

RIGHT TO EQUALITY IN NORTH KOREA:
CASTE SYSTEM, INEQUALITY AND PERSECUTION IN
EVERY ASPECT OF LIFE

EunHae Oh[†]

INTRODUCTION

All are equal before the law and are entitled without any discrimination to equal protection of the law.

All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.¹

In April 2018, the leaders of the Republic of Korea (or “South Korea”) and North Korea (also known as the “Democratic People’s Republic of Korea”) announced as part of the Panmunjom Declaration before the Korean people and the whole world that a new era of peace has begun.² The two leaders sought to change the 1953 armistice to a peace treaty, which would end the military tensions and longstanding division.³ Subsequently, in Pyongyang Joint Declaration of September 2018, North Korea again pledged denuclearization of the Korean peninsula and a future of unification, cooperation, and reconciliation with the Republic of Korea.⁴

[†] LL.M. Candidate, Regent University School of Law, 2019; J.D. Candidate, Handong International Law School, 2019; B.A. Handong Global University, 2017. I thank God for His grace and the resources He provided through attorney Jina Yang. I am deeply grateful to Professor Edward Purnell for his guidance and advice on this Note. Special thanks to the editors of Handong International Law Review and Sharad Kumar Sharma for their encouragement and support.

¹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 7 (Dec. 10, 1948) [hereinafter UDHR].

² Inter-Korean Summit Press Corps, *Full Text: Panmunjom Agreement on Korea launches ‘New Era of Peace’*, UPI, https://www.upi.com/Top_News/World-News/2018/04/27/Full-text-Panmunjom-Agreement-on-Korea-launches-new-era-of-peace/5101524829856/ (last updated Apr. 27, 2018, 12:21 PM).

³ *Id.*

⁴Pyongyang Joint Declaration of September 2018, CHEONG WA DAE (Sept. 19, 2018), <https://english1.president.go.kr/BriefingSpeeches/Briefings/322>.

Aside from the summit declarations, North Korea's human rights violations problems have continued. For instance, North Korea requested to repatriate a group of North Korean waitresses, who had defected to the Republic of Korea, and threatened that failure to do so could result in obstacles for a reunion of North and South Korean separated families.⁵ Also, a daughter of North Korean acting ambassador to Italy went missing, and the international society has been extrapolating the forcible repatriation to North Korea.⁶

North Korea, a member state of the United Nations (the “UN”), a ratifying country of the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”) and the International Covenant on Civil and Political Rights (the “ICCPR”), through summit diplomacy and interactions with other countries, publicly portrays itself as an ordinary country.⁷ While the Universal Declaration of Human Rights (the “UDHR”) states, “all human beings are born free and equal in dignity and rights”⁸ and “[a]ll are equal before the law,”⁹ North Korea refutes the notion of individual human rights.¹⁰ Instead, North Korea advocates the *songbun* system, where the term, *songbun*, literally refers to “‘component’ or ‘constituent’; and in North Korean context, it means ‘the part of society you belong to or come from.’”¹¹ It classifies the whole population into three different classes based on the person’s

⁵ Whan-woo Yi, *N. Korea Demands Probe into Restaurant Workers’ Defection*, THE KOREA TIMES, http://www.koreatimes.co.kr/www/nation/2018/07/103_252639.html (last updated July 22, 2018, 8:17 PM).

⁶ Hamish Macdonald, *Daughter of North Korean Diplomat Returned to DPRK Last Year, Italy Confirms*, NK NEWS (Feb. 20, 2019), <https://www.nknews.org/2019/02/daughter-of-north-korean-diplomat-returned-to-dprk-last-year-italy-confirms/>.

⁷ Bughan-Ingwon Munje Gaegwal [An Overview of North Korean Human Rights Issues], North Korea Human Rights Portal, <https://www.unikorea.go.kr/nkhr/info/summary/> (last visited June 6, 2019).

⁸ UDHR, *supra* note 1, art. 1.

⁹ *Id.* art. 7.

¹⁰ Bughan-Ingwon Munje Gaegwal, *supra* note 7.

¹¹ Fyodor Tertitskiy, *Hero? Traitor? Vicious Missionary? N.Korea’s Many Social Labels*, NK NEWS (Feb. 24, 2016), <https://www.nknews.org/2016/02/hero-traitor-vicious-missionary-n-koreas-many-social-labels/>.

ancestral identity, *chulsin songbun*, along with the person's socio-political status, *sahoe songbun*. The difference in the human rights concept leaves grounds for significant disputation over whether identity and responsibility belong to the individual or a collective group of people.

Limiting one's life into a certain class and giving preferential or discriminatory treatment contingent upon the person's ancestral identity conflict with the universal concept of human rights, and these human rights abuses are due in substantial part to the characteristics of this structural system.¹² Nevertheless, North Korea's attempt to restrict her people manifests human rights violations, which the UN human rights committees and special rapporteurs have consistently pointed out for the past few decades.¹³ Particularly, North Korea distinguishes itself from other countries by violating human rights by dividing its whole population into three classes based on *chulsin songbun* and driving the lower class to engage in a "form of slave labor."¹⁴ It is generally known that the lower classes suffer from and are subject to "severe discrimination, increased confinement, contempt, suicide, intestinal hemorrhage, battery, highly-intensive collective punishment, [and] fear of unbearable torture."¹⁵ North Korea utilizes the *songbun* system as a means of persecution within the State while publicly seeking peaceful relations with other countries.

Part I of this Note begins by addressing the special features of North Korea's historical establishment. Part II of

¹² Inho Song, *A Study on the Improvement Direction for the Current North Korean Human Rights Act*, 79 DONG-A L. REV. 67, 67 (2018).

¹³ Robert R. King, *Fifth Anniversary of the Landmark Report of the UN Commission of Inquiry on North Korean Human Rights*, CENTER FOR STRATEGIC & INTERNATIONAL STUDIES (Feb 21, 2019), <https://www.csis.org/analysis/fifth-anniversary-landmark-report-un-commission-inquiry-north-korean-human-rights>.

¹⁴ ROBERT COLLINS, *MARKED FOR LIFE: SONGBUN, NORTH KOREA'S SOCIAL CLASSIFICATION SYSTEM I* (2012).

¹⁵ Hye Ran Yoo, *Analysis of the North Korean System Trauma Anxiety Through North Korean Refugees*, 25 KOREAN J. OF CHRISTIAN COUNSELING 117, 137 (2014).

this Note examines how the State initiated, developed, and enforced the *songbun* system and its criteria for classification. Then Part III surveys the rigorous impacts derived from the *songbun*. As the *songbun* system causes violations against international human rights conventions, the impacts on peoples' lives in the criminal and penal system, right to movement and housing, food, education, and employment exhibit discrimination in different aspects of people's lives.

This Note then lays out feasible approaches from other States that experienced disbanding and proposes to implement potential remedial measures applicable to the victims of the *songbun* system. In the event that the current ruling class in North Korea remains in power and achieves unification through mutual agreement, it would be difficult for the victims to speak for contention as the lower class of *songbun* system are socioeconomically and politically weak. As a matter of the universal history of humankind, those who have interests in and actively pursue justice have been mainly the victims with a few people who have advocated for them. For that reason, this Note proposes to implement remedial measures after the unification to ensure a smooth transition to unified Korea.

I. FOUNDING OF THE NORTH KOREAN KIM REGIME AND THE PRINCIPLE OF JUCHE IDEOLOGY

The Korean peninsula is currently one nation with two states that share a common culture and experience under Japanese Colonialism.¹⁶ After liberation from Japan, the Korean peninsula was soon divided in half, which the Union of Soviet Socialist Republics (the "USSR") occupied the North

¹⁶ Jacqueline Willis, *Two States, One Nation: The Koreas and the Policy/Culture Nexus 3* (2013) (unpublished Ph.D. thesis, Western Sydney University) (on file with Institute for Culture and Society, Western Sydney University), <http://researchdirect.uws.edu.au/islandora/object/uws%3A21633/datastream/PDF/view>.

and the United States the South.¹⁷ After the Korean War, efforts to unify the peninsula failed, and North Korea fell into the hands of the communist bloc.

Under the guidance of the USSR, Kim Il-sung, the first leader of North Korea, constructed and elaborated the “guiding ideology”¹⁸ called *Juche* ideology that emphasizes collective interests over individual rights.¹⁹ It is analogous to Marxist collectivism in that both operate “under a highly centralised party leadership”²⁰ and make the State legitimate to deprive and exploit the rights of the people even when it is distinctively opposite “from the concept of universal human rights.”²¹ For the term *Juche*, “etymologically, *ju* means ‘a master’ and *che* is ‘a body’ or ‘an entity,’”²² and *Juche* literally means “self-reliance” that strictly guards the State against external influences and thoughts.²³ As a result, North Korea maintained a closed society where the State’s instituted norms have immense control over the daily lives of individuals.²⁴

Moreover, the State uses the “Supreme Leader (*Suryong*)” ideology and the Ten Principles of Monolithic Ideology (the “Ten Principles”) to deify the Supreme Leader and preserve loyalty towards the Party.²⁵ Failure to or refusal of the norm compliance often results in severe punishment and imprisonment in government-run prison camps. The societal norm, *Juche* ideology, and the Ten Principles have

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 29.

¹⁹ Michael Brabazon, *Trump Misreads North Korea’s Sacred Dynasty at His Peril*, THE GUARDIAN (Sept. 23, 2017), <https://www.theguardian.com/global-development/2017/sep/23/trump-misreads-north-korea-sacred-dynasty-at-his-peril>.

²⁰ JIYOUNG SONG, HUMAN RIGHTS DISCOURSE IN NORTH KOREA: POST-COLONIAL, MARXIST, AND CONFUCIAN PERSPECTIVES 105 (2011).

²¹ *Id.* at 25.

²² *Id.* at 123.

²³ *Id.*

²⁴ Willis, *supra* note 16, at 22.

²⁵ ROBERT COLLINS & AMANDA MORTWEDT OH, FROM CRADLE TO GRAVE: THE PATH OF NORTH KOREAN INNOCENTS 3 (Raymond Ha ed.) (2017).

shaped an atmosphere where human rights abuses prevail throughout the country; and the State propagandized and indoctrinated people to give absolute obedience to the Supreme Leader from a young age.²⁶

II. BACKGROUND FOR THE *SONGBUN* SYSTEM

A. *Historical Development of the Songbun System*

Songbun in North Korea is also referred to as “*todae*,”²⁷ which refers to one’s basis, foundation, or inherent class at birth-assigned by the State. The historically unprecedented *songbun* system, having no root in religion or custom, was founded by the first Supreme Leader, Kim Il-sung, in 1958. In a public speech, he ordered to divide the whole nation into three classes²⁸ to distinguish between those who were loyal to the socialist revolution and “anti-revolutionary elements.”²⁹ The distribution for each class was 25 percent for the core class, 55 percent for the wavering, and 20 percent for the hostile class.³⁰ Particularly, Kim Il-sung compared religion to “opiate” for it can incapacitate one’s consciousness and be used as an ideological tool for exploitation and oppression.³¹ In accordance to the speech, the Korean Workers’ Party initiated to search out “all religious leaders above deacons”

²⁶ Mark Memmott, *U.N. Report Details North Korea's 'Crimes Against Humanity'*, NPR: NATIONAL PUBLIC RADIO, (Feb. 17, 2014, 9:00 AM), <https://www.npr.org/sections/thetwo-way/2014/02/17/278461563/u-n-report-details-north-koreas-crimes-against-humanity>.

²⁷ INHO SONG, TONGILPŎP KANGŪI [REUNIFICATION LAW LECTURE]: BASIC THEORY AND MAIN POINTS 156 (2015).

²⁸ COLLINS, *supra* note 14, at III.

²⁹ KOR. INST. FOR NAT'L UNIFICATION, WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 157 (2010).

³⁰ COLLINS, *supra* note 14, at III.

³¹ YEO-SANG YOON & SUN-YOUNG HAN, 2009 WHITE PAPER ON RELIGIOUS FREEDOM IN NORTH KOREA 23 (2009); U.S. Commission on International Religious Freedom, *Thank You Father Kim Il Sung: Eyewitness Accounts of Severe Violations of Freedom of Thought, Conscience, and Religion in North Korea* 25 (2005), <https://www.uscirf.gov/sites/default/files/Thank%20You%20Father%20Kim%20Il%20Sung%20-%20Nov2005.pdf> (“Although religion as the ‘opiate of the masses’ is typically attributed to Marx himself, numerous respondents attributed the sentiment directly to Kim Il Sung.”).

and executed them;³² the lay people were forced to conform by imprisonment and heavy labor; when that failed, they were also executed.³³

Subsequently, the North Korean government conducted a Resident Registration Project, in which the government investigated “3 direct generations and all relatives of the wife and mother who are separated up to the 6th degree of relationship.”³⁴ The hereditary discrimination derives from the concept, “Guilt-by-Association” or crime by association.³⁵ It constrains the whole family for merely relating to someone who was found guilty of “wrong thought” on the assumptions that blood-related family members would share the same thoughts and intentions that would result in congruent conduct in the future.³⁶

While discriminating against the potential hostile groups, the North Korean government arranged preferential treatment for Pyongyang residents by giving them a separate Pyongyang identification card.³⁷ This exclusive Pyongyang identification card allowed people to travel more easily to other provinces under the Citizens Registration Law in 1997, while individuals from the rest of the country could not enjoy the same right to movement.³⁸ However, the card is always subject to confiscation upon violation of North Korean laws.³⁹ Including the Resident Registration Project, North Korea

³² COLLINS, *supra* note 14, at 79.

³³ *Id.*

³⁴ *Id.* at 106.

³⁵ Vitit Muntarbhorn, (Special Rapporteur on the Situation of Human Rights in the Democratic People’s Republic of Korea), *Question of the Violation of Human Rights and Fundamental Freedom in Any Part of the World*, U.N. Doc. E/CN.4/2005/34, ¶ 34 (Jan. 10, 2005).

³⁶ Paul Szoldra, *The Stories from Inside North Korea’s Prison Camps are Horrifying*, BUSINESS INSIDER (Mar. 24, 2017, 1:29 PM), <http://www.businessinsider.com/un-north-korea-prison-camp-2017-3#the-noth-uses-guilt-by-association-to-lock-up-entire-familites-just-for-knowing-someone-convicted-of-wrong-thought>.

³⁷ ROBERT COLLINS, PYONGYANG REPUBLIC: NORTH KOREA’S CAPITAL OF HUMAN RIGHTS DENIAL 77 (2016).

³⁸ *Id.*

³⁹ *Id.* at 78.

continuously conducted more than nine different projects in 30 years to sort out revolutionaries and anti-communist forces.⁴⁰ To enforce the *songbun* system effectively, the Ministry of Public Security preserves a permanent record for every person above the age 17 and updates it every two years.⁴¹ The records are kept in a “local administration office, ordinary police, secret police and at specific organisations, like the Worker’s Party, Women’s Union, or labour union.”⁴²

B. Determinants of Songbun

The *songbun* is designated for each citizen after comprehensively investigating several factors. North Korea abided by the Resident Registration Project Reference Manual (hereinafter, the Manual), which laid out the *songbun* determining factors as economic conditions at the time of birth and family’s class foundation, *todae*.⁴³ The objective for the *songbun* system is to evaluate each person’s value as “[a] political asset or liability to the socialist revolution and the regime in general and to the ruling Kim family specifically.”⁴⁴

Generally, all North Korean residents, upon reaching the age of 17, must report to the city and county officials the “personal profile form that includes name, gender, *chulsin songbun* (family background), birthplace, residence, blood type, information on parents and siblings, etc.” to officially register as an adult.⁴⁵ However, this registration is a mere formality because registering residents are directly affected by their parents’ *songbun* and their immediate family members’ behavior. North Korea extensively evaluates the

⁴⁰ COLLINS, *supra* note 14, at 106–07.

⁴¹ *Id.* at 3.

⁴² Fyodor Tertitskiy, *Are You Special, Basic or Complex? Behind North Korea’s Caste System*, THE GUARDIAN (Mar. 4, 2015, 5:00 AM), <https://www.theguardian.com/world/2015/mar/04/are-you-special-basic-or-complex-behind-north-koreas-caste-system>.

⁴³ COLLINS, *supra* note 14, at 28.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.* at 30.

“families and relatives of all citizens under the pretext of ‘citizen research’ (*jumin yohae*).”⁴⁶ The range of investigation is far-reaching as follows: “(a) Immediate family — grandfather, father, mother, son, daughter (son-in-law), grandson, elder brother, younger brother/sister, nephew, elder sister, brother-in-law, niece, uncle, cousin, and cousin’s child or great-uncle’s child; (b) In-laws — wife’s parents and brother; and (c) aunt, and aunt’s husband.”⁴⁷

According to the Manual, even illegitimate children and orphans are not exceptions to the Resident Registration Project. As for illegitimate children, the Manual requires investigations of the biological father and the foster father’s backgrounds and living circumstances; when the father is unknown, the government considers the mother’s backgrounds.⁴⁸ Unsurprisingly, the hostile class is subject to more rigorous and stricter standards, which require investigating family and relatives, even the distant ones.⁴⁹ The Manual also requires background investigations on relatives regardless of whether they are alive or dead, have fled to another country, and even have gone missing or have been executed.⁵⁰ The only exceptions to the Resident Registration Project are the people that are already detained in political prison camps.⁵¹

C. Classification of Songbun

As North Korea runs under firm political control, North Korea heavily accentuates the person’s political status,

⁴⁶ KOR. INST. FOR NAT’L UNIFICATION, WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 2015 168 (2015).

⁴⁷ *Id.*

⁴⁸ *Jeonjumin-eul Gibongunjung Bogjabhan Gunjung Jeogdaeselyeogjan-yeobunjalo Bunlyu* [All Residents are Classified as Basic, Complex and Hostile Forces] MONTHLY CHOSUN (July 2007), <http://monthly.chosun.com/Client/News/viw.asp?ctcd=&nNewsNumb=200707100015>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

and the ruling class constitutes a majority of the core class, *haeksim*. The Manual stipulates that the people in the core class showed fidelity to the regime and fought “to the death to protect the Great Leader.”⁵² The core class is comprised of 13 subgroups:

Revolutionaries, honored veterans of the military, those who died or were wounded during the Korean War, those close to the Kim Il-sung family, national heroes, laborers, discharged soldiers, those who strived for the socialist revolution and the Korean Workers’ Party, as well as laborers, peasants, soldiers, and intelligentsia at the time of liberation.⁵³

This core class also includes high and mid-level cadres, who are called the “clean judicial cases.”⁵⁴

The wavering, *dongyo*, or “complex stratum,” is made up of people with “political problems in [the] background, socio-political behavior or performance, or family life.”⁵⁵ They are not part of the Korean Workers’ Party but mainly are urban and rural workers.⁵⁶ The person with wavering *songbun* may face discrimination due to a slight flaw in their background.⁵⁷ A few of the 31 subgroups stipulated in the Manual are “repatriated soldiers; those who cooperated with reactionary groups; those who served in Japanese

⁵² COLLINS, *supra* note 14, at 39.

⁵³ *Id.*

⁵⁴ SONG, *supra* note 20, at 103.

⁵⁵ COLLINS, *supra* note 14, at 39.

⁵⁶ SONG, *supra* note 20, at 103.

⁵⁷ Tertitskiy, *supra* note 42.

organizations before liberation; liberation soldiers; discharged construction workers; defectors to the North; and former political prisoners.”⁵⁸

Finally, the Manual defined the hostile class, *choktae*, as “[t]raitors to the nation who sold off the State and the nation to the remnants of the overthrown exploiting class, Japanese imperialists, and American imperialists.”⁵⁹ The hostile class faces “substantial prejudice” compared to the core and wavering classes.⁶⁰ This bottom class consists of 12 subgroups, which are families of “those who defected overseas, landlords, rich farmers, capitalists, pro-Japan personnel, pro-U.S. personnel, religious personnel and their followers, factionalists, spies, agricultural foremen, entrepreneurs, and businessmen.”⁶¹ North Korea despises any religious believers because North Korea considers “all religions [a] social evil.”⁶² Especially Christianity is subject to more severe persecution as Christians have been regarded as “agents of Western imperialism.”⁶³ Besides the subgroups listed above, the hostile class also includes “persons of South Korean origin or family members of those who fled to the South, family members of South Korean soldiers who were taken prisoner during the Korean War.”⁶⁴

III. IMPACT ON PEOPLE’S LIVES

North Korea has been a UN member state since 1993 and accessed the ICCPR and the ICESCR in 1981. North Korea also accessed the Convention on the Elimination of All Forms of Discrimination against Women and ratified the

⁵⁸ KOR. INST. FOR NAT’L UNIFICATION, *supra* note 46, at 165.

⁵⁹ *Id.*

⁶⁰ Tertitskiy, *supra* note 42.

⁶¹ COLLINS, *supra* note 14, at 39.

⁶² CHRISTIAN SOLIDARITY WORLDWIDE, NORTH KOREA: A CASE TO ANSWER – A CALL TO ACT 64 (2007).

⁶³ COLLINS, *supra* note 14, at 79.

⁶⁴ SONG, *supra* note 20, at 103.

Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.⁶⁵ Signing, acceding, or ratifying of human rights treaties is an indicator that the State party is aware of “a legal obligation to report on the implementation of the rights . . . and protect human rights in the country.”⁶⁶ However, North Korea has failed to show its willingness to carry out its obligations over the course of years.⁶⁷

As a party to the treaties, North Korea incorporated part of the Convention provisions into the national laws but continued to “selectively enforce [the laws] based on an individual’s *songbun* status.”⁶⁸ Furthermore, North Korea has not recognized or accepted UN Human Rights Council resolutions but rather regarded it as the “extreme manifestation of politicization, selectivity and double standard in the area of human rights.”⁶⁹ Regardless of the ratification of the treaties, the Commission of Inquiry (the “COI”) stipulated extensive and systemized abuses, including forced labor, torture, and executions in the political prison camps. Consequently, North Korea has shown no sign that it may be changing its system because it is purportedly flawless under the Kim regime.

Despite the presence of discrimination, North Korea consistently objected to the inclusion of its “human rights record on the security council’s agenda for debate as a first step toward a possible referral to the international criminal

⁶⁵ *Ratification of 18 International Human Rights Treaties: Democratic People’s Republic of Korea*, THE OFFICE OF THE U.N. HIGH COMM’R FOR HUMAN RIGHTS, <http://indicators.ohchr.org/> [hereinafter OHCHR].

⁶⁶ OHCHR, METADATA REPORTING COMPLIANCE, <https://www.ohchr.org/Documents/Issues/HRIndicators/MetadataReportingCompliance.pdf>.

⁶⁷ U.N. Charter art. 4, ¶ 1.

⁶⁸ Steven Garipey, *Human Rights in North Korea - The Pump Don't Work Cause the Vandals Took the Handles*, 2 INT’L HUM. RTS. L.J. 1, 21 (2016).

⁶⁹ Human Rights Council, Rep. of the Working Group on the Universal Periodic Review: Democratic People’s Republic of Korea, ¶ 5, U.N. Doc. A/HRC/13/13 (Jan. 4, 2010).

court [(the “ICC”)].”⁷⁰ Ja Song-Nam, the North Korean UN ambassador, objected by saying, “[t]he so-called ‘human rights issue’ in the Democratic People’s Republic of Korea is politically fabricated and, therefore, it is not at all relevant to the regional or international peace and security.”⁷¹ Notwithstanding North Korea’s stance, it is apparent that the human rights and living conditions are “strictly contingent” on a person’s *songbun*.⁷² Due to *songbun*, only the core class, who are deemed to be loyal to the nation, are entitled to rights.⁷³ By contrast, the “hostile strata” are denied their right to a fair trial, right to housing, right to food, and right to education and employment,⁷⁴ and the rest of this section describes how the *songbun* consciousness pervades and impacts different areas of people’s lives.

A. Criminal and Penal System

North Korea established a judiciary consisting of “adjudicative and prosecuting bodies” that the State uses as powerful weapons for the Kim family regime.⁷⁵ According to the 1992 North Korean Constitution, the law guarantees judicial independence and carrying out of court proceedings in accordance with the laws; but in fact, the judiciary is not free from political influence.⁷⁶ Hierarchically, the “court system is placed below the Supreme People’s Assembly, the National Defense Commission, and the cabinet.”⁷⁷ As for the law, the *Suryong*’s word, the Ten Principles, and the Supreme

⁷⁰ *North Korea Asks United Nations to Investigate CIA Torture ‘Crimes’*, THE GUARDIAN (Dec. 16, 2014, 7:24 AM), <https://www.theguardian.com/world/2014/dec/16/north-korea-united-nations-cia-torture-report>.

⁷¹ *Id.*

⁷² SONG, *supra* note 20, at 25.

⁷³ *Id.* at 104.

⁷⁴ *Id.* at 103.

⁷⁵ KEN E. GAUSE, COMM. FOR HUMAN RIGHTS IN N. KOR., COERCION, CONTROL, SURVEILLANCE, AND PUNISHMENT: AN EXAMINATION OF THE NORTH KOREAN POLICE STATE 63 (2012).

⁷⁶ *Id.* at 65.

⁷⁷ *Id.*

Leader's instructions are dominant over the Constitution and any rules and regulations.⁷⁸ Consequently, since the Supreme Leader's instructions created the concept of *songbun*, it pervades all over the society more than the Constitution does. As such, *songbun* demonstrates how *rule by law* rather than *rule of law* underpins North Korea.

Notably, North Korea's criminal justice system aims at oppressing any rebellion of the hostile class and maintaining the regime.⁷⁹ Article 4 of the North Korean Criminal Procedure Act states, "[t]he state fully guarantees human rights in dealing with and disposing of a criminal case."⁸⁰ Although it seems on its face to be in uniformity with "universally accepted norms," it is used to manipulate and degrade one's *songbun*.⁸¹ For instance, it is justifiable in North Korea to dispose of a criminal by "immediately reclassif[ying] [one's *songbun*] into the hostile class"⁸² simply for having relatives in the Republic of Korea.

On the other hand, many provisions in the law explicitly recognize and distinguish state enemies. In Article 3 of the North Korean Criminal Procedures Act, it states, "[t]he state, in combating treason against the nation, distinguishes friend from foe and punishes hostile elements."⁸³ North Korea defines "anti-state, anti-people crimes . . . crimes injurious to socialist culture" as felony crimes rather than criminal offenses⁸⁴ and puts heavier stress on "perceived anti-revolutionary elements than it does with justice."⁸⁵

⁷⁸ SONG, *supra* note 27, at 124.

⁷⁹ *Id.* at 146.

⁸⁰ COLLINS, *supra* note 14, at 48.

⁸¹ *Id.*

⁸² *Id.* at 47.

⁸³ *Id.* at 45.

⁸⁴ Stephan Haggard & Marcus Noland, *Repression and Punishment in North Korea: Survey Evidence of Prison Camp Experiences* 9 (East-West Ctr., Working Paper No. 20, 2009).

⁸⁵ COLLINS, *supra* note 14, at 47.

In addition to the laws, the trial process also discriminates on the basis of *songbun*. When the judge passes sentence on ordinary and political crimes, the court takes account of the person's *songbun* along with the type and severity of the crime.⁸⁶ The Korean Bar Association found that, of the 100 North Korean defectors interviewed for a survey, 79 percent said that, “[w]hen people with no background [low *songbun*] commit a crime, they face harsher punishment because of their background.”⁸⁷ As anticipated, some were released because “[l]eniency is available to the higher *songbun* classes,”⁸⁸ while those with poor *songbun* were publicly executed for the same crime.⁸⁹

Not only treated differently in terms of the severity of the crime, but people with poor *songbun* were also deprived of their right to a fair trial. According to a COI Report, people who had contacts with the nationals of the Republic of Korea or Christian missionaries were sent “to a political prison camp (*kwanliso*) without any trial or imprisoned in an ordinary prison camp (*kyohwaso*) after an unfair trial.”⁹⁰ Many were detained without knowing the reason why because there has been no trial at all.⁹¹ As defined in Article 10 of the UDHR and Article 14 of the ICCPR, the right to a fair trial and the right to counsel are two of the fundamental rights that people need in order to have a chance to determine their guilt or innocence by a fair legal process.⁹² Securing the legal right to

⁸⁶ GAUSE, *supra* note 75, at 72.

⁸⁷ COLLINS, *supra* note 14, at 45.

⁸⁸ *Id.* at 50.

⁸⁹ KOR. INST. FOR NAT'L UNIFICATION, WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 2017 142 (2017).

⁹⁰ Human Rights Council, Rep. of the Detailed Findings of the Comm'n of Inquiry on Human Rights in the Democratic People's Republic of Korea, ¶ 409, U.N. Doc. A/HRC/25/CRP.1 (Feb. 7, 2014) [hereinafter COI Report].

⁹¹ *Study Details North Korean Caste System*, VOICE OF AMERICA (June 6, 2012, 6: 40 PM), <https://www.voanews.com/a/north-korea-caste-system-kim/1204309.html>.

⁹² UDHR, *supra* note 1, art. 10 (“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and

have a fair trial firmly guarantees that a foundation for a justiciable society will be established. However, because of guilt-by-association that descends from a person's ancestors, the State deprives the right to trial and detains its own people in prison camps without declaring the actual charge.

Furthermore, the State deprives one's right to a counsel, as the attorney-client system is in fact, not available in the legal system. Although one may have access to a counsel, it is mere formality and otiosity as all "work for the state, none for the defendant."⁹³ Thereby the legal system itself facilitates the government in discriminating against the hostile class and taking away a right "to be heard in public by an unbiased — that is, independent and impartial — judge in a reasonable amount of time";⁹⁴ it leaves the hostile class vulnerable to a miscarriage of justice.

B. Freedom of Movement and Residence

Article 13 of the UDHR and Article 12 of the ICCPR stipulated the right to freedom of movement and residence within the State and the right to leave a country.⁹⁵ Similarly, Article 75 of the North Korean Constitution stipulated the freedom of residence and travel to any place.⁹⁶ However, in practice, the State limits the right to movement and housing through Article 194 of the Administrative Penalty Law; and Article 30 of the People's Security Enforcement Law grants

obligations and of any criminal charge against him."); International Covenant on Civil and Political Rights art. 12, Dec. 16, 1966, 1966 U.S.T. 521, 999 U.N.T.S. 171 ("To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.") [hereinafter ICCPR].

⁹³ *Id.*

⁹⁴ Corallina Lopez Curzi, *Article 6 – Why the Right to a Fair Trial Is Important for Everyone*, RIGHTSINFO (Nov. 13, 2015), <https://rightsinfo.org/article-6-why-the-right-to-a-fair-trial-is-important-for-everyone>.

⁹⁵ UDHR, *supra* note 1 ("(1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country."); ICCPR, *supra* note 92, art. 12.

⁹⁶ Amended 2012 SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA art. 75 (Apr. 13, 2012).

the People's Security Agency to control activities that violate travel regulations.⁹⁷

In the late 1950s, the State cleared the hostile class "50 km of Pyongyang and Kaesong" or "within 20 km to any other large city."⁹⁸ The State relocated the hostile class outside of the capital to achieve "complete unity' among the rank and file members."⁹⁹ Many individuals from the hostile class were sent to Hamgyong Province, which is the farthest province from Pyongyang.¹⁰⁰ Except for a very few people from other *songbun* classes, only the core class can live and work in Pyongyang.¹⁰¹ Moreover, North Korea forcibly relocated 300 households whose relatives defected to the Republic of Korea to concentration camps and surveilled them with guard posts.¹⁰² Besides relocation within the State, the right to access areas like Pyongyang is also strictly limited as it is governed by a general travel permit system.¹⁰³ Article 6 of North Korea's Travel Regulations states that "people must obtain travel permits before taking any trip."¹⁰⁴ As anticipated, those who do not belong in the core class are not allowed to enter the capital city unless they have obtained travel permits and approval by the Pyongyang City Government.¹⁰⁵

Furthermore, North Korea assigns houses for all citizens in accordance with their *songbun*. People have no power to choose whether their houses would be in a city or a rural area, and the "housing size, style, and location are

⁹⁷ KOR. INST. FOR NAT'L UNIFICATION, *supra* note 89, at 119.

⁹⁸ Gause, *supra* note 75, at 101.

⁹⁹ *Id.*

¹⁰⁰ COLLINS, *supra* note 14, at 77.

¹⁰¹ *Id.* at 76.

¹⁰² *NK Relocates Escapees' Families to Concentration Camps*, THE DONG-A ILBO (Apr. 9, 2011, 8:55 AM),

<http://english.donga.com/srv/service.php3?bicode=050000&biid=2011040940728>.

¹⁰³ KOR. INST. FOR NAT'L UNIFICATION, *supra* note 89, at 125.

¹⁰⁴ KEUM-SOON LEE ET AL, WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 2008 191 (Center for North Korean Human Rights Studies ed. 2008).

¹⁰⁵ *Id.* at 192–93.

strictly assigned on the basis of class and *songbun*-based occupation/position.”¹⁰⁶ The agricultural workers and farm community residents mostly live in old houses or farmers’ houses, which consists of 60 percent of all housing.¹⁰⁷ As for the wavering class, such as ordinary workers, provincial officers, and teachers, they live in “one room and a kitchen or two rooms and a kitchen for two families.”¹⁰⁸ Meanwhile, the government assigns core class people with “newer high-rise apartments,” which are available to only fifteen percent of the population¹⁰⁹ whereas the individuals in the hostile class “are assigned housing separate from other classes,” such as “isolated mountain villages where they perform hard labor at mines and farms.”¹¹⁰

C. Right to Food

UDHR Article 25 provides the right to maintain health and well-being with food, clothing, and housing.¹¹¹ Also, ICESCR Article 11 specifically protects the right to an adequate amount of food to maintain an adequate standard of living.¹¹² ICESCR Article 11 recognizes the right to be free from hunger in the same context as ICCPR Article 6, which protects the inherent right to life.¹¹³ Likewise, the North

¹⁰⁶ COLLINS, *supra* note 14, at 75.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 76.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ UDHR, *supra* note 1, art. 25.

¹¹² International Covenant on Economic, Social and Cultural Rights art. 11, Dec. 16, 1966, 1966 U.S.T. 521, 993 U.N.T.S. 3 [hereinafter ICESCR]:

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures . . .

¹¹³ ICCPR, *supra* note 92, art. 6 (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”).

Korean Constitution also guarantees the “material and cultural well-being of its citizens.”¹¹⁴ However, in reality, North Korea fails to abide by its own Constitution as well as international norms. As proven by the great famine called “March of Hardship” or “Arduous March” in 1994, where approximately one to three million deaths occurred,¹¹⁵ the State has failed to provide the essential amount of food as promised to its people.

In terms of food, the COI Report stated, “[p]eople with lower *songbun* were discriminated against in terms of the quantity and composition of rations.”¹¹⁶ According to a North Korean refugee’s testimony, the Public Distribution System gives prerogative to the higher *songbun* by allocating extra amounts of food.¹¹⁷ While a worker in a special security function receives 800 grams of food a day, prisoners only receive 200 grams a day.¹¹⁸ Being in a core, loyal class assures “first and foremost better access to food, better access to housing, better access to the residential location,”¹¹⁹ whereas being in a hostile class with lower economic opportunity “results in poorly compensated employment, inhibiting one’s ability to cope with food security.”¹²⁰ The people in a core class in Pyongyang were regarded as the “royal families” for being well-fed, “while less or no food was sent to North Hamgyong w[h]ere mostly people of lower *songbun* live.”¹²¹

¹¹⁴ COMP. CONST. PROJECT, KOREA (DEMOCRATIC PEOPLE’S REPUBLIC OF)’S CONSTITUTION OF 1972 WITH AMENDMENTS THROUGH 1998 13 (2018), https://www.constituteproject.org/constitution/Peoples_Republic_of_Korea_1998.pdf?lang=en.

¹¹⁵ Jordan Weissmann, *How Kim Jong Il Starved North Korea*, THE ATLANTIC (Dec. 20, 2011), <https://www.theatlantic.com/business/archive/2011/12/how-kim-jong-il-starved-north-korea/250244>; see also Barbara Crossette, *Korean Famine Toll: More Than 2 Million*, NYT (Aug. 20, 1999), <https://www.nytimes.com/1999/08/20/world/korean-famine-toll-more-than-2-million.html>.

¹¹⁶ COI Report, *supra* note 90, at 172.

¹¹⁷ RESEARCH AND DEV. DIV., INST. FOR UNIFICATION EDUC., 2014 UNDERSTANDING NORTH KOREA 374 (2014).

¹¹⁸ *Id.*

¹¹⁹ VOICE OF AMERICA, *supra* note 91.

¹²⁰ COLLINS, *supra* note 14, at 67.

¹²¹ COI Report, *supra* note 90, at 173.

Among the nine provinces in North Korea, the northeastern regions, which are North and South Hamgyong, Ryanggang, and Kangwon provinces, became the place of exile for “prisoners of war and groups purged in the 1950s and 1960s,”¹²² and the Public Distribution System was cut first at the beginning stage of the Arduous March.¹²³ Even when distributing food from foreign relief organizations, the State discriminated on the basis of poor *songbun* by diverting all food to “military provisions” to feed the soldiers in military bases.¹²⁴ Despite tons of food aid provided, a poll conducted of 500 North Korean defectors revealed that 78.2 percent “never received any foreign grain aid when they lived in the North.”¹²⁵ The members of the North Korean Army, who belong to the core class, were placed before the civilians even in distributing humanitarian aid because of their loyalty to the State. By deprioritizing the poor *songbun*, the northeastern part of the State was “left to fend for itself.”¹²⁶ Thus, based on the facts and circumstances presented, it is apparent that the *songbun* system has created a vicious cycle of discrimination that threatens life by starvation.

D. Education and Employment

In 2012, North Korea modified its compulsory education system by increasing it from 11 to 12 years.¹²⁷ It is

¹²² *Id.*

¹²³ *Id.*

¹²⁴ INT’L FED’N FOR HUM. RTS., MISERY AND TERROR: SYSTEMATIC VIOLATIONS OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN NORTH KOREA 12 (2003), <https://www.fidh.org/IMG/pdf/kp374a.pdf>.

¹²⁵ 78% of N.Korean Defectors Never Saw Foreign Food Aid, THE CHOSUNILBO (Apr. 6, 2011), http://english.chosun.com/site/data/html_dir/2011/04/06/2011040600985.html; see also Mark E. Manyin & Mary Beth D. Nikitin, *Foreign Assistance to North Korea*, CONGRESSIONAL RESEARCH SERVICE 19 (2014), <https://fas.org/sgp/crs/row/R40095.pdf> (“Since 1995, more than 90% of the 2.2 million MT of food aid the U.S. has provided to North Korea has been shipped via donations to the WFP.”).

¹²⁶ *Deprive and Rule*, THE ECONOMIST (Sept. 17, 2011), <http://www.economist.com/node/21529063>.

¹²⁷ *N. Korea to Implement Extended 12-Year Compulsory Education System*, YONHAP NEWS AGENCY (Mar. 29, 2017, 3:51 PM), <http://english.yonhapnews.co.kr/northkorea/2017/03/29/0401000000AEN20170329008500315.html>.

compulsory; nevertheless, not every child receives equal benefits because *songbun* determines advancement to higher education.¹²⁸ Generally, students with poor *songbun* cannot “advance education beyond high school (except for technical schooling).”¹²⁹ The reason for facing limited opportunities against their advancement is because of “tainted blood.”¹³⁰ As no wavering or hostile class can live in Pyongyang, none from those families can attend school in Pyongyang.¹³¹ Some elite schools exist exclusively for the talented students from families of distinctively high *songbun*;¹³² and only the students from a high *songbun* are given chances to compete against each other to enter into Kim Il-sung University, the State’s top university.¹³³

Moreover, the State deprives educational opportunities even more from those who belong to poor *songbun*. While the core curriculum for the education system is expected to be “Kim Il-sungism and science” and “the Ten Great Principles of Monolithic Ideology,”¹³⁴ students from elementary to high school in rural areas are often dragged to labor for spring rice planting and autumn harvest.¹³⁵ Other than those seasons, students are dragged to labor on dry fields to farm as if they are serving in detention centers.¹³⁶ The State not only denies the right to education but also forces students to work

¹²⁸ COLLINS, *supra* note 14, at 72.

¹²⁹ *Id.* at 73.

¹³⁰ Barbara Demick, *North Korea: Secrets and Lies*, THE TELEGRAPH (Feb. 16, 2010, 1:12 PM), <https://www.telegraph.co.uk/news/worldnews/asia/northkorea/7249849/North-Korea-secrets-and-lies.html>.

¹³¹ COLLINS, *supra* note 14, at 74.

¹³² *Teugsu Gyoyug* [Special Education], NORTH KOREA INFORMATION PORTAL, <http://nkinfo.unikorea.go.kr/nkp/overview/nkOverview.do?sumryMenuId=CL405> (last visited Aug. 5, 2018).

¹³³ COLLINS, *supra* note 14, at 74.

¹³⁴ COLLINS, *supra* note 14, at 71.

¹³⁵ DATABASE CTR. FOR N. KOR. HUM. RTS., 2017 WHITE PAPER ON NORTH KOREAN HUMAN RIGHTS 351 (2017).

¹³⁶ *Id.*

regardless of their will, which in severe cases often inflicts injuries and affects their studies.¹³⁷

While the education level influences one's employment in most countries, it is not the case in North Korea because *songbun* discrimination in education continues in employment. The UDHR Article 23 states, "[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."¹³⁸ The ICESCR specified the right to work in Article 6.¹³⁹ Similarly, the North Korean Constitution stipulates the right to work in Article 70 and defined that right as a duty in Article 83.¹⁴⁰ However, in reality, people usually do not get a chance to choose a job but are instead "dispatched, deployed, or stationed" to the workplace by the government.¹⁴¹ One's pedigree and the father's occupation are dispositive factors for being dispatched to a workplace, rather than personal strength and aptitude.¹⁴² People with poor *songbun* live as unskilled workers handling simple tasks and are prevalently thrown out of the workplace for their relatives' mistake, which puts the family's livelihood in danger.¹⁴³

Furthermore, *songbun's* effect reaches beyond employment as it repeatedly bars people from promotion in the workplace or permits people's demotion from their positions. Even if people with poor *songbun* graduate from

¹³⁷ *Id.*

¹³⁸ UDHR, *supra* note 1, art. 23.

¹³⁹ ICESCR, *supra* note 112, art. 6 ("1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.").

¹⁴⁰ COMP. CONST. PROJECT, *supra* note 114, at 14–15 ("Citizens have the right to work. All able-bodied citizens choose occupations in accordance with their wishes and skills and are provided with stable jobs and working conditions. Citizens work according to their abilities and are paid in accordance with the quantity and quality of their work."; "Work is noble duty and honor of a citizen. Citizens shall willingly and conscientiously participate in work and strictly observe labor discipline and the working hours.").

¹⁴¹ COLLINS, *supra* note 14, at 53.

¹⁴² DATABASE CTR. FOR N. KOR. HUM. RTS., *supra* note 135, at 343.

¹⁴³ *Id.* at 341.

school, the State dispatches them to mines or farmlands, where it is hard to expect fair and righteous treatment and compensation.¹⁴⁴ The State often deploys a whole group of people rather than assigning individuals to work. When a person refuses to conform to the assigned group, the State ceases to distribute all kinds of food rations, housing, and goods to the nonconforming individual; and the person is ostracized by society.¹⁴⁵ The people's professions are notably predetermined for people by their *songbun*; and the whole society forces people to conform to the system.

IV. REMEDIAL MEASURES FOR THE *SONGBUN* SYSTEM

As illustrated through *songbun*'s impact on people's lives, the State presumes that guilt extends up to three subsequent generations of a family.¹⁴⁶ Also, it refuted the notion of individual rights and prioritized collective interests. At the expense of individual rights, the State controlled various groups of people, who were "disadvantaged through no fault of their own."¹⁴⁷ The different notion between the individual and collective rights might not easily be narrowed down because North Korea persistently adhered to its *songbun* system while refusing to comply with the international accords to which it is a party. Consequently, the elimination of the *songbun* system after unification subsequently raises a question about the kind of measures that should take place to remedy the violations of the right to equality. This part offers the examples of the United States and former Communist states as exemplars of promoting

¹⁴⁴ *Id.* at 343.

¹⁴⁵ *Id.*

¹⁴⁶ Mike Wright & David Urban, *Brutal and Inhumane Laws North Koreans are Forced to Live Under*, THE TELEGRAPH (Sept. 19, 2017, 12:59 PM), <https://www.telegraph.co.uk/news/2017/09/19/brutal-inhumane-laws-north-koreans-forced-live/>.

¹⁴⁷ COLLINS, *supra* note 14, at 4.

lustration. This part also discusses remedial measures to be taken in unifying two countries into one.

A. *Deprivation of the Right to Vote*

Since the Korean War in the 1950s, Korea remained one nation, two states, with two different political ideologies. Likewise, in the 19th century, the United States was once separated into two different states, the Northern (the “Union”) and the Southern (the “Confederate”) states, mainly due to a difference on whether to preserve or abolish the “institution of slavery.”¹⁴⁸ Upon the Union’s victory in the Civil War, the United States became a single nation again.¹⁴⁹ In dealing with the reconstruction of the whole country, the Congress passed several Acts, including the Civil Rights Act of 1866 that “abolished slavery nation-wide”¹⁵⁰ and Reconstruction Acts that limited “some former Confederate officials’ and military officers’ rights to vote and to run for public office.”¹⁵¹ Congress’ action was to prevent the former Confederate “from re-establishing white supremacy.”¹⁵² Also, after the African American community were able to gain suffrage, the Union government denied the Confederate officials, who were previously in power, their right to vote. This subsequently led to the election of “a number of black state officials, including a lieutenant governor.”¹⁵³ By implementing such measures,

¹⁴⁸ *10 Facts: What Everyone Should Know About the Civil War*, AMERICAN BATTLEFIELD TRUST, <https://www.battlefields.org/learn/articles/10-facts-what-everyone-should-know-about-civil-war> (last visited Mar. 24, 2019) [hereinafter *10 Facts*].

¹⁴⁹ James M. McPherson, *Out of War, a New Nation*, NATIONAL ARCHIVES (last updated Dec. 15, 2017), <https://www.archives.gov/publications/prologue/2010/spring/newnation.html>.

¹⁵⁰ *10 Facts*, *supra* note 148.

¹⁵¹ *Civil War and Reconstruction, 1861–1877*, LIBRARY OF CONGRESS, <http://www.loc.gov/teachers/classroommaterials/presentationsandactivities/presentations/timeline/civilwar/recontwo/> (last visited May 21, 2019).

¹⁵² *Race and Voting in the Segregated South*, CONST. RTS. FOUND., <http://www.crf-usa.org/brown-v-board-50th-anniversary/race-and-voting.html> (last visited Mar. 26, 2019).

¹⁵³ *Id.*

the United States was reintegrated by preventing the former Confederate regime from regenerating.

Article 4 of the Republic of Korea Constitution clearly states, “[t]he Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on the basic free and democratic order.”¹⁵⁴ With regard to the Constitution, the Supreme Court of South Korea unanimously confirmed that, “the principle of international peace and peaceful unification, which our Constitution proclaimed in Articles 4 and 5 of the Constitution, presupposes that it does not violate the prerequisite of our Constitution, which is a basic free and democratic order.”¹⁵⁵ Both the Constitution and the Supreme Court case consistently imply that the Republic of Korea acknowledges the unification of the Korean peninsula only in a basic free and democratic order.

As the United States abolished the institution of slavery and prevented those who are responsible from exercising the right to vote, its society was thereby stabilized and integrated into one state. Likewise, the Republic of Korea would seek to preserve a free and democratic order after unification. Considering that the two Korean states have been separated for more than 70 years, whereas the Union and the Confederate were separated for fewer than five years, the transitional process of unified Korea would necessitate more time and means to integrate two states into one. As the United States restricted the Confederate officials’ right to vote, here, it would be apt to restrict the voting rights of those who were loyal to the Korean Workers’ Party to smoothen integration.

¹⁵⁴ DAEHANMINKUK HUNBEOB [HUNBEOB][CONSTITUTION] art. 4 (S. Kor.).

¹⁵⁵ Supreme Court [S. Ct.], 2003Do758, Apr. 17, 2008 (S. Kor.).

B. Lustration and Reinstatement

Former Communist states, such as Germany, the Czech Republic, and Bulgaria promoted lustration laws on people holding higher public positions during the communist regime. In the case of East Germany, the process of lustration began in 1990, and for the Czech Republic, it began in 1991 with the Great Lustration Act.¹⁵⁶ Through lustration, the countries excluded Communist officials and secret agents from high governmental positions. The people who worked as or under high officials were subjected to a screening process “in which their histories were evaluated for evidence of collaboration.”¹⁵⁷ The Act stipulates “certain prerequisites for the exercise of certain [high] positions [I]n the state administration, and [for other] high-ranking officers” while restricting such positions based on their past career.¹⁵⁸ Those positions include “high-ranking officers in the army and the Ministry of Defense, the Security and Information Service, the police,”¹⁵⁹ as well as “senior positions in the offices of the constitutional organs.”¹⁶⁰ In the case of Bulgaria, by passing the Law on Public Administration in 1997, it prohibited the former *apparatchik*, the member of the Soviet Communist Party, to hold a high position for the next five years.¹⁶¹

In the case of North Korea, most people who hold high governmental positions or work for the State or the Korean Workers’ Party belong to the core class. For almost a century, North Korea distinguished those who are loyal and gave preference to the core class and their family; as a result, the

¹⁵⁶ YEO-SANG YOON ET AL., *TRANSITIONAL JUSTICE AND INTEGRATION* 164 (Yoonhwan Seo ed. 2016).

¹⁵⁷ James Kirchick, *Return of the Czech Communists*, FOREIGN POLICY (Oct. 12, 2012, 2:10 PM), <https://foreignpolicy.com/2012/10/12/return-of-the-czech-communists/>.

¹⁵⁸ Roman David, *Lustration Laws in Action: The Motives and Evaluation of Lustration Policy in the Czech Republic and Poland (1989–2001)*, 28 L. & SOC. INQUIRY 387, 408–09 (2003), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1747-4469.2003.tb00197.x>.

¹⁵⁹ *Id.* at 409.

¹⁶⁰ *Id.* at 410.

¹⁶¹ YOON ET AL., *supra* note 156, at 167.

core class has engrossed all the potential opportunities in terms of education, employment, and living conditions. On account of the *songbun* system, it would be clearer to distinguish the privileged parties under the North Korean regime than other former communist countries. To prevent former high-ranking officers from intergenerational wielding powers, it would be plausible for unified Korea to adopt lustration law as East Germany and the Czech Republic adopted a program of lustration after the breakdown of the Communist state.

On the other hand, unified Germany set up policies to reinstate the education and employment of East Germans as they were discriminated against for political and ideological reasons. Particularly, Christians were deprived of opportunities for higher education; and those who had flaws in their records or contacts with the West lost the chance of promotion.¹⁶² As a part of reinstatement, unified Germany supported the aggrieved people with special treatment such as vocational training and scholarships, as well as opportunities for career transition training.¹⁶³ In determining the amount of pension, the State took account of the duration of the persecution.¹⁶⁴

Similar to the East Germans, the wavering and hostile classes in North Korea are socially disadvantaged because of discriminatory *songbun* treatment. Through deprivation of opportunities for nearly 70 years, they have not had the same opportunity to educate themselves and build wealth. A significant number of individuals in the hostile class were deprived of the educational rights of young children, as many grew up in political prison camps or gulags due to guilt by

¹⁶² *Id.* at 62.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

association.¹⁶⁵ Like adults, children often engaged in working in “notoriously dangerous mines, working 16-18 hours a day” and died in accidents.¹⁶⁶ As deprivation of educational rights directly links to one’s occupation in the future, it would be necessary to provide preferential measures, especially to those with poor *songbun* classes. To lift the disadvantaged individuals out of the past and to not repeat socioeconomically unpleasant circumstances, unified Korea may find it helpful to grant them scholarships and assist them with their academics. Also, providing supplementary training for the future career or having special considerations on entrance exams for certain jobs or promotions may help to induce their participation as members of the community.

C. Trials in Tribunal

Like the North Korean regime, the Cambodian communist government persecuted and killed almost two million of its people from 1975–1979.¹⁶⁷ Those removed were “intellectuals, . . . residents, and religious practitioners,” and many “enemies” faced persecution for being disloyal to the State.¹⁶⁸ As a part of transitional justice, Cambodia established the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”), assisted by the UN.¹⁶⁹ The ECCC prosecutes the senior leaders who were most responsible for the crimes committed during the period of Democratic Kampuchea.¹⁷⁰ Under the Internal Rules of the ECCC, whoever suffered physical, material, or psychological injury

¹⁶⁵ Jeremy Laurence & Ju-min Park, *Guilty-by-Association: Growing up in Hell of North Korean Gulag*, REUTERS, (May 4, 2011, 4:36 PM), <https://www.reuters.com/article/us-northkorea-prisons-idUSTRE74275D20110504>.

¹⁶⁶ *Id.*

¹⁶⁷ *Khmer Rouge: Cambodia’s Years of Brutality*, BBC (Nov. 16, 2018), <https://www.bbc.com/news/world-asia-pacific-10684399>.

¹⁶⁸ “Smashing” *Internal Enemies*, U.S. HOLOCAUST MEMORIAL MUSEUM, <https://www.ushmm.org/confront-genocide/cases/cambodia/violence/smashing-internal-enemies> (last visited July 17, 2018).

¹⁶⁹ YOON ET AL., *supra* note 156, at 199.

¹⁷⁰ *Id.* at 200–01.

within the jurisdiction of the ECCC can participate as a civil party, and there is no distinction of current residence or nationality.¹⁷¹ As civil parties, the victims exercise their legal rights and are assisted by the Civil Party Lead Co-Lawyers throughout the proceedings¹⁷² in areas such as questioning the accused,¹⁷³ requesting investigative action,¹⁷⁴ and accessing case files.¹⁷⁵ Despite frequent criticism of the ECCC,¹⁷⁶ it appears many Cambodians hope to seek “justice, in the form of trials and punishment of the wrongdoers.”¹⁷⁷ Through participating as civil parties, the victims are being given the opportunity to actually exercise their and their family members’ deprived legal rights in the criminal proceedings.

The Cambodian Khmer Rouge is very analogous to current North Korea in terms of depriving people’s rights to fair trials. Like the Cambodian Khmer Rouge, the North Korean regime infringed the legal rights of people who belong in the wavering and hostile classes. As demonstrated, individuals and families are discriminated against on the basis of their *songbun* and detained in political prison camps without them knowing why. Setting up a tribunal and prosecuting the crimes committed under the North Korean regime would provide an opportunity to satisfy their

¹⁷¹ EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA, INTERNAL RULES (REV.8) Rule 23bis (1) (2011), <https://www.eccc.gov.kh/sites/default/files/legal-documents/ECCC%20Internal%20Rules%20%28Rev.8%29%20English.pdf>.

¹⁷² *Id.* Rule 23.

¹⁷³ *Id.* Rule 90(2).

¹⁷⁴ *Id.* Rule 55(10).

¹⁷⁵ *Id.* Rule 55(11); *see also id.* Rule 86.

¹⁷⁶ Seth Mydans, *11 Years, \$300 Million and 3 Convictions. Was the Khmer Rouge Tribunal Worth It?*, N.Y. TIMES (Apr. 10, 2017), <https://www.nytimes.com/2017/04/10/world/asia/cambodia-khmer-rouge-united-nations-tribunal.html/>.

¹⁷⁷ Pham Phuong et al., *After the First Trial: A Population-Based Survey on Knowledge and Perception of Justice and the Extraordinary Chambers in the Courts of Cambodia*, HUM. RTS. CTR., U.C., BERKELEY 35 (2011), https://www.law.berkeley.edu/files/HRC/Publications_After-the-First-Trial_06-2011.pdf.

resentment. Moreover, allowing the victims to engage in the trial proceedings and providing legal assistance would alleviate their burning desire for participation, which many civilians would likely seek.

CONCLUSION

In the past decades, the international community utilized both carrots and sticks by providing food aid and imposing economic sanctions. However, there was no sign of human rights situations improving. Although the *songbun* system, *juche*, and crime by the association are acknowledged as ideologies lying at the center of North Korea's human rights violations, there are far fewer international demands to cease the *songbun* policy. However, this must not be a question of whether or not international sanctions on North Korea work. It is necessary to keep compelling North Korea to stop its discrimination and heighten the international attention on the individuals and families in the hostile class in spite of the regime's intransigence.

With the summit meetings between the Republic of Korea, North Korea as well as the United States, now, more than ever, there seems to be a greater need for preparing remedial measures for the *songbun* system despite the fact that the timing and method of unification remain uncertain. As a part of the unification process, the remedial measures for the *songbun* system would reduce the political, social, and cultural gap that formed for more than 70 years. The lack of such remedial measures after unification may lengthen and intensify the existing discriminatory situation. The insufficiency of such remedial measures could deeply affront the victims and potentially trigger them to seek personal revenge, which could cause chaos in unified Korean society and could setback harmonious unification for decades. However, more than any policy planning and implementation,

it would be of the greatest importance to reflect the victims' will and opinions in regard to how they would want to be compensated for their loss of the right to equality.