MESSAGE FROM THE EDITOR

Greetings! I would like to take this opportunity to welcome everyone to the Asia Law News.

This edition of our Newsletter tries to adopt a theme and focuses on human rights violations within the Asia Pacific region.

We start out with an article by a gentleman, Mr. Gregory MacKenzie, who has taken a great interest in the human rights violations of North Korea. This article focuses on North Korean prisons and the treatment of prisoners. Additionally, the article provides an overview into the governmental structure of North Korea.

The second article, written by our Year-In-Review editor – Mr. Justin Persaud, focuses on corporate responsibility and anti-bribery legislation and how these rules and regulations can affect human rights within a particular country or region.

Our final article is a general opinion-editorial piece, written by Russell Aldrich, that also focuses on North Korea. However, Mr. Aldrich’s article focuses on how unlikely reform will be in North Korea.

We offer no firm arguments or conclusions on this topic and leave it to our readers to decide for themselves, given the articles provided within this issue of Asia Law News.

I look forward to continuing the newsletter and hope that you will participate in future issues. Please note that if your article was not selected for this particular newsletter, it will be considered for future issues. A reminder that the next deadline for submissions is November 22, 2012. The next topic that we will focus on is Anti-Bribery and Anti-Corruption laws both the effect on and the enactment within the Asia-Pacific region.

- Emilie Simone
  Editor, Asia Law News
Opinion/Editorial Piece:

NORTH KOREA MUST ACCOUNT FOR ITS TREATMENT OF “POLITICAL” PRISONERS

By: Gregory W. MacKenzie, Esq.¹

The history of the Democratic People’s Republic of Korea (“DPRK”) often referred to as “North Korea” has been and continues to be marked by widespread human rights violations since its inception in 1948. There is little doubt that the DPRK was intentionally constructed by its rulers to be a closed society so as to conceal these violations from the international community and guarantee their control of the populace. Despite the architecture of that government, many accounts given by those defecting from North Korea have shed light on the problems there. These accounts have served as the basis for many publications by defectors as well as observers concerned about the situation in North Korea.² The accounts are mounting, consistent and compelling. North Korea must account for its treatment of its citizenry, especially those detained in its political prison camps. The purpose of this article is to increase public awareness of the DPRK political prison camp system and the social context in which it exists. There is no shortage of reasons why conditions in the DPRK warrant sustained and unrelenting scrutiny by the international community. The DPRK is governed by a totalitarian³ regime just now beginning its third generation.⁴ The Kim Regime historically and systematically has eliminated, by the most vicious means imaginable, all dissenters (both real and perceived) in order to maintain an iron grip on power. In doing so, it has ignored the most basic of human rights while at the same time giving lip service⁵ to their importance in the nation’s constitution.⁶ The United Nations General Assembly has thus adopted resolutions on North Korean human rights violations every year since 2005.⁷ Not surprisingly, North Korea has resisted visits to that country by the U.N Special Rapporteur on the situation of human rights in the DPRK.⁸

Energy and foreign currency shortages and the collapse of its food distribution system⁹ resulted in a famine in the 1990’s. The famine, called the “Arduous March” in state propaganda, caused immense suffering of DPRK citizenry, including the deaths of hundreds of thousands (or more).¹⁰ There are alarming indicators, including resurgence of reports of cannibalism and executions therefore,¹¹ that a similar crisis may be on the horizon, if it has not already begun. Urgent help is reported to be needed to avoid a replay of the famine. A 2011 United Nations survey concluded that “more than six million vulnerable people urgently required international food assistance.”¹² Deforestation, limited mechanization, soil degradation, poverty, lack of sufficient amounts of arable land and difficult weather conditions are expected to combine with a food import deficit and declining food aid to render DPRK unable to feed its population.¹³ The DPRK’s allocation of apparently scarce resources (one estimate, up to 25%)¹⁴ to militarize itself is a gross violation of its responsibility to protect its own citizenry.

Of all the reasons why the international community should be concerned over the situation in the DPRK, perhaps the most compelling is the situation of detainees in its political prison camps.¹⁵ Six are believed to exist in the mountainous North-East portion of the nation.¹⁶ It is believed that 150,000-200,000 individuals are detained in these facilities.¹⁷ These camps are reported to encompass large areas of land (50 - 250 square km), to hold between 5,000 and 50,000 prisoners each¹⁸ and to be surrounded by electrified fences (one reported to be 3,300V¹⁹) and guard towers.

Continued on page 3
The DPRK government “consistently denies” the existence of these camps.\textsuperscript{20} Amnesty International (“AI”), however, reports that conditions in these camps are “some of the worst conditions AI has documented in the past fifty years.”\textsuperscript{21} Such conditions are confirmed by those fleeing from the country who have been interviewed and who have provided first-hand accounts of life in the camps. Among the defectors are former detainees and guards. Recent satellite imagery shown on the AI website compared to that taken in 2001 shows significant increases in construction, agriculture and mining within the camps indicating that no end to them is in sight.\textsuperscript{22}

David Hawk, author of \textit{The Hidden Gulag}, correctly observes that the DPRK political prison camp system does not exist in a vacuum. Indeed, the camps exist as just one part of a vast system of intimidation and repression created by “the Great Leader,” Kim Il-Sung, to ensure his (and his family’s) grip on power. The possibility of imprisonment within the camps instills terror amongst the populace and, in connection with other tactics, not the least of which are public trials, public executions and periodic “purges,” coerce the population’s obedience to the Kim Regime. Political prison camps are dumping grounds for those perceived to be threats to the Kim Regime.\textsuperscript{23}

The system of North Korean repression is and has been Orwellian in scope. Its instruments of repression include – among others – constant ideological messaging, false creation of siege mentality, deification of its leader and loyalty to his leadership above all else, international isolation, constant surveillance, lack of recourse, extreme intimidation and punishment, excessive investment in its military infrastructure and success based on loyalty to the leadership.

Propaganda saturates elementary education so that children are taught\textsuperscript{24} about the evils of the West and the goodness and wisdom of “the Great Leader” from a very young age.\textsuperscript{25} Writing in 1994, Helen Louise Hunter reported that school children were taught that Kim Il-Sung was the source of all that is good.\textsuperscript{26} Kim Il-Sung was and is deified as “the Great Leader.” Religious activities were and are “thoroughly suppressed” as they posed a threat to the singular power of the Kim Regime.\textsuperscript{27} One defector reported the 2009 public execution of an individual for possession of a Bible.\textsuperscript{28} Defectors who are repatriated to the North and who have reported contact with Christians in South Korea are reportedly beaten or executed.

Kim Il-Sung’s opponents were crushed, and power consolidated in him.\textsuperscript{29} The Socialist Constitution of the Democratic People’s Republic of Korea (Preamble) contains many references to his alleged successes and names him “eternal President of the Republic.” His descendant, Kim Jong-Un, has been named “the Great Successor,” “the Supreme Leader,” and “the Sagacious Leader.”\textsuperscript{30} Political education occurs on a constant frequency in adulthood\textsuperscript{31} to such an extent that in 1999 Hunter reported that constant political chores\textsuperscript{32} had exhausted the population.\textsuperscript{33}

The government is structured to perpetuate the power of Kim Il-Sung and his descendants. For example, the Ten Principles – announced in 1974 as part of the “Monolithic Ideological System” and ordered by Kim Jong-Il to be unconditionally accepted by North Koreans – stipulated “Although our life is one, we wish to live for the Great Leader and willingly dedicate our youth and life to the Great Leader. In any adverse situation, our hearts will be loyal to the Great Leader.”\textsuperscript{34} These principles called for “unconditional obedience” to Kim Il-Sung’s instructions.\textsuperscript{35} Similarly, the ideology of \textit{Juche} stresses the importance of self-reliance which justifies not only international isolationism but also the subordination of individual rights to the collective headed by the leader, making adherence to his teachings mandatory.\textsuperscript{36}
A belief in Kim Il-Sung’s omniscience and omnipresence arose from coerced political control of the populace and rewarded political loyalty. Kim Il-Sung is reported to have given countless episodes of “on-the-spot guidance” at collective farms and other facilities, and his words during these visits are invariably reported to have improved whatever task that facility conducted. Things he touched while on such visits were veiled or put under glass. Buildings he visited are named after the date of his first visit. Residents are required to keep a state-issued picture of him on the most prominent wall of their home with a state-issued dust cloth under it. It is the only wall-hanging allowed on the wall. Failure to maintain the picture is a political crime. Hunter reported that, prior to his death in 1994, over 500 life size statues of Kim Il-Sung were found throughout the country, with that number increasing after his death. History was even revised to embellish his image.

Classes of society are structured based on real or perceived political loyalty whereby those belonging to the loyal class are allowed opportunity while those belonging to the hostile class are not. Called Songbun, this system of social stratification, has its roots in North Korean history. In February of 1946, the North Korean Provisional People’s Committee was formed and in September of that year conducted its first registration of the citizenry. Between 1946 and the beginning of the Korean War in 1950, Songbun (background) investigations occurred for those wanting major party, government or economic positions. Initial Songbun records were “spotty.” In October of 1950, China intervened to aid the fledgling North in the Korean War. While the intervention saved the Regime, discontent mounted among members of the populace, resulting in the imprisonment or execution of these citizens. Subsequently, Kim Il-Sung distanced Korea from Soviet and Chinese influences resulting in the beginning of purges of those factions. In 1956, Kim Il-Sung travelled abroad and in his absence, “secret maneuverings began among Yenan and Soviet Koreans to rally anti-Kim Il-Sung forces.” In response, the Kim Regime planned for mass purges of its political enemies. Approximately 2,500 people were executed in purges between 1957 to 1960 (often publically), and other members of the hostile class were jettisoned from Pyongyang and coastal areas (leaving the mountainous areas where hostiles were exiled).

Kim’s response was to tighten control over the entire nation with an eye toward independence from the Soviet Union and China and Juche economically and militarily. In 1957, the Kim Regime launched a campaign to “evaluate the credentials of every North Korean adult.” The entire population was labeled in one of three classes generally described as loyal, wavering and hostile classes – all based on perceived loyalty to Kim Il-Sung’s regime. Because opportunity is provided based on Songbun, the system assured that power would remain with Kim Il-Sung and his family.

While some social stratification existed for centuries prior to Japanese occupation of Korea, the Kim Regime used the Songbun classification system as an instrument of political control. In 1964, following the purges of Soviet and Chinese factionalists, independence from those countries and increasing militarization, hundreds of groups were appointed to thoroughly research every North Korean adult. As a result, the population was categorized into even further categories. The Citizen Registration Bureau and the Resident Registration Bureau were created. There came to be dozens of social subcategories, and the entire population was categorized into an applicable category. Anti-revolutionaries were either executed or sent with their families to the mountains. Other purges occurred in the 1960’s with execution estimates for that decade exceeding 6,000 and imprisonments numbering 70,000.
The Songbun categorization is hereditary and has resulted in what Hunter described in 1999 as “what must be the most class differentiated society in the world today.” An individual’s ability to succeed in North Korea is not measured by one’s merits but is inextricably tied to one’s Songbun. In 1999, Hunter wrote that “Everyone in North Korea seems to know pretty much what his Songbun is, although there are no precise gradations and no official notice is given.” By middle school, schoolchildren know their own rank in society, and their success is measured not by their ability but by the individual’s Songbun. Middle school students with bad Songbun go directly to work, no matter how well they do in their studies. All college students are of the best Songbun and are strong supporters of the Regime. Hunter reports that it is easy to have one’s Songbun downgraded, but it is very difficult to have it upgraded – in fact, those with poor Songbun are likely to never escape surveillance. Those in the privileged class (1999, about 30% of the population) were the anti-Japanese guerillas who fought with Kim Il-Sung, veterans of the Korean War and the descendants of the pre-revolution working class, the poor and farmers. As a result of Songbun, opportunity is allowed to those perceived to be politically loyal, with the hostile classes not achieving positions of power or influence.

Advancement of the individual through the social strata is controlled by Songbun, and the population as a whole is managed through – among other techniques – control, isolation and surveillance. There is no freedom of movement within the country – moving a residence requires government approval, and trips out of town require a permit. The right to own a television is subject to registration, and the TV is then altered only to receive state-sanctioned programming and sealed subject to periodic inspection. Similarly, radio purchases must be registered; radio frequencies are turned to official broadcasting channels, and tuning in to a South Korean radio broadcast is a crime with the perpetrator treated as a political prisoner. International news regarding pro-democracy movements in the Middle East have been intentionally curtailed. South Korean movies and music are confiscated, and smugglers/peddlers face penalties including imprisonment in a labor camp and public execution. Cell phone usage (banned in 2004 and recently allowed) is monitored especially along the border with China, and conversations with South Koreans are subject to sanctions. International phone calls are restricted. Settings are contrived for view of foreign visitors to create an artificial view of the true conditions on the ground.

The population is constantly monitored. Government informants or “snitches” are reported to be everywhere. The populace is required to undergo frequent criticism/self-criticism sessions in which their short-comings are reported to neighbors and made the subject of criticism. Historically, everyone has watched “everyone else in or around one” and conversations with South Koreans are subject to sanctions. Unannounced home inspections in the middle of the night are reported. House searches otherwise are prevalent, and correspondence subject to review.

Neighborhood associations (In-min-ban) consisting of up to 40 households exist throughout the country. Every North Korean citizen is required to belong to an In-min-ban. Ken Gause reports that each In-min-ban has at least one informant who works for the State Security Department (“SSD”) and one police informant. The In-min-ban meets frequently, is the source of ideological education and assists in mobilizing for various patriotic campaigns of the Regime. The leader of the In-min-ban receives instruction from the SSD and reports on suspicious activities of household members in its group, political statements, radio and television viewing habits, visitors and the use of foreign currency. Gause reports that individuals staying overnight with friends or relatives must register with the In-min-ban. Failed investigations can lead to the execution of an informant.

Continued on page 6
Massive surveillance networks exist within the country.\textsuperscript{99} Affiliation in groups other than \textit{In-min-ban} is required, and several quasi-governmental organizations exist which provide additional monitoring and influencing of the citizenry.\textsuperscript{100} Incoming and outgoing mail is subject to inspection.\textsuperscript{101}

There is no independent judiciary\textsuperscript{102} and portions of the DPRK constitution\textsuperscript{103} appear comical in light of what actually happens in the country.\textsuperscript{104} North Korea does not permit outside observation of its legal system, so information on procedures and practices is limited.\textsuperscript{105}

As to ordinary crimes, lawyers for accused have been reported to receive state salaries and are required to represent the interests of the Regime, explain the charges to the accused and convince them to confess.\textsuperscript{106} Trials – when they occur – appear to be designed not to safeguard individual rights but to make an example of the accused so as to further state policy.\textsuperscript{107} The same is true of public executions\textsuperscript{108} which occur by firing squad and hanging.\textsuperscript{109} Appeals are discouraged because they can result in a heavier punishment for the accused.\textsuperscript{110} One defector reported being sentenced to a labor camp based solely on documentary evidence.\textsuperscript{111}

In the case of political or ideological crimes, investigation of those (and possibly also adjudication)\textsuperscript{112} are handled by the State Security Department.\textsuperscript{113} Gause reports that the procedures are opaque and violated so frequently as to be meaningless.\textsuperscript{114} If there are trials, they are usually secret,\textsuperscript{115} and the accused does not have counsel. As will be explained further, in some cases, entire families can be sentenced based on the anti-state crime of one member of the family. In others, those accused of anti-state crimes can be arrested and sentenced to a labor or prison camp with family members having no knowledge of what happened to the individual.\textsuperscript{116}

The totalitarian system of DPRK is an outgrowth of the Soviet and Stalinist influences which shaped the North after the end of World War II. The DPRK political prison camp system also finds its origins in these roots. The North Korean government initially set up primitive prison camps after World War II to imprison political enemies,\textsuperscript{117} with the first established in 1947 under Soviet occupation.\textsuperscript{118} The political prison camps were fully developed in the early 1970's under orders from Kim Il-Sung. Prior to that, the families of those sympathizing with the South during the Korean War were deported in cargo trains to twelve special districts so that they would be completely isolated from the rest of the population.\textsuperscript{119}

Two types of political prison camps are known to exist within North Korea: complete control districts and revolutionary districts.\textsuperscript{120} The revolutionary districts (\textit{kyo-hwa-so}) are those camps which house prisoners sentenced to a finite sentence\textsuperscript{121} who are expected to someday return to society -- if they survive the imprisonment. Detainees of complete control districts (\textit{Kwan-li-so}) are usually sentenced to life terms with no hope of returning to society alive.\textsuperscript{122} Similar brutalities are reported in both types of camps. However, in \textit{kyo-hwa-so} camps, detainees are subjected to ideological education after many hours of back-breaking labor. Re-education includes forced memorization of Kim Il-Sung and Kim Jong Il speeches and criticism and self-criticism sessions.\textsuperscript{123} Prisoners of both camps are subjected to grueling labor in industries such as mining, logging, textiles, manufacturing and farming.\textsuperscript{124} Prisoners are intentionally malnourished.\textsuperscript{125} The conditions are filthy, and reports of prisoner deaths due to beating, disease, execution, malnutrition, sickness and work-related accidents are very common.\textsuperscript{126} One defector who had been imprisoned in a revolutionary zone within a \textit{Kwan-li-so} reported that 40\% of the population died from malnutrition between 1999 - 2001.\textsuperscript{127}
North Korea follows a system of guilt by association, which results in the imprisonment of elderly, women and children. A 1972 statement by Kim Il-Sung states: “Factionalists or enemies of class, whoever they are, their seed must be eliminated through three generations.” As a result of this statement by “the Great Leader” and seemingly as an extension of Songbun, those associated with political criminals, as well as their families, are imprisoned in political prison camps for three generations.

Kang Chol-Hwan, co-author of *Aquariums of Pyongyang*, documents his arrest at the age of nine, along with the arrest of his grandmother and other family members, and his internment in Yodok because of an offense(s) his grandfather may have committed. Because of their relationship to alleged political prisoners, children are sentenced to imprisonment in *Kwan-li-so* camps and some are born within them. Shin Dong-hyuk was born within Camp 14. His first memory (age 4) is that of a fellow prisoner having pebbles shoved in his mouth by prison guards who hooded him and then shot him to death.

Those released from political prison camps in DPRK must upon their release sign a statement promising never to reveal what they have experienced within the camps under the threat of being sent back. However, former detainees have reported experiencing and witnessing the following in North Korean prison and labor camps:

- Frequent illnesses and deaths caused by malnutrition, starvation and constant and severe hunger;
- Filthy conditions;
- Freezing temperatures and inadequate clothing to keep warm in the winter;
- Public execution by hanging and firing squad of those attempting escape (members of prison village forced to watch);
- Hard labor from sunrise to sundown with only a few days off per year with daily work quotas even for children;
- Parents not allowed to help children who are forced to work;
- Competition for food and pitting family members against each other;
- Frequent work-related accidents (such as mine cave-ins and explosions) maiming and killing prisoners;
- Work-related injuries and deaths of children who are forced to work in mines;
- Very inadequate or no medical treatment for detainees;
- Torture by sweat-box (close confinement where prisoner has to crouch on one’s knees, hands on thighs unable to talk or move, with little food and light; some punishments here lasting up to three months in duration) for minor offenses and sexual encounters with other prisoners;
- Frequent beating of children sometimes to death (e.g., a beating by a “teacher” of a six-year old girl who had unauthorized corn in her pocket);
- Torture of 13 year-old boy by suspending him from the ceiling upside down, hanging him by his ankles for a day, and also binding his feet and hands and suspending him over a tub of burning charcoals;
- The killing of some pregnant women and their fetus;
- Severe mutilation, raping, flogging and humiliation of female prisoners engaging in sexual relations;
- Forced abortions;
- Prisoners eating rats and insects for nourishment;

Continued on page 8
• Cutting off a prisoner’s finger above the first knuckle because he dropped a sewing machine;\textsuperscript{148}
• Dozens of men having to sleep in extremely tight quarters on cement floor;
• Heat only when temperature dipped below 14 degrees;\textsuperscript{149}
• Punishment of a detainee’s family if he or she committed suicide;\textsuperscript{150}
• Post-mortem stoning of executed detainee;\textsuperscript{151}
• Prisoners forced to tend to corn growing in fields with body parts in the soil; fields planted above mass graves.\textsuperscript{152}

The brutality of at least one of the camps (Camp 14) is further demonstrated by their rules which one escapee states are strictly enforced:

• You must not escape.
• Three or more inmates must not meet together.
• You must not steal.
• You must absolutely obey orders of Protection Agency guidance officers.
• You must immediately report if you have seen any outsiders or suspicious persons.
• All inmates must carefully watch over each other and immediately report in the event of unusual behavior.
• You must “over-fulfill” all tasks assigned to you.
• Unless job-related, no contact between males and females is allowed.
• You must truly [be] remorseful of your own mistakes.
• You will be immediately shot by a firing squad if you ever violate these “laws and regulations” of the camp.

Juxtapose the above camp rules and accounts with official statements from the DPRK government. For example, on August 27, 2009, the DPRK submitted its Universal Periodic Review (“UPR”) report to the United Nations. In paragraph 12 of the UPR, the DPRK stated:

The Great leader General Kim Jong Il said that human rights are the inviolable and inalienable rights of the people in our country as they are masters of the State and society.

At paragraph 16 of the UPR, the DPRK stated:

The stipulation in the Constitution that the State shall respect and protect human rights is the manifestation of the commitment of the State to ensuring full enjoyment by citizens of human rights on a high standard.

Because the statements of former detainees of DPRK political prison camps are so grossly at odds with the positions taken by the DPRK, the DPRK statements are not credible. That government must account now to the international community regarding its treatment of detainees held in its political prison camps.

While there is clearly reason for the international community to be concerned over the DPRK’s decision to make itself a nuclear power, to the maximum extent possible, that concern should not continue to distract attention away from the chronic human rights violations occurring within that nation. Those abuses are occurring within the DPRK at this very moment.
It should be obvious to anyone who has reviewed the data that the DPRK political prison camps must be dismantled. A subsequent article will address applicable international law as well as approaches for addressing the problem. However, dismantling the camps may not be as easy as simply opening the gates. David Hawk in the second edition of The Hidden Gulag created a detailed list of recommendations for addressing the issue.

DPRK political prison camps should be open to immediate inspection by qualified observers. Conditions within the camps, particularly intentional food shortages, should be immediately improved, and children and family incarcerated on the principle of guilt by association immediately released. All other prisoners confined therein who have not been convicted of a crime under a specific provision of DPRK criminal laws, after an appropriate trial, should also be released, and slave labor conditions within the camps should immediately end. All other countries, especially including China, should stop forcibly repatriating DPRK defectors back to the DPRK.

Those forcibly repatriated to the DPRK are reported to have been subject to interrogation, torture, forced abortion and, sometimes, execution. Hawk reports that pregnant women who are repatriated to the North from China are subjected to forced abortion or their babies are killed; his report documents infants being stabbed to death in the head “with forceps at a soft spot in their skulls” and others being left in boxes to die.

We can no longer sit idle while tens of thousands of men, women and children living in the DPRK political prison camps continue to suffer under the most inhumane conditions imaginable. It is time for the international community to act to end the DPRK political prison camps.

Endnotes:

1 A special thanks to James Armstead, Esq. and Diana Konate, JD, a recent graduate of Michigan State College of Law for their help in the production of this article.
3 For the purposes of this article, the following definition is particularly applicable: “totalitarian – of or relating to a centralized and dictatorial system of government requiring complete subservience to the state” “totalitarian” CONCISE OXFORD ENGLISH DICTIONARY. Revised 10th Ed. 2002.
5 KIM, SOO-AM ET AL., KOREA INSTITUTE FOR NATIONAL UNIFICATION, WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 111 (2012).
6 Id.
7 Id. at 65.
ights, exercises of his work and his son’s work is also required. These reports occurred during the period of famine in the 1990’s. There are reports by defectors of executions in 2006 and 2009 for cannibalism. Kim, supra note 4, at 98.

Special Rapporteur, supra note 7, ¶ 22.

Id. at 5.

BARBARA DEMICK, NOTHING TO ENVY: ORDINARY LIVES IN NORTH KOREA 65 (2010).

Depending on the severity of the violation, those violating the law in the DPRK are generally sentenced to one of the following sentences: an unlimited term of correctional labor; a limited term of correctional labor; disciplinary prison labor; or execution. Kim, supra note 4, at 112. Extremely hard labor, beatings by prison guards, malnourishment, disease, inadequate or no medical care and prisoner deaths are common place in correctional and labor training centers. Kim, supra note 4, at 147.

Id. at 149.

Id. at 157.


Id.; DAVID HAWK, COMMITTEE FOR HUMAN RIGHTS IN NORTH KOREA, THE HIDDEN GULAG: EXPOSING NORTH KOREA’S VAST SYSTEM OF LAWLESS IMPRISONMENT 9 (2d ed. 2012), available at http://www.davidrhawk.com/HRNK_HiddenGulag2/Web_5-18.pdf. The history of succession management between generations of the Kim Regime rulers suggests that increased population control can be expected while the transition occurs to secure Kim Jong Un’s government. Given that context, one certainly would not expect any weakening of the political prison camp system which is a principal instrument of social control.

Hawk, supra note 21, at 26.

“Three soldiers from the Korean People’s Army killed thirty American soldiers. How many American soldiers were killed by each of them if they all killed an equal number of enemy soldiers?” First Grade math problem reported by DEMICK, supra note 13, at 120.


Kim, supra note 4, at 27.

Id. at 102.

See, e.g., GAUSE, supra note 25, at 105.

Special Rapporteur, supra note 7, ¶ 9.

HUNTER, supra note 24, at 21 (nightly study sessions three or four times per week studying life of Kim Il-Sung).

The Ten Principles set out by Kim Il-Sung in February of 1974, for example, require every citizen to study the teachings of Kim Il-Sung every day. Rigorous competitive memorization exercises of his work and his son’s work is also required. http://www.dailynk.com/english/read.php?catalId=nk00400&num=4162; Gause, supra note 25, at 51.

Hunter, supra note 24, at 33.

GAUSE, supra note 25, at 111.

Id. at 112.

Kim, supra note 4, at 62.

HUNTER, supra note 24, at 27.

DEMICK, supra note 13, at 65.

HUNTER, supra note 24, at 14.

Id. at 16.

Id.

Id. at 18.

For example, it was taught that the American-backed South started the Korean War, and Kim Il-Sung was portrayed as single handedly defeating the Japanese. HUNTER, supra note 24, at 21. Promotion was only had through loyalty to Kim Il-Sung and his son Kim Jong-II. Id. at 21. Criticizing the authority and prestige of Kim Il-Sung and Kim Jong Il has been reported to result in execution. GAUSE, supra note 25, at 60.

COLLINS, supra note 3, at 11.
There have been many such campaigns, including the “Let’s Eat Two Meals a Day” campaign of the 1990s. David Hawk, Committee for Human Rights in North Korea, The Hidden Gulag: Exposing North Korea’s Prison Camps 27 (2003).

As the economic conditions worsen, however, bribery is increasingly used to avoid these restrictions. Kim, supra note 4, at 25.

These sessions are reported by Lifton in his study of prisoners released from Chinese prison camps as intense tools of “brainwashing.” Robert Lifton, Thought Reform and the Psychology of Totalism: A Study of Brainwashing in China (1962). See also, Kim, supra note 4, at 30 for reference to lifestyle review meetings.

Gause reports that the SSD carries out a wide variety of counterintelligence and internal security functions “normally associated with secret police.” Id. at 17.

There have been many such campaigns, including the “Let’s Eat Two Meals a Day” campaign of the 1990s. Demick, supra note 13, at 86.
Accounts of such accidents and deaths are very common. E.g., HARDEN, supra note 131, at 75-76, 79.

138 KANG & RIGOULOT, supra note 24, at 123.

139 Id. at 94.

140 Id. at 148.

141 Id. at 65.

142 Id. at 68; HARDEN, supra note 131, at 25.

143 HARDEN, supra note 131, at 54.

144 Id. at 17.

145 KANG & RIGOULOT, supra note 24, at 145.

146 Kim, supra note 4, at 11; KANG & RIGOULOT, supra note 24, at 146.

147 HARDEN, supra note 131, at 20.
148  *Id.* at 93.
149  KANG & RIGOLLOT, *supra* note 24, at 64.
150  *Id.* at 99.
151  *Id.* at 140.
152  *Id.* at 102.

“The testimony reveals that forced repatriation from China is a pathway to pain, suffering, and violence. Arbitrary detention, torture and forced labor are inflicted upon many repatriated North Koreans, and sexual humiliations, forced abortions and infanticides are inflicted upon repatriated North Korean women, many of whom are pregnant after having been trafficked and tricked or coerced and sold into “marriage” to men in China. The testimonies from former women prisoners and detainees also reveal the racial prejudices that North Korean prison officials and guards hold toward half-Chinese fetuses and newborn babies, which are aborted or killed immediately upon birth, a practice documented at multiple detention facilities along the North Korea-China border.”

154  HAWK, *supra* note 58 at 62.
CORPORATE RESPONSIBILITY PRINCIPLES AND ANTI-BRIBERY LEGISLATION¹

By: Justin G. Persaud, Esq.

“It has become increasingly clear that issues of trade and investment ought not to be discussed in isolation from human rights and democracy.”²

It should come as no surprise to those engaged in the international practice of law, business, or political science, that corporate practices have a direct and profound impact on human rights. While it is evident that broad business activity presents opportunities for local populations in the form of skills training and potential for better living standard. Through numerous studies conducted by non-governmental organizations, governmental organizations, and the United Nations, corporate integration into local communities often carries with it poor working conditions, exploitative standards, corruption of foreign officials, and other violations of human rights.

This article will introduce the newly enacted Guiding Principles adopted by the United Nations in setting standards for corporate responsibility and best practices. Then, this article will re-introduce anti-bribery legislation around the Asian and Pacific jurisdictions.

In June 2011 the United Nations unanimously implemented the Guiding Principles for Business and Human Rights or the Protect, Respect, and Remedy policy framework³. This document does not present legally binding codes to be strictly adhered to, but presents a global unified standard for the way businesses should practice while adhering to human rights standards. As the name suggest, there are three pillars upon which this document rests:

1. The State Duty to Protect Human Rights;
2. The Corporate Responsibility to Protect Human Rights; and
3. The need for greater Access to Remedy for victims of business related abuse.

These Guiding Principles have taken shape in current practices. For example, Ford Policy Letter 24 stipulates that it is Ford’s mandate to comply with the goals promulgated by the UN’s Protect, Respect, and Remedy policy, and Ford even encourages its suppliers to adopt these same principles⁴. UBS is another example of corporate initiative. Through its Code of Business Conduct and Ethics it has enshrined the Guiding Principles in relation to employees, suppliers, and clients⁵.

With the realization that these guiding principles present a somewhat idealistic solution to the problem of human rights violations, a practical solution may be found in the anti-corruption/bribery legislation. The most pervasive example of such legislation is the American Foreign Corrupt Practices Act⁶. Practitioners who deal with American corporations in Asia-Pacific jurisdictions must be savvy to this Act’s long arm jurisdiction.

Continued on page 15
With the realization that these guiding principles present a somewhat idealistic solution to the problem of human rights violations, a practical solution may be found in the anti-corruption/bribery legislation. The most pervasive example of such legislation is the American Foreign Corrupt Practices Act. Practitioners who deal with American corporations in Asia-Pacific jurisdictions must be savvy to this Act’s long arm jurisdiction.

Bribery is often seen as a catalyst for corruption and results in human right violations. Since 2005 the United States Department of Justice has resolved 39 FCPA related actions linked to Asian Pacific jurisdictions. The Foreign Corrupt Practices Act makes it unlawful for certain foreign issuers of securities, any foreign firm(s) and person(s) while in the United States, and any U.S. person to make a payment to a foreign official with the purpose of obtaining or retaining business or directing business. Also, for those issuers with securities listed in the United States, those issuers must be compliant with the FCPA accounting provisions.

The Asia Pacific Region is responsible for a large portion of the corporate corruption investigations. As such, the Asian-Pacific region has seen a marked improvement and growth in anti-bribery legislation. The following countries have enacted legislation to combat bribery: Australia, China, Japan, Malaysia, South Korea, and New Zealand. Of those listed countries only China and Malaysia are not signatories to the OECD Convention. While some countries may not have enacted specific statutes against bribery, it is possible to find accountability through general anti-bribery statutes. For example, Hong Kong and Singapore are two jurisdictions where general anti-bribery law may find accountability to foreign persons.

For practitioners engaging in the representation of corporations in Asian Pacific countries there are indicators of corruption or “red flags” to look out for. Transparency International, a non-governmental organization, releases annual results of a country’s prevalence of corruption. The organization assigns each country around the world with a number ranging from 0-10. The lower the score the higher the risk of corruption, and vice versa.

Human rights violations are often the result of corrupt private and public practices. Practitioners should note the aforementioned Protect, Respect, and Remedy principles espoused by the UN guiding corporate practices coupled with the heavy handed anti-bribery legislation enacted in the United States and Asian Pacific jurisdictions when advising their clients. As violations of human rights are often the spawn of corrupt practices, practitioners should do their best to advise their clients on how to ensure compliance with the Protect, Respect, and Remedy guiding principles and anti-corruption laws.

ENDNOTES

1 Written by Justin G. Persaud, Esq.
4 http://www.parl.gc.ca/Content/SEN/Committee/361/fore/rep08dec98part7-e.htm#D.%20Integration%20of%20Human%20Rights%20with%20Trade%20and%20Investment.


BETWEEN A ROCK AND A HARD PLACE: WHY KIM JONG-UN IS UNLIKELY TO REFORM NORTH KOREA

By: Russell Aldrich

North Korea stands out from your run-of-the-mill human rights abusers in both the depth and scope of its oppression. Freedom House gave it the lowest possible ratings in the categories of “political rights” and “civil liberties” and regularly includes the country in its annual “Worst of the Worst” report. In a Heritage Foundation ranking of economic freedom, North Korea ranked dead last out of 179 countries. Unsurprisingly, the DPRK is also one of the world’s poorest countries, with a per capita GDP that ranks among the world’s worst.

If there were ever a place in need of reform, it is North Korea. But changing the status quo will be a formidable task. Inside the country, a powerful state security apparatus keeps a tight lid on the country’s twenty-four million people, cracking down on any and every kind of dissent – real, imagined, perceived, written, spoken, and otherwise. The prospect of externally-imposed regime change is also no longer a likely possibility given the country’s recent acquisition of nuclear weapons. Any meaningful reform, therefore, could only plausibly come from atop the very North Korean leadership structure whose very survival depends on its ability to prevent change.

With the recent succession of Kim Jong-Un as the country’s Supreme Leader, some observers were optimistic that he would relax the totalitarian control that has been a national staple since the founding of the Kim regime some six decades ago. After all, at twenty nine years old Kim is the world’s youngest head of state and, unlike his father or grandfather, has experienced the West and all of its accouterments, having been educated for a time at a private school in Switzerland. The young Kim was exposed to pop music, video games, and sports – indeed, he was said to be a fan of Michael Jordan and the Chicago Bulls. Presumably he was also exposed to Western ideas – such as civil society, rule of law, free trade, and democracy – as well.

However these observers overestimate the junior Kim’s appetite for risk and his incentive for reform. While it is true that the vast majority of North Koreans are impoverished and oppressed, for those at the top of the regime the quality of life is good. These insiders live in nice houses, drive luxury cars, and want not for food. And for those at the very top, such as Kim and his immediate family, the standard of living is on par with that of a movie star or a Wall Street executive. Kim’s attitude may therefore be one of “if it ain’t broke, don’t fix it,” but perhaps an even larger disincentive for change might be the fear of what would happen if he loses control of his people.

Continued on page 18
In the 1980’s Mikhail Gorbachev’s policies of glasnost and perestroika loosened political and economic restrictions in the Soviet Union with the goals of reducing corruption and improving efficiency in a broken system. The outcome, however, was not what had been intended. The small freedoms granted to the Soviet citizenry allowed them the opportunity to demand yet more freedoms; this Pandora’s Box would ultimately lead to the demise of the Soviet Union itself. Gorbachev and the rest of the Soviet elite would end up just fine; indeed, many would become part of the oligarchy that would form the top of the Russian ruling class over the next two decades. Yet for every Gorbachev there is a Nicholai Caucaescu or a Saddam Hussein, who found themselves on the wrong end of a gun or noose, respectively. A similar fate could await the young Kim if he attempts reforms of his own.

But reform has its benefits as well. Deng Xiaoping’s liberalization of the Chinese economy in the 1970’s is largely responsible for its emergence as a world superpower. Yet in spite of relaxing some restrictions previously imposed on its citizens, the Chinese leadership has been able to retain control primarily because it enjoys the support of its military and internal security apparatus. In North Korea, however, the military is vehemently opposed to reform of any kind, and this puts Kim in a seemingly impossible situation. If he defies the military by initiating reform, he will lose their support. But if his people take advantage of their newfound freedoms by rising in revolt, then Kim will need his military to suppress them. The young leader is caught between a proverbial rock and a hard place, and tragically, for millions of repressed North Koreans, reform does not appear to be coming anytime soon.
Greetings Fellow Asia-Pacific Committee Members,

I would like to seize this opportunity to invite you to submit an article for our contribution to The International Lawyer Year In Review publication for 2012. The Year In Review is an annual publication that highlights legal developments worldwide. The publication has a global readership.

It is evident that the Asian-Pacific Region has seen a dramatic change in legal developments in 2012. It is incumbent upon us the Asian-Pacific Committee Members to contribute to this global initiative. Articles need not be long nor time consuming. Please note the deadline will be November 15, 2012 for submissions.

Please feel free to email me should you have any questions or would like to contribute. I look forward to producing an expansive and well informed publication this year!

Best regards,

Justin G. Persaud, Esq.
Editor for Asia-Pacific TIL Year In Review
justingpersaud@gmail.com

The Asia/Pacific Committee is the focal point for activities of the Section of International Law involving the Asia/Pacific region and the countries in that region, including Afghanistan, Australia, Bangladesh, Bhutan, Brunei, Cambodia, the Cook Islands, Indonesia, Japan, North Korea, South Korea, Laos, Malaysia, Myanmar, Nepal, New Zealand, Pakistan, the Philippines, Singapore, Sri Lanka, Thailand, and Vietnam.

The committee attempts to bring together attorneys and other legal professionals who have a common interest in affairs of the region to: (i) develop awareness of common issues; (ii) serve as a sounding board for legal issues in the region; (iii) educate one another about regional legal issues; (iv) serve as a forum for attorneys who are interested in the region to meet and work together; and (v) sponsor programs on key legal issues affecting the region.

For inquiries, please feel free to contact the committee co-chairs, William A. Herbert and Philippe Joun-Ho Shin.