

son, helping to provide training, and providing transportation to and from work. Other evidence indicates that disabled people receive vocational training and jobs outside of Pyongyang.

There is other evidence of harsh discrimination based upon physical characteristics. Two sources indicate that dwarfs in North Korea have been put in a small community deep in the mountains of South Hamgyong Province. Their numbers are dwindling and only 30 couples remain. The Government's evident goal is to eliminate them quietly. Most observers of North Korean society have been limited to official tours of Pyongyang, Pannunjom, and model agricultural centers. These observers have commented upon the uniformity of the people's physique and the absence of deformities. It appears that Kim has effectively eliminated from foreign observation all persons who do not fit the image of "the new Korean."

V. LIFE

Article 3

Everyone has the right to life, liberty and security of person.

Article 6 of the International Covenant on Civil and Political Rights elaborates on this provision of the Universal Declaration of Human Rights by limiting the application of the death penalty and anticipating its ultimate abolition:

"In countries which have not abolished the death penalty, sentence may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence...."

A. The Death Penalty under the DPRK Penal Code

To some extent DPRK law contains provisions consistent with these international standards. Article 275 of the DPRK's Code

of Criminal Procedure states that a judgment condemning a person to death shall be executed only upon the approval of the Standing Committee of the Supreme People's Assembly.* Article 30 of the Penal Code provides that "persons who have not reached the age of eighteen years at the time they committed a crime shall not be sentenced to the death penalty."***

Under Article 95 of the DPRK Constitution, "The President of the Democratic People's Republic of Korea exercises the right of granting special pardon." In addition, Article 103(11) of the Constitution gives the Central People's Committee the authority to grant general amnesties, which might benefit those condemned to death. The Code of Criminal Procedure also provides for pardon and amnesty. ***

In very significant ways, however, DPRK law departs from these standards. Rather than limit the death penalty to the "most serious crimes," there are approximately 47 provisions in the DPRK Penal Code which impose the death penalty, at least in certain circumstances. The Code classifies these offenses under six general headings: 1) Crimes against State Sovereignty; 2) Crimes against the State Administration; 3) Crimes against State, Public-Service, and Cooperative Property; 4) Crimes against Persons; 5) Crimes against the Property of Citizens; and 6) Military Crimes.

The Penal Code provides that some of these 47 crimes are punishable by the death penalty merely upon a showing that the of-

* See Constitution of the Democratic People's Republic of Korea, Art. 85.

** This provision is consistent with the similar limitations in Article 6(5) of the International Covenant on Civil and Political Rights.

*** See Code of Criminal Procedure Art. 5(7). These provisions are consistent with Article 6(4) of the International Covenant on Civil and Political Rights.

fense was committed. The remaining crimes are punishable by the death penalty (as opposed to imprisonment, correctional labor, or a fine) only upon a showing of aggravating circumstances. Article 47, which defines aggravating circumstances for the purpose of imposing the death penalty, explains that "the fundamental question to be decided in each individual criminal act is that of the danger to the public from the crime under consideration." It then stipulates six aggravating circumstances which can lead to death:

"1) the commission of a crime aimed at overthrowing the people's democratic system; 2) the commission of a crime by a group or band; 3) the commission of a crime for the second time; 4) the commission of a crime for profit or other base motives; 5) the commission of a crime with unusual violence or cunning; 6) the commission of a crime against persons who are dependent on the offender and under his care or who are helpless because of age or other conditions."*

1. Crimes against State Sovereignty

There are eleven listed crimes against state sovereignty. All but one are punishable by the death penalty without the need to show aggravating circumstances. These crimes include: armed uprising (Art. 65); "participation for anti-state purposes in an armed intervention by foreign powers against the Democratic People's Republic of Korea, or in other actions aimed at blockading the Republic, or in forcible seizure of state property, or in the impair-

* Penal Code Article 48 defines extenuating circumstances, but the death penalty provisions refer explicitly to aggravating circumstances.

ment of diplomatic relations, or in the disruption of treaties concluded by the Democratic People's Republic with foreign states" (Art. 66); communicating for anti-state purposes with a foreign power that has unfriendly relations with the Republic (Art. 67); high treason (Art. 68); terrorist acts (Art. 72);* undermining state industry, transportation, trade, money circulation, or the credit system for the purpose of harming the state in the interest of the traditional ownership system (Art. 73) or in the interests of former owners (Art. 74); propaganda or agitation advocating the overthrow, undermining, or weakening of the people's sovereignty (Arts. 76, 78); and aggressive acts aimed at suppressing or harassing the Korean people's national freedom on behalf of Japanese or other imperialism (Art. 79). In addition, under aggravating circumstances, espionage is punishable by death (Art. 71).

2. Crimes against the State Administration

Eight crimes against the state administration are punishable by the death penalty. They are: banditry and attacks on public and private institutions or on private citizens, robbery, and destruction of railroads (Art. 82); mass disorders by organizers, directors, and other participants (Art. 83); counterfeiting bank notes and state securities (Art. 84);** theft of firearms (Art. 88); railroad destruction (Art. 89); violation of labor discipline (violation of traffic regulations, poor maintenance of rolling stock and road beds) by transport workers and such violation results or might have resulted

• The term "terroristic" is not defined.

•• Penal Code Articles 82 - 84 carry the death penalty; the other five offenses impose the death penalty only with especially aggravating circumstances.

in damage to or destruction of an airplane or an accident involving people" (Art. 92); and "propaganda or agitation aimed at arousing national or religious hatred or dissension and the dissemination, preparation, and storage of such literature" (Art. 101).

3. Crimes against State, Public-Service, and Cooperative Property

The only crime against "state, public service, and cooperative property" that is punishable by the death penalty is Article 106, which proscribes "[s]ystematic, organized, or large-scale pilfering from state, public-service, and cooperative establishments, warehouses and enterprises, or from goods shipped via railroad or ship."

4. Crimes against Persons

The only crime against the person that is punishable by death is the offense of homicide. Article 112 provides that the death penalty shall be imposed for homicide committed under aggravating circumstances and under the following circumstances:

- 1) when the crime was engendered by profit seeking, jealousy or other base motives;
- 2) when the defendant previously had been prosecuted for homicide or grievous bodily injury;
- 3) when the crime endangered the lives of many people or was especially painful to the victim;
- 4) when the purpose of the crime was to conceal another serious crime;
- 5) when parents or relatives were victims;
- 6) when the perpetrator had a special caretaking responsibility for the victim; and
- 7) when a helpless victim was exploited.

5. Crimes against the Property of Citizens

The only crime against the property of citizens that is punishable by death is robbery, and only when it is accompanied by aggravating circumstances (Art. 150).

6. Military Crimes

There are approximately 24 military crimes that are punishable by death, although, for most, death can be imposed only if the crime was accompanied by aggravating circumstances, committed in aid of the enemy, or undertaken during combat or wartime. These crimes are: "failure of a subordinate to carry out the orders of his immediate superior or the failure of a junior to carry out the orders of his senior when issued in the lines of duty" (Art. 266); resisting those performing their military duties (Art. 267); compelling a person who is performing his military duties to desist therefrom (Art. 268); absence without leave by a private or non-commissioned officer for up to 6 hours (Arts. 272, 274) or by anyone for more than 24 hours (273, 274); abandoning or deserting a unit or post (Arts. 275, 276, 277); failing without good reason to report on time for duty when assigned to or transferred from detail or to return on time from furlough (Art. 278); desertion accompanied by theft or plunder involving the use of weapons (Art. 279); evasion of military duties by infliction of injury upon oneself (Art. 280); flight from the battlefield or abandonment of a unit or post in a combat situation (Art. 281); illegal alienation, pledge, or transfer of army clothing or equipment (Art. 282); violating guard duty regulations or instructions (Art. 284); the abuse or exceeding of authority by a commanding officer in certain circumstances (Art. 286); surrender in aid of the enemy (Art. 290); failure of a commander to take the necessary measures during a retreat to destroy or render useless the means of waging war (Art. 291); unauthorized deviation by a commander from his battle order to aid the enemy (Art. 292); surrender not justified by

the combat situation or refusal to use arms or crossing over to the enemy's lines (Art. 293); abandonment of a sinking warship by a commander (Art. 294); divulging a state or military secret or losing documents containing such information (Art. 295); reporting false information on one's execution of a combat assignment (Art. 297); and looting the possessions of the dead and wounded on the battlefield (Art. 300).

B. Accounts of Executions, Deaths, and Assassinations

1. Public Executions

Reliable statistics on the use of the death penalty in the DPRK are unavailable. The use of the death penalty appears to have been widespread during certain periods of repression. For example, during the 1958-1960 period, 9,000 people were reportedly purged from the Party and killed after trials. They were accused of being "anti-Party elements, factionalist, poisonous elements, and counter-revolutionaries." *

* Koo-Chin Kang, Law in Communist Korea: An Analysis of Soviet-Chinese Influences Thereupon 110 (1968). Kang's studies are regarded as the authoritative works on law in the DPRK.

At least in the past, the DPRK Government under Kim Il Sung staged mass denunciations and instant executions by firing squad in large public places to teach the public the consequences of committing political and anti-social crimes.* For example, as noted, the DPRK strictly controls sexual behavior. Deviance is treated as a sign of "bourgeois" values and has often been punished in public. The following case, reported by a defector who claims to have worked with the State Security Agency in the DPRK, is illustrative.** In July 1965, he witnessed a mass trial and execution in the valley of Mt. Banryong, in Hamhung City. His account is as follows:

The defendant, a woman student of Hamhung Teachers College, was charged with prostitution for having had affairs for money with about 30 influential party members. One day a Security Agent arrested her as she was enticing a customer in a theatre. Because the Government at that time treated illicit sexual activities as an impediment to the socialist revolution, it ordered the Security Agency to execute sexual offenders in public as a lesson to the masses. A crowd of about 20,000 people gathered at the scene of the trial. A judge and the defendant entered at 10:00 a.m. The trial consisted of public denunciations and accusations. At about 2:00 p.m., the judge sentenced the woman to death for violating Kim Il

Public executions have been used traditionally in China and Korea to educate and scare the populace into obedience. During the Great Proletarian Cultural Revolution in China (1966-1976), public executions (wan-jen da-hui) became a prominent part of the justice system. The descriptions cited in the text of public executions in the DPRK are similar to descriptions that have been made public of such executions in China.

Kong Tak Ho, Inside Story of a Political Security Agency of North Korea: Testimony of a Defector 82-86 (1976).

Sung's order against moral decadence. Upon hearing the judgment, the crowd began to yell and curse her with great excitement. She was immediately executed by a firing squad.

Reports of mass trials have not been received in recent years, but public executions accompanied by public vilification continued through at least the early 1980s. Recent defectors have provided accounts of past public executions for crimes such as treason, murder, aggravated rape, sedition, and other subversive crimes. Several defectors indicated in interviews that the criminal was brought to a stadium or school ground in front of a huge number of people. Sometimes the crowd became hysterical in its outbursts against the prisoner. They repeatedly threw stones, poked the accused with sticks, and sometimes even beat the prisoner to death, often while shouting slogans. The accused was sometimes associated with American plots and crimes. Based on other interviews on the legal system and reports of social stratification in the DPRK, it appears that, in at least some instances, the elite would not be so punished.

Despite the extensive list in the Penal Code of offenses warranting the death penalty, it appears that the DPRK Government has executed those persons who commit still other offenses when the authorities wish to make an example of the offender. For example, although the offense of rape does not formally carry the death penalty under the Penal Code, a North Korean fisherman indicated that he had seen two people executed in public for rape in Nampo City during the 1970s. These persons appear to have been from the wavering or hostile classes. One defector of the elite class and another long-term resident of the DPRK now living abroad have reported that the elite are not punished for rape. Based on other interviews on the legal system and reports of social stratification in the DPRK, it appears that, in at least some instances, the elite would not be so punished.

2. Assassination and Execution of Political Opponents

According to one former DPRK resident, whose information is partially corroborated, the Ministry of State Security has used a special team of 15 to 20 members trained to assassinate the political opponents of Kim Il Sung and Kim Jung Il.* There are several unconfirmed reports of assassinations by this special team, including an allegation that it was responsible for the death of Nam Il, a former Vice Premier, who died in October 1975 in a suspicious car accident.

According to an unconfirmed report, special execution centers are operated in each province by the Public Security Ministry. Persons who have slandered Kim Il Sung or his son have reportedly been killed by a hit to the head with an iron bar.

3. Deaths in Custody

Several former inmates of camps for political prisoners reported that, at least through 1983, killings without due process and

* Interview with Kang Duk Hoon, former captain of the Jangsan ship, who defected from the DPRK in January 1982, reprinted in Institute of North Korean Studies, Collection of Testimonies of Defectors on Human Rights in North Korea 18 (June 1986).

a fair trial were a common occurrence. They report that if a prisoner tried to escape and was caught, he was publicly criticized before a crowd and promptly executed by the guards. For example, in 1976 Shin Young Hwan (age 33) and Kong Chang Duk (age 28) were reportedly caught escaping from their prison and were publicly executed. One former prisoner who left the DPRK in 1986 reported hearing coordinated gun fire that sounded like executions during the period of his imprisonment, from 1978 to 1983.* Other prisoners indicated that such gunfire marked the execution of people who had attempted to escape. A graduate from the Pyongyang Fine Art College was sentenced to a 20-year prison term for the "anti-revolutionary act" of drawing a portrait of Kim Il Sung on a piece of paper lying on the floor and later throwing the picture away. He was later executed in prison for unknown reasons during the early 1980s.**

* See 1 U. Choe & S. Shin, Jokuk-un Johannul Jomollil 405-06 (relating to an execution in early July 1980), 465-69 (relating to another execution in winter 1980)(1988).

** Testimony of Kim Man Chol as reported from South Korea, 20 February 1987. Kim Man Chol, age 47, defected with 10 family members in a small boat that reached Japan on 20 January 1987. He reported that another brother was sentenced to 25 years in a labor camp for criticizing the Soviet Union. The brother died in the camp.

VI. TORTURE AND INHUMAN TREATMENT

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

The laws of the DPRK apparently contain no sanction against the use of torture or inhuman treatment. Although Article 108 of the Code of Criminal Procedure provides that, "In the course of interrogation of the accused, the pretrial investigator must not use any force, threats, or other similar measures in order to obtain his testimony or confession," there appears to be no procedure or sanction for assuring that this provision is respected in practice. Indeed, campaigns have occasionally been mounted to convince offenders to confess so as to avoid or minimize ill-treatment. Those detainees who refused to confess were beaten, deprived of food, given harsher work assignments, and otherwise punished more severely.*

All available evidence indicates that, at least through the early 1980s, North Korean prisoners were routinely tortured or ill-treated during interrogation and at times during later imprisonment. When a political offender was arrested, he was initially held in a detention center of the Public Security Ministry. Although reports

* See Koo-Chin Kang, Law in Communist Korea: An Analysis of Soviet-Chinese Influences Thereupon 35 (1968).

were received from a wide range of prisoners covering various periods, no prisoners reported having avoided ill-treatment.

Reports indicate different methods of torture and ill-treatment. One political prisoner who escaped from the DPRK in 1986 described the ill-treatment he suffered while imprisoned from 1978 to 1982.* Because Kim Jung Il wanted to force him to make propaganda films, he was deprived of food and sleep. To limit his ability to sleep or rest, the guards forced him to sit with his hands on his knees in a rigid upright position. Every three hours he was allowed to stand for only two minutes. This ill-treatment lasted for one year and was, according to the former prisoner, even more painful than physical beatings. Moreover, as a form of punishment his diet was manipulated. His meals were limited to rice, corn, soybeans, and soup of leaves or plants with roots, and he reported that all salt was intentionally eliminated or limited.

A second account was given by a former DPRK resident who in 1958 was tortured by the Public Security Ministry in one of its detention facilities to force him to confess.** In what was known as "airplane" and "water torture," he was hung upside down and water was poured onto his face, making it difficult to breathe.

* Interview with movie producer, December 1986. See also I U. Choe & S. Shin, *Jokuk-un Johanal Jomelli* 321-29, 355-68 (1988).

** Interview with former prisoner who was interviewed in September 1986. See appendix 4.

A third account was given by a former DPRK resident* whose father worked for the Public Security Ministry and observed a scene in the interrogation unit of the Ministry in the mid-1970s. Security officials placed pencils between the fingers of a detainee and then squeezed his hand, demanding that he confess. The father heard the detainee scream in pain.

A fourth account came from a guard who served during the late 1960s and early 1970s in a detention center of the Public Security Ministry in Bukchang County.** He provided a detailed account of the facilities based on observations he made during a tour that he was given by his supervisor when he first started work. His description is as follows:

The facility had six cells capable of holding 10 prisoners each. The last cell was a torture chamber. It had a wooden floor and a pot instead of a toilet stool.*** The cell had no water and the detainees were not allowed to wash. A terrible odor came from the toilet pot and the unwashed prisoners, forcing the detention worker to wear a mask. The torture chamber was rather dark and various torture tools laid about, including a rubber whip, sticks, and a bar. Detainees who did not comply with the rules or cooperate with their interrogator were taken to the

* Interview with former pilot, who was interviewed in September 1986. See appendix 4.

** Kong Tak Ho, *Inside Story of the Political Security Agency of North Korea* (1976).

*** Most other defectors indicated that they had seen detention centers with stone or dirt floors.

torture chamber. Their pants were removed, a sharp, angled stick was placed behind their knees, and they were required to squat for one hour, producing intolerable pain and bleeding. The prisoners screamed and often fainted. Some detainees died of such torture and some killed themselves.

Foreigners have evidently been spared the worst treatment, but their deprivations have been similar. Ali Lameda, a Venezuelan who came to the DPRK to help prepare propaganda, was arrested in Pyongyang during 1967 because he objected to the propaganda as too unrealistic to be credible.* Lameda reported hearing the cries of other prisoners being tortured, but avoided this treatment himself. In one year of captivity, Ali Lameda lost fifty pounds, and his body was covered with sores and hemorrhages.

Lloyd Bucher, the Commander of the US Naval ship Pueblo, was seized and imprisoned with his crew in the DPRK in 1968. He testified to having seen a Korean who had been tortured for being a South Korean spy: the man's face was beaten to a pulp; one eye was out; the prisoner had bitten himself through his own lip; and his arm was broken with the bone protruding from the skin.** During interrogation, Captain Bucher and his crew were routinely punched repeatedly, kicked, hit with boards, and thrown against the floor and walls. Later, the prisoners were threatened and subjected to mock executions.

Hunger has also been used to "correct" the behavior of foreigners and to obtain confessions from them. Given very small quantities of food in any event, the prisoners were punished for

misbehavior by adulterating the food with hair, pieces of human nails, teeth, and other human parts. The prisoners developed diarrhea, scurvy, pneumonia, hepatitis, and skin infections, and suffered damaged vision.

* Amnesty International, Ali Lameda: A Personal Account of the Experience of a Prisoner of Conscience in the Democratic People's Republic of Korea (1979).

** T. Ambrister, A Matter of Accountability: The True Story of the Pueblo Affair (1970).

**VII. PROCEDURAL FAIRNESS IN THE CRIMINAL PROCESS
AND THE COURTS**

Article 3

Everyone has the right to life, liberty and security of person.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

This chapter discusses the history and structure of the criminal justice system in the DPRK, particularly the procedures for arrest and trial. It shows that although the Code of Criminal Procedure contains elaborate procedural guarantees, these safeguards are not followed in practice, particularly in political cases.

A. The Legal Tradition

The Korean peninsula's legal tradition has lacked strong restraints on abuse of power. During the Yi or Choson dynasty, which lasted from 1392 until 1910, the magistrate

"had to perform the duties of judge, prosecutor, and police chief in addition to his other functions as the head of the local government.... [T]he imperial judicial practice contained certain features that put the individual at a definite disadvantage. These included the presumption of the guilt of the accused, the non-existence of defense attorneys, the use of torture for extracting confession, the analogous and retroactive

application of penal provisions, and the enforcement of group responsibility and group punishment."⁺

During the 36-year Japanese occupation (1910-1945), the Japanese government attempted to impose its own criminal justice system, which was based upon a German model. It lacked an independent judiciary, failed to limit government power, and provided no rights for the accused.^{**} The oppressive nature of the Japanese rule led many Koreans to resent and reject Japanese legal traditions, particularly during the period of armed conflict from 1937 through 1945.^{***} As a result, Japanese legal traditions were discarded after Japanese rule ended in 1945.^{****}

The current DPRK legal structure is based principally on the Soviet legal system. The DPRK Constitution, Penal Code, and Code of Criminal Procedure closely resemble their counterparts in the Russian Soviet Federal Socialist Republic (RSFSR).⁺ The DPRK Constitution of 9 September 1948 is almost a verbatim copy of the 1936

* Koo-Chin Kang, *Law in Communist Korea: An Analysis of Soviet-Chinese Influences Thereupon* 8 (1968).

** *Id.* at 10.

*** *Id.* at 12.

**** *Id.* at 17.

+ Koo-Chin Kang, *An Analytical Study of Criminal Law in North Korea*, 4 *Lawasia, Journal of the Law Association for Asia and the Western Pacific* 1, 3 (1973).

Constitution of the USSR. The DPRK Penal Code of 3 March 1950 is very similar to the 1926 Penal Code of the RSFSR.* The North Korean Code of Criminal Procedure of 3 March 1950 is similar to the 1923 RSFSR Code of Criminal Procedure. And the DPRK Law on Court Organization of 1 March 1950 establishes a court system similar to the judicial system of the USSR and its various republics as they were structured in 1938.**

In 1972 the DPRK Constitution was somewhat modified to reflect Chinese constitutional developments. The Code of Criminal Procedure and the Law on Court Organization were apparently amended in 1974 to reflect these changes.***

B. Structure of the Criminal Justice System

The highest court of the DPRK is the Central Court,**** which consists of a President appointed by the Supreme People's Assembly and judges appointed by the Standing Committee of the

• Id.

•• Koo-Chin Kang, Law in Communist Korea: An Analysis of Soviet-Chinese Influences Thereupon 22 (1968).

••• See R. Scalapino & J. Kim, North Korea Today: Strategic and Domestic Issues (1983); C. Kim, Korean Law Study Guide 18 (1987).

•••• Constitution of the Democratic People's Republic of Korea, Art. 141. Prior to the 1972 Constitution, the highest court was the Supreme Court. This section's description of the structure of the criminal justice system is based primarily upon the provisions of the DPRK law. It has not been possible to confirm that the structure is, in all aspects, as described in the law.

Supreme People's Assembly. The Central Court, which supervises all lower courts,* has one collegium of judges for criminal cases, a second for civil cases, and a third for administrative cases.**

The Central Court has jurisdiction to serve as a trial court for particularly serious criminal cases. Otherwise, the Central Court serves as an appellate court for decisions of the provincial courts.***

Provincial courts have jurisdiction as the court of first instance over cases involving crimes against state sovereignty, as well as substantial crimes against the person, state and cooperative property, and against state duties. There is one provincial court for each of the nine provinces, and each has a separate collegium for civil and criminal cases.**** Provincial courts also have jurisdiction over other criminal cases referred by law to the jurisdiction of such courts. + Three-judge panels of the provincial courts + + also have appellate jurisdiction over judgments rendered by city and county courts. + + +

• Constitution of the Democratic People's Republic of Korea, Art. 141.

•• Law on Court Organization, Art. 50.

••• Id., Art. 48.

•••• Koo-Chin Kang, Law in Communist Korea: An Analysis of Soviet-Chinese Influences Thereupon 60 (1968).

+ Law on Court Organization, Art. 31.

+ + Id., Art. 34.

+ + + Id.

City and county people's courts have jurisdiction over criminal cases involving crimes against state administration, crimes against state and cooperative property, crimes against the person, crimes against the property of individuals, crimes involving violation of work laws and decrees, crimes against official duties, economic crimes, crimes against the social order, and crimes against the people's health.* Each People's Assembly selects lay assessors for the courts in the same jurisdiction from among citizens entitled to vote.** People's assessors ordinarily serve for a period of not more than 14 days.***

Special military courts have jurisdiction over military crimes.**** The presidents of these special courts are selected by the Central Court. + People's assessors sit with the judges in the military courts; the assessors are military personnel who are elected by the assembly of the military personnel in the locality and division of the military they serve. + + Military Courts have responsibility for handling cases of counter-revolutionary activities, espionage, infrin-

• Law on Court Organization, Art. 26.

** Law on Court Organization, Art. 14; Constitution of the Democratic People's Republic of Korea, Art. 134.

*** Law on Court Organization, Art. 15.

**** Law on Court Organization, Art. 37.

+ Constitution of the Democratic People's Republic of Korea, Art. 135; see also Law on Court Organization, Art. 38.

+ + Law on Court Organization, Art. 39. While there are legal provisions for transport courts, these special courts were abolished in August 1958 and their functions were transferred to regular people's courts. See Kang, Machinery of Justice in North Korea, Korean J. Comparative Law 123, 128 (1977); Koo-Chin Kang, Law in Communist Korea: An Analysis of Soviet-Chinese Influences Thereupon 59 (1968).

gements upon the security of the state or the fighting capacity of the armed forces, failures of military discipline, and violations of military service rules.

The investigation and prosecution of civilian criminal cases are the responsibility of the Procurator General of the Central Procurator's Office and the Procurator's offices of the province, city, and county.* The Procurator General is appointed and may be removed by the Supreme People's Assembly. The Procurator General, in turn, appoints the procurators in the Central Office and in subsidiary offices at the regional, city, country, and other levels.**

*The Central Procurator's Office is accountable for its activities to the Supreme People's Assembly, the President of the Democratic People's Republic of Korea and the Central People's Committee.**** Pursuant to Articles 85 and 96 of the Code of Criminal Procedure, the procurator supervises criminal investigations under his jurisdiction.

C. The Criminal Procedure Code

1. Arrest and Investigation Procedure

According to the Criminal Procedure Code, criminal proceedings may be initiated on the basis of declarations from citizens or organizations, communications from institutions or

• Constitution of the Democratic People's Republic of Korea, Art. 143.

** Id., Art. 145.

*** Constitution of the Democratic People's Republic of Korea, Art. 146.

government officials, the confession of the perpetrator, as well as at the direction of a procurator, pretrial investigator, or court. If the declaration or communication establishes the elements of a criminal offense, a criminal investigation must be initiated, unless the procurator issues a reasoned decree refusing to initiate the criminal case.* Victims may also bring a civil suit, which can be considered in the same proceedings as the criminal charge.**

The Code specifies that investigations may be undertaken by commissioned officers of the army; pretrial investigators; and inspectors from governmental agencies for labor, finance, fire prevention, etc.*** These investigators have the right to arrest a person suspected of committing a crime.**** A procurator must exercise general supervision over any inquiry occurring in his jurisdiction.+ For serious offenses, the procurator must personally conduct the pretrial investigation.+ + Only inspectors of the Ministry of State Security, however, have authority to investigate crimes against state

* Code of Criminal Procedure, Art. 78.

** Id., Art. 12.

*** Id., Art. 79.

**** Code of Criminal Procedure, Art. 82.

+ Id., Art. 85.

+ + Id., Art. 86

sovereignty, including the crimes of engaging in an armed uprising, communicating with a foreign power for anti-state purposes, treason, desertion, crossing the border, espionage, terrorism, undermining state industry, sabotage, propaganda for the overthrow of the government, disseminating anti-state literature, and similar conduct.*

Article 6 of the Code of Criminal Procedure states: "No one shall be subjected to arrest or detention except in cases provided by laws and decrees and in accordance with the procedure established by laws and decrees." Any person who is arrested should be transferred to a procurator or pretrial investigator within 48 hours of apprehension.** Article 84 states: "The period of inquiry conducted by an agency of inquiry [including the police or Public Security Ministry] may not exceed 10 days." During the pretrial investigation the suspect and the victim have the right to interrogate witnesses or conduct expert examinations upon a showing of "significance for the case."***

Article 94 sets a two-month limit on the pretrial investigation, but also permits a one-month extension with the permission of the province procuracy, and additional extensions with the permission of the Procurator General. If the pretrial investigator finds sufficient evidence, the investigator is required to prepare a decree naming the accused and commencing the prosecution. The accused must be notified within 48 hours of that decree.****

* Id.; Penal Code, Arts. 65-81.

** Code of Criminal Procedure, Art. 83.

*** Id., Art. 91.

**** Id., Art. 100.

As noted, Article 108 provides: "In the course of interrogation of the accused, the pretrial investigator must not use any force, threats, or other similar measures in order to obtain his testimony or confession." Article 111 requires that, after the completion of the interrogation, the record be read to the accused and the accused given the right to demand additions and corrections in conformity with the testimony.

Article 141 permits searches only during the day, "except in instances not permitting delay." The official conducting the search may only remove articles "with direct relation to the case."

Before the consideration of a case in a judicial session, the court must determine whether the procurator correctly decided to bring the prosecution, whether a defense counsel must participate in the trial, and whether witnesses should be summoned. **

2. Trial and Appeal

Article 138 of the DPRK Constitution provides that court cases are heard in public and the accused is guaranteed the right of defense. Hearings may be closed to the public as stipulated by law.*

Article 16 of the Criminal Procedure Code specifies:

"The examination of cases in all courts shall be open. The courtroom may be cleared of the public for the entire session or for a part of it, upon a reasoned ruling of the court, only in cases either where it is necessary to protect state secrets, or where the publicity of judicial examination might be prejudi-

cial to the public morals, or where it is necessary to safeguard the personal secrets of a citizen."

Article 17 of the Criminal Procedure Code goes on to state that, even in the event that publicity is prohibited, "the judgment of courts shall in all cases be proclaimed publicly."

Article 194 of the Code of Criminal Procedure provides that the trial begins with the reading of the decision to bring charges and to compel the accused to stand trial. The accused must then be asked whether he admits the charges against him.

Article 223 of the Code of Criminal Procedure requires that the judgment be based exclusively on the evidence recorded in the file of the case and presented at the judicial session. Article 223 also establishes the burden of proof in criminal cases: the "judges shall evaluate evidence according to their own conviction based on the examination of the given case." The judgment of the court in most cases is by simple majority of the presiding judge and two lay assessors.*

Article 250 of the Code of Criminal Procedure provides that a judgment can be vacated on appeal only for issues of law (cassation), including: (1) the inadequacy of the inquiry or pretrial investigation, (2) a substantial violation of judicial procedure, (3) a violation or incorrect application of laws and decrees, or (4) the manifest injustice of the judgment.**

* Law on Court Organization, Arts. 17 (local and county court), 33 (provincial court), 44 (special courts); Code of Criminal Procedure, Art. 227.

** See also Law on Court Organization, Art. 18.

• Id., Art. 145.

• Law on Court Organization, Art. 27.