

PETITION TO:
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

Chairperson-Rapporteur: Mr. El Hadji Malick Sow (Senegal)
Vice-Chairperson: Ms. Shaheen Ali (Pakistan)
Mr. Vladimir Tochilovsky (Ukraine)
Mr. Roberto Garretón (Chile)
Mr. Mads Andenas (Norway)

HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of

Kang Mi-ho, Kim Jeong-nam, and Shin Kyung-seop,

Citizens of the Democratic People's Republic of Korea

v.

Government of the Democratic People's Republic of Korea

PETITION FOR URGENT ACTION

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, and 15/18¹

Submitted By:

Jared Genser² and Chris Fletcher



Counsel to Kang Mi-ho, Kim Jeong-nam, and Shin Kyung-seop³

April 3, 2012

¹Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. Resolutions 6/4 and 15/18, further extending the mandate of the Working Group, were adopted by the Human Rights Council, which has “assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights . . .” G.A. Res. 60/251, para. 6

² For further information, contact Jared Genser at jgenser@perseus-strategies.com or +1 (202) 320-4135.

³Counsel was retained by North Korea defectors Kang Cheol-hwan for his sister Kang Mi-ho and by Shin Dong-hyuk for his father Shin Kyeong-seop. All work has been performed on a pro bono (unpaid) basis.

I. Basis for Urgent Action

A. Kang Mi-ho's Basis for Urgent Action⁴

Kang Chol-hwan (“Mr. Kang”) believes his sister, Kang Mi-ho’s (“Ms. Kang”), was arrested by the National Security Agency (“NSA”) of the Democratic People’s Republic of Korea (“DPRK” or “North Korea”) around May, 2011. Ms. Kang’s neighbors, Korean-Chinese smugglers, and the broker that had been delivering money to her, all report that she and her 11-year-old son, Kim Jeong-nam, (together “Petitioner 1”) simply disappeared around that time. We believe that Ms. Kang’s disappearance was a result of the broker informing North Korean authorities that Ms. Kang was receiving money from her brother. Her resulting detention was likely a result of the Government’s policy of guilt-by-association (as was her previous detention) with her brother, who is a well-known activist for North Korean human rights and was then in South Korea.

We believe that when Ms. Kang was arrested, she was taken to No. 15 at Yodok, South Hamyong Province (“Camp 15” or “No. 15”) because: 1) she had previously been a prisoner there; 2) she lives in the province near that camp; and 3) the camp is for prisoners dealing with crimes of defection. Because she and her brother previously spent time in this camp, we understand the deplorable conditions in which she is living. In this camp, prisoners are tortured until they confess, endure back-breaking labor, and are provided only starvation-level food rations.

Accordingly, we request the Working Group consider this Petition pursuant to the Working Group’s “Urgent Action” procedure. As set forth in the attached Petition, Ms. Kang is being arbitrarily deprived of her liberty. Given her brother’s notoriety as a North Korean human rights activist who fled to South Korea, there is reason to believe that Ms. Kang’s health and safety are in serious jeopardy while she remains in a North Korean prison, barred from communication with the outside world. In addition, we request that this Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolutions 2000/36, 2003/31, and the Human Rights Council Resolutions 6/4 and 15/18.

B. Shin Kyung-seop's Basis for Urgent Action⁵

Shin Kyung-seop (“Petitioner 2” or “Mr. Shin”) was arrested in Oidong-ri, Kaecheon, South Pyongan Province in 1965 by the NSA. He has been detained in No. 14 Kwanliso, Oidong-ri, Kaecheon, South Pyongan Province (“Camp 14” or “No. 14”) since that time. On January 2, 2005, his son, Shin Dong-hyuk, escaped the camp. If he is still alive, Mr. Shin is suffering from life-threatening labor and starvation-level rations that are imposed on prisoners in the North Korean gulag system after having suffered such torture.⁶

⁴ This section relies heavily on information provided by Mr. Kang Chol-hwan.

⁵ This section relies heavily on information provided by Mr. Shin Dong-hyuk.

⁶ Due to the isolation of the *kwan-li-so* camps, we have no way to confirm that Mr. Shin is alive. However, for the purposes of this submission, we assume that Petitioner is alive.

When Mr. Shin's wife and older son attempted to escape in April of 1996, Mr. Shin was severely tortured. As a result of the torture, his right leg faced outward in an unnatural way. Below his knee, his leg bones, which had been broken, showed signs of those breaks by forming back together at an odd angle. This torture permanently disabled Mr. Shin, rendering him unable to perform most jobs. Based on our knowledge of the torture he suffered in 1995 and 1996, as well as the torture his son suffered and the reports from other *kwan-li-so* escapees,⁷ we are acutely aware of the type of torture he is presumed to be currently enduring.

Because we believe that Mr. Shin is likely suffering this severe life-threatening torture, we request the Working Group consider this Petition pursuant to the Working Group's "Urgent Action" procedure. As set forth in the attached Petition, he is being arbitrarily deprived of his liberty. Given his son's escape and activism for human rights in North Korea, along with the fact that attempted escapes resulted in torture for family members, there is reason to believe that Mr. Shin's health and safety are in serious jeopardy while he remains in a North Korean prison, barred from communication with the outside world. In addition, we request this Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights as reconfirmed by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.

II. North Korea's Political Prison System⁸

A. North Korea's Formation of the Prison System

Following World War II, Korea was split at approximately the 38th parallel.⁹ In the North, the Communist Party adopted a constitution and elected a "Supreme People's Assembly" that ratified it and named Kim Il-Sung as premier in 1948.¹⁰ Kim Il-sung invaded the South in 1950 in an attempt to create one communist country.¹¹ He was unsuccessful and an armistice was signed on July 27, 1953, establishing a military boundary as the *de facto* border between North and South Korea.¹² Following this war, Kim Il-sung attempted to eliminate any opposition within his country, and as a result, dissent or criticism of the government became a punishable offense.¹³

Kim Il-sung's attempt to eliminate any political or ideological opposition led to the creation of a system of prison camps known as *kwan-li-so*. The range of crimes for which someone could be detained in the *kwan-li-so* was wide so as to ensure that political opposition was completely eliminated. Even statements that did not directly criticize the government were

⁷ Among other torture, he was stripped, roped from his ankles and wrists, and suspended from a hook on the ceiling and lowered over a fire until he passed out when his flesh began to burn. Blaine Harden, *Escape from Camp 14*, VIKING (advanced uncorrected proofs), at xiv, [hereinafter "Harden"].

⁸ Throughout this section and the rest of the Petition, we draw heavily from the sources cited within, and often pull information from them closely or even directly.

⁹ DLA Piper US LLP & US Committee for Human Rights in North Korea, *Failure to Protect: A Call for the UN Security Council to Act in North Korea* 34 (2006), 2, [hereinafter "Failure to Protect"].

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *Id.* at 3-4.

¹³ *Id.* at 4.

considered crimes, such as expressing exasperation of life generally or singing a song from South Korea.¹⁴

To further eliminate opposition, Kim Il-sung instituted a philosophy, known as *juche*, which promotes “an independent form of Korean Socialist thought that emphasized a Supreme Leader’s absolute control over his people.”¹⁵ This ideology emphasized absolute independence, strengthening a structure whereby most North Koreans are cut off from life outside the country.

After Kim Il-sung’s death in 1994, Kim Jong-il, the “Dear Leader,” assumed leadership of the country.¹⁶ Under Kim Jong-il, North Korea maintained a centralized, socialist government under the control of the communist Korean Workers’ Party.¹⁷ Near the time of his death, the camps imprisoned 150,000 to 200,000 detainees under torturous conditions.¹⁸ Kim Jong-Il died in December 2011 and was replaced by his son, Kim Jong-Eun, who is the current leader of North Korea.¹⁹ Reports and satellite images show that the *kwan-li-so* system still remains intact under Kim Jong-Eun’s leadership.²⁰

B. North Korea’s Massive Political Penal Camps House Hundreds of Thousands

North Korea’s massive political prison system imprisons approximately 150,000 to 200,000 detainees.²¹ While North Korea has a number of different types of prison camps, the type involved in this Petition are the *kwan-li-so*, or political penal labor colonies, where prisoners are sent along with up to three generations of family members for certain political crimes.²² The goal of this gulag system is to eliminate “the seeds” of bad families;²³ Kim Il-Sung outlined this intent in 1972, stating: “factionalists or enemies of class, whoever they are, their seed must be eliminated through three generations.”²⁴

The *kwan-li-so* is miles long and wide, located in Northern provinces in the mountains and valleys.²⁵ It is surrounded by barbed-wire (often electrified) fences and secured by armed guards in towers.²⁶ While it was believed that at one point there were twelve prison camps, it is believed there are presently six.²⁷ The six are: No. 14 at Kaeachon, South Pyongan Province;

¹⁴ *Id.*

¹⁵ *Id.* at 5.

¹⁶ Kjell Magne Bondevik and Kristen Abrams, *Democratic People’s Republic of Korea*, in *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in Our Time*, 346, 347 (Jared Genser and Irwin Cotler ed., 2011) [hereinafter “DPRK”].

¹⁷ *Id.*, at 347.

¹⁸ David Hawk, *The Hidden Gulag- Second Edition*, U.S. Committee for Human Rights in North Korea [Forthcoming 2012] at 8-9 (hereinafter, “Second Edition”).

¹⁹ Choe Sang-Hun, *At Huge Rally, North Koreans Declare Kim their Leader*, *New York Times*, Dec. 29, 2011, available at <http://www.nytimes.com/2011/12/30/world/asia/north-korea-declares-kim-jong-un-as-supreme-leader.html>.

²⁰ See Second Edition, *supra* note 18, at 28, and generally.

²¹ *Id.*, at 28.

²² *Id.*, at 29.

²³ See *Failure to Protect*, *supra* note 9, at 35.

²⁴ *Id.*

²⁵ See Second Edition, *supra* note 18, at 27.

²⁶ *Id.* at 28.

²⁷ See *Failure to Protect*, *supra* note 9, at 34.

No. 15 at Yodok, South Hamyong Province; No. 16 at Hwasong, North Hamgyong Province; No. 18 at Bukchang, South Pyongan Province; No 22 at Hoeryong, North Hamgyong Province; and No. 25 at Chongjin, North Hamgyong Province.²⁸ Except for some prisoners in Camp 18, the prisoners are not able to communicate with people outside of the camp.²⁹

Despite the testimonies of former prisoners or guards confirming the existence of these camps, as well as clear satellite images showing them, North Korea denies the existence of the gulag. As the representative of North Korea to the United Nations Human Rights Council stated on December 7, 2009, “The term ‘political prisoner’ does not exist in the DPRK’s vocabulary...[therefore] the so-called political prisoner’s camps do not exist.”³⁰

C. *North Korea’s Gulag System Has No Legitimate Basis for Most Detentions*

Prisoners are sent to the *kwan-li-so* for “committing” a variety of political crimes, or for being a relative within three generations of someone who has. Political crimes include: expressing anti-socialist sentiment, having “unsound ideology,” criticizing the regime in any manner, reading a foreign newspaper, expressing exasperation with the difficulty of life in North Korea, possessing religious belief apart from *juche*, belonging to a criminal family, missing an official march, exhibiting a want of enthusiasm for the Great Leader, and lacking requisite zeal in their denunciation of state traitors.³¹ A forthcoming report by David Hawk and the U.S. Committee for Human Rights in North Korea has categorized the crimes that can lead to detention in the gulag system as: wrong-doing, wrong-thinking, wrong-knowledge, wrong-association, and wrong-background.³²

²⁸*Id.*

²⁹See *Second Edition*, *supra* note 18, at 28.

³⁰*Id.*, at 3, quoting “Report of the Working Group on the Universal Periodic Review: DPRK” UN Doc. A/HRC/13/13, 4 January 2010, para. 45.

³¹See DPRK, *supra* note 16, at 351; Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang*, BASIC BOOKS, 2001, at 52 [hereinafter “Kang”].

³²These categories of crimes are as follows: “Imagined or perceived **wrong-doing** can include being on the “wrong” or losing side of a bureaucratic, factional, or political dispute within the Korean Workers’ Party, skipping too many of the compulsory ideological education classes all North Koreans are required to attend, defacing or failing to take adequate care of photographic images of Kim Il-sung, complaining about conditions, expressing criticism of regime policies, or leaving the country without permission, and in particular, meeting South Koreans while outside North Korea. Imagined or perceived **wrong-thinking** includes expressing or supporting ideas at variance with the official ideology. At times this could have been belief or evidence of belief in Protestant Christianity. At other times *wrong-thinkers* were orthodox Marxists who thought that “*juche* ideology” or dynastic succession within Kim Il-sung’s family was contrary to the spirit and tenets of Marxism-Leninism. An example of **wrong-knowledge** includes the situation of North Korean students or diplomats who had been studying or posted in Eastern Europe in the late 1980s during the collapse of socialism, and who were recalled to the DPRK only to be immediately dispatched to labor camps to prevent their knowledge of the collapse of state socialism in North Korea’s allies from spreading to the North Korean population. An earlier example of **wrong-knowledge** was the exposure to and knowledge about capitalist prosperity, democracy and civil liberties in Japan by ethnic Koreans who “repatriated” to the DPRK in the 1960s to build socialism in the Korean fatherland, but found Kim Il-sung’s version of totalitarian socialism not what they had imagined. **Wrong-association** is being part of a family whose husband, father or grandfather had collaborated with the Japanese occupation of Korea, or who was a Presbyterian elder or deacon, or part of a family whose patriarch was part of a purged faction of the Korean Workers’ Party, or who was suspected of supporting South Korea during the Korean War or having subsequently defected to South Korea. **Wrong class background** includes those who had been aristocratic land-owners or otherwise privileged bourgeoisie during the Japanese colonial regime in Korea.” See *Second Edition*, *supra* note 18, at 25-26.

The perceived criminals and their extended families are forcibly taken by police authorities from their homes to the camps, with no judicial process or legal recourse, usually for life.³³ They are not formally charged or arrested, or sometimes even notified of the alleged conduct or shown (often nonexistent) arrest warrants.³⁴ Rather, they are interrogated and sometimes tortured until they confess.³⁵ They are typically told they are traitors, but they are not told how long or where they will be detained.³⁶ Their family members, whether or not they themselves are detained, are rarely informed of their family member's detention.³⁷

D. Atrocities of the Gulag System

The North Korean gulag system forces its detainees to suffer numerous atrocities. North Koreans can be taken to the camps, along with three generations of their family, without knowledge of why they are being taken, or for how long, and they are not granted a trial.³⁸ This generationally-focused imprisonment essentially wipes out the family as these prisoners are not allowed to produce children, as discussed later.³⁹ Kim Il-sung outlined this intent in 1972, stating, "factionalists or enemies of class, whoever they are, their seed must be eliminated through three generations."⁴⁰ Once in these camps, detainees suffer from: 1) demanding labor, malnutrition, and a lack of healthcare; 2) punishment, torture, and execution; and 3) forced abortions and infanticide.

1. Camp Conditions: Labor, Malnutrition, and Lack of Healthcare

All prisoners must engage in dangerous and demanding labor.⁴¹ Examples include mountain logging, stone quarrying, farming, and factory work.⁴² The inmates are given unrealistic daily production quotas and typically work seven days a week for at least ten hours a day, with some reporting twelve to fifteen hour workdays.⁴³ The workers are only excused from work for weather when it is less than negative thirteen degrees Fahrenheit.⁴⁴ When a prisoner faints due to overwork, he or she is not given rest but rather is berated and punished.⁴⁵ In one instance, when children were tasked with excavating earth and there was a cave-in that killed some of them, the others were ordered to continue working right next to their former co-workers' dead bodies.⁴⁶ In some camps, it is estimated that twenty to twenty-five percent of the prisoners are worked to death each year.⁴⁷

³³ *Id.*, at 28.

³⁴ See DPRK, *supra* note 16, at 357.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ See *Failure to Protect*, *supra* note 9, at 34-35.

³⁹ See DPRK, *supra* note 16, at 361.

⁴⁰ See *Failure to Protect*, *supra* note 9, at 35

⁴¹ *Id.* at 37.

⁴² See DPRK, *supra* note 16, at 351.

⁴³ *Id.* at 352; Harden, *supra* note 7, at 6.

⁴⁴ See *Failure to Protect*, *supra* note 9, at 38.

⁴⁵ See Harden, *supra* note 7, at 20.

⁴⁶ See *Failure to Protect*, *supra* note 9, at 37-38.

⁴⁷ *Id.* at 37.

Prisoners starve as a result of “starvation-level” food rations combined with long and demanding labor.⁴⁸ This starvation occurred even before North Korea’s famine; it is not a result of the food shortage, but rather it is used as a method of control.⁴⁹ To ensure that the prisoners nearly or actually starve, they are beaten or executed for acquiring unauthorized food (even weeds).⁵⁰ Prisoners cannot eat plants, but they can eat rats, frogs, snakes, and insects.⁵¹ A defector who was at Camp 22 stated that prisoners were given 20 grains of corn a day and supplemented this by searching through cow dung to locate undigested grain.⁵² If one fails to meet his work quota, he is given even more reduced food rations.⁵³ These food rations are so inadequate that a former prison guard at Camp 22 reported that 1,500 to 2,000 of the 50,000 prisoners died annually from malnutrition when he was working in the camp.⁵⁴ The prisoners are unable to have any communication or visits with those outside the camps (except for camp 18, where some are).⁵⁵ They also are not allowed to receive any supplies to supplement the lack of supplies and food they have.⁵⁶

Despite these conditions, there is almost no healthcare. In Camp 15, there was one real hospital where prisoners requiring immediate surgery would go.⁵⁷ Prisoners tried to avoid the hospital because after their surgeries they were often left alone to develop secondary infections and die.⁵⁸ If a patient needed more than a basic operation, he would not be treated but rather left to die.⁵⁹ The camp also had a quarantine area.⁶⁰ The quarantine area had one section for prisoners with contagious ailments and one section for prisoners with psychiatric illnesses.⁶¹ The patients were left in the quarantine area, without medicine until their illness passed or they died.⁶²

2. Punishment, Torture, and Executions

According to Mr. Kang, “in North Korea, every political criminal is tortured.”⁶³ When prisoners are first arrested, they are tortured to induce a confession.⁶⁴ Once in camp, they are sometimes tortured as punishment.⁶⁵ They are also sometimes used in experiments to train new medical doctors.⁶⁶ In one instance of torture, a man was placed in a seven by three by ten foot

⁴⁸ *Id.* at 35-36.

⁴⁹ *Id.* at 36.

⁵⁰ *Id.* at 37.

⁵¹ See Harden, *supra* note 7, at 20.

⁵² See *Failure to Protect*, *supra* note 9, at 36-37.

⁵³ *Id.* at 36.

⁵⁴ *Id.*

⁵⁵ See Second Edition, *supra* note 18, at 33.

⁵⁶ *Id.*

⁵⁷ See Kang, *supra* note 31, at 122.

⁵⁸ *Id.* at 122-23.

⁵⁹ *Id.* at 123.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at 184.

⁶⁴ See *Failure to Protect*, *supra* note 9, at 38.

⁶⁵ *Id.*

⁶⁶ See DPRK, *supra* note 16, at 360.

enclosure for a year with low food levels.⁶⁷ He lost more than fifty pounds and his body was covered with sores.⁶⁸ After that, he was placed in buildings with unheated rooms, sleeping on the floor in freezing temperatures.⁶⁹ His toenails fell off and he suffered frostbite.⁷⁰

One punishment at Yodok is the sweatbox.⁷¹ It is possible to survive it, but usually with crippling, permanent aftereffects.⁷² Hardly anyone has exited on his own feet.⁷³ The prisoner is confined in a small area where his rear end presses into his heels so hard that the buttocks turn solid black from bruising.⁷⁴ There is no food.⁷⁵ The only gestures allowed are raising the left hand to relieve oneself and the right hand if one is sick.⁷⁶ The victim is not allowed to speak.⁷⁷ If the prisoner talks or moves, he is beaten, or worse, made to crouch over the septic pit for half an hour with his hands behind his back and nose bowed downward.⁷⁸ Being sent to the sweatbox automatically adds five years to one's detention.⁷⁹

In the case of Mr. Shin's son, his right middle finger was cut off above the knuckle for dropping a sewing machine.⁸⁰ When his brother and mother attempted to escape, he was taken to an underground prison and one day and stripped naked, shackled around his ankles, hands bound, and tied to the ceiling such that his face and feet were toward the ceiling and his back was toward the floor.⁸¹ Then, burning charcoal was placed beneath him, and he was lowered toward the flame.⁸² He was pierced in the lower abdomen by a gaff hook and held over the fire while his flesh burned until he lost consciousness.⁸³ He suffered severe blisters from the fire, and he soiled himself.⁸⁴

According to a former guard, "public executions within prisons take place routinely."⁸⁵ One guard stated that rule breakers are shot and attempted escapees are hanged.⁸⁶ There have also been reports of an attempted escapee being tied behind a car and dragged to death.⁸⁷ According to reports, "Prisoners may be executed for stealing or foraging for food, fighting, assaulting guards, engaging in sexual relations, refusing to abandon religious beliefs, criticizing

⁶⁷ See *Failure to Protect*, *supra* note 9, at 38.

⁶⁸ *Id.* at 38-39.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Kang, *supra* note 31, at 96.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See Harden, *supra* note 7, at 2.

⁸¹ *Id.* at 58.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See *Failure to Protect*, *supra* note 9, at 39.

⁸⁶ *Id.* at 40.

⁸⁷ *Id.*

the North Korean regime, or attempting to escape.”⁸⁸ A guard who shoots an attempted escapee is rewarded by being relieved of his duties and being allowed to attend college tuition-free.⁸⁹

In Camp 14, there are ten rules of camp.⁹⁰ Breaking any of them can result in execution.⁹¹ At the execution, a guard tells the crowd that the prisoner had been offered redemption through hard labor, but rejected the government’s generosity.⁹² The guards stuff pebbles in the soon-to-be executed prisoners’ mouths so they cannot speak against the state.⁹³ Everyone must attend the executions.⁹⁴ At the executions, prisoners are sometimes made to throw stones at the corpses of those publicly hanged until there is almost nothing left of the bodies.⁹⁵

3. Forced Abortions and Infanticide

In the camps, “Those found to be pregnant are punished and generally subjected to a forced abortion. Women who somehow progress to a late stage of pregnancy have disappeared or are killed. There are also reports that babies born in detention are killed upon birth.”⁹⁶ If a woman is less than eight months pregnant, the fetus is aborted.⁹⁷ If the woman is more than eight months pregnant, the baby is delivered and then killed or abandoned.⁹⁸ Some of these pregnancies result from women taking cleaning assignments from guards to avoid being beaten, which sometimes include sexual services.⁹⁹

III. Ms. Kang’s Detention and History in Camp 15¹⁰⁰

A. Ms. Kang’s First Arbitrary Detention

Ms. Kang was detained previously at Camp 15 due to guilt-by-association with her grandfather. Her grandfather disappeared in July of 1977, and the family was only told, upon asking his department, that he left on a business trip for an urgent matter. A few weeks later, four uniformed security agents came into the home where Ms. Kang lived. Her mother kept repeating, “But what is happening to us?” Three of the men looked through the family’s

⁸⁸ See DPRK, *supra* note 16 at 360.

⁸⁹ See *Failure to Protect*, *supra* note 9, at 40.

⁹⁰ These rules are: 1) Do not try to escape; 2) No more than two prisoners can meet together; 3) Do not steal; 4) Guards must be obeyed unconditionally; 5) Anyone who sees a fugitive or suspicious figure must promptly report him; 6) Prisoners must watch each other and report any suspicious behavior immediately; 7) Prisoners must more than fulfill the work assigned them each day; 8) Beyond the workplace, there must be no intermingling between the sexes for personal reasons; 9) Prisoners must genuinely repent of their errors; and 10) Prisoners who violate the laws and regulations of the camp will be shot immediately. See Harden, *supra* note 7, at 14, Appendix.

⁹¹ *Id.*

⁹² *Id.* at xiii.

⁹³ *Id.*

⁹⁴ *Id.*, at 19.

⁹⁵ See Kang, *supra* note 31, at 140-41.

⁹⁶ See DPRK, *supra* note 16, at 361.

⁹⁷ See *Failure to Protect*, *supra* note 9, at 41.

⁹⁸ *Id.*

⁹⁹ See Second Edition, *supra* note 18, at 54.

¹⁰⁰ This information draws information heavily from Kang, *supra* note 31.

belongings as a fourth took notes. The fourth man informed the family that the grandfather had committed “a crime of high treason,”¹⁰¹ the consequence of which was that the family was immediately to present itself at the secure zone in Yodok. The family packed some things and left. Ms. Kang was only seven. Her mother stayed behind, and neither Ms. Kang’s mother, nor her family, was told when or if she would be coming. She never joined them, because she was spared as a member of a “heroic family.”

The trip to the camp started at the break of day in a Tsir truck used to haul prisoners. During the beginning of the trip, Ms. Kang and her brother were not allowed to look outside. Ms. Kang started vomiting from the bumpy ride. They reached the camp at around 2 pm. The gate leading to the camp read: “Border Patrol of the Korean People, Unit 2915,” which was an attempt to make the camp look like an army barracks.

B. Ms. Kang’s Second Arbitrary Detention

Ms. Kang and her son, Kim Jeong-nam, have been missing since around May 2011 according to her neighbors, a broker her brother was using, and smugglers. We believe they were arrested and taken to Camp 15.

Ms. Kang’s brother, who was released with Ms. Kang after her first detention at Camp 15, fled North Korea for fear of being imprisoned again for listening to South Korean radio. Mr. Kang is now a well-known North Korean human rights activist living in South Korea and works for the *Chosun Ilbo*, a large and influential newspaper in South Korea. We believe that the broker Ms. Kang’s brother had been using to send her money informed the NSA of the arrangement, leading to her arrest. We base this belief on the fact that the broker, who her brother had been using since 2008, did not send her brother a letter of receipt for items delivered in 2010 or 2011. In July 2011, the broker finally contacted Ms. Kang’s brother and explained that he had been caught and imprisoned by the NSA and had just been released. He said that he could not locate Ms. Kang and that she had seemingly disappeared. The broker claimed that Ms. Kang gave his name to the NSA, but this claim is not credible because Ms. Kang knew that admitting to receiving money would likely result in her imprisonment in the gulag system. We believe that when the broker was captured, he informed the NSA of the arrangement, leading to Ms. Kang’s arrest.¹⁰²

C. Ms. Kang Suffered Cruel, Inhumane, and Degrading Treatment in Camp 15

When Ms. Kang and her family arrived at the camp for the first time, her brother observed that the prisoners looked “frightfully filthy, dressed like beggars, their hair caked and matted with dirt.” One of the kids approached and said: “The camp is no place to grow big and strong . . . a lot of kids stop growing here.”

¹⁰¹ Apparently her grandfather was arrested as part of a larger sting operation relating to the Han Duk-su affair, the power struggle that raged for a time within the Chosen Soren’s political leadership in Japan. Many of the former Japanese residents weighed in on it, but he hardly took an interest.

¹⁰² Although there is no article in the Penal Code prohibiting contact with foreigners, the authorities tend to consider anyone in contact with foreigners, especially those in South Korea, as spies.

Ms. Kang and her family were housed in a structure with a roof of bare wooden planks, dried earth for walls, and packed dirt for a floor. Power outages were frequent. There was no running water in the housing structure and the river was a ten minute walk away. A group of ten huts made their “village,” which was formally known as a “workers’ group.” Each village held a specific category of detainees with Ms. Kang’s village housing former Japanese residents and their families.

Ms. Kang was detained at age seven. As a child, Ms. Kang attended school in the morning and performed manual labor in the afternoon. She later worked in the sweatshops. She also chopped wood and hauled logs, grew corn, and pulled weeds among other tasks. She almost never saw her brother, so he is not sure if she faced the same hardships in the camp. She was exhausted at night and immediately collapsed into sleep. She made little fuss about eating rat meat, as she suffered from pellagra, an often fatal disease associated with malnutrition, and eating the rat meat that her brother obtained may have saved her life.

While these are the few specifics we know about Ms. Kang’s first detention in the camp, we do know more about life in the camp generally. The work conditions are torturous. Prisoners are forced to make twelve round trips of 6 to 8 kilometers per day hauling logs. In another example, a tunnel collapsed on children working on excavating a tunnel. After the survivors were pulled out, the other workers were forced to go back to work in view of their dead co-detainees.

The extreme lack of food makes it difficult to avoid malnutrition and starvation. Corn rations were approximately one pound for adults who worked all day, and slightly less than a pound for others and children. No vegetables were distributed. More than one hundred people out of a population of 2,000 to 3,000 died each year in Camp 15.

D. Ms. Kang and Mr. Kim are Currently in a Life-Threatening Situation in Camp 15¹⁰³

We believe that Ms. Kang and Mr. Kim are being held at Camp 15, because she had previously been a prisoner there, she lives in that region, and it is the prison camp where prisoners with crimes dealing with defection are detained. Ms. Kang suffered life-threatening conditions in the camp in her first detention. The conditions she and her son are enduring in this second detention are likely worse, because her brother and his uncle have since fled to South Korea, and her brother has become a well-known advocate for human rights in North Korea.

E. Model Questionnaire

1. Identity

- a. Family name: Kang (강)
- b. First name: Mi-ho (미호)
- c. Sex: Female

¹⁰³ This information is provided largely from her brother.

- d. Birth date or age (at the time of detention): June 14, 1970.
- e. Nationality/Nationalities: DPRK
- f. (i) Identity document (if any): Unavailable.
(ii) Issued By:
(iii) On (date):
(iv) No.:

There is no documentation available for Ms. Kang. It is extremely difficult for any foreigner, especially a South Korean, to obtain any documentation of any North Korean citizen. Ms. Kang's brother has received a photo taken in 2005 of her, and her son, Kim Jeong-nam (김정남), who is 11 years old as of 2012. Mr. Kang has also received a few letters written to a friend of his which were given as a written receipt for the money sent to Ms. Kang through a broker. While Mr. Kang has sent her money several times, he has sent it under the name of Ahn Hyuk, who escaped from North Korea with Mr. Kang in 1993. Using another's name is a precaution, as money sent from Mr. Kang, a famous North Korean dissident, is more likely to be a cause for action by the NSA. These letters and photo are the only forms of contact and current information available outside of North Korea

g. Profession and/or activity: Ms. Kang was a stay-at-home mother who lived with her son inside North Korea. However, her brother, Mr. Kang, has been working against the North Korean regime and for the improvement of North Korean human rights. Because of Mr. Kang's actions, the NSA has kept close surveillance on Ms. Kang and her son.

Ms. Kang's brother sent her money through a Korean-Chinese broker, Choi Deung-man (Male, born circa 1980), in early 2008. He then received a letter, hand-written by Ms. Kang, stating that she had safely received the money through Mr. Choi. A year later, Mr. Kang sent his sister additional money, approximately \$1,000, via Mr. Choi. In 2010, Mr. Kang sent around \$2,000 to Ms. Kang via Mr. Choi once again. This time a letter of receipt was not sent to Mr. Kang. Once again, in January, 2011, Mr. Kang attempted to deliver additional funds to Ms. Kang via Mr. Choi. This time, however, Mr. Choi did not contact Mr. Kang until July 2011. Finally, in July of 2011, Mr. Choi contacted Mr. Kang and explained that he had been caught and imprisoned by the NSA and had just been released. He also reported that he could not locate Ms. Kang and she had seemingly disappeared.

h. Address of usual residence: #7, Pungho 2-dong, Dongheungsan-district, Hamheung, South Hamkyung Province.

2. Arrest

a. Date of arrest: Ms. Kang has been missing since sometime around May 2011. According to Ms. Kang's neighbors, Korean-Chinese smugglers, and the broker Mr. Kang had been using to send money to Ms. Kang, she simply disappeared around that time.

b. Place of arrest: The exact place of her arrest is unknown as there were no witnesses to her arrest.

c. Forces who carried out the arrest or are believed to have carried it out: The NSA. The NSA has watched her every move due to her brother's activities in South Korea, which are strongly against the North's regime. In addition, all things related to political prisoners are the NSA's tasks. Therefore, it is likely her disappearance was caused by the NSA.

Contacts within North Korea assert that Ms. Kang and her son simply disappeared one night, leaving behind all their household items and belongings when they left. The disappearance of Ms. Kang and her son Jeong-nam has been verified by several sources within North Korea. It is likely that if the NSA discovered that Ms. Kang was receiving money from her brother, who is one of the most famous dissidents of the North Korean regime, she would be arrested and sent back to No. 15 *kwan-li-so* in Yoduk.

d. Did they show a warrant or other decision by a public authority? No.

e. Authority who issued the warrant or decision: N/A

f. Relevant legislation applied (if known): There is no proper legislation which can be applied to this case. However, Ms. Kang is the only sibling of one of the most famous dissidents of the North Korean regime and received money from outside North Korea.

Choi Deuk-man was arrested sometime in early 2011 for illegal smuggling. He was released and contacted Mr. Kang in July 2011. Mr. Choi claimed that Ms. Kang had given his name to the NSA. However, Ms. Kang had already spent a significant portion of her life within the No. 15 Kwanliso in Yoduk and was always very cautious when accepting money from her brother. Therefore, it seems unlikely to Mr. Kang that his sister would recklessly allow information about her receiving funds from her brother to reach the NSA.

Mr. Kang believes that Mr. Choi was likely captured in early 2011 and during interrogation informed the NSA of the arrangement between Ms. Kang and her brother. This scenario would better explain Ms. Kang's disappearance in May, which has been verified by several other contacts within North Korea, and Mr. Choi's reappearance in July of 2011. However, no definitive reason for Ms. Kang's disappearance has been given.

3. Detention

a. Date of detention: Approximately May 2011.

b. Duration of detention: Approximately May 2011 to present.

c. Forces holding the detainee under custody: The NSA

d. Places of detention (indicate any transfer and present place of detention):

Ms. Kang is presumably being held in the No. 15 Kwanliso in Yoduk. Ms. Kang had previously been a prisoner at Yoduk camp. Furthermore, she lives in South Hamkyung Province

near the Yoduk prison camp. Yoduk is also the prison camp where prisoners with crimes dealing with defection are detained. It is likely Ms. Kang's detention is a result of the activities of her brother since his defection to South Korea.

e. Authorities that ordered the detention: The NSA

f. Reasons for the detention imputed by the authorities: Even though there is no article in the Penal Code prohibiting contact with foreigners, the authorities tend to consider anyone with contact with foreigners, especially South Koreans, as spies. Therefore, cases such as this are generally treated as cases of espionage and treason. Those suspected of these crimes fall under the authority of the NSA.

g. Relevant legislation applied (if known): See *infra* at IV(D)(3)(g).

4. Describe the circumstances of the arrest and/or the detention and indicate precise reasons why you consider the arrest or detention to be arbitrary

Ms. Kang's brother is a dissident fighting against the North Korean regime. He works as a reporter for the *Chosun Ilbo*, a large newspaper in South Korea. He is an NGO activist working to reveal atrocities committed by the regime, and he has been working for North Korean human rights for over a decade.

Ms. Kang was simply a stay-at-home mother in North Korea. She lived at home and took care of her son, Kim Jeong-nam. However, it is typical in North Korea for the NSA to arrest family members of problematic figures such as Mr. Kang. This guilt-by-association is quite common within North Korea. For instance, Ms. Kang's entire family had previously been imprisoned in No. 15 Kwanliso in Yoduk for an unknown crime committed by her grandfather in 1977.

Through the interrogation of Choi Deuk-man, the NSA might have learned of the money Ms. Kang had received from her brother, Mr. Kang, who was residing in South Korea. This would likely be a cause of arrest by the NSA.

5. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken

N/A

IV. Shin Kyung Seop's Detention and History in Camp 14¹⁰⁴

A. Mr. Shin's Arbitrary Detention

¹⁰⁴ This section draws facts largely from *Harden*, *supra* note 7.

Mr. Shin was taken to Camp 14 along with his parents and two brothers by the NSA in 1965. Before dawn, security forces forced their way into a house owned by Mr. Shin's grandfather in Mudok County in South Pyongan Province. The armed men told them: "Pack your things." They did not explain why the family was being arrested or where they were going. A truck showed up for their belongings, and they traveled the entire day until they reached Camp 14. Mr. Shin's only "crime" was having two brothers who fled to the South during the Korean War.

B. Mr. Shin Has Suffered Inhumane Treatment in Camp 14

Mr. Shin has been in Camp 14 for over 45 years. When he was first imprisoned, he operated a metal lathe in the camp's machine shop. His skill in that position earned him a reward marriage, arranged by camp guards. If he refused to marry the woman the guards offered to be his wife, neither of them would have been able to marry. Though married, Mr. Shin was forced to live in a dormitory at his work site rather than with his wife and his two children who were born in Camp 14. For the five nights following the wedding, however, he was allowed to stay with his wife. From then on, he was allowed to stay with her a few times a year. As a result of these visits, he had two sons, who also lived in the camp. Despite their marriage, Mr. Shin's wife was forced to have sex with guards.

In April 1996, Mr. Shin's wife and oldest son were caught trying to escape. Mr. Shin and his younger son were taken to an underground prison, where they were tortured. As a result, Mr. Shin's right leg faced outward in an unnatural way. Below his knee, the bones of his legs had been broken and now had reconnected at an odd angle.

After spending over six months in this underground prison, Mr. Shin and his younger son were handcuffed, blindfolded, and placed in the back seat of a car. As a condition of their release, they were forced to sign documents promising that they would never discuss what happened in that underground prison. When they were let out of the car, Mr. Shin and his son were forced to the front of a crowd to witness the execution of Mr. Shin's wife and older son.

The conditions of the prison camps, one of which is Mr. Shin's place of detention, have been described by Vitit Muntarbhorn, the former Special Rapporteur on the Situation of Human Rights in Democratic People's Republic of Korea, as "a death trap for inmates."¹⁰⁵ In a 2005 report, Mr. Muntarbhorn noted concerns about a lack of humane treatment, catastrophic food shortages, and guilt-by-association, among other concerns.¹⁰⁶ In Camp 14, assemblies of more than two inmates are forbidden, except for executions, where everyone must attend. A few prisoners are publicly executed every year. Others are beaten to death or secretly murdered by guards who are almost completely free to rape and abuse prisoners at will.

Prisoners are forced to work in extremely physically demanding jobs twelve to fifteen hour days. Prisoners in the gulag have been reported to perform jobs such as mountain logging, stone quarrying, farming, and factory work¹⁰⁷ while subsisting on a near starvation diet of corn,

¹⁰⁵ See DPRK, *supra* note 16, at 363.

¹⁰⁶ *Id.*, at 362-63.

¹⁰⁷ *Id.*, at 351.

cabbage, and salt. In one instance where Mr. Shin's son was working to erect a concrete wall, a nearby wall cracked, collapsed, and fell on a group of eight workers below it. Three adults, three fifteen-year-old girls, and two fifteen-year-old boys were killed. Several of them were crushed beyond recognition. After the accident, the supervising guard did not stop the work. Rather, at the end of the shift, he ordered Mr. Shin's son and the other workers to dispose of the dead bodies.

Prisoners also face the persistent threat of starvation. To survive, prisoners are forced to eat rats, frogs, snakes, and insects. Other techniques prisoners use to fight hunger include: regurgitating a recent meal and eating it again; not defecating; and avoiding water because it may speed up digestion. Prisoners lose their teeth, their gums turn black, their bones weaken, and as they enter their forties, they hunch over at the waist. Prisoners usually die before fifty due to malnutrition related illness. Because of these conditions, suicide is common.

C. *Shin Kyung Seop is Currently Under Life-Threatening Conditions in Camp 14*

We believe Mr. Shin is in Camp 14 likely suffering from severe torture as a result of his son's escape. If he is in the camp and not enduring "torture," he is almost certainly undergoing the general torturous conditions of Camp 14, described above.

D. *Model Questionnaire*

1. Identity

- a. Family name: Shin (신)
- b. First name: Kyung-seop (경섭)
- c. Sex: Male
- d. Birth date or age (at the time of detention): Born 1946, date unknown.
- e. Nationality/Nationalities: DPRK
- f. (i) Identity document (if any): There is no document because an ID card of prisoners of *kwan-li-so* are taken away when they enter.
(ii) Issued by: N/A
(iii) On (date): N/A
(iv) No.: N/A
- g. Profession and/or activity: Unknown.
- h. Address of usual residence: Unknown. Mr. Shin's place of birth was Rongbok-ri, Mundeok, South Pyongan Province.

2. Arrest

- a. Date of arrest: 1965
- b. Place of arrest: Oidong-ri, Kaecheon, South Pyongand Province

c. Forces who carried out the arrest or are believed to have carried it out: The NSA. All work related to the *kwan-li-so* including: arrests, interrogations, detentions, and management of the prisoner system is the responsibility of the NSA.

d. Did they show a warrant or other decision by a public authority? No. There are no warrants or documents of authority provided by the NSA to political prisoners. The NSA's method of arrest for political prisoners is to enter the home unannounced, order the prisoners to collect a sparse amount of daily necessities, force them into the back of a truck, and drive them directly to the political prison camp. This completes the process of arrest. There is no warrant, no advance notice, and no trial.

e. Authority who issued the warrant or decision: N/A

f. Relevant legislation applied (if known): N/A

3. Detention

a. Date of detention: Mr. Shin was detained sometime in 1965.

b. Duration of detention: From 1965 to present.

c. Forces holding the detainee under custody: The NSA. All work related to *kwan-li-so* is done by the NSA.

d. Places of detention: No. 14 Kwanliso, Oidong-ri, Kaecheon, South Pyongand Province.

e. Authorities that ordered the detention: The NSA.

f. Reasons for the detention imputed by the authorities: Mr. Shin's family, including his parents and two brothers- Shin Myeong-seop(신명섭) and Shin Chang-seop(신창섭)- were placed into the No. 14 Kwanliso in Kaecheon in 1965. The exact date is not known.

Shin Dong-hyuk, who is Mr. Shin's son, accidentally stumbled upon the reason for his family's detention when he was dragged to a basement prison facility immediately after his mother and brother attempted to escape from the camp on April 6, 1996. At that time, he needed to sign a document with his thumbprint. The document he signed explained the entirety of his family's history and their imprisonment. The document stated "Shin Tae Seop was involved in the security forces in 1951 and escaped to the South." Shin Tae-seop is Mr. Shin's eldest brother. Those who were involved with the security forces during the Korean War were classified as part of the lowest class in North Korea, along with landlords and religious persons, as the most dangerous faction. Because of his brother's associations and defection during the Korean War, Mr. Shin's entire family, except those members who escaped or are dead, has spent over forty years in No. 14 *kwan-li-so*.

g. Relevant legislation applied: According to the North Korean Penal Code Articles 44 to 55, the longest term of detention in the reeducation camps is 10 years. Reeducation camps serve the same purpose as prisons in other law-governed nations. The most critical punishment is, of course, the death penalty.

As an example of sentencing, Article 44 states, “Those who were involved in a conspiracy to overthrow the Republic, or took part in a riot, are to be given a sentence of between 5 and 10 years at a labor and reeducation camp. The leader or primary participants are to be sentenced to the death penalty or over ten years at the labor and reeducation camps, and forfeit their property rights.”

However, regardless of what the Penal Code states, the reality is that suspects of crimes tend to be detained in the political prison camps for life. Their families are also imprisoned in a separate revolutionary zone of the camp specifically for those convicted for guilt-by-association.

The North Korean regime uses the Party’s Ten Principles for the Establishment of the One-Ideology System to punish citizens who it deems a danger to the regime. The “Ten Principles” of the regime override any statute in the constitution. Furthermore, the punishment for violating the “Ten Principles” is much more severe, and entirely arbitrary.

In fact, the reality is that those who are convicted of serious violations of these “Ten Principle” crimes are usually detained in political prison camps for life. Their families are also imprisoned in a separate revolutionary zone of the camp specifically for those convicted of the crime of guilt-by-association

4. Describe the circumstances of the arrest and/or the detention and indicate precise reasons why you consider the arrest or detention to be arbitrary

The No. 14 Kwanliso was opened in 1965. Mr. Shin and his family were arrested that year for the crime of defection committed by Mr. Shin’s older brothers over a decade before.

The 1960’s marked the beginning of the era of Kim Il-Sung’s idolization project after Kim Jong-Il’s graduation from Kim Il-Sung University started his political activities in the Party. In order to monitor and control the thoughts of the people, the authorities established special detention facilities.

According to Hwang Jang-yop, there had been labor camps in North Korea since the late 1950’s. However, 1964 marked the first establishment of Complete Control Zones. These are the camps where political offenders are imprisoned until they die. Camp No. 14 is one of them.

Therefore, Mr. Shin’s son presumes that in the process of looking for political prisoners for the newly opened Complete Control Zones, the NSA uncovered the records of defection for Mr. Shin’s two brothers. This was a very serious charge. Furthermore, the family, whose members escaped to the South during the War, had already been placed in the lowest class in North Korea, named “the hostile class.” Therefore, there was no objection to their detention.

Mr. Shin and his family were detained over a decade after the defection of Mr. Shin's older brothers. Their arrest and detention was part of a campaign by the government to rid itself of political dissidents as well as their family and associates. Even by North Korean standards, the family had committed no crime except for guilt-by-association.

5. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.

N/A

V. Petitioners' Detentions Violate International Law that Governs North Korea

The deprivation of Petitioners' freedom falls within Categories II and III of the Working Group's classification of cases because it results from the deprivation of freedoms under the International Covenant on Civil and Political Rights¹⁰⁸ ("ICCPR"), the Universal Declaration of Human Rights¹⁰⁹ ("UDHR"), and the Protection of all Persons Under Any Form of Detention or Imprisonment¹¹⁰ ("Body of Principles").

This is a straightforward case in which the Petitioners are being detained solely because of their familial blood relationship, as expressed by the guilt-by-association practice of the DPRK government that determined Petitioners' family had carried out actions in violation of DPRK law. And in detaining the Petitioners, the DPRK has provided them no due process of law. Petitioners' deprivation of freedom falls within Category II because Article 22 of the ICCPR and Article 20 of the UDHR were violated.¹¹¹ The deprivation of freedom also falls within Category III of the Working Group's classification of cases because Articles 9 and 14 of the ICCPR and Article 10 of the UDHR were violated.¹¹²

A. Petitioners Were Denied the Right to Freedom of Assembly and Association

¹⁰⁸ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52 U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976.

¹⁰⁹ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc.A/810.

¹¹⁰ Protection of all Persons Under Any Form of Detention or Imprisonment, U.N. Res., entered into Dec. 9, 1988.

¹¹¹ A Category II deprivation of liberty occurs, "[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the UDHR and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the [ICCPR]. Office of the High Comm/r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV(B).

¹¹² The Working Group considers a deprivation of liberty to be Category III arbitrary detention "[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character." Office of the High Comm/r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV(B). Additionally, in making a Category III determination, the Working Group will look to the Principles for the Protection of All Persons under any Form of Detention or Imprisonment, and if the State is a party to the ICCPR, articles 9 and 14 of the ICCPR.

The ICCPR and the UDHR provide the Petitioners with a right to freedom of assembly and association.¹¹³ Article 22 of the ICCPR states, “Everyone shall have the right to freedom of association with others... .” Petitioners’ families were denied this right and thus Petitioners are denied it as well because they were imprisoned solely due to guilt-by-association; Mr. Shin, due to his brother’s alleged crime, and Ms. Kang and Mr. Kim, due initially to her grandfather’s alleged crime and now most likely to her brother’s activism.

B. Petitioners Were Denied Their Due Process Rights

The ICCPR, UDHR, and Body of Principles protect the Petitioners rights related to due process. Under the ICCPR¹¹⁴ this includes: “All persons shall be equal before the courts and tribunals [where] everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law [Article 14(1)]¹¹⁵.... Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law [Article 14(2)]¹¹⁶...[and] shall be ...informed promptly...of the nature and cause of the charge against him [Article 14(3)(a)].¹¹⁷ ...[Everyone shall]...have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing [Article 14(3)(b)]¹¹⁸...[Everyone shall]...be tried without undue delay [Article 14(3)(c)]...in his presence, and to defend himself in person or through legal assistance of his own choosing [Article 14(3)(d)]...[and is entitled]...to examine, or have examined, the witnesses against him [Article 14(3)(e)]. ...In the case of juvenile persons, the procedure shall...take account of their age and the desirability of promoting their rehabilitation [Article 14(4)]. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law [Article 14(5)].”

Here, all these rights were violated. Neither Petitioner received the reason for arrest, a trial of any kind and its associated procedures, or the opportunity to consult counsel. Mr. Shin was taken away in 1965 by the NSA for having two brothers who fled to the South during the Korean War. He was not informed of the reason for his arrest; the security agents did not even explain where the family was being taken. A truck showed up for their belongings, and they traveled the entire day until they reached Camp 14. Based on what we know about Camp 14, it is extremely unlikely that a trial took place. It is also extremely unlikely that Mr. Shin ever was offered the opportunity to consult with counsel.

Ms. Kang was informed only that her grandfather was a traitor of the state, and she was not told of her rights or of the conditions of Camp 15. Ms. Kang was taken with her family from her home to Camp 15. She was not given a trial or provided with an opportunity to consult counsel. It is believed that neither she nor her son were provided any trial or counsel with regard to their disappearance and transfer to Camp 15.

¹¹³ ICCPR, Art. 22 Article 20(1) of the UDHR provides that “Everyone has the right to freedom of peaceful assembly and association.”

¹¹⁴ See subsections of ICCPR Article 14.

¹¹⁵ See also UDHR Article 10.

¹¹⁶ *Id.* Article 11(1).

¹¹⁷ See also ICCPR Art. 9(2); Body of Principles, 13

¹¹⁸ See also Body of Principles, Principle 17, 18(1).

VI. Conclusion

The Government of North Korea's arrest and detention of Mr. Shin for over forty-five years and Ms. Kang and Mr. Kim for approximately eleven years (ten years in her first detention and approximately one year in her current detention) without due process equates to arbitrary detention under Categories II and III of the Working Group's classifications. The Petitioners remain arbitrarily detained despite having committed no crime. In fact, both are imprisoned on a basis of guilt-by-association relating to alleged "crimes" of their family members. On the basis of the evidence submitted, we respectfully request the Working Group communicate an urgent appeal to the Government of North Korea and proceed to issue an opinion on this case urging Petitioners' release.

INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN

As described above, Petitioners never had a trial and have had no chance to dispute the reason for their detention or the legitimacy of the laws upon which their detention is based. They remain incarcerated, despite doing nothing that could legitimately be considered criminal. As a result, they remain forced to endure torture, backbreaking work, starvation-level food rations, and no access to healthcare. Mr. Shin has no ability to be released, and Ms. Kang and Mr. Kim probably do not either. In the absence of their ability to appeal or have any review, we submit this Petition.

VII. Full Name and Address of the Person(s) Submitting the Information

This petition is submitted by attorneys Jared Genser and Chris Fletcher, pro bono counsel to Petitioners Kang Mi-ho, Kim Jeong-nam, and Shin Kyung-seop.

Jared Genser and Chris Fletcher
Perseus Strategies, LLC
1146 19th Street, NW, Suite 500
Washington, D.C. 20036
United States of America
+1 (202) 320-4135 (tel)
+1 (202) 318-8326 (fax)
jgenser@perseus-strategies.com