

Studies Series 06-01

The North Korean Penal Code, Criminal Procedures, and their Actual Applications

***By* Kim, Soo-Am**




KOREA INSTITUTE FOR
NATIONAL UNIFICATION

PURL: <https://www.legal-tools.org/doc/1dccc0/>



STUDIES
SERIES

The North Korean Penal Code, Criminal Procedures, and their Actual Applications



The North Korean Penal Code, Criminal Procedures, and their Actual Applications

By Kim, Soo-Am

Korea Institute for National Unification

Printed: March 2006

Published: March 2006

Place of Publication: Korea Institute for National Unification

Publisher: President of Korea Institute for National Unification

Registration No.: 2-2361 (April 23, 1997)

Address: 535-353 Suyu-dong, Gangbuk-gu, Seoul, 142-887, Korea

Telephone: 82-2-900-4300; 82-2-901-2529

Fax: 82-2-901-2547

(c) Korea Institute for National Unification 2006

Publications of Korea Institute for National Unification are available at major bookstores.

Also, contact the Government Publication Sales Center:

Tel: 82-2-734-6818 or 82-2-394-0337

ISBN 89-8479-347-7 93340

(The) North Korean Penal Code, Criminal Procedures, and their
Actual Applications / By Kim, Soo-Am. -- Seoul: Korea Institute
for National Unification, 2006

p. ; cm

ISBN 89-8479-347-7 93340 : 비매품

364.011-KDC4

345.5193-DDC21

CIP2006000740

The North Korean Penal Code, Criminal Procedures, and their Actual Applications

by Kim, Soo-Am

Korea Institute for National Unification

* * *

The Analyses, comments and other opinions contained in this monograph are those of the authors and do not necessarily represent the views of the Korea Institute for National Unification.

TABLE OF CONTENTS

I . Introduction	1
II . North Korean Attitudes toward Law and the Penal System	3
1. Attitude toward Law • 3	
2. Changing Attitude toward Penal Code • 7	
III . North Korean Attitudes toward Crime, Punishment, and Penal Institutions	11
1. Attitudes toward Crime and Punishment, and Principles of Penal Disposition • 11	
2. Penal Institutions and Officers of the Court • 16	
3. Quasi-Penal Systems • 20	
IV . Criminal Proceedings against Law Violators.....	25
1. Investigations, Preliminary Examination, and Indictment • 25	
2. Trials • 30	

V. Actual Handling of Criminal Cases 37

1. Investigations and Preliminary Examination • 37
2. Trials and the Enforcement of Sentence • 46
3. The Realities of Forced Labor • 58

VI. Conclusion: Evaluations and Future Tasks 63

• TABLES

Table 1. Changes in North Korean Criminal Laws 4

Table 2. Criminal Jurisdictions by Crime Categories 19

Table 3. Court Jurisdictions..... 30

I . Introduction

The North Korean human rights issue became a focal point of international concern in the 1990s in the wake of the well-known economic hardship. The realities of the human rights situation in North Korea began to be known to the world outside through testimonies of “new settlers (defectors),” as well as in the process of distributing humanitarian relief materials to the North Koreans. Subsequently, many independent reports have been published, such as the annual “White Paper on the Human Rights in North Korea” (Korea Institute for National Unification, Seoul), “The Hidden Gulag” (David Hawk, 2003), A “Special Report on Public Executions” (Amnesty International, 1997), and “Human Rights in North Korea and the Food Crisis” (Good Friends, Seoul, 2004).

These reports and testimonies provide basic facts and general background and are useful for understanding the human rights situation in North Korea, but they usually account for individual

episodes or deal with cases scattered over a wide spectrum of North Korean society. It would, therefore, be desirable to analyze the situation more systematically by concentrating on specific areas - in the case of this study, on the North Korean criminal justice system.

North Korea had undertaken a major revision of its Penal Code (Criminal Code) in 1987, and has since been updating the code from time to time. In the face of growing international uproar and, in part, in response to its internal changes, North Korea has again overhauled its penal code and criminal procedure law in 2004. Furthermore, North Korea has continued to revise or enact laws within the purview of its criminal justice system, including the statutes and guidelines on court structures, attorneys, sentencing, enforcement of sentences, and supervision of prosecutors' offices.

Despite these legal updates, however, there exist few studies that deal with how law violators are processed according to what procedures and based on what laws and regulations. In order to better understand the truth about human rights violations in North Korea, it is highly desirable to examine carefully and systematically the entire process of its criminal justice system. For these reasons, this study will attempt to analyze in detail the overall process of North Korea's criminal justice system based on actual applications of the laws in specific cases.

II . North Korean Attitudes toward Law and the Penal System

1. Attitude toward Law

North Korea defines legislation as a process of realizing the legal thoughts and theories of Juche Ideology developed by the Great Suryong (Kim Il-sung) and the Dear Leader (Kim Jong-il). Specifically, North Korean criminal law scholars always try to explain the functions of law and the relationship between law and politics in terms of Kim Il-sung's 1958 "Speech at the National Conference of Judicial Workers," in which he said:

Laws of our country are important weapons for the realization of national policy. Laws are the expressions of politics, hence subservient to politics, from which they can never be separated.¹

¹ Kim Il-sung, "In order to Carry Out Our Party's Judicial Policies," a speech before the National Conference of Judicial Workers, April 28, 1958. See *The Kim Il-sung Collections*, Vol. 12 (Pyongyang: The Workers Party of Korea Publishing House, 1981), p. 221.

North Korean criminal law scholars argue that the function of criminal law is to contribute to a successful building of socialist society and the Suryong (Great Leader) system in North Korea. Until the early 1980s, criminal law had been described as a body of laws that the State had enacted to suppress anti-revolution criminals who would attempt to topple the North Korean socialist system, to prevent any infringement of sovereign rights of workers and farmers, and to forestall any obstructions to the realization of great revolutionary tasks; and as a body of laws to control ordinary criminals who would hamper a steady progress of the socialist system.² Likewise, North Korea’s Criminal Procedure Law, as a weapon of proletariat dictatorship that would politically safeguard the Korean Workers’ Party (KWP), is entrusted with the mission of protecting and guaranteeing the historic task of turning “the entire society into Juche Ideology.”³

Table 1. Changes in North Korean Criminal Laws

Statutes	Enactments and Revisions
Penal Code	<ul style="list-style-type: none"> - Enacted by order of the Supreme People’s Assembly (SPA) Standing Committee, March 3, 1950. - Decision of the SPA Standing Committee, Dec. 19, 1974. - Adopted as Decision No. 2 of the SPA Standing Committee, Feb. 5, 1987. - Adopted as Decision No. 6 of the SPA Standing Committee, Dec. 15, 1990. - Amended and expanded as Decision No. 54 of the SPA Standing Committee, Mar. 15, 1995.

² Kim Keun-sik, *Criminology 1* (Pyongyang: Kim Il-sung University Press, 1986), pp. 5-6.
³ Lee Jae-do, *Criminal Procedure Laws* (Pyongyang: Kim Il-sung University Press, 1987), pp. 11, 17, 48.

Statutes	Enactments and Revisions
Penal Code	<ul style="list-style-type: none"> - Revised as Order No. 953 of the SPA Standing Committee, Aug. 11, 1999. - Amended and expanded as Order No. 432 of the SPA Standing Committee, Apr. 29, 2004.
Criminal Procedure Law	<ul style="list-style-type: none"> - Adopted at the First Session, 5th Meeting of SPA, Mar. 3, 1950. - Order of the SPA Standing Committee, June 15, 1954. - Decision of the SPA Standing Committee, Jan. 10, 1976. - Adopted as Decision No. 12 of the SPA Standing Committee, Jan. 15, 1992. - Amended and expanded as Decision No. 59 of the SPA Standing Committee, Apr. 12, 1995. - Amended and expanded as Decision No. 67 of the SPA Standing Committee, Jan. 19, 1996. - Amended and expanded as Decision No. 95 of the SPA Standing Committee, Sept. 17, 1997. - Amended and expanded as Order No. 996 of the SPA Standing Committee, Sept. 2, 1999. - Amended and expanded as Order No. 436 of the SPA Standing Committee, May 6, 2004.
Court Organization Law	<ul style="list-style-type: none"> - Adopted as Decision No. 19 of the SPA Standing Committee, Jan. 10, 1976. - Amended and expanded as Decision No. 122 of the SPA Standing Committee, July 1, 1998. - Amended and expanded as Order No. 160 of the SPA Standing Committee, Nov. 19, 1998.
Attorney Law	<ul style="list-style-type: none"> - Adopted as Decision No. 43 of the SPA Standing Committee, Dec. 23, 1993.
Enforcement Laws for Court Decisions and Sentences	<ul style="list-style-type: none"> - Adopted as Decision No. 80 of the SPA Standing Committee, Jan. 23, 1997. - Revised as Decision No. 93 of the SPA Standing Committee, Sept. 5, 1997. - Amended and expanded as Order No. 160 of the SPA Standing Committee, Nov. 19, 1998.

Statutes	Enactments and Revisions
Prosecution Supervision Law	<ul style="list-style-type: none"> - Adopted as Decision No. 15 of the SPA Standing Committee, Sept. 19, 1985. - Amended and expanded as Decision No. 78 of SPA Standing Committee, Jan. 15, 1997. - Amended and expanded as Order No. 160 of the SPA Standing Committee, Nov. 19, 1998.
(Civil and Criminal) Evidence and Witness Law	<ul style="list-style-type: none"> - Adopted as Order No. 284 of the SPA Standing Committee, Nov. 26, 1998.
Social Safety Control Law	<ul style="list-style-type: none"> - Adopted as Decision No. 22 of the SPA Standing Committee, Dec. 28, 1992. - Amended and expanded as Order No. 540 of the SPA Standing Committee, Mar. 24, 1999.
Appeals and Petition Law	<ul style="list-style-type: none"> - Adopted as Decision No. 120 of the SPA Standing Committee, Jun. 17, 1998. - Amended and expanded as Order No. 483 of the SPA Standing Committee, Feb. 26, 1999. - Revised as Order No. 1676 of the SPA Standing Committee, Jul. 24, 2000.

Based on Kim Il-sung's teachings, laws are perceived as a means of realizing the policy objectives of the Korean Workers' Party (KWP), and the general attitude to faithfully follow these teachings is quite evident throughout the process of interpreting and enforcing the laws.

We are not discouraging arguments on fine points of the law. We are simply asking not to distort the basic spirit of the laws by interpreting them independently of political imperatives.⁴

In addition, the laws are interpreted and applied specifically on

⁴ Kim Il-sung, "In order to Carry Out Our Party's Judicial Policies," p. 222.

the basis of “class doctrine.”

To reiterate the demands of the Party from the class struggle point of view, we are simply emphasizing that we should interpret and apply the laws accurately from the viewpoint of proletarian dictatorship.⁵

The class struggle principles applicable in criminal cases were established in the 1950s by Kim Il-sung’s guidelines, and they were still maintained in Kim Jong-il’s paper, “On Strengthening the Socialist Lawful Living,” written in the 1980s.

The socialist laws are weapons for the proletarian dictatorship, which is the will of the working class and working masses. Therefore, they should be interpreted and applied from the viewpoint of the Party and the working class.⁶

As evident from the foregoing examples, the principle of trying to discourage crimes and law violations from “working class” perspectives is still basically retained in the law, even though a significant number of human rights elements have been incorporated in the 2004 revision of the Criminal Procedure Law.

2. Changing Attitude toward Penal Code

North Korea’s 1973 Political Dictionary defines the mission of its Penal Code as a body of laws designed to strictly identify and enforce various methods of punishment according to class dis-

⁵ *Ibid.*, p. 221.

⁶ Kim Jong-il, “On Strengthening the Socialist Lawful Living,” *The Kim Jong-il Collections*, Vol. 7 (Pyongyang: The Workers Party of Korea Publishing House, 1996), p. 342.

tinctions, and to prevent crimes, inculcate animosity toward class enemies, and inculcate law-abiding spirits.⁷

This “mission” was adopted as a decision of the SPA Standing Committee on December 19, 1974, and went into force from Feb. 1, 1975. The 1974 Penal Code had newly installed a section called “The Fundamental Penal Policy of the DPRK,” in which the mission of the Penal Code was defined as a weapon of cooperation for the enforcement of criminal law policies of the Korean Workers’ Party (KWP).

Some changes, however, have been made on the description of the nature of this mission during the Penal Code revisions of February 1987. The strongly political and ideological section on the “fundamental penal policy” was deleted in the revised 1987 Penal Code. Article 1 of the 1987 Penal Code stipulates, “The State sovereignty and socialist system shall be safeguarded and self-reliant and creative life of the people guaranteed through the struggle against crimes.” And, the “anti-revolution crime” category, which was a description mainly aimed at punishing “class enemies,” was replaced with the “anti-State crime” category. Clearly, then, direct political descriptions were deleted from the 1987 Penal Code and more neutral descriptions have been introduced. But, the fundamental framework of the law as a political tool to safeguard national sovereignty and socialist system has been firmly retained.⁸

The basic philosophy that law is subservient to politics continues

⁷ *The Political Dictionary* (Pyongyang: Social Science Publishing House, 1973), p. 1249.

⁸ Even though the Penal Code was revised in 1999, the “mission” of the 1987 Penal Code had been retained in the text.

to dominate the revised 2004 Penal Code; but perceptible changes are noticeable in that accommodation has been made for more details and stipulations about crime-handling processes and procedures. The revised 2004 Penal Code stipulates in its Article 1, “National sovereignty and socialist system shall be safeguarded and the self-reliant and creative life of the people guaranteed by setting up a just penal system and imposing fair punishment to fit the crime.”

It is necessary here to examine the changes in the provisions covering political crimes or crimes that are political in nature. In the 1974 Penal Code, there were separate chapters and sections on “anti-revolution crimes,” “ordinary crimes,” and “military crimes,” in addition to the chapter on “general principles concerning crimes and punishments,” so that different levels of criminal procedure could be pursued depending on the nature of crime.⁹

From the revised 1987 Penal Code, some changes began to appear, such as substituting the “anti-revolution crime” with “anti-State crime,” even though political overtones were still maintained.¹⁰ The revised 2004 Penal Code contains an increased total of 14 subject areas. The increases in the number of items and categories, however, were due to the need to elaborate and specify previously existing articles and clarify more precisely what constituted crime. Clearly, this is an improvement

⁹ Hong Geuk-pyo, *A Legislative History of the DPRK* (Pyongyang: The Science and Encyclopedia House, 1986), p. 278. Also, see Kim Geun-sik, *Criminology 2* (Pyongyang: Kim Il-sung University Press, 1987), p. 8.

¹⁰ Han In-sop, “The Half-a-Century of North Korean Penal Code,” The Asia Social Science Research Center, ed., *The 50 Years of North Korean Laws - Trends and Prospects*, 1999, p. 105.

over earlier versions.

The missions of the Criminal Procedure Law have also undergone some change, as political overtones were removed and more orderly criminal procedures were introduced. For example, Article 1 of the 1999 Criminal Procedure Law had stipulated the mission of the law to be, “The DPRK Criminal Procedure Law shall safeguard national sovereignty and the socialist system and guarantee self-reliant and creative life of the people through its struggle against crime.” In short, the objective of punishing crimes was to safeguard national sovereignty and the socialist system. But, the revised 2004 law stipulates in Article 1, “The DPRK Criminal Procedure Law shall contribute to the establishment of firm order and a system of procedures at all stages of investigation, preliminary examination, indictment and trial, so that criminal cases may be handled accurately.”

III . North Korean Attitudes toward Crime, Punishment, and Penal Institutions

1. Attitudes toward Crime and Punishment, and Principles of Penal Disposition

One of the important elements of North Korean attitudes toward crime is the principle that law is subservient to politics, and this unique element will invariably impact criminal procedures. In the revised 1987 Penal Code, crime was defined as “any behavior that by accident or design endangers national sovereignty or breaches law and order.” So, any infringement of sovereignty or violation of law and order was regarded as crime in North Korea.

Crimes in North Korea may be clearly distinguished into two basic categories: ordinary crimes and crimes of political nature. The distinction stems from the motives of crime in connection with its socialist system. In other words, this North Korean attitude is based on the belief that political crimes and ordinary

crimes fundamentally differ from their root causes. First, the anti-revolution crime is a crime perpetrated by anti-revolutionary elements that will try to topple the socialist system and re-establish the so-called system of exploitation.¹¹ The description for this “anti-revolution crime” in the 1974 version has undergone changes over the years; first, as the “anti-State” crime in 1987 and then the “anti-State, anti-People” crime in 2004. But, the attitude and policy of identifying crimes of political nature from other crimes continued to persist even in the revised 2004 Penal Code.

Meanwhile, the causes of ordinary crimes are thought to stem from inside the people themselves. So, ordinary crimes are defined as crimes stemming from selfish motives and remnants of corrupt old thinking, not from any anti-revolutionary motives. These criminal behaviors include acts of stealing the properties of social cooperatives or infringing upon the life and property of other citizens, in addition to creating disorder in the national society.¹² So, ordinary crimes are fundamentally different from those political crimes seeking to overturn the socialist system and re-establish the system of exploitation, which would constitute anti-revolution crimes perpetrated by anti-revolutionary elements. Ordinary crimes are simply wrong behaviors committed by some people who have not been able to overcome the remnants of old way of thinking, hence these crimes are basically internal problems within the workers themselves (as distinct from political or “systemic” crimes).¹³

¹¹ Kim Geun-sik, *Criminology 1*, 1986, p. 5.

¹² Kim Geun-sik, *Criminology 2*, 1987, p. 50.

¹³ Sim Hyong-il, *The Legal Theories of Juche* (Pyongyang: Social Science Publishing House, 1987), pp. 403-404.

According to the North Korean scholars of criminology in the 1980s, punishment is the forcible means available to a socialist country to suppress and sanction ordinary criminals as well as anti-revolution criminals, who are opposed to the victory of the great Juche revolutionary tasks and who will infringe upon and violate the self-reliant rights and interests of the masses.¹⁴ Punishment, in other words, is a “sharp weapon of proletariat dictatorship” with which to control ordinary criminals and thoroughly subdue anti-revolution elements in order to achieve the great Juche revolutionary tasks.

The revised 2004 Penal Code lists the following as basic punishment categories: death sentence, “no-term (lifetime) correctional labor,” “term correctional labor,” and “labor-training.” Additional punishment categories include suspension of electoral rights, confiscation of personal property, and disqualification or suspension of qualification of civic rights.

First, death sentences are carried out to deprive one’s life by such means as firing squad. Criminals sentenced to term correctional labor or no-term (life) correctional labor are locked up in correctional centers and forced to engage in labor details. During this period, their civic rights are suspended. The duration for term correctional labor runs anywhere from one to 15 years. The “labor- training” has been newly added to the category of punishment, and the law stipulates that those who receive this sentence shall be sent to “certain locations” for labor detail. Unlike “correctional labor” punishments, civic rights are retained in the case of labor-training punishments. The duration for labor-training sentence runs from 6 months to two years. Unlike the cases

¹⁴ Kim Geun-sik, *Criminology I*, 1986, pp. 155-157.

of correctional labor, however, labor-training punishment is to take place at unspecified “certain locations.”

Another unusual system of punishment in North Korea is the so-called “social education,” which involves no physical detention. This particular decision is given to the minors who are involved in criminal activities. But, sometimes this sentence is handed down even to adults depending on the crime’s danger (or, damage) level and the quality of his/her remorsefulness. In case of this disposition, the individual would be immediately released and treated as if he/she did not commit the crime, without any personal disadvantage. So, “social education” is a legal disposition in which a crime was committed under the law, but the person would be treated in the same way as those who did not commit crimes.

Finally, two principles are relied on in penal dispositions in North Korea. First is the “working class” doctrine, and second is the principle of balance between legal sanctions and social education. These are the two major principles North Korea has embraced in handling criminal cases. In fact, Article 2 of the 2004 Criminal Procedure Law stipulates, “The State shall strictly identify friends and enemies in its struggle against anti-State and anti-People crimes, and subdue the small minority of enemy leaders and embrace the majority of (innocent) followers. In its struggle against ordinary crimes, the State shall largely rely on “social education” dispositions along with a mix of legal sanctions.” In other words, North Korea is trying to make clear distinctions between the “friend-enemy contradiction” and the “contradiction within the people.” And, in its struggle against anti-State crimes that stem from the “friend-enemy” contradiction, the courts must clearly identify friends and enemies and

forcefully subdue and crush the small minority of leaders and enemy elements, while embracing the following majority. In its struggle against ordinary crimes that stem from the “contradiction within the people,” courts are asked to rely mainly on “social education” along with a mix of legal sanctions in their final dispositions in line with the class struggle doctrine.

North Korea also continues to firmly adhere to the principle of mass struggle in its Penal Code and Criminal Procedure Law. The 2004 Penal Code stipulates the mission of the Code as “the establishment of penal systems and disposition of criminal responsibilities.” This appears to be an improvement. But, the principle of mass struggle is clearly retained in Art. 3, which says, “The State shall rely on the power and wisdom of the masses in its handling of criminal cases.”

Fundamentally, then, the belief that law is subservient to politics is still evident and significantly impacts criminal dispositions, supported by ideological tools like class and mass struggle doctrines. However, in the process of revising the Criminal Procedure Law, many positive changes have apparently been made in the areas of human rights and fairness, prescribed legal procedures, and stipulations to follow proper procedures and methods. Of particular significance was Article 8 of the 2004 Criminal Procedure Law, which explicitly demands to observe the methods and procedures specified in the law; to wit, “In handling and dealing with criminal cases, the State shall follow the principles, procedures, and methods specified in this law.” (Art. 8)

2. Penal Institutions and Officers of the Court

The agencies that are officially entrusted with the responsibilities for handling criminal procedures under the Criminal Procedure Law include the People's Security Agency, the State Security Agency (SSA), the Office of Prosecutors, the Courts, and Attorneys.

The Ministry of People's Security (MPA) is responsible for investigations, preliminary examination, and correctional centers. It is also charged with the duties specified in the Social Safety Control Law. The agency maintains a central headquarters, with security bureaus at major cities and provinces, security offices at city and county levels, and branches at sub-county levels. In connection with the criminal procedures, the agency within its central headquarters houses inspection bureau, investigation bureau, preliminary examination bureau, and correctional bureau. Under North Korea's Socialist Constitution, the Prosecutors Department shall maintain Central Prosecutors' Office, Provincial (and major city) offices, city and county offices, military prosecutors' offices, and special prosecutors' offices. The director of central office is appointed or relieved by the Supreme People's Assembly (SPA). For this reason, he is responsible for his performance to the SPA, and during the recess, to the SPA Standing Committee. North Korea has a Prosecutor Supervision Law to fulfill a Constitutional mandate of overseeing the activities of prosecutors.

North Korean courts consist of Central Court, Provincial (and major city) Courts, and People's Courts (county). There are two special courts: the Military Court and the Railroad Court. Judges are appointed through elections, in accordance with "democratic

principles.” The SPA is responsible for appointing or dismissing the Chief Justice (or, director of the central court). The SPA Standing Committee appoints the justices of the Central Court; and the people’s assemblies of the area or district will elect and appoint judges for the provincial (and major city) courts and people’s courts. Their tenure will coincide with the terms of assemblies. The central court will appoint judges for military and railroad courts.

Just as the central court is responsible for its performance to the SPA and its Standing committee, the provincial courts are also responsible for their work to the people’s assemblies and, during the recess, to their standing committees. The Court Organization Law specifically spells out how the courts are to be organized. In connection with this law, it should be noted that the previously extant political elements in the 1976 law have been significantly weakened in the 1998 revisions. Although most political elements or provisions have been removed from the Court Organization Law of 1998, the “class doctrine” still seems to persist. For example, Article 4, which said, “The courts shall actively strive to oppose all class enemies and all law violations, and contribute to achieving the historic task of uniformly covering the entire society with the great Juche Ideology,” was deleted in the 1998 version. But, Article 156, which says, “The courts should actively strive in opposition to all class enemies and law violators,” is still retained in the 1998 Socialist Constitution.

North Korea has a “people’s assessor” system in connection with trials. The SPA will select people’s assessors for the Central Court; and provincial (and major city) courts will select their assessors through their respective people’s assemblies. Assessors’ tenures will coincide with the terms of office of the peo-

ple's deputies, who have voted for assessor selections. Military and railroad courts will vote for their assessors at their respective military workers assemblies or railroad employees' assemblies. (Art. 5, Court Organization Act)

Another set of officers of the court would be the attorneys. North Korea has defined the job of attorneys as workers who "must strive to safeguard KWP policies; and, as proponents of Party policies they have the duty to enlighten the people and justify the various policies of the Party in the process of court deliberations and trials." The lawyer's duty, it is said, is to "point out the seriousness of the crime committed and make the offender (defendant) deeply remorseful of his/her acts before the people and the fatherland by deeply analyzing and clearly proving the offender's motives for the crime." So, the underlying idea is that the attorneys are not necessarily the agent of the defendant(s) nor do they stand in protection of the defendant's rights.¹⁵ However, the revised 1998 Socialist Constitution in Article 158 clearly provides for the defendant's rights to an attorney; to wit, "The defendant's right to attorney shall be guaranteed." In addition, a separate "attorney law" spells out specific roles the attorneys shall play within the realm of Criminal Procedure Law and provides for a smooth operation of the attorney system.

North Korea's Criminal Procedure Law does not contain any definition of defendants who are the subjects of trials. The law simply states, "Those accused of criminal offenses in the courts of the Republic are lawfully prosecuted for their offenses and are not defendants who would stand in court as a party vis-à-vis the prosecutors." So, the law rejects the concept of defense against

¹⁵ Lee Jae-do, *Criminal Procedure Law*, 1987, pp. 76, 207.

prosecution. It emphasizes the court’s power and authority of sanction, but denies the status of defendant as a party to the trial except as a subject to be proven guilty.¹⁶

We will discuss more detailed criminal procedures later in this study, but basically the procedure goes through the stages of investigations → preliminary examination → indictment → trial. Each stage will have a supervisory government agency. And, all criminal cases occurring within an area would fall under the jurisdiction of the agency responsible for the area.

Table 2. Criminal Jurisdictions by Crime Categories

Category		Types of Cases	Jurisdiction
Investigation (Investigation agents)	Ordinary investigation	Anti-State & Anti-People Case	NSPA
		Ordinary crimes	PSA
		Routine crimes during surveillance of economic, administrative and law enforcement agencies	Prosecution
	Special investigation	Ordinary crimes by rail employees or Rail-related ordinary crimes by outsiders	PSA or Railroad
		Ordinary crimes during surveillance of economic, administrative, and law enforcement agencies	Railroad prosecutors
		Crimes by soldiers, PSA agents, and military employees	Military prosecutors

¹⁶ Cho Byung-cheon, “The Position of Attorneys in the Republic’s Criminal Trials,” The Kim Il-sung University Campus Paper,” *The History & Laws*, Vol. 41, No. 1, 1995, p. 55.

Category		Types of Cases	Jurisdiction
Preliminary Examination (PE Agents)	Ordinary PE	Anti-State and Anti-People crimes	NSPA
		Ordinary crimes	PSA
		Ordinary crimes during surveillance of economic, administrative, and law enforcement agencies	Prosecutors' Office
	Special PE	Military crimes Ordinary crimes in the military Crimes by soldiers, security agents, and military employees	Military prosecutors' office
		Ordinary crimes by rail employees Rail-related ordinary crimes by rail outsiders	Rail PSA
		Ordinary crimes during surveillance of economic, administrative, and law enforcement in the rail operation	Railroad Prosecutors

3. Quasi-Penal Systems

In addition to its Penal Code (and Criminal Procedure Law), North Korea operates a separate criminal justice system in order to exercise control over its people. One of these “quasi-judicial systems” is the “Social Safety Control Law.” Article 1 of the law says, “The purpose of this law is to contribute to the protection of the people’s life, property and constitutional rights and to safeguard national sovereignty and the socialist system of the DPRK.” So, like the Penal Code, this law also aims to “safeguard national sovereignty and the socialist system of government” and “to protect life, property and rights of the people.” The rationale for this law in addition to the Penal Code is “to lay down the principles, methods and procedures concerning investi-

gations and handling of law violators not covered by the criminal laws.” (Art. 7)

Other quasi-justice systems North Koreans are subject to without going through the regular justice system will include the “comrade judgment committees” and “socialist lawful living guidance committees.” These quasi-justice systems do in fact perform legal functions and the source of their authority is found in North Korea’s Prosecution Supervision Law. Article 40 of the law lists cases, in which the prosecutors will decide to rectify law violations or pursue legal responsibilities. Section 3 of the article lists cases the prosecutors should determine “whether to turn them over to preliminary examinations, or refer them to the ‘comrade judgment committee,’ the ‘socialist lawful living guidance committee,’ ‘labor training,’ or ‘imprisonment.’”

The ‘comrade judgment committee’ is not simply an auxiliary body under the national justice system. It is an independent and unique type of people’s trial, in which ideological struggles are instilled through open and public self-criticism. These committees are organized at all levels of national agencies, workplaces and units throughout the regions and districts. This, however, is not a standing committee, but something that will be organized from time to time when there is need to hand down a judgment on a violator. And, the agency or organization the violator belongs to will determine whether to convene the committee. It would appear that only those who were involved in unethical, immoral misconduct or minor crimes would be referred to these forums.

Another informal justice system is the so-called ‘socialist lawful living guidance committee.’ Under Kim Il-sung’s instructions

these committees were initially organized as collective decision-making bodies under the respective people's assemblies at all levels - central agencies as well as provinces (and major cities), cities and counties. And, more concrete action guidelines have been issued through Kim Jong-il's 1982 article on "How to strengthen our socialist lawful living." This system also has constitutional authority. In the revised 1992 Constitution, North Korea declared, "The State shall perfect socialist legal systems and strengthen the socialist lawful living." (Art. 18) Kim Jong-il had enumerated various powers of this committee in his 1982 paper. First, the committee on its own responsibility will organize and uniformly carry out various inspections over administrative and economic agencies, workplaces and other supervisory bodies. Second, it will perform the duty of educating the workers in its area so that they will observe the laws. Third, it will decide various policies and levels of punishment for social and economic crimes. Fourth, the committee will have authority of interpretation on various disputes and misunderstanding that may arise between and among the related agencies in the course of executing laws and regulations including the Kim Il-sung guidelines.¹⁷

Finally, the 'safety committee' is another quasi-justice system that gets involved in the process of punishing North Korean citizens. At the Party Headquarters, the committee consists of the Party Secretary, Director of Party Organization Guidance Dept., MPA, SSA, Chief Justice of the Central Court, and Chief Prosecutor of the Central Prosecutors' Office. Safety Committees exist at all levels of administrative units, and the party secretary of the area is charged with full responsibility as the committee

¹⁷ Kim Jong-il, "On Strengthening Socialist Lawful Living," pp. 342-343.

chairman. The main mission of the chair is to receive instructions from the KWP concerning social safety matters, control and manage roles and functions of the judicial organizations, and ensure the uniformity and consistency of judicial activities.

The committees at the Party levels are directed to exercise proper controls over various projects, strictly guide and control all social safety activities of the judicial and prosecutorial agencies by routinely discussing the social safety projects and judicial prosecutorial projects.¹⁸

¹⁸ Kim Il-sung, “A Complete Report on Central Committee Projects before the Fifth Session of KWP,” Nov. 2, 1970, *The Kim Il-sung Collections*, Vol. 25 (Pyongyang: The Workers Party of Korea Publishing House, 1983), p. 354.

IV. Criminal Proceedings against Law Violators

The proceedings against law violators as specified in the Penal Code will require the stages of investigation → preliminary examination → indictment → trial → decision (sentencing) → enforcement of sentences.

1. Investigations, Preliminary Examination, and Indictment

Investigation under the North Korean criminal proceedings means a process of detecting the law violator and turning him/her over to the preliminary examination. Because the scope of investigation is limited to identifying the violator and turning him over to the preliminary examination, it is limited to timely collection of basic evidence and their preservation.¹⁹

¹⁹ Ministry of Court Administration, *Overview of North Korean Judicial*

The investigator who has secured the criminal information will then decide to open the case in accordance with explicit legal authority and submit a copy of his decision to the prosecutor within 24 hours of initiation of his investigation. The investigator is then allowed to take witness statements, search and seizure, psychological profiling, identification of evidence, lab-tests, and presentation of witnesses to the suspect (this last item was absent from the old Criminal Procedure Law). However, no further evidence collection activity is allowed after the suspect is placed under arrest.

If the investigator wanted to place the suspect or criminal under detention, he must submit detention papers to the prosecutor for the latter's approval within 48 hours of arrest. Even if the detention is approved, the suspect must be turned over to a preliminary examination within 10 days of arrest. If an investigator failed to get prosecutor's approval, or was unable to prove crime within 10 days of arrest, the suspect must be released immediately. And, the investigator who uncovered the suspect in a criminal case must refer the case to the preliminary examination.

A unique procedure in North Korea's criminal proceedings is the "preliminary examination" between the investigation phase and indictment. The preliminary examination is responsible for scientific discovery of evidence, an accurate and thorough clarification of facts and detail, and rounding up of all the suspects involved. In short, it is a stage where the entire picture of crime comes to light for later trial.

Preliminary examination is conducted by a group of agents who

System (Seoul: Ministry of Court Administration, 1996), pp. 331-332.

are separate from investigators and prosecutors. Through investigative activities and forcible actions, these agents will attempt to find out all relevant facts about law violations, the level of gravity of violation and responsible parties, so that indictment decisions can be made. So, this portion of the proceedings is truly the heart of investigation in all criminal proceedings.

The duration of preliminary examination will last for two months from the date the examination began. Under unusual and inevitable circumstances, the duration could be extended as long as four months. In order to extend one month beyond the initial two month period, the state and local “preliminary examiners” will have to obtain an approval from the provincial (and major city) chief prosecutor, and those working for the Central Court must get approvals from the chief of central prosecutors’ office. To extend an additional month beyond the first extension, the approval of the director of the central prosecutors’ office (or, “attorney general”) is required. For those cases that the court(s) have sent back for further examination (involving possible death sentences, no-term or term correctional labor sentences), the preliminary examination should be concluded within 20 days, and for possible labor-training sentence cases within 7 days. After the labor-training sentence was newly introduced, the preliminary examination period for possible labor-training sentence cases has been extended to 10 days. If the case is too complicated to be resolved within ten days, the period of detention could be extended up to one month upon the approval of the prosecutor. When the evidence submitted by the initial investigation is sufficient for labor-training cases, the preliminary examination could be concluded immediately. In North Korea, prosecutors, not judges, issue arrest warrants (unlike South Korea where all warrants are issued by judges).

Preliminary examination agents must decide and begin work within 48 hours of the arrival of the case. When the agents have collected sufficient evidence that would convince them of the complicity of the suspect, they must decide on the “criminal prosecution” of the case and inform the suspect as such within 48 hours, also informing him/her of the right to choose an attorney. The agents must also submit the “criminal prosecution” decision papers to the prosecutor within 48 hours of their decision. (In the old law, the time constraints were not indicated.)

Within 48 hours of informing the decision to prosecute, the examining agents may interrogate the suspect, and the suspect(s) who received the summons but did not respond, could be arraigned (if they were not already under detention). Interrogation of suspects under detention should be conducted at the “preliminary examination venues” away from the detention facility.

The preliminary examination agents could decide to detain the suspect(s) to prevent them from interfering with investigations or avoiding trials. But, for those violators whose penalty would likely be only labor-training sentences, arrest and detention would be permitted only in unusual and exceptional cases. Decision to arrest and detain can only be carried out after the decision to prosecute has been made. The preliminary examination agents who decide to arrest and detain a suspect must draw up a decision paper describing the reasons for detention and the applicable law provisions. In principle, no arrest or detention may be made unless prescribed by law (newly inserted in the 2004 Criminal Procedure Law). So, the examination agents must submit a detention application to the prosecutor and receive an arrest warrant before he could detain a suspect. In the process,

the agent must present the arrest and detention warrant to the suspect, and send a copy to the institution that will house the suspect. In the case of pregnant woman, the agents are not permitted to arrest or detain her 3 months prior to and 7 months after giving birth to a baby. For those sentenced to no-term or term correctional labor and labor-training penalty, the term of service shall be calculated from the date he/she was detained by the authorities.

The search for the suspect, as well as search and seizure of premises, may only take place after the agents have drawn up a decision paper and received prosecutor's approval. As soon as the preliminary examination is over, the fact should be informed to the suspect and he should be allowed to review his criminal records and be asked if he had any objections. The agents will, then, fill out necessary examination papers and take steps to conclude the examination in the presence of a prosecutor. On the day the examination is completed, all records and evidence should be turned over to the prosecutors.

Indictment is a process in which the suspect is turned over to the court if all records and evidence compiled by the preliminary examination were found to be in good order and the picture of overall crime was made clear. This review and disposition of the case should be completed within 10 days after the records were received from the preliminary examination agency. (15 days under the old law) For the cases subject to labor-training sentence, the records should be reviewed and disposed of within 3 days. In light of these requirements for indictment, the suspect detention period is limited to 10 days, and 3 days for those subject to labor-training sentences.

Once the prosecutor was satisfied with sufficient evidence and proper preliminary examination, he would indict the suspect before the court, submitting the indictment papers along with records and evidence. If, however, the preliminary examination is deemed insufficient, the prosecutor will indicate as such and return the case to the preliminary examination agency.

2. Trials

Articles 126 and 133 of the Criminal Procedure Law specify the assignment of cases that each level of court is expected to handle. The court jurisdictions are as follows:

Table 3. Court Jurisdictions

Courts	Jurisdictions
People’s Courts	Ordinary crimes not belonging to Province (Major city) courts, special courts and Central Court
Province (Major city) Courts	Lower court (1st level) for ordinary cases involving Anti-State, Anti-People cases and cases to result in death or “no-term” correctional-labor sentences Appeals from People’s Courts within its jurisdiction Cases under jurisdiction of People’s courts if necessary
Military Court	Crimes of soldier and People’s Safety agents Crimes by employees of military agencies
Railroad Court	Crimes by railroad employees Rail-related crimes by people outside the railroad
Central Court	Appeals from 1st level courts, like railroad court or Provincial court Decisions on jurisdiction of 1st level courts if necessary

The duty of all lower courts (first level court) is to hand down decisions based on relevant laws and objective evidence, as well as impartial examination of details, participated in by all interested parties. Lower courts consist of one judge and two people's assessors. In special cases, three judges may form a court.

Trials in North Korea are, in principle, open to public (Art. 158 of the Constitution), and the independence of the court is guaranteed (Art. 160 of the Constitution, and Art. 272 of the Criminal Procedure Law). From the legalistic standpoint, these are true. However, Article 158 of the Constitution makes an exception, "If prescribed by law, trials may not be open to public."

What is unique to North Korea is that the law allows local, on-site (or, ad hoc) trials. Article 286 of the Criminal Procedure Law (On-site trials) stipulates, "In an effort to prevent crimes and make the masses aware of the consequences, the Courts may organize on-site trial procedures. In this instance, the heads or leaders of the agencies, workplaces, and unions involved, could bring accusation and reveal the acts of criminal perpetrators."

On-site public trial is a form of education in law-abiding, teaching and reminding hundreds and thousands of people by striking off one. The prosecution and enforcement agencies should organize and instructively manage on-site public trials in such a way that people will voluntarily observe the laws and participate actively in a struggle against law-breaking incidents.²⁰

²⁰ Kim Jong-il, "On Strengthening Prosecution and Enforcement Projects," A letter sent to the participants of the Nationwide Prosecution and Enforcement Leadership Conference, Nov. 21, 1982, *The Kim Jong-il Collections* (Pyongyang: The Workers Party of Korea Publishing House, 1996), p. 316.

People involved in the lower court trial (in normal cases) would include a judge (presiding), people's assessors, a prosecutor, an attorney, the defendant, and a court clerk (Art. 274 of the Criminal Procedure Law).

The court could detain the defendant up to 25 days. If the anticipated punishment is labor-training sentence, the period of detention is 15 days. In this case, the trial should be concluded within 10 days of receipt of the case records. If the case is particularly complicated, the trial may be extended by five more days.

A lower court trial in North Korea is divided into two phases: the trial preparation phase and the deliberation phase. Preparing for a trial means that the court upon receipt of a case will review the case to determine if it will be put on actual trial, and prepare for necessary steps to attain a fruitful result once the case is referred to actual trial.

A judge will decide to turn the defendants over to trial deliberations only when he is convinced that the preliminary examination was sufficient for the trial. Trial deliberation is a stage where the records and evidence collected in the process of investigation and preliminary examination are finally reviewed, on the basis of which the crime(s) and perpetrators are identified and the defendant(s) are tried. Three days before the opening of trial, the court should notify the prosecutor, the defendant and the attorney of the trial date.

During the deliberation of facts, the court is required to conduct interrogation of the defendant(s) and witnesses, re-interrogation and cross examination, expert witnesses and lab-tests, on-site reenactment and confirmation of evidence, and collection of new

evidence. The presiding judge will then inquire the prosecutor, the attorney and the people's assessors whether there were further matters to examine. He then may declare the end of deliberations, and notify them as such. After the deliberation of facts, the prosecutor, the claimant(s) of damages, and the attorney will make their case in turn. The prosecutor must "accuse the defendant for his crime and scientifically cite the legal basis for the violations, including the relevant criminal law clauses." (Art. 326 of the Criminal Procedure Law) The defense attorney will then "plead his case by elaborating the defendant's motives, purposes, the damage levels, and the genuineness of defendant's penitence, and request due consideration of these factors in sentencing. (Art. 327)

However, the "mass struggle" principle is still apparent in the concluding phase of fact deliberations. Article 324 of the Criminal Procedure Law says, "If a person or persons who were responsible for the education of the defendant, or who allowed the opportunity for the defendant to violate the laws, have participated in the process of fact deliberations, that person(s) must be made to come up with appropriate lessons from the case before concluding the fact deliberations." Article 325 further says, "If necessary, leaders of the agency, workplace, or organization, who had participated in the trials, may also be allowed to speak."

If a criminal case has been conclusively identified, only a judge and two people's assessors will participate in the decision. Court decisions and/or sentencing will be decided on the basis of majority rule. The decisions are of three kinds: handing down a punishment sentence, a guilty decision requiring "social education," and a not guilty decision. All sentences are imposed in the name of the DPRK. The decision paper should contain relevant

law provisions and the terms of sentence, including whether or not “social education” is warranted, as well as appeals procedures.

The duty of the appeals court (second level court) is to review the entire trial process, records and evidence, to determine if the lower court proceedings, including the terms of sentence, were in accord with the laws and procedures. If any mistake is discovered, the appeals court will rectify the error.

The attorney (or the defendant) must submit a copy of the appeal to the lower court within 10 days from the receipt of court decisions. At the end of the appeals period, the lower court must forward the letters of appeal along with all relevant records to the higher-level prosecutors’ office. The higher-level prosecutor must review the records within 10 days and re-submit the case to an equivalent level court or cancel the appeals.

The defendants and attorneys planning to appeal must submit the copies of court decisions (or sentencing) and submit them to the lower court within ten days of their receipt. Upon passing of the appeals period (10-days), the lower court must forward the case along with all relevant records to a high court. However, the decisions made by the lower court division of the Central Court, as well as the decisions of the appeals courts (second level courts) and special appeals courts are not allowed for re-appeal.

Unlike the First-level courts, three judges consist of Second-level courts. They will have 25 days in which to examine and determine the case. The prosecutor will participate in the Second-level court deliberations, and if attorneys were involved in, they will also participate in the process. The Second-level courts

will mainly focus on the appealed contents and examine if the First-level court decisions violated Criminal Procedure Law provisions and requirements. The presiding judge will open the court session, and report the case, the decisions, and the reasons for appeal. The judge will hear the remarks from the prosecutors, attorneys, and other court members. The presiding judge will finally state his views, and in consultation with the participants in the court, a decision is reached. When the final decision is read, the prosecutor must also be present.

In North Korea, “special appeals courts” are responsible for “rectifying the matter if a court decision (or sentencing) has failed to comply with the demands of the law.” (Art. 384) Only Chief Justice of the Central Court or Chief Prosecutor at the Central Prosecutors’ Office may request for a special appeals court, and no limitation is set for the timing of making the request. The special appeals court consists of three judges at the Central Court, and may handle all court decisions and sentencing, except for those handed down by the Central Court. The prosecutors from the Central Prosecutors’ Office are required to participate in the special appeals court proceedings, which should be completed within one month of receipt of the appeals.

Article 403 of the North Korean Criminal Procedure Law stipulates, “The purpose of re-examination or review of completed court decisions and sentences is to rectify wrongful decisions based on newly discovered evidence.” The chief justice of the Central Court or chief prosecutor of the Central Prosecutors’ Office may request “re-examination” of court decisions, and three judges of the Central Court will make up the court and rule on the appeals. Prosecutors from the Central Office will participate in the proceedings to determine whether the applications of

law and the identification of defendant(s), as well as the terms of sentencing, have been lawful, accurate, and proper. The re-examination must be completed within one month of receipt of the case.

V . Actual Handling of Criminal Cases

1. Investigations and Preliminary Examination

A. The Reality of Jurisdictions

The investigation and preliminary examination of crimes like treason and anti-State crime should fall under the jurisdiction of the State Security Agency, while the jurisdiction for ordinary crimes falls under the MPA.

According to the testimony of “new settler (defector)” Lee XX, who used to work on criminal proceedings at the State Security Agency, the Agency will handle political prisoners, while MPA handles ordinary crime cases. But, if a person is charged with both political and ordinary crimes, the State Security Agency will take charge.²¹ New settler Chang X has also testified that

²¹ Testimony of new settler Lee XX during an interview at KINU, Oct. 10,

the Security Agency would get involved in all crimes with any political sensitivities or implications. In order to prevent attempts to cover-up political crimes as ordinary crimes, the Security Agency will intervene even in such crimes as rape and robbery if the case shows any possibility of political ramifications. But, if the case has no political significance, it will be turned over to the MPA.²²

It is reported that this type of jurisdiction is strictly applied to the North Korean defectors who had been forcibly repatriated from China back to North Korea. If a North Korean defector is arrested along the Chinese border and repatriated to North Korea, he/she is certain to go through intense interrogations by the local security agency in the area for political motives. This is a clear indication that North Korea will approach all acts of border crossing (into China) from a political standpoint (like the crime of “treason against the fatherland”). Initially, the State Security Agency will determine whether the defection will amount to the crime of treason or a simple border crossing for livelihood. In connection with the former possibility, the agents will scrutinize every detail, including whether he/she has had contacts with any South Koreans or Christians, whether he sought admission into South Korea, and whether he/she was involved in human trafficking. Depending on the result of investigation, the case will be continuously handled by the security agency if there are any political implications. But if not the case will be turned over to the Safety Department. So, various laws and regulations governing investigation and preliminary examination (under the crimi-

2005.

²² Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

nal law) are in fact applied even to the returning North Koreans (defectors).²³

A new settler, whose crime was classified as political, testified that his case was transferred from the city/country security agency to the (higher) provincial agency and underwent “preliminary examination.” According to the testimony of new settler Choi XX, he had seen a young man about 19 years old when he was under detention at the State Security Agency. This young man was arrested for religious reasons while he was staying with Chinese border guards, and repatriated to North Korea.²⁴

Under the Criminal Procedure Law, the military investigative units are responsible for handling all criminal activities involving the military. New settler Kim XX testified that he had participated in the investigation and preliminary examination of anti-espionage and military criminal cases at the security agency of an army division. He said that all “command” level units were operating independent prosecutors’ offices and court marshal units. First, the security guidance agent will start the investigation, which the section chief will endorse. When the director of security signs off on it, the case becomes official. As soon as the security director at the division level reports the case to the corps commander, the suspect would be detained in the corps detention center.²⁵

²³ See Kim Soo Am, “The Defectors and North Korean Human Rights,” A paper read before the Korean Association of International Studies summer academic conference, June 24, 2005.

²⁴ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

²⁵ Testimony of new settler Kim XX during an interview at KINU, Oct. 21,

B. The Process of Investigation and Preliminary Examination

New settler Chang X used to work on security matters at a people's security branch, but he was later sentenced to a correctional labor punishment for money-related law violations. In the following, he testified on the entire process from investigation to the conclusion of preliminary examination. If a crime is suspected, the surveillance division of the people's security agency in the area, in cooperation with the investigation division, will start building a case, collecting information and other materials on the suspected person, including testimonies of witnesses. If the agents are convinced that the suspect has clearly violated certain provisions of the criminal law, the case is forwarded to the preliminary examination division. If the agent in charge of the preliminary examination determined that the suspect should be held in a detention center, he will get the approval of his director (Director of people's security agency). Initially, the suspect may be detained up to 10 days, but the detention could be extended up to one month. Preliminary examination is a stage where facts and evidence are weighed in to see if punishment is warranted. The agent in charge will submit the necessary paperwork based on the Penal Code to the people's security agency Director, who will then confer with his staff, including his deputy, chief of surveillance, chief of investigation and chief of preliminary examination. If punishment by correctional labor is determined during this process, the security director, with the consent of the director of prosecutors' office, will submit his case to the local (city or county) Party's Safety Committee. The security director will report to the committee, and if it approves the case, the date of this decision is recorded and the enforcement of sentence will

2005.

begin from that day. The suspect is regarded as a convict from that moment. His hair will be cut short and his term of service will be counted from that day. If the committee denies the case, there is no crime case and the suspect is released immediately. The process is the same even if a prosecutors' office handles the case. The prosecutor in charge will build up a case, receive his director's approval, and submit to the people's safety committee for decision.²⁶

From the foregoing testimony of new settler (defector) Chang X, it is possible to ascertain that the criminal procedures on ordinary crimes, discussed in Chapters 3 and 4 above, are basically observed. But, it is also clear from Chang's testimony that an organization known as the People's Safety Committee is playing a quasi-judicial function in the criminal process. In the process of investigation and preliminary examination, the committee will make a final decision as to whether or not a crime was committed. So, it seems to suggest that a form of Party leadership (or, direction) is apparent in the roles the people's safety committees play during the criminal proceedings.

All political crimes are handled by the State Security Agency. New settler and former security agent Yoon XX explained the process as follows: Except for the cases of crime in progress, information on those possibly engaged in suspicious anti-State or ideological activities would be collected in the process of surveillance conducted by intelligence agents. The city and military security agents would then investigate the case. The suspect's own statement, witness testimonies, and other evidence along

²⁶ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

with surveillance records would be collected. The city and military security agents would then draw up a ‘case file,’ which also contains an arrest warrant and request for detention, and forward it to the provincial security agency. After a review, it would in turn forward the case to the State Security Agency, where the Prosecutors’ Division will examine the case and if crime is found, it will approve the decision to detain the suspect.²⁷

From the testimony of new settler Yoon XX, it is clear that except for the crime in progress, arrests and detentions for investigative purposes, especially for preliminary examination, are carried out only upon the approval of higher authorities such as the provincial agency or the State Security Agency.

According to new settler Lee XX, in the case of Nampo City security agency, the units involved in criminal matters included the divisions of surveillance, investigation, communication, preliminary examination, and data analysis. The surveillance agents would try to collect information on illegal and unlawful activities. Because they work on merit basis, the agents would try to amass any and all information on all daily routines of the inhabitants, which would sometimes result in false confessions by the scared and fear-ridden citizens. The Data Analysis division will analyze various suspected crimes reported by the surveillance team, and try to ascertain if the person actually committed the crime. They will conduct personal interviews, consultations with the suspect, and spot checks with co-workers and neighbors. This division will also examine data and evidence, including handwriting, fingerprints, search and seizure of residences, etc.

²⁷ Testimony of new settler Yoon XX during an interview at KINU, Oct. 12, 2005.

The communication division will also join investigation at this point. The final decision and the level of punishment will be determined at the end of preliminary examination, during which the applicable laws and evidence presented are carefully reviewed.²⁸

C. The Realities of Detention

First, we need to know if all regulations are observed in the process of sending someone into detention. Under the Criminal Procedure Law, a prosecutor is charged with the responsibility of approving (or, denying) detention. But according to new settler Chang X, if the agent conducting the preliminary examination thought he had reason to put someone into detention, he could detain a person for up to 10 days upon approval of the director of people's security agency (or, the police chief). According to Chang, the Party Safety Committee, in fact, exercises all authority on the detention matter. In Chang's case, the Nanam district People's Safety Committee found a crime in the report filed by the Central Prosecutors' Office on April 23, and immediately his hair was shaved off and he was put under detention.²⁹ So, Chang's testimony needs to be re-confirmed through other sources, because it is a significant departure from the rule that all decisions on detention should be made by the prosecutor(s), which is what the criminal procedure law requires.

Second, we need to find out if the duration of detention is observed as spelled out in the criminal procedure law. Chang

²⁸ Testimony of new settler Lee XX during an interview at KINU, Oct. 10, 2005.

²⁹ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

testified that the decision to detain up to 10 days may be made by the agent conducting preliminary examination upon approval of the director of people's safety. If necessary, the agent could extend the period of detention up to one month. In fact, Chang said he had undergone one month of interrogation (or, preliminary examination) at the Nanam district prosecutor's office. And, upon the approval of Province Prosecutors' Office, the period of investigation was extended for another month.³⁰ Chang's testimony is fully in accord with the 1999 criminal procedure law regulations that detention could last as long as one month and an additional extension for a month will require the approval of the Province Prosecutors' Office.

According to the information booklet published by the Network for North Korean Democracy and Human Rights, based on the testimonies of new settlers (defectors), the period of detention for the purpose of conducting preliminary examination usually runs from one month to six months. However, it is reported, there is no set period of detention in the detention facilities run by the State Security Agency. Some reports have it that they will keep the suspect(s) in detention centers for years, if necessary, until they believe they have uncovered all confidential materials they needed.³¹ On the other hand, new settler Lee XX, who used to be a security agent, testified that political prisoners would normally be detained at the detention facility for about 2-3 months.³²

³⁰ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

³¹ The Network for North Korean Democracy and Human Rights, Keys, Vol. 47, Nov. 2004.

³² Testimony of new settler Lee XX during an interview at KINU, Oct. 10, 2005.

Prof. Huh Man-ho reported that in the case of new settlers who helped him prepare his “litigation papers,” the period of preliminary examination did not exceed 6 months at the longest, which was the maximum allowed under the 1999 criminal procedure law.³³ Article 108 of 1999 criminal procedure law stipulates that the period of preliminary examination is, in principle, 2 months, and it could be extended up to 6 months. So, this provision apparently is observed during the criminal process.

Since, however, there is no set limit for the political crime cases, it would be necessary to collect more testimonies on the detention periods at the security agency detention facilities.

Most testimonies agree that laws are observed once the decision to detain has officially been made, but human rights violations seem to take place during the stages between arrest and this “official decision to detain.” New settler Chang X testified that he and 16 others were investigated in the security offices of Kim Chaek Consolidated Steel Enterprise for one month from Feb. 7, 1993 while the Central Prosecutors’ Office audited the City of Chongjin on charges of foreign currency violations. According to him, there is no time limit during the initial “learning” period, in which the agents will try to grasp the extent of the case. But, once people were detained, he said, the period of detention is well observed.³⁴ From Chang’s testimony, it is clear that we need to find out more about how much physical liberty the suspects are allowed before the decision is made to press criminal charges under the criminal procedure law.

³³ Prof. Huh Man-ho, “The Status and Prospects of Human Rights in the Asia-Pacific Region,” unpublished paper, 2005.

³⁴ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

The next step is to examine the issue of service terms once the detainee is sentenced to a period of correctional labor. We have already discussed how the agent conducting preliminary examination obtains a decision from the Security Director, who will reach a decision, under the law, in consultation with his deputy, the chiefs of surveillance, preliminary examination, and investigation. Once a decision for correctional labor is reached, the security director will seek the chief prosecutor's consent, and submit the case to the local (city, county) Party's Safety Committee, which will determine the guilty plea by entering the decision date. It is this date that is counted as the first day of term. The "convict" or inmate will get his hair shaved and thrown into the detention facility.³⁵ From Chang's testimony, it is clear that a detainee, who was sentenced to a correctional labor, will get the period of his detention counted as part of his term of service, as Article 25 of the 1999 Penal Code demands.

2. Trials and Enforcement of Sentences

A. The Jurisdiction Issue

In the case of political criminal, the law provides that investigation and preliminary examination will be conducted by the security agency but the court will have the trial jurisdiction. However, we have testimonies stating that the security agency is conducting trials, as well. New settler Yoon XX, who used to be a security agent himself, testified that if the facts of crime were determined to be true during the interrogation and preliminary

³⁵ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

examination at the Province Security Agency, the case will be reported to the Prosecutors' Office of the State Security Agency. If the Prosecutors' Office determines the veracity of crime, trials are conducted by the local security agency where the preliminary examination was conducted. The prosecutor from the security agency will hand down the sentence in the name of Central Court. The trial is conducted behind the scenes and the sentencing is handed down according to the criminal law. In the process of deliberating the terms of sentence, such things as whether the entire family should be sent off along with the convict and whether he/she should be detained for life will also be determined at this time, even though there is no guideline for this type of action. Before the decision is made, the staff involved in the decision will confer and decide the period and scope of detention.³⁶ Another new settler Lee XX, who used to work on similar cases at the security agency, testified that once the preliminary examination is over, a prosecutor from the State Security Agency prosecutors' bureau would come over and hand down a final decision. He also said that in the case of Nampo City the decision is made by the City Security Agency, and in the case of other cities and counties the prosecutor from the Prosecutors' Bureau of the State Security Agency will come to the Province Security Agency to try the case. In short, there is no formal trial in cases of political crime.³⁷ In other words, the prosecutors at the National Security Agency will routinely perform the role played by the courts.

Another issue is the jurisdiction of military crimes. According to

³⁶ Testimony of new settler Yoon XX during an interview at KINU, Apr. 19, 2005.

³⁷ Testimony of new settler Lee XX during an interview at KINU, Oct. 10, 2005.

new settler Kim XX, courts and prosecutors' bureau are installed independently at all "command" level military units. And there is a trial division within the national security prosecutors' bureau at the corps level. According to him, the security agent will investigate crimes, and upon approval of the chief investigator and the director of security, the case becomes official. Once the security director at the division level reports the case to the corps security headquarters, the suspect will be detained in the corps detention facility. The prosecutor at the corps security headquarters must obtain the detention approval within a week of detention, and the prosecutor in charge will conduct trials based on regulations. In short, there are prosecutors who are in charge of trials within the prosecutors' department of corps headquarters. But important cases are referred to the Ministry of People's Armed Forces.³⁸

As we have seen, there are numerous testimonies about the prosecutors performing the judges' duties in connection with political and military crimes. This is a fact that needs to be ascertained on a continuing basis.

The next issue is the Party's control over the trial process. We have testimonies that trials are reported in advance to the Party's Safety Committee of the city or county, with possible sentence alternatives, before the actual trial.³⁹ In other words, the Safety Committee not only determines whether or not to detain a suspect but also plays an important role in the trial process. New settler Lee XX testified, "The Party chief secretary has the right

³⁸ Testimony of new settler Kim XX during an interview at KINU, Oct. 21, 2005.

³⁹ Testimony of new settler Yoon XX during an interview at KINU, Apr. 29, 2005.

to pressure the court from behind. If the party worker instructs, the judicial branch is bound to listen.”⁴⁰

B. Court Deliberations and Sentencing

First, the issue is the length of trial period. According to new settler Chang X, the judge in charge of his case spent one month trying to “re-understand” his case. In the process, the judge went through the process again, listening to the suspect testimonies, etc. According to Art. 199 of the 1999 criminal procedure law, the court must try the case within one month of receipt of a case, and Chang’s testimony supports this time frame. In the process of deliberation, the court has the right to summon witnesses, and in Chang’s case the court in fact summoned witnesses and interrogated them. He said he was tried at the North Hamkyong Provincial Court located in Imgok-dong, Chung-am District of Chongjin City, and six witnesses appeared to testify on his case. They were the co-workers at his workplace and employees of his client company.⁴¹

According to Article 211 of the 1999 criminal procedure law, the court during its deliberation is required to inform the defendant of the officers of the court including the prosecutor and court clerk, and ask if the defendant wanted any change in the composition of court officers. New settler Chang was aware of these requirements, so he asked the judge to replace the prosecutor he knew he did not like. From April 23 to May 23 the preliminary examination agent of the Nanam District prosecutors’

⁴⁰ Testimony of new settler Lee XX during an interview at KINU, Mar. 11, 2005.

⁴¹ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

office conducted his investigation (taking down his statements, witness statements, etc.). When one month elapsed, he extended detention for one more month. In principle, the investigation should be conducted by the Provincial Prosecutors' Office, but with the approval from the provincial prosecutors' office, the paperwork was done as if everything was done at the provincial prosecutors' office, he said. It was when he faced the judge on June 23 at the North Hamkyong Provincial Court that he found out that his case had bypassed the provincial prosecutors' office. So, Chang protested, and requested the judge to replace the prosecutor from the city, with whom he had confrontations earlier. When the judge persuaded him, saying that replacing the prosecutor could work to his disadvantage, he decided not to raise the issue officially.⁴²

In the case of First level (lower court) trial, the court in principle consists of one judge and two people's assessors, and the terms of sentence are decided on a majority basis after consultations among the three. But, in the case of Chang, who was sentenced to six years of correctional labor, he said, the decision was reached as a result of an agreement among the judge, prosecutor, attorney and the people's assessors. New settler Hyun XX also concurred in this observation. So, many new settlers testify that court decisions are reached on the basis of consensus among the judge, prosecutor, attorney and the people's assessors.⁴³

New settler Chang has also testified about his attorney's defense

⁴² Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

⁴³ Testimony of new settler Hyun XX during an interview at KINU, Mar. 11, 2005. And, testimony of Chang X during an interview at KINU, Oct. 12, 2005.

procedures. Originally, the prosecution had recommended 13 years at the time he was indicted. But during the trial the court officers, along with the prosecutor and the attorney, consulted and arrived at a consensus, and only after the consultation did his attorney pleaded for a lesser sentence during his final defense. In other words, the lesser sentence was already agreed upon before the defense made its case. But the attorney will make the plea anyway simply to give the appearance of fairness of the trial process. The judge, of course, will cite the defense attorney's persuasiveness, and hand down the lighter sentence, which had already been agreed on.⁴⁴

After the prosecutor and the defense attorney made their respective final statements, the judge will read off his decision, citing relevant law provisions and handing down the sentence in the name of DPRK. New settler Chang recalled that the judge said, "Based on such and such articles and sections of the Penal Code of DPRK, the court orders defendant Chang X to serve six years of correctional labor." The court informed him of the deadline for appeals.⁴⁵ Most new settlers seemed to agree that sentencing is handed down based on relevant articles of North Korean Penal Code. Incidentally, there was a testimony indicating that some trials were conducted in the absence of defendants, but this assertion needs further research to ascertain the truth. According to this assertion, the agents at the surveillance division would bring the court documents and read off terms of sentence the court had allegedly handed down and take the suspect away to the correctional facilities.⁴⁶

⁴⁴ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

⁴⁵ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

During the interviews with the Good Neighbors, one new settler, who had been detained in Hweryong for illegal river-crossing, testified that most detainees had been sentenced to detention penalties ranging from six months to 15 years. In view of Article 24 of the 1999 Penal Code which says, “The terms of correctional labor penalty shall run from 6 months to 15 years,” the courts’ sentencing practices appear to be generally in accord with the law.⁴⁷

The foregoing accounts were some of the testimonies on actual court cases involving ordinary crimes, but in political crime cases the actual court practices were difficult to ascertain. As we have seen, however, in many cases the courts were not involved in political crime cases, and in many cases trials were conducted in the absence of defendants (the accused), some new settlers said.

As for public executions, it is not altogether clear on what legal basis public executions are carried out, because there is no specific provision for it in the Penal Code. According to the testimonies of new settlers, public executions are carried out even on those accused of economic crimes, in the belief that examples must be set in front of the onlookers and other citizens. Others testified that certain government proclamations, rather than the Penal Code, seemed to provide the basis for such actions. New settler Yoon XX testified that trials were conducted and public executions carried out in accordance with the proclamations, in addition to the Penal Code. Proclamations would contain warn-

⁴⁶ Testimony of new settler Park XX during an interview at KINU, Apr. 22, 2005.

⁴⁷ Good Friends, “North Korea Today,” (Seoul), No. 2, Oct. 6, 2004.

ings that people committing certain crimes would be put to death. A total of eight proclamations have been issued between 1995 and 1998. The issuing authority varied from the MPA to the National Defense Commission, depending on the contents and nature of the proclamation. Since most proclamations do not specify effective dates, people had to assume that the orders stood in effect all the time they were posted. New settler Park XX also testified that one of the MPA's proclamations said that violators of the terms of the proclamation would be shot to death or sent off for several years of correctional labor. For example, some proclamations would say that death penalty would be imposed for crimes like stealing and selling parts of factory equipment or installations, dissemination of hearsay, disconnecting and selling telephone wires, and interference with railroad operations. Depending on the contents and nature of warning, the issuing authority will vary.⁴⁸ Given these testimonies, further research is needed to ascertain the practice of proclamations, as well as the entire process of criminal procedures, including the cases of public execution.

In connection with the “class struggle” provision in the criminal procedure law, we have a testimony about the impact of this provision on the society. New settler Lee XX testified that if the facts of crime were clear in the process of Security Agency investigations, the people's security agency (police agency) would take away household record books, which the law enforcement agents will use in determining the level of punishment. In other words, the authorities will try to look up the fami-

⁴⁸ Testimony of new settler Yoon XX during an interview at KINU, Apr.19, 2005. Also, testimony of Park XX during an interview at KINU, Apr.22, 2005.

ly background so they can consider various factors when handing down the final penalty. If they found many Party members in the household, it should mean that the family environment would be favorable for “re-education,” hence less harsh sentence. In this context, most City Security Agencies maintain a set of guidelines. For example, “three years” would be shaved off from the expected sentence if one’s household contained more than 9 party members. People with government medals or Kim Il-sung citations would also benefit in the trial process.⁴⁹ In light of these practices, it would be desirable to continue in-depth research into the latitude allowed the enforcement agents for social re-education under North Korea’s penal system. In particular, it is necessary to investigate in detail the role of class struggle doctrine, and what specific factors would play critical roles in the criminal process.

C. Enforcement of Court Decisions and Sentences

Another issue of concern is the suspension of sentences in the middle of enforcement. Article 299 of the 1999 criminal procedure law stipulates, “The enforcement of sentences could be suspended if the convict (inmate) sentenced to correctional labor was suffering from grave illness or mental illness. If a pregnant woman were undergoing the correctional labor penalty, the sentence should be suspended between three months before and 7 months after the birth of a child. Those released to the hospitals or homes pending treatment shall be placed under the supervision of local people’s security agency.” New settler Chang X was detained at the Hweryong correctional center, but he was

⁴⁹ Testimony of new settler Lee XX during an interview at KINU, Oct. 10, 2005.

released for illness. Once released for illness, he testified, one could get treatment at local hospitals and move around within the district under the supervision of the people's security agency. From the testimony of Chang X, it is clear that the provisions of the criminal procedure law are faithfully observed.⁵⁰ However, there are numerous testimonies that this provision is not observed in the case of forcibly repatriated pregnant women.

Next issue is the execution of death sentences. According to Article 297 of the 1999 criminal procedure law, the execution of death sentence is possible only upon approval of the SPA Standing Committee. It is, however, impossible to ascertain if public executions were based on this prescribed procedure. Article 32 of the Decisions and Sentencing Law says, "Death sentences shall be carried out by such methods as firing squads." Since the law says "such methods as," it may be assumed that other methods are also used for the purpose. In this connection, new settlers also testified that "death by hanging" was the most serious form of execution.

General and special amnesties are also granted on such festive occasions as birthdays of Kim Il-sung and Kim Jong-il, and other national holidays. The SPA Standing Committee member(s) responsible for amnesty matters will select eligible inmates from a list of provincial correctional facilities. Inmates in the correctional centers would rank at the top of eligible candidates for amnesty and those released on bail for illness would be the next priority. But those who committed felonies like murder and robbery would not be eligible.⁵¹

⁵⁰ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

D. The On-site Public Trial

Article 179 of the 1999 criminal procedure law provides for “on-site public trials” for purposes of preventing crimes and reminding the masses about potential consequences. Some new settlers testified that public executions were carried out in times of internal instability or when the public was highly restive. And even ordinary criminals who were thought to have damaged the system would be executed.⁵² So it appears that this provision is the source not only for public trials but also for public executions.

New settlers who have witnessed public executions testified that the officials would read off the nature of crime and death sentence on site. The official of the people’s security agency would read the terms of sentence, but the sentencing document itself was in the name of Central Court.⁵³ Another new settler testified that a judge from the court explained the nature of crime and pronounced the sentence.⁵⁴

The people’s security agency is responsible for the execution of death sentences based on copies of court decisions and execution orders, as specified in Article 296 of the 1999 Criminal Procedure Law. But, it is not altogether clear whether public reading

⁵¹ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

⁵² Testimony of new settler Park XX during an interview at KINU, April 25, 2005.

⁵³ Testimony of new settler Yoon XX during an interview at KINU, April 29, 2005. Also, testimony of Hyon XX during an interview at KINU, Mar. 11, 2005.

⁵⁴ Testimony of Kim XX during an interview at KINU, Feb. 19, 2005.

of these documents is sufficient in the case of public executions. At this point, two questions need further research: First, we need to find out more about the criminal procedures leading to the execution of these “public-executed” convicts. Second, it is necessary to accurately understand the on-site public execution procedures, including the composition of the on-site court and whether the people’s security agency are actually organizing and running the on-site trials.

In this connection, there are testimonies reporting that many trials are conducted not in the courthouse buildings but in other places, and it is not clear whether these “other places” are related to the “on-site trials.” There are testimonies indicating that many trials are conducted in other buildings than the courthouse because at the city and county level courthouse buildings are usually not big enough to conduct public trials where lots of people are expected. However, for minor cases like divorce, in which the number of participants are small, the proceedings will take place inside the courthouse building.⁵⁵ New settler Lee XX has had an experience as a witness at a human trafficking trial in January of 2004. He said the trial was conducted not in the courthouse building, but at a building located in Sinwon-dong, Sinui-ju city. The defendant in this trial was sentenced to a three-year correctional labor.⁵⁶ Meanwhile, there is another testimony saying that trials are usually conducted in the courthouse despite the inconvenience of tightness of space, while on-site public trials are held amongst the general public.⁵⁷

⁵⁵ Testimony of new settler Kim XX during an interview at KINU, Feb. 19, 2005. Also, testimonies of new settler Park XX on April 22, 2005 and Park XX, on Mar. 11, 2005.

⁵⁶ Testimony of new settler Lee XX during an interview at KINU, Mar. 11, 2005.

3. The Realities of Forced Labor

In the course of revising the Penal Code in 2004, “labor-training” was newly added as a form of punishment. However, “labor-training” and “unpaid labor” have already been in practice as forms of penalty under different sets of laws and regulations even before the revision. It would, therefore, be necessary to find out more specifically how these old punishments are imposed in relation to the new “labor-training” penalty.

First, in order to rectify a law violation, or impose legal responsibilities on a suspect, the prosecutor must choose one of the options under the law; and the Prosecutor Supervision Law in Article 40, Section 3, illustrates following options: “Turn over the violator to preliminary examination; refer to the “comrade judgment committee” or to the “socialist lawful living guidance committee;” or punish by detention or labor-training.” In short, a prosecutor could decide to punish the law-breaker by “labor-training.” But, there are also stipulations for “labor-training” and “unpaid labor” in the Court Decisions and Sentencing Law. For example, Article 18, Section 3 of this law says, “If an inmate serving correctional labor, labor-training, or unpaid labor is suffering from grave illness, or in the case of a pregnant woman (3 months before and 7 months after giving birth to a child),” the court should suspend the term. Moreover, the enforcement of sentence would be terminated “when the inmate serving the correctional labor, labor-training or unpaid labor should die.” (Article 22, Section 1) Article 43 of the Court Decision and Sentencing Law stipulates, “Copies of court decisions (or, sentences)

⁵⁷ Testimonies of new settler Yoon XX, on Apr. 19, 2005, and Lee XX during interviews at KINU, Oct. 10, 2005.

directing the defendant to serve labor-training or unpaid labor, should be forwarded to the proper authorities responsible for carrying out the enforcement.” This law was enacted presumably expecting that the court decisions and sentences would be carried out accordingly. Since the terms of “labor-training” and “unpaid labor” were fully spelled out in this law, it would mean that these punishments should be carried out only as the court has specifically directed. So, it is clear that these two forms of punishment have been on the books long before the recent Penal Code revision has incorporated them. Furthermore, a significant overlap exists because both Prosecutor Supervision Law and Court Decision and Sentencing Law list these items as possible penalties.

How, then, was the labor-training punishment enforced before the 2004 Penal Code revision? Most new settlers testified about the existence of “labor training corps,” which is a collective detention facility where “forced labor” is enforced under strict rules. So the labor-training penalty is a form of forced labor organized into a labor-training corps. Everyone who testified about the labor training corps said that those who were ordered to serve the labor-training sentence and put in the labor-training corps were allowed to keep their citizenship identifications. Forced labor is also enforced in the form of “re-education courses” at all “collection points,” where people caught while traveling without permit or defectors who have been forcibly repatriated are detained. Recent new settlers also testified that in addition to the labor-training corps at the city and county levels, “special education” facilities were also built to hold the defectors. If the people’s security agency director were to decide to send someone to the “special education” facility, instead of labor training corps, he should request the city or county safety committee for

approval, and it will decide on the case.⁵⁸

The new settlers also testified that the “labor-training” and “unpaid labor” penalties are determined not by the courts or prosecutors but by the people’s security agency and the “socialist lawful living guidance committees.” The labor-training punishment, in particular, is usually imposed by the people’s security agency in the local area. If the security agencies decided to impose labor-training punishments, they would presumably rely on the social safety control law. In this law, there are numerous stipulations banning certain sets of behaviors, but specific punishments are not listed there, leaving the possibility that authorities could abuse the “labor-training” as a blanket penalty for all cases. For example, the law in Article 13 says, “The authorities may exercise control over those who disrupt orderly administration of work schedules, such as failing to report to work without justifiable causes, or frequently failing to keep working hours.” New settler Chang X testified that people are required to report the pattern of their working hours to the security agents in their area. The agent will then build up a roster, and report those who are absent from work for more than a month without justifiable reasons, to the surveillance unit of the city or county security branch. The deputy chief of surveillance will in turn confer with his chief, and the chief, upon getting approval of the security director, will enforce appropriate punishment. Throughout the entire process, the deputy chief of surveillance will play a crucial role.

Article 17 of the Social Safety Control Law says, “The enforce-

⁵⁸ Testimony of new settler Kim XX during an interview at KINU, Oct.21, 2005.

ment authorities shall maintain order and discipline concerning the behavior of traveling and pedestrian public.” Similarly, new settler Chang X testified that violators of traveling and pedestrian rules would be charged in a manner similar to the absence from work without justifiable reasons. The security agent will collect necessary information and the deputy surveillance chief will draw up papers and consult with his chief. The chief will then obtain the signature of the security director and enforce the law. Since the entire process goes through without any formal trial, there is room for flexibility in their decisions. And, the supervisor of the “labor-training corps” often takes bribery to shorten the detention period in consultation with the security agency.⁵⁹ This testimony is a departure from the known rule of the Social Safety Control Law, which requires the “senior workers committee” of the People’s Security Agency to determine the levels of punishment. This discrepancy needs to be ascertained in the future through additional testimonies.

The fact that the people’s security agency determines the “labor-training” penalties is also true in the case of repatriated defectors, about which more discussion will follow. Upon repatriation, the City or County Security Agency will interrogate them intensively about possible involvement in crimes of political nature. If it is concluded that the border crossing was a simple crime, the person will be turned over to the people’s security agency, and the people’s security agency will decide to lock him up in the labor-training corps. On the other hand, the “socialist lawful living guidance committee” frequently decides on the “unpaid labor” penalties. In any case, more fact-finding research

⁵⁹ Testimony of new settler Chang X during an interview at KINU, Oct. 12, 2005.

is needed to learn more about the procedures concerning “labor-training” and “unpaid labor” punishments. Another item of research interest would be the relationship or practical differences between these two punishments and the “labor-training” penalty newly introduced in the revised 2004 Penal Code.

VI. Conclusion: Evaluations and Future Tasks

In light of changing internal and external circumstances, North Korea has been continually revising its Penal Code and the Criminal Procedure Law, as well as other related laws like the Attorney Law, Prosecution Supervision Law and the Court Decisions and Sentencing Law. Although it appears to be making intra-system changes only, it is also true that North Korea is in the process of streamlining and tightening the overall criminal procedures in line with various internal and external changes and imperatives.

First, in the area of criminal laws, North Korea is attempting to water down political overtones and tighten criminal procedures in a way that is unambiguous and prescriptive.

Second, measures are being taken to narrow the room for subjective interpretations of law. Most North Korean law provisions today appear to be trying to eliminate room for arbitrary inter-

pretations and inferences. And North Korea has practically incorporated in its Penal Code the principle of “nullen crimen sine lege (no crime unless prescribed in the law).” As a result, room for arbitrary applications of law has significantly been reduced.

At this point, it would be appropriate to qualify our observations and say that these changes are taking place only inside the North Korean system. Because, first, there is no evidence of change in their fundamental belief that law is subservient to politics. The North Korean Constitution clearly proclaims the leadership of the Korean Workers’ Party, and so, the Party’s control over the entire judicial process is certain to continue. In recent years, political overtones in many laws have been removed, but the basic tenet of safeguarding national sovereignty and socialist system is clearly preserved. In particular, the principles of class struggle and mass struggle are firmly maintained and sharp distinctions are made between ordinary and political crimes. Consequently, political influence on judicial process has not diminished fundamentally.

Second, in addition to the Penal Code and official roles of the judiciary, there are still a number of quasi-judicial organizations that wield power in criminal matters. The Party’s Safety Committee, the Socialist Lawful Living Guidance Committee, and the Comrade Judgment Committee are only some of the quasi-law enforcement organizations that exercise power and interfere with the judicial process. The presence of these entities is in fact the reason why we cannot speak of the independence of the judiciary in North Korea.

Based on these findings, let us summarize some of the future

tasks that should guide our fact-finding researches in the field of criminal law and legal process, which in turn would serve as the basic data for the improvement of human rights in North Korea.

First, North Korea has practically incorporated in its laws the principle of “no crime unless prescribed in the law,” but the problem is how the principle is practiced in its criminal process. For example, the 2004 Penal Code has introduced a new “labor-training” penalty. But, it is not clear in practice how this new provision works in relation to the previous punishments like “labor-training” and “unpaid labor.”

Second, more fact-finding researches will be necessary regarding the arbitrary interpretation of law provisions. The criminal procedure law stipulates that ordinary crimes will be punished with “social education” with a “mix of legal sanctions.” Since the standard for applying one or the other penalty is unclear, there is room for arbitrary interpretation, as well as the possibility of political pressure. In addition, more research should be done on the doctrines of class and mass struggle and their impact on criminal process, along with actual case examples.

Third, it would be necessary to study, and systematically analyze, the actual roles and functions of quasi-legal entities in the criminal process, including such entities as People’s Safety Committee, Lawful Socialist Living Guidance Committee, and Comrade Judgment Committee.

Fourth, more fact-finding is needed about the on-site public trials contained in the Criminal Procedure Law.

Fifth, because South Korea has not had any new settlers (defec-

tors) who used to work as prosecutors or judges in North Korea, it is rather difficult to understand various stages of trial and accurate roles the “people’s assessors” play, as well as the details about indictment, prosecution’s recommendations, and oral defense. It is desirable to investigate systematically how indictment and each stage of trial unfold and how the appeals procedures work. In addition, because most new settlers came originally from the border provinces, it is difficult to comprehend how the criminal procedures and decisions are made at the higher and central levels. Researches are also needed regarding special or specialized courts like the military courts and tribunals and the railroad courts. Information in this area is almost non-existent. And, more concrete and detailed investigations are needed with regard to the criminal procedures involving political crimes, because we had many testimonies that argued that the criminal procedure law was not observed during the trials of political criminals.

Sixth, North Korea’s criminal process should be studied more concretely and by stages, as well as by areas. For example, more facts are needed about the number of detainees by regions, house arrests, etc., as well as the number of premature detentions before lawful warrants were issued. Another area of potential research would be the nature of suspension of sentences. Findings in these areas of research, particularly concerning the controversial disappearance of political prisoners, would be highly desirable, particularly from the standpoint of their families.

