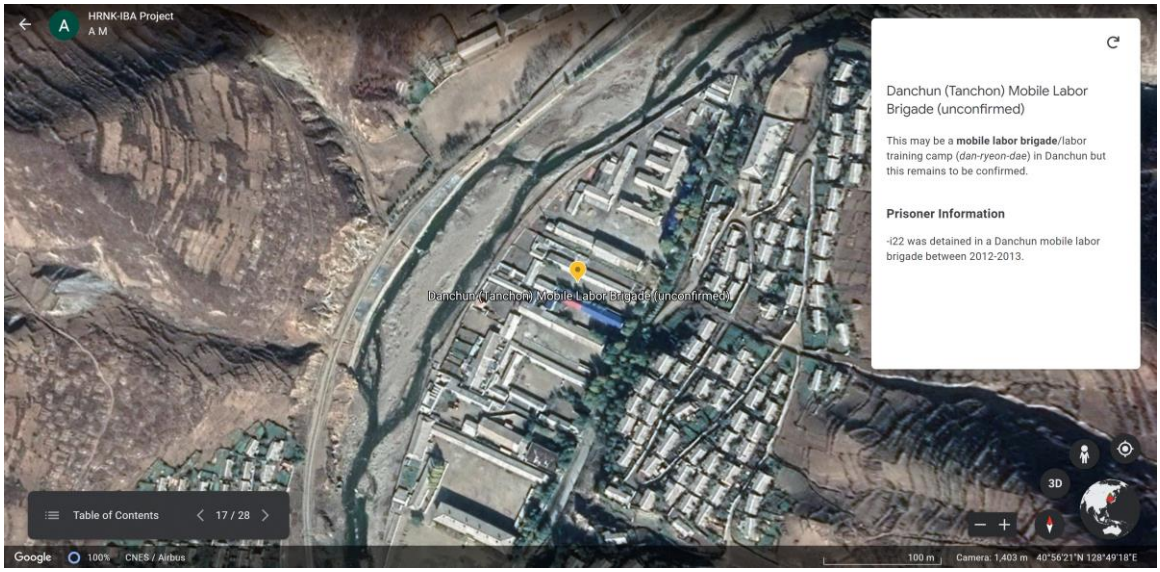
XI. 2. Onsong Ministry of State Security Interrogation / Detention Facility: Onsong *Bo-wi-bu*

XII. 3. Hoeryong Ministry of State Security Interrogation / Detention Facility: Hoeryong *Bo-wi-bu / Ku-ryu-jang*

XIII. 4. Hoeryong Mobile Labor Brigade

XIV. 5. Hoeryong City Yuseon-gu Police Station: Hoeryong city *Bo-an-so*

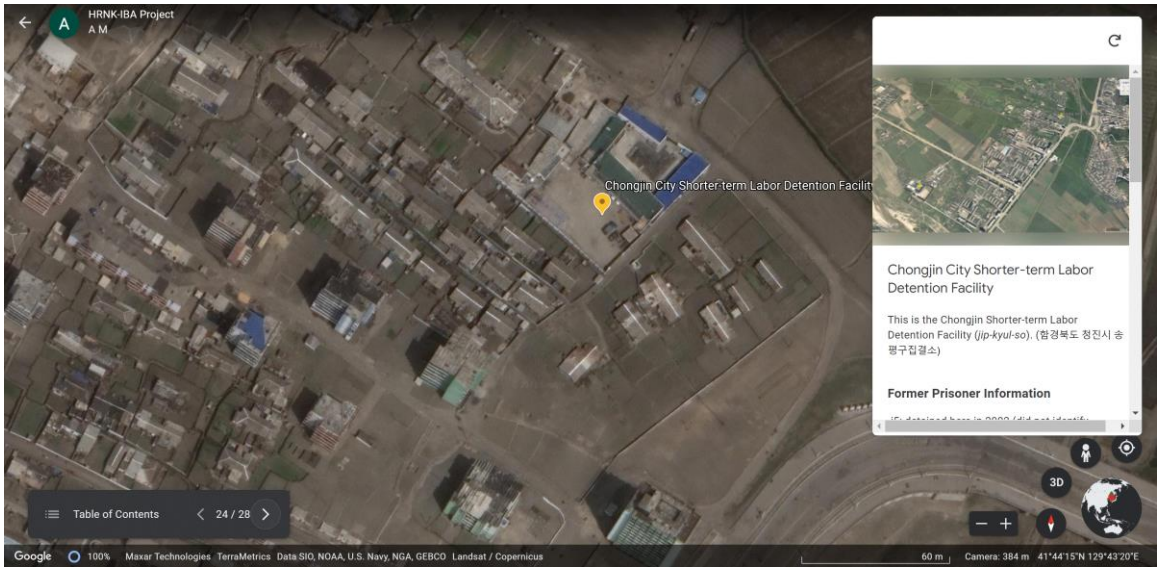
XV. 6. Danchun (Tanchon) Mobile Labor Brigade: Danchun *Ro-dong-dan-ryeon-dae*



XVI. 7. Musan Mobile Labor Brigade: Musan *Ro-dong-dan-ryeon-dae*

XVII. 8. Musan County Ministry of State Security Interrogation / Detention Facility: Musan *Bo-wi-bu Ku-ryu-jang*

XVIII. 9. Chongjin City Shorter-term Labor Detention Facility: Chongjin *Jip-kyul-so*



XIX. 10. Samjiyeon Police Station: Samjiyeon *Bo-an-so*

XX. 11. Chŭngsan No. 11 Detention Facility Headquarters

XXI. 12. Re-education through Labor Camp No. 3, Jong-ri

XXII. 13. Kilju Police Station: Kilju *Bo-an-so*

XXIII. 14. Onsong Ministry of Social Security Interrogation / Detention Facility: Onsong *Bo-an-so*; *An-jeon-bu*; *Bo-an-seung*; *Ku-ryu-jang*

XXIV. 15. Onsong Mobile Labor Brigade: Onsong *Ro-dong-dan-ryeon-dae*

XXV. 16. Hoeryong Ministry of Social Security Detention Facility

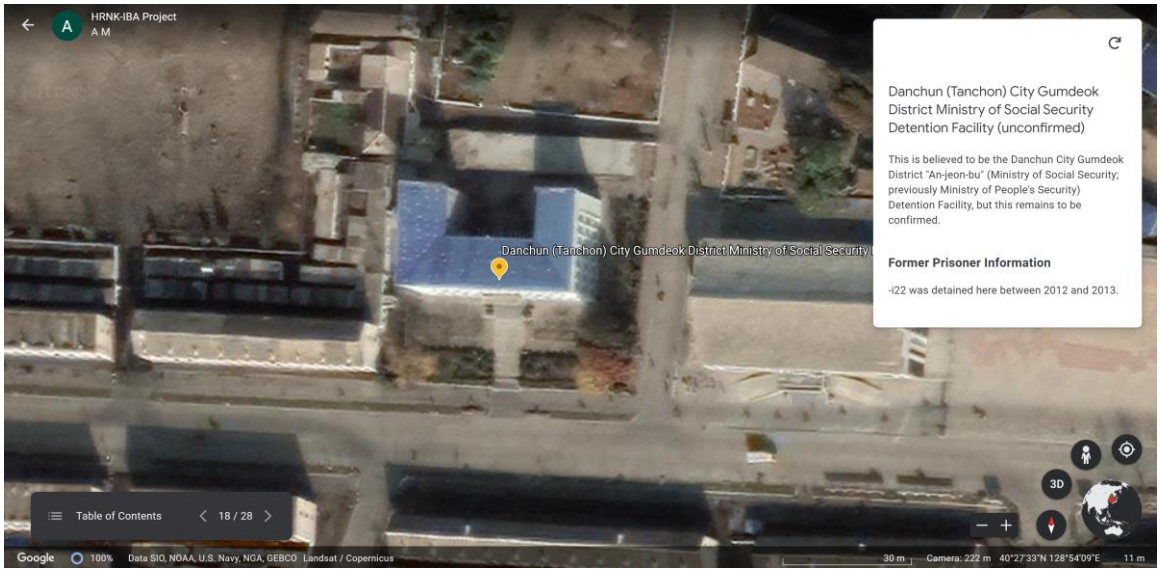
XXVI. 17. Hoeryong Shorter-term Labor Detention Facility: Hoeryong *Jip-kyul-so*

XXVII. 18. Hyesan Mobile Labor Brigade: Hyesan *Ro-dong-dan-ryeon-dae*

XXVIII. 19. Hyesan City Detention Facility

XXIX. 20. Hyesan Detention Facility

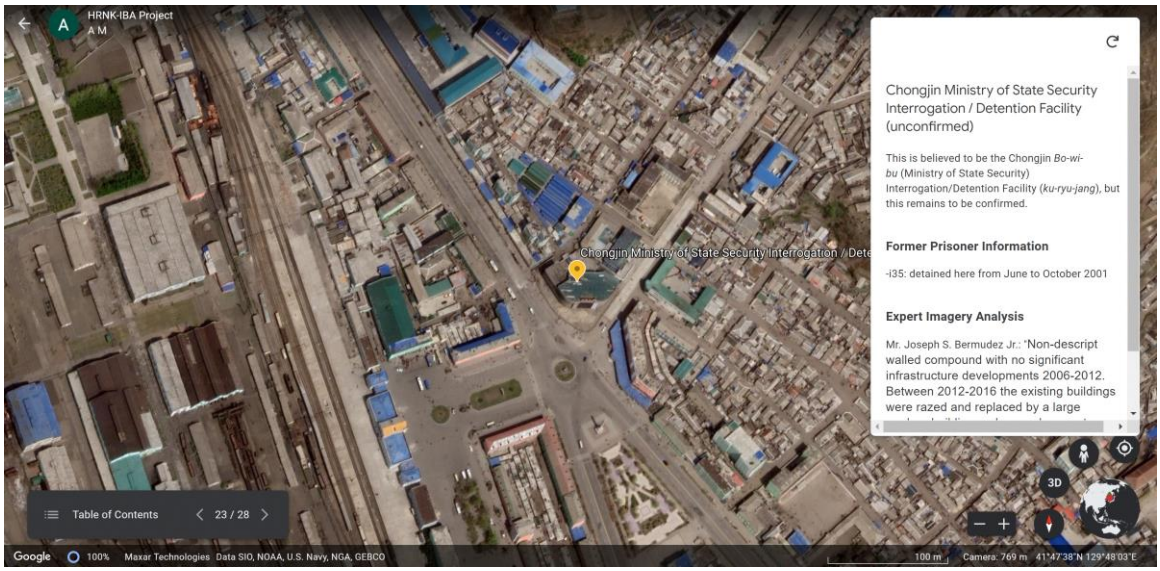
XXX. 21. Danchun (Tanchon) City Gumdeok District Ministry of Social Security Detention Facility



XXXI. 22. Musan County Ministry of Social Security Interrogation / Detention Facility

XXXII. 23. Saetgol-ri Ministry of State Security Interrogation / Detention Facility: Saetgol-ri *Bo-wi-bu*

XXXIII. 24. Chongjin Ministry of State Security Interrogation / Detention Facility: Chongjin *Bo-wi-bu*



XXXIV. 25. Re-education through Labor Camp Sungho – Prisons 2 and 3 at Pokchong-ni

XXXV. 26. Samjiyeon Detention Facility

XXXVI. 27. “Foreigner Prison”

Appendix 4: International Covenant on Civil and Political Rights, Excerpted Articles

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public)

or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

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

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

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

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

    (c) To be tried without undue delay;

    (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

    (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

    (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

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

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

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

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such

conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

The International Bar Association (IBA)

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. Through its global membership of individual lawyers, law firms, bar associations and law societies, it influences the development of international law reform and shapes the future of the legal profession throughout the world.

It has a membership of more than 80,000 individual lawyers and more than 190 bar associations and law societies spanning over 160 countries. It has considerable expertise in providing assistance to the global legal community.

IBA War Crimes Committee

The role of the IBA War Crimes Committee (WCC) is to serve as a forum to discuss, highlight and examine pertinent issues of international criminal and humanitarian law, as well as human rights. The WCC endeavours to provide IBA members and the public with comprehensive, reliable information and resources in these legal fields. It is directly involved with the IBA's ongoing programme in support of international, hybrid, *ad hoc* and domestic accountability mechanisms. The WCC also provides lawyers, international agencies and tribunals with an unparalleled and easily accessible network of contacts. The committee is composed of legal professionals from around the world. The membership is diverse, ranging from those in academia and civil society, to those practising before the international courts on all sides - defense, victims, prosecution - and judges. The WCC hosts events and webinars throughout the year, engages in substantive projects and contributes to the development of reports and recommendations. The committee welcomes further opportunities to engage with the international legal community that it serves.

The Committee for Human Rights in North Korea (HRNK)

HRNK was established in 2001 as America's only nonpartisan think-tank/civil society organization dedicated exclusively to researching, investigating, and reporting on North Korea's human rights situation. HRNK has published 54 reports to date, in areas including: North Korea's vast system of unlawful imprisonment; vulnerable groups, especially women, children, and people in detention; Kim regime structure, dynamics, and its policy of human rights denial; and North Korea's information environment and its counter-offensive aimed to repel information from the outside world. HRNK obtained UN ECOSOC consultative status in April 2018.

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