Han Kim and State Accountability for Torture and Unlawful Killing

This note assesses the implications of the D.C. Circuit Court case of Han Kim v. Democratic People's Republic of Korea, in which the court found the North Korean state responsible for the torture and unlawful killing of Kim Dong Shik, a South Korean missionary who was abducted by the North Korean government while in China. In particular, this note shows how the judgment breaks new ground by holding a state responsible for torture and unlawful killing based solely on general evidence of that country's human rights practices, without additional information about the fate of the victim himself. This note also discusses this case's implications for the plaintiffs themselves, and for other victims of North Korean human rights abuses.

I. Introduction

The international community has long struggled to figure out how to hold the North Korean regime responsible for its rampant commission of human rights abuses and crimes against humanity. Human rights activists and legal commentators have most commonly focused their attention on targeted human rights sanctions, the prospects of bringing the North Korean situation before the International Criminal Court, or thinking about transitional justice mechanisms in a post-unification Korea.[1] There has been far less attention given to domestic judicial accountability mechanisms. Yet, a string of Foreign Sovereign Immunity Act ("FSIA") cases in the US courts has shown the potential for domestic courts to hold some of the world's most brutal regimes accountable for their crimes, including North Korea's Kim regime.[2]

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[1] *See, e.g.,* Jung-Hoon Lee & Joe Phillips, *Drawing the Line: Combatting Atrocities in North Korea,* 39 Washington Q 61 (2016); TRANSITIONAL JUSTICE IN UNIFIED KOREA (Baek Buhm-Suk & Ruti Teitl eds., 2015)

[2] *See,* Massie v. Gov't of Democratic People's Republic of Korea, 592 F. Supp. 2d 57 (D.D.C. 2008) (holding North Korea responsible for torturing survivors of the 1968 U.S.S. Pueblo seizure); Calderon–Cardona v. Democratic People's Republic of Korea, 723 F.Supp.2d 441, 460–85 (D.P.R. 2010) (holding North Korea responsible for supporting the Japanese Red Army and Popular Front for the Liberation of Palestine in their 1972 attack on Lod Airport); Kaplan v. Hezbollah, 715 F. Supp. 2d 165, 167 (D.D.C. 2010) (finding North Korea and Iran liable for

This note will analyze the most important of the North Korean cases: *Han Kim v. Democratic People's Republic of Korea*.[3] The case has significance and interest beyond the immediate effect on the plaintiffs and North Korean human rights. Indeed, the D.C. Circuit's ruling shows the US federal court system at its most internationalist; citing international law, lowering the burden of proof for human rights violations, and disregarding sovereign immunity.[4] While it remains unclear whether the plaintiffs will ever be able to collect any of the money awarded them at court, the case will undoubtedly be an important precedent to hold states accountable for torture and unlawful killing in disappearance cases.

2. The Facts

Kim Dong Shik was born in 1947 in South Korea, but moved to Chicago as a young man, where he served for many years as pastor of the Chicago Evangelical Holiness Church.[5] During the 1980s, Kim became involved in humanitarian and religious work in China, and in 1993 he finally moved to China in order to serve the North Korean refugee community, by opening up shelters and a school for North Korean children and handicapped persons.[6] For North Korean escapees, life in China posed (and still poses) numerous challenges and dangers, as they faced deportation back to North Korea if caught, while the humanitarians who helped

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damages for providing material support and assistance to Hezbollah, who fired rockets into Israel, causing injuries).

[3] 950 F. Supp. 2d 29 (D.D.C. 2013), *reversed by* 774 F. 3d 1044 (D.C. Cir. 2014); 87 F. Supp. 3d 286 (D.D.C. 2015) (damages).

[4] Han Kim, 774 F.3d at 1049-51.

[5] First Amended Complaint at ¶ 13, Han Kim v. Democratic People's Republic of Korea, No. 109CV00648 (D.D.C., filed Nov. 24, 2009) (hereinafter, First Amended Complaint).

[6] *Id*. at ¶ 14-16.

them also ran considerable risks, including potential arrest and persecution by Chinese authorities.[7]

On January 16, 2000, Pastor Kim was abducted by North Korean agents while leaving a restaurant in Yanji, China (across the Yalu River from North Korea).[8] He has not been heard from since. However, one of the North Korean agents involved in his abduction was tried and convicted in South Korea for his role in multiple abductions, including that of Pastor Kim.[9] The facts of Kim's abduction were also reported by a Chinese newspaper.[10] While Kim's family delivered second-hand or third-hand reports that Kim had been imprisoned, tortured and killed, these reports were considered hearsay and did not play a role in the D.C. Circuit Court's decision.[11]

3 .The Lawsuit

In 2009, Pastor Kim's son (Han Kim) and brother (Yong Seok Kim) filed suit against the Democratic People's Republic of Korea ("DPRK") in the District of Columbia District Court for the torture and unlawful killing of Kim Dong Shik using the terrorism exception to judicial immunity under the FSIA.[12] Under this section, the US nationals may bring suit against foreign sovereigns "for personal

[7] *See,* Andrew Wolman, *Protection for Chinese National who have Provided Humanitarian Assistance to North Korean Escapees: Recent Developments in U.S. Immigration Law*, 7 N. KOR. REV. 22 (2011). *See also* Eric Y.J. Lee, *National and International Legal Concerns over the Recent North Korean Escapees,* 13 INT'L J. REFUGEE L. 142-52 (2001)

[8] First Amended Complaint, *supra* n. 5, at ¶ 20-21.

[9] Han Kim, 950 F. Supp. 2d at 35-6 (D.D.C. 2013).

[10] *Id*. at 37.

[11] First Amended Complaint, *supra* n. 5, at ¶ 27.

[12] 28 U.S.C. § 1605A(a)(1). The FSIA provides the only basis for U.S. courts to obtain jurisdiction over a foreign sovereign. Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 434 (1989).

injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act," if the foreign State is designated as a sponsor of terrorism.[13] Both Han Kim and Yong Seok Kim were the US nationals at the time of the abduction (Han Kim was a permanent resident, and Yong Seok Kim was a US citizen).[14] North Korea had, at the time, been designated a State sponsor of terrorism.[15]

Plaintiffs' primary hurdle, therefore, was evidentiary. They needed to supply "evidence satisfactory to the court" that Kim Dong Shik had indeed been tortured and unlawfully killed.[16] They attempted to fulfill this burden by submitting a considerable number of governmental and non-governmental human rights reports attesting to North Korea's brutal treatment of political prisoners,[17] which they supplemented with expert testimony from North Korean human rights experts David Hawk and Ernest Downs. Both Downs and Hawk testified that Kim was likely tortured and killed.[18] According to Downs, any foreigner abducted by the DPRK for political purposes would be given "exceptionally painful, brutal, and outrageous treatment" and Kim probably died as a result of his torture and malnutrition.[19]

Unsurprisingly, the DPRK did not respond to the plaintiffs' complaint, so the plaintiffs moved for default judgment after presenting their case. In response,

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[13] 28 U.S.C. § 1605(a)(7). FSIA adopts the definition of torture contained in section 3 of the Torture Victims Protection Act. 28 U.S.C. § 1604A(h)(7).

[14] Han Kim, 950 F. Supp. 2d at 41.

[15] North Korea was listed by the US as a state sponsor of terrorism in 1988. *See*, Public Notice 1048, U.S. Department of State, dated February 5, 1998, 53 FR 347701, 1988 WL 276528 (F.R.).

[16] Han Kim, 950 F. Supp. 2d at 34 (citing 28 U.S.C. § 1608(e)).

[17] This included Congressional resolutions, book excerpts, NGO reports, and US State Department human rights reports. *Id*. At 35.

[18] *Id*. at 37-39.

[19] *Id*. at 39-42.

the trial court ruled that the plaintiffs had failed to sustain a claim for torture or unlawful killing, primarily because they had presented no direct evidence of his torture or death, and no details about the type or severity of the torture suffered.[20] The court's decision relied largely on dicta from *Price v. Socialist People's Libyan Arab Jamahiriya* regarding the level of detail needed to satisfy the definition of torture.[21]

The plaintiffs then filed an interlocutory appeal to the D.C. Circuit Court. The DC Circuit Court reversed, holding that even absent direct evidence, the court should find a default judgment in favor of the plaintiff where there is compelling and admissible evidence that the "regime abducted the victim and that it routinely tortures and kills the people it abducts," as was the case in North Korea.[22] The judgment stressed the convincing evidence of North Korea's general pattern of rights abuses, citing specifically the 2014 UN Commission of Inquiry Report on Human Rights Abuses in the DPRK and the expert testimony of Hawks and Downs to sustain its findings on the normality of North Korean torture and killing of political prisoners.[23] According to the Circuit Court's judgment, a reliance on circumstantial evidence in cases involving disappearances was justified in part by Congress' purpose of holding State sponsors of terrorism responsible for their crimes, and in part by reference to the jurisprudence of the Inter-American Court

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[20] *Id*. at 42.

[21] *Id*. (citing *Price v. Socialist People's Libyan Arab Jamahiriya,* 294 F.3d 82 (D.C. Cir. 2002)). In *Price*, the D.C. Circuit noted that plaintiffs offered "no useful details about the nature of the kicking, clubbing, and beatings that plaintiffs allegedly suffered" and therefore there was "no way to determine from the present complaint the severity of plaintiffs' alleged beatings—including their frequency, duration, the parts of the body at which they were aimed, and the weapons used to carry them out—in order to ensure that they satisfy the TVPA's rigorous definition of torture." Price, 294 F.3d at 93.

[22] Han Kim, 774 F.3d at 1049.

[23] *Id*., at 1046 (citing U.N. Human Rights Council, *Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea,* U.N. Doc. A/HRC/25/CRP.1 (Feb. 7, 2014)).

of Human Rights ("IACtHR").[24] On remand, the D.C. District Court awarded the plaintiffs USD 15 million apiece in compensatory damages, and assessed an additional USD 300 million of punitive damages against North Korea.[25]

Throughout the case and appeal, the Kim family's legal representation was provided by the Israel Law Center (Shurat HaDin), a Tel Aviv-based public interest law firm. On first glance, this might seem odd because Shurat HaDin is, according to its website, "dedicated to the protection of the State of Israel" and "[going] on the legal offensive against Israel's enemies."[26] However, North Korea has supplied Hamas and Hezbollah with arms and training in the past, and has been accused of transferring ballistic missile technology to Iran and Syria, so it perhaps could be considered as an enemy of Israel.[27] In fact, the same firm won an earlier FSIA verdict against North Korea in a case about North Korean involvement in the 1972 Lod Airport massacre.[28] From a broader perspective, the case highlights the ideological diversity of the coalition against North Korean human rights abuses, ranging from Christian missionaries to Israeli nationalists to

[24] *Id.*, at 1049 (citing *Radilla–Pacheco v. Mexico*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter–Am. Ct. H.R. (ser.C) No. 209, ¶ 222 (Nov. 23, 2009) and *Velásquez–Rodriguez v. Honduras*, Merits, Judgment, Inter–Am. Ct. H.R. (ser.C) No. 4, ¶ 131 (July 29, 1988)).

[25] Han Kim, 87 F. Supp. 3d at 291.

[26] Shurat HaDin, http://israellawcenter.org/about/ (last visited on Nov. 23, 2016).

[27] Michael Freund, *The North Korean Threat to Israel*, JERUS. POST, Aug. 25, 2015, *available at* http://www.jpost.com/Opinion/Fundamentally-Freund-The-North-Korean-threat-to-Israel-413133 (last visited on Nov. 23, 2016); Yoko Kubota, *Israel Says Seized North Korean Arms were For Hamas, Hezollah*, REUTERS, May 12, 2010, available at http://www.reuters.com/article/us-israel-korea-north-idUSTRE64B18520100512 (last visited on Nov. 23, 2016). Shurat HaDin may also have been concerned with advancing the FSIA jurisprudence on responsibility of terrorist states. Currently, the only three states on the State Department list of terrorist sponsors are Sudan, Iran and Syria.

[28] Calderon–Cardona, *supra* note 2.

traditional human rights activists (US-based NGO Human Rights First submitted an *amicus curiae* brief in support of the Kim family's appeal).

4. Implementation

The D.C. Circuit's decision was a victory for the Kim family. However, they still must somehow retrieve the money that they were awarded. Any property of a State sponsor of terrorism that is frozen pursuant to lawful means is subject to execution or attachment in aid of a judgment under the terrorism exception to the FSIA,[29] and hundreds of millions of dollars have in fact been paid to various victims from frozen State assets in past cases.[30] The main obstacle for the Kim family, however, is that North Korea was taken off the list of terror sponsors in 2008. Also, a recent Second Circuit case stated that US-held assets are not available under the Terrorism Risk Insurance Act when the country was not designated at the time of the plaintiff's verdict.[31]

The plaintiffs' lawyers have therefore been looking abroad for satisfaction. In 2015, the Kims' lawyers filed claims in Mexican courts (Veracruz and Distrito Federal) in an attempt to attach the Mu Du Bong, a North Korean ship impounded by the Mexican government for violating the UN sanctions, in order to pay off the

[29] Victims of Trafficking and Violence Protection Act of 2000, 22 USC § 7100.

[30] Elizabeth Defeis, *Litigating Human Rights Abuses in United States Courts: Recent Developments*, 10 ILSA J. INT'L. & COMP. L. 319, 325 (2004). Plaintiffs have successfully collected awards as a result of FSIA lawsuits against Iran, Cuba, Iraq, Libya, and Syria. ORDE KITTRIE, LAWFARE: LAW AS A WEAPON OF WAR (2015).

[31] Calderon-Cardona v. Bank of New York Mellon, 770 F.3d 993 (2d Cir. 2014), *cert. denied*, 136. S. Ct. 893 (2016).

Kim family's judgment.[32] The Mexican courts rejected their pleas, however, and the Mexican government later sold the ship for scrap.[33] The plaintiffs' lawyers are continuing to search for North Korean property outside the US, however, including in Japan and elsewhere.[34]

For other victims of North Korean atrocities, however, the *Han Kim* ruling represents a bittersweet victory. As mentioned above, North Korea was removed from the list of State sponsors of terrorism in 2008, so that the FSIA lawsuits against it are no longer possible.[35] There is, however, considerable legislative pressure in the US Congress to reinstate North Korea as a terrorist State, which would have the effect of re-establishing an avenue for the FSIA litigation.[36]

5. Implications

[32] *Abogados buscan embargar al buque Mu Du Bong encallado en Tuxpan*, QUADRATÍN VERACRUZ, Aug. 20, 2015, *available at* https://veracruz.quadratin.com.mx/Abogados-buscan-embargar-al-buque-Mu-Du-Bong-encallado-en-Tuxpan/ (last visited on Nov. 23, 2016).

[33] Leo Byrne, *Mexico Declares N. Korean Ship Abandoned: Will Sell for Scrap*, N.K. NEWS, Apr. 22, 2016, *available at* https://www.nknews.org/2016/04/mexico-declares-n-korean-ship-abandoned-will-sell-for-scrap/ (last visited on Nov. 23, 2016).

[34] Telephone Interview with Avi Leitner, Attorney, Shurat HaDin (Nov. 23, 2016). In searching for money for the Cardona-Calderon judgment, Shurat HaDin even subpoenaed Dennis Rodman, who famously traveled to North Korea as a guest of Kim Jong Un, to see if he had information on North Korean assets stored overseas. Yonah Jeremy Bob, *Shurat HaDin v. former NBA Star Dennis Rodman?*, JERUS. POST, Mar. 7, 2013, *available at* http://www.jpost.com/International/Shurat-HaDin-vs-former-NBA-star-Dennis-Rodman (last visited on Nov. 23, 2016).

[35] North Korea was taken off the list as part of disarmament negotiations underway at the time, however these negotiations collapsed soon afterwards. Helene Cooper, U.S. Declares North Korea off Terror List, N.Y. Times, Oct. 12, 2008, *available at* http://www.nytimes.com/2008/10/13/world/asia/13terror.html (last visited on Nov. 23, 2016).

[36] *U.S. Lawmakers Push to have North Korea Reinstated on List of State Sponsors of Terrorism*, JAP. TIMES, June 17, 2016, *available at* http://www.japantimes.co.jp/news/2016/06/17/asia-pacific/u-s-lawmakers-push-north-korea-reinstated-list-state-sponsors-terrorism/ (last visited on Nov. 23, 2016).

Apart from its immediate effect on plaintiffs or other victims of North Korean abuses, the *Han Kim* judgment presents an innovative approach to evidentiary requirements for proving torture and unlawful killing. It was the first time that a US Circuit Court had held a country liable under the FSIA without any victim-specific evidence of torture or unlawful killing.[37] It was also a ground-breaking judgment at the international level. To date, international human rights tribunals and committees have taken a range of different approaches to the (very challenging) task of proving torture where the victim has been 'disappeared' and there is no witness testimony or physical evidence of torture. In the landmark case of *Velásquez–Rodriguez v. Honduras*, the IACtHR introduced two theories.[38] First, it relied on a State duty to ensure human rights, by stating that "subjecting a person to official, repressive bodies that practise torture and assassination with impunity is itself a breach of the duty to prevent violations of that right, even if that particular person is not tortured, or if those facts cannot be proven in a concrete case."[39] Next, the IACtHR held that "the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment," and thus a violation of Article 5 of the American Convention of Human Rights.[40] The Human Rights Committee has similarly stated that a

[37] The closest similar verdict was the district court judgment in Kilburn v. Islamic Republic of Iran, 699 F. Supp. 2d 136, 152 (D.D.C. 2010) (finding torture of a disappeared hostage based on evidence that the three other hostages held by Hezbollah at the same time were tortured).

[38] Merits, Judgment, Inter–Am. Ct. H.R. (ser.C) No. 4, (July 29, 1988)).

[39] *Id*, at ¶ 175

[40] *Id*. at ¶ 187. This approach has also been endorsed by the U.N. General Assembly in the Declaration on the Protection of all Persons from Enforced Disappearance, G.A. Res. 47/133, art. 1, U.N. Doc. A/RES/47/133 (Dec. 18, 1992) ("Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of … the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.").

disappearance is inherently linked to a violation of Article 7 of the ICCPR.[41] By contrast, the European Court of Human Rights ("ECHR") has generally rejected allegations of torture of a disappeared person if there is no direct evidence,[42] while the Committee against Torture has yet to establish a clear rule regarding which side has the burden of presenting evidence of torture in disappearance cases.[43]

So far, however, none of these tribunals or committees have directly asserted that the commission of acts of torture can be proved solely with evidence about the routine use of torture in a particular country, absent any evidence of its use against the concerned individual. The D.C. Circuit's *Han Kim* judgment thus pushes the envelope, by allowing plaintiffs to fulfill their burden of proof of torture without direct evidence of the fate of the disappeared individual.

The D.C. Circuit's judgment that unlawful killing can be proved solely with circumstantial evidence is likewise innovative. In disappearance cases, the IACtHR and ECHR have commonly found that a disappeared individual had been unlawfully killed based upon the passing of time since s/he was last heard from.[44]

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[41] Mojica v. Dominican Republic, Communication No. 449/1991, ¶ 5.7, U.N. Doc. CCPR/C/51/D/449/1991 (1994) ("Aware of the nature of enforced or involuntary disappearances in many countries, the Committee feels confident to conclude that the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7.")

[42] Ophelia Claude, *A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence,* 5 INTERCULTURAL HUM. RTS. L. REV. 407, 413 (2010). *See, eg,* Çiçek v. Turkey, European Ct. of H.R, Judgment of Feb. 27, 2001, Application No. 25704/94, ¶ 155. ("where an apparent forced disappearance is characterised by total lack of information, whether the person is alive or dead or the treatment which she or he may have suffered can only be a matter of speculation.")

[43] Gabriela Echevarria, *Challenges to Proving Cases of Torture before the Committee Against Torture: Opening Remarks,* 20(4) HUM. RTS. BRIEF, 33, 34 (2013).

[44] Velásquez–Rodriguez, *supra* note 38 (IACtHR finds state liable for killing when over seven year since victim last seen); Timurtas v. Turkey, European Ct. of H.R, Judgment of 13 June 2000, Application No. 23531/94 (ECHR finds state liable for killing when six and one-half years had passed since the victim was seen); Taous Djebbar and Saadi Chihoub v. Algeria, Communication No. 1811/2008, U.N. Doc. CCPR/C/103/D/1811/2008 (2012) (Human Rights Committee finds violation of right to life when it was 15 years since victims last seen alive).

The Human Rights Committee has in some cases done likewise,[45] or has chosen to avoid the question, where the petitioner does not ask for such a ruling, perhaps out of hope that the victim is still alive.[46] Where *Han Kim* differs, however, is that the D.C. Circuit does not rest its decision on the passing of time. Rather, it holds that Kim Dong Shik was unlawfully killed because the DPRK reportedly kills political prisoners unlawfully.[47] This opens up new opportunities for families of the disappeared to receive remedies at an earlier date than previously would have been possible.

There are certainly reasons why the D.C. Circuit may have embraced an evidentiary requirement that is less demanding than the major regional human rights tribunals. Most significantly, the standard of proof in the FSIA cases is quite vague, i.e., cases must simply be decided according to "evidence satisfactory to the court." In contrast, the ECHR uses a "beyond a reasonable doubt" standard for torture cases,[48] as does the IACtHR,[49] while, for unlawful death cases, the courts are sometimes seen as requiring a lower standard of proof.[50] However, other

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[45] See, eg, Mojica, *supra* note 41; Bousroual v. Algeria, Communication No. 992/01, UN Doc. CCPR/C/86/992/2001 (2006).

[46] Sarma v. Sri Lanka, Communication No 950/2000, ¶ 9.6, UN Doc CCPR/C/78/D/950/2000, (2003).

[47] Han Kim, 774 F.3d at 1050.

[48] Marthe Lot Vermeulen, *Evidence Revisited: A Case for Freedom from Torture Claims in 'Disappearance' Cases*, 4 MEMORIAL: EHRAC BULLETIN 6, 6 (2005) ("So far, the European Court has found a violation of freedom from torture or other ill-treatment only when the evidence showed 'beyond reasonable doubt', through several consistent eye-witness accounts, that such a violation occurred"). See also, Gelayev v. Russia, European Ct. of H.R., Judgment of July 15, 2010, Application No. 20216/07, ¶ 122.

[49] Vermeulen, *supra* note 48, at 6 ("[I]n the Inter-American Court of Human Rights and the European Court of Human Rights, the common standard of proof for finding a violation of the freedom from torture is that of 'beyond reasonable doubt'")

[50] *Id*. ("the European Court has edged away from the standard of proof 'beyond reasonable doubt' in cases of the right to life"); Gobind Singh Sethi, *The European Court of Human Rights' Jurisprudence on Issues of Forced Disappearances*, 8(3) HUM. RTS. BRIEF 29, 30 (2001) ("the

organs, especially at the UN, invoke a less strict "preponderance of the evidence" standard.[51] The D.C. Circuit's judgment may also have been influenced by North Korea's peculiarly poor human rights reputation, combined with the country's opacity. Without permissive evidentiary requirements, complainants would often have no chance of obtaining direct evidence of the regime's torture or killings.

6. Conclusion

Human rights activists have long struggled to convince tribunals that disappeared individuals have been tortured or killed. The D.C. Circuit Court's decision in *Han Kim* opens up a new path, based exclusively on evidence of the customary practices of the country at issue. The case will be cited both inside and outside of the US context by plaintiffs who might lack first-hand evidence, but still want to hold States accountable not only for disappearances (as a separate human rights violation), but also for the torture and murder of disappeared individuals. From the perspective of North Korea-watchers, the most obvious implication of this case is that it increases the relevance of the ongoing congressional movement to reinstate North Korea on the State Department list of Foreign Sponsors of Terrorism. While the US has already implemented a range of State sanctions to punish North Korea for its human rights violations and pursuit of nuclear weapons, a State Department designation would allow individuals to also hold the North Korean regime accountable.

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evidentiary burden to establish a violation of the right to life is less than proof beyond a reasonable doubt, though the IACHR has not articulated a particular standard for this lesser burden")

[51] Juan Méndez, *Challenges to Proving Cases of Torture before the Committee Against Torture: Remarks,* 20(4) HUM. RTS. BRIEF, 39, 42 (2013).