

The U.N. Standard Minimum Rules for the Treatment of Prisoners and North Korea: How North Korea is Violating these Rules with its Operation of the Yodok Concentration Camp^{1*}

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ABSTRACT

The aim of this paper is to analyze how North Korea is violating the “U.N. Minimum Rules for the Treatment of Prisoners”, the international authority on how U.N. countries treat their prisoners, with its operation of the Yodok concentration camp, and how the International Community can apply pressure on North Korea to close this camp. With this in mind, first it provides the international definitions of “torture” and “cruel, inhuman, and degrading punishment”, as well as some notable examples of torture and relevant international human rights case law. Then, it analyzes the “U.N. Minimum Rules for the Treatment of Prisoners”, and how North Korea is violating these Rules with their continued operation of Yodok. Finally, It analyses the action of formal international bodies to try to convince North Korea to either change the conditions of confinement for its prisoners in Yodok, or to shut down the camp entirely, as well as North Korea’s response to this international pressure. It concludes that these formal attempts at persuading North Korea to close down Yodok have not worked, and have had the unwanted effect of both angering the North Korean government and of further fermenting North Korea’s anti-international sentiment. In the end, it suggest ways in which the International Community can put pressure on North Korea to close the Yodok camp, and provides original examples of how we can stop this concentration camp from existing in the future, with the help of both formal U.N. bodies and independent organizations.

1. INTRODUCTION

Nine-year old Kang Chol-hwan and his family arrived at the Yodok concentration camp after a long and tumultuous van ride, knowing little about where they were going or what exactly they had done wrong.² The grandmother, who had attended every Party meeting and assembly and showed only the utmost loyalty to Kim Il-Sung and the Revolutionary cause, felt betrayed by the State which she had devoted her entire life to, while her youn-

1 Acknowledgments: I would like to thank Professor Martha Rayner of Fordham University School of Law for overseeing the research and drafting of this paper. I would also like to thank Professor Eric Jensen, whose confidence in my writing has motivated me to try and publish my work with international law journals. Last but certainly not least, I would like to thank my mother and father, who have read all three of my papers on North Korea, and have provided me with an endless supply of love and support pivotal to any success I have enjoyed.

2 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang 46-8* (Basic Books, New York 2005).

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gest grandson Kang could not help but bawl over the prospect of losing his most prized and exotic fish.³ Once Kang climbed out of the van with his family, however, he began to realize that the survival of his fish would be the least of his problems:

The guards [then] pulled the canvas cover off the truck and we all stood up...I had the vague impression that this was to be a decisive moment. The canvas was like a theater curtain that had been prematurely drawn. A new scene, indeed a new act, had begun, and none of us were ready for it... But I didn't have long to inquire because the men and women standing around the truck were already stepping forward for a closer look. How frightfully filthy they all were, dressed like beggars, their hair caked and matted with dirt. Panic took hold of me.⁴

Kang and his family would go on to spend ten long years at the Yodok concentration camp, a mass political penal-labor camp ("kwan-li-so") where North Korean citizens who are considered enemies of the State are banished and sentenced to a lifetime of "slave labor in mining, logging, and farming enterprises", without any sort of judicial process involved, unless they are sent to the "revolutionizing zone".⁵ Although North Korea is one of the most isolated countries in the world,⁶ and is not willing to allow international groups or researchers to enter into its country for the purposes of confirming the existence of the Yodok camp,⁷ satellite images and former prisoner testimonials have provided the international community with more than enough information to confirm not only its existence, but also the torturous and cruel, inhuman, and degrading techniques used therein.⁸

Run by the National Security Agency⁹, the Yodok camp, located in the Hamgyong Namdo Province, is ap-

proximately 378 kilometers in area,¹⁰ and is surrounded by barbed-wire fences three to four meters high, electrically-wired walls, strategically placed watch towers, and over a thousand prison guards armed with automatic rifles and well-trained guard dogs.¹¹ Because Yodok is a political prisoner camp, it abides by the principle of "guilt by association", first articulated by Kim Il Sung in 1972, which means that up to three generations of an offender's family automatically can go to prison, regardless of whether or not the family member committed a crime.¹² Yodok is also the only known political camp to have a re-education section ("revolutionizing zone"), a special part of the camp which is separate from the "total control zone"¹³ and from which a select number of prisoners have been released and allowed to re-enter "normal" North Korean life.¹⁴

Regardless of what section of the camp they are in, all Yodok prisoners are subject to torture and cruel, inhuman, and degrading punishment, as well as a subhuman standard of living.¹⁵ Yodok prisoners are forced to complete back-breaking labor from dawn to dusk every day,¹⁶ eat inadequate amounts of a crudely made

10 Blain Harden, "Outside World Turns Blind Eye to N. Korea's Hard-Labor Camps", Washington Post, July 20, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/19/AR2009071902178.html> (last visited April 5, 2012).

11 David Hawk, *The Hidden Gulag: Exposing North Korea's Prison Camps* 34. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003).

12 David Hawk, *The Hidden Gulag: Exposing North Korea's Prison Camps* 24. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003), 25 ("The other strikingly abnormal characteristic of the kwan-li-so system is that prisoners are not arrested, charged (that is, told of their offense), or tried in any sort judicial procedure").

13 Kang Chul Hwan, "A Christian Family Detained for life for Praying", *The Daily NK*, Oct. 14, 2005, available at <http://www.dailynk.com/english/read.php?cataId=nk02600&num=313> (last visited April 5, 2012).

14 David Hawk, *The Hidden Gulag: Exposing North Korea's Prison Camps* 12, 26. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003).

15 SEE *Survey Report on Political Prisoners' Camps in North Korea*, National Human Rights Commission of Korea, Dec. 2009, & David Hawk, *The Hidden Gulag: Exposing North Korea's Prison Camps*. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003).

16 "North Korea: images reveal scale of political prison camps", Amnesty International, May 4, 2011, available at <http://www.amnestyusa.org/news/press-releases/north-korea-images-reveal-scale-of-political-prison-camps> (last visited March 28, 2012) (Jeong Kyoungil, former prisoner at Yodok: "A day starts at 4am with an early shift, also called the 'pre-meal shift', until 7am. Then breakfast from 7am to 8am but the meal is only 200g of poorly prepared corn gruel

3 *Id.* at 45 and 46 ("most of the time I stayed seated...grieving the death of several of my fish").

4 *Id.* at 48-9.

5 David Hawk, *The Hidden Gulag: Exposing North Korea's Prison Camps* 10, 11. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003).

6 Robert L. Worden, "North Korea: A Country Study" xxiii. Federal Research Division, Library of Congress, 2008 ("Major Features: Traditionally socialized, centrally planned, and primarily industrialized command economy isolated from rest of world").

7 SEE Section V of this Paper.

8 Examples include David Hawk's, *The Hidden Gulag: Exposing North Korea's Prison Camps* 10, 11. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003), and "Yodok, North Korea - Write for Rights 2011", Amnesty International USA, November 15, 2011, available at <http://www.amnestyusa.org/news/multimedia/yodok-north-korea-write-for-rights-2011> (last visited March 15, 2012).

9 *White Paper on Human Rights in North Korea 2005* 69-70, Korean Institute for National Unification, Seoul, 2005.

corn gruel which turns their stomachs inside out,¹⁷ and praise and worship the Kim family at nightly meetings, thanking their Dear Leader for his infinite compassion and love in giving them, the lowly political prisoners, the chance to correct their sinful and anti-revolutionary ways.¹⁸ All the while, the fear of life-threatening solitary confinement and death by execution looms over their heads, threats made real by the existence of the “sweatbox”, a torture device used to discipline prisoners for what is considered exceptionally bad behavior,¹⁹ and by the frequent execution of prisoners in public, prisoners who did nothing more than try to escape the man-made Hell that is Yodok.²⁰

Kang’s story of survival at Yodok²¹ serves as a reminder that hundreds of thousands of North Koreans still remain imprisoned in concentration camps²² all over North Korea.²³ The few North Korean citizens

for each meal. Then there is a morning shift from 8am to 12pm and a lunch until 1pm. Then work again from 1pm to 8pm and dinner from 8pm to 9pm. From 9pm to 11pm, it’s time for ideology education. If we don’t memorize the ten codes of ethics we would not be allowed to sleep. This is the daily schedule”).

17 “North Korea: images reveal scale of political prison camps”, Amnesty International, May 4, 2011, available at <http://www.amnestyusa.org/news/press-releases/north-korea-images-reveal-scale-of-political-prison-camps> (last visited March 28, 2012) (Jeong Kyoungil, former prisoner at Yodok: At night, “200g of poorly prepared corn gruel in a bowl would only be given if we finish our daily tasks”).

18 SEE Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang 47-159* (Basic Books, New York 2005).

19 *Id.* at 77, 93-4, 96.

20 *Id.* at 47-159 (at 158: “The next day, the liberated families were summoned to the security office of the village, where we each had to sign a document promising never to reveal any information about Yodok or about what they had seen during their incarceration”).

21 *Id.* at 158.

22 David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps 2*. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003) (“The *kwon-li-so* political penal labor colonies are also variously translated into English as “control centers,” “management centers,” “concentration camps,” or “political prison camps”).

23 Bryna Subherwal, “Families Imprisoned in Secret Camps”, Human Rights Now: The Amnesty International USA Web Log, November 23, 2011, available at <http://blog.amnestyusa.org/iar/families-imprisoned-in-secret-camps-in-north-korea/> (last visited March 15, 2012) (“Although authorities deny the existence of political prison camps in North Korea, Amnesty International has verified that Yodok is one of at least six such camps in which **200,000 political prisoners and their families are held**”) (emphasis not added); Yodok, North Korea – Write for Rights 2011, Amnesty International USA, November 15, 2011, available at <http://www.amnestyusa.org/news/multimedia/yodok-north-korea-write-for-rights-2011> (last visited March 15, 2012) (Currently, “[t]ens of thousands of people are held in Yodok political prison camp, with an

who have been released from Yodok and managed to escape the country have attested to the camp’s horrible conditions, and the inhumane treatment of prisoners therein. Their stories, which are outlined in greater detail later in this paper, provide a vivid account of daily life in Yodok, and all the evidence one needs to conclude that the Yodok prison is nothing short of a 21st century concentration camp.

The very existence of the Yodok camp, and its philosophy of political reformation through torture and cruel, inhuman, and degrading punishment, runs contrary to the U.N. *Standard Minimum Rules for the Treatment of Prisoners*, a non-binding set of guidelines for both international and domestic law regarding how individuals held in prisons and in other forms of custody are to be treated, with the ideals espoused in major human rights instruments - particularly a person’s right to human dignity - permeating throughout the Rules.²⁴

In the pages that follow, Yodok’s most egregious violations of the U.N. Standard Minimum Rules for the Treatment of Prisoners will be analyzed. In particular, the focus will be on the prison’s punishment and discipline of prisoners, since this is arguably the State’s greatest weapon in keeping its prisoners in line and “re-forming” them into law-abiding revolutionaries.²⁵ The

estimate of around 50,000, and most are imprisoned there without trial or following grossly unfair trials on the basis of “confessions” obtained through torture”; David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps 34*, U.S. Committee for Human Rights in North Korea, Washington D.C. 2003 (“During An Hyuk’s year-and-a-half imprisonment [1987-89], there were some 30,000 prisoners in the lifetime area, and 1,300 singles and 9,300 family members in the revolutionizing zone along with some 5,900 Koreans, including Kang’s family”); “Liberty in North Korea: The North Korean Human Rights Crisis”, Adrian E. Hong, June 29, 2007, available at <http://www.youtube.com/watch?v=zHvf8OLYND4> (last visited March 28, 2012) (approx. 15:27: over 250,000 people are in North Korean concentration camps).

24 United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e.html> [accessed 14 May 2012].

25 Indeed, Kim Il Sung and the Korean Worker’s Party were well aware of the effectiveness of such a policy. Establishing the “Democratic People’s Republic of Korea” (heretofore “North Korea”) on September 9th, 1948, the Korean Workers’ Party – led by premier Kim Il Sung – consolidated power in part by creating a system of political prison and labor camps. Any citizen whose loyalty to both the Party and to the Revolution was deemed questionable was sent to one of these camps, depending on the nature and severity of the crime. SEE Andrea Matles Savada, *North Korea: A Country Study 38*, U.S. Government Printing Office, Washington, D.C., 1994, & David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps 37-8*. U.S. Committee for Human Rights in North Korea

policy of sending citizens to concentration camps for both minor and major political infractions,²⁶ part of the country's "national democratic revolution", dates at least as far back as the death of Joseph Stalin in 1953²⁷ and Kim Il Sung's establishment of a "hermit kingdom" style of isolation and self-reliance, which meant that citizens who tried to leave the country and were caught were sent to political penal labor camps.²⁸

This inhumane policy of sending citizens to camps has been a long tradition faithfully adhered to by Kim Il Sung, Kim Jong Il, and the newest leader to date, Kim Jong-un, who was appointed supreme commander of North Korea on December 30th, 2011.²⁹ Even before Kim Jong-un's accession as the new leader, his father, Kim Jong Il, upon Kim Jong-un being appointed a four-star general in 2010, substantially increased the number of citizens being sent to political prison camps, leading one to believe that such camps, and the torture tactics

used therein, are useful in suppressing any trace of anti-revolutionary thought or sentiment, and that sending more citizens to these camps is especially effective in ensuring a smooth transition of power.³⁰ This philosophy is reflected in North Korea's 1950 Penal Code, which states that the purposes underlying such punishment are "to suppress class enemies, educate the population in the spirit of 'socialist patriotism,' and reeducate and punish individuals for crimes stemming from 'capitalist' thinking."³¹

The flow of this paper will be as follows: First, I will briefly provide the international definitions of "torture" and "cruel, inhuman, and degrading punishment", as well as some notable examples of torture and relevant international human rights case law. Then, I will be looking at the *U.N. Standard Minimum Rules for the Treatment of Prisoners*, since they provide specific guidelines regarding the treatment of prisoners and because they are considered the international authority on the proper treatment of prisoners (one of the major treaties which helps regulate how a nation-state treats its prisoners – the Convention Against Torture (CAT) - will only be discussed here when analyzing what constitutes torture and when discussing the notes and comments to the *U.N. Standard Minimum Rules for the Treatment of Prisoners*, since North Korea has yet to sign or ratify CAT)³². After this legal analysis, I will talk about how North Korea is violating the U.N. Standard Minimum Rules with their continued operation

(Washington, D.C. 2003) ("Kim Il-sung, under Soviet tutelage, instituted what is usually termed a 'national democratic revolution'... [which] included a purge of Koreans in the colonial bureaucracy, who thought that Korea should follow the Japanese path to economic, social and political modernization, and Korean police officers who had collaborated with the harshly repressive Japanese rule in Korea. Many purged police officials and dispossessed Korean landlords fled to the south. Many of their family members who remained in the north ended up in labor camps); The gulag behind the goose-steps, April 21st, 2012, available at <http://www.economist.com/node/21553090> (last visited May 17th, 2013) ("The new edition [of "The Hidden Gulag"] provides testimony starting in 1970 about different types of forced-labour camps: the *kwan-li-so* for political prisoners, from which there is usually no release; the *kyo-hwa-so* penitentiaries mostly for those serving out sentences as common criminals; and detention centres for those forcibly repatriated from China) (emphasis added).

26 The reasons why citizens are sent to these camps range from allegations of high treason to accidentally dirtying a portrait of Kim Il Sung. Regardless, citizens are not usually told what particular law they have broken or given any sort of judicial process. For some examples, SEE Hidden Gulag 2 and The Aquariums of Pyongyang.

27 David Hawk, *The Hidden Gulag*, Second Edition: The Lives and Voices of "Those Who are Sent to the Mountains" 37-9. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2012). ("Following the death of Stalin in 1953, the Soviet Union and most of Eastern Europe curbed some of the worst excesses of Stalinism seeking a measure of return to 'socialist legality,' and in anticipation of what became known as 'revisionism,' the possibility of "peaceful co-existence" between capitalism and socialism. Ruling communist parties in East Asia took a dramatically different course that has been described as 'national Stalinism'").

28 *Id.* at 39-40.

29 "Kim Jong-un appointed supreme commander of North Korea's military", *The Telegraph*, Dec. 30, 2012, available at <http://www.telegraph.co.uk/news/worldnews/asia/northkorea/8985807/Kim-Jong-un-appointed-supreme-commander-of-North-Koreas-military.html> (last visited May 7th, 2013).

30 SEE "North Korea: Kim Jong-il's death could be opportunity for human rights", Amnesty International, Dec. 19, 2011, available at <http://www.amnesty.org/en/news/north-korea-kim-jong-il-s-death-opportunity-improving-human-rights-2011-12-19> (last visited March 28, 2012) ("recent reports received by Amnesty International suggest that the North Korean government has purged possibly hundreds of officials deemed to be a threat to Kim Jong-un's succession, by having them executed or sent to political prison camps. 'Our information over the last year indicates that Kim Jong-un and his supporters will try to consolidate his new rule by intensifying repression and crushing any possibility of dissent,' said Sam Zarifi").

31 Andrea Matles Savada, *North Korea: A Country Study* 273-4, U.S. Government Printing Office, Washington, D.C., 1994 ("the code's ambiguity, the clear official preference for rehabilitating individuals through a combination of punishment and reeducation, and additional severity for crimes against the state or family reflect the lack of distinction among politics, morality, and law in neo-Confucian thought").

32 To see the ratification status of the Convention Against Torture, SEE "Chapter IV: Human Rights – 9. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", United Nations Treaty Collection, available at http://treaties.un.org/Pages/ViewDetails.aspx?src=UNTS&tabid=2&mtds_g_no=IV-9&chapter=4&lang=en#Participants (last visited March 21, 2012).

of Yodok, relying on both the testimonials of prisoners and the reports of non-governmental organizations to outline each specific violation. Once each human rights violation has been accounted for, I will then discuss what The Working Group on the Universal Periodic Review, the U.N. General Assembly, and the U.N. Special Rapporteur of Human Rights have done, if anything, to try and get North Korea to either change the conditions of confinement for its prisoners in Yodok, or shut down Yodok entirely, as well as the State's response to this international pressure. In the end, I will discuss what the International Community can do to put pressure on North Korea to close Yodok, since the current existence and persistence of Yodok as a full-fledged concentration camp housing thousands of innocent citizens is a human rights situation which should concern everyone.

2. TORTURE AND CRUEL, INHUMAN, AND DEGRADING PUNISHMENT, DEFINED

2.1 Torture

Arguably the most widely accepted international definition of torture³³ is set forth in Article 1 of the Convention Against Torture ("CAT").³⁴ According to CAT, torture is:

[A]ny act by which **severe pain or suffering**, whether physical or mental, is **intentionally**

33 There is no one, single definition of torture, although a myriad of definitions exist. This leads governments to call its acts of torture by other names, as pointed out by the 1973 Amnesty International Report on Torture. The acts we will be discussing, however, are clearly torture on their face, and so the purpose of providing the definition stated above is to guide the reader and get her thinking about the acts of torture committed in Yodok in relation to specific elements of an acceptable definition. For more on the definition of torture, SEE Gail H. Miller, Defining Torture, Floersheimer Center for Constitutional Democracy, Cardozo Law School, Dec. 2005, available at <http://ranid.mc.yu.edu/cms/uploadedFiles/FLOERSHEIMER/Defining%20Torture.pdf> (last visited April 7, 2012).

34 "Defining torture", International Rehabilitation Council for Torture Victims, available at <http://www.irct.org/what-is-torture/defining-torture.aspx> (last visited April 7, 2012); Gail H. Miller, Defining Torture, Floersheimer Center for Constitutional Democracy, Cardozo Law School, Dec. 2005, available at <http://ranid.mc.yu.edu/cms/uploadedFiles/FLOERSHEIMER/Defining%20Torture.pdf> (last visited April 7, 2012); Bo Kyi & Hannah Scott, Torture, Political Prisoners and the UN-Rule of Law: Challenges to Peace, Security and Human Rights in Burma, available at http://www.aappb.org/Torture_political_prisoners_and_the_un-rule_of_law.pdf (last visited April 7, 2012).

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 or incidental to lawful sanctions.³⁵ (emphasis added)

Following this definition is Article 2's absolute prohibition on all forms of torture, which according to General Comment No. 2 has the force of customary international law (specifically a *jus cogens* norm³⁶), making it non-derogable under all circumstances.³⁷ Indeed, the forced internment and torturing of hundreds of thousands of North Korean citizens at Yodok is in clear violation of the universal principle, espoused by the Human Rights Committee, the American Convention for Human Rights, the Inter-American Commission on Human Rights, the European Court of Human Rights, and the former Commission on Human Rights, that the right to humane treatment is a right of universal significance.³⁸

35 UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.unhcr.org/refworld/docid/3ac6b3a94.html> [accessed 7 April 2012].

36 Pursuant to Article 53 of the Vienna Convention, a *jus cogens* norm is defined as "a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character". Therefore, every State in the world has several non-derogable obligations stemming from the existence of this *jus cogens* norm, including the duty to prosecute or extradite, the non-applicability of a statute of limitations, the non-derogation of this norm in times of peace, war, or "states of emergency", and so on. Additionally, the Articles of the International Law Commission explicitly recognizes the prohibition against torture and the prohibition of cruel, inhuman or degrading treatment as a *jus cogens* norm. For more, SEE Mirgen Prenc, *Torture as Jus Cogen Norm*, Acta U. Danubius Jur. 87 (2011). ALSO SEE *Nicaragua v. U.S.*, 1986 I.C.J. 14 (affirming *jus cogens* as an accepted doctrine of international law).

37 UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.unhcr.org/refworld/docid/3ac6b3a94.html> [accessed 7 April 2012].

38 From North Korea Now - International Law: "Human rights violated in forced internment are either 'peremptory norms' (*jus cogens*, or a fundamental principle of international law) themselves, or affect the protection of such peremptory norms, including the right

In addition to CAT's definition of torture, the International Covenant of Civil and Political Rights (ICCPR), to which North Korea is a party to, provides a succinct but equally powerful definition of torture and cruel, inhuman and degrading punishment.³⁹ Article 7 to the ICCPR reads as follows:

No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.⁴⁰

General Comment No. 20 to the ICCPR, which deals directly with the Covenant's prohibition of torture and cruel treatment or punishment, expands upon the ICCPR's concise definition by outlining the duties which all the State parties have and which they must fulfill to the best of their abilities in order to adequately comply with Article 7, including the duty to "afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by Article 7, whether inflicted by people acting in their official or private capacity."⁴¹ In addition, the General

Comment points out that Article 7 is reinforced and "complemented by the positive requirements of article 10, paragraph 1, of the Covenant, which stipulates that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'"⁴² The General Comment also states that Article 7 can never be derogated, even in times of public emergency (Statement 3), that Article 7's absolute prohibition applies to acts which cause mental suffering and which can be considered corporal punishment (Statement 5), and that solitary confinement is absolutely prohibited under Article 7 (Statement 6).⁴³ Perhaps the most powerful clause can be found in Statement 13 of General Comment 20, which states that "[t]hose who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible".⁴⁴ It is no wonder, then, that five years after the publication of this Comment to the ICCPR, which bolstered Article 7's already direct and unwavering prohibition of torture and cruel, inhuman or degrading punishment, North Korea considered it in their best interest to try and withdraw from the treaty.⁴⁵

to life and the right to be free from torture. Article 4 of the ICCPR allows for the derogation from certain human rights obligations during times of emergency. However, not only is Article 4 inapplicable to the case of North Korea because no such emergency exists, but the Human Rights Committee, Article 27(2) of the American Convention for Human Rights, the Inter-American Commission on Human Rights, the European Court of Human Rights, and the former Commission on Human Rights, have affirmed that judicial guarantees, because they protect non-derogable rights to life and freedom from torture, cannot be derogated from in times of emergency. This consensus across international human rights bodies affirms the universal significance of the right to liberty and security, the right to a fair trial, and the right to humane treatment".

39 To see the ratification status of the International Covenant on Civil and Political Rights, SEE "Chapter IV: Human Rights – 4. International Covenant on Civil and Political Rights", United Nations Treaty Collection, available at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=IV-4&chapter=4&lang=en (last visited March 21, 2012) (The "Democratic People's Republic of Korea", or North Korea, acceded to the ICCPR on September 14th, 1981, but subsequently sent the Secretary-General a notification of withdrawal on August 23rd, 1997, although, as the Secretary General himself noted, such a withdrawal is not possible unless all the State Parties to the ICCPR consent to the withdrawal. The U.N. Special Rapporteur still considers North Korea a party to the ICCPR, since it was no legally possible for North Korea to unilaterally withdraw from the ICCPR).

40 *International Covenant on Civil and Political Rights*. United Nations General Assembly Resolution 2200A [XXI] Article 7. 16 December 1966.

41 UN Human Rights Committee (HRC), *General comment no. 20, Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment*, 10 March 1992, CCPR/C/GC/20, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument) [accessed 28 January 2013].

42 *Id.*

43 *Id.*

44 *Id.*

45 SEE FN 38, supra; in addition, the Inter-American Convention to Prevent and Punish Torture provides a more general definition of torture, e.g. "the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish". Organization of American States, Inter-American Convention to Prevent and Punish Torture, Article 2, 9 December 1985, OAS Treaty Series, No. 67, available at: <http://www.unhcr.org/refworld/docid/3ae6b3620.html> [accessed 28 January 2013] ("For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article"). The European Convention on Human Rights, meanwhile, provides an even more succinct definition of torture than the ICCPR: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Art. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b3b04.html> [accessed 5 February 2013].

While General Comment 20 to the ICCPR sidesteps the opportunity to list instances of prohibited acts which constitute torture,⁴⁶ examples of acts which fall under the aforementioned definitions of torture (as provided by CAT and the ICCPR) are numerous. The International Rehabilitation Council for Torture Victims, the largest membership-based organization which helps rehabilitate torture victims and prevent the torture of others,⁴⁷ lists beatings, electrical shocks, suffocation, burns, stretching, and sensory deprivation as examples of acts constituting torture, pursuant to the definition set forth in CAT.⁴⁸ Along the same lines, Amnesty International, in reporting on the inhumane conditions of Yodok, states that the combination of forced labor in dangerous conditions with inadequate food, beatings, unhygienic living conditions, and virtually no medical care constitutes a systematic policy of torture officially condoned in the camp.⁴⁹ Amnesty also refers to North Korea's use of a "torture cell" (or "punishment cell", as it will be referred to as later), a cell so small that a prisoner can neither stand nor lie down in it, along with its use of solitary confinement and other torture techniques generally.⁵⁰ Human Rights Watch, in its 2012 World Report on North Korea, cited "sleep deprivation, beatings with iron rods or sticks, kicking and slapping, and enforced sitting or standing for hours" as examples of torture techniques deployed in North Korean prison camps.⁵¹

46 General Comment No. 20, statement 4: "The Covenant does not contain any definition of the concepts covered by article 7, nor does the Committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied." UN Human Rights Committee (HRC), *General comment no. 20, Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment*, 10 March 1992, CCPR/C/GC/20, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?Opendocument) [accessed 28 January 2013].

47 "What is the IRCT", International Rehabilitation Council for Torture Victims, available at <http://www.irct.org/about-us/what-is-the-irct.aspx> (last visited April 7, 2012) ("Our members comprise more than 140 independent organisations in over 70 countries... [W]e are the largest membership-based civil society organisation to work in the field of torture rehabilitation and prevention").

48 "What is torture?", International Rehabilitation Council for Torture Victims, available at <http://www.irct.org/what-is-torture/defining-torture.aspx> (last visited April 7, 2012).

49 "Yodok, North Korea – Write for Rights 2011", Amnesty International, Nov. 15, 2011, available at <http://www.amnestyusa.org/news/multimedia/yodok-north-korea-write-for-rights-2011> (last visited April 7, 2012).

50 "North Korea: Images reveal scale of political prison camps", Amnesty International, May 4, 2011, available at <http://www.amnestyusa.org/news/press-releases/north-korea-images-reveal-scale-of-political-prison-camps> (last visited April 7, 2012).

51 "World Report 2012: North Korea", Human Rights Watch, available at [http://www.hrw.org/world-report-2012/world-report-](http://www.hrw.org/world-report-2012/world-report-2012-north-korea)

There is also human rights case law which sheds some light on what constitutes torture in the international human rights community. In *Ireland v. U.K.*, 5310/71 (European Court of Human Rights 1977), the Court stated that "torture...is undoubtedly an aggravated form of inhuman treatment causing intense physical and/or mental suffering."⁵² The Court then went on to emphasize that torture should be considered from both an objective and subjective perspective, which means that such factors as the method of torture employed, the duration of such treatment, the age, sex and health of the person exposed to it, the likelihood that such treatment might injure the person exposed, and whether the torture could cause serious long term injuries, all need to be taken into account.⁵³

2.2 Cruel, Inhuman, and Degrading Punishment

Neither CAT nor the ICCPR provide a definition of what constitutes cruel, inhuman, and degrading punishment ("CID"). However, the Elements of Crimes for the International Criminal Court provide a useful definition, stating in sum that CID is the same as torture, except that there is no requirement that the punishment be inflicted for a specific purpose.⁵⁴ In other words, CID can be seen as acts which would be considered torture, but for the lack of a specific motive or intent (i.e. to extract a confession). This distinction is inherent in the definition of torture under CAT, which lists motive or intent as an essential element.⁵⁵

As mentioned above, ICCPR Article 7 provides in pertinent part that "[n]o one shall be subjected to...cruel, inhuman or degrading treatment or punishment."⁵⁶ In addition, General Comment 20 expands upon Article 7's

2012-north-korea (last visited April 7, 2012).

52 *Ireland v. The United Kingdom*, 5310/71, Council of Europe: European Court of Human Rights, 13 December 1977, available at: <http://www.unhcr.org/refworld/docid/3ae6b7004.html> [accessed 28 January 2013].

53 *Ireland v. The United Kingdom*, 5310/71, Council of Europe: European Court of Human Rights, 13 December 1977, available at: <http://www.unhcr.org/refworld/docid/3ae6b7004.html> [accessed 28 January 2013].

54 Elements of Crimes for the ICC, Definition of inhuman treatment as a war crime (ICC Statute, Article 8(2)(a)(ii)).

55 UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html> [accessed 7 April 2012].

56 *International Covenant on Civil and Political Rights*, United Nations General Assembly Resolution 2200A [XXI] Article 7. 16 December 1966.

prohibition by outlining the duties of the State Parties and certain acts which fall under the purview of Article 7, although distinctions between torture and cruel, inhuman and degrading punishment are not delineated.⁵⁷

While the aforementioned treaties may be silent as to what constitutes CID, the European Court of Human Rights, in the *Ireland v. U.K.* case mentioned above,⁵⁸ talked about the five specific techniques which they determined constituted cruel, inhuman and degrading treatment, in violation of the European Convention on Human Rights: (i) wall-standing for hours at a time, (ii) hooding for extended periods of time, (iii) subjection to a loud hissing noise, (iv) sleep deprivation, and (v) deprivation of food and drink.⁵⁹

3. U.N. STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS⁶⁰

The U.N. *Standard Minimum Rules for the Treatment of*

Prisoners (“U.N. Standard Minimum Rules”) were adopted by the First United Nations Congress on Crime Prevention and Control in 1955, and were subsequently approved by the Economic and Social Council of the United Nations in 1957.⁶¹ The product of thirty years of deliberation and numerous revisions and updates (beginning in 1926 with the work of the International Penitentiary Commission),⁶² the U.N. Standard Minimum Rules represent the International Community’s general consensus as to what constitutes the humane and proper treatment of prisoners, and have the full support of the U.N., which considers the rules “a body of doctrine representing ‘as a whole, the minimum conditions which are accepted as suitable.’”⁶³ Some of the principles set forth in the U.N. Standard Minimum Rules include rights pertaining to accommodation (Rules 9-14), personal hygiene (15-16), clothing and bedding (17-19), food (20), exercise and sport (21), and medical services (22-26), as well as rules pertaining to the discipline and punishment of prisoners (27-32) and the use of instruments of restraint (33-34).

The U.N. Standard Minimum Rules are indicative of the U.N.’s all-important role in setting minimum, baseline human rights standards, with the aim of better protecting people’s human rights and raising the basic standard of living for all.⁶⁴ Indeed, these rules have

57 UN Human Rights Committee (HRC), *General comment no. 20, Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment*, 10 March 1992, CCPR/C/GC/20, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6924291970754969c12563ed004c8ae5?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6924291970754969c12563ed004c8ae5?OpenDocument) [accessed 28 January 2013].

58 SEE the section on torture in this article, *supra*.

59 *Ireland v. The United Kingdom*, 5310/71, Council of Europe: European Court of Human Rights, 13 December 1977, available at: <http://www.unhcr.org/refworld/docid/3ae6b7004.html> [accessed 28 January 2013] (“(a) wall-standing: forcing the detainees to remain for periods of some hours in a “stress position”, described by those who underwent it as being “spreadeagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back, causing them to stand on their toes with the weight of the body mainly on the fingers”; (b) hooding: putting a black or navy coloured bag over the detainees’ heads and, at least initially, keeping it there all the time except during interrogation; (c) subjection to noise: pending their interrogations, holding the detainees in a room where there was a continuous loud and hissing noise; (d) deprivation of sleep: pending their interrogations, depriving the detainees of sleep; (e) deprivation of food and drink: subjecting the detainees to a reduced diet during their stay at the centre and pending interrogations”).

60 Several binding and non-binding international instruments have been adopted in regards to the detention and treatment of prisoners. Some of these binding instruments include the International Covenant on Civil and Political Rights, Convention Against Torture, and the Geneva Conventions of 1949. Some of the non-binding instruments include the *Universal Declaration of Human Rights*, the U.N. *General Assembly’s Declaration on the Protection of All Persons from Being Subjected to Torture*, *Basic Principles for the Treatment of Prisoners*, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, *Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.

61 Office of the United Nations High Commissioner for Human Rights: *International Law*, available at <http://www2.ohchr.org/english/> (last visited March 21, 2012); ALSO SEE “Analysis of Extent of Applicability of the UN Standard Minimum Rules for the Treatment of Prisoners to Community-Based Supervision and Residential Care for Convicted Offenders” 1, Commission on Correctional Facilities and Services, Washington D.C., 1974 (These standard minimum rules were also endorsed by the U.N. General Assembly in the form of future resolutions, which recommended the implementation and adoption of these rules by all member States).

62 Open-Ended Intergovernmental Expert Group Meeting on the United Nations Standard Minimum Rules for the Treatment of Prisoners 1, United Nations Office on Drugs and Crime, Vienna 2012.

63 “Revision of the UN Standard Minimum Rules?” 1-2, Association for the Prevention of Torture (APT), Dec. 14 2011, available at http://apt.ch/region/unlegal/APT_Position_SMR.pdf (last visited March 21, 2012); Analysis of Extent of Applicability of Standard Minimum Rules for the Treatment of Prisoners to Community-Based Supervision and Residential Care for Convicted Offenders.

64 William Clifford, *The Standard Minimum Rules for the Treatment of Prisoners* 233, *The American Journal of International Law*, Vol. 66, No. 4 (September 1972); *Imprisonment Today and Tomorrow* 705 (“These Rules have always been considered as the most important international document in the area of prisons. They are the manifestation of the moral and philosophical standards that have consistently inspired progress and reform in prison conditions since the whole concept of imprisonment became the subject of regular international debate and co-operation in the last quarter of the nine-

contributed positively to the establishment and modification of national policies and practices,⁶⁵ helped in part by Economic and Social Council Resolution 1984/47, which puts forth the procedures by which the U.N. Standard Minimum Rules can be implemented into domestic practices and institutions.⁶⁶ For example, the Secretary-General invited Member States to send periodic reports to the U.N. regarding the implementation and incorporation of these rules into their domestic law.⁶⁷ Experts applaud the high standing and legitimacy of these rules in the international community today,⁶⁸ and their success in guiding countries towards improving their prison system is readily apparent.⁶⁹ As the late Dr. Kurt Neudek, who served on five U.N. world congresses on the prevention of crime and treatment of prisoners,⁷⁰ once wrote:

[T]he Rules have been widely recognized as constituting a virtual code of practice in prison administration[.] they reach out with the authority of the United Nations, to provide an important platform for world-wide prison reform...the Rules may have reached the status of customary international law⁷¹

teenth century”) (emphasis not added).

65 United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), U.N. General Assembly, A/RES/45/110, Dec. 14, 1990.

66 Open-Ended Intergovernmental Expert Group Meeting on the United Nations Standard Minimum Rules for the Treatment of Prisoners 2, United Nations Office on Drugs and Crime, Vienna 2012.

67 The Standard Minimum Rules for the Treatment of Prisoners in the Light of Recent Developments in the Correctional Field 13, A/CONF.43/3, United Nations 1970; Open-Ended Intergovernmental Expert Group Meeting on the United Nations Standard Minimum Rules for the Treatment of Prisoners 2.

68 Open-Ended Intergovernmental Expert Group Meeting on the United Nations Standard Minimum Rules for the Treatment of Prisoners 6, United Nations Office on Drugs and Crime, Vienna 2012 (“the Rules continued to be held in high regard and...were the main reference point in terms of measuring minimum standards within the prison environment”).

69 *Id.* at 4-5 (“A large number of reporting countries, including Austria, China, Finland, Japan, Mauritius, Mexico, New Zealand, South Africa and the United Kingdom, indicated that their national legislation on the treatment of prisoners was based, or had been greatly influenced by the Rules”).

70 “Obituary – IAP Honorary Member, Kurt Neudek, 15 April 1935 – 3 August 2005, available at http://www.zoominfo.com/CachedPage/?archive_id=0&page_id=1934449955&page_url=//www.iap.nl.com/newsletters/32.html&page_last_updated=2007-11-23T02:53:36&firstName=Kurt&lastName=Neudek (last visited May 14, 2012).

71 Kenneth G. Zysk & Dirk Van Zyl Smit, *Imprisonment Today and Tomorrow: International Perspectives on Prisoners’ Rights and Prison Conditions* 706 (Brill Academic Publishers, 2001) (the quote was taken from a paper which Dr. Kurt Neudek wrote describing

Additionally, the European Court of Human Rights and even some U.S. courts have cited the U.N. Standard Minimum Rules for the Treatment of Prisoners in their opinions, particularly in the legal analysis portions of their decisions.⁷² The Rules also guide the treatment of prisoners in the Detention Center in The Hague.⁷³

For the purposes of this paper, I will be focusing on the following articles, as they pertain specifically to the disciplining and punishing of prisoners:

Article 27: *Discipline and order* shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

Article 28(1): No prisoner shall be employed, in the *service* of the institution, in any disciplinary capacity. (2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

Article 31: *Corporal punishment*, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

Article 32(1): Punishment by *close confinement* or *reduction of diet* shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.⁷⁴ (emphasis added)

the process of preparing for the Eighth U.N. Congress on Crime Prevention and the Treatment of Offenders (Havana, Cuba, 1990).

72 SEE *Mamatkulov and Askarov v. Turkey* 19 (European Ct. of Human Rights 2005) (“Conditions under which detainees are held pre-trial are reportedly so poor as to amount to cruel, inhuman and degrading treatment. In 1997 the Uzbek authorities admitted that conditions of detention fell far short of the UN basic minimum standards for the treatment of prisoners”); *Ananyev and Others v. Russia* 12-3 (European Ct. of Human Rights 2012); *Kane v. Winn*, 319 F.Supp.2d 162 (D. Mass. 2004) (talking about the Rules in relation to customary international law).

73 ICC – What are the conditions of detention at the Detention Centre in the Hague? International Criminal Court, available at <http://www2.icc-cpi.int/menus/icc/about%20the%20court/frequently%20asked%20questions/24> (last visited January 31, 2013) (“The ICC Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules”).

74 United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, available at <http://www.unhcr.org/refworld/docid/3ae6b36e.html> (last accessed 21 March 2012).

3.1 Notes and Comments to the United Nations Standard Minimum Rules

On December 21, 2010, pursuant to Resolution 65/230, the U.N. General Assembly requested that the Commission on Crime Prevention and Criminal Justice establish an open-ended intergovernmental expert group (held in Vienna from January 31st to February 2nd, 2012)⁷⁵ “to exchange information on best practices, as well as national legislation and existing international law, and on the revision of the existing United Nations standard minimum rules for the treatment of prisoners”,⁷⁶ in order to better reflect advances in the treatment of prisoners.⁷⁷ The General-Secretariat prepared notes and comments for each rule, identifying advancements in relation to each rule by referencing relevant international instruments and any contemporary views on the Rules.⁷⁸

Several options have been discussed regarding the possible revising and updating of the U.N. Standard Minimum Rules, including the creation of a Convention on the Treatment of Prisoners, a complete restructuring of the Rules, a limited and targeted revision of the Rules, or the mere addition of a preamble.⁷⁹ With regard to the option of restructuring the U.N. Standard Minimum Rules entirely, Rule 31 (prohibiting corporal punishment) is noted as a rule which Member States may consider reviewing, although rules 27, 28(1), and 32(1)) were not considered to be in danger of major

revision, were a restructuring of the Rules to occur (in general, the restructuring option seems unlikely to happen).⁸⁰ In regards to the minimal re-drafting option, special attention would likely be given to rules 31 and 32, especially the use of close / solitary confinement and the reduction of diet as a punishment, although the only option seems to be an expansion – rather than a redaction - of this rule.⁸¹

In order to better guide the intergovernmental meeting, the General-Secretariat prepared a comprehensive report detailing the advances made within the subject area of each rule, including the treaties and other international instruments which draw upon the substance of the specific rule.⁸² Some of these international instruments include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration of Human Rights (UDHR), and the Convention Against Torture (CAT), amongst others. These instruments provide a historical context under which the rules were first enacted, help define the terms found in the rules themselves, and place the rules into a more contemporary context.⁸³ Each rule is analyzed with these three purposes in mind, including rules 27, 28, 31, and 32.

Rule 27, which concerns the disciplining and punishing of prisoners, is placed in relation to Article 10 of the ICCPR, which states in part that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁸⁴ Rule 27 is also compared to and supplemented by the *Rules for Juveniles Deprived of their Liberty*,⁸⁵

75 “Open-ended intergovernmental expert group meeting on the United Nations standard minimum rules for the treatment of prisoners, 31 January – 2 February 2012, Vienna, Austria”, United Nations Office on Drugs and Crime, 2012, *available at* <http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings4.html> (last accessed 22 March 2012).

76 Open-Ended Intergovernmental Expert Group Meeting on the United Nations Standard Minimum Rules for the Treatment of Prisoners 1. United Nations Office on Drugs and Crime, United Nations Office on Drugs and Crime, Vienna 2012.

77 *Id.* Note that comments to the U.N. Standard Minimum Rules were also made in 1974, in preparation for the second meeting of the United Nations Working Group of Experts on the Standard Minimum Rules for the Treatment of Prisoners. For our purposes, however, we will focus on the notes and comments made in anticipation of the Open-ended Intergovernmental Expert Group Meeting, held from January 31 to February 2 of 2012. Also note that, prior to the meeting, “the Secretariat requested Member States to provide information on best practices, as well as national legislation and existing international law, and on the revision of the existing United Nations standard minimum rules for the treatment of prisoners.”

78 *Id.*

79 *Id.* at 6-7.

80 *Id.*

81 *Id.* at 7-8.

82 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners: Preliminary Observations.

83 *Id.*

84 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners: Preliminary Observations 18; 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* Mar. 23, 1976.

85 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners: Preliminary Observations 18 (Rule 66 of *Rules for Juveniles Deprived of their Liberty* states that “[a]ny disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of

Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas,⁸⁶ *World Medical Association Statement on Body Searches of Prisoners*,⁸⁷ and the Human Rights Committee's General Comment 16 on Article 17 of the ICCPR.⁸⁸ The writers also provide clarification for the term "firmness", a term which, they emphasize, "should never be understood to imply the use of unnecessary force".⁸⁹

Rule 28(1), which states that "[n]o prisoner shall be employed, in the service of the institution, in any disciplinary capacity", reflects the concern that appointing prisoners for such purposes will undermine the general, overriding principle of creating a healthy and positive prison environment, devoid of fear and distrust.⁹⁰ According to the "Analysis of Extent of Applicability of the U.N. Standard Minimum Rules for the Treatment of Prisoners to Community-Based Supervision and Residential Care for Convicted Offenders", published in 1974 in preparation for the second meeting of the U.N.'s Working Group of Experts on the U.N. Standard Minimum Rules, Rule 28 was designed to "bar any disciplinary or authoritarian role of prisoners over other prisoners."⁹¹ "Promoting" certain prisoners to supervise and report on others violates this very interpretation of Rule 28(1), and brings with it the risk that these appointed prisoners will abuse their delegated powers, harshly disciplining their new subjects in an attempt to gain favor with the higher-ups.⁹²

Rule 31, which prohibits corporal punishment and all cruel, inhuman, or degrading punishments, garners significant support from various international legal instruments.⁹³ By definition, corporal punishment is a

form of physical punishment inflicted upon the body, as contrasted with a fine or pecuniary punishment.⁹⁴ Its definition, in the context of the treatment of prisoners, "includes excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure", as articulated in General Comment No. 20 of the U.N. Human Rights Committee (in reference to Article 7 of the ICCPR).⁹⁵ The other forms of punishment specified in Rule 31 – "punishment by placement in a dark cell, and all cruel, inhuman, or degrading punishments" – are totally prohibited, regardless of whether or not they are used as a means of punishment for disciplinary offenses.⁹⁶

Finally, the notes and comments elaborate on Rule 32(1), which states that "[p]unishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it".⁹⁷ Out of the four rules discussed in this paper, Rule 32(1) has the most support in International Law, in terms of treaties and other international instruments which seek to prohibit close confinement as a means of punishment in equally forceful and absolutist terms. First, the authors define close confinement (or "solitary confinement") as the act of "confining a prisoner in a closed cell on his or her own", usually involving "extensive sensory deprivation" and "deprivation of any human contact or stimulation."⁹⁸ This definition is important because it expands upon Rule 31 by including the deprivation of human contact and stimulation, which can be equally damaging on a person's psyche.⁹⁹ The authors then go on

every person").

86 *Id.* (Principle XXI of *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* deals with the legality and necessity of bodily searches, inspections, and the like).

87 *Id.* at 19 (This instrument also deals with bodily searches).

88 *Id.* at 18.

89 *Id.* at 17-8.

90 *Id.* at 20 (ALSO SEE European Prison Rule 62).

91 Analysis of Extent of Applicability of the U.N. Standard Minimum Rules for the Treatment of Prisoners to Community-Based Supervision and Residential Care for Convicted Offenders 12, American Bar Assoc., Washington, D.C. 1974.

92 Chico Harlan, "South Korean report details alleged abuses at North Korea's prison camps", *The Washington Post*, May 9, 2012, available at http://www.washingtonpost.com/world/asia_pacific/south-korean-report-details-alleged-abuses-at-north-koreas-prison-camps/2012/05/09/gIQA794LDU_story.html (last visited May 14, 2012).

93 Notes and comments on the United Nations Standard Mini-

um Rules for the Treatment of Prisoners: Preliminary Observations 22 (the following are the international legal instruments which are directly on point with Rule 31: International Covenant on Civil and Political Rights (Art. 7), expanded upon by General Comment No. 20 of the UN Human Rights Committee, Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (23), and the Convention Against Torture.

94 Free Dictionary: "corporal punishment", available at <http://legal-dictionary.thefreedictionary.com/corporal+punishment> (last visited May 14, 2012).

95 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners: Preliminary Observations 22.

96 *Id.*

97 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* 22, 30 August 1955, available at <http://www.unhcr.org/ref-world/docid/3ae6b36e.html> (last accessed 21 March 2012).

98 *Id.* at 22.

99 SEE Brandon Keim, "Solitary Confinement: The Invisible Torture", *Wired*, April 29, 2009, available at <http://www.wired.com/wiredscience/2009/04/solitaryconfinement/> (last visited May 14,

to explain the situations in which “close confinement” is generally used by referencing the *Istanbul Statement on the Use and Effects of Solitary Confinement*, adopted on December 9th, 2007 at the International Psychological Trauma Symposium in Istanbul.¹⁰⁰ *The Basic Principles for the Treatment of Prisoners*, the UN Human Rights Committee (referencing the ICCPR), the Committee against Torture, the Committee on the Rights of the Child, the UN Special Rapporteur on Torture, *Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders*, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, European Prison Rule 53, and the *Istanbul Statement on the Use and Effects of Solitary Confinement* all condemn, in one form or another, the close confinement of prisoners for the purposes of inflicting disciplinary punishment.¹⁰¹ The distinction placed on close confinement as a *means* of inflicting *punishment*, however, cannot be ignored, as it is significantly different from, and does not rise to the level of, an absolute ban, although the authors openly embrace the recommendation of prohibiting its use even when a prisoner is not being punished.¹⁰² The Committee against Torture, for instance, in recognition of the harmful mental and physical effects of prolonged solitary confinement, has recommended the abolishment of solitary confinement in all circumstances, except of course in the most extreme cases.¹⁰³ Others, such as the UN Special Rapporteur on Torture, have called for a more limited ban on the use of close confinement,

such as a prohibition on solitary confinement exceeding fifteen straight days.¹⁰⁴

In regards to a reduction of diet as a means of punishment, the notes and comments make clear that the International Community considers this a form of inhuman punishment.¹⁰⁵ Such a form of punishment is in violation of the principles set forth in ICESCR and the ICCPR, as well as the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*.¹⁰⁶

What’s most notable about the analysis of Rule 32(1), however, is the acknowledgment that the portion of the Rule allowing for solitary confinement and reduction of diet as a form of punishment, so long as a “medical officer has examined the prisoner and certified in writing that he is fit to sustain it”, is now a violation which “flies in the face” of a doctor’s sense of professional responsibility towards her patient.¹⁰⁷ For if a medical officer approves of a prisoner’s fitness to undergo close confinement or a reduction of diet, she would be in violation of the *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.¹⁰⁸ The authors’ condemnation of this exception in the Rule indicates a willingness to revise it in the future, further updating the U.N. Standard Minimum Rules and bringing it more fully into the 21st century.

4. NORTH KOREA’S VIOLATION OF THE U.N. STANDARD MINIMUM RULES

Kim Il Sung, former leader and current Eternal President of North Korea,¹⁰⁹ once said that “[f]actionalists or enemies of class, whoever they are, their seed must be eliminated through three generations.”¹¹⁰ This state-

2012) & Bruce A Arrigo, Heather Y. Bersot, and Brian G. Sellers, *The Ethics of Total Confinement: A Critique of Madness, Citizenship, and Social Justice* 60-92 (Oxford University Press, New York 2011).

100 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners: Preliminary Observations 23 (According to the Istanbul Statement, solitary confinement is generally applied in four scenarios around the world: (i) to enforce disciplinary punishment on sentenced prisoners, (ii) to isolate individuals during an ongoing criminal investigation, (iii) to manage specific groups of prisoners, and (iv) as a judicial sentence. It is also used in some parts of the world as a substitute for caring for mentally ill individuals, and as a means of coercively interrogating certain individuals).

101 *Id.* at 23-4 (Basic Principles for the Treatment of Prisoners (7): “Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged”; UN Human Rights Committee, Comment No. 20, paragraph 6: “The Committee notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 (of the International Covenant on Civil and Political Rights)”).

102 *Id.* at 23.

103 *Id.*

104 *Id.* at 24.

105 *Id.*

106 *Id.*

107 *Id.* at 25.

108 *Id.*

109 Nicholas D. Kristof, “Death Doesn’t End Rule of Kim Il Sung, ‘Eternal President’,” *The New York Times*, Sept. 7, 1998, available at <http://www.nytimes.com/1998/09/07/world/death-doesn-t-end-rule-of-kim-il-sung-eternal-president.html> (last visited May 14, 2012).

110 Robert Park, *North Korea and the Genocide Movement*, Harvard International Review: Web Perspectives, Sept. 27, 2011, available at <http://hir.harvard.edu/north-korea-and-the-genocide->

ment is indicative of a policy which treats anyone who questions or doubts the abilities of the Dear Leader or the imminent success of the Revolutionary effort as enemies unworthy of living – as traitors to be thrown into concentration camps, where they will waste away and slowly be stripped of their humanity. Such a policy leaves no room for the humane treatment of political prisoners, especially given North Korea’s constant proclamations to its citizens that enemies outside the country – the U.S., Japan, and any bourgeois imperialist – are threatening to undermine the Revolution.¹¹¹

With this policy of ill-treatment in mind, it is no wonder that former Yodok prisoners who have escaped North Korea attest to acts of torture and cruel, inhuman, and degrading treatment. Indeed, prisoners at Yodok are universally and without reason disciplined with excessive firmness (Rule 27), employed as secret informants in the service of the camp, often against their will (Rule 28), disciplined with corporal punishment and other forms of cruel, inhuman, or degrading punishment (Rule 31), and punished with extensive periods of close confinement and reductions of diet (Rule 32). The following ten Yodok practices will be discussed in detail, since they are vital in keeping the prisoners under control in Yodok, and are amongst the most inhumane practices testified to in Yodok: (1) beating and verbally abusing prisoners, (2) corporal punishment, (3) beating and verbally abusing child prisoners, (4) network of informants, (5) prohibition on sexual activity between men and women, (6) obligation to attend public executions and participate in postmortem stoning, (7) punishment for failure to attend night class / not criticize well enough at a criticism session, (8) reduction of diet as punishment, (9) the “sweatbox”, and (10) punishment cells. Violations of both the articles and the corresponding notes and comments will be accounted for by reference to the testimonials of prisoners who managed to escape or be released from Yodok, as well as official NGO reports. It must be emphasized here that a myriad of other violations occur at the Yodok prison which are equally egregious and amoral in their own right, and should likewise be rectified as soon as possible. These include a lack of notice as to why a pri-

soner is being sent to Yodok,¹¹² lack of a formal judicial process by which prisoners are properly sentenced,¹¹³ wholly inadequate housing conditions¹¹⁴ and food rations,¹¹⁵ and the public execution of prisoners.¹¹⁶ The latter violation, in order that it may be properly treated and analyzed, requires the writing of a separate paper, focused solely on the policy of public executions, its occurrence in Yodok and in other North Korean prisons, and what the International Community should do to ensure its future prohibition.

4.1 Beating and Verbally Abusing Prisoners without Cause

During a prisoner’s “normal” work hours, Yodok supervisors shout at, verbally abuse, and beat prisoners caught resting or working at a slower than acceptable pace.¹¹⁷ Guards have admitted to beating prisoners just because they can, and also because they genuinely felt that these prisoners were traitors of the State.¹¹⁸ There have even been reports of sexual abuse committed by the guards.¹¹⁹ Kang Chol-Hwan recalled a guard telling him that he didn’t deserve to live, and to be thankful

112 David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps* 10. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003).

113 *Id.*

114 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 50 (Basic Books, New York 2005).

115 David Hawk, *The Hidden Gulag, Second Edition: The Lives and Voices of “Those Who are Sent to the Mountains”* 31. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2012); *Yodok Stories* 2008 (approx. 25:37).

116 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 57, 137 (Basic Books, New York 2005).

117 David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps* 31-2. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003) 31-2 (guards have been accused of beating prisoners with wooden sticks); Kenneth Chan, “N. Korean Prison Camp Survivors Speak at UN Meeting”, *The Christian Post*, April 7, 2005, available at <http://www.christianpost.com/news/n-korean-prison-camp-survivors-speak-at-un-meeting-1325/> (last visited May 14, 2012); David Hawk, *The Hidden Gulag, Second Edition: The Lives and Voices of “Those Who are Sent to the Mountains”* 65. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2012) (Jung Gwang-il witnessed guards beating prisoners).

118 *Yodok Stories* 2008, available at <http://www.yodokfilm.com/#/english/people/ahn-myong-chol> (last visited May 14, 2012) (Ahn Myong Chol, prison guard in Yodok and other camps in North Korea from 1987-1994).

119 David Hawk, *The Hidden Gulag, Second Edition: The Lives and Voices of “Those Who are Sent to the Mountains”* 68. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2012).

movement (last visited May 14, 2012).

111 SEE Hyung-chan and Dong-kyu Kim, *Human Remolding in North Korea: A Social History of Education* (University Press of America, Inc., Maryland 2005).

that the Party and the Great Leader had given him a chance to redeem himself.¹²⁰ According to Kang, the guards were “almost all uneducated, rough people, of a generally bad moral character”, who were carefully picked by the State so as to ensure a “good” background (being from a family of peasants or poor workers with no “anti-Communist criminals”) and sufficient physical strength.¹²¹

The routine and senseless beating and abusing of prisoners without cause is in violation of Rule 27, since beating and abusing prisoners in such a manner constitutes the use of unnecessary force which does not further the safe keeping of prisoners or the maintenance of a well-ordered community.¹²²

4.2 Corporal Punishment

Corporal punishment is a fairly common phenomenon in Yodok.¹²³ One former prisoner was beaten and forced to endure a sit-down-stand-up punishment¹²⁴ for an extensive period of time, rendering him unable to walk.¹²⁵ The same prisoner was also beaten unconscious¹²⁶ with a burning piece of wood, as punishment for not being able to complete his work.¹²⁷ Another

prisoner was put in the “pigeon position”,¹²⁸ whereby his hands were cuffed behind his back as he was hung from a ceiling for two to three days.¹²⁹ A former Yodok prisoner, going by the name Kim Kwang Soo, described the use of the pigeon torture at Yodok in gruesome detail during a Citizens’ Alliance for North Korean Human Rights:

“Your hands are tied behind your back and handcuffed to an iron bar. You cannot sit or stand. After a day of being in this position, your muscles tense up and your chest sticks out like the breastplate of a bird. Your whole body becomes stiff.”¹³⁰

The use of the sweatbox and punishment cells, discussed later in this paper, are also forms of corporal punishment, used to punish prisoners for the most minor and trifling of offenses.¹³¹

Any form of corporal punishment is expressly prohibited by Rule 31, specifically when used as a means of punishment for disciplinary offenses.¹³² Here, forcing prisoners to endure sit-down-stand-up punishments, beating them unconscious with burning pieces of wood, and placing them in a “pigeon position” as a disciplinary measure, in addition to the use of the sweatbox and punishment cells, runs directly contrary to Rule 31.

4.3 Beating and Verbally Abusing Child Prisoners

Not surprisingly, Yodok takes a harsh approach towards the children of political criminals. Teachers in Yodok are notorious for addressing child prisoners “in the harshest, crudest manner”, beating students and subjecting them to humiliating and degrading punish-

120 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 59 (Basic Books, New York 2005).

121 *Id.* at 59-60.

122 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* Art. 27, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e.html> [accessed 14 May 2012]; Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners 17-8.

123 *Yodok Stories* 2008; David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps* U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003).

124 For the U.S.’s use of this technique on detainees, SEE Brian Ross, “CIA’s Harsh Interrogation Techniques Described”, ABC News, Nov. 18, 2005, available at <http://abcnews.go.com/Blotter/Investigation/story?id=1322866#.T7J7I-0zLww> (last visited May 15, 2012) (“They would not let you rest, day or night. Stand up, sit down, stand up, sit down. Don’t sleep. Don’t lie on the floor,” one prisoner said through a translator).

125 David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps* 32. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003); Kim Song A, “‘Pigeon Torture’, Willing to Surrender Life”, Daily NK, May 3, 2007, available at <http://www.dailynk.com/english/read.php?cataId=nk00100&num=2012> (last visited May 15, 2012) (“Kim said, ‘Once you are made to sit and stand 500 times with a blanket on top of you in a hot stuffy room full of prisoners, you no longer see yourself as human’”).

126 *Yodok Stories* 2008 (approx. 32:02 – if a prisoner dies during a beating, it doesn’t really matter).

127 Kenneth Chan, “N. Korean Prison Camp Survivors Speak at UN Meeting”, The Christian Post, April 7, 2005, available at <http://www.christianpost.com/news/n-korean-prison-camp-survivors-speak-at-un-meeting-1325/> (last visited May 14, 2012).

128 Kim Song A, “‘Pigeon Torture’, Willing to Surrender Life”, Daily NK, May 3, 2007, available at <http://www.dailynk.com/english/read.php?cataId=nk00100&num=2012> (last visited May 15, 2012).

129 AmnestyInternational, “‘Hell holes’: North Korea’s secret prison camps”, YouTube, May 4, 2011, available at <http://www.youtube.com/watch?v=1y0yhV6IT7o> (last visited May 14, 2012).

130 Kim Song A, “‘Pigeon Torture’, Willing to Surrender Life”, Daily NK, May 3, 2007, available at <http://www.dailynk.com/english/read.php?cataId=nk00100&num=2012> (last visited May 15, 2012).

131 SEE (9) (the “sweatbox”) and (10) (punishment cells).

132 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* Art. 31, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e.html> [accessed 14 May 2012]

ments.¹³³ Students are made to feel less than human,¹³⁴ and are assigned hard labor if they show the slightest bit of resistance towards their revolver-wielding teachers.¹³⁵ For instance, a teacher punished his students by making them stand naked in the courtyard with their hands behind their backs.¹³⁶ One teacher, nicknamed “The Old Fox” by Kang Chol-Hwan and his friends, made his students peel walnuts until their hands were stained black, and then made them rub their hands back and forth until they were clean, crushing their hands with his boot if they failed to comply.¹³⁷ One story is particularly disturbing:

One time a friend of mine from class started complaining to us because he’d been picked for the nasty job [cleaning stalls and emptying septic tanks] several times in a row...

Someone must have gone to squeal to the Wild Boar [students’ nickname for their teacher], because a minute later we saw him walking toward us looking mad as hell. He grabbed the guilty student and started beating him savagely, first punching him with his clenched fists, then kicking him. Battered and wobbly-legged, the boy fell into the septic tank...my friend managed to reach the edge and climb out, but he was in such a sad state that no one wanted to help him wash up or bandage his wounds. A few days later he died.¹³⁸

Treating children in this manner is in violation of Rule 27, in that it is not necessary for the safe custody and maintenance of a well-ordered community,¹³⁹ and is also not humane.¹⁴⁰ Such a policy is also in violation of Rule 31, in that the beating of students constitutes corporal punishment¹⁴¹ (excessive chastisement ordered as punishment so as to discipline the student and educate

him as to how to behave in the future).¹⁴² The physical and verbal abusing of children also constitutes cruel, inhuman, and degrading treatment, which is prohibited in all instances, disciplinary or otherwise.¹⁴³

4.4 Network of informants

Yodok maintains a network of informants who report to the Yodok prison guards regarding any treasonous or anti-State comments made by prisoners, including talks of escape.¹⁴⁴ Similar to the camps in the Soviet Union and Nazi Germany, Yodok designates certain prisoners to have authoritative power over others, including the power to punish prisoners by denouncing them to the guards.¹⁴⁵ These informants, who are chosen without the other prisoners knowing, are often times picked against their will and without consideration as to their opinion, since becoming an informant means alienation from your friends and family.¹⁴⁶ It also means that prisoners are less likely to band together to fight for their rights, although inmates become adept at spotting informants over time.¹⁴⁷ Regardless, talking too freely in front of an informant can lead to severe punishment, including extra hard labor, a reduction in diet, and time in the “sweatbox.”¹⁴⁸ Indeed, the system is an extensive and pervasive one, making any sort of collaborating and scheming highly unlikely:

The informants were at every turn. There was no one to confide in, no way to tell who was who. The only advice [their] fellow prisoners could offer was to have patience: they [Kang’s father and

142 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners 22.

143 *Id.*

144 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 77, 103-108-9 (Basic Books, New York 2005); Chico Harlan, “South Korean report details alleged abuses at North Korea’s prison camps”, *The Washington Post*, May 9, 2012, *available at* http://www.washingtonpost.com/world/asia_pacific/south-korean-report-details-alleged-abuses-at-north-koreas-prison-camps/2012/05/09/gIQA794LDU_story.html (last visited May 15, 2012).

145 *Id.* at 57-8 (“The brigade chiefs are important links in the chain of command between the camp’s authorities and the common detainee”).

146 *Id.* at 77, 103-108-9

147 *Id.*

148 *Id.* at 77, 103-108-9; Chico Harlan, “South Korean report details alleged abuses at North Korea’s prison camps”, *The Washington Post*, May 9, 2012, *available at* http://www.washingtonpost.com/world/asia_pacific/south-korean-report-details-alleged-abuses-at-north-koreas-prison-camps/2012/05/09/gIQA794LDU_story.html (last visited May 14, 2012).

133 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 63-71 (Basic Books, New York 2005) (one teacher punished his students by making them stand naked in the courtyard with their hands behind their backs. Another beat a student to death).

134 *Id.* (A teacher ordered a student to go on all fours and say “I’m a dog”).

135 *Id.*

136 *Id.*

137 *Id.* at 69; 71 (as punishment for riding a teacher’s bike, students were given a week of supplementary night work, which included digging ditches and filling them with rocks).

138 *Id.* at 68.

139 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* Art. 27, 30 August 1955, *available at* <http://www.unhcr.org/refworld/docid/3ac6b36e.html> [accessed 14 May 2012].

140 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners 17-8.

141 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* Art. 31, 30 August 1955, *available at* <http://www.unhcr.org/refworld/docid/3ac6b36e.html> [accessed 14 May 2012].

uncle] would learn to pick out the snitches soon enough. Until then, they would do well to keep their thoughts to themselves.¹⁴⁹

On at least some occasions, prisoners would on their own volition inform guards about other prisoners complaining, in the hopes of avoiding punishment themselves.¹⁵⁰

The maintenance of this network of informants is in violation of Rule 28(1), in that these informants are in a sense “employed” in the service of the institution in a disciplinary capacity, since their reports to Yodok guards regarding what prisoners are saying could land those prisoners in serious trouble.¹⁵¹ Their work in informing the guards of what other prisoners are saying also runs contrary to the idea that some prisoners should not have any disciplinary or authoritarian power over others.¹⁵² In addition, the network of informants in Yodok does not fall under the exception stated in Rule 28, since the existence of secret informants does not go to the “proper functioning of systems based on self-government”, such as social, educational, or athletic groups.¹⁵³ This network also undermines the principle that prisons should foster as healthy and positive an environment as possible, devoid of distrust and fear, since informants are likely to abuse their delegated powers in order to win favor with the Yodok guards.¹⁵⁴

149 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 77 (Basic Books, New York 2005).

150 *Id.* at 77; Chico Harlan, “South Korean report details alleged abuses at North Korea’s prison camps”, *The Washington Post*, May 9, 2012, available at http://www.washingtonpost.com/world/asia_pacific/south-korean-report-details-alleged-abuses-at-north-koreas-prison-camps/2012/05/09/gIQA794LDU_story.html (last visited May 14, 2012).

151 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 77, 103-108-9 (Basic Books, New York 2005); Chico Harlan, “South Korean report details alleged abuses at North Korea’s prison camps”, *The Washington Post*, May 9, 2012, available at http://www.washingtonpost.com/world/asia_pacific/south-korean-report-details-alleged-abuses-at-north-koreas-prison-camps/2012/05/09/gIQA794LDU_story.html (last visited May 14, 2012).

152 Analysis of Extent of Applicability of the U.N. Standard Minimum Rules for the Treatment of Prisoners to Community-Based Supervision and Residential Care for Convicted Offenders 12.

153 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* Art. 28(1), 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e8.html> [accessed 14 May 2012].

154 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners 19-20.

4.5 Prohibition on Sexual Activity between Men and Women

One especially harsh disciplinary measure taken at Yodok, consistent with Kim Il Sung’s philosophy of rooting out the enemy seed, is the prohibition on sexual activity between men and women.¹⁵⁵ Although Rule 8 of the U.N. Standard Minimum Rules states that men and women should be “detained in separate institutions”,¹⁵⁶ Yodok is organized such that entire families are placed in specific villages, which means that men and women are interacting on a consistent basis, including with their spouses.¹⁵⁷ It is only natural, then, that these men and women will engage in sexual activity, activity which is not expressly barred by the U.N. Standard Minimum Rules or by any other binding or non-binding international instrument. In Yodok, however, were a man and woman to engage in sexual activity and get caught, the man would be physically punished, and the woman would be forced to recount her sexual encounters in front of the entire village of prisoners.¹⁵⁸ One former prisoner stated that women who got pregnant were imposed an additional six months in prison, while their male counterparts were sentenced to another two.¹⁵⁹ If the woman managed to conceal her pregnancy from the guards and have a baby, Yodok guards would ensure that the baby did not survive by either abandoning it in the mountains, or by burying it in the ground.¹⁶⁰

Such a policy is in violation of Rule 27, in that it goes beyond that which is necessary for safe custody and maintenance of a well-ordered community,¹⁶¹ and because it promotes treating prisoners inhumanely and with no respect for their human dignity, especially sin-

155 David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps* 35. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003).

156 United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e8.html> [accessed 14 May 2012].

157 SEE Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 47-159 (Basic Books, New York 2005).

158 *Id.* at 145-6.

159 David Hawk, *The Hidden Gulag*, Second Edition: *The Lives and Voices of “Those Who are Sent to the Mountains”* 68. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2012) (one male was actually transferred to the “total control zone”).

160 *Id.*

161 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* Art. 27, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e8.html> [accessed 14 May 2012].

ce it prohibits them from engaging in normal human behavior.¹⁶² Forcing the women to recount their sexual activities in front of an entire village of prisoners is in violation of Rule 31, in that it is a degrading punishment used to discipline the prisoner.¹⁶³

4.6 Obligation to attend Public Executions and participate in Postmortem stoning

Once Yodok considers you an adult prisoner (which is at age fifteen),¹⁶⁴ you are obligated to attend public executions of prisoners.¹⁶⁵ Executions are generally carried out when a prisoner tries to escape, and are done in public so as to intimidate those with similar ideas.¹⁶⁶ Once the prisoner is shot dead,¹⁶⁷ prisoners are required to stone the dead body and shout State-approved propaganda lines (i.e. “down with the traitors of the people”).¹⁶⁸ According to Kang Chol-Hwan, prisoners at Yodok learn to adapt to this otherwise cruel and unnecessary requirement, undoubtedly designed for the

purpose of instilling fear in anyone watching.¹⁶⁹

Forcing prisoners to watch public executions is in violation of Rule 27, in that requiring them to watch other prisoners get killed and stone their dead bodies does not show respect for the inherent dignity of people, since the majority of human beings do not wish to desecrate and yell at the dead body of a fellow victim.¹⁷⁰ These two requirements are also in violation of Rule 31, since making people watch executions and stone dead bodies is cruel, inhuman and degrading, especially in cases where a parent, sibling, or relative must observe and desecrate the victim.¹⁷¹

4.7 Punishment for Failure to Attend Night Class / Not Criticize Well Enough at a Criticism Session

All North Korean citizens are required to attend meetings whereby they criticize themselves and others for their shortcomings in helping the Revolutionary cause.¹⁷² While normally a North Korean citizen will not be severely punished for failing to adequately self-criticize or criticize others,¹⁷³ this is not the case at Yodok, where such sessions are taken much more seriously.¹⁷⁴ These bi-weekly meetings are made worse by the fact that they are held at night, when prisoners could be getting some much-needed sleep, since the camp considers them absolutely necessary to the political rehabilitation of prisoners.¹⁷⁵ Furthermore, all Yodok prisoners must attend these meetings, unless particularly extenuating circumstances permit otherwise.¹⁷⁶ Kang Chol Hwan states that

162 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners 17-8.

163 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* Art. 31, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e.html> [accessed 14 May 2012].

164 There have been varying testimonies as to when prisoners are required to view public executions. For instance, former Yodok prisoner Kim Tae Jin has stated that children are required to watch public executions. SEE *Yodok Stories* 2008, available <http://www.yodokfilm.com/#/english/people/kim-tae-jin> (last visited May 14, 2012).

165 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 137-41 (Basic Books, New York 2005); “North Korea: Irrefutable Satellite Evidence of Prison Camps in North Korea”, Amnesty International, available at <http://www.amnestyusa.org/research/science-for-human-rights/north-korea> (last visited May 14, 2012).

166 “North Korea: Irrefutable Satellite Evidence of Prison Camps in North Korea”, Amnesty International, available at <http://www.amnestyusa.org/research/science-for-human-rights/north-korea> (last visited May 14, 2012); David Hawk, *The Hidden Gulag, Second Edition: The Lives and Voices of “Those Who are Sent to the Mountains”* 65. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2012).

167 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 139 (Basic Books, New York 2005) (“The custom was to shoot three salvos from a distance of five yards. The first salvo cut the topmost cords, killing the condemned man and causing his head to fall forward. The second salvo cut the chords around his chest and bent him forward further. The third salvo released his last tether, allowing the man’s body to drop into the pit in front of him, his tomb. This simplified the burial”).

168 David Hawk, *The Hidden Gulag: Exposing North Korea’s Prison Camps* 35. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003).

169 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 141 (Basic Books, New York 2005) (“I don’t blame the prisoners who unaffectedly went about their business. People who are hungry don’t have the heart to think about others”).

170 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners 17-8; Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 140 (Basic Books, New York 2005) (“Once both men were finally dead, the two or three thousand prisoners in attendance were instructed to each pick up a stone and hurl it at the corpses while yelling ‘Down with the traitors of the people!’. We did as we were told, but our disgust was written all over our faces. Most of us closed our eyes, or lowered our heads, to avoid seeing the mutilated bodies”).

171 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* Art. 31, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e.html> [accessed 14 May 2012].

172 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 127 (Basic Books, New York 2005).

173 *Id.*

174 *Id.* at 125-30.

175 *Id.*

176 *Id.*

such sessions were not taken seriously or personally by most of the adult prisoners, who knew that such sessions were just part of North Korea's attempts to indoctrinate its citizens, even while they suffer in one of its prisons.¹⁷⁷

These criticism and self-criticism sessions are in violation of Rule 27, since they serve no real purpose in maintaining a well-ordered community life. The argument that prisoners will be more likely to follow camp rules if they attend these sessions is undermined by the fact that prisoners must perform forced labor under close and often times abusive supervision. Furthermore, attempting to pit prisoners against each other in these sessions creates a wholly inhospitable atmosphere which is in violation of the spirit of the U.N. Standard Minimum Rules.¹⁷⁸

4.8 Reduction of Diet as Punishment

Reduction of diet as a form of punishment is used in a number of instances at Yodok. A prisoner who fails to meet his work quota, for instance, could see his food ration cut in half.¹⁷⁹ In addition, any prisoner who is considered "unbalanced" (i.e. mentally unstable) is given food to eat in direct proportion to the amount of work he can do.¹⁸⁰ This is also the case for normal, mentally stable prisoners, who may suffer a reduction of diet if the entire work group fails to meet a day's quota.¹⁸¹ A prisoner may also see his diet reduced if he fails a memorization test (i.e. of a Kim Il Sung speech or an important date in the Party's history).¹⁸² In addition,

prisoners sent to the "sweatbox" or punishment cell (discussed in greater detail below) have their already meager diets drastically reduced.¹⁸³

The reduction of a prisoner's diet in the aforementioned instances is in violation of Rule 32(1), since punishment by reduction of diet shall never be inflicted,¹⁸⁴ and since such a punishment is considered inhumane.¹⁸⁵

4.9 The "Sweatbox"

The "sweatbox", a torture device commonly used to punish prisoners for the most trifling of offenses, has been cited by former prisoners and human rights NGOs as one of the harshest torture devices used in Yodok.¹⁸⁶ The use of the sweatbox dates back to the United States in the 19th century, where it was used as a form of naval discipline.¹⁸⁷ This torture device has also

Prison Camps 31-2. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2003).

183 *Id.* at 94-6; David Hawk, *The Hidden Gulag*, Second Edition: The Lives and Voices of "Those Who are Sent to the Mountains" 65. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2012); Chico Harlan, "South Korean report details alleged abuses at North Korea's prison camps," *The Washington Post*, May 9, 2012, available at http://www.washingtonpost.com/world/asia_pacific/south-korean-report-details-alleged-abuses-at-north-koreas-prison-camps/2012/05/09/gIQA794LDU_story.html (last visited May 14, 2012) ("Those who complained about conditions were frequently betrayed by fellow prisoners, Jeong said... Often, Jeong himself informed guards about such misbehavior. 'Some people would say, 'This is worse than being dead.' And I'd report it. Then the person would be taken to solitary confinement for one month and given one meal per day'").

184 North Korea is not the only country which uses a reduction of diet as a means of punishment. In prisons throughout the U.S., certain prisoners are served what is called "Nutriload" as a punitive and nutritional punishment for bad behavior. Nutriload, or "prison loaf" as it is sometimes called, is food ground up and baked in loaves and served to prisoners (often those in solitary confinement) as a form of punishment. Though it purportedly has the same nutritional value as the food served to other prisoners, prisoners who have eaten it have gotten violently ill and have lost a substantial amount of weight as a result of eating Nutriload on a daily basis. For more SEE Adam Cohen, "Can Food Be Cruel and Unusual Punishment?", *TIME*, April 2, 2012, available at <http://ideas.time.com/2012/04/02/can-food-be-cruel-and-unusual-punishment/> (last visited May 14, 2012), & Matthew Purdy, "What's Worse Than Solitary Confinement? Just Taste This," *The New York Times*, August 4, 2002, available at <http://www.fedcrimlaw.com/visitors/PrisonLore/TheLoaf.html> (last visited May 14, 2012).

185 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners 22-3.

186 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 94 (Basic Books, New York 2005) (Kang Chol-Hwan described it as one of the harshest punishments thought possible)

187 Darius Rejali, "Ice Water and Sweatboxes: The long and sa-

177 *Id.*

178 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* Art. 27, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e8.html> [accessed 14 May 2012].

179 Chico Harlan, "South Korean report details alleged abuses at North Korea's prison camps," *The Washington Post*, May 9, 2012, available at http://www.washingtonpost.com/world/asia_pacific/south-korean-report-details-alleged-abuses-at-north-koreas-prison-camps/2012/05/09/gIQA794LDU_story.html (last visited May 14, 2012) ("laborers who failed to meet work quotas saw their meager food rations cut in half, a cycle that led to starvation because the less they ate, the weaker they got, and the poorer they became at work").

180 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 123-4 (Basic Books, New York 2005).

181 Amnesty International, "Hell Holes": North Korea's secret prison camps", YouTube, May 4, 2011, available at <http://www.youtube.com/watch?v=1y0yhV6IT7o> (last visited May 14, 2012); Kenneth Chan, "N. Korean Prison Camp Survivors Speak at UN Meeting", *The Christian Post*, April 7, 2005, available at <http://www.christianpost.com/news/n-korean-prison-camp-survivors-speak-at-un-meeting-1325/> (last visited May 14, 2012).

182 David Hawk, *The Hidden Gulag: Exposing North Korea's*

been utilized by the Japanese during World War II on POWs,¹⁸⁸ and by the Chinese on South Koreans during the Korean War.¹⁸⁹

The sweatbox itself is a “kind of shack...devoid of any openings” and shrouded in total darkness.¹⁹⁰ It is extremely small and cramped, such that the prisoner cannot fully stand or lie down, forcing him to crouch on his knees.¹⁹¹ This close confinement punishment is made worse by the fact that the prisoners are prohibited from talking or gesturing, except when sick or asking to go to the bathroom.¹⁹² If they talk or make any unnecessary gestures, they are beaten and abused by the guards (in one case, the guards tied the hands of a prisoner behind his back and shoved his nose into a septic tank).¹⁹³ The diet of a prisoner in the sweatbox is also reduced, leading him to eat anything that crawls within his grasp.¹⁹⁴ Prisoners must silently starve in the sweatbox for days or weeks at a time, and such severe treatment has been reported to have a lasting impact on survivors.¹⁹⁵

The existence and use of the sweatbox as a means of discipline and punishment is in violation of Rule 31, in that placing prisoners in the sweatbox constitutes corporal punishment.¹⁹⁶ It is also in violation of Rule 31 because the prisoner is placed in a dark cell, and because the very use of this torture device constitutes cruel, inhuman, and degrading punishment.¹⁹⁷ The sweatbox is also in violation of Article 32(1), since it is by its very nature punishment by close confinement,¹⁹⁸

and since such confinement involves “extensive sensory deprivation” (especially light) and “deprivation of any human contact or stimulation.”¹⁹⁹ Finally, the reduction in diet constitutes a violation of Article 32(1) because such punishment is expressly prohibited.²⁰⁰

4.10 Punishment Cells

Prisoners at the Yodok concentration camp also face the possibility of being sent to a “punishment cell”,²⁰¹ a sentence often spelling death for the already weakened prisoner.²⁰² Like the sweatbox, prisoners are unable to move in these cells,²⁰³ are deprived of light and human contact, and are fed very little (in punishment cells, the diet is 10 grams a day).²⁰⁴ Former prisoners have stated that people are sent to these cells anywhere from ten to forty-five days, and that those who manage to come out alive are too weak to even walk, dying soon after being released from the cell.²⁰⁵ While the sweatbox and punishment cells are similar in many respects, a major difference between them is that, in the punishment cells, prisoners have a rope tied around their neck, and are forced to sit in the cramped cell with this rope around their neck for up to six months, significantly longer than the time prisoners spend in the sweatbox.²⁰⁶

The existence and use of the punishment cell, as with the existence and use of the sweatbox, is in violation of Rules 31 and 32(1).

distic history behind the CIA’s torture techniques”, Slate, March 17, 2009, available at http://www.slate.com/articles/news_and_politics/jurisprudence/2009/03/ice_water_and_sweatboxes.2.html (“They were a standard part of naval discipline, and the word *sweatbox* comes from the Civil War era”).

188 *Id.* (“The Japanese used them in POW camps in World War II. They are still common in East Asia”).

189 *Id.* (“They are still common in East Asia. The Chinese used them during the Korean War, and Chinese prisoners today relate accounts of squeeze cells (*xiaobao*, literally “small number”), dark cells (*beinv*), and extremely hot or cold cells”).

190 Kang Chol-Hwan and Pierre Rigoulot, *The Aquariums of Pyongyang* 94 (Basic Books, New York 2005).

191 *Id.*

192 *Id.*

193 *Id.*

194 *Id.*

195 *Id.*

196 United Nations, *Standard Minimum Rules for the Treatment of Prisoners* Art. 31, 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e.html> [accessed 14 May 2012]

197 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners 22.

198 United Nations, *Standard Minimum Rules for the Treatment of*

Prisoners Art. 32(1), 30 August 1955, available at: <http://www.unhcr.org/refworld/docid/3ae6b36e.html> [accessed 14 May 2012]

199 Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners 22-4.

200 *Id.*

201 “North Korea: Images reveal scale of political prison camps”, Amnesty International, May 4, 2011, available at <http://www.amnestyusa.org/news/press-releases/north-korea-images-reveal-scale-of-political-prison-camps> (last visited April 7, 2012).

202 *Yodok Stories* 2008 (approx. 26:10).

203 *Id.*

204 *Id.*

205 David Hawk, *The Hidden Gulag*, Second Edition: *The Lives and Voices of “Those Who are Sent to the Mountains”* 65. U.S. Committee for Human Rights in North Korea (Washington, D.C. 2012). (“Just outside the Sorimchon section there was a punishment facility for ‘rule violators.’ Rule breakers were sent to this prison within the prison camp for 10-45 days and almost everyone died shortly after release. Mr. Kim...knew three persons sent to the punishment cells, one person for ‘stealing’ honey, another for eating raw corn intended for the animals, and one woman who had sex with another prisoner. All three died upon release from the punishment cells”); ALSO SEE 66.

206 *Yodok Stories* 2008 (approx. 20:41 to 21:42).

5. REACTIONS OF THE INTERNATIONAL COMMUNITY

5.1 The Working Group on the Universal Periodic Review

So how has the international community –specifically the Working Group on the Universal Periodic Review, the General Assembly, and the U.N. Special Rapporteur on Human Rights in North Korea – dealt with these blatant violations of the U.N. Standard Minimum Rules? As can be expected, North Korea denies the existence of any political prison camps in its country. North Korean representatives made such a denial at a recent convening of The Working Group on the Universal Period Review, established pursuant to Human Rights Council Resolution 5/1 on June 18th, 2007.²⁰⁷ The Universal Periodic Review (“UPR”), set up by the Human Rights Council, analyzes the human rights situations of all 193 U.N. Member States with each country being looked at once every four years.²⁰⁸ The UPR Working Group consists of forty-seven members of the Human Rights Council (although any U.N. Member State can take part in the review) who review a country according to the human rights standards set forth in various human rights treaties.²⁰⁹ The goal of the UPR is to comprehensively assess the human rights situation in every country, offer non-binding recommendations and assistance if necessary, and have the State assume primary responsibility for implementing the recommendations.²¹⁰ NGOs may participate in the process as well.²¹¹

North Korea last submitted a report during the sixth session of the Human Rights Council Working Group on the Universal Periodic Review, held in Geneva from November 30th to December 11th, 2009.²¹² In chapter IV (“Efforts and Experiences in the Protection and Promotion of Human Rights”), subsection 1(C), Nor-

th Korea claims that torture and other inhuman treatment is strictly prohibited by their Criminal Procedures Law, particularly forcing a suspect to admit an offense by torture or beating.²¹³ In subsection 4, meanwhile, North Korea claims that it cooperates with International Human Rights NGOs, although such groups have been calling on North Korea for years to cease the operation of the Yodok concentration camp, which North Korea officially denies exists.²¹⁴ What’s perhaps most perplexing, however, is the accusations it lays out in chapter V (“Obstacles and Challenges to the Protection and Promotion of Human Rights”). In subsection one, North Korea claims that the U.S. is pursuing a “hostile policy” towards North Korea which “poses the greatest challenge to the enjoyment of genuine human rights by the Korean people.”²¹⁵ In subsection 2, meanwhile, North Korea claims that the “EU in collusion with Japan and other forces hostile to the DPRK has adopted every year since 2003 the anti-DPRK ‘human rights resolution’ at the Commission on Human Rights, Human Rights Council and UN General Assembly.”²¹⁶ North Korea goes on to say that:

These “resolutions” aim at tarnishing the image of the DPRK and thereby achieving political purpose of eliminating the ideas and system that the Korean people have chosen for themselves and defended, and not at the genuine protection and promotion of human rights. The sponsors of the “resolution” preposterously argue that they are aimed at promoting “cooperation” and “collaboration” for the “protection and promotion of human rights”. However, the reality speaks by itself that the “resolutions” are the root source of mistrust and confrontation, and the impediments to international cooperation

This sort of evasiveness and circular reasoning is indicative of a country that is unwilling to hold itself accountable for the egregious human rights violations committed at Yodok.

207 Report of the Working Group on the Universal Periodic Review: Democratic People’s Republic of Korea, U.N. General Assembly, A/HRC/13/13, Jan. 4, 2010.

208 “Basic Facts about the UPR”, United Nations Human Rights, available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> (last visited May 14, 2012).

209 Id.

210 Id.

211 Id.

212 National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: Democratic People’s Republic of Korea, U.N. General Assembly A/HRC/WG.6/6/PRK/1, Aug. 27, 2009.

213 Id. at 8.

214 “North Korea: Demand the closure of an inhumane prison camp”, Amnesty International, available at http://www.amnesty.ca/writeathon/?page_id=3489 (last visited May 14, 2012) (“[t]he North Korean government denies that any political prison camps exist, even though satellite photographs and testimony collected by Amnesty International from former guards and former prisoners confirm their existence”).

215 National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: Democratic People’s Republic of Korea 15, U.N. General Assembly A/HRC/WG.6/6/PRK/1, Aug. 27, 2009.

216 Id. at 16.

The Working Group reviewed North Korea's report on human rights on December 7th, 2009, and issued a report two days later, which was subsequently published on January 4th, 2010.²¹⁷ In its report, the Working Group noted that the North Korean delegation denied the existence of any political prison camps, although the delegation eerily referred to the existence of "reform institutions":

On the issue of "political prisoners' camps", the delegation noted that freedoms of speech, press, assembly and demonstration and freedom of religious belief are the fundamental rights guaranteed by the Constitution.

Exercising the rights to such freedom can never be criminalized. Thoughts and political views are not something that can be controlled by the law. The term "political prisoner" does not exist in DPRK's vocabulary, **and therefore the so-called political prisoners' camps do not exist.** There are **reform institutions**, which are called prisons in other countries. Those who are sentenced to the penalty of reform through labour for committing anti-State crimes or other crimes prescribed in the Criminal Law serve their terms at the reform institutions.²¹⁸ (emphasis added)

Despite North Korea's insistence that these camps do not exist, numerous countries participating in this working group session, including South Korea, the Netherlands, and France, expressed concerns about the use of torture in North Korea and the existence of prison camps, although no explicit reference to Yodok is made.²¹⁹ In addition, the Working Group recommended that North Korea "[c]ooperate with the special rapporteurs and other United Nations human rights mechanisms by granting them access to the country",²²⁰ "positively consider requests for country visits of special procedures of the Council and implement the recommendations stemming from United Nations human rights mechanisms", "[g]rant access to the three thematic Special Rapporteurs who have requested a visit", "[r]espond favourably to the request of special procedures mandate-holders to enter the country and cooperate with special procedures and other human rights mechanisms", and "[e]nsure that all persons deprived of their liberty are treated with humanity and with respect for the inherent dignity of

the human being,"²²¹ amongst other recommendations. Among the one-hundred-and-sixty-seven recommendations, North Korea did not support fifty of them, including "recogniz[ing] the mandate of the Special Rapporteur on the situation of human rights, cooperat[ing] with him and grant[ing] him access", "grant[ing] access, as a matter of priority, to the Special Rapporteur on the situation of human rights in DPRK", "[c]ooperat[ing] more intensively with United Nations human rights mechanisms, in particular by responding positively to the repeated requests for visits by the Special Rapporteurs on the situation of human rights and the right to food", and "[a]gree[ing] to requests for a visit by the Special Rapporteur on the situation of human rights".²²²

In the same Working Group session which analyzed North Korea's national report, the Working Group looked at reports from fifteen other countries, including Albania, Costa Rica, Ethiopia, and the Democratic Republic of Congo.²²³ Of the sixteen countries examined in this session, twelve received eighty-five or more recommendations, with Cote d'Ivoire receiving 147, second only to North Korea's 167.²²⁴ While most of these countries, supported almost all of the Working Group's recommendations,²²⁵ North Korea did not support 50 of its 167 recommendations,²²⁶ which was the highest percentage of denial in the session.²²⁷

5.2 U.N. General Assembly Resolutions

North Korea's report on its human rights situation, and the Working Group's response, is indicative of Nor-

217 *Id.*

218 *Id.*

219 *Id.*

220 Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea 15, U.N. General Assembly, A/HRC/13/13, Jan. 4, 2010.

221 *Id.* at 17.

222 *Id.* at 20 (North Korea also did not support the recommendation to "[d]evelop cooperation on the issues of human rights with international organizations and their mechanisms, in particular by engaging constructively with the Special Rapporteur on the situation of human rights and responding positively to offers of technical assistance by OHCHR").

223 The eleven other countries include Brunei Darussalam, Bhutan, Cote d'Ivoire, Cyprus, Dominica, Dominican Republic, Eritrea, Equatorial Guinea, Cambodia, Norway, and Portugal.

224 *Report of the Working Group on the Universal Periodic Review: Cote d'Ivoire*, U.N. General Assembly, A/HRC/13/9, Jan. 4, 2010.

225 BUT SEE *Report of the Working Group on the Universal Periodic Review: Ethiopia*, U.N. General Assembly, A/HRC/13/17, Jan. 4, 2010 (Ethiopia denied 32 of the 142 recommendations made to it).

226 *Report of the Working Group on the Universal Periodic Review: Democratic People's Republic of Korea*, U.N. General Assembly, A/HRC/13/13, Jan. 4, 2010.

227 For the Sixth Session, SEE <http://www.ohchr.org/EN/HRBodies/UPR/Pages/MeetingsHighlightsSession6.aspx> (last visited May 14, 2012).

th Korea's reluctance to participate actively and honestly regarding its violations of a prisoner's fundamental human rights, specifically the existence of the Yodok concentration camp. The U.N. General Assembly however, has taken an important step in creating awareness regarding the existence of prison camps in North Korea. The main deliberative and policymaking organ of the U.N., the General Assembly, which is comprised of all 193 U.N. Member States,²²⁸ has raised awareness of the dire situation in Yodok through both implementation of the aforementioned Working Group and by passing resolutions regarding the existence of prison camps and the use of torture therein.²²⁹ But the recommendations put forth in the Working Group report and in the GA resolutions are non-binding, and only have power in so far as they influence other U.N. bodies with legally binding capabilities.

5.3 U.N. Special Rapporteur of Human Rights

The Special Rapporteur on the situation of human rights in North Korea was established by the Commission on Human Rights in 2004 under resolution 2004/13.²³⁰ In his most recent report on North Korea, the Rapporteur – Marzuki Darusman²³¹ - talked extensively about detention and correctional facilities in North Korea, including the existence of political prison camps.²³² Specifically, the Special Rapporteur noted North Korea's reference to such camps in its own legal instruments (Article 18 of its Sentences and De-

cisions Enforcement Law), the flagrant human rights violations (including torture) occurring therein, and the need to prompt North Korea to improve the human rights situation in these camps.²³³ As with the General Assembly Working Group and GA Resolutions, the suggestions of the Special Rapporteur on Human Rights are non-binding, and depend in large part on North Korea's willingness to comply and amend its ways, a willingness it has not shown thus far.

6. WAYS OF APPLYING PRESSURE ON NORTH KOREA TO CLOSE YODOK

In light of North Korea's hostile response to the Working Group's recommendations pursuant to the UPR, and considering the GA's U.N. Special Rapporteur's findings on the matter, it is important to consider the methods and mechanisms which are available for applying pressure on North Korea to close Yodok. For one, the U.N. Security Council, an organ of the U.N. which is charged with the maintenance of international peace and security,²³⁴ could pass a resolution calling on the North Korean Government to either close the Yodok camp, or to at least cooperate with Special Rapporteurs and the Human Rights Council. Generally, the Security Council can settle any dispute which is likely to endanger international peace and security, and may investigate the dispute and recommend ways of resolving it.²³⁵ If it determines that there exists a threat to the peace, a breach of the peace, or an act of aggression, it may call on States to apply sanctions towards the offending State (Article 41), or can call on the States to take military action in order to restore peace and security.²³⁶ In recent years, the Security Council has passed resolutions calling on countries and regions to improve their human rights situations. It has also helped ensure the inclusion of human rights provisions in peace agreements, has facilitated the elimination of the use of children in armed conflicts, and has included human rights protections in the work of its Counter-

228 General Assembly of the United Nations, *available at* <http://www.un.org/en/ga/> (last visited May 15, 2012).

229 60/173. Situation of human rights in the Democratic People's Republic of Korea, A/RES/60/173, March 14, 2006; 61/174. Situation of human rights in the Democratic People's Republic of Korea, A/RES/61/174, March 2007; 62/167. Situation of human rights in the Democratic People's Republic of Korea, A/RES/62/167, Feb. 2008; 63/190. Situation of human rights in the Democratic People's Republic of Korea, A/RES/63/190, Feb. 2009; 64/175. Situation of human rights in the Democratic People's Republic of Korea, A/RES/64/175, March 2010; 65/225. Situation of human rights in the Democratic People's Republic of Korea, A/RES/65/225, March 2011; 66/174. Situation of human rights in the Democratic People's Republic of Korea, A/RES/66/174, March 2012.

230 *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, U.N. General Assembly, A/HRC/16/58, Feb. 2011 (the Rapporteur also said that such camps are operated by the "Farm Guidance Bureau of the State Security Agency." The latter may also be another name for the National Security Agency).

231 "Scuffle after North Korea rejects UN rights report", BBC, March 13, 2012, *available at* <http://www.bbc.co.uk/news/world-asia-17348611> (last visited May 15, 2012).

232 SEE FN 232, *supra*.

233 *Id.*

234 United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, *available at* <http://www.unhcr.org/refworld/docid/3ae6b393.html> [accessed 15 May 2012].

235 *Id.*

236 *Id.*

-Terrorism Committee.²³⁷ In 2012, for instance, the Security Council called on the Western Sahara²³⁸ and the Middle East²³⁹ to improve their human rights situations. Indeed, the Security Council is a powerful tool for enforcing the will of the international community upon a country, since its Resolutions may have binding international force.²⁴⁰

Another way of persuading North Korea to close Yodok is by passing a General Assembly Resolution which *specifically calls* for the closing of Yodok. The General Assembly has in the past condemned human rights violations occurring in other countries, expressing concern over the systematic and widespread violations of a citizen's civil, political, economic, cultural and social rights, including the use of torture and other cruel, inhuman, and degrading punishment. A GA Resolution that targets Yodok specifically could raise public awareness as to that camp's horrid and inhumane conditions, although this is dependent largely upon whether or not the media chooses to publicize it.

Another effective way of raising awareness would be through the efforts of an NGO or any other independent organization. Amnesty International and Human Rights Watch, two prominent international human rights NGOs, have published reports specifically con-

demning the operation of and torture tactics used in Yodok.²⁴¹ However, it would be even more beneficial if an independent organization dedicated solely to the human rights violations in North Korea were to release an official report or video, akin to the video produced by The Invisible Children earlier this year called "Kony 2012", which to date has over 89,000,000 views.²⁴² One such group is "Liberty in North Korea", ("LiNK"), an organization dedicated to both raising awareness regarding the dire conditions in North Korea – including the existence of concentration camps – and rescuing North Korean refugees.²⁴³ If an organization such as LiNK could release a video of similar production quality (though hopefully of more informative value) to Kony 2012, then this may empower individuals all over the world to start campaigns calling on their governments – and even on the U.N. – to take a harsher, more direct stance with the North Korean Government. To compel North Korea to close the Yodok concentration camp, the world must make its closing *the* human rights issue of our time, and must act with all due haste before another human rights issue takes its place.

237 Alston Steiner & Goodman, *International Human Rights in Context* (Oxford University Press 2007).

238 *Security Council Resolution 2044*, U.N. Security Council, S/RES/2044, April 2012.

239 *Security Council Resolution 2043*, U.N. Security Council, S/RES/2043, April 2012.

240 Alston Steiner & Goodman, *International Human Rights in Context* (Oxford University Press 2007).

241 SEE "Yodok, North Korea – Write for Rights 2011", Amnesty International, Nov. 15, 2011, *available at* <http://www.amnestyusa.org/news/multimedia/yodok-north-korea-write-for-rights-2011> (last visited April 7, 2012) & World Report 2012: North Korea, Human Rights Watch, *available at* <http://www.hrw.org/world-report-2012/world-report-2012-north-korea> (last visited April 7, 2012).

242 Invisiblechildreninc, "KONY 2012", YouTube, March 5, 2012, *available at* http://www.youtube.com/watch?v=Y4MnpzG5Sqc&feature=results_video&playnext=1&list=PLA186B5D376BFAC72 (last visited May 14, 2012).

243 LiNK: The North Korea Crisis, *available at* <http://www.link-global.org/> (last visited May 14, 2012).