

NORTH KOREA:

A CASE TO ANSWER

A CALL TO ACT



**CHRISTIAN
SOLIDARITY
WORLDWIDE**
VOICE FOR THE VOICELESS

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Christian Solidarity Worldwide (CSW) is a human rights organisation which specialises in religious freedom, works on behalf of those persecuted for their Christian beliefs and promotes religious liberty for all. Exposing human rights violations in over 30 countries, CSW raises awareness and lobbies governments and key inter-governmental bodies including the European Union and United Nations.

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The urgent need to respond to mass
killings, arbitrary imprisonment, torture and
related international crimes

Acknowledgements

This report is dedicated to those who continue to suffer the abuses documented herein. CSW wishes to honour the many survivors and witnesses who have courageously testified about the abuses that they suffered in order to protect others from enduring the same fate. We particularly wish to thank Kang Cheol-Hwan, Ahn Myeong-Cheol, Kim Young-Soon, Kim Tae-Jin, Lee Yeong-Guk, Lee Min-Bok, Kim Sung-Min, Kim Yong and Lee Yeon-Sun.

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“ Regrettably, it is the ordinary people of the Democratic People’s Republic of Korea who suffer at the hands of the authorities and who bear the brunt of the myriad of abuses, which are both systematic and pervasive.¹ ”

Professor Vitit Muntarbhorn
United Nations Special Rapporteur on the situation of
human rights in the Democratic People’s Republic of Korea

“ If international justice is alive and if a global conscience exists, then we can no longer turn a blind eye to the devastation in North Korea. Not only in the prison camps but all throughout North Korea people are suffering through torture, public execution, and deaths caused by mass starvation. My parents, siblings and friends, together with the majority of the people living in North Korea today, are all hoping for the international community to release them from the tyranny and starvation being suffered under the North Korean regime. ”

Kang Cheol-Hwan
Former child prisoner at Yodeok Political Prison Camp

¹ Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, submitted to the UN Human Rights Council, UN Doc. A/HRC/4/15, 7 February 2007, para. 70.

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Note on Translations and Romanisation

The English translations of Korean terms used in this report have been chosen after careful consideration of the existing translations of each term and also the authentic Korean meaning. There are inconsistencies in the existing literature regarding Korean terms due to the difficulty of translating the terms precisely while simultaneously conveying the meaning in an accurate manner to an English-speaking audience. Furthermore, the terms used by the North Korean regime can be misleading. Some of the existing translations have opted for more descriptive translations. The terminology chosen for this report has sought to keep as close to the authentic Korean as possible. However, where that translation could be deemed misleading, a more descriptive term has been used.

Inconsistencies also lie in the romanisation of the Korean words. This report uses the guidelines outlined by the Ministry of Culture and Tourism in July 2000.² However, where this report uses names of people and places that are already well-known and widely published, such as Kim Jong-Il, Kim Il-Sung and Pyongyang, and common family surnames such as Kim, Kang and Lee, the transliterations have been maintained in order to avoid confusion.

Glossary

Korean	Korean romanisation	English translation
집결소	<i>Jipkyeol-so</i>	Detention centre
노동단련대	<i>Rodong-dallyeon-dae</i>	Forced labour facility
교화소	<i>Kyohwa-so</i>	Re-education prison
관리소	<i>Kwanlli-so</i>	Political prison camp
혁명화대상구역	<i>Hyeokmyeonghwadaesang-guyeok</i>	Revolutionising re-education zone
특별독재대상구역	<i>Teukbyeoldokjaedaesang-guyeok</i>	Absolute control zone
국가안전보위부	<i>Gukga-anjeon-bowi-bu</i>	State Security Protection Agency
최고인민회의	<i>Choe-go-inmin-hoe-ui</i>	Supreme People's Assembly
국방위원회	<i>Gukbang-wiwon-hoe</i>	National Defence Commission

² Ministry of Culture and Tourism, *The Revised Romanization of Korean*; available on their website. Please see www.mct.go.kr/english/roman/roman.jsp#04 for more information.

Witness Profiles

The following are profiles of North Koreans quoted in the report who can be safely referenced. A number of witnesses' profiles are omitted for protection of the individual and their family. Where a pseudonym has been used, this is indicated by the symbol † after the name.

Ahn Myeong-Cheol was a former guard at political prison camps No. 11, 13, 22 and 26 between 1987 and 1994. He defected from duty in September 1994 and arrived in Seoul in October 1994.

Hwang Jang-Yop was the Secretary of the Korean Workers' Party, the architect of *Juche* ideology and a confidant of Kim Il-Sung. He defected to South Korea in April 1997. He is now President of the North Korean Democratization Alliance.

Kang Cheol-Hwan was taken, with his family, to Yodeok Political Prison Camp in 1977 when he was nine years old after his grandfather was accused of a political crime. He was released ten years later. He arrived in South Korea in 1992. He is co-founder of NKGULAG and works as a journalist at the *Chosun Ilbo*.

Kim Bok-Sun† escaped to China for the first time in the late 1990s. She was arrested and returned to North Korea where she was detained. She crossed the border to China again later in the same year and is now settled in South Korea.

Kim Sung-Min was a captain in the North Korean army for over fifteen years. He escaped to China in 1995 where he was caught and returned to North Korea. He was detained in February 1996 in Onseong District. He escaped during transfer to another detention centre and fled to China. He defected to South Korea in 1999. He is now Director of Free North Korea Radio.

Kim Tae-Jin first escaped to China in 1986. After sixteen months, he was returned to North Korea where he was interrogated for eight months. He was imprisoned in Yodeok Political Prison Camp for four and a half years. He arrived in South Korea in June 2001.

Kim Yong was arrested in May 1993 and interrogated for three months at Maram detention facility in Yongseong, Pyongyang City, and then at Munsu detention facility for fifteen days. He was imprisoned at No. 14 Political Prison Camp in 1993 and was later transferred to No. 18 Political Prison Camp. He escaped in 1998 and arrived in South Korea in 1999.

Kim Young-Soon was sent to Yodeok Political Prison Camp with her parents and four children in 1970. She was imprisoned for eight years. She arrived in South Korea in November 2003.

Lee Jin-Taek† was arrested while trying to leave North Korea with his family in the late 1990s. He escaped, left the country again and reached South Korea in 2000.

Lee Mi-Suk† was twice repatriated from China and sent to North Pyeongan Provincial Police Detention Centre in South Sinuiju. She escaped again and arrived in South Korea in March 2002.

Lee Min-Bok first left North Korea in November 1990, but was caught and repatriated almost immediately upon his arrival in China. He was detained in a police detention centre in Hyesan City for three months. He was released in February 1991 and left for China in the following June. He arrived in South Korea in February 1995.

Lee Yeon-Sun is the wife of Pastor Ahn Seung-Un, who was abducted by North Korean agents from China on 9 July 1995. He remains in North Korea and she has not seen him since. They have three children.

Lee Yeong-Guk was a former bodyguard of Kim Jong-Il. He became disillusioned after leaving his position and escaped to China in October 1994. He was tricked into entering the North Korean embassy and repatriated. He was imprisoned in Yodeok Political Prison Camp from April 1995 to 1999. He reached South Korea in May 2000.

Park Yeong-Cheol† was detained in North Korea for crossing the border to China in the late 1990s. He left the country again later in the same year.

Executive Summary

Action on North Korea is urgently needed. There is a glaring disparity between the scale and seriousness of human rights violations and the limited and largely ineffectual response of the international community. The Government of North Korea (Democratic People's Republic of Korea)³ has succeeded in closing off the country from outside scrutiny. The population has been prevented from speaking out for fear of reprisals against them or their relatives, the exactions including harassment, camp internment, torture and extrajudicial killings.

In spite of these constraints, North Koreans who have managed to escape the regime are speaking out and calling for an end to the abuses and for justice. Video footage smuggled out of the country provides further insight into a disturbing picture of serious human rights violations amounting to crimes under international law. In the absence of any realistic prospect for justice inside North Korea in the immediate term and in the light of North Korea's recalcitrance in engaging with international bodies on human rights concerns, victims' calls for action and justice have been virtually ignored. It is time for the international community, and in particular the United Nations, to respond effectively to bring about an end to these ongoing serious violations and secure justice for the people of North Korea.

One of the main reasons for the lack of international action is the difficulty posed by North Korea's isolation. In particular, there is the challenge of corroborating the witness statements of victims, former officials and independent witnesses, some of which are inevitably anecdotal, as well as the challenge of confirming pictorial evidence. However, eyewitness testimonies from victims, guards, defectors and other witnesses contained in a series of reports published by international and Korean human rights groups as well as the United Nations are sufficiently detailed and consistent to allow for the conclusion on a *prima facie* basis that serious violations have been committed in North Korea, and are ongoing.

This report considers the available evidence, and concludes that there is a *prima facie* case for the commission of crimes against humanity, namely murder, extermination, enslavement/forced labour, forcible transfer of population, arbitrary imprisonment, torture, persecution, enforced disappearance of persons, other inhumane acts and, perhaps, rape and sexual violence. It also examines the possibility of genocide and concludes that there are indicators of genocide against religious groups, specifically Christians, implemented in particular in the 1950s and 1960s. The strictly hierarchical system of government and the information available about decision-making in North Korea suggests that the political leadership, and in particular Kim Jong-Il, is responsible for the commission of such crimes.

Systematic repression operates throughout North Korea at all levels of society. A strict culture of surveillance and propaganda curtails any freedom of expression, in particular openly-expressed criticism of the regime. This level of control is enforced by the harsh punishments meted out to those considered 'politically hostile' and their families, in a policy whereby three generations of an offender's family are also punished for the offender's acts. North Korea maintains a large prison system, mainly for those labelled as 'politically hostile', including religious believers. Prisoners are taken to political prison camps without proper arrest processes or access to judicial procedures and are imprisoned without access to the outside world. In the camps, prisoners are held in inhuman conditions in a state of near-starvation. They are forced to carry out hard labour and are tortured and punished with severe beatings and other forms of cruel, inhuman or degrading treatment for minor transgressions, often completely arbitrarily. According to calculations based on first-hand testimony, hundreds of thousands of prisoners have died, some as a result of summary executions, others as a result of the inhuman prison conditions. According to various assessments, the total number of victims of the political prison camps may have even reached the million mark.⁴

³ The use of 'North Korea' rather than 'Democratic People's Republic of Korea' in this report is due to the unwieldy nature of the latter, particularly when used repeatedly or as an adjective. The choice does not indicate any political or ideological position.

⁴ See section 5.3 below.

While these figures are by necessity imprecise given the current situation and access, they do underline the need for an investigation into the scale and nature of abuses occurring in North Korea. Government forces have also executed innumerable North Koreans outside the prison system in flagrant violation of fair trial standards.

Those who have fled to China and been caught are subjected to ill-treatment in detention centres. There are significant numbers of reports that women who have come back pregnant have been subjected to forced abortion or had their babies killed after birth.

The Government of North Korea has also contributed to and aggravated large-scale famine by preventing large parts of the population from accessing food, by failing to spend available money on alleviating suffering and by preventing famine-coping mechanisms.

Over the last decades, North Korean agents have abducted large numbers of foreign nationals. Most cases involve South Koreans and Japanese, but a number of nationalities are involved and various cases involve abductions from Europe. Significant numbers continue to be kept in North Korea against their will and the fate of many remains unknown.

Intelligence agencies, especially in South Korea, are known to have a wealth of additional information, which has been accumulated by debriefing North Koreans arriving in their territory. However, they do not show any inclination to use or share this evidence for justice purposes. It is clear that further evidence is needed to prove the alleged crimes and to establish individual liability, a question ultimately to be determined by judicial bodies. However, this issue of evidence will continue to pose a serious challenge for as long as the many potential witnesses inside North Korea remain unable to testify, and for as long as the country itself, including the scenes of the reported crimes, remains inaccessible to independent bodies.

The serious crimes under international law detailed in this report do not only entail state responsibility and individual criminal liability on the part of those directly responsible and those in positions of command. They also entail obligations for other international actors. States have a responsibility under both treaty and customary international law to prevent and punish international crimes. This includes responsibility to investigate with a view to prosecuting and punishing (or extraditing) those accused of international crimes and to cooperate in efforts aimed at preventing recurrence.

The United Nations has responsibility to take steps to prevent and suppress international crimes. The UN Charter entrusts the organisation with the task of maintaining international peace and security and promoting human rights. Following the UN's acknowledgement of its failure to respond appropriately to instances of genocide and other atrocities, in particular in Srebrenica and Rwanda, UN bodies have repeatedly stressed the UN's responsibility to act to prevent serious violations amounting to international crimes. The UN Security Council has emphasised its readiness to respond to serious violations and has taken measures under Chapter VII, including individual sanctions, setting up commissions of inquiry and referring the Darfur situation to the International Criminal Court (ICC). The Security Council has expressly affirmed the 'responsibility to protect' according to which the United Nations has the responsibility 'to help to protect populations' from international crimes, in particular by taking 'timely and decisive action' where 'national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.⁵

In the case of North Korea, a growing body of evidence points to the ongoing commission of a range of crimes as 'state crimes'. It is manifestly evident that the national authorities are failing to protect their population from international crimes, because they are the very authorities and persons responsible for such crimes. There can be little doubt that this is one of the situations for which the 'responsibility to protect' was envisaged.

⁵ *World Summit Outcome*, resolution adopted by the General Assembly, UN Doc. A/RES/60/1, 24 October 2005, para. 139, confirmed in Security Council resolution 1674 (2006).

The UN General Assembly has already condemned human rights violations in North Korea, following earlier resolutions by the Commission on Human Rights and reports by the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea. Given the Government of North Korea's refusal to cooperate with, or even recognise the mandate of, the Special Rapporteur, it is time for all relevant UN bodies, in particular the Security Council, to take effective action to protect the North Korean population from the continued perpetration of international crimes. In the light of past failings to prevent serious international crimes, it is essential that the UN take action in the face of such open recalcitrance so as not to render itself ineffective and powerless.

The UN Security Council is already considering the situation in the country, having responded to North Korea's missile and nuclear tests in 2006 with resolutions and sanctions. However, a narrow focus on military threats ignores the threat to international peace and security emanating from the political system of repression and the dire human rights situation in North Korea and overlooks the fact that the system of repression in North Korea enables such threats to be made without opposition. In the light of the strong *prima facie* case that international crimes have been committed in North Korea, the United Nations, including the Security Council, should, in addition to taking other steps towards ending such violations, set up an international commission of inquiry. Such a commission needs to be vested with a strong mandate and should be tasked with collecting and examining evidence to determine the exact nature and scale of violations, as well as recommending what further action should be taken in order to ensure protection, justice and accountability.

I. Introduction

While North Korea has been the focus of increased international attention over the threat posed by its nuclear weapons programme, little concern has been demonstrated over the severe suffering that it is currently imposing on its own population. There has been little international action to bring an effective end to, and ensure justice for, the serious human rights violations that are being committed in North Korea, violations that amount to crimes under international law. These violations have been the cause of extreme suffering in North Korea over many decades and continue to be inflicted upon its people on a devastating scale.

In light of these exceptionally grave circumstances Christian Solidarity Worldwide (CSW) commissioned REDRESS to conduct an expert legal assessment of the violations in the context of international criminal law. The assessment concludes, and this report presents, that there is a *prima facie* case that crimes against humanity are being perpetrated in North Korea. It also identifies indicators of genocide against religious groups, specifically Christians. The analysis focuses on crimes committed in the prison and punishment system because it is at the core of repression and has been the locus of systematic and egregious violations. It also considers the practice of abductions of foreign nationals because of its international dimensions. The focus of this report is without prejudice to the legal qualification of serious violations known to have been committed in North Korea, such as a series of violations committed in the course of the famine, which may amount to crimes against humanity.

The report relies primarily on eyewitness accounts and extensive investigation and research carried out by CSW. Over the past seven years, CSW has conducted interviews on human rights in North Korea with over 80 North Koreans in ten countries in three continents. Interviews were carried out in north-east Asia, south-east Asia, South Korea, Japan, Europe and North America. Those interviewed include both individuals who have been imprisoned and also those who have been responsible for imprisonment and torture. Interviewees were specially selected for their specific insight and knowledge in these areas. In analysing the evidence, medical examination, psychiatric analysis and expert medical advice have been used. In conjunction with these interviews, CSW has worked with and talked to numerous individuals and organisations working with North Koreans, as well as diplomatic staff and those who have worked inside the country. These findings complement and correlate with the existing evidential material documenting the severe abuses of human rights in North Korea. The presentation of the situation in North Korea that follows in this report expresses the situation as represented by escapees during these in-depth interviews and in extensive consultations with agencies and experts involved in North Korea.

This report also builds on United Nations findings on human rights in North Korea to date.⁶ The UN Commission on Human Rights appointed a Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea in 2004. Though denied access to the country, the Special Rapporteur has nonetheless been in a position to collect evidence of human rights violations, which has now reached the UN General Assembly. In its second resolution on North Korea in 2006, the General Assembly requested the Secretary-General to submit a comprehensive report on the situation in North Korea.

To date, states and UN bodies alike have sought to engage with North Korea.⁷ Engagement continues to be important. However, there is also a need for UN bodies to deal with the question of how to

⁶ UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/RES/61/174, 19 December 2006; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/61/349, 15 September 2006; UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/60/173, 16 December 2005; *Report of the Special Rapporteur on the Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. E/CN.4/2006/35, 23 January 2006, pp. 7-9; *Situation of human rights in the Democratic People's Republic of Korea: Note by the Secretary-General*, UN Doc. A/60/306, 29 August 2005, p. 2; UN Commission on Human Rights resolution, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. E/CN.4/2005/L.30, 11 April 2005; *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Democratic People's Republic of Korea*, UN Doc. E/C.12/1/Add.95, 12 December 2003; Commission on Human Rights resolution, *Situation of human rights in the Democratic People's Republic of Korea* UN Doc. E/CN.4/RES/2003/10, 16 April 2003; *Concluding Observations of the Human Rights Committee: Democratic People's Republic of Korea*, UN Doc. CCPR/CO/72/PRK, 27 August 2001; *Situation of human rights in the Democratic People's Republic of Korea: Sub-Commission Resolution 1998/2*, UN Doc. E/CN.4/SUB.2/RES/1998/2, 19 August 1998; UN Commission on Human Rights, *Situation of human rights in the Democratic People's Republic of Korea: Sub-Commission Resolution 1997/3*, UN Doc. E/CN.4/SUB.2/RES/1997/3, 21 August 1997.

⁷ Engagement, at least as a first step, is also the thrust of the recently published report by DLA Piper and the U.S. Committee for Human Rights in North Korea, *Failure to Protect*, which examines the commission of crimes against humanity in North Korea in the broader context of other factors that trigger the responsibility of the Security Council to act. DLA Piper and U.S. Committee for Human Rights in North Korea, *Failure to Protect, A Call for the UN Security Council to Act in North Korea*, 2006.

prevent further international crimes and to ensure justice, in particular in view of the failure of North Korea to engage to date. The present report not only examines what violations and international crimes have been committed based on available *prima facie* evidence; it also specifically considers the question of addressing crimes against humanity from an international criminal justice perspective, not least as a means to deter or stop further violations, in particular by examining the recent experience of commissions of inquiry and international or internationalised tribunals.

This report makes a preliminary assessment that shows the need for further action. It does not purport to replace the work of human rights bodies or criminal courts; these bodies and courts will ultimately be responsible for making a determination as to whether the evidence allows for the conclusion that human rights violations and/or international crimes have been committed for which the state or particular individual(s) bear responsibility.

This report:

- Provides a factual background, including an assessment of available evidence;
- Analyses the *prima facie* basis for the perpetration of international crimes, in particular crimes against humanity and genocide, focusing on the camp and prison system as the main mechanism for violations and considering the practice of abductions because of its international dimension;
- Identifies the responsibilities of states and the United Nations and examines avenues that may be pursued to address international crimes in the North Korean context, both *vis-à-vis* the state and *vis-à-vis* individuals (state officials). The analysis focuses on what kind of remedy the various avenues can offer, how appropriate the respective remedies are given the nature of the violations, and how feasible they are to pursue;
- Recommends steps to be taken by various UN bodies, in particular the UN Security Council, states and civil society with a view to stopping further violations and holding the state of North Korea and individual perpetrators responsible.

The report is aimed at states and regional and international bodies, in particular the UN Security Council, as well as at civil society worldwide, with a view to urging them to join efforts for effective action against the system of repression marked by such violations as mass murder, persecution, enforced disappearances, torture and forced labour that amount to crimes against humanity. It is imperative that states, organisations and individuals around the world do everything possible to stop these violations and to ensure justice for the victims.

2. Gathering Momentum: Evidence and Action

For many decades the situation in North Korea remained shrouded in secrecy, with isolation and harsh penalties preventing the outflow of information. The punishment of innocent family members for criticisms voiced by relatives abroad has been used to curtail witness testimony of abuses in North Korea. While these dynamics are still true today, the exodus of significant numbers of North Koreans in response to the severe food shortages has greatly increased the information available. There are now more than ten thousand North Koreans who have reached South Korea, with hundreds of thousands having crossed over into China. Significant numbers of such defectors have spoken out about various forms of human rights abuses in different contexts.

Even before the famine prompted the increased outflow of North Koreans and thus information, a number of defectors had reached the outside world and testified to very severe human rights abuses taking place in North Korea. Of particular importance are those who survived the prison system, especially the political prison camps.

North Korean human rights first took on an international face with the imprisonment of two committed communists, Ali Lameda from Venezuela and Jacques Sedillot from France, who had been working with the North Korean Ministry of Foreign Affairs. After many years, following a campaign by Amnesty International, the two men, who had both been sentenced to terms of twenty years, were released in 1974. Lameda returned to Venezuela and his account of his imprisonment was published by Amnesty International.⁸ Sedillot was released a year later, in 1975, only to die in Pyongyang in January 1976 from health problems caused by his imprisonment.⁹

In December 1988, Minnesota Lawyers International and Asia Watch published a report entitled *Human Rights in the Democratic People's Republic of Korea (North Korea)*, an important milestone in international attention on human rights in North Korea.¹⁰

A number of key defector accounts emerged in the mid 1990s. Kang Cheol-Hwan and Ahn Hyeok, both of whom were imprisoned in Yodeok Political Prison Camp, arrived in South Korea in August 1992 and published a book entitled *The Festival of a Great King I-III*¹¹ in 1993. Ahn Myeong-Cheol, a former guard at four absolute control zone political prison camps, defected from North Korea in 1994 and published his account of his experiences, *They are Crying for Help*, in 1995.¹² Further testimonies from a growing number of witnesses have emerged since that time.

With the onset of famine in the 1990s, increased numbers of North Koreans escaped, with significant numbers reaching countries where they could testify to their experiences. Thus the depth and breadth of defector testimony on human rights has greatly expanded in the last decade.

The growing number of defectors and testimonies has naturally led to increased interest and attention. South Korean agencies have carefully gathered and published defectors' testimonies,¹³ and various international conferences have made a wealth of information and testimony available to an international audience.¹⁴

Of particular importance is the annual *White Paper on Human Rights in North Korea*, published by the Korea Institute for National Unification (hereafter KINU) since 1996.¹⁵ KINU is a government-funded think tank which bases its research and writings on extensive interviews with North Koreans arriving in South Korea. It reports with particular authority as it has access to information gathered by national intelligence agencies and by direct observation through its visits to North Korea.

⁸ Ali Lameda, *A Personal Account of the Experience of a Prisoner of Conscience in the Democratic People's Republic of Korea*, Amnesty International, 1979, AI Index: ASA 24/02/79.

⁹ Yoon Hyun, "'The Gulag Archipelago': North Korea, Past and Present", *East Asian Review*, March 1998, p. 41, p. 42.

¹⁰ Minnesota Lawyers International and Asia Watch, *Human Rights in the Democratic People's Republic of Korea (North Korea)*, Minnesota Lawyers International Human Rights Committee, December 1988.

¹¹ 강철환 & 안혁, *대왕의 제전*, 1993 (Kang Cheol-Hwan and Ahn Hyeok, *The Festival of a Great King*; available in Korean only).

¹² 안명철, *그들이 울고있다*, 도서출판 천지미디어, 1995 (Ahn Myeong-Cheol, *They are crying for help*; Korean version available only). See also Ahn Myeong-Cheol, *Political Prisoners' camps in North Korea: the testimony of Ahn Myeong-Cheol, an ex-guard at a political prisoners' camp in North Korea*, Seoul: Center for the Advancement of North Korean Human Rights, 1995.

¹³ Citizens' Alliance, *Life and Human Rights in North Korea*, Quarterly Journals (since August 1996); see <http://www.nkhumanrights.or.kr>; Citizens' Alliance, *Prisoners of Their Own Country: North Korea in the Eyes of the Witnesses*, March 2005; NKNET, KEYS Quarterly (From March 2000 to December 2004); see <http://www.dailynk.com/korean/keys/2004/lastkeys.php>.

¹⁴ For example, Citizens' Alliance has hosted seven International Conferences to date (Dec 1999, Dec 2000, Feb 2002, March 2003, Feb-March 2004, Feb 2005 and May 2006). Conference materials and extensive resources are available at <http://www.nkhumanrights.or.kr>.

¹⁵ Korea Institute of National Unification (hereafter KINU), *White Paper on Human Rights in North Korea (1996-2006)*.

The National Human Rights Commission of Korea has had a North Korean Human Rights Research Team since 2003. In 2005 they published their own findings following in-depth interviews with 50 defectors and questionnaire surveys with a further 100 defectors.¹⁶ The human rights issue has also been the subject of analysis by the Korean Bar Association, which produced its own *White Paper on North Korean Human Rights* in September 2006.¹⁷

The work of the Database Centre for North Korean Human Rights (hereafter NKDB) is particularly significant. NKDB specialises in systematically collecting and collating evidence and inputting the information into a sophisticated human rights database program.¹⁸ This detailed and systematic information-gathering and analysis has obvious importance for evidential matters. NKDB plans to publish its findings in a report analysing information by abuse, location and time period.

North Korean defectors are now exercising a greater voice by setting up their own agencies, such as the Democracy Network against North Korean Gulag (hereafter NKGulag). Some defectors, such as Kang Cheol-Hwan¹⁹ and Lee Yeong-Guk,²⁰ have also published accounts of their prison experiences. The book *Are They Telling Us the Truth? – Brutality Beyond Belief* records 115 incidents selected from five witness accounts, themed ‘to demonstrate the systematic and comprehensive range of human rights violations in the North Korean prison settlements’.²¹

In 2004 NKGulag published 611 names of ‘inmates and missing people, who had been imprisoned without any notice’ in North Korea, according to known defectors. The information provided includes the place, year of imprisonment, reason for imprisonment and last known status of each person.²² NKGulag also secured a list of the names and details of 121 political prisoners imprisoned at the singles zone of Seorimchon, Yodeok Political Prisoner Camp between 1999 and 2003.²³

In recent years the international community has become increasingly aware of the existence of such information. David Hawk’s report, *The Hidden Gulag: Exposing North Korea’s Prison Camps*, published by the U.S. Committee for Human Rights in North Korea in 2003, provided the most detailed study of North Korea’s detention system to date and expanded the types of evidence available by including high-resolution satellite imagery of seven North Korean prisons and prison camps.²⁴ Reports from organisations such as Human Rights Watch, Amnesty International, the U.S. Commission on International Religious Freedom (USCIRF) and Anti-Slavery International have addressed a variety of human rights violations affecting the North Korean population.²⁵

In 2006 DLA Piper and the U.S. Committee for Human Rights in North Korea published its report *Failure to Protect* in which the Security Council is challenged to exercise its powers to act in response to the failure of the North Korean regime to protect its population.

With the rising influx of defectors, more attention has recently been given to the lasting physical and psychological effects resulting from defectors’ experiences. Medical assessment supports defector testimony accounts of human rights violations. The work and published findings of The Korean Rehabilitation Center for Torture Victims and Families is of particular value.²⁶ Psychological assessments likewise provide valuable information that supports defector accounts of violations and trauma.²⁷

¹⁶ 국가인권위원회, 탈북자 증언을 통해서 본 북한인권 실태조사, 2005 (National Human Rights Commission of the Republic of Korea, An Assessment of North Korean Human Rights through the Testimonies of the Defectors, 2005; Korean version available only).

¹⁷ 대한변호사협회, 북한인권백서, 2006 (Korean Bar Association, *White Paper on North Korean Human Rights*, 2006, Korean version available only).

¹⁸ For more information, see www.nkdb.org.

¹⁹ Kang Cheol-Hwan & Pierre Rigoulot, *The Aquariums of Pyongyang, Ten Years in a North Korean Gulag*, Basic Books, 2001.

²⁰ 이영국, 나는 김정일 경호원이었다, 시대정, 2002; (Lee Yeong-Guk; *I was Kim Jong-Il's bodyguard*; Korean version available only).

²¹ Life Funds for North Korean Refugees (LFNKR) & Database Center for North Korean Human Rights (NKDB), *Are They Telling Us the Truth? – Brutality Beyond Belief*, February 2004 (hereafter *Are They Telling Us the Truth?*).

²² NKGulag, *The Names Lost into North Korean Gulags*, 2004.

²³ NKGulag, *Political Prisoners in Seorimchon, Yoduk, 1999-2003*.

²⁴ David Hawk & U.S. Committee for Human Rights in North Korea, *The Hidden Gulag: Exposing North Korea's Prison Camps*, 2003 (hereafter Hawk, *Hidden Gulag*).

²⁵ Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China*, November 2002; U.S. Committee for Human Rights in North Korea, *The North Korean Refugee Crisis: Human Rights and International Response*, December 2006; U.S. Commission on International Religious Freedom, *Thank you Father Kim Il Sung: Eyewitness accounts of severe violations of thought, conscience, and religion in North Korea*, November 2005 (hereafter USCIRF, *Thank You Father Kim Il Sung*); Amnesty International, *Starved of Rights: Human Rights and the Food Crisis in the Democratic People's Republic of Korea (North Korea)*, January 2004; U.S. Committee for Human Rights in North Korea, *Hunger and Human Rights: The political famine in North Korea*, 2005; Anti Slavery International, *An Absence of Choice: The sexual exploitation of North Korean women in China*, 2005.

²⁶ Byun Juna et al., *North Korean Defectors Settled in South Korea: Survey on Torture Victims*, The Korean Rehabilitation Center for Torture Victims and Families (KRCT), Seoul Summit: Promoting Human Rights in North Korea, December 2005, p. 74-97.

²⁷ Min Sung-Kil & Jeon Woo-Taek, *Psychiatric Issues in the Process of Korean Unification: I. Adaptation Problems of North Korean Defectors in South Korean Society*, Yonsei University; Chung Sang-Keun, *Psychiatric Report on Refugees from North Korea*, Chonbuk University, January 2007; Jeon et al., ‘Correlation Between Traumatic Events and Posttraumatic Stress Disorder Among North Korean Defectors in South Korea’, *Journal of Traumatic Stress*, Vol. 18, No. 2, 2005; Haggard & Noland ed., *The North Korean Refugee Crisis: Human Rights and International Response*, U.S. Committee for Human Rights in North Korea, 2006.

In addition, important video footage has emerged of prisoners²⁸ and public executions.²⁹ A number of important documentaries covering human rights in North Korea have been broadcast on major television networks including the BBC and CNN in recent years.³⁰

This report, *North Korea: A Case to Answer – A Call to Act*, combines first-hand witness testimonies and consultations with South Korean academics and agencies working in the field of North Korean human rights with a fresh legal analysis of the evidence presented according to the definitions of crimes against humanity and genocide.

Increasing international attention

Since 2003, the United Nations has been addressing North Korea as a country of foremost concern in the area of human rights. The United Nations Commission on Human Rights adopted three resolutions, the first at its 59th Session on 16 April 2003.³¹ Following a subsequent resolution, Professor Vitit Muntarbhorn was appointed United Nations Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea on 13 July 2004.³² The Special Rapporteur has submitted five reports to date articulating the grave human rights concerns regarding North Korea.³³

The first UN General Assembly resolution on human rights in North Korea, adopted on 16 December 2005, expressed serious concern at 'continuing reports of systemic, widespread and grave violations of human rights' in North Korea.³⁴ The second General Assembly resolution, adopted on 19 December 2006, not only expressed more robust criticism than the first resolution, but also attracted more votes and sponsors, most significantly the vote of the Republic of Korea (South Korea), which had not voted in favour of a UN resolution on human rights in North Korea before.³⁵

There are naturally significant ongoing challenges in the field of documenting human rights in North Korea owing to the lack of co-operation by the North Korean authorities. Despite numerous calls by the United Nations, North Korea has refused to co-operate with the Special Rapporteur, refusing even to recognise his mandate. The closed-door policy and the level of repression also affect the evidence available, especially from the absolute control zones of the political prisons camps. The lifetime incarceration, extreme control and violent punishment of attempted escapees, as well as the isolation of the areas the camps are located in, means that witness evidence is limited and cannot be corroborated. There are, however, more survivors of the revolutionising re-education zones of the political prison camps, especially from Yodeok. Greater numbers of prisoners have emerged from the re-education prisons and there is significant testimony of torture and abuse in the interrogation facilities. While presenting challenges, the level of repression does at the same time highlight the vital importance of addressing the situation. As this report argues, there is sufficient evidence of a grave enough nature to merit serious United Nations investigation. Indeed, North Korea's recalcitrance underlines the need for vigilant UN attention and action.

The international censure expressed in the United Nations resolutions has also been reflected at the regional level by the adoption of the European Parliament's first Urgency Resolution condemning human rights violations in North Korea on 14 June 2006.³⁶ The seriousness of human rights concerns is also reflected in national legislative measures addressing the issue.

²⁸ Fuji Television, February 2004.

²⁹ Life Funds for North Korean Refugees, 2005 (www.northkoreanrefugees.com/dvd/images/execution2.wmv).

³⁰ See BBC, *Access to Evil*, February 2005; CNN, *Undercover in the Secret State*, November 2005.

³¹ UN Commission on Human Rights resolutions, *Situation of human rights in the Democratic People's Republic of Korea*; 59th Session, April 2003 (E/CN.4/RES/2003/10); 60th Session, April 2004 (E/CN.4/RES/2004/13); 61st Session, April 2005 (E/CN.4/RES/2005/11).

³² See UN Press Release: HR/4786, 'Vitit Muntarbhorn appointed UN Special Rapporteur on situation of human rights in Democratic People's Republic of Korea'.

³³ UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Prof. Vitit Muntarbhorn, 7 Feb 2007 (UN Doc. A/HRC/4/15); 15 Sep 2006 (UN Doc. A/61/349); 23 Jan 2006 (UN Doc. E/CN.4/2006/35); 29 Aug 2005 (UN Doc. A/60/306); 10 Jan 2005 (UN Doc. E/CN.4/2005/34).

³⁴ UN General Assembly resolution on *Situation of human rights in the Democratic People's Republic of Korea*, 60th Assembly, 16 December 2005 (A/RES/60/173) para. 1 (b).

³⁵ UN General Assembly resolution on *Situation of human rights in the Democratic People's Republic of Korea*, 61st Assembly, 19 December 2006 (A/RES/61/174).

³⁶ European Parliament resolution on North Korea, RC\619804EN.doc Article L.7, 14 June 2006 (<http://www.europarl.europa.eu/sides/getDoc.do?language=EN&objRefId=120390>).

3. Political and Legal Background

a) History and Political System

i) State ideology

North Korea is a Communist state based on '*Juche*' (self-reliance) ideology, which replaced Marxist-Leninism as the fundamental constitutional doctrine, and the Military First ideology introduced by Kim Jong-Il. *Juche* ideology claims that the North Korean people are self-reliant agents who will realise the Communist revolution. *Juche* ideology stresses that the people can fulfil their role only with the guidance of the Communist Party and the '*Suryong*' (Great Leader), Kim Il-Sung,³⁷ making it an ideology of absolute dictatorial rule. In practice this means the implementation of a closed-door policy in which the flow of information and personnel is forbidden. To further entrench *Juche* ideology, Kim Il-Sung introduced the 'Ten Great Principles for the Establishment of Unitary Ideology' in 1974. These principles have become a 'peremptory social norm', requiring unconditional and absolute loyalty to Kim Il-Sung and his instructions. Under these principles, Kim Il-Sung's decisions were accorded the force of law. Disobeying the principles or the *Suryong*'s decisions is thus akin to breaking the law. Such a system creates a highly irregular system of rules resulting in arbitrary punishments. Indeed, the Ten Principles are invoked as legal grounds for conviction.³⁸

The Ten Principles

- 1) Struggle with all your life to paint the entire society with the one colour of the Great Leader Kim Il-Sung's revolutionary thought.
- 2) Respect and revere highly with loyalty the Great Leader Kim Il-Sung.
- 3) Make absolute the authority of the Great Leader Kim Il-Sung.
- 4) Accept the Great Leader Kim Il-Sung's revolutionary thought as your belief and take the Great Leader's instructions as your creed.
- 5) Observe absolutely the principle of unconditional execution in carrying out the instructions of the Great Leader Kim Il-Sung.
- 6) Rally the unity of ideological intellect and revolutionary solidarity around the Great Leader Kim Il-Sung.
- 7) Learn from the Great Leader Kim Il-Sung and master communist dignity, the methods of revolutionary projects, and the people's work styles.
- 8) Preserve dearly the political life the Great Leader Kim Il-Sung has bestowed upon you, and repay loyally for the Great Leader's boundless political trust and considerations with high political awareness and skill.
- 9) Establish a strong organisational discipline so that the entire Party, the entire people, and the entire military will operate uniformly under the sole leadership of the Great Leader Kim Il-Sung.
- 10) The great revolutionary accomplishments pioneered by the Great Leader Kim Il-Sung must be succeeded and perfected by hereditary successions until the end.

Source: KINU, *White Paper*, 2002, p.125.

³⁷ KINU, *White Paper on Human Rights in North Korea 2000* (hereafter *KINU White Paper*, 2000), pp. 2-5.

³⁸ *Ibid.*, pp. 4 and 69-70.

ii) Leadership

Kim Il-Sung led North Korea from its inception until 1994. He kept power by purging rivals, consigning political prisoners to labour camps, and developing a personality cult that centred on him. Following his death, his son, Kim Jong-Il, took power. In this way, North Korea became the first communist nation ever to have a hereditary succession. Kim Jong-Il is Chairman of the National Defence Commission, General Secretary of the Korean Workers' Party (KWP) (the ruling party in North Korea) and Supreme Commander of the Korean People's Army and holds ultimate power in the country.³⁹

In 1998, in revisions to the Constitution, Kim Il-Sung was declared Eternal President of the Republic. The Constitution's near-deification of Kim Il-Sung only serves to cement his son's role as absolute ruler of the country in control of the bases of power. North Korea has been described by the United Nations as 'unique in the world community since power is concentrated absolutely at the top, with total, pervasive control exercised by the State over the population.'⁴⁰ Under Kim Jong-Il, the role of the military has become more important, as expressed in the Military First policy, which focuses on building up the military capacity of North Korea and mobilising forces.

iii) Three branches of government all controlled by the Korean Workers' Party

Legislative

The Supreme People's Assembly (SPA), a legislative body comprising of 687 members, is nominally the highest organ of state power, and the Constitution gives it many functions normally accorded to a head of state. Officially, the SPA oversees the National Defence Commission (NDC), which the Constitution charges with responsibility for the armed forces, national defence and foreign relations. In reality, however, the SPA has no power and simply acts as a rubber stamp for decisions by the Party.

Executive

Since 1998 the highest executive body in North Korea is the National Defence Commission (NDC), reflecting the priority given to military affairs. The NDC outranks the Cabinet, which is headed by the Premier and is responsible mainly for the economy. The Cabinet is thus a functional and administrative instrument for Kim Jong-Il, with no autonomous or decision-making power.

Judiciary

North Korea's judiciary is headed by a Central Court to which members are elected by the Supreme People's Assembly. In practice, the choice of judges is made by the executive branch. The judiciary does not engage in judicial review of legislation; moreover, the justice system operates under the authority of the Supreme People's Assembly.⁴¹ Therefore the judiciary does not function as an independent branch of government.⁴²

Thus there is no real separation of powers and all actual power is contained in the person of Kim Jong-Il who personifies his father, Kim Il-Sung, and the supreme agencies of the Korean Workers' Party, which he heads.

iv) The main security and law enforcement agencies

State Security Protection Agency: political crimes

The State Security Protection Agency (SSPA), controlled by the National Defence Commission, 'tracks down and arrests anti-party and anti-system conspirators, infiltrates special areas and arrests spies, collects and analyses information related to domestic and foreign matters, and supervises the guard alert

³⁹ For more information on the power structure of North Korea, see Park Hyeong-Jung and Lee Kyo-Duk, *Continuities and Changes in the Power Structure and the Role of Party Organisations under Kim Jong-Il's Reign*, KINU, May 2005.

⁴⁰ *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/60/306, 29 August 2005, para. 21.

⁴¹ KINU *White Paper*, 2006, p. 71.

⁴² *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, UN Doc. E/CN.4/2006/35, 23 January 2006, p. 9.

system in the border areas and extraterritorial regions.⁴³ To accomplish its mandate, the SSPA carries out surveillance of the North Korean population, especially high officials, the university-educated, artists, 'factional elements' and those suspected of being political criminals. The SSPA, with personnel of around 50,000, operates with bureaus all over the country and is believed to be operating under the direct orders and control of Kim Jong-Il.⁴⁴

Ministry of Public Security: economic/violent crimes

The Ministry of Public Security (MPS) is the main body charged with maintaining the existing social and political order and is responsible for administering interrogation facilities. When it was first founded in 1948, it was dedicated to purging North Korea of the 'remains of Japanese imperialism'. Under Kim Il-Sung, it played a key role in eliminating his political enemies.⁴⁵

b) Legal system

i) Constitution and basic rights

North Korea first adopted a Constitution in 1948, which was revised in 1972 and further modified in 1992 and 1998. The Constitution guarantees many of the basic human rights identified by the United Nations and the international system.⁴⁶ North Korea has become party to the following international human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) (in 1981); the International Covenant on Economic, Social and Cultural Rights (ICESCR) (in 1981); the Convention on the Rights of the Child (CRC) (in 1990) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (in 2001, with reservations).

However, the North Korean interpretation of these rights differs substantially from internationally-recognised standards. North Korea argues that human rights are 'equal and self-reliance rights' and that developmental rights take precedence over civil and political rights. Moreover, 'human rights are guaranteed and respected not as a right but as benevolence from the leader to his people'.⁴⁷

ii) Judicial protection and remedies

As stated above, North Korea's judiciary is not independent. Insofar as the judiciary's role is to guarantee that Party policies are effectively implemented, judicial protection of human rights is non-existent.

⁴³ KINU *White Paper*, 2006, p. 132.

⁴⁴ *North Korean Intelligence Agencies*, www.globalsecurity.org.

⁴⁵ KINU *White Paper*, 2000, pp. 76-77.

⁴⁶ See Articles 62 et seq. of the 1998 Constitution.

⁴⁷ KINU *White Paper*, 2006, p. 11.

4. The Context of Political Repression in North Korea

4.1 Ideological context of repression

The ideology in North Korea creates a unique context for human rights abuses. The institution of the personality cult and the requirement of unswerving obedience mean that no political deviation is tolerated and a system of control and punishment exists in order to detect and deal with political aberrations. Deemed political allegiance affects every area of North Koreans' lives.

Defectors report that crimes such as spilling ink on a picture of Kim Il-Sung or damaging their obligatory lapel pin with his image on it count as grounds for being punished as a political enemy.

In 1957 a Special Decision of the Korean Worker's Party Standing Committee 'On Transforming the Struggle Against Counter-revolutionary Elements into an All-Party, All Peoples Movement' ushered in the notorious 'songbun' system.⁴⁸ Under this system the entire population was classified into three classes, the core mass (core class), basic mass (wavering class) and complex mass (hostile class) and 51 sub-classes depending on their loyalty to the regime. The system, described as Juche's caste system, established a hereditary class system in which criminal punishment and access to education, employment, health benefits and even such basic necessities as food distribution depended on one's placing in the hierarchy of loyalty.⁴⁹

Those in the 'hostile class' are particularly vulnerable to human rights abuses. This class accounts for about 27% of the population and consists of national enemies, those branded as impure elements and reactionaries.

This class includes the families of former landowners and those owning businesses prior to the communist takeover, religiously active persons, public officials under Japanese rule and those who collaborated with South Korea during the Korean War. Family members of those who have been imprisoned, executed or who have fled to South Korea are also included in this class under the principle of guilt by association.

'A soldier was walking past a door and his Kim Il-Sung badge got scratched. So he stole someone else's in the middle of the night and switched it with his. Later on, it was discovered and in the end he attempted to commit suicide by hanging himself in the toilet, but failed and was rescued. When he attempted to shoot himself, he was taken away and no one knew what happened to him after that.'

Lee Young-Guk, former bodyguard of Kim Jong-Il and former prisoner at Yodeok Political Prison Camp

“Inside the camp there are two types of prisoner, the anti-government type and the religious type. Neither type gets out – they are in until they die.”

Kim Sung-Min, former captain in the North Korean army

The veneration of Kim Il-Sung and Kim Jong-Il and the religious nature of the personality cult have also led to harsh intolerance of religious belief as allegiance to a higher power is viewed as a threat to the regime. Many have commented on the religious nature of *Juche*, which can be seen in the Ten Principles and their 65 sub-principles. Alongside academics⁵⁰ recognising these parallels, defectors also consistently affirm that *Juche* is a religious entity. Those who have come into contact with Christianity after leaving North Korea consistently speak of the uncanny parallels between forms of Christian worship and what they describe as the worship of Kim Il-Sung. They describe the similarity in veneration, reading from a revered book, singing similar songs and practising unswerving obedience. Those helping North Koreans who cross the border report that they are often not aware of religious words and do not know the word for God. North Koreans inside the country refer to religious believers as 'crazy people' and are unable to understand how anyone could believe in religion.

⁴⁸ Andrei Lankov, *Crisis in Korea*, 2005, p. 181, cited in USCIRF, *Thank You Father Kim Il Sung*, p. 69.

⁴⁹ See Heo Man-Ho 'North Korean Human Rights in "Co-operative Antagonistic Relations": Intervention and Education', *Sungkok Review* Volume 35, 2004, Sungkok Academic and Cultural Foundation, Seoul (hereafter Heo Man-Ho, 'North Korean Human Rights in "Co-operative Antagonistic Relations": Intervention and Education'; KINU *White Paper*, 2006, pp. 164-171; KINU *White Paper*, 2006, pp. 91-103.

⁵⁰ See Suh Jae-Jean, *The Impact of the Personality Cult in North Korea*, KINU, 2004, p. 8; Thomas J. Belke, *Juche: A Christian Study of North Korea's State Religion*, 1999.

“From birth to adulthood all worship Kim Il-Sung. There is no other faith – so we can’t compare it to anything. It was all we knew. We worshipped because if we didn’t bow down we would be killed.”

Baek Mi-Jin¹, North Korean escapee

The Ten Principles:

Selected sub-principles showing the religious nature of the state ideology

- (2.1) Consider all things that serve our Great Leader, who is the Genius of the revolution, the Sun of the people, the legendary Hero, with the greatest happiness and greatest honour. Endlessly revere and adore the Great Leader, and eternally lift him higher.
- (2.3) Firmly believe that the way pointed out by the Great Leader Kim Il-Sung is the path to victory and glory; wholly entrust your complete destiny to the Great Leader; have an iron conviction that nothing is impossible on the way to following the Great Leader’s guidance and sacrifice your whole body and heart to the revolutionary task led by the Great Leader.
- (3.1) Hold the firm position that no one other than the Great Leader Kim Il-Sung has knowledge.
- (3.6) Respectfully worship and thoroughly protect the Great Leader Kim Il-Sung’s portraits, gypsum statues, bronze statues, badges with portraits, publications with portraits of the Great Leader, artworks depicting the Great Leader, boards with instructions of the Great Leader, and mottos of the Party.
- (4.3) Unconditionally accept the instructions of our Great Leader Kim Il-Sung, measure everything against them and only think and act trusting in the thought of our Great Leader.
- (4.10) Strongly fight against the tide of anti-Party and anti-revolutionary thinking that have their roots in capitalist ideas, feudalistic Confucianism, revisionism, dogmatism and flunkeyism, and that are contrary to the revolutionary thought of Great Leader Kim Il-Sung; adhere strongly to the revolutionary thought and *Juche* idea of the Great Leader.
- (5.2) Regard as a supreme glory and holy duty to alleviate the concerns of our Beloved Leader Kim Il-Sung and fight for it, sacrificing everything.

Source: 편집부, 북한연구소, 북한, 북한 1974년 9월호 (통권 제33호) (Editorial, North Korea, Institute for North Korea Studies, September 1974, Vol. 33, pp. 207-217; Korean version available only).

4.2 Political repression and human rights violations in North Korea

“I believe that this place is a human rights blind spot in today’s world. I urge the international community to help North Korea become a society where justice and universal human rights are upheld.”

Kim Tae-Jin, former prisoner at Yodeok Political Prison Camp

In the context of such invasive control, human rights are suppressed at every level in North Korea. Lack of the rule of law and arbitrary treatment create a culture of repression and fear. Society is extensively controlled through persistent projection of propaganda, close surveillance and the suppression of actions or statements deemed to indicate the slightest lack of support for the regime.

The sense that North Korea is always on the alert against ‘the enemy’ engenders a degree of nationalism that vitiates much of the unrest that might otherwise find expression. The prevalence of informants limits the possibility of dissent and ensures that dissenters are swiftly punished. Thus freedom of expression and religion are strictly controlled and freedom of thought is repressed. Freedom of movement, assembly and association are all strictly curtailed.

North Koreans know that if they are deemed to have offended the system, or to be connected to someone who has, they can be taken from their homes, at night and with their whole family, and disappear from society. North Koreans regularly refer to this pattern of events and cite incidents of those they knew being taken away and never seen again. Witnesses believe that those involved were either taken away to political prison camps or killed.

The system of guilt by association, i.e. the punishment of family members, is a strategy central to the maintenance of control and power in North Korea. The threat of such punishments of loved ones has been used very effectively as a deterrent against any expression of resentment of the harsh social control and abuse.

The system of guilt by association and the system of secret surveillance are the two pillars of repression and control of society that affect the entire population.

“ *Over 60% of the prisoners in Yongpyeong-ri Absolute Control Zone are victims of guilt by association. In other words, they are there simply because they are related to landowners, Japanese collaborators, missionaries, etc.* ”

Kim Young-Soon, former prisoner at Yodeok Political Prison Camp

An insight into the prevalence of these factors in society can be gained from a study conducted on post-traumatic stress disorder among a sample of 200 North Koreans who had reached South Korea. The survey, conducted by a team from Yonsei University, found that 86.5% had witnessed a public execution, 64% had witnessed the punishment of an acquaintance for political misconduct, 49% had experienced agony over their family background, 38.5% had witnessed torture, 37% had experienced anxiety resulting from doubts being raised about their ideology because of political misconduct, and 28% had been punished for the political misconduct of a family member or relative.⁵¹

The National Human Rights Commission of Korea found that 92% of those questioned had witnessed or knew about public executions. The survey also found 89% of their interviewees knew about class discrimination and 94% knew about or had heard of the existence of political prison camps.⁵²

4.3 Famine

A very significant issue relating to the human rights and welfare of the North Korean people is that of famine and food shortages. This issue has broad implications for a wide spectrum of rights and provides the context for much of the suffering and many of the abuses carried out against the population. It also exacerbates and contributes to the grave suffering of those in the detention and imprisonment facilities.

North Korea has been suffering from serious food shortages for several years, and in 1995 to 1998 experienced a large-scale famine that claimed between 600,000 to 3.5 million lives, according to various estimates.⁵³ The famine was caused largely by failed economic policies and inadequate government

⁵¹ Jeon et al., ‘Correlation between Traumatic Events and Posttraumatic Stress Disorder Among North Korean Defectors in South Korea’, *Journal of Traumatic Stress*, Vol. 18, No. 2, April 2005, pp. 147-154.

⁵² 국가인권위원회, 탈북자 증언을 통해서 본 북한인권 실태조사, 2005 (National Human Rights Commission of the Republic of Korea, *An Assessment of North Korean Human Rights through the Testimonies of the Defectors*, 2005; Korean version available only), pp. 138, 3, 133

⁵³ North Korea has officially admitted that 220,000 people died during the food crisis between 1995 and 1998. Marcus Noland gives the likely figures as lying between 600,000 and 1 million and Goodkind and West place the figures in similar realms. KINU records that the South Korean government estimated in February 1999 the number of deaths from starvation to be about 2.5-3 million, citing documents from the North Korean Ministry of Social Security and that South Korea’s Ministry of Unification estimates the number of excess deaths in recent years to be 500,000 - 800,000 a year. Medecins Sans Frontières estimates that 3.5 million died from starvation or disease related to starvation between 1995 and 1998 and Good Friends, formerly called Korean Buddhist Sharing Movement, cited the figure of 3.5 million in their assessment. See: Marcus Noland, ‘Famine and Reform in North Korea’, *Institute for International Economics*, 2003; Daniel Goodkind and Lorraine West, ‘The North Korean Famine and its Demographic Impact’, *Population and Development Review*, 2001 27 (2), 219-238; KINU *White Paper*, 2006, pp. 181-182; Marcus Noland, ‘Avoiding the Apocalypse: The Future of the Two Koreas’, *Washington Institute for International Economics*, 2000.

'You were shut in the country and couldn't go in or out. Suddenly there was international relief but all the people could not get to it because you could not go wherever you wanted. There were international inspectors watching the food relief stations, but the minute they were gone, the North Korean authorities snatched the food back again. From what I saw when I was there they truly were not giving the food relief to the people.

Even for sneaking just a few ears of corn from the field they'd seize you, tie you to a post and shoot you. 'Shoot 'em in the head, shoot 'em right in the head', they'd say. They see the person's thinking as wrong, so that is why they say he is to be shot in the head. They put nine bullets in the head. Man or woman, they shoot until the head is blown right off. When there is a public execution each victim is to be shot simultaneously by three soldiers from ten metres distance. They gather people to watch, children too; they make us all watch. They announce the executions and we must attend.'

Park Mi-Nam†, former North Korean soldier, referring to the period 1996-7

responses to the food shortages that had been occurring since the early 1990s. The situation is now somewhat improved, but shortages, malnutrition and starvation remain a serious problem.

The effects of the famine were greatly exacerbated by the actions of the North Korean government, such as failing to make appropriate calls or responses to international aid, preventing access to areas of the population by international aid bodies, imposing harsh measures such as execution for survival crimes, preventing flight to areas where food could be obtained, and violently punishing those who sought to escape, including by the death penalty.

In addition, there are multiple reports of food being siphoned off to the military, even after monitoring visits. The prioritisation of the military over the welfare of the population is a major concern⁵⁴, which still persists today. As the UN Special Rapporteur on the situation of human rights in the DPRK has highlighted: '[The] missile tests had a negative impact on the food situation of the country, since they caused various contributors of humanitarian aid to discontinue providing that aid. Those tests were a serious waste of precious national resources, which should have been spent on alleviating food shortages and responding to the plight of the population.'^{55 56}

Famine clearly violates a series of human rights. Equally, the infliction of famine, whether intentionally or recklessly (or through *dolus eventualis*), may constitute the crime against humanity of murder, extermination or other inhumane acts. An examination of this issue goes beyond the scope of this report, which focuses on the institutionalised system of repression.⁵⁷

“Normally if you are starving you can flee elsewhere to find food, but in North Korea you are not allowed to flee. The leadership force you to stay and starve to death. Therefore North Korea is like a big prison camp.”

Kang Cheol-Hwan, former child prisoner at Yodeok Political Prison Camp

⁵⁴ The years leading up to the famine showed a notable increase in military expenditure. *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/60/306, 29 August 2005, paras. 16-17.

⁵⁵ *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/61/349, 15 September 2006, para. 10.

⁵⁶ The food situation has been noted with very deep concern by the United Nations. See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, paras.1 (b) (vi), 3; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN Human Rights Council, UN Doc. A/HRC/4/15, 7 February 2007, para. 9; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/61/349, 15 September 2006, paras 3, 10; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN Commission on Human Rights, UN Doc. E/CN.4/2006/35, 23 January 2006, para. 66; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/60/306, 29 August 2005, paras.16-17. For more information, see Stephan Haggard and Marcus Noland eds, *The North Korean Refugee Crisis: Human Rights and International Response*, 2006, p.16; KINU, *The DPRK Famine of 1994-2000: Existence and Impact*, Suk Lee, May 2005, p.14; Marcus Noland, 'Famine and Reform in North Korea', Institute for International Economics, 2003; Daniel Goodkind and Lorraine West, 'The North Korean Famine and its Demographic Impact', *Population and Development Review*, 2001 27 (2), 219-238; Marcus Noland, *Avoiding the Apocalypse: The Future of the Two Koreas*, Washington Institute for International Economics, 2000; S. Haggard and M. Noland, *Hunger and Human Rights: The Politics of Famine in North Korea*, 2005, pp. 12-17; KINU, *White Paper*, 2006, pp. 6-7, 171-184, 216, 222, 245; Amnesty International, 'North Korea: Human Rights Concerns', 24 November 2006; Jasper Becker, 'Dictators: The Depths of Evil', *New Statesman*, 4 September 2006; Refugees International, 'North Korea: Nuclear Brinkmanship Likely to Result in Greater Displacement', 10 October, 2006.

⁵⁷ For a treatment of this issue see DLA Piper and U.S. Committee for Human Rights in North Korea, *Failure to Protect: A Call for the UN Security Council to Act in North Korea*, 2006.

4.4 Consequences of crossing the North Korean border

The famine has led to significant numbers of North Koreans fleeing across the Chinese border. Numbers fluctuate and have been estimated to be as high as 300,000, with lower figures of 30-50,000 at present. Although the main reason for this exodus is economic hardship and food shortages, individuals have also decided to leave because of class-based discrimination and government repression, and to join relatives who have previously fled. These figures are strong factors for those leaving the country for a second time. Leaving the country is a criminal offence under North Korean law, and arrest teams are dispatched to find and forcibly repatriate those who have left. China also forcibly returns North Korean refugees. Sending individuals back to countries where they face a real risk of torture violates the prohibition on *refoulement* recognised in international law.⁵⁸ Although China is a party to the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol as well as the UN Convention against Torture, it not only practises *refoulement*, but also refuses to allow North Koreans access to asylum procedures or to allow the UNHCR access to North Koreans. UN bodies have expressed concern at the practice of returning refugees to North Korea because of the evident risk of persecution, torture and punishment.⁵⁹ North Koreans in China face many hardships and dangers, including bride-selling, sexual exploitation and labour exploitation. Those returned to North Korea face interrogation, mistreatment, torture, and, in the worst cases, long-term imprisonment or execution. Torture is commonly reported and there is significant defector testimony that women repatriated from China who are pregnant face forced abortion and the killing of their babies, in particular where the father is Chinese.⁶⁰

⁵⁸ See Article 33 of the 1951 Convention relating to the Status of Refugees and Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵⁹ See *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, UN Doc. A/61/349, 15 September 2006, paras 20 et seq.

⁶⁰ For general information on border crossers, see KINU *White Paper*, 2006, pp. 260-293; International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, October 2006; Amnesty International, *North Korea: Briefing on present situation*, AI Index: ASA 24/002/2005 (Public), 28 July 2005.

5. The North Korean Detention and Imprisonment System and the Nature of International Crimes Committed in this Context

The North Korean system for dealing with political and criminal offenders involves a range of detention and punishment facilities. Initial investigations are carried out in interrogation facilities run by the State Security Protection Agency (*Gukga-anjeon-bowibu*) and the People's Safety Agency (*Inmin-boan-seong*), where torture, severe food deprivation and inhuman conditions are commonplace.

'During interrogation they made me kneel with a square piece of wood behind my knees and then stamped on my thighs. The pain is just beyond description. Twenty days into the interrogation I could stand it no longer and I tried to commit suicide. I had to do it by biting my own wrists as there was nothing else available to try to harm myself with, but I fainted before I could succeed. The whole place is full of crying and shrieking. Even when you are not being interrogated you have to listen to others shouting and yelling. People were crawling because they had been so badly beaten. It is not a place for human beings, but for beasts.'

During the first period of one and a half months, interviews began very early in the morning and lasted until 2 or 3 o'clock the next morning. The interrogators worked in shifts and did not allow us to sleep. This was very, very painful. To keep me from sleeping I was put into a cramped chamber with water up to the top of my stomach. Because of the small dimensions I had to stay hunched the whole time. If I slipped a little my face would make contact with the water. They handcuffed me on the ceiling so that I would not be able to sit or lay down and if I fainted, they lifted me up so that I would not fall asleep. I had to stay like this for three days, unable to sleep. After 24 hours I was already worn out.

However, the most painful form of torture they used against me was to insert very sharp bamboo needles under my fingernail and push them up the finger to the first knuckle. When the needle goes in, the pain makes your whole body shake.

I wanted to confess everything but I had nothing to confess! I was lucky. I was only interrogated for three months. For other prisoners the interrogation period can be much longer.'

Kim Yong, former prisoner at No. 14 and No.18 political prison camps

Increased numbers of testimonies have emerged from such interrogation facilities in recent years, in particular from those operating along the Chinese border. This is because people who eventually reach countries where they can speak about their experiences have very often been detained at least once before for earlier attempts to leave the country.⁶¹ The importance of these facilities has expanded because of the explosion in the number of illegal border crossings and hunger- and famine-related economic crimes, for example the theft of food from state warehouses, failure to report to work (often in order to scavenge for food) and unauthorised private enterprise.

Those deemed to have committed minor crimes may be sent extrajudicially to short-term forced labour punishment facilities (*Rodong-dallyeon-dae*). Even work superiors can administratively sentence employees to such terms.

Systematic severe human rights abuse characterises the detention and imprisonment system. Detainees and prisoners consistently report violence and torture, less than subsistence food rations and forced labour. Former detainees and prisoners testify that high death rates occur throughout.

There is an important distinction in the treatment of those who breach the criminal law and are, as such, regular criminals, and those who are targeted for political deviation. Those who are accused of breaching the criminal law are generally subject to formal judicial procedures, while those considered to be political

⁶¹ According to the survey by The Korean Rehabilitation Center for Torture Victims and Families, 33% of their interviewees defected once, 63% twice and 4% three times. Byun Juna et al., *North Korean Defectors Settled in South Korea: Survey on Torture Victims*, The Korean Rehabilitation Center for Torture Victims and Families, December 2005.

offenders have no recourse to such procedures.⁶²

However, these lines are considerably blurred in North Korea, as the law criminalises actions that would not be regarded as illegal elsewhere, such as engaging in private economic enterprise and leaving the country. Even in the cases where formal judicial procedures are used, consistent reports describe summary and pre-determined hearings, widely breaching fair trial protections provided in international law.

Those judicially sentenced for longer terms are sent to re-education prisons (*kyohwa-so*), also translated as 'edification' centres. These prisons, which may take the form of conventional institutional prisons or more sprawling work camps, are administered by the People's Safety Agency. Here prisoners are subjected to intense forced labour, either in factory settings or in camp settings involving mining or other labour. Working conditions are dangerous. Hours are long, and missed quotas or mistakes are punished. In the regular institutional prisons, cells are so overcrowded that prisoners may often have difficulty lying down straight at night. Sleeping is restricted. Sanitary conditions are extremely poor and prisoners even describe having to use toilet facilities at specified times only, forcing them to otherwise urinate or defecate on themselves. Lice and skin conditions abound. Punishments can be very brutal, including the incarceration of individuals in tiny cells, a punishment often described as a *de-facto* death sentence. Food is minimal and prisoners describe suffering constant hunger and resorting to eating anything alive they can find, and even inedible substances, in order to try to survive. Although sentenced to fixed terms of imprisonment, after which they are released, many simply do not survive because of the harsh conditions, forced labour, malnutrition, lack of health care, and punishments and accidents arising from the poor working conditions. Thus a term of imprisonment in a correctional prison can often be considered a virtual death sentence.

Those outside the regular criminal system are even more vulnerable. If they are deemed to have committed a political misdemeanour, they are not processed through the judicial system. Removed by the State Security Protection Agency, often at night, with no indication as to where they are being taken, they disappear without trace.⁶³ They are investigated by the State Security Protection Agency, typically under torture. There is no access to a lawyer or judicial process. Instead cases are decided by the State Security Protection Agency rather than in a trial.⁶⁴ Once the individual's 'guilt' has been formally established, they will be transferred to a political prison camp (*kwanlli-so*), which is technically translated as 'management centre' or 'administrative centre'.

“All opponents are sent to the kwanlli-so; not only offenders, but also family members are sent to die and many sent without knowing the charges against them. It is a really awful thing. None of them survived. They were innocent victims who met a tragic end. It should not be tolerated. The international community should do everything possible to prevent such atrocious treatment from occurring and reoccurring.”

Ahn Myeong-Cheol, former political prison camp guard

⁶² There are also reports that facilities for the mentally ill are used as a form of political control. 12% of interviewees in the Korean Rehabilitation Center for Torture Victims and Families' survey reported they had been subjected to drug and mental hospital abuse; 6% had endured toxic drug abuse and 6% were locked up in a mental hospital and given daily shots of unknown drugs. Amongst the acute psychological post-traumatic effects assessed amongst participants was hallucination following the imposition of these drugs. (Byun Juna et al., *North Korean Defectors Settled in South Korea: Survey on Torture Victims*, The Korean Rehabilitation Center for Torture Victims and Families, December 2005, p. 94-5.) In addition, Kim Young-Soon reports that: 'At political prison camp No. 15, there is a separate camp for the mentally ill, located to the right of the main entrance. Anyone there who spoke about Kim Il-Sung, the father of Kim Jong-Il, was taken to No. 17, where the mentally ill person would eventually be killed. People died there nearly every day.'

It is not only those deemed to have committed offences who are detained. The UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea has highlighted the 'very disconcerting picture' of the treatment of those with disabilities. (*Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/61/349, 15 September 2006, para. 45; the concern has also been expressed by the General Assembly in its 2006 resolution on the situation of human rights in the Democratic People's Republic of Korea, UN Doc. A/RES/61/174.) The Special Rapporteur quotes the KINU *White Paper*, saying: 'North Korean authorities are practising merciless discrimination against handicapped persons by setting up collective camps for them where they are designated according to their physical deformity.' KINU *White Paper*, 2005, p. 124 – 5, cited in *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/61/349, 15 September 2006, para. 45. This testimony emerged prior to the 2003 Law on the Protection of Persons with Disabilities and it remains to be seen whether the new law will bring about changes.

⁶³ Koh Young-Hwan, 'Human Rights in North Korea' in Choi Sung-Chul ed., *International Community and Human Rights in North Korea*, 1996, p. 215: 'North Korean society is controlled by the Labour Party and its [10 Principles for the Establishment of Unity] when the sun is out, and by the Ministry of National Security Protection after sundown, without any restriction by the Constitution of the Criminal Code'. Earlier he writes 'The night of North Korea is controlled neither by the Constitution nor by the Criminal Code but by the Ministry of National Security Protection; the Ministry with its network that covers all districts – Province, County, Lee (Village) and Dong (Ward) - literally abducts all suspicious people and their direct immediate family without any notice.'

⁶⁴ KINU *White Paper*, 2006, pp. 77, 236.

'Prisoners who committed misdemeanours such as economic crimes received beans as well as corn for meals and that's why they were much less likely to suffer from malnutrition. However, political prisoners were given only corn in a small cup, mixed with soup cooked with dried radish leaves. The radish leaves were leftovers and were marinated. There were no other side dishes. Corn and soup were all for three meals. We were made to work for 14 hours on a daily basis and if one prisoner does not work as well as guards expected, the whole group of 2-300 would be beaten up together. This is the way that they make prisoners watch each other. We caught mice and snakes for nutrition and ate them.'

Lee Yeong-Guk, former bodyguard of Kim Jong-Il and former prisoner at Yodeok Political Prison Camp

Anyone seen as hostile to the regime can become a political prisoner. The political prison camps are extremely large, sprawling encampments, containing multiple self-contained 'villages'. Conditions are similar to those in the re-education prisons, with prisoners forced to carry out long days of very hard labour such as mining or logging, on minimal food rations. The dangerous working conditions and malnutrition result in a high mortality rate, which is further enhanced by the brutal treatment, punishments and executions of attempted escapees and others. Prisoners live in very poor accommodation which barely protects them from the harsh winters and makes them susceptible to sickness. However, medical care is denied and prisoners are forced to work through illness, often left to die without treatment.

With few exceptions, prisoners are not allowed to marry, and reproduction is forbidden in the camps. Violent measures against the mother and offspring are reported in cases where a pregnancy has been discovered.⁶⁵ There are also reports of biological and chemical experimentation on political prisoners.⁶⁶

Moreover, punishment is not limited to the deemed offenders themselves, but under the principle of guilt by association, completely innocent family members can be punished for the guilt of the targeted individual. Up to three generations of an offender's family can be incarcerated, without access to any judicial procedures, and often without knowledge of the alleged offence committed.

5.1 Locations and size of the political prison camps

The North Korean prison system was modelled on that of Stalinist Russia. Collective camps were first set up after the August Faction Incident, a conspiracy against Kim Il-Sung, in 1956. The political prison system was largely completed in the early 1970s, and in the course of the regime's policy of consolidating power, the number of prisoners increased dramatically in the following decades.

The names and locations of the political prison camps are given as:⁶⁷

Camp 14 at Gaecheon County in South Pyeongan Province

Camp 15 at Yodeok County in South Hamkyeong Province

Camp 16 at Hwaseong County in North Hamkyeong Province

Camp 18 at Bukchang County in South Pyeongan Province

Camp 22 at Hoeryeong City in North Hamkyeong Province

Camp 25 at Suseong Edification Centre, Suseong District at Cheongjin City in North Hamkyeong Province

These camps are under the control of Bureau No. 7 of the State Security Protection Agency (*Gukganjeon-bowi-bu*). Camp 18, however, is under the control of the People's Safety Agency (*Inmin-boanseong*).⁶⁸ There are also unconfirmed reports of further camps.⁶⁹

⁶⁵ See section 8.A. below under the subheading 'Forced abortions and infanticide'.

⁶⁶ See section 8.F. below.

⁶⁷ This information comes primarily from defectors, including Ahn Myeong-Cheol. For more information, see KINU *White Paper*, 2006, pp. 238, 243; Hawk, *Hidden Gulag*; Heo Man-Ho, 'North Korean Human Rights in "Co-operative Antagonistic Relations": Intervention and Education', pp. 190-196.

⁶⁸ For this reason KINU does not list Camp 18 as a political prison camp. See KINU *White Paper*, 2006, p. 237.

⁶⁹ Camp 17 at Bukchang County in South Pyeongan; Camp 21 at Kyeongsang County in South Hamkyeong Province; Camp 23 at Deokseong County in South Hamkyeong Province; and two further camps at Jeongpyeong County in South Hamkyeong Province and Huicheon City in Jagang Province. See 대한변호사협회, 2006 북한인권백서, p. 237 (Korean Bar Association, 2006 *White Paper*; all page references refer to the Korean publication; hereafter KBA, 2006 *White Paper*); see also 오경섭, 북한인권 침해의 구조적 실태에 대한 연구 - 정치범수용소를 중심으로, p. 79 (Oh Kyeong-Seob, *A Study on the Structural Situation of the North Korean Human Rights Abuses - focusing on the North Korean Gulag*; Korean version available only; hereafter Oh Kyeong-Seob, *A Study on the Structural Situation of the North Korean Human Rights Abuses*); Heo Man-Ho, 'North Korean Human Rights in "Co-operative Antagonistic Relations": Intervention and Education', p. 193.

Other camps are known to have existed, but have been closed down, some as they were too close to the border, and amalgamated with currently existing camps. These include: Camp 11 at Kyeongseong County, North Hamkyeong Province; Camp 12 at Onseong County, North Hamkyeong Province; Camp 13 at Onseong County, North Hamkyeong Province; Camp 26 at Seungho County, Pyongyang and Camp 27 at Cheonma, North Pyeongan Province.⁷⁰

Most of the camps are ‘absolute control zones’ (*wanjeon-tongje-guyeok*),⁷¹ from which detainees are never allowed out, even in death. Those in these camps lose their citizenship. There are also ‘revolutionising re-education zones’ (*hyeokmyeonghwadaesang-guyeok*), where there is some hope of eventual release. Those considered capable of reform are sent to these areas and are subjected to re-education. These detainees are able to keep their citizenship. The numbers in those zones are smaller. Camp 18 and a section of Camp No. 15 (Yodeok) fall into this category. However life in these camps is still extremely brutal, with an oppressive daily regime, appalling living conditions and a very high level of deprivation and barbarity.

Numbers in the political prison camps

It is naturally impossible, with the current level of access, to give a precise figure for the number of detainees in the political prison camps. However, South Korean intelligence has access to various means for estimating the numbers and the figure given by the Korea Institute for National Unification of 200,000 is therefore a helpful basis from which to work.⁷²

Ahn Myeong-Cheol was a guard at four political prison camps between 1987 and 1994 and gave the following figures for the numbers in each camp: 30,000 prisoners in Camp 11; 30,000 prisoners at Camp 13; 50,000 prisoners at Camp 22; and 20,000 prisoners at Camp 26, making a total of 130,000. Through his contacts with other colleagues on duty in other camps he estimated the total figure to be 200,000. This figure matched with estimates from others. Three of the four camps where Ahn was a guard are now closed (Camps 11, 13 and 26), but Camp 22 remains open. Ahn says that, although a number of camps were closed, prisoners were transferred to other camps and he was involved in transporting them from one to another. Kim Yong, who was imprisoned in Camp 14 and 18, gives the figures for these camps as 15,000 and 30,000 respectively.

Kang Myeong-Do, the son-in-law of the former North Korean Prime Minister, Kang Seong-San, estimated in 1997 that there were around 300,000 detainees being held at political prison camps 17, 19, 22 and 23.⁷³ This matches other information from a further source with inside knowledge which provides the number as around 300,000. However, other estimates place the figure lower. Professor Heo Man-Ho estimates the numbers have decreased to around 150,000 owing to the release of certain family members, a credible figure which has also often been used.

The numbers in the camps increased dramatically as Kim Jong-Il consolidated his position as successor and purged opponents from 1980 onwards. The numbers are also believed to have increased in the wake of the fall of the Iron Curtain. According to defectors, the famine caused changes in the system as those outside the camps were suffering and dying from the food shortages. The rations inside the camps were consequently cut so that the prisoners would not be in a better position than those outside. In the mid-1990s, families of detainees in the revolutionising re-education zones, especially the families of returned Korean Japanese, were either released or transferred to absolute control zones. Thus the revolutionising re-education zone in Yodeok is now said to be considerably smaller than before, while sections that were previously in this zone have been absorbed into the absolute control zone.⁷⁴

⁷⁰ This information comes partially from former camp guard, Ahn Myeong-Cheol. See also KBA, *2006 White Paper*, p. 235; Oh Kyeong-Seob, *A Study on the Structural Situation of the North Korean Human Rights Abuses*, p. 79; KINU *White Paper* 2006, p. 243; Heo Man-Ho, ‘North Korean Human Rights in “Co-operative Antagonistic Relations”: Intervention and Education’, p.195.

⁷¹ The official terminology ‘*teukbyeoldokjaedaesang-guyeok*’ is more colloquially known as ‘*wanjeon-tongje-guyeok*’ (완전통제구역). For more information see Heo Man-Ho, ‘North Korean Human Rights in “Co-operative Antagonistic Relations”: Intervention and Education’, p. 187

⁷² KINU, *White Paper*, 2006, p. 238.

⁷³ Kang Myeong-Do, ‘북한의 인권’ (Human Rights in North Korea, Korean only), Proceedings of the Unification and Security Forum (North Korean Human Rights Issues), Peace Research Institute at Kyungpook National University, 21 November 1997, cited in Heo Man-Ho ‘North Korean Human Rights in “Co-operative Antagonistic Relations”: Intervention and Education’.

⁷⁴ For more information on camps, see Heo Man-Ho ‘North Korean Human Rights in “Co-operative Antagonistic Relations”: Intervention and Education’, 2004, p. 187-196; KBA, *2006 White Paper* p. 223-257; Oh Kyeong-Seob, *A Study on the Structural Situation of the North Korean Human Rights Abuses*; KINU *White Paper* 2006, p. 231-248; Hawk, *Hidden Gulag*, p. 24-41; Citizens’ Alliance for North Korean Human Rights (NKHR) *Prisoners of Their Own Country: North Korea in the Eyes of the Witnesses* (March 2005), p. 21 et seq.; testimony by Choi Dong-Cheol, *Are They Telling Us the Truth?*, p. 30.

5.2 The camps as death camps

“They are death camps. It would be kinder to kill outright, but in North Korea they make the process long, protracted and painful. One experiences ongoing agony and suffering leading to death instead of a quick death. The gruesome life and suffering is not a life anyone would want: the same horrific lifestyle, being forced to work from very early in the morning, day in day out, filled with abhorrent suffering. It is much better to be shot dead.”

Kim Young-Soon, former prisoner at Yodeok Political Prison Camp

Ahn Myeong-Cheol says of the camps he was involved in: ‘The purpose of the camps was to kill the prisoners. Instead of killing them by shooting, the intention was to force them to work to the last minute. ... The purpose was to kill, but the method was just different. None of the prisoners in the camp survive. It is a killing field, to kill through labour.’ Survivors of the revolutionising re-education zones of Yodeok Political Prison Camp also describe the camps as death camps. Kang Cheol-Hwan, who was imprisoned in Yodeok for ten years from the age of nine, says: ‘The camps are death camps. It is systematic killing, not arbitrary killing. It is very planned and systematic. It is better to die by being gassed. In North Korea they just use you up. It is a slow process of death, starvation and pain; a long-drawn-out process in which the prisoners are whittled down to bones.’

KINU describes the Revolutionising Re-Education Zone in Yodeok where Kim Young-Soon and Kang Cheol-Hwan were imprisoned as ‘a boot camp, which dictates extremely harsh conditions and an unbearable subsistence life until individuals are exhausted or have expired.’⁷⁵

5.3 Numbers of deaths in the political prison camps

While it is clearly impossible to give accurate figures for the total numbers of deaths that have occurred in the political prison camps, evidence from defectors goes some way in providing a rough basis for calculations. The following estimates are not provided as concrete figures, but as an attempt to calculate the scale of abuse in the political prison camps.

Both Ahn Myeong-Cheol and Lee Yeong-Guk speak of a high rate of death in the initial stages of imprisonment. Ahn Myeong-Cheol states that in the absolute control zones, which make up the majority of the camps, the death rate in the first three months was 20–30%. He comments: ‘Those who lived were no longer human; they were just beasts and animals trying to survive’. He says that those who did survive could usually live for some years. Lee Yeong-Guk states that those who had experienced less hardship outside imprisonment found it hardest to survive as the shock of the prison system had the greatest impact upon them. He states that those in such condition would not last more than one or two years, while those who were more seasoned to hardship would last longer, around five to ten years. Witnesses report that the population of the camps was maintained so that figures remained constant.

Outside the comparatively small revolutionising re-education zones it is not possible to speak of a survival rate, as those sent to the absolute control zones are sent there permanently, to remain in the camps even after death.

A few survivors from Yodeok Revolutionising Re-education Zone have reached freedom and are able to indicate the death rates that they personally witnessed. Kim Young-Soon who was imprisoned in Yodeok from 1970 to 1978, reports that around 30 people died per year out of her section of 300, making an annual death rate of 10%. Kang Cheol-Hwan, who was imprisoned between 1977 and 1987, reports that 30 out of the 50 children in his section died within five years, which works out as an annual death rate of 12%. However, he states that this figure is higher than the average death rate, as children were among the most vulnerable and thus most likely to die. Kang estimates that 50% of the general prison population died in ten years. Kim Tae-Jin, who was imprisoned from 1988 to 1992, states that two or three prisoners died every month out of his section of 400–500 prisoners, making an annual death rate of around 6–7%.

⁷⁵ KINU *White Paper*, 2006, p. 241.

The figures had changed substantially by the time Lee Yeong-Guk was imprisoned from 1995 to 1999, when famine was affecting the population and prisoners were given reduced rations. Lee reports that 42 prisoners died a month out of the 2500–3000 prisoners in his section, making an annual death toll of 504 a year. This works out at an annual mortality rate of between 17% and 20%. Lee states that the camp population remained constant. He says that 50–60 new prisoners arrived every month during the years from 1996 to 1998, during which large numbers of people died. His figures are supported by other testimony which describes higher death rates at that time and throughout the decade.

These figures are particularly striking when compared with those for the average national death rate provided by North Korea to the United Nations, which show mortality rates of 0.7%, 0.45%, 0.59% and 0.88% in 1970, 1980, 1990 and 2000 respectively.⁷⁶

Official life-expectancy rates can also be contrasted with defectors' observations concerning the life expectancy of prisoners. Survivors from Yodeok in the 1970s and 1980s say that prisoners might live to 40, but that they would not reach 50. In comparison, official statistics submitted to the United Nations give the life expectancy of the normal population as 66 in 1972 and 74.3 in 1986.⁷⁷

This information comes primarily from those sent to the camps for re-education, as they have been able to leave. It would be logical to assess that the treatment in the absolute control zones would be harsher than in these re-education zones.

If one takes as a guide that there were consistent prison camp populations of 100,000 prisoners in the camps from their establishment in the late 1950s through to the late 1970s, and then 200,000 from 1980 to the present (the current figure given by the South Korean governmental-funded think tank KINU), it is possible to make some calculations as to the potential scale of death in the camps. Even if the lowest of all these percentages from the less harsh revolutionising re-education zones is used, that of 5% (based on 50% dying in ten years), and is applied to all the camps, including the harsher and larger absolute control zones, the figure of 380,000 deaths in the political prison camps emerges. Using the figure of 10% provided by Kim Young-Soon, it would work out at 760,000. However these figures would not take into account the increased death rate during the famine period, which according to Lee Yeong-Guk's average estimate would have resulted in an annual death rate of 36,640 across the 200,000 population of the political prison camps.

If the number of those who have died is added to the current population of the camps, even the lowest calculation reaches over half a million. It may even be possible to place the total number of victims of the political prison camps at around one million, especially if all those who have been held in the revolutionising re-education zones are included in the calculation.

These figures correlate with previous estimates. In 1996 it was estimated that 400,000 people had died in the camps since 1972.⁷⁸ This figure was repeated by former North Korean diplomat Ko Young-Hwan, when he spoke at a forum on Capitol Hill in 1997.⁷⁹ Defence Forum Foundation reports that at that time 'South Korean government agencies ... estimated that at least 400,000, but perhaps as many as one million people, have died in these camps since they were first established'.⁸⁰ Using the 400,000 figure and extrapolating at the same annual rate would make a total of over 580,000 deaths from 1972 to date.

Asia expert Jasper Becker, while recognising the impossibility of giving accurate estimates, says that the deaths in the camps may amount to at least a million.⁸¹ He bases his estimate on his expertise in Chinese labour-camp death rates and interviews with North Korean defectors. His figure, which represents the total number who have died, uses an estimated annual death rate of 10% applied to the higher end of the total camp population estimates of 200,000-300,000.

⁷⁶ Core Document Forming Part of the Reports of States Parties, Democratic People's Republic of Korea, 16 July 2002, HRI/CORE/1/Add.108/Rev.1, p. 12. Verified statistics are not available. For a treatment of the reliability or otherwise of official statistics, see Lee Suk, *The DPRK Famine of 1994-2000: Existence and Impact*, KINU, 2005.

⁷⁷ Core Document Forming Part of the Reports of States Parties, Democratic People's Republic of Korea, 16 July 2002, HRI/CORE/1/Add.108/Rev.1, p. 12.

⁷⁸ Choi Sung-Chol, ed., *The International Community and Human Rights in North Korea: Centre for Advancement of North Korean Human Rights, 1996*, p. 11, cited in Jack Rendler, 'The Last Worst Plane on Earth: Human Rights in North Korea', in Henry D. Sokolski (ed.), *Planning for a Peaceful Korea*, (Carlisle, PA: SSI, Feb 2001), p. 115.

⁷⁹ Speech given at Defence Forum Foundation forum held on Capitol Hill on 26 September 1997.

⁸⁰ 'North Korea Human Rights Situation and How We Should Respond' speech by Suzanne Scholte, President, Defense Forum Foundation, 17 June 2006, Kwangju, Republic of Korea.

⁸¹ Jasper Becker, *Rogue Regime: Kim Jong-Il and the Looming Threat of North Korea*, 2005, p. 87.

When asked about the death rate figure, Ahn Myeong-Cheol, the former political prison camp guard, said that one million is too low.

It should be noted that these figures cover only the political prison camps. Thus, the overall scale of death for those detained for political or other unjust reasons, through arbitrary imprisonment and unfair trial, and those imprisoned in conditions involving extreme suffering will be much higher. Rates of death in correctional prisons and other detention facilities can be exceptionally high. Some interviewees have reported much higher death rates than those given above.

While these figures are by necessity imprecise, given the current situation and access, they do underline the need for an investigation into the scale and nature of abuses occurring in North Korea.

5.4 The system of repression in imprisonment and detention facilities as genocide and crimes against humanity

The system of targeting a large section of the population as political enemies and imprisoning them in gulags resulting in large-scale killing and abuses constitutes either genocide or crimes against humanity, or both. There are several historical precedents in which those responsible for such a system and practice were held accountable (and others, such as in the Soviet Union under Stalin, where they were not). The Nazis in Germany maintained concentration camps as part of their policy of exterminating Jews and targeting other groups, including political prisoners, which resulted in large-scale suffering, inhuman conditions, abuses, forced labour, killings and millions of deaths. The Nuremberg Tribunal and Military Tribunals set up after the Second World War found that this policy and practice constituted crimes against humanity, in particular persecution, extermination, murder and inhuman treatment.⁸²

The Khmer Rouge in Cambodia, after taking power in 1975, forced hundreds of thousands of people (in particular from the urban population, which was seen as being potentially hostile) to work on communal farms under the supervision of soldiers and cadres in inhuman conditions. 'Starvation, disease, and physical exhaustion, caused by inadequate food, medicine, and sanitation, and oppressive work requirements, killed hundreds of thousands from 1975-1978. Witnesses reported that the Khmer Rouge overseers routinely killed many thousands who refused or could no longer work, often murdering their family members as well.'⁸³ Moreover, the Khmer Rouge targeted 'enemies' of the regime, including, among others, officials of the previous regime, the educated classes and religious leaders and believers, many thousands of whom were summarily executed or tortured and killed.⁸⁴ This policy and practice of the Khmer Rouge is not uniformly believed to have constituted genocide because it was aimed at a political group that is not protected by the Genocide Convention.⁸⁵ However, it is generally acknowledged that the system of camps and other facilities, and the acts committed therein, constituted a series of crimes against humanity.⁸⁶ Extraordinary panels have been set up in Cambodia, with international support, to try the surviving perpetrators bearing the greatest responsibility.⁸⁷

A further case concerns prison camps set up in Bosnia during the conflict in the former Yugoslavia lasting from 1991 to 1995. The system of prison camps was part of a broader strategy targeting ethnic groups rather than political ones. Nevertheless, the case has some relevance to the North Korean context, largely because of the camp conditions and the practices within camps and their legal qualification as crimes against humanity, in particular the crime of persecution. As found by the International Criminal Tribunal for the former Yugoslavia (ICTY): 'Detainees were kept in inhuman conditions and an atmosphere of extreme mental and physical violence pervaded the camp. Intimidation, extortion, beatings, and torture were

⁸² See *Trials of the Major War Criminals before the International Military Tribunal, the 'Blue Series', IMT, 1947-1949*.

⁸³ Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*, Second Edition, Oxford University Press, 2001, p. 272.

⁸⁴ *Ibid.*, pp. 272 et seq.

⁸⁵ *Ibid.*, p. 287 and Schabas, *Genocide in International Law*, Cambridge University Press, 2000, in particular pp. 118, 119 and 144. The Khmer Rouge also targeted several ethnic groups and the Buddhist monkhood, and the crimes committed may constitute genocide. Article 4 of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, 2001, provides the extraordinary chambers with jurisdiction over genocide.

⁸⁶ Ratner/Abrams, *Accountability*, supra, pp. 288 et seq. Article 5 of the 2001 Cambodian Law vests the Extraordinary Chambers with jurisdiction over the crimes against humanity of murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial, and religious grounds and other inhumane acts.

⁸⁷ See Ernestine E. Meijer, 'The Extraordinary Chambers in the Courts of Cambodia for Prosecuting Crimes Committed by the Khmer Rouge: Jurisdiction, Organization, and Procedure of an Internationalized Tribunal', in Cesare P. Romano, André Nollkaemper, and Jann K. Kleffner (eds.), *Internationalized Criminal Courts, Sierra Leone, East Timor, Kosovo, and Cambodia*, Oxford University Press, 2004, pp. 207-232.

customary practices. The arrival of new detainees, interrogations, mealtimes, and use of the toilet facilities provided recurrent opportunities for abuse. [...] Murder was common. While every incident of violence and abuse reported by witnesses is not recounted here, the following summary demonstrates vividly that deliberate brutality and appalling conditions were part and parcel of daily life in the camp.⁸⁸ The ICTY, which is mandated to hold the perpetrators of international crimes committed in this context to account, found in several instances that the practice in the camps constituted crimes against humanity and may also amount to genocide.⁸⁹

⁸⁸ *Prosecutor v. Kvočka et al.*, IT-98-30/1, Trial Chamber Judgment (2 November 2001) para. 190, this determination specifically affirmed by Appeals Chamber (28 February 2005), para. 324-325; *Prosecutor v. Jelisić*, IT-95-10 Trial Chamber Judgment (14 December 1999) para. 51-58; *Prosecutor v. Krnojelac*, IT-97-25, Trial Chamber Judgment (15 March 2002), Parts VI & VIII; *Prosecutor v. Krnojelac*, IT-97-25, Appeals Chamber Judgment (17 September 2003) Parts IV (A, C-G) & VI and *Prosecutor v. Kunarac, Kovac and Vuković*, IT-96-23 and IT-96-23/1 Trial Chamber Judgment (22 February 2001); paras 4-6, 8-10, 26-47, 883-884, 886, 888-889; upheld on appeal see Appeals Chamber Judgment 12 June 2002, Part XII *Prosecutor v. Sikirica et al.*, IT-95-8 Trial Chamber Judgment, (13 November 2001), Part III, VI (B), Part I (C) para. 18-37, *Prosecutor v. Limaj et al.* IT-03-66, Trial Chamber Judgment (30 November 2005) [CAH not est. see para. 228] currently under appeal; *Prosecutor v. Krajišnik*, IT-00-39/40, Trial Chamber Judgment (27 September 2006), paras 708, 710, 795-806, 810-818, 867.

⁸⁹ *Prosecutor v. Jelisić*, IT-95-10, Trial Chamber Judgment (14 December 1999) paras 51 et seq.; *Prosecutor v. Jelisić*, IT-95-10, Appeals Chamber Judgment (5 July 2001), paras. 53-72; *Prosecutor v. Krajišnik*, IT-00-39/40, Trial Chamber Judgment (27 September 2006), while no finding of genocide in detention centres (see paras 859-860, 863), because no *mens rea* (para. 868-869), detention centres met *actus reus* of genocide, para. 867 and *Prosecutor v. Karadžić and Mladić* (Case No.IT-95-5-R61 and IT-95-18-R61) Consideration of the Indictment within the Framework of Rule 61 of the Rules of Procedure and Evidence, 11 July 1996, para. 95.

6. International Criminal Law and North Korea

International criminal law has been defined as ‘a body of international rules designed both to proscribe international crimes and to impose upon states the obligation to prosecute and punish at least some of those crimes.’⁹⁰ International treaties, statutes of international criminal tribunals and national legislation have recognised a series of international crimes. The Rome Statute of the International Criminal Court (ICC Rome Statute)⁹¹ is the most significant development in this regard, covering the crimes of genocide, crimes against humanity and war crimes.⁹² Commission of any of these international crimes, namely an act or omission that fulfils the required *actus reus* (material element) and the *mens rea* (mental element), entails individual criminal responsibility.⁹³ The material elements depend on the crime in question whereas the mental element normally encompasses intent and knowledge.⁹⁴

North Korea has neither signed nor ratified the ICC Rome Statute. It has, however, become party to the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) in 1989. Under customary international law, North Korea is also obliged to hold perpetrators of extrajudicial killings, torture and other serious international crimes responsible. Genocide is subject to universal jurisdiction, which means that states are allowed or even obliged to prosecute and punish these crimes, or send the accused to another state for trial, irrespective of where the crime has been committed and the nationality of victim or perpetrator.⁹⁵

The subsequent legal analysis is based on customary international law binding on North Korea, drawing in particular on the jurisprudence of the ad-hoc tribunals set up by the UN Security Council, and the ICC Rome Statute. Although the ICC Rome Statute does not apply directly to North Korea as a non-state party, it is the most comprehensive expression of international standards applied to international crimes and broadly reflects customary international law. It can be applied in case of UN Security Council referral or in relation to crimes committed on foreign territory or involving foreign nationals, provided the state concerned has accepted the jurisdiction of the ICC.

⁹⁰ Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, p. 15.

⁹¹ *The Rome Statute of the International Criminal Court*, A/CONF.183/9, as corrected by procès-verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002.

⁹² Article 5 of the ICC Rome Statute.

⁹³ See Articles 25 and 28 of the ICC Rome Statute for the grounds of individual criminal liability.

⁹⁴ See Article 30 of the ICC Rome Statute.

⁹⁵ See e.g. Christopher Keith Hall, ‘Universal Jurisdiction: New Uses for an Old Tool’, in Lattimer/Sands (eds.), *Justice for Crimes against Humanity*, Hart Publishing, 2003, pp. 47 et seq.

7. Crimes Against Humanity and North Korea

7.1 Crimes against humanity under international criminal law

Crimes against humanity are recognised as an international crime in the statutes of the ICC, the ICTY, the International Criminal Tribunal for Rwanda (ICTR), and in customary international law.⁹⁶ This category of crime encompasses particularly serious offences that are not just isolated acts but part of a policy, plan or widespread practice. There is no agreed definition of crimes against humanity but its main elements are broadly recognised. Whereas the term was originally confined to crimes committed during war, it is today recognised that no link to an armed conflict is required for an act or series of acts to qualify as crimes against humanity,⁹⁷ as specified in the ICC Elements of Crimes:⁹⁸ ‘The acts need not constitute a military attack.’⁹⁹ Various tribunals and national laws have used slightly different definitions, building upon the original notion of crimes against humanity encompassing murder and other acts committed against any civilian population as well as persecution on political, racial or religious grounds.¹⁰⁰ The ICTY and ICTR statutes encompass the crimes against humanity of murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial and religious grounds and other inhumane acts.¹⁰¹ The ICC Rome Statute also recognises acts of apartheid, forcible transfer and enforced disappearance as crimes against humanity and includes a broader definition of sexual violence, all of which reflect customary international law. The jurisprudence of the ICTY, the ICTR and the ICC Rome Statute recognise that any of these acts constitute crimes against humanity ‘when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’.¹⁰²

Article 7(2) (a) of the ICC Rome Statute defines such an attack as ‘a course of conduct involving the multiple commission of acts referred to in paragraph 1 [murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, rape and other forms of sexual violence, persecution, enforced disappearance of persons, apartheid and other inhumane acts] against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.’ The ICTR for its part defined a widespread attack as a massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed at a multiplicity of victims.¹⁰³ A systematic attack, on the other hand, is thoroughly organised and follows a regular pattern on the basis of a common policy involving substantial public or private resources and is carried out pursuant to a policy or plan, although it need not be an official state policy.¹⁰⁴ According to the Trial Chamber of the ICTY, the widespread nature of the attack can consist in the ‘cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.’¹⁰⁵ The ICTY maintained in its jurisprudence that the existence of a policy or plan is not a requirement of crimes against humanity under customary international law though it would serve as proof of the systematic nature of the crime.¹⁰⁶

⁹⁶ Article 5 of the ICTY Statute, Article 3 of the ICTR Statute and Article 7 of the ICC Rome Statute and, on customary international law, Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, pp. 72 et seq.

⁹⁷ The link was maintained in Article 5 of the ICTY Statute but is not contained in either Article 3 of the ICTR Statute nor in Article 7 of the ICC Rome Statute.

⁹⁸ International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000).

⁹⁹ ICC Elements of Crimes, Article 7, Introduction, (3).

¹⁰⁰ *Charter of the International Military Tribunal [IMT Charter] in Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis [London Agreement]*, August 8, 1945, 58 Stat. 1544, E.A.S. No. 472, 82 U.N.T.S. 280, Art. 6 (c) and CCL No.10. Art. 2(1)(c).

¹⁰¹ Article 5 of the ICTY Statute and Article 3 of the ICTR Statute.

¹⁰² Article 7 (1) of the ICC Rome Statute. See for ICTY and ICTR jurisprudence, *Prosecutor v. Naletilic and Martinovic*, IT-98-34 (Trial Chamber), (31 March 2003), para. 236 and *Prosecutor v. Akayesu*, ICTR-96-4-T (Trial Chamber) (2 September 1998), para. 579 respectively.

¹⁰³ *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), para. 580.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Trial Chamber Judgment (26 February 2001), para. 179.

¹⁰⁶ *Prosecutor v. Krajisnik*, IT-00-39/40, Trial Chamber Judgment (27 September 2006), para. 706 (b) and *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 and IT-96-23/1, Appeals Chamber Judgment, (12 June 2002), para. 98. While the ICTR initially held that some kind of preconceived plan or policy must be present, ie. *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), para. 580 and *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber Judgment (21 May 1999), para. 123, it subscribed to the ICTY’s reasoning in *Prosecutor v. Semanza*, ICTR-97-20, Trial Chamber Judgment (15 May 2003), para. 329.

Knowledge of a widespread or systematic attack is usually required as a mental element in order to distinguish between isolated acts and acts that form part of international crimes. In respect of the nature of the attack, it suffices that the perpetrator knows that his or her act is part of a widespread or systematic attack on a civilian population.¹⁰⁷ The ICC Rome Statute defines knowledge generally as ‘awareness that a circumstance exists or a consequence will occur in the ordinary course of events’.¹⁰⁸ This means that a single act or a few acts can constitute crimes against humanity if linked to widespread or systematic attacks.¹⁰⁹

There is sufficient evidence to show that there have been a series of attacks in North Korea, which have been both widespread and systematic. There is equally evidence that these crimes were committed by a range of perpetrators having the requisite intent and/or knowledge. The following section examines the widespread and systematic nature of the crimes, and the mental element relating to the mental element of knowledge is dealt with in more detail in the context of individual responsibility.¹¹⁰

7.2 Evidence for widespread and systematic attacks against the civilian population in North Korea

The camp system in North Korea and specific violations committed therein constitute an attack. According to the ICTY, ‘in the context of a crime against humanity, the phrase ‘attack’ is not limited to the use of armed force; it also encompasses any mistreatment of the civilian population’.¹¹¹ The attack must be ‘directed against any civilian population’.¹¹² Prisoners who are the target of the attacks in North Korea are ‘civilians’ because they are not combatants or otherwise taking part in an armed conflict.¹¹³ The acts ‘must not be isolated but form part of the attack’.¹¹⁴ The executions, killings, torture, prison conditions and other acts are frequent occurrences and are part of the treatment envisaged for ‘enemies of the regime’. The acts are generally tolerated if not actively encouraged¹¹⁵ and would constitute isolated crimes only where the acts clearly contravene orders and prison rules, and are not deemed acceptable by the authorities.

The attack is widespread, consisting of a series of inhumane acts directed at a multiplicity of victims. The prison system, in particular the system of political prison camps, has been operating for decades. There are several camps with a large number of prisoners, most of whom have died as a result either of killings or acts directly resulting in death or because of the prison conditions imposed upon them. Testimonies from camp witnesses over the last 20 years show the frequency of these practices.¹¹⁶ The cumulative effect is a series of inhumane acts because the camp system utterly disregards the physical and mental integrity of prisoners who are treated as ‘enemies’, abused as a source of cheap labour and are kept in inhuman conditions both as punishment and as a means of minimising costs.

The attack is also systematic. There is a discrepancy between the ICC statute and the ICTY jurisprudence on the need for the existence of a policy or plan, but even where this is not seen as an essential element, as by the ICTY, a plan or policy provides strong evidence of the systematic nature of the attack.¹¹⁷ ‘The element “systematic” requires an organised nature of the acts and the improbability of their random occurrence.’¹¹⁸

¹⁰⁷ *Prosecutor v. Rutaganda*, ICTR-96-3 Trial Chamber Judgment, (6 December 1999), para. 71 and *Prosecutor v. Krajisnik*, IT-00-39/40, Trial Chamber Judgment (27 September 2006), para. 706 (e).

¹⁰⁸ Article 30 (3) of the ICC Rome Statute.

¹⁰⁹ *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Trial Chamber Judgment (26 February 2001), para. 178.

¹¹⁰ See section 10 below.

¹¹¹ *Prosecutor v. Vasiljevic*, IT-98-32-T, Trial Chamber Judgment (29 November 2002), paras 29, 30.

¹¹² *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 and IT-96-23/1, Trial Chamber Judgment (22 February 2001), para. 410 and *Prosecutor v. Limaj et al.* IT-03-66, Trial Chamber Judgment (30 November 2005), para. 186.

¹¹³ See definition in *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), para. 582.

¹¹⁴ *Prosecutor v. Naletilic and Martinovic*, IT-98-34, Trial Chamber Judgment, (31 March 2003), para. 234, *Prosecutor v. Krajisnik*, IT-00-39/40, Trial Chamber Judgment (27 September 2006), para. 706 and *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-I-T, Trial Chamber Judgment (21 May 1999), paras 122-123.

¹¹⁵ See testimonies by Choi Dong-Cheol and Ahn Myeong-Cheol, former detention settlement guards, in *Are They Telling Us the Truth?* p. 217 and p. 221 respectively.

¹¹⁶ See KINU *White Paper*, 2006, p. 248, and Hawk, *Hidden Gulag*, pp. 35 et seq, *Are They Telling Us the Truth?* pp. 177 et seq. and pp. 188 et seq.

¹¹⁷ *Prosecutor v. Krajisnik*, IT-00-39/40, Trial Chamber Judgment (27 September 2006), para. 706 (b); *Prosecutor v. Naletilic and Martinovic*, IT-98-34, Trial Chamber Judgment (31 March 2003), para. 236.

¹¹⁸ *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 and IT-96-23/1, Appeals Chamber Judgment (12 June 2002), para. 94.

The prison system, in particular with regard to political prisons, is based on an official state policy of how to treat 'political enemies'. Salient features of this policy are:

- the grouping of society into three different classes;
- the specification of the treatment to be given to each group, including a system of criminalisation, 're-education' and punishment for those deemed insufficiently political loyal;
- the elimination of the seed of class enemies and factionalists through to three generations of the original offender(s);
- the imprisoning of political prisoners in camps maintained with substantial public resources.

The system of classifying, identifying, arresting, detaining, imprisoning and ill-treating political prisoners is conducted in an organised manner. The system of imprisonment and detention facilities is highly centralised, run by the State Security Protection Agency and the Ministry of Public Security, which are both under the direct control of the Korean Workers' Party and ultimately Kim Jong-Il. Political prison camps have been built following orders from Kim Il-Sung and Kim Jong-Il, with the aim of removing 'political enemies' from society. The killing and death of those who are classified as entrenched enemies who are not susceptible to 're-education and re-integration' in the pervading political system is an integral part of the system and openly tolerated, not being subject to any sanctions.¹¹⁹

The ICTY concluded that crimes against humanity had been committed in the case of Jelisić, in particular the confining of Croat and Muslim men, including in the Luca camp where they were kept in inhuman conditions, beaten and often killed. The factors that led to the ICTY finding apply in equal measure to the situation in North Korea: 'The existence of an acknowledged policy targeting a particular community, the establishment of parallel institutions meant to implement this policy, the involvement of high-level political or military authorities, the employment of considerable financial, military or other resources and the scale of the repeated, unchanging and continuous nature of the violence committed against a particular civilian population are among the factors which may demonstrate the widespread or systematic nature of an attack.'¹²⁰

The mental element of knowledge of the attack does not require proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the state or organisation.¹²¹ Instead, the mental element is satisfied if the perpetrator knew the general context in which his or her acts took place and intended by his or her acts to further a widespread or systematic attack.¹²² It is not required that the accused knows exactly what would happen to the victims or knows of the criminal plan, provided that he or she deliberately takes a risk that the crime may be committed.¹²³ In this way, the mental element can be inferred from the surrounding circumstances and deduced from factual evidence.¹²⁴ Relevant factors are historical and political circumstances, the functions and responsibilities of the accused within the political hierarchy, the scope and seriousness of the acts committed as well as the nature of the crimes committed and common knowledge about the crimes.¹²⁵ While these factors have to be carefully analysed in each individual case, the system of inhuman treatment and killings in the political prison camps is common and readily apparent, as testified by several former camp guards. This would appear to allow the inference of knowledge in regard to all those who are involved in the planning, supervision and running of the camp system.

¹¹⁹ See testimonies by Choi Dong-Cheol and Ahn Myeong-Cheol, former detention settlement guards, in *Are They Telling Us the Truth?* p. 217 and p. 221 respectively.

¹²⁰ *Prosecutor v. Jelisić*, IT-95-10, Trial Chamber Judgment (14 December 1999), para. 53.

¹²¹ See Introduction to Article 7 of the ICC Elements of Crimes, para. 2 and *Prosecutor v. Krajisnik*, IT-00-39/40, Trial Chamber Judgment (27 September 2006), para. 706 (e).

¹²² *Prosecutor v. Blaskić*, IT-95-14, Trial Chamber Judgment (3 March 2000), paras 244 and 247 as well as Introduction to Article 7 ICC Elements, para. 2.

¹²³ *Ibid.*

¹²⁴ *Prosecutor v. Blaskić*, IT-95-14, Trial Chamber Judgment (3 March 2000), paras 258 and 259.

¹²⁵ *Ibid.*, para. 259

8. Crimes Against Humanity¹²⁶

A. Murder

The crime against humanity of murder occurs with the killing of one or more persons where death results from an act or omission by the perpetrator and there was intention to kill or cause death.¹²⁷ The conduct must be committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator must know or intend the conduct to be part of such an attack.¹²⁸

Murder committed in the detention system

Executions and killings

'When public executions were about to start, they were announced very loudly by the prison guards through speakers; intimidating everyone that they must come out and attend the scene. The maximum number of prisoners who had witnessed public executions was 2500 and the minimum 500. During my five year prison camp life, three prisoners were publicly executed per month on average. If you calculate the number, I have witnessed about 180 prisoners being executed. Most executed prisoners were in their thirties to forties. More than 99% of them were male. Most of the executed prisoners were those who had no particular grounds for public execution and a few were those who stole food or made an attempt to escape. Public executions were carried out mainly to intimidate prisoners. The prisoners were already beaten before they were hung. They were already half dead when they were taken out and tied to a tree for execution.

I still can't forget the execution by firing squad. After the prisoners were hung and executed by a firing squad, they still continued to bleed. The other prisoners were told to walk around them. One day a prisoner was shot with nine bullets but he was still moving. So a guard approached him and shot him one more time in his head. His brain burst out. We were told to line up and walk in front of him. I can never forget that scene.'

Lee Yeong-Guk, former bodyguard of Kim Jong-Il and former prisoner at Yodeok Political Prison Camp

Testimonies describe secret and public executions carried out in North Korean prisons. Prisoners may be executed for acts like foraging for or stealing food, attempting to escape, rioting, assaulting guards, sexual relations with guards, refusing to abandon religious beliefs, and criticising the North Korean regime. Prisoners and guards describe execution by firing squad and by hanging, often accompanied by gruesome torture. Prisoners and guards alike describe execution sites in the camps, saying that the sites smell different from other parts of the camp.

The executions are often carried out as a means of deterrence and control, instilling fear in the prison population. Prisoners describe being forced to throw stones at the bodies or to touch them while they are still bleeding. Prisoners have also been forced to participate in killings in various ways, including marching over other prisoners. Other accounts describe how prisoners have been killed by being recklessly or deliberately exposed to fire.

Prisoners have also been killed on the whim of the guards, who are authorised to kill them and trained not to treat prisoners as human beings. With this discretion and trained disregard for prisoners' lives, there are reports of guards, with an eye to promotion and professional reputation, arbitrarily killing prisoners and subsequently claiming that the latter were trying to escape. Guards are also warned that treating prisoners with compassion will lead to their own punishment and even imprisonment.

¹²⁶ The definitions of crimes against humanity used in this report draw primarily on the ICC Rome Statute and the ICC Elements of Crimes. Although the elements are not binding they are an aid to interpretation of the provisions of the ICC Rome Statute (See ICC Rome Statute, Article 9). The report considers the jurisprudence of the ICTY and ICTR as well as other relevant sources in examining whether there is evidence for the commission of the particular crime against humanity in North Korea.

¹²⁷ The terms killed and caused death are used interchangeably in the ICC Elements of Crimes. See also *Prosecutor v. Kupreskic et al.*, IT-95-16 Trial Chamber Judgment, (14 January 2000), para. 561. The killing must be premeditated murder according to ICTY (*Prosecutor v. Kupreskic et al.*, IT-95-16, Trial Chamber Judgment (14 January 2000), para. 561) and ICTR jurisprudence (*Prosecutor v. Semanza*, ICTR-97-20, Trial Chamber Judgment (15 May 2003), paras 334-337; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber Judgment (21 May 1999), paras 137-139).

¹²⁸ See ICC Rome Statute, Article 7 (1) (a), ICC Elements of Crimes, Article 7 (1) (a).

The executions and killings are carried out in manners that constitute violations of the right to life.¹²⁹ Under international law, the death penalty may be imposed only for the most serious offences and following a trial that upholds the highest guarantees for fair trial.¹³⁰ Most of the executions in the camp are said to relate to escape attempts and to taking or stealing things in order to survive – acts that are not recognised as serious offences justifying the imposition of the death penalty under international law, even if fair trial standards were applied. Executions are carried out following decisions by the camp authorities without judicial supervision and observance of fair trial rights.¹³¹

Torture resulting in death

I was detained on return to North Korea for having crossed the border. I was placed in a cell with 50 other people. It was so cramped you couldn't move. There was a special compartment made of iron. They told us that if we did something really wrong they would put us in there, and no one ever came out alive. One night I could not sleep. The cell leader, who happened to be from my village, said he would show me something. He opened the door to the iron compartment and there was a man inside under a blanket. He lifted the blanket up and I could see the man. He had no flesh left on his face, his eyes were barely open, and his skin was all black. He was barely still alive. His crime had been the same as mine, just crossing over the border, but he must have said something to anger the guard. It was a really appalling thing to see someone in such a disfigured tortured state.

They tortured us by making us sit motionless on the floor. If you move without authorisation, you are punished. We had to sit cross-legged, in a row without moving, without making any noise. The only time we could move was when we ate. If we needed to go to the toilet, we had to raise our hand and ask permission. We had to sit like that all day. At night we could try to change position, but it was so crowded that we had to sleep all over each other.

There was a 60 year old man detained with me. He couldn't move around much anyway, but his body was especially weak since there was not enough food. He sat there for about ten days: cross-legged, straight-backed and with his hands on his knees. After that he couldn't take any more and he died.'

Park Yeong-Cheol¹², North Korean escapee

As described below in relation to the crime against humanity of torture,¹³² torture is widespread and systematic and takes a wide variety of forms, practised across the detention and imprisonment system. There are numerous eyewitness accounts testifying to beatings and other forms of torture resulting in death, typically carried out by prison guards. Deaths happen both during torture and subsequently as a result of injuries inflicted during torture. Accounts describe death by torture through *inter alia* beatings, sexual abuse, confinement in tiny punishment cells, experimentation and exposure to the elements.¹³³

¹²⁹ Also see in this context *Concluding Observations of the Human Rights Committee: Democratic People's Republic of Korea*, UN Doc. CCPR/CO/72/PRK, 27 August 2001, para. 13: 'While the Committee appreciates that the number of offences carrying the death penalty has been reduced to five, it remains seriously concerned that, of those five offences, as the report states, four are essentially political offences (arts. 44, 45, 47 and 52 of the Criminal Code), couched in terms so broad that the imposition of the death penalty may be subject to essentially subjective criteria, and not be confined to 'the most serious crimes' only, as required under article 6, paragraph 2, of the Covenant. The Committee is also concerned at acknowledged and reported instances of public executions.'

¹³⁰ Human Rights Committee, *General Comment No.6: The right to life*, 30 April 1982: 'The Committee is of the opinion that the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure. It also follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.'

¹³¹ This practice has been noted with very serious concern by the United Nations. See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, paras 1 (b) (i), (ii); *Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children: Addendum, Summary of cases transmitted to Governments and replies received*, submitted to the UN Commission on Human Rights, UN Doc. E/CN.4/2006/62/Add.1, 27 March 2006, para. 72. For more information, see KINU, *White Paper*, 2006, pp. 217, 234-248; Kang Cheol-Hwan in Database Centre for North Korean Human Rights (NKDB) and Life Funds for North Korean Refugees (LFNKR); testimony of Choi Dong-Cheol, Ahn Myeong-Cheol, Ahn Hyeok in *Are They Telling Us the Truth?*, (2004), pp. 37-40, 177-183, 189-193, 197-199 and 175, 187, 217 and 203; Hawk, *Hidden Gulag*, pp. 35, 37; Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China*, 19 November 2002, p. 27; Amnesty International, *North Korea: Human Rights Concerns*, 24 November 2006; Jasper Becker, 'Dictators: The Depths of Evil', *New Statesman*, 4 September 2006; Human Rights Without Frontiers, *Long-standing practices of baby-killing in the camps of North Korea: Accounts by eyewitnesses*, 8 January 2002; Jasper Becker, *Rogue Regime: Kim Jong Il and the Looming Threat of North Korea*, 2005, p. 90.

¹³² See section 8.F below.

¹³³ For further information see testimony of Choi Dong-Cheol and Ahn Myeong-Cheol in *Are They Telling Us the Truth?*, pp. 79, 83, 153-154 and 145; Los Angeles Times, 'North Korea's Use of Chemical Torture Alleged', 3 March 2004; Amnesty International, *North Korea: Human Rights Concerns*, 24 November 2006.

It is not necessary that the perpetrators premeditated murder. The *mens rea* or mental element is satisfied where the perpetrator causes 'grievous bodily harm in the reasonable knowledge that the attack was likely to result in death'.¹³⁴ This is the case where 'it is the actor's purpose, or the actor is aware that it will occur in the ordinary course of events'.¹³⁵ It is evident that acts of torture, in particular when inflicted on persons who are in a weakened state, which applies to all prisoners in the camps, can easily or will result in the death of the victim. Proving the required intent for murder in such a case would depend on the severity of the treatment and the circumstances indicating the likelihood of the torture resulting in death.

Death as a result of prison conditions

'When I first saw the prisoners, they looked like a group of handicapped people. In fact they looked like beasts. However, they were working so I knew they were human beings. They all had one kind of deformity or another. They had very sunken eyes and their heads looked like skulls. They were just skin and bone.

You can usually read someone's mentality by looking into their eyes. But the prisoners' eyes are unfocused and fearful. When they are called they expect to be beaten. They are always looking down, looking for food. They have to keep their eyes down when they meet officers.

They wore old guard uniforms which had been dyed black and were all patched up. Shoes were made from tyres.

I had no feeling of sympathy for the prisoners. But I felt curiosity and wondered how they could survive. I could not understand how such people could be alive.'

Ahn Myeong-Cheol, former political prison camp guard

All prisons have very high mortality rates, because of the harsh conditions, inadequate rations and forced labour. All prisoners describe existing on very meagre rations. Constant hunger pervades the prison system, with some survivors describing this as the most unbearable aspect of their incarceration. Driven by hunger, prisoners fight for scraps of food and scavenge for anything edible: survivors describe eating pig slops, rats, snakes, lice, plants, bark, and even clay. However, prisoners caught stealing or scavenging may be punished by severe beatings or even execution. Prisoners who work too slowly or who do not meet production quotas may be punished by a reduction in their food rations.¹³⁶

As mentioned above, accommodation in all types of prisons is cramped, poorly insulated, and infected with insects. The harsh conditions have many negative ramifications including the rampant spread of disease. Survivors testify that prisoners were left to die without medical treatment. Owing to malnutrition, many of the prisoners are unnaturally short, emaciated, hunchbacked or otherwise deformed, or prematurely aged. The unsafe working conditions lack many basic safety

precautions, and cause multiple deaths, leaving many prisoners disabled and/or missing limbs. Many lose fingers and toes from frostbite. Prisoners often suffer from pneumonia, tuberculosis, pellagra and other diseases associated with malnutrition and exposure.¹³⁷ As noted above, the loss of life in the prison system is so high that many prisons are effectively death camps.¹³⁸

The general conditions in prisons are maintained by the camp authorities and prison guards. These authorities are responsible for acts, i.e. forcing prisoners to perform harsh labour, as well as omissions, i.e. failing to provide adequate food. The required intent is fulfilled where the perpetrator intends to 'cause grievous bodily harm or inflict serious injury in the reasonable knowledge that the attack is likely to result in death'.¹³⁹ The combination of harsh labour and a near-starvation diet has resulted in hundreds of thousands of deaths in prisons. Death is therefore a foreseeable consequence of the prison regime. This indicates that the camp authorities are aware that most prisoners will die from these conditions in the ordinary course of events.

¹³⁴ *Prosecutor v. Blaskic*, IT-95-14, Trial Chamber Judgment (3 March 2000), para. 217.

¹³⁵ *Prosecutor v. Kupreskic et al.*, IT-95-16, Trial Chamber Judgment (14 January 2000), para. 561.

¹³⁶ Hawk, *Hidden Gulag*, p. 25; Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China*, 19 November 2002. See also testimonies in *Are They Telling Us the Truth?* pp. 49-50, 93-107.

¹³⁷ KINU White Paper, 2006, p. 247.

¹³⁸ See section 5.2 above. See also KINU White Paper, 2006, p. 247; testimony by Ahn Hyeok, Kang Cheol-Hwan, Ahn Myeong-Cheol, Choi Dong-Cheol, in *Are They Telling Us the Truth?*, pp. 61, 63-64, 69, 79-80, 83 and 41 and 65; Hawk, *Hidden Gulag*, pp. 41-55, 25; Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China*, 19 November 2002; Democracy Network against North Korean Gulag, *The Names Lost into North Korean Gulags*, p. 1, 42, 53.

¹³⁹ *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Trial Chamber Judgment (26 February 2001), para. 236.

Forced abortions and infanticide

'One morning I had to help escort three pregnant women to a military hospital outside North Pyeongan Provincial Police Detention Centre in South Sinuiju. The first woman was a 27-year-old from Chongjin who was full term. The second was a 22-year-old from Musan who was also full term. The third was aged 30 and was about eight months pregnant. Because I was supposed to help escort the lady from Chongjin, I was in the room when she gave birth. This was the first time in my life that I saw a newborn baby. It was very tiny. It cried and moved its arms and legs. When the baby was born the umbilical cord was cut and then one of the nurses took the baby. She then took a wet towel and smothered the baby to kill it. They killed the baby in the mother's presence. She was beside herself, crying, shrieking and screaming. When the baby stopped breathing the nurse wrapped it in a white cloth and took it away.

The nurses were acting like police officers. They said the baby was a 'chink' and that they did not want Chinese babies. When I saw this I wondered what kind of crimes these women had committed to suffer this penalty. The nurses obviously believed defecting to be a serious crime against the fatherland and showed no mercy because they considered the baby to be born to a serious criminal. Seeing this made me want to stop living.

The other women also gave birth to living babies. I could not see them as they were behind another partition, but they were killed in the same way. Other girls saw such things and told me about them. The women who gave birth were returned to jail later in the day to start work the next day. There was no special meal for them. I saw the lady from Chongjin when she came back. Her eyes were swollen and she kept crying. She was so sad, so depressed.

There were over ten pregnant women who forcibly lost their babies during the 50 days that I was there. Some were given an injection. Some babies were lost through forced abortion, others were delivered dead and others were born alive and then killed. The second time I was arrested, I was again sent to North Pyeongan Provincial Police Detention Centre. This time, there were three women who were three or four months pregnant and they were all subjected to forced abortion.'

Lee Mi-Suk†, former detainee at North Pyeongan Provincial Police Detention Centre in South Sinuiju

Defectors consistently testify that reproduction is not permitted in the political prison camps. The policy of elimination of class enemies and of wiping out the seed of reactionaries means that perpetuating the family line of prisoners is forbidden. Sexual relations among prisoners are prohibited, although there are some reports that marriage is offered as a very exceptional incentive. However, even when couples were imprisoned together, survivors testify that their schedules were arranged so that they would be able to spend little time together.

A pregnancy in the camp is greatly feared and former prisoners describe women trying to induce miscarriage to prevent the pregnancy being discovered. Group action to prevent a pregnancy materialising has also been reported as punishments could be exacted against the community as well as the individual. Those found pregnant have been punished and subjected to forced abortion. Accounts state that women who have not miscarried by an advanced stage of pregnancy have disappeared or been killed. There are also testimonies of babies born in detention being killed upon birth. The abortions, baby-killings and punishment of those involved all serve to instil fear in the population and prevent births within the camp population.

Significant numbers of reports have emerged in recent years of North Korean women who are detained for having crossed the border into China being subjected to forced abortion or having their newborn babies killed at birth. Eyewitnesses have described seeing babies killed after birth, usually by being smothered or left face down to die unattended. Accounts describe the reason given for the killing of the baby being that it was of part-Chinese descent. In some accounts, other prisoners were forced to kill the baby. Pregnant women have been deliberately mistreated to induce miscarriage, by use of injections or through means such as poking, kicking or beating their stomachs or forcing them to overly exert themselves through labour or physically demanding tasks. Many testimonies report that women who were subjected to forced abortion were given no special treatment and were required to work as normal. Accounts also state that women who were too far advanced in their pregnancy to be subjected to a forced abortion were detained for longer in order that the baby might be killed at birth. Witnesses describe multiple killings or abortions, stating that the practice was consistently applied while they were detained.

Witnesses report that North Korean officials used harsh anti-Chinese expressions and that it was generally assumed that the babies were fathered by Chinese men, but without definitive proof. Defectors describe degrading questioning about sexual experiences with Chinese men and virulent anti-Chinese rhetoric intolerant of Chinese seed affecting the Korean race.¹⁴⁰

The National Human Rights Commission of Korea found that 60% of interviewees had experienced or knew about forced abortions.¹⁴¹ A survey by the Korean Bar Association found that 57.7% of those asked had experienced or knew about forced abortions in the detention facilities.¹⁴²

The killing of infants constitutes murder. Forced abortion constitutes inhuman treatment at the very least, if not murder.¹⁴³

Widespread or systematic attack against civilians

The violations in the prison system resulting in the deaths of hundreds of thousands of victims constitute a widespread and systematic attack against civilians.

Mental element

Anyone who has taken part in the killings, either personally or in other ways that trigger personal responsibility under international criminal law, incurs responsibility when he or she satisfies the mental element of intent and knowledge, namely meaning to engage in the conduct and being at least aware that death will occur as a consequence of his or her conduct in the ordinary course of events. This would appear to apply to all those involved in the establishment, supervising and running of the camps that cause the death of the large majority of prisoners.

¹⁴⁰ For further information see footnote 261 in Section 9.

¹⁴¹ 국가인권위원회, 탈북자 증언을 통해서 본 북한인권 실태조사 (translated as The National Human Rights Commission of Korea, *Assessment of North Korean Human Rights through the testimony of the defectors*) p. 3.

¹⁴² Korean Bar Association, *White Paper*, 2006, p. 398.

¹⁴³ See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, para. 1 (b) (iv); *Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children: Addendum, Summary of cases transmitted to Governments and replies received*, submitted to the UN Commission on Human Rights, UN Doc. E/CN.4/2006/62/Add.1, 27 March 2006, para. 75; *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Addendum, Summary of cases transmitted to Governments and replies received*, submitted to the UN Commission on Human Rights, UN Doc. E/CN.4/2005/51/Add.1, 2 February 2005, para. 23; KINU, *White Paper 2006*, pp. 260, 272; testimony of Ahn Myeong-Cheol, Ahn Hyeok, Choi Dong-Cheol, in *Are They Telling Us the Truth?* pp. 259-260, 261, 263 and 255; Hawk, *Hidden Gulag*, pp. 13, 15, 61-62, 65, 66, 68, 69, 72; See Human Rights Without Frontiers, *Long-standing practices of baby-killing in the camps of North Korea: Accounts by eyewitnesses*, 8 January 2002; Human Rights Without Frontiers, *Baby killings: Fact-finding mission by Human Rights Without Frontiers*, 28 February 2002; The New York Times, James Brooke, 'North Korean prisons reportedly force abortions or kill babies', 10 June 2002; International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, 26 October 2006; Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China*, 19 November 2002, p. 23; Jasper Becker, *Rogue Regime: Kim Jong Il and the Looming Threat of North Korea*, 2005, p. 87, 89; Amnesty International, *North Korea: Human Rights Concerns*, 24 November 2006.

Arbitrary executions outside prisons

'I have witnessed public executions in North Korea many times. There was a public execution in Onsong, my home town, the day before my defection to China. Whenever there was a public execution posters were put up all around the place. Eventually people were not interested, so they then killed people in the market place where there was already a crowd. It is extremely unpleasant having to watch another man being killed. The first convict I saw was someone who made a mistake in building something. His family background was bad so they killed him. However, after that, the crimes they committed were related to the food shortage, such as stealing cows or food or similar acts. So it was not very pleasant to watch.

Any convict is already half dead by the time he is brought to the execution site. He cannot walk by himself. Guards have to hold him on both sides. He is blindfolded, gagged and tied to a pole. The ropes go around his chest, stomach and legs. First they shoot the rope to break the chest rope, the bullet enters the chest and the person falls forward. The next marksman shoots at the stomach rope and then the last one shoots at the rope around the legs. Then the whole body falls forwards to the ground. Then they shoot him indiscriminately to make sure he is dead. There is only a short interval of a few seconds between the first and the second bullet because when the chest rope breaks, the upper body starts falling.

After the convict is dead, they roll the dead body in a straw mat. It is put into a truck and nobody knows where it is taken afterwards.'

Lee Jin-Taekt, North Korean escapee

Eyewitness reports and video footage testify to the practice of executions following summary trials. Descriptions of executions often depict a similar scene. Typically, eyewitnesses see victims, who have obviously been tortured, dragged out in front of an assembled crowd. The victims are prevented from speaking by a stone which has been thrust into their mouths. In some cases a formal hearing or enactment takes place, where the crime is read out and witnesses recount the event. The process is swift and summary with no opportunities for the 'defendant' to speak. In reality it would appear that these are not so much public hearings as public spectacles, and the witnesses are not so much giving evidence as denouncing the victim in an attempt to distance themselves from the crime in order to avoid their own punishment.

Most accounts describe the victims being tied to a pole with three strips of rope or wire. There are often three marksmen who each take three shots at the ropes, one at the head, one at the heart and one at the stomach. A number of witnesses comment that the victim falls progressively forward at each shot as the ropes are broken, until at the last shot he or she falls to the ground. The accounts of public executions are often graphic, describing gory details of what happens to the body and brain.

Other forms of execution are used and the number of marksmen and shots vary. Alternative means of securing the prisoner have also been described. One eyewitness related how victims were secured to crucifix-shaped structures with six strips, one around the chest, one around the waist and two on the shoulders and wrists.

The crimes subject to execution are often simple efforts to secure food, such as stealing or exchanging public property to obtain food. For such, the use of public execution was particularly prevalent during the famine years in the later 1990s. A public proclamation by the Social Safety Agency on 5 August 1997, obtained by KINU, dictates that those who commit serious food related crimes will be 'executed by firing squad'.¹⁴⁴

Execution has also been frequently referred to as the punishment for those North Koreans who return from China having had contact with Christians or with South Koreans. A number of eyewitnesses have described such executions, with several of these incidents taking place in Musan and Onseong.

¹⁴⁴ KINU White Paper, 2006, pp. 29-31.

The verbal testimony of public executions was confirmed by video footage released in 2005.¹⁴⁵ The secretly-taped footage shows two public trials, of several individuals on each occasion, which took place on 1 and 2 March 2005. The public trials omit the principle of innocence until guilt is proved and the proceedings are highly summary, with execution conducted immediately after the sentence is proclaimed.

These executions are in flagrant violation of fair trial standards because the accused are not granted even the most basic rights to defend themselves.¹⁴⁶ The executions, including any orders to carry out executions under these circumstances, are manifestly unlawful.

The survey by the National Human Rights Commission of Korea found that 75% of 100 interviewees had personally seen a public execution and an additional 17% had heard of public execution.¹⁴⁷ A higher percentage emerged in the survey of 200 North Koreans carried out by Yonsei University, which found that 86.5% of their interviewees had witnessed a public execution.¹⁴⁸ While such figures would indicate widespread practice, it does also appear that the numbers of public executions have decreased considerably in recent years. Nevertheless, credible current accounts of executions continue to emerge. In addition to public executions, unknown numbers of secret extrajudicial executions take place.

The frequency of eyewitness accounts indicates that the practice of public execution is, or has been, widespread. Executions in violation of the right to life form an integral part of the system of repression and are used to counter dissent and conduct seen as threatening the prevailing order. The public nature of many executions, which is in itself a violation of the right to life, serves to reinforce the symbolic deterrent of executions that follows a clear pattern in line with state policy at any given time.¹⁴⁹ Available evidence indicates that the practice and policy of executions constitutes the crime against humanity of murder where committed with the required mental element.¹⁵⁰

B. Extermination

The crime against humanity of extermination is characterised by the killing of one or more persons, including by inflicting conditions of life (*inter alia* the deprivation of access to food and medicine) calculated to bring about the destruction of part of a population where the conduct constitutes, or takes place as part of, a mass killing of members of the civilian population. The conduct must be committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator must know or intend the conduct to be part of such an attack.¹⁵¹

Mass killings

Extermination is part of the classic corpus of crimes against humanity recognised by the statutes of the Nuremberg Tribunal, the ICTY, ICTR and ICC and further developed in jurisprudence.¹⁵²

Crimes against humanity of extermination are characterised by the targeting of a 'numerically significant part of the population',¹⁵³ which means that the 'act of extermination must be collective in nature'.¹⁵⁴ As clarified by the ICTR, exterminations concern mass killings whereby it is considered that '... the distinction between extermination and murder [is not entirely related to numbers but] is a conceptual one that relates to the victims of the crime and the manner in which they were targeted'.¹⁵⁵

¹⁴⁵ Available at <http://www.northkoreanrefugees.com/dvd/>.

¹⁴⁶ KINU *White Paper*, 2006, p. 70-86.

¹⁴⁷ NHRC, *ibid.*, p. 138.

¹⁴⁸ Jeon et al., 'Correlation between Traumatic Events and Posttraumatic Stress Disorder Among North Korean Defectors in South Korea', *Journal of Traumatic Stress*, Vol. 18, No. 2, April 2005 p. 151. These figures belie the number of executions reported by North Korea (13 executions between 1998 and early 2001). See KINU *White Paper*, 2006, pp. 27 et seq.

¹⁴⁹ See on public executions, *ibid.* The United Nations has also expressed concern. See *Concluding Observations of the Human Rights Committee: Democratic People's Republic of Korea*, UN Doc. CCPR/CO/72/PRK, 27 August 2001, para. 13.

¹⁵⁰ This practice has been noted with very serious concern by the United Nations. See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, paras 1 (b) (i), (ii). For more information, see KINU, *White Paper*, 2006, pp. 27-40; testimony of Ahn Myeong-Cheol, in *Are They Telling Us the Truth?*, pp. 177-183, 189, 191-192 and 175 and 187; USCIRF, *Thank You Father Kim Il Sung*, pp. 26, 47; Amnesty International, *North Korea: Human Rights Concerns*, 24 November 2006; Minnesota Lawyers International and Asia Watch, *Human Rights in the Democratic People's Republic of Korea (North Korea)*, December 1988, p. 65; Jasper Becker, *Rogue Regime: Kim Jong Il and the Looming Threat of North Korea*, 2005, p. 89.

¹⁵¹ See ICC Rome Statute, Articles 7 (1) (b) and 7 (2) (b) and ICC Elements of Crimes, Article 7 (1) (b).

¹⁵² See Article 6 (c) Charter of the International Military Tribunal, Article 7 (1) (b) of the ICC Rome Statute, Article 5 (b) of the ICTY Statute and Article 3 of the ICTR Statute and references to jurisprudence in subsequent footnotes.

¹⁵³ *Prosecutor v. Krstic*, IT-98-33, Trial Chamber Judgment (2 August 2001), para. 503.

¹⁵⁴ *Prosecutor v. Vasiljevic*, IT-98-32-T, Trial Chamber Judgment (29 November 2002), para. 227.

¹⁵⁵ *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, ICTR-99-52-T Trial Chamber Judgment, (3 December 2003), para. 1061.

According to the ICC Elements of Crimes: ‘the conduct could be committed by different methods of killing, either directly or indirectly.’¹⁵⁶

The direct killings and harsh conditions in the political prison camps have caused the deaths of a large number of the camp population, most probably resulting in the death of a significant part of the population constituting over 10,000 prisoners annually.¹⁵⁷

The political prison camp policy appears calculated to cause the death of a large number of persons who form a part of the population, namely those labelled as ‘enemies’ who suffer on account of their genuine or alleged political beliefs or other crimes. The conditions in the camps do not meet minimum standards of survival and, inevitably, many prisoners die mainly as a result of exhaustion, malnutrition or disease. While living conditions in North Korea are characterised by food shortages that have intermittently resulted in famines, many testimonies show that prisoners have been deprived of access to food and medicine. Even though the health problems and mortality rates of prisoners are well-known, the authorities have seemingly not taken any steps to provide the levels of food and medical treatment required in order to reduce mortality significantly. The fact that prisoners are generally seen as ‘political enemies’, many of whom have no prospect of being released, and that they are said to be treated inhumanely throughout their imprisonment, indicates a complete disregard for their life.¹⁵⁸

Widespread or systematic attack

The practice of killing and imposing conditions calculated to bring about the destruction of a part of the population have been both widespread, being applied in most camps to a large number of people, and systematic, being based on a policy pursued consistently over a considerable period of time.

Mental element

The required intent for the crime against humanity of extermination is two-fold. The perpetrator must intend to kill or inflict serious injury and must have done so ‘being aware that his act or omission forms part of a mass killing event’¹⁵⁹ or, in other words, ‘in the knowledge that his action is part of a vast murderous enterprise in which a large number of individuals are systematically marked for killing or killed.’¹⁶⁰ The latter implies constructive knowledge of the general circumstances which would need to be proven in the individual case whereby officials in relevant decision-making functions and the heads of the responsible authorities can be expected to have the required degree of awareness.

C. Enslavement

The crime against humanity of enslavement occurs where the perpetrator exercises any or all of the powers attaching to the right of ownership over one or more persons, such as purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty. Such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status. The conduct must be committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator must know or intend the conduct to be part of such an attack.¹⁶¹

¹⁵⁶ ICC Elements of Crimes, Article 7 (1) (b).

¹⁵⁷ See section 4.9 above.

¹⁵⁸ See testimony of Ahn Myeong-Cheol, Choi Dong-Cheol, Ahn Hyeok, Kang Cheol-Hwan, in *Are They Telling Us the Truth?* pp. 203, 205-208, 213, 217, 221-223, 227-229, 231-232, 233; see Human Rights Without Frontiers, *Long-standing practices of baby-killing in the camps of North Korea: Accounts by eyewitnesses*, 8 January 2002; Jasper Becker, *Rogue Regime: Kim Jong Il and the Looming Threat of North Korea*, 2005, p. 87, 89.

¹⁵⁹ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-I-T, Trial Chamber Judgment (21 May 1999), para. 144.

¹⁶⁰ *Prosecutor v. Vasiljevic*, IT-98-32-T, Trial Chamber Judgment (29 November 2002), para. 229.

¹⁶¹ See ICC Rome Statute, Articles 7 (1) (c) and 7 (2) (c) and ICC Elements of Crimes, Article 7 (1) (c) and footnote 11. The footnote states: ‘It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.’ See also *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 and IT-96-23/1, Trial Chamber Judgment (22 February 2001), para. 542; *ICTY Prosecutor v. Krnojelac*, IT-97-25, Judgment of Trial Chamber (15 March 2003), para.359.

Forced labour

'The political prisoners are not seen as human beings, rather as small parts of a big machine; treated worse than dogs and cats. Their reasoning is paralysed because they have to live like machines; they have no energy reserves to think. They get up at 5 o'clock in the morning and are subject to roll call three times a day to make sure that they stay at their respective sites of unspeakably hard labour. The prisoners would suffer injuries and illnesses – on average five or six out of ten prisoners would always be injured or die because they caught a disease. The types of labour they have to do include gold mining, quarrying, felling, road construction, livestock rearing and production for foreign currency such as medicinal herbs, high quality timber and alluvial gold extracts. If they fail more than twice to be counted during the roll call, they are treated as having attempted to escape and are killed. With meagre food rations of corn, salt and soup made from waste leftovers, prisoners had to work 14 hours a day and often longer if their daily work quota had not been met. You did not normally get to sleep until after 10 at night but for those who had to carry on working, they would not be allowed to sleep. There are many children in the North Korean concentration camps because of the family quarters. Technically speaking, there are schools but these are just the meeting places where children gather for forced labour. The children have to endure more brutal labour than the adults. The reason why they have a higher death rate than the adults is because they are driven hard at work and they have malnutrition.'

Kang Cheol-Hwan, former child prisoner at Yodeok Political Prison Camp

In the Nazi trials, Schirach and Sauckel were convicted of the crime against humanity of enslavement for forced labour by the International Military Tribunal at Nuremberg. It was held in the *Milch* case and the *Pohl and others* case that forced labour may constitute a crime against humanity.¹⁶² The crime of enslavement has been recognised subsequently in the ICTY, ICTR and ICC Statutes.¹⁶³ As held more recently by the ICTY in *Kunarac and others*, 'detaining or keeping someone in captivity, without more, would, depending on the circumstances of the case not constitute enslavement ... further indications of enslavement include exploitation; the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship...'¹⁶⁴

In the North Korean prison system, prisoners are forced to perform hard labour for the benefit of the country's economy. The work includes mining, logging, farming and intensive factory labour. As covered above, prisoners are forced to complete this work on the barest of food rations, which leaves them constantly hungry and prone to fatigue and sickness, and, in many cases, to eventual death.¹⁶⁵ They are forced to labour even when seriously ill.

Prisoners are pushed extremely hard. Failure to meet quotas or standards or to work hard enough can be met with beatings, extended working hours, reduction of food rations and brutal punishments, some of which lead to death. Collective punishment is also used, imposing punishments on a group for the mistake of one member.

Working conditions are hazardous, lacking basic safety precautions, leading to avoidable accidents resulting in multiple deaths. Work also causes deformity and serious injuries, which are not given medical attention. Significant numbers of deaths are caused by forced labour, either directly or as a result of the combination of such exertion and minimal food rations.

The labour is not conducted following a sentence imposed by a competent court in a fair trial. Instead, it is part of the general system to which political prisoners are subjected. Work lasts twelve hours or

¹⁶² See *U.S.A. v. Erhard Milch*, Judgment of the US Military Tribunal at Nuremberg, judgment of 17 April 1947 and *U.S.A. v. Pohl et al.*, judgment of 3 November 1947 and Vol. 22 International Military Tribunal Trials, pp. 565-68.

¹⁶³ Article 5 (c) of the ICTY Statute, Article 3 (c) of the ICTR Statute and Article 7 (1) (c) of the ICC Rome Statute.

¹⁶⁴ *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 and IT-96-23/1, Trial Chamber Judgment (22 February 2001), para. 542.

¹⁶⁵ While conditions worsened dramatically during the 1990s famine, rationing preceded the famine by decades, suggesting the nutrition level was part of a deliberate plan to starve prisoners, rather than a contingency necessitated by natural disaster.

more a day following early morning starts. Accounts describe unnecessary exertion, such as being forced to run to, and during, work, or being ordered to carry out pointless heavy labour, such as moving rocks back and forth. Even children in the camps are forced to labour.

Survivors describe very strict controls, forbidding them from talking, laughing or having breaks to rest. In the factory settings they have also described being allowed to use communal toilets only at a couple of set times a day and being forced to urinate or defecate in their clothing while working because they cannot wait. Survivors state that time off is given on national holidays, although it is rare that prisoners are genuinely given a full day of rest, and that otherwise prisoners work seven days per week.¹⁶⁶

The system of forced labour in prisons clearly falls within the definition of the Forced Labour Conventions. Article 2(1) of the Forced Labour Convention 1930 defines forced labour as all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. Article 1(a) of the Abolition of Forced Labour Convention 1957 also prohibits the use of any form of forced or compulsory labour as a means of punishment for the expression of political or ideological views. According to Article 8(3)(b) of the International Covenant on Civil and Political Rights, hard labour in prison constitutes forced labour unless it is imposed as a punishment for a crime following a sentence by a competent court or if it is normally required of a detained person in consequence of a lawful court order. Based on these conventions, compulsory labour in prisons constitutes forced labour because it is not a consequence of a conviction in a court of law (an exemption under Art. 2(2) of the Forced Labour Convention 1930). It also constitutes a deprivation of liberty and the imposition of a servile status on the victims. Forced labour in the political prison camps is imposed as a punishment for (allegedly) holding or expressing political or ideological views. The labour is not based on any lawfully imposed convictions. In those cases where the forced labour is based on a conviction, the latter is commonly not imposed following a trial in line with international fair trial standards.

Widespread or systematic attack

The system of forced labour in North Korea is widespread, as it has been a long-standing practice afflicting a large number of persons; the political prison camps alone are believed to hold around 200,000 prisoners. It is also systematic because it is followed as routine practice in all camps, seemingly as part of the economic calculations of the regime.

Mental element

Available evidence indicates that those involved in the system know the circumstances constituting forced labour and mean to engage in the conduct of exacting forced labour.

D. Forcible transfer

The crime against humanity of deportation or forcible transfer of population occurs where one or more persons are forcibly¹⁶⁷ displaced by expulsion or other coercive acts from the area in which they are lawfully present to another state or location, without grounds permitted under international law. It is also necessary that the perpetrator is aware of the factual circumstances that establish the lawfulness of such presence. The conduct must be committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator must know or intend the conduct to be part of such an attack.¹⁶⁸

¹⁶⁶ The practice of forced labour has been noted with very serious concern by the United Nations. See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, para. 1 (b) (i); *Report of the Special Rapporteur on the independence of judges and lawyers: Addendum, Situation in specific countries or territories*, submitted to the UN Commission on Human Rights, UN Doc. E/CN.4/2006/52/Add.1, 27 March 2006, para. 63; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/60/306, 29 August 2005, para. 60. For further information, see KINU, *White Paper*, 2006, pp. 240-241; testimony of Ahn Hyeok, Ahn Myeong Cheol, Kang Cheol-Hwan and Choi Dong Cheol in *Are They Telling Us the Truth?*, pp. 29, 69, 73-74, 79-80, 83, 97, 127, 129, 170-172, 213, 233, 41, 65; Hawk, *Hidden Gulag*, pp. 15, 25, 30, 46, 51, 63, 73, 74; Minnesota Lawyers International and Asia Watch, December 1988, *Human Rights in the Democratic People's Republic of Korea (North Korea)*, p. 106; Anti-Slavery International, *North Korea: Trafficking in women and forced labour*, 2005; NKHR, *Prisoners of Their Own Country: North Korea in the Eyes of the Witnesses*, pp. 44-49.

¹⁶⁷ The footnote to the Elements clarifies: 'The term 'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.'

¹⁶⁸ See ICC Rome Statute, Articles 7 (1) (d) and Article 7 (2) (d) and ICC Elements of Crimes, Article 7 (1) (d).

The crime against humanity of forcible transfer is expressly recognised in the ICC Rome Statute¹⁶⁹ whereas previous tribunals had jurisdiction only over deportations, which meant that forcible transfers of populations were classified as other inhumane acts.¹⁷⁰ Deportation denotes the forced removal beyond state borders, while forcible transfer concerns displacement within a state.¹⁷¹

'When I was punished, my mother and sister were banished to a remote, barren and inhospitable hillside village because of my defection. They were fortunate not to have ended up in a camp. North Korea is the only country in the world where this evil practice is performed – due to the perceived offence of a single member of the family the entire family has to be punished.'

Lee Min-Bok, former detainee at a police detention centre in Hyesan City

In North Korea, large numbers of individuals have been transferred to prisons in other parts of the country, in particular political prison camps, and exiled to inhospitable areas as a means of punishment. Those deemed to be class enemies are made to reside in harsh areas where they face many disadvantages and hardships. North Korea controls the movement of its population and transfers people according to its political priorities. Transfers are carried out against the will of the individuals on the basis of decisions by the security forces and proceedings not meeting international fair trial standards.¹⁷² The long-standing practice of sending individuals and families to political prison camps differs from the mass expulsion of populations in other cases,

such as in former Yugoslavia, but has the same effect and equally constitutes forced displacement. Those transferred to prison camps have normally been lawfully present in the places they have been taken from as the transfer is not connected to the illegality of the place of residence, as may be the case with forced evictions.¹⁷³

Displacement within a state, including transfer of persons belonging to designated groups to imprisonment and detention facilities, is permitted only if carried out in conformity with international standards. As stated by the Secretary-General's Representative on the human rights of internally displaced persons, Mr Deng, 'banishment within the State's territory is only permissible as punishment when imposed in conformity with the guarantees in criminal proceedings set down in Articles 14 and 15 of the ICCPR.'¹⁷⁴ As individuals are both sent to political prison camps and detained there for an indefinite period on the basis of political convictions alone and without the possibility of judicial review, the international standards of minimum fair trial contained in Article 14 of the ICCPR are clearly being violated.¹⁷⁵

Widespread or systematic attack

The forcible transfers are both widespread and systematic, as they are undertaken on a large scale and as part of the policy of separating and eliminating political opposition.

Mental element

Available evidence indicates that those involved in the system know the circumstances constituting forcible transfer and mean to engage in the conduct of forcibly transferring persons from the area where they are lawfully present.

¹⁶⁹ Article 7 (1) (d) of the ICC Rome Statute.

¹⁷⁰ See *Prosecutor v. Krstic*, IT-98-33, Trial Chamber Judgment (2 August 2001), para. 523.

¹⁷¹ *Ibid.*, 521 and *Prosecutor v. Krajsnik*, IT-00-39/40, Trial Chamber Judgment (27 September 2006), para. 723.

¹⁷² KINU *White Paper*, 2006, pp. 236 et seq.

¹⁷³ This practice has been noted with very serious concern by the United Nations. See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/RES/61/174, 19 December 2006, para. 1 (b) (iii); *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN Human Rights Council, UN Doc. A/HRC/4/15, 7 February 2007, para. 22. For more information, see Amnesty International, *North Korea: Human Rights Concerns*, 24 November 2006; Jasper Becker, *Rogue Regime: Kim Jong Il and the looming threat of North Korea*, 2005, p.89; Minnesota Lawyers International and Asia

Watch, December 1988, *Human Rights in the Democratic People's Republic of Korea (North Korea)*, p.49.

¹⁷⁴ Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Francis Deng, *Legal Aspects Relating to the Protection against Arbitrary Displacement*, UN Doc. E/CN.4/1998/53/Add.1, 11 February 1998, p. 26.

¹⁷⁵ See Human Rights Committee, General Comment 13: *Equality before the courts and the right to a fair and public hearing by an independent court established by law* (Art. 14), 13 April 1984.

E. Arbitrary imprisonment or other severe deprivation of physical liberty

The crime against humanity of imprisonment or other severe deprivation of physical liberty is committed where the perpetrator imprisons or severely deprives of physical liberty one or more person or persons and the gravity of the conduct is such that it was in violation of fundamental rules of international law. It is also necessary that the perpetrator is aware of the factual circumstances that established such gravity of conduct. The conduct must be committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator must know or intend the conduct to be part of such an attack.¹⁷⁶

The crime of imprisonment is recognised in the statutes of the ICTY, ICTR and the ICC Rome Statute¹⁷⁷ and has been defined as denoting ‘arbitrary imprisonment, that is to say, the deprivation of the liberty of the individual without due process of law, as part of a widespread or systematic attack directed against a civilian population’.¹⁷⁸

A large number of persons have been deprived of their liberty, in particular those being sent to political prison camps. This deprivation has been imposed arbitrarily because ‘no legal basis can be invoked to justify the deprivation of liberty’.¹⁷⁹

Prisoners are incarcerated in political prison camps without being granted judicial safeguards and without having faced a fair trial as recognised by applicable international standards, to which North Korea has subscribed. Article 9 of the ICCPR enshrines the right to liberty and security, including, in particular, protection against arbitrary deprivation of liberty. North Korea is bound by this right not only as a matter of treaty law but also under customary international law. The right to liberty and security imposes several obligations on the state to ensure due process in relation to arrest and detention during relevant proceedings.¹⁸⁰

In practice, presumed political offenders are seized without warning by security agents and tortured to produce confessions. They do not benefit from access to a lawyer and cases are decided by the State Security Protection Agency rather than in a trial.¹⁸¹ The deprivation of liberty, in particular the decision to send those suspected of ‘political crimes’ to political prison camps, is therefore not based on any independent judicial decision and thus violates fundamental rules of international law. Prisoners have been able neither to benefit from legal counsel nor to challenge the legality of detention even though imprisonment is often long-term or indefinite under harsh conditions.¹⁸²

‘I was only nine years old when my whole family was taken to a concentration camp at night without any charge. The security agents came round to our house and made us pack our things before forcing my father, grandmother, uncle and younger sister into a car to be driven away at dawn. My mother did not come with us because she went through a forced divorce. At that time, I did not fully understand the sorrow of my parents’ tears and grief. We did not have a trial. It was not possible to know what crime we had committed. The only thing we knew at that time was that my grandfather had been missing for a few days and that he had been called a traitor to the people. Sometimes my friends would disappear along with their families. The rumours always labelled their families as spies or traitors. When I was young, I believed these as the truth. Almost all North Koreans have knowledge of neighbours who simply disappeared at night. Everybody knows that they had better not ask any questions about their whereabouts. In fact, everyone knows that they were taken to a concentration camp.’

Kang Cheol-Hwan, former child prisoner
at Yodeok Political Prison Camp

¹⁷⁶ See ICC Rome Statute, Article 7 (1) (e) and ICC Elements of Crimes, Article 7 (1) (e).

¹⁷⁷ Article 5 (e) of the ICTY Statute, Article 3 (e) of the ICTR Statute and Article 7 (1) (e) of the ICC Rome Statute.

¹⁷⁸ *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Trial Chamber Judgment (26 February 2001), paras 302, 303.

¹⁷⁹ *Prosecutor v. Krnojelac*, IT-97-25, Trial Chamber Judgment (15 March 2002), para. 115 (2).

¹⁸⁰ See Human Rights Committee, General Comment No.8: *Right to Liberty and Security of Persons*, 30 June 1982.

¹⁸¹ KINU *White Paper*, 2006, p. 77 and p. 236.

¹⁸² This practice has been noted with very serious concern by the United Nations. See UN General Assembly resolution, *Situation of human rights in the Democratic People’s Republic of Korea*, A/RES/61/174, 19 December 2006, paras 1 (b) (i), (ii). For more information, see KINU, *White Paper*, 2006, pp. 44-65; NKDB and LFNKR, *Are They Telling Us the Truth?*, passim; Hawk, *Hidden Gulag*, passim; Amnesty International, *North Korea: Human Rights Concerns*, 24 November 2006; Jasper Becker, *Rogue Regime: Kim Jong Il and the Looming Threat of North Korea*, 2005, pp. 87, 90, 97-98; Anti-Slavery International, *North Korea: Trafficking in women and forced labour*, 2005.

As previously mentioned, North Koreans may also be imprisoned because of their relationship with individuals accused of political crimes. The principle of guilt by association extends to three generations: North Koreans may be imprisoned indefinitely for the political crimes of their parents, grandparents, children, and grandchildren. The number of family members incarcerated depends on the severity of the presumed political offence and the social classification of the prisoner.¹⁸³

Widespread or systematic attack

Arbitrary imprisonment and deprivation of liberty are both widespread and systematic, as they are undertaken on a large scale and form an intrinsic part of the operation of the prison system.

Mental element

Available evidence indicates that those involved in the system know the circumstances constituting arbitrary imprisonment and deprivation of liberty and mean to engage in the conduct of arbitrarily imprisoning one or more persons or otherwise severely depriving one or more persons of physical liberty.

F. Torture

The crime against humanity of torture consists of ‘the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions’.¹⁸⁴ The conduct must be committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator must know or intend the conduct to be part of such an attack.¹⁸⁵ According to the jurisprudence of the ICTY and ICTR, torture needs to be inflicted for a particular purpose, such as obtaining information or a confession, punishing, intimidating or coercing the victim or a third person, or discriminating, on any grounds, against the victim or a third person.¹⁸⁶ In contrast, according to the ICC Elements of Crimes, ‘it is understood that no specific purpose need to be proved for this crime’.¹⁸⁷

The crime against humanity of torture is contained in the statutes of the ICTY, ICTR and ICC.¹⁸⁸ The ICTY and ICTR have developed the definition of the crime against humanity of torture in a series of judgments.¹⁸⁹

Former detainees, prisoners and guards who have defected describe a myriad of acts inflicting severe physical or mental pain or suffering amounting to torture that have been committed against prisoners and detainees throughout the detention and imprisonment system, including some against children. Recent research has indicated that the use of torture is worsening.¹⁹⁰

Owing to the increased numbers of escapees who have reached freedom and the frequency of detention before their eventual successful escape, witness testimony of torture has multiplied significantly. Escapees report that interrogation routinely involves torture, sometimes to the point of disability, paralysis or death. Frequent beatings are described, both with fists and implements. Severe pain and injury is also inflicted through violent kicking and stamping on the body. Other cruel treatment includes suspending detainees by their wrists from the ceiling or from bars and using clubs, blocks, guns, holsters, metal poles, wooden poker, electric rods and other objects to inflict terrible pain, burns and injuries.

¹⁸³ This practice has been noted with concern by the United Nations. See *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, E/CN.4/2005/34, 10 January 2005, p. 11.

¹⁸⁴ ICC Rome Statute, Article 7 (2) (e).

¹⁸⁵ See ICC Elements of Crimes, Article 7 (1) (f).

¹⁸⁶ *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 and IT-96-2311, Appeals Chamber Judgment (12 June 2002), para. 142; *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), paras 593-595.

¹⁸⁷ ICC Elements of Crimes, Article 7 (1) (f), footnote 14.

¹⁸⁸ Article 5 (f) of the ICTY Statute, Article 3 (f) of the ICTR Statute and Article 7 (1) (f) of the ICC Rome Statute.

¹⁸⁹ *Prosecutor v. Limaj et al.*, IT-03-66, Trial Chamber Judgment (30 November 2005), paras 234 et seq.; and *Prosecutor v. Vocko et al.*, IT-98-30/1, Trial Chamber Judgment (2 November 2001), paras 137 et seq.; *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 and IT-96-2311 (Trials Chamber), (22 February 2001), para. 496; *Prosecutor v. Furundzija*, IT-95-17/1, Trial Chamber Judgment (10 December 1998); *Prosecutor v. Semanza*, ICTR-97-20, Trial Chamber Judgment (15 May 2003), paras 342-343 and *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), paras 593-595, 681.

¹⁹⁰ See Citizens' Alliance for North Korean Human Rights, *고문의 공화국, 북한 North Korea: Republic of Torture*, March 2007, as reported by Kim Yong-Hun, Daily NK, 19 March 2007.

'During interrogation I endured what is known as "motionless sitting" torture. Anyone who moved, however slightly, was handcuffed and chained to high grids with his arms spread wide. In this position, you were then beaten. They used an iron rod, ordinarily used for cleaning guns, to hit detainees' bones. They targeted sensitive areas such as the wrists, knees, or ankles, in order to inflict extreme pain with little effort.

As the interrogation was such a painful process, I swallowed a nail in the hope that I would be sent to a hospital for surgery. However, I failed in that attempt, as the nail came out in my stool. The painful stay in the cell made me think that the pain from a surgical operation would be nothing, if only I could stay away from the cell, even for a few days.

After eight months I was imprisoned without trial in No. 15 Political Prison Camp in Yodeok, South Hamkyeong Province, North Korea.

One day while I was working there I was carrying something heavy in an A-frame, and as I was trying to balance the weight I naturally stooped a little. As a result, I failed to notice a passing patrol guard. He asked me to come out in the evening so that he could punish me for not bowing to him. He and seven or eight of his colleagues beat me brutally. After the beating, they stripped me naked, handcuffed me, and stood me in the middle of the courtyard. When they handcuffed me, they tightened the handcuffs by stepping on my hands, cutting off the circulation until my hands turned black. Although it was August, it was extremely cold late at night. It was more painful than being beaten. I woke the following morning with a head prisoner kicking me, telling me I should go to work.

They also forced me to sit on top of quicklime while it was raining. Due to a chemical reaction, when water is added to quicklime, it becomes very hot and emits gas. My buttocks were burning, but the guard forced me to sit there. Because of the burns on my buttocks, I was not able to lie on my back for about a month and suffered severe pain when I tried to sit. I could not wear trousers for a while. A watery discharge from the sore stuck to my trousers and gave me excruciating pain.

The prison cell was extremely cold. I would sit holding my legs in my arms, because this position made the cold more bearable. But a warden stripped me, and kicked me in the face for sitting like that. I was very dizzy due to severe bleeding from my nose. That same warden put me in a room that had a lot of fleas. Today, when I recall the pain of being in that room it makes me shudder. I begged to be moved to a room without fleas. The warden came back with a bucket of water, and poured it over my body. My entire body began to freeze, the pain was overwhelming. Even today, whenever a cold wind hits me, causing me to sneeze and my nose to run, the memory of that freezing cold haunts me.'

Kim Tae-Jin, former prisoner at Yodeok Political Prison Camp

Detainees have been subjected to various forms of water torture, at times being submerged for days in water that becomes increasingly soiled by their own excretions. Water torture is among the means used to deprive detainees of sleep, a common tactic in interrogation. Psychological and verbal abuse is also used.

Various forms of sexual abuse of prisoners are reported, including rape and abuse inflicted with the use of whips, rods and forceps.

Prisoners are also forced to carry out beatings and torture and other forms of cruel and inhuman treatment against each other, as well as being forced to watch others suffer such treatment.

Outside the torture rooms, violence can also be fierce. Those held after return to North Korea often report being forced to sit for extensive periods without moving. They describe how those in the cells who are deemed to have moved without permission have been forced to put their hands through the bars of the door, where the guards have beaten or stamped on them until they are bleeding and the skin is shredded.

Although torture happens most regularly in interrogation facilities, it also occurs in the prison system. Survivor testimony commonly describes torture by means such as prolonged periods of exposure to

winter conditions, with confinement in tiny punishment cells being referred to as a particularly feared punishment, often leading to death.¹⁹¹

There are also a number of reports that prisoners have been used for medical, chemical and biological experiments. Testimonies recount how prisoners in the political prison camps are used for the training of medical doctors.¹⁹² A number of accounts, including those covered in prominent media, have described macabre uses of human body parts and chemical and biological testing,¹⁹³ including gassing prisoners to death.¹⁹⁴

Medical assessment provides further evidence of torture. The Korean Rehabilitation Center for Torture Victims and Families (KRCT) interviewed 30 torture victims from September to November 2005. After medical analysis, it was concluded that all had experienced both physical and psychological post-traumatic effects as a result of torture.

With regard to physical torture, the KRCT reports that interviewees suffered an average of 14.8 physical post-traumatic effects of torture: 50% suffered from external wounds; 40% from broken bones; 30% from concussion; 23% from vascular damage or nerve paralysis; 6% from burns; 6% from haematoma and 3% from joint dislocation. As for long-term physical post-traumatic effects, the KRCT found that 93% suffered from digestive problems; 83% from muscle and bone problems; 80% from central and peripheral nervous system problems; 63% from dental problems; 47% from ear, nose and throat problems; 47% from skin problems; 40% from lung and heart problems; 27% from urinary or genital problems and 23% from eye problems.

The survey also found that interviewees suffered an average of 11.9 psychological post-traumatic effects. Among the assessments it was found that 87% of the interviewees had acute emotional disorders, 73% claimed to have acute abnormal cognitive reactions, and 63% suffered from peripheral nerve disability.¹⁹⁵

The punishments do not constitute lawful sanctions. Even where they are imposed in accordance with North Korean laws and regulations, they do not meet the required minimum standards under international law, being neither imposed following a fair trial nor in compliance with acceptable standards for the treatment of prisoners.¹⁹⁶

Widespread and systematic attack

The practice of torture in the North Korean detention and imprisonment system has been large-scale and systematic. There are numerous accounts testifying to the routine use of torture as a means of interrogation, in particular of a large number of those repatriated from China, and as a regular form of punishment, in particular in political prison camps.

¹⁹¹ Torture has been noted with very serious concern by the United Nations. See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, paras 1 (b) (i), (ii); *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN Human Rights Council, UN Doc. A/HRC/4/15, 7 February 2007, paras 46-47; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/61/349, 15 September 2006, para. 16; *Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children: Addendum, Summary of cases transmitted to Governments and replies received*, submitted to the UN Commission on Human Rights, UN Doc. E/CN.4/2006/62/Add.1, 27 March 2006, para. 75; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN Commission on Human Rights, UN Doc. E/CN.4/2006/35, 23 January 2006, para. 64. For more information, see Citizens' Alliance for North Korean Human Rights, *North Korea: Republic of Torture*, March 2007; KINU, *White Paper*, 2006, pp. 44-52, 242, 252; Hawk, *Hidden Gulag*, pp. 13, 15, 25, 32, 33, 36, 43, 45, 50, 53, 58, 70-72; Amnesty International, *North Korea: Human Rights Concerns*, 24 November 2006; Human Rights Without Frontiers, *Long-standing practices of baby-killing in the camps of North Korea: Accounts by eyewitnesses*, 8 January 2002; Human Rights Without Frontiers, *Baby killings: Fact-finding mission by Human Rights Without Frontiers*, 28 February 2002; Minnesota Lawyers International and Asia Watch, December 1988, *Human Rights in the Democratic People's Republic of Korea (North Korea)*, p. 71; USCIRF, *Thank You Father Kim Il Sung*, p. 47; testimony of Ahn Myeong-Cheol in *Are They Telling Us the Truth?*, pp. 127-128, 259-260, as well as pp. 159 et seq. for inhuman treatment and cruel punishment of children; testimonies in NKHR, *Prisoners of Their Own Country*, pp. 37-43; Kim Seung-Cheol, *The reality of the prisons of North Korea's Security Agency*, 2005 (Korean only).

¹⁹² See testimony of Ahn Hyeok, Ahn Myeong-Cheol and Choi Dong-Cheol in *Are They Telling Us the Truth?* pp. 249-253.

¹⁹³ See testimony of Ahn Myeong-Cheol in *Are They Telling Us the Truth?* pp. 237-9, 245-7; KINU *White Paper*, 2006, pp. 248, 249. KINU states that 'it is known that there is a military unit performing biological experiments on human bodies in Omok-ri, near Nampo City, South Pyongan province'; Hwang Jang-Yop, the former KWP Secretary, has stated that Kim Jong-Il instructed political prisoners to be used instead of dogs in testing munitions in 'The Problems of Human Rights in North Korea' by Hwang Jang-Yop: <http://www.dailynk.com/english/keys/2002/9/04.php>.

¹⁹⁴ This World, broadcast 1 February 2004, BBC 2, transcript available on BBC News website at http://news.bbc.co.uk/1/hi/programmes/this_world/3440771.stm; Newsnight, broadcast 27 July 2004, BBC 2, transcript available on BBC News website at <http://news.bbc.co.uk/1/hi/programmes/newspoint/3933727.stm>; Anthony Barnett, *Revealed: the gas chamber horror of North Korea's gulag*, *The Observer*, 1 February 2004 (available at <http://observer.guardian.co.uk/international/story/0,6903,1136440,00.html>); Barbara Demick, 'North Korea's Use of Chemical Torture Alleged', *Los Angeles Times*, 3 March 2004; *Are They Telling Us the Truth?*, p. 245-7.

¹⁹⁵ Byun Juna et al., *North Korean Defectors Settled in South Korea: Survey on Torture Victims*, The Korean Rehabilitation Center for Torture Victims and Families (KRCT), Seoul Summit: Promoting Human Rights in North Korea, December 2005; see also Jeon et al., 'Correlation Between Traumatic Events and Posttraumatic Stress Disorder Among North Korean Defectors in South Korea', *Journal of Traumatic Stress*, Vol. 18, No. 2, 2005; Haggard & Noland ed., *The North Korean Refugee Crisis: Human Rights and International Response*, U.S. Committee for Human Rights in North Korea, 2006.

¹⁹⁶ Human Rights Committee, General Comment 20, 1992, para. 5 and Article 31 of the Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

Mental element

Available evidence indicates that those involved in the system know the circumstances constituting torture, mean to engage in the conduct of inflicting severe physical or mental pain or suffering upon one or more persons in their custody or under their control and are at least aware that such pain or suffering will occur in the ordinary course of events.

G. Rape and sexual violence

Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence of comparable gravity constitute crimes against humanity where committed as part of a widespread or systematic attack directed against a civilian population and where the perpetrator knew or intended the conduct to be part of such an attack. Rape is committed where the perpetrator invades the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body and where the invasion is committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion is committed against a person incapable of giving genuine consent. Sexual violence occurs where, under similar circumstances, '[t]he perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature, and was aware of the factual circumstances that established the gravity of the conduct'.¹⁹⁷

The crime against humanity of rape and sexual violence was for the first time expressly stipulated in the ICC Rome Statute but had already been recognised in the jurisprudence of the ICTY and ICTR.¹⁹⁸

Probably, camps are the worst places for sexual abuse of women. The guards there have to spend ten years in military service. They face a period of lassitude, getting bored, so they take it out on girls like that. The girls have to do whatever is told to them to do. There is no choice for them.

There was a lively young woman in the camp who seemed special among the prisoners. Her uncle was purged, so all the relatives, including her, were sent to camps. She arrived at Camp 22. She was never pessimistic or melancholic. She always had a hope that, since she had not committed a crime, she might be released if she worked hard and got a good record. However, she was raped by an officer. Prisoners are punished if they have sexual relations with officers or guards, even if unwillingly. I saw her again about a year later. I was surprised that she was still alive. The only reason she had been spared death was because she had been raped. If she had given consent she would have been killed. I could see burn marks on her neck. I asked what had happened and, with tears welling up in her eyes, she replied, "I lost my womanhood". When she opened her shirt I could see she had wounds on her breasts from being scorched with fire.

Later on, I asked another prisoner who knew her what had happened to her. He told me that she had lost her legs in a mining accident. Some time later I was at a corn mill and I saw her. She had tyres sewn over the stumps at her knees, on both legs. When she saw me she looked sad, close to crying. She was a different person. She had no hope and was afraid of people. She was no longer bright as she had been.'

Ahn Myeong-Cheol, former political prison camp guard

Defectors report that rape and sexual abuse takes place in imprisonment and detention facilities. Accounts describe human penetration, the insertion of instruments such as rods, sticks, forceps and electric rods, and rape by oral sex. Forced sexual contact with animals and whips have also been used during sexual torture.

¹⁹⁷ See ICC Rome Statute, Article 7 (1) (g) and ICC Elements of Crimes, Articles 7 (1) (g)-1 and (7) (1) (g)-6.

¹⁹⁸ Article 7 (1) (g) of the ICC Rome Statute; *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), para. 597 and *Prosecutor v. Furundzija*, IT-95-17/1, Trial Chamber Judgment (10 December 1998), para. 185; *Prosecutor v. Kunarac, Kovac and Vukovic*, IT-96-23 and IT-96-23/1, Trial Chamber Judgment (22 February 2001), para. 460

Reports of abuse in interrogation facilities also include being forced to obey humiliating orders to re-enact past sexual behaviour with Chinese men; to adopt humiliating positions of a sexual nature; to watch the sexual torture of others; to strip; and to endure insulting and degrading rhetoric. Another common practice in interrogation facilities along the Chinese border is 'pump training' whereby the interrogated person is forced, while naked, to squat repeatedly, often to the point of collapse, in order to ascertain if there is any currency hidden in the vagina or anus. Sometimes instruments are subsequently used to extract any money found.

Although sexual relations of any nature are prohibited in the political prison camps, defector testimonies report that sexual relations between female prisoners and guards do take place, and some report such practice to be common. This can be fully involuntary, or done in exchange for food and other advantages.

There are reports of very severe torture and sexual abuse of those discovered having sexual relations with guards.

In the survey by The Korean Rehabilitation Center for Torture Victims and Families, 63% of the interviewees suffered rape. The survey divides this figure up into two distinct categories: 57% endured genital torture with an instrument and 6% were victims of human sexual violence.¹⁹⁹ All those interviewed suffered psychological sexual disgrace.

Evidence from victims of sexual abuse is limited. However, in the light of the nature of the crime and in the context of Korean culture, it is very likely that much evidence would not be disclosed in this regard. The experience of other countries confirms that victims of rape and other forms of sexual violence are often reluctant to speak out about the treatment because of the sense of shame associated with the practice and the related stigma and cultural taboos.²⁰⁰

Available evidence does not show that sexual abuse is ordered and thus the practice does not appear to be systematic. No substantial evidence is available that points to an official state policy backing this practice, though it may be tolerated in some instances. However, while it does not appear to be systematic, there is some evidence to suggest it may be widespread and therefore could amount to a crime against humanity.

H. Persecution

The crime against humanity of persecution occurs where the perpetrator severely deprives one or more persons of fundamental rights contrary to international law and targets such person or persons by reason of the identity of a group or collectivity, or targets the group or collectivity as such, based on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law. The conduct must be committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator must know or intend the conduct to be part of such an attack.²⁰¹

The crime against humanity of persecution was already recognised in the statute of the Nuremberg Tribunal and has since been contained in the statutes of the main international tribunals²⁰² and elaborated upon by the ICTY and ICTR.²⁰³

¹⁹⁹ Byun Juna et al., *North Korean Defectors Settled in South Korea: Survey on Torture Victims*, The Korean Rehabilitation Center for Torture Victims and Families, December 2005.

²⁰⁰ For further information on rape and sexual violence, see KINU, *White Paper*, 2006, p. 107, pp. 163-164; testimony of Ahn Myeong Cheol in *Are They Telling Us the Truth?*, pp. 127-129, 153, 177-8, 237-239, 259-260; testimonies in NHRK, *Prisoners of Their Own Country*, pp. 35 and 39; Hawk, *Hidden Gulag*, pp. 46, 47, 72; Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China*, 19 November 2002, p. 14; Human Rights Without Frontiers, *Long-standing practices of baby-killing in the camps of North Korea: Accounts by eyewitnesses*, 8 January 2002, cases 7, 8.

²⁰¹ See ICC Rome Statute, Article 7 (1) (h) and 7 (2) (g) and ICC Elements of Crimes, Article 7 (1) (h). Article 7 (1) (h) of the ICC Rome Statute reads: 'Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court'. Article 7 (2) (g) states: "'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity'. Element 4 of the ICC Elements of Crimes states: 'The conduct was committed in connection with any act referred to in Article 7 paragraph 1, of the Statute or any crime within the jurisdiction of the Court.' See also *Prosecutor v. Kupresic et al.*, IT-95-16, Trial Chamber Judgment (14 January 2000), para. 621; also *Prosecutor v. Ruggiu*, ICTR-97-32-I, Trial Chamber Judgment (1 June 2000), para. 21.

²⁰² Article 5 (h) of the ICTY Statute, Article 3 (h) of the ICTR Statute and Article 7 (1) (h) of the ICC Rome Statute.

²⁰³ *Prosecutor v. Krajisnik*, IT-00-39/40, Trial Chamber Judgment (27 September 2006), paras 733-783; *Prosecutor v. Kupresic et al.*, IT-95-16, Trial Chamber Judgment (14 January 2000), para. 567-636; *Prosecutor v. Ruggiu*, ICTR-97-32-I, Trial Chamber Judgment (1 June 2000), paras 18-24.

Political and religious persecution in North Korea

'Christianity is public enemy number one in North Korea. If someone is a Christian in North Korea they are a political enemy and will be either executed or sent away to a political prison camp. If they are sent there, even their family will not know where they are. I saw the execution of three Christian men, aged 19, 24, and 32 in Musan in June 1998. An announcement was made that three men had gone to China and become Christians and were to be executed. People were invited and forced to attend and witness the executions. Each man was blindfolded. They were fully clothed so their injuries could not be completely identified, but none of them could walk on their own. They were dragged out, tied to poles and shot. Normally they would each be shot with three bullets, but this time six were used. This was because they had betrayed the regime.'

Kim Wu-Yeong†, North Korean escapee

Political persecution has been intense, as described in detail above.²⁰⁴ Likewise religious repression has also been brutal, virtually eliminating the followers of Cheondokyo, Buddhism and Protestant and Catholic Christianity that made up a sizeable proportion of the population when Kim Il-Sung came to power.

Persecution of Christians has been particularly harsh, with serious abuses committed against them and multiple executions and transfers to political prison camps. Persecution was especially intense in the initial stages of the regime as it consolidated power in the 1950s and 1960s. Reports describe Christians being killed in brutal ways, such as being hung on a cross over fire,²⁰⁵ crushed under a steamroller or herded off bridges.²⁰⁶ According to the policy of eliminating the seed of class enemies to three generations, family members, including children, have also been targeted and incarcerated in political prison camps where reproduction is forbidden.²⁰⁷

While religious persecution wiped out virtually all religious believers and their family line, very harsh

persecution of religious believers continues to occur today. Defectors systematically report that any Christians discovered will be sent to political prison camps or executed. Consistent accounts describe how, when religious activity has been discovered by the authorities in their locality, the 'offenders' disappeared, followed subsequently by their family members. Christians seeking to share their faith who have been converted in China or are found in possession of a Bible from overseas are in particular danger. A number of direct eyewitness accounts exist of the recent execution of Christians.²⁰⁸

There is also evidence that families of religious believers are held in the political prison camps. A number of testimonies describe how Christians are particularly harshly treated in the camps, both because the guards target them and because the other prisoners demean and ostracise them, treating them as deranged because of their faith. Several accounts describe believers in the prison system who refused to recant their faith being publicly trampled underfoot by guards, and then by coerced prisoners, until they died. Other extremely brutal accounts of the killing of Christians in the prison system have also been given.²⁰⁹

²⁰⁴ See e.g. Section 4 above. See also UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, para.1 (b) (iii); KINU, *White Paper 2006*, pp. 119-121, 235-238, 242, 245-246; testimony of Ahn Myeong-Cheol in *Are They Telling Us the Truth?*, p.40; Hawk, *Hidden Gulag*, pp. 15, 26-41; Amnesty International, *North Korea: Human Rights Concerns*, 24 November 2006; Human Rights Without Frontiers, *Long-standing practices of baby-killing in the camps of North Korea: Accounts by eyewitnesses*, 8 January 2002; Jasper Becker, *Rogue Regime: Kim Jong Il and the looming threat of North Korea*, 2005, p. 89.

²⁰⁵ Thomas J. Belke, *Juche: A Christian Study of North Korea's State Religion*, 1999, p. 145.

²⁰⁶ *Ibid.*, p. 144; USCIRF, *Thank You Father Kim Il Sung*, p. 44-5.

²⁰⁷ Children have also been tricked into informing about their parents' religious beliefs, never to see them again. This has naturally led to parents making the difficult decision not to tell their children about their religious convictions, preventing such beliefs from passing down the generations. Belke also reports that children who were 'indoctrinated' with the Christian faith were forcibly removed from their families and enrolled in regimented communist youth training camps (Thomas J. Belke, *Juche: A Christian Study of North Korea's State Religion*, 1999, p. 143). See sections 4.2, 5, 7.2, 8.A. and 8.E. above for further information on elimination, guilt by association and restriction on reproduction.

²⁰⁸ In addition to eyewitness accounts received directly by CSV, recent reports of executions include: Mission Network News, 'Christian executed in North Korea', 10 Jan 2007 (www.mnnonline.org/article/9469); Jasper Becker, 'Persecuted Church Fights Secret War', South China Morning Post, 17 June 2001 (<http://chosunjournal.com/scmpnews.html>); Michael Ireland, 'Christian believers executed in North Korea', World Net News, 21 Jan 2007 (http://worldnetdaily.com/news/article.asp?ARTICLE_ID=53863); Magda Hornemann, 'North Korea: Christians murdered, sources state', Forum 18 news Service, 14 October 2004 (http://www.forum18.org/Archive.php?article_id=431).

²⁰⁹ Persecution has been noted with very serious concern by the United Nations. See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, para.1 (b) (iii); *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN Human Rights Council, UN Doc. A/HRC/4/15, 7 February 2007, paras 16, 23; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/61/349, 15 September 2006, para. 30; *Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children: Addendum, Summary of cases transmitted to Governments and replies received*, submitted to the UN Commission on Human Rights, UN Doc. E/CN.4/2006/62/Add.1, 27 March 2006, para. 72; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN Commission on Human Rights, UN Doc. E/CN.4/2006/35, 23 January 2006, para. 68; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/60/306, 29 August 2005, para.36; *Report of the Special Rapporteur on Civil and Political Rights, including the Question of Religious Intolerance*, submitted to the UN Commission on Human Rights, UN Doc. E/CN.4/2005/61/Add.1, 15 March 2005, para. 74. For more information, see KINU, *White Paper*, 2006, pp. 134-150; testimony of Kang Cheol-Hwan in *Are They Telling Us the Truth?*, pp. 23-24; Hawk, *Hidden Gulag*, pp. 58, 65, 67; Amnesty International, *North Korea: Human Rights Concerns*, 24 November 2006; USCIRF, *Thank You Father Kim Il Sung*, pp. 4, 10, 25, 26 and passim; testimony of Kim Tae Jin, 'Religious activities in prison camps' (2004), www.nkgulag.org.

There are extensive accounts of the persecution of those who flee to China, where they encounter and embrace Christianity. Returnees consistently report that they are interrogated about two key questions: whether they encountered Christians and whether they met South Koreans. The common understanding is that a positive response to either of these will lead to severe penalties, namely being sent to a lifelong political prison camp or being executed.²¹⁰

“*If defectors were found to have contact with South Koreans or Christians, they would be treated differently. They could forget about being released.*”

Kim Bok-Sun†, North Korean escapee

North Korea has deprived groups belonging to those labelled as ‘political prisoners’, religious groups, and to some degree repatriated persons, of a range of their fundamental rights. Acts of murder, torture, forced labour, inhuman treatment, disappearances and arbitrary imprisonment as described above violate the right to life, the right to be free from torture, the right to a fair trial as well as most civil and political and other rights.²¹¹ In the jurisprudence of the ICTY on prison camps in Bosnia, the following acts relevant in the North Korean context were found to constitute persecution when committed with the requisite discriminatory intent: ‘imprisonment, unlawful detention of civilians or infringement upon individual freedom, murder... forcible transfer [and the] seizure, collection, segregation and forced transfer of civilians to camps...’²¹²

Persons belonging to the groups mentioned above were targeted for reasons contrary to international standards. The prohibition of discrimination is in particular enshrined in Article 2(1) and 26 of the ICCPR and Article 2 (2) of the ICESCR, and is a rule of customary international law that is binding on North Korea. Discrimination ‘should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.’²¹³ Discrimination not only relates to recognised rights but also extends to ‘discrimination in law or in fact in any field regulated and protected by public authorities.’²¹⁴ It clearly encompasses the practice of deprivation of the fundamental rights of the groups identified above.

This deprivation has been severe because it has removed members of these groups from any recognition of their rights and protection of the law and is based on outright discrimination based on political orientation, religious beliefs or descent.

The persecution of political prisoners, including religious believers and family members, has been carried out with the required discriminatory intent because they are singled out to suffer on the basis of their alleged political or religious actions or beliefs: ‘It is the specific intent to cause injury to a human being because he belongs to a particular community or group, rather than the means employed to achieve it, that bestows on it its individual nature and gravity...’²¹⁵

Widespread or systematic attack

This denial of fundamental rights has been large-scale and based on a policy according to which political enemies of the regime, classified as ‘hostile’, and adherents of religious beliefs should be repressed.

Mental element

Available evidence indicates that those involved in the system know the circumstances constituting persecution and mean to engage in the conduct of severely depriving one or more persons of fundamental rights in contravention of international law, being at least aware that their conduct will result in such deprivation in the ordinary course of events.

²¹⁰ See USCIRF, *Thank You Father Kim Il Sung*, p. 82.

²¹¹ See also *Prosecutor v. Blaskic*, IT-95-14, Trial Chamber Judgment (3 March 2000), para. 220.

²¹² *Prosecutor v. Kvočka et al.*, IT-98-30/1, Trial Chamber Judgment (2 November 2001), para. 186.

²¹³ See Human Rights Committee, General Comment No. 18: *Non-Discrimination*, 10 November 1989, para. 7.

²¹⁴ *Ibid.*, para. 12.

²¹⁵ *Prosecutor v. Blaskic*, IT-95-14, Trial Chamber Judgment (3 March 2000), para. 235. See also *Prosecutor v. Nahimana, Barayagwiza and Ngeze*, ICTR-99-52-T, Trial Chamber Judgment (3 December 2003), para. 1071.

I. Enforced disappearance of persons

The crime against humanity of enforced disappearances consists of “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”²¹⁶ It is also necessary that the perpetrator was aware that (a) such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or (b) such refusal was preceded or accompanied by that deprivation of freedom; and that the perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time. The conduct must be committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator must know or intend the conduct to be part of such an attack.²¹⁷

The prohibition of enforced disappearances is enshrined in international human rights law²¹⁸ and enforced disappearances have been recognised as a crime against humanity under the category of other inhumane acts by the ICTY and expressly included in the ICC Rome Statute.^{219 220}

Disappearances inside North Korea

‘My husband, Lee Dong-Myeong, worked for an encyclopaedia publisher. On the night of 4 July 1970, he disappeared. Leaving the door open, I waited for him all night. On the morning of 6 July, my husband’s co-workers from the publisher visited my place and said they saw him being accompanied by a security agent in charge of the publishing house and two other unknown security agents. Many years later I found out in our family register that he had been charged with being a spy and sentenced to 20 years. But to this day I do not know what crime he has really been charged with, where he had been sent or whether he is alive or dead.

After I was discharged from the military, I worked at a shop for foreign travellers. On 1 August 1970, while working there, I was ordered to pack and taken to Shinuiji State Security Agency and interrogated for two months. After the two months, without any trial or sentence I was dragged to Yodeok Political Prison Camp No. 15 with my family.

There were seven of us – me, my parents, my one-year-old son, my five-year-old son, a son in first grade and a daughter in third grade. I did not know we were being dragged to the political prison camp until we arrived at the front door of the camp. Within six months of my imprisonment in Yodeok Political Prison Camp, my father died of malnutrition. Two years later, my mother died of malnutrition and oedema. At the age of nine, my son died on his way home from school. He drowned in an undercurrent while crossing a river that had no bridge. In 1988, my other son, then 23, was shot dead while trying to defect to China.

In the camp, every action of every individual and all matters are reported. Consequently, anyone who commits any infraction is sent to solitary confinement within the public office building of Camp No. 15. Those who are sent there never come out alive. There is no set process or criteria for sending prisoners to the solitary punishment cell.

Offenders are either arrested on the spot, taken from criticism sessions, or suddenly whisked away from their homes. They disappear without leaving any trace, and are considered “missing”.

Kim Young-Soon, former prisoner at Yodeok Political Prison Camp

²¹⁶ ICC Rome Statute, Article 7 (2) (i).

²¹⁷ See ICC Elements of Crimes, Article 7 (1) (i).

²¹⁸ See for example leading cases of regional human rights courts, *Velasquez Rodriguez Case*, Case 4/88, Inter-Am. Ct. H.R. (Ser. C) (1988) and *Kurt v. Turkey* (Application #24276/94, ECHR, Judgment, 25 May 1998) and the International Convention for the Protection of All Persons from Enforced Disappearances adopted by the UN Human Rights Council on 29 June 2006.

²¹⁹ *Prosecutor v. Kupreskic et al.*, IT-95-16, Trial Chamber Judgment (14 January 2000), paras 563 et seq.; Article 7 (1) (i) of the ICC Rome Statute.

²²⁰ The practice of enforced disappearance of persons has been noted with very serious concern by the United Nations. See UN General Assembly resolution, *Situation of human rights in the Democratic People’s Republic of Korea*, A/RES/61/174, 19 December 2006, para. 1 (b) (v); *Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/60/306, 29 August 2005, para. 60; testimony of Ahn Myeong-Cheol in *Are They Telling Us the Truth?*, p. 128, and pp. 9, 157; See Hawk, *Hidden Gulag*, pp. 10, 15, 24.

Those considered politically hostile are arrested and detained without acknowledgement of their arrest. No information is provided on their fate or whereabouts. Testimonies recount how relatives or friends vanished without a trace and how authorities replied to inquiries by advising the inquirer not to ask any further questions about 'political enemies'. Prisoners are cut off from the outside world and are not allowed to have any correspondence with friends or relatives. The refusal to expressly acknowledge the deprivation of freedom and to give any kind of information on the fate or whereabouts of such persons is part of state policy, as the existence of the political prison camp system is not officially acknowledged. The policy is intended to remove political prisoners from the protection of the law, usually for life and in any case for prolonged periods. The policy of disappearances in North Korea differs from that of other countries where courts or other bodies could take action for legal protection should they come to know about the disappearances. In North Korea the system of arresting, transferring and imprisoning political prisoners is completely separate from and designed to operate outside the law and other mechanisms that could in theory provide at least some level of judicial protection.²²¹

Widespread or systematic attack

The practice of disappearing political 'enemies' is widespread because it is a common practice on a large scale, and is systematic, being based, according to the consistent accounts of witnesses, on a standard procedure that fails to acknowledge the arrest and whereabouts of prisoners who are completely cut off from the outside world.

Mental element

Available evidence indicates that those involved in the system know the circumstances constituting enforced disappearances and mean to engage in the conduct having the requisite degree of awareness and intent. This means that arrests, detentions or abductions would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons, and that arrests, detentions or abductions as well as subsequent refusals to acknowledge that deprivation of freedom are carried out by, or with the authorisation or support of a state.²²²

International abductions

'My husband, Pastor Ahn Seung-Un, was abducted on 9 July 1995 in Yongil, China. He had gone to see the apartment where our family was planning to live and had intended to come back to South Korea on 25 July. Two North Korean men approached him, telling him that they had something to talk about. My husband told the people that he was with at the time that he would return soon. He left his wallet, car keys and glasses with them in the car. One of the men got into a taxi, followed by my husband, then the second man, who was shoving a bit. Those he had been with tried to call him, but his phone was cut off. They then notified the local police.

The first time that I knew of my husband's abduction was on 25 July when his story came out on television in North Korea. The South Korean Government set up a task force, but there had been no reply despite their efforts. I only find out news about him through the mass media.

My husband is a very outgoing and family-oriented person. He dearly loves our three children. I am convinced that my husband would not have gone to North Korea voluntarily and does not like being there.'

Lee Yeon-Sun, wife of abducted Pastor Ahn Seung-Un

The question of the abduction of foreign nationals has long affected North Korea's foreign relations. In contrast to other issues, sustained international pressure on this matter has resulted in an admission of guilt by North Korea. While North Korea has had a policy of denying abductions, on 17 September 2002, at the Japan-DPRK Summit Meeting, Kim Jong-Il admitted for the first time that North Korea had abducted Japanese citizens.

²²¹ See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, para. 1 (b) (i); KINU, *White Paper*, 2006, pp. 251-260, and Appendix I.

²²² See ICC Elements of Crimes, Article 7 (1) (i).

Abductions, however, are not limited to Japanese citizens. The vast majority of cases relate to South Koreans. Alongside the longstanding grievance over South Korean civilians abducted during the Korean War,²²³ North Korea has abducted significant numbers of South Koreans since the Korean Armistice, with a large number of cases involving the interception of ships at sea. While most of those involved have been returned, KINU reports that a total of 485 abductees remain in North Korea.²²⁴ Various testimonies disclose that abductees have been used to train spies for foreign infiltration.

South Koreans have also been abducted from other countries. North Korean agents abducted a South Korean schoolteacher, Ko Sang-Mun, from Norway in April 1979.²²⁵ South Korean pastors Reverend Ahn Seung-Un and Reverend Kim Dong-Shik were abducted from China in July 1995 and January 2000 respectively.²²⁶ It is reported that Kim Dong-Shik was tortured after refusing to collaborate and that he died in February 2001 and was buried in District 91 military training base in Sangwon-ri near Pyongyang.²²⁷ Two Korean Chinese men, Mr Ryu Yeong-hwa and Mr Kim were sentenced in South Korea to terms of ten and five years in 2005 and 2006 respectively for involvement in the kidnapping. Both men confessed at their trials that 4-5 North Korean SSPA agents and four Korean Chinese were involved in the kidnapping under the guidance of the SSPA.

Jin Kyeong-Suk, a defector who had reached South Korea in 2002, was abducted from China on 8 August 2004 when she and her husband, Mun Jeong-Hun, were visiting as tourists. Mun evaded capture but identified the assailants as security agents from their shoes and knives.²²⁸ In August 2005 *Chosun Ilbo*, South Korea's largest-circulation newspaper, publicised the case of a former North Korean army officer, Kang Geon.²²⁹ Kang had defected to South Korea in 2000 and was involved in helping North Koreans and exposing human rights abuses. According to the report, a co-worker of his, Lim Yeong-Hak, was abducted in February 2005 and used to lure Kang to Yanji in China. Kang was last seen in Yanji in March 2005. His wife and others connected to him state that he has been abducted. Four further North Korean men were also reported to have been abducted and nothing has been heard of them since: Ji Man-Gil, Kim Cheol-Hun, Kim Cheol-Su, abducted in April 2003, and Shim Seong-Shin, also abducted in April 2003. It is not known whether they are alive or dead.

The Japanese Government has identified 17 Japanese citizens as victims of abductions by North Korea.²³⁰ Following the 2002 admission by North Korea, five abductees were returned. However, unresolved issues over the fate of the remaining abductees remain a major stumbling block in relations between Japan and North Korea.²³¹

The abduction of thirteen-year-old schoolgirl Yokota Megumi in November 1977 symbolises the issue of abductions in Japan. Twenty years after her abduction a North Korean agent reported that he had seen her in North Korea. He had heard from her tutor that as she was transported in a ship's hold she cried continuously, calling for her mother and scratching on the door and wall so desperately that her nails were bloody and had nearly peeled away by the time the ship reached its destination. North Korea has claimed that Ms Yokota died and submitted remains to the Japanese authorities, but test results seemed to indicate that the remains belong to another person. The previous submission of probable remains of a man abducted in Europe which proved on two occasions to be the remains of a woman have not helped North Korea's credibility.²³²

²²³ The figure was given as 82,959 in 1952 by the Bureau of Statistics, 17,940 in the statistics from the Ministry of Home Affairs in 1954 and 7,034 in the statistics from the Korean Red Cross in 1956.

While there are outstanding issues that a considerable number of Prisoners of War continue to be held in North Korea, this issue is beyond the scope of this report.

²²⁴ KINU *White Paper*, 2006, p. 251.

²²⁵ KINU *White Paper*, 2006, p. 252.

²²⁶ CSW, *Individuals of Concern in DPRK*, pp. 2-3; KINU *White Paper* 2006, p. 252.

²²⁷ KINU *White Paper*, 2006, p. 252.

²²⁸ CSW, *Individuals of Concern in DPRK*, pp. 1-2.

²²⁹ NK Chosun, 23 August 2005 (Kang Cheol-Hwan, 'The abduction of a former North Korean officer defector', NK Chosun, 23 August 2005; Korean version available only). See http://nkchosun.com/news/news.html?ACT=detail&cat_id=4&res_id=68688&page=9

²³⁰ *Abductions of Japanese Citizens by North Korea*, Ministry of Foreign Affairs of Japan, April 2006. Masayoshi Hamada, Vice Minister for Foreign Affairs of Japan said on 6 February 2007 that 'at least 17 Japanese citizens have been identified as victims of abductions by North Korea' (http://www.mofa.go.jp/region/asia-paci/n_korea/abduction/stae0702.html). See also Secretariat, Headquarters for the Abduction Issue, Government of Japan, *The Issue of Abductions of Japanese Citizens by North Korea: for the Return of all the Abductees*, March 2007, p. 4-5.

²³¹ The Investigation Commission on Missing Japanese Probably Related to North Korea (COMJAN) believes that 35 Japanese have been abducted to North Korea. They list 16 unresolved cases of disappearances of Japanese nationals since 2000 that they are investigating as potential abductions and 5 such cases since July 2002. However there is no known evidence that North Korea was involved in these disappearances.

²³² International Crisis Group, *Japan and North Korea: Bones of Contention*, Asia Report No. 100, 27 June 2005, p. 12.

The Japanese authorities have identified three suspected abductions of Japanese citizens in Europe between 1980 and 1983. Twenty-three-year-old Arimoto Keiko, who was studying in the United Kingdom, went missing around July 1983 after sending her last letter to her family from Copenhagen, Denmark. Ishioka Toru, 22, and Matsuki Kaoru, 26, both male, disappeared from Spain around May 1980. The actual number of Japanese abductees is a subject of contention. NGOs estimate that North Korea is responsible for around 100 disappearances.

The Japanese National Police Agency has placed a number of individuals on the wanted list of Interpol: Shin Kwang-Soo, Uomoto Kimihiro, Kim Se-Ho, Choe Sun-Chol, Kim Myeong-Suk, Han Geum-Nyeong, Kim Nam-Jin and Kim Kil-Uk. They have also requested the extradition of the first seven individuals.²³³

Abductions from other countries have also taken place. The National Association for the Rescue of Japanese Kidnapped by North Korea (NARKN) and the Investigation Commission on Missing Japanese Probably Related to North Korea (COMJAM) have compiled lists of those abducted by North Korea. The lists show four Lebanese, one Thai (abducted from Macau), one Romanian, two Chinese (residents of Macau), four Malaysian, one Singaporean, three French, three Italians, two Dutch and one Jordanian, as well as over 100 Japanese (NGO accounts) and 489 South Korean (post-ceasefire) victims of abduction. The sources of this information are various eyewitnesses and other abductees.²³⁴ Recent evidence from the US deserter Charles Jenkins, and his Japanese wife, Hitomi Soga, herself an abductee, who arrived from North Korea to Japan in 2004 has stirred fresh interest in the issue, especially in Thailand in relation to a Thai national, Ms Anocha Panjoy, who disappeared in Macau in July 1978. NARKN reports that Ms Soga knew her well and has been able to recognise her from a photo shown by the family.²³⁵

NARKN states: 'We know that in early 1976 Kim Jong-Il ordered the covert operation sections to educate the agents using foreign nationals as language and culture teachers. Although the act of abduction had been conducted since the 1960s, it was just after this order that the cases of abduction increased significantly. According to the testimony of Ahn Myeong-Jin, a defected former North Korean operative, the Japanese, the South Koreans, the Arabs, the Chinese and the Europeans were kidnapped systematically.'²³⁶

Widespread or systematic attack

While abductions were frequent over a considerable period of time, it is doubtful whether the number of persons abducted is sufficient to meet the threshold of a widespread attack, in particular in the 1990s and 2000s. However, the practice of abductions constitutes a systematic attack. Abductions have been organised and followed a regular pattern, being carried out by state agents in order to train spies, to benefit from the skills of the abducted person or to forcibly return North Koreans, including those that have changed nationality. North Korea has admitted to carrying out some abductions, after years of pressure and denials. The abductions have apparently been based on a policy of abducting foreign nationals. While it is not entirely clear who carried out the abductions, it is alleged that the reconnaissance division of North Korea's Ministry of People's Armed Forces was responsible for abductions of Japanese nationals, acting under direct orders from the political leadership, namely Kim Jong-Il.²³⁷

²³³ National Police Agency, Suspected Abduction of Japanese Nationals, International Wanted List for Abductions, available at www.npa.go.jp/keibi/gaiji1/wanted/wanted_e.html.

Spellings are unchanged and given as they have been presented on the International Wanted List for Abductions.

²³⁴ National Association for the Rescue of Japanese Kidnapped by North Korea (NARKN) August 2006 (see www.sukuukai.jp/narkn/about/html); COMJAM (see www.chosa-kai.jp/indexeng.htm). This evidence includes the memoirs of Charles Jenkins, a former US serviceman who lived in North Korea.

²³⁵ Tsutomu Nishioka, Permanent vice Chairman of the National Association for the Rescue of Japanese Kidnapped by North Korea (NARKN), speech, 'The Current State of the Japanese Rescue Movement'.

²³⁶ Tsutomu Nishioka, Permanent vice Chairman of the National Association for the Rescue of Japanese Kidnapped by North Korea (NARKN), speech, 'The Current State of the Japanese Rescue Movement'.

The practice of abducting foreign nationals has been noted with very serious concern by the United Nations. See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, para. 1 (b) (v); *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN Human Rights Council, UN Doc. A/HRC/4/15, 7 February 2007, paras 17, 56-57; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/60/306, 29 August 2005, para. 48 (see also paras 43-50). For more information see International Crisis Group, 'Japan and North Korea: Bones of Contention', Asia Report No. 100, 27 June 2005; KINU, *White Paper*, 2006, pp. 251-260, and Appendix 1; Jasper Becker, 'Dictators: The Depths of Evil', *New Statesman*, 4 September 2006.

²³⁷ 'Warrant issued for N. Korean agent in abduction', *Asian Political News*, 5 August 2002.

Mental element

Available evidence indicates that those involved in the system of international abduction know the circumstances constituting enforced disappearance and mean to engage in the conduct having the requisite degree of awareness and intent. This means that arrests, detentions or abductions would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons, and that arrests, detentions or abductions as well as subsequent refusals to acknowledge that deprivation of freedom are carried out by, or with the authorisation or support of a state.²³⁸

J. Other inhumane acts

The crime against humanity of other inhumane acts consists of the intentional infliction of great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act, if such an act was of a character similar to other crimes against humanity, and the perpetrator was aware of the factual circumstances that established the character of the act. The conduct must be committed as part of a widespread or systematic attack directed against a civilian population and the perpetrator must know or intend the conduct to be part of such an attack.²³⁹

The crime against humanity of other inhumane acts applies to acts that are not already covered by specific enumerated crimes against humanity but are nevertheless of sufficiently similar seriousness as to constitute crimes against humanity.²⁴⁰ The ICTR and ICTY have applied this category to such crimes as sexual violence, forced disappearances and forcible displacement within national borders, which have now been recognised as separate crimes against humanity.²⁴¹

'During my imprisonment, I fell from a mulberry tree on my way to work and broke my collarbone, but had to go to work without any treatment. Even when suffering intense pain, one is still expected to work. In addition, I had to run 4-6 km every day to get to work. My liver swelled by about 5cm due to overwork. However, I could not get it examined, let alone have it treated. I did not menstruate for three years during my time in Yodeok camp due to all the mental and physical stress. This is not uncommon among North Korean women.'

Kim Young-Soon, former prisoner at Yodeok Political Prison Camp

Most acts occurring in the context of the North Korean prison system are covered by specific crimes against humanity. The near-starvation diet and inhumane conditions of life in the camps cause serious bodily or mental harm and would constitute other inhumane acts in so far as they do not already constitute other crimes against humanity.²⁴²

“In a political prison camp in North Korea, you must forget you are a human being. I had to do many things to survive. I carefully watched a dog so that I could steal its food. I ate snakes, frogs, rats, and anything that could be source of nutrition.”

Kim Tae-Jin, former prisoner at Yodek Political Prison Camp

²³⁸ See ICC Elements of Crimes, Article 7 (1) (i).

²³⁹ See ICC Rome Statute, Article 7 (1) (k) and ICC Element of Crimes, Article 7 (1) (k).

²⁴⁰ *Prosecutor v. Naletilic and Martinovic*, IT-98-34, Trial Chamber Judgment (31 March 2003), para. 247; *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T, Trial Chamber Judgment (21 May 1999), paras 148 et seq.

²⁴¹ See eg *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), para. 688 and *Prosecutor v. Kvočka et al.*, IT-98-30/1, Trial Chamber Judgment (2 November 2001), para. 208.

²⁴² See in this context also *Concluding Observations of the Human Rights Committee: Democratic People's Republic of Korea*, UN Doc. CCCR/CO/72/PRK, 27 August 2001, para. 16: 'The Committee takes note of the information provided by the delegation on the conditions of detention in prisons of the Democratic People's Republic of Korea. The Committee nonetheless remains concerned about the many allegations of cruel, inhuman and degrading treatment and conditions and of inadequate medical care in reform institutions, prisons and prison camps, which appear to be in violation of articles 7 and 10 of the Covenant and of the Standard Minimum Rules for the Treatment of Prisoners.'

It is also recognised that forcing someone to witness acts, in particular those committed against family members or friends, causes serious mental harm which may amount to a crime against humanity of inhumane acts.²⁴³ Particular practices, such as being forced to witness executions or even being forced to participate in them, such as by throwing stones on the bodies of the executed,²⁴⁴ can also constitute other inhumane acts although it is not clear on the basis of available evidence how widespread and systematic such practices are. This applies equally to forcing mothers to witness the killing of their babies.²⁴⁵

²⁴³ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-I-T, Trial Chamber Judgment (21 May 1999), para. 153.

²⁴⁴ See testimonies in *Are They Telling Us the Truth?*, pp. 189, 191, 197, 201.

²⁴⁵ See UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, A/RES/61/174, 19 December 2006, paras 1 (b) (i), (ii); *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/61/349, 15 September 2006, para. 16; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the UN General Assembly, UN Doc. A/60/306, 29 August 2005, para. 60; Human Rights Without Frontiers, *Long-standing practices of baby-killing in the camps of North Korea: Accounts by eyewitnesses*, 8 January 2002; Human Rights Without Frontiers, *Baby killings: Fact-finding mission by Human Rights Without Frontiers*, 28 February 2002.

9. Genocide

Genocide is recognised as an international crime in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (the Genocide Convention), the statutes of the International Criminal Court (ICC), International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR) and under customary international law.²⁴⁶ Article II of the Genocide Convention, which contains the commonly accepted definition of genocide, provides:

'In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.'

The forms of attack and the protected groups listed form the objective aspect of the crime of genocide.

The crime of genocide is difficult to prove, as its subjective element requires specific intent (*dolus specialis*) to destroy, in whole or in part, a protected group as such.²⁴⁷ There is no need to prove an explicit expression of intent, which can be inferred from either words or deeds,²⁴⁸ in particular from presumptions of fact such as the scale and systematic nature of acts indicating intent.²⁴⁹ The perpetrator has intent to destroy a group where he seeks to destroy a distinct part of the group.²⁵⁰ This includes the destruction of a part of the group located in a geographically limited area²⁵¹ or selecting a more limited number of persons for the impact that their disappearance would have on the survival of the group as such.²⁵² It therefore appears that it is sufficient if the perpetrator targets a small number of persons (in the belief that he or she is attacking the group as such) if all the other elements are present.²⁵³

Consideration of the applicability of genocide

A. Political prisoners

Although the system of political repression and prison conditions and the practice of targeting political prisoners fulfil most of the material elements of genocide, and specified acts including killing members of the group and causing serious bodily or mental harm to members of the group have been carried out, political groups have been excluded from the list of protected groups under the Genocide Convention.²⁵⁴ A more expansive reading of genocide that includes stable and permanent groups defined by birth could encompass relatives of 'political enemies', but it is unlikely that any tribunal would subscribe to such a

²⁴⁶ Article 4 of the ICTY Statute, Article 2 of the ICTR Statute, Article 6 of the ICC Rome Statute and, on the prohibition of genocide as a rule of customary international law, Schabas, *Genocide*, pp. 3 et seq.

²⁴⁷ See *ibid.*, pp. 206 et seq. for an extensive discussion and *Prosecutor v. Krajisnik*, IT-00-39/40, Trial Chamber Judgment (27 September 2006), paras 850 et seq.

²⁴⁸ Intent can be inferred from either words or deeds and may be demonstrated by a pattern of purposeful action. The chamber considered evidence such as the physical targeting of the group or their property; use of derogatory language towards members of the targeted group; weapons employed and the extent of bodily injury; the methodical way of killing and the systematic manner of killing. ICTR, 95-5-T, *Prosecutor v. Kayishema and Ruzindana*, Trial Chamber Judgement (21 May 1999).

²⁴⁹ 'Intent is a mental factor which is difficult, even impossible to determine. This is the reason why in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact . . . such as the general context of the perpetration of other culpable acts systematically directed against the same group, whether these acts were committed by the same offender or by others. Other factors such as the scale of the atrocities committed, their general nature, in a region or country, or furthermore, deliberately and systematically targeting victims on account of their membership of a particular group, while excluding members of other groups, can enable the Chamber to infer genocidal intent of a particular act.' *Prosecutor v. Akayesu*, ICTR-96-4-T, para. 523.

²⁵⁰ ICTY *Prosecutor v. Krstic*, IT-98-33, Trial Chamber Judgement (2 August 2001), para. 590.

²⁵¹ *Ibid.*

²⁵² ICTY *Prosecutor v. Jelisić*, IT-95-10-T, Trial Chamber Judgement (14 December 1999), para. 82.

²⁵³ See Commentary to Article 6 of the ICC Rome Statute, RSICC/C, Vol. I, ch. II, p. 348.

²⁵⁴ See Schabas, *Genocide*, pp. 134 et seq.

view as the list of protected groups is an exhaustive one and not merely intended to be illustrative.²⁵⁵ Repeated calls to include political groups in the genocide definition have gone unheeded in the face of continuing objections by states.²⁵⁶

Acts committed against prisoners and others because they belong to a group classified as 'political enemies' cannot be prosecuted as genocide, but may constitute crimes against humanity, including the crime against humanity of persecution.

B. Forced abortion and killing of infants of women repatriated from China

Forced abortions and infanticide constitute the material element of genocide, namely killing, causing serious harm and imposing measures to prevent births within a group, if committed against a protected group with the intention to destroy the group, or at least parts thereof. The measures are directed against the birth of children who are fathered in China and are often of mixed descent.

There is no authoritative definition of the constitutive elements of protected groups but a common understanding has developed in the jurisprudence of tribunals. Mixed children do not appear to constitute a national group, as they are not a national minority nor can they be said to be 'a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties'.²⁵⁷ Neither can they be seen as an ethnical group 'whose members share a common language or culture',²⁵⁸ as they would normally be brought up by their returned Korean mothers as Koreans even though they may face stigma because of their descent. However, mixed children appear to constitute a 'racial group'. This term is contested because of the notion of race but there is general agreement that racial groups are defined by a distinctive identity 'in terms of physical characteristics or biological descent'.²⁵⁹ Mixed children may have distinctive physical features, and have a distinctive identity as children whose fathers are Chinese, which defines their common biological descent. Further criteria that may be used in establishing the existence of a protected group are self-perception by the group and the perceptions of the perpetrators.²⁶⁰ In the present context, North Korean officials have apparently treated the mixed babies born or about to be born to North Korean mothers as a separate group characterised by common features.

However, at this stage the available evidence is too incomplete to allow any firm conclusions with regard to the requisite genocidal intent. Several eyewitness testimonies point to a fairly frequent practice and accompanying comments by perpetrators may serve as an indication of a specific intent to kill mixed children. However, the extent and systematic nature of this practice is not entirely clear.²⁶¹ Further detailed evidence would be needed to establish that there is either a policy or plan, or a manifest pattern or similar conduct in order to show that the babies of mixed descent have been killed with genocidal intent.

C. Religious believers and groups²⁶²

As described above,²⁶³ religious persecution in North Korea is extremely harsh and religious activity is seen to be inconsistent with the obligatory adherence to the personality cult of the political leadership. Religious groups are recognised as one of the four specified groups that are protected by the Genocide Convention. As religious believers have been executed, sent to political prison camps that they cannot

²⁵⁵ Some experts such as Stanton and Harff call the crimes 'politicide', and note their similarity to genocide. See Gregory Stanton, 'Genocides, Politicides, and Other Mass Murder since 1945' at <http://www.genocidewatch.org/aboutgenocide/genpolimmchart.htm>, and Barbara Harff, 'Assessing Risks of Genocide and Politicide' in Marshall and Gurr, eds, *Peace and Conflict*, 2005.

²⁵⁶ See Schabas, *Genocide*, pp. 142 et seq.

²⁵⁷ *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), para. 511.

²⁵⁸ *Ibid.*, para. 512.

²⁵⁹ See US Genocide Convention Implementation Act of 1987, s.1093. See also *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), para. 511.

²⁶⁰ *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), para. 702.

²⁶¹ For example the KINU *White Paper*, 2006, p. 278, lists seven cases of forced abortions and other deliberate killings from 1998 to July 2004 and Hawk, *Hidden Gulag*, p. 59, bases his assessment on eight 'eyewitnesses or persons with firsthand accounts of ethnic infanticide', reporting that this practice occurs in three places: Sinuiju, Onseong, and Chongjin. Hawk reports 26 infanticides and 29 forced abortions at eight labour camps and detention centres from 1999-2000. Human Rights Without Frontiers collected eight testimonies from North Korean refugees in 2000 and 2001 that recount several instances of forced abortions and infant killings, one testimony alleging that in May 2000 alone 7 newborn babies were killed in the North Hamkyong Provincial Police Detention Camp of Chongjin. See Information and Press Service, *North Korea, Baby Killings, Fact-finding mission by Human Rights Without Frontiers*, 28 February 2002.

²⁶² This text is a shortened version of a longer treatment: Religion in North Korea available at www.csw.org.uk.

²⁶³ See sections 4.1 and 8.H. above.

leave and where reproduction is prohibited, and targeted in other ways as described above,²⁶⁴ evidence indicates that most or all of the acts specified in the genocide definition have been carried out against religious believers.

The most difficult element to prove the crime of genocide in relation to religious groups in North Korea is specific intent. As this is a complex issue, some detail is given below in presenting available evidence to indicate whether or not genocidal intent is present.²⁶⁵

Evidence of genocidal policy

A number of reports record quotes by Kim Il-Sung in the 1960s and 1970s that clearly articulate the goal of eliminating Christians:

*'Through court trials, we have executed all Protestant and Catholic church cadre members and sentenced all other vicious religious elements to heavy punishment. The repentants have been given work, but non-repentants have been sent to concentration camps.'*²⁶⁶

*'(We) cannot carry such religiously active people along our march toward a Communist society. Therefore, we tried and executed all religious leaders higher than deacon in the Protestant and Catholic churches. Among other religiously active people, those deemed malignant were all put to trial. Among ordinary religious believers, those who recanted were given jobs while those who did not were held at concentration camps... Therefore in 1958 we completely and thoroughly apprehended that group of people and had them executed. That is how we found out that the only way to fix the bad habit of these religious believers is for them to be killed.'*²⁶⁷

*'The guidelines for dealing with religious believers are clearly set out in our Party's public security policy. You need only to follow it. Silly old religionists need to die in order for their bad habits to be corrected. In which case, we must mercilessly eradicate them....'*²⁶⁸

Although much of the context and rhetoric surrounding these statements relates to Christians being seen as 'enemies' and 'agents of imperialist forces', Christians were still deliberately targeted as a group, which is the key issue in relation to the requirement to prove specific intent to destroy a religious group 'as such'.²⁶⁹

The quotes attributed to Kim Il-Sung are from secondary sources and are not recorded in official texts.²⁷⁰ Intent is naturally difficult to prove, for the obvious reasons that a state may not wish to publish its genocidal intentions on paper, and even if it does, such papers would normally be difficult to obtain. As mentioned above,²⁷¹ in the light of these difficulties, the ICTR has recognised that 'intent can be inferred from either words or deeds and may be demonstrated by a pattern of purposeful action.'²⁷²

²⁶⁴ See section 8.H. above for details of acts, including those affecting births and children.

²⁶⁵ This additional analysis does not reflect the perceived comparative strength of the case, but simply the higher legal threshold relevant in the case of genocide and the different level of information necessary to make an accurate assessment in this regard.

²⁶⁶ Recorded as a quote from Kim Il-Sung during the plenary session of the 4th-term Party Central Committee in 1962 in Kang In-Duk, 'North Korea's Policy on Religion', East Asian Review, Vol 7, No 3, Seoul: the Institute for East Asian Studies, 1995, p. 95.

²⁶⁷ Recorded as teaching from Kim Il-Sung passed down to all members of the Ministry of Public Security in 1962, in response to the underground activities of religious believers, in Koh Tae-Woo, *North Korea's Policy on Religion*, 1989, p. 79 (translation is by KINU (as provided in its White Paper 2006, p. 136) and CSW).

²⁶⁸ The quote continues: 'In the case of immature youth who are contaminated by religion, this can be easily prevented by reinforcing ideological education and by carefully explaining the falsity and unscientific content of religion. And then from amongst those, the malicious elements we just need to eradicate, and the passive elements, especially those belonging to the 'hostile' class, we simply need to lock up in the prison camps. So stop worrying so much and just use your head.' Cited in Koh Tae-Woo, *North Korea's Policy on Religion*, 1989, p. 81.

²⁶⁹ The ICTR has addressed the question of associating membership of a group with political alignment: '[T]he association of the Tutsi ethnic group with a political agenda, effectively merging ethnic and political identity, does not negate the genocidal animus that motivated the Accused. To the contrary, the identification of Tutsi individuals as enemies of the state associated with political opposition, simply by virtue of their Tutsi ethnicity, underscores the fact that their membership in the ethnic group, as such, was the sole basis on which they were targeted.' *Prosecutor v. Nahimana et al.*, Trial Chamber Judgment (3 December 2003), para. 969.

²⁷⁰ North Korea has admitted in public that it persecuted religious believers. Philo Kim reports that members of a North Korean religious delegation touring the US in May 1991 'frankly admitted that in the past North Korean authorities engaged in repression of religion because of their misunderstanding of religion. Former Ambassador Han Si-hae said that, "I am very sorry that many Christians underwent great suffering due to the misunderstanding of the religion."' Philo Kim, 'New Religious Policy and the Reality of Religious Freedom in North Korea', 5th International Conference on North Korean Human Rights and Refugees, Warsaw, Poland, 29 February to 2 March 2004, p. 85 (hereafter, Philo Kim, 'New Religious Policy and the Reality of Religious Freedom in North Korea').

²⁷¹ See section 9 above.

²⁷² ICTR, 95-5-T *Prosecutor v. Kayishema and Ruzindana*, Trial Chamber Judgement (21 May 1999). See also *Prosecutor v. Akayesu*, ICTR- 96-4-T, Trial Chamber Judgment (2 September 1998), para. 523.

Hwang Jang-Yop, a policy-maker who was the architect of Juche, the KWP Secretary and a confidant of Kim Il-Sung, is well-placed to give insight on policy and reality in North Korea. Among his relevant statements,²⁷³ he has said: 'if anybody in North Korea publicly states that they believe in religion, they die'.²⁷⁴

Ahn Myeong-Cheol, who was a guard at a number of political prison camps, states in relation to the genocide definition:

'We do not have national or ethnic groups so the genocide definition does not apply in this regard, but the treatment of Christians precisely fits the genocide definition. The genocide definition fits the policy towards Christians one hundred per cent. There was a special instruction from the political leadership that all religions are social evil. There was an abundance of references to Christian groups for the purposes of annihilation. There were speeches, texts, instructions, textbooks and pamphlets covering this. Religion is seen to be like opium and has to be wiped out. When I was on duty I saw many Christians. One is meant to worship only the political leaders and any other worship was a deviation from loyalty to the regime. When North Koreans hear about God they think they are talking about Kim Il-Sung. All North Koreans have this confusion. If anyone embraces Christianity in North Korea they are called a crazy guy. No one could understand or imagine someone wanting to become a Christian. It is very unlikely one could find a descendant of a Christian still living. The camp rules were intended to prevent Christian families. Everyone in the camp was prevented from reproducing. If someone had a baby it would be a problem in the whole camp. Christians were reactionaries and there were lots of instructions and mottos to wipe out the seed of reactionaries. The purpose of the camps I was involved in was to kill the prisoners. Instead of killing them by shooting, the intention was to force them to work to the last minute. The intention was to kill, not to extract labour. The purpose was to kill; the method was just different.'

Kang In-Duk records that, as early as the 1950s, and under the instructions of Kim Il-Sung, the North Korean regime embarked on a policy of rooting out religion thoroughly and the North Korean Workers' Party mapped out the fundamental principles, as follows: firstly, through ideological indoctrination, ordinary religious followers must be made to abandon their religious belief and practices. Secondly, religious leaders who are found to be engaged in counter-revolutionary or anti-state activities against the government policy must be punished in accordance with the related laws. Among the details to implement these principles was that those religious believers found incapable of being remade would be classified as the 'targets of dictatorship'.²⁷⁵

Implementation of anti-religion policy

Religious persecution has indeed been brutal, with the implementation of a very harsh programme of repression of religion, especially in the 1950s and 1960s. Persecution against Christians was particularly harsh, with Protestants singled out, and virulent anti-Christian propaganda was channelled through Party, company, school and workers associations creating a culture of hatred and mistrust of Christians.²⁷⁶ By the mid-1950s there were no churches functioning.²⁷⁷ Likewise, all Buddhist temples and Cheondokyo places of worship were eliminated.²⁷⁸

²⁷³ Other quotes from Hwang Jang-Yop: 'If someone really wanted to attend church, or declared allegiance to it, he would be shot within five minutes.': http://www.nkmissions.com/10part_report/Week6/in-depth.shtml and 'Kim Il Sung and Kim Jong Il do not allow freedom of religion and despise all religious believers. They demand that the people love and respect only them, forbid the people from loving or respecting anyone else, and even deprive the people of the right to believe in and love God': Hwang Jang-Yop, *Problems of Human Rights in North Korea (III)*, at <http://www.dailynk.com/english/keys/2002/9/04.php>.

²⁷⁴ Statement made on Free North Korea Radio on 23 June 2006. See: <http://www.dailynk.com/korean/read.php?catald=nk02200&num=24122>.

²⁷⁵ Kang In-Duk, 'North Korea's Policy on Religion', *East Asian Review*, Vol 7, No 3 (Seoul: the Institute for East Asian Studies, 1995), p. 94-95.

²⁷⁶ Andrei Lankov, 'North Korea's Missionary Position', *Asia Times Online*, 16 March 2005: <http://www.atimes.com/atimes/Korea/GC16Dg03.html>. See also Philo Kim, 'New Religious Policy and the Reality of Religious Freedom in North Korea', p. 84. Footnote 13 of this page states that 'The books used for anti-religious education are as follows: *Why should We Oppose Religion?* (Ha-Chul Chung, Korean Workers' Party Press, 1959), *Opium of the People* (He-Il Kim, Democratic Youth Press, 1959), *Reactionary Nature of Religious Ethics* (Won-Kyu Baek, Democratic Youth Press, 1959), *Life and Superstition* (Korean Women's Press, 1959).'

²⁷⁷ As Russian scholar Andrei Lankov notes: 'As usual, the Korean Stalinists outdid Stalin himself: even in the worst days of Josef Stalin's rule a handful of churches remained opened in Soviet cities, and some priests avoided the gulag (more often than not through co-operation with Stalin's secret police)'. 'North Korea's Missionary Position', *Asia Times Online*, 16 March 2005.

²⁷⁸ Suh Dae-Sook, *Kim Il-Sung: The North Korean Leader*, 1988, p. 399, cited in USCIRF, *Thank You Father Kim Il Sung*, p. 63. For detailed coverage of the historical stages and the progress of persecution see Philo Kim, 'New Religious Policy and the Reality of Religious Freedom in North Korea', p. 79-90; 김병로, *북한 그루터기 신앙공동체의 존재 양태*, 통일한국포럼의 2장 (Philo Kim, *An assessment of the existence of a grassroots Christian community in North Korea*, Ch. 2 of the Christian Unification Forum of Korea; Korean version available only).

Philo Kim, a foremost Korean academic authority on religion in North Korea, states: ‘All religiously active people have disappeared as a result of the central party’s intensive guidance program... 900 pastors and some 300,000 followers have either been killed or forced to recant their faith... 260 Catholic fathers/nuns/monks, and 50,000 Catholic followers were killed because they refused to recant their faith. In addition, some 800 or 1,600 Buddhist monks and nuns and their 35,000 Buddhist followers have been wiped out. And... 120,000 followers of Cheondokyo have disappeared or been forced to recant their faith. Because of this persecution, about 400,000 religiously active people and their families were either executed or banished to political prison camps.’²⁷⁹

Changes in religious demography

At the time of Liberation, there was significant religious activity in the country. Statistics can be found in the *Korean Workers’ Party Central Yearbook of Korea of 1950*²⁸⁰ and more accurate estimates of the numbers are available from a number of sources. Either set of figures shows the religiously active made up over 20% of the population. By this stage, these figures come in the context of persecution and the flight of many religious believers. The religious change effected in North Korea can be seen today. In a communication in August 2002, North Korea reported to the United Nations Human Rights Committee that there were few religious believers in the country and provided the figures for religious adherents shown in the table below.²⁸¹

	KWP Yearbook 1950	Realistic estimates 1950	DPRK figures to UN 2002
Cheondokyoists	1,500,000	1,700,000 ²⁸²	15,000
Buddhists	375,000	500,000 ²⁸³	10,000
Protestants	200,000	300,000 ²⁸⁴	12,000
Catholics	57,000	[57,000]	800
Total	2,132,000	2,557,000	37,800
Population	9,000,000	9,000,000 ²⁸⁵	22,963,000
Religiously active % of population	23.69%	28.40%	0.16%

The figures show that there has clearly been a very significant drop in the percentage of the population engaged in religious activities.²⁸⁶ It is necessary to bear in mind that many would view even these small numbers as fabricated on the basis that the entire state authorised religious system is intended to provide a false impression of religious activity. Naturally, on their own these figures have limited meaning.

²⁷⁹ Philo Kim, ‘New Religious Policy and the Reality of Religious Freedom in North Korea’, p. 84. See also KINU, *White Paper*, 2006, p. 136, for similar information and assessment.
²⁸⁰ Korean Workers’ Party Publishing House, *Central Yearbook of Korea 1950* (Pyongyang: Korean Workers’ Party Publishing House, 1950), cited in Philo Kim, ‘New Religious Policy and the Reality of Religious Freedom in North Korea’.
²⁸¹ *Concluding Observations of the Human Rights Committee, Democratic People’s Republic of Korea, Addendum*, UN Doc. CCPR/CO/72/PRK/Add.1, 5 August 2002, pp. 2-3. It is noteworthy that there is considerable contradiction in the information presented to the UN, with the verbal report being internally inconsistent and contradicting the other figures by significant percentages: Human Rights Committee, Seventy-second session, Summary Record of the 1946th Meeting, 30 October 2001, CCPR/C/SR.1946, paragraph 63. For example, the representative of the DPRK stated that there were 400 Christian priests whereas the written record states 20. Other figures for Catholicism and Cheondokyo are also markedly different. The figures for the population come from Core Document Forming Part of the Reports of States Parties, Democratic People’s Republic of Korea, 16 July 2002, HRI/CORE/1/Add.108/Rev.1, p. 10. Verified statistics are not available. For a treatment of the reliability or otherwise of official statistics, see Suk Lee, *The DPRK Famine of 1994-2000: Existence and Impact*, KINU, Seoul, 2005.
²⁸² Philo Kim, ‘New Religious Policy and the Reality of Religious Freedom in North Korea’, p. 84.
²⁸³ Kang In-Duk, ‘North Korea’s Policy on Religion’, *East Asian Review*, Vol 7, No 3 (Seoul: the Institute for East Asian Studies, 1995), p. 90.
²⁸⁴ Lee Chan-Young (ed.), *The Pictorials of North Korean Churches* (Seoul: General Assembly’s Committee for the Rehabilitation of North Korean Churches, 2000) p. 10, cited in Philo Kim, ‘New Religious Policy and the Reality of Religious Freedom in North Korea’, p. 83.
²⁸⁵ Kang In-Duk, ‘North Korea’s Policy on Religion’, *East Asian Review*, Vol 7, No 3 (Seoul: the Institute for East Asian Studies, 1995), p. 89.
²⁸⁶ It is noteworthy that northern Korea was much more Christian than southern Korea and that North Korea was a well known centre of Christian revival before the regime and Pyongyang was known in the Christian world as ‘the Jerusalem of the East’, with 25-30% of the adult population being church-going Christians. (See Andrei Lankov, ‘North Korea’s Missionary Position’, *Asia Times Online*, 16 March 2005.) The 0.06% believing in Christianity (both Protestant and Catholic), according to the DPRK figures given to the United Nations in 2002 (see table above), contrasts markedly with the comparative 27% figure of Christians in South Korea. (Korea National Statistical Office; 2003 figures: http://kosis.nso.go.kr/cgi-bin/sws_999.cgi.)

However, they do raise the legitimate question of how such a transformation took place in North Korea. While significant numbers of religious believers fled south before and during the war, there were still significant numbers who would have remained. These dramatic changes are reflected in the consistent response of North Koreans that there are no longer any Christians in the country.

The reversal of religious life is also seen in the reduced number of places of worship.²⁸⁷ For example, the South Korean Church has identified 3,000 Protestant Christian places of worship that were operating in the northern area, in stark contrast to the two Protestant churches now existing in the capital.

The current situation

While there seems to be common acceptance of the intensity and violence of the campaign to root out religion thoroughly in the 1950s and 1960s, the current situation is slightly less clear. When asked if this policy is continuing in the same manner, North Koreans typically reply that there is no need now; the job has been done; there are none left to persecute. Defectors do also say that they are aware that it is very dangerous to be a Christian, that being a Christian is an extremely serious crime and that anyone caught as a Christian faces severe penalties.

North Koreans consistently report that they have never met a religious practitioner, or seen a Bible or a Church. The only exceptions are those in Pyongyang, who have seen the few state-sanctioned churches, but report that they exist for the benefit of foreigners, giving the illusion of religious freedom. When asked if there can be religious life in North Korea, a common answer is that it is impossible: all the Christians have fled or been killed; there are none left. Another answer is that, even if they had survived, it would be impossible for them to meet to practise their faith because of the invasive informant system.²⁸⁸ It is clear that they link the absence of Christians to the repression and the intolerance of the Christian faith.

However, North Korea has made a few overt steps towards seeking to demonstrate greater religious freedom and towards using religious bodies to engage with the outside world for their purposes,²⁸⁹ establishing some state-controlled religious bodies and allowing a few religious places of worship to function, albeit under very tight restrictions.²⁹⁰ While most recognise that the motivation behind these groups is not religious freedom for its own sake,²⁹¹ assessment of those within the bodies varies. While there may be some discussion as to whether those in the state-sanctioned bodies are true religious believers allowed a measure of freedom to practise their faith,²⁹² none would contend that there is liberty to freely follow the faith of one's choice according to one's conscience.

²⁸⁷ See UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Democratic People's Republic of Korea*, UN Doc. CCPR/CO/72/PRK/Add.1, 27 August 2001, para. 5; Philo Kim, 'New Religious Policy and the Reality of Religious Freedom in North Korea', p. 84.

²⁸⁸ There is great consistency in the responses of North Koreans in regard to the matters of religious repression and the absolute prohibition of religious faith and practice. CSW's findings from over 80 interviews accords very closely with the reported responses of North Koreans recorded in the United States Commission on International Religious Freedom's report *Thank You Father Kim Il Sung*, see e.g. pp. 25-26, 29.

²⁸⁹ KINU states: 'The reason North Korea is changing its religious policy is to maintain religious repression internally amid deteriorating food shortage, the death of Kim Il-Sung and the unruly social environment, while expanding contacts with the international community. In short North Korea is utilizing religion as a means of gaining foreign currency.' (KINU *White Paper*, 2006, p.139).

²⁹⁰ The religious bodies are the Korean Christian Federation, the Korean Buddhist Federation, the Korean Catholic Association, the Korean Cheondokyo Association and the Korean Orthodox Association.

²⁹¹ The establishment of these groups is widely recognised as being motivated by securing international advantages and avoiding international censure. The groups are run under the direct control of the Korean Workers' Party United Front Department and are used for its purposes. See Kang In-Duk, 'North Korea's Policy on Religion', *East Asian Review*, Vol 7, No. 3 (Seoul: the Institute for East Asian Studies, 1995), p. 96. Many argue that the entire system is a fake with state ordered and orchestrated participation. It is reported that when North Korea agreed to build a Russian Orthodox Church in Pyongyang, in an apparent overture to Russia, Kim Jong-Il assured Russians sceptical of the existence of believers that North Korea would find believers. See Andrei Lankov, 'North Korea's Missionary Position', *Asia Times Online*, 16 March 2005. For Hwang Jang-Yop's assessment of the legitimacy of the religious bodies and programmes in North Korea, see <http://www.dailynk.com/korean/read.php?catald=nk02200&num=24122> (in Korean) and <http://www.dailynk.com/korean/read.php?catald=nk02200&num=24122> (in Korean). His statement that the creation of the Department of Religion at Kim Il-Sung University (while he was President) was done to deceive the outside world fits with the finding of the U.S. Commission on International Religious Freedom that the department was drafting questions for the border repatriation centres to identify genuine religious believers (USCIRF, *Thank You Father Kim Il Sung*, p. 4).

²⁹² A good number of those who have had the opportunity to attend such bodies believe that a significant percentage of those who attend the religious bodies are genuine, if severely restricted, religious believers. In particular they state that they are descendants of pre-WWII believers. The most significant testimony on this is from Rev. Dr. Syngman Rhee, who returned to North Korea and recognised people from Church youth groups before the Korean War: However, it is important to point out that this is not evidence that those who wished to practise their faith were not eliminated, as even those who point to the importance of this evidence would recognise that those who sought to maintain their faith would not have been able to survive, whereas those who renounced it may have been able to live, and would have been classified in the hostile classes, where they would still have suffered discrimination across a range of areas. See Andrei Lankov, 'North Korea's Missionary Position', *Asia Times Online*, 16 March 2005; USCIRF, *Thank You Father Kim Il Sung*, p. 85.

Targeting of religious group

Even if the dubious official religious bodies were regarded as evidence that North Korea has abandoned its policy of destroying religious activity, it is arguable that it has only abandoned that policy towards certain religious groups. Membership in or allegiance to the religious denominations that existed previously is not a possibility in North Korea. Before the intense persecution of the Church, the Church in Korea was evangelistic, meaning that believers actively shared their faith. This is an inherent element of Christianity and religious believers who seek to implement and follow this command in the current day are very harshly targeted.²⁹³ According to multiple defector accounts, including eyewitness testimonies, they will be executed or sent to political prison camps.

Summary and conclusion

Available evidence demonstrates that Christians have been targeted and that various attacks or measures constituting the objective element of genocide have been committed or imposed against members of the group.²⁹⁴

A considerable number of members of religious groups have been systematically targeted for their belief as such, not least on the basis of its incompatibility with the ideology of Juche. The discriminatory nature of the practice and the policy of subjecting members of religious groups to detention, inhuman prison conditions, torture and, in some cases, arbitrary killings, is indicative of genocidal intent. This applies in particular to the height of religious persecution in the 1950s and 1960s.²⁹⁵

²⁹³ In this regard it is noteworthy that the Korean Christian Federation have made it clear that they do not evangelise. See 'Report of the Canadian Council of Churches Delegation to the DPRK', 4-13 November 1988, in *Currents*, January 1989, a (now defunct) periodical of the ecumenical Canada-Asia Working Group, p. 5, cited in USCIRF, *Thank You Father Kim Il Sung*, p. 83.

²⁹⁴ USCIRF, *Thank You Father Kim Il Sung*, pp. 50 et seq.

²⁹⁵ See Kang In-Duk, 'North Korea's Policy on Religion', in *East Asian Review*, Autumn 1995, Vol. 7, No. 3, p. 95 and KINU *White Paper*, 2006, p. 136.

10. Individual Criminal Responsibility

Principles governing individual criminal liability

Under international law, it is only individuals and not the state that may incur criminal responsibility even where the state is also responsible for the violations.²⁹⁶ In principle, anyone who has committed an international crime is fully responsible, regardless of their position of authority. This principle has been recognised in the statutes and jurisprudence of international tribunals.²⁹⁷ The reason is that no one should escape accountability for the most serious crimes on account of his or her position. Officials are fully responsible even where they follow superior orders.²⁹⁸

Persons under the age of 18 years may not be held criminally liable for international crimes.²⁹⁹

Criminal liability for international crimes committed in North Korea

A range of individuals may be held criminally responsible for the international crimes that have been committed in North Korea. This includes those who:

- carry out the violations themselves, such as prison officials, camp guards and security agents;
- are in positions of responsibility in the State Security Protection Agency or other agencies that operate or oversee prisons, other interrogation facilities or otherwise implement policies resulting in the commission of the crimes;
- have overall responsibility for the running of the country, including for the various agencies and bodies, namely the political leadership.

10.1 Political leaders

The criminal acts in the system of imprisonment and detention facilities have largely been committed as part of a tightly controlled system. This means that the responsibility for international crimes lies not only with those responsible for pulling the triggers or guarding the camps, but with the long chain of superiors provided that knowledge is proved; and ultimate political responsibility for international crimes lies with the head of state, Kim Jong-Il.³⁰⁰ Kim Jong-Il and other persons in high-ranking governmental positions, such as ministers responsible for the State Security Protection Agency, normally do not personally kill, torture or force prisoners to perform hard labour. However, they are responsible for formulating policies which endorse these practices, while simultaneously directing and controlling the state machinery and its actions. As recognised since the war crimes tribunals judging Nazi and Japanese criminals, it would be perverse if those most responsible for the crimes would not incur criminal responsibility because of the lack of direct personal involvement.

The following considerations of forms of responsibility are of a general nature because of the dearth of publicly available information on the inner workings of the North Korean system, the precise chain of command and the responsibility of named individuals for specific policies or acts. More detailed information and evidence needs to be collected and examined in order to conclusively determine the responsibility of any particular person in North Korea, which should be one of the tasks of a UN commission of inquiry, which is called for in this report.

²⁹⁶ Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, pp. 136 et seq. The concept of state crimes was originally contained in Article 19 of the ILC Draft Articles on State Responsibility but subsequently given up in the 2001 Draft Articles.

²⁹⁷ Articles 7 (2) ICTY; 6 (2) ICTR and 27 of the ICC Rome Statute. However, heads of states and certain high-ranking officials may still enjoy personal immunity in criminal proceedings that are brought against them in courts in third countries but only as long as they stay in office. See *Case Concerning the Arrest Warrant of 11 April 2000 (Democratic Republic of Congo v. Belgium)*, Judgment of the International Court of Justice of 14 February 2002.

²⁹⁸ Article 33 of the ICC Rome Statute.

²⁹⁹ Article 26 of the ICC Rome Statute.

³⁰⁰ See for a study focusing on his personal liability, Grace M. Kang, *A Case for the Prosecution of Kim Jong-Il for Crimes against Humanity, Genocide, and War Crimes*, ExpressO Reprint Series, 2006, Paper 1394.

There are three forms of criminal liability that capture the specific nature of the role of those in positions of authority:

10.1.1 Giving orders or inducing a crime

An order to commit a crime ‘requires that a person in a position of authority instructs another person to commit a crime.’³⁰¹ The order need not be given in any particular form, and may even be implicit, and can be proved by circumstantial evidence.³⁰²

“*Concentration camps have been created by Kim Il-Sung and Kim Jong-Il on special instructions that ‘reactionaries must be eliminated to three generations’. Propaganda slogans all over the barracks say ‘No mercy to be shown to class enemies’. All ‘education’ is in accordance with these slogans. The emphasis during our training sessions was: ‘They are not people - they are the people’s enemy. If they escape they will return for revenge, so they must not be allowed to escape.’ We were not allowed to show any encouragement, sympathy or mercy towards the prisoners. There were virtually no limits on the punishments we could mete out to them.*”

Ahn Myeong-Cheol, former political prison camp guard

It is apparent that Kim Il-Sung ordered the establishment of political prison camps as a means of ‘combating political enemies’ and that Kim Jong-Il is in overall charge of the system. Given the hierarchical nature of the regime, it is likely that there are a series of orders or instructions to the relevant agencies to perform certain acts, such as public executions, forced labour or beatings as punishment in order to implement the policy of controlling and exploiting ‘political enemies’. The orders need not be explicit; it can be sufficient to make it clear to prison guards that certain action is required in a given situation, such as punishing someone severely for trivial transgressions of camp rules. Anyone in a position of authority in North Korea who has given orders or solicited subordinates to commit international crimes incurs criminal responsibility where he or she had the intention that the crime be committed.³⁰³

There is some evidence incriminating the political leadership by demonstrating that specific orders have been given in relation to executions and abductions.³⁰⁴ Hwang Jang-Yop, the former Secretary of the KWPP, has stated that political orders have an immediate impact.³⁰⁵ They are expected to, and will normally be strictly followed by subordinates. This may allow the inference that, given their patterns, certain crimes are committed systematically pursuant to direct orders and instructions from the political leadership.

10.1.2 Joint criminal enterprise

Persons in authority can also be found liable on the grounds of a joint criminal enterprise. This is a form of liability that criminalises the contribution to the commission of or attempt to commit a crime by a group of persons acting with a common purpose. In other words, there must be several persons who have a common plan to carry out the crimes and the accused must have participated in the execution of the common plan.³⁰⁶ The contribution needs to be intentional and to be made either with the aim of furthering the criminal activity or purpose of the group, or in the knowledge of the intention of the group to commit the crime.³⁰⁷

³⁰¹ *Prosecutor v. Limaj et al.*, IT-03-66, Trial Chamber Judgment (30 November 2005), para. 515; *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), para. 483.

³⁰² *Prosecutor v. Blaskic*, IT-95-14, Trial Chamber Judgment (3 March 2000), para. 281.

³⁰³ See in addition to the jurisprudence of the ICTY and ICTR referred to above, Article 25 (3) (b) and Article 30 of the ICC Rome Statute.

³⁰⁴ See KINU *White Paper*, 2006, pp. 28 et seq. and ‘The producer from Hell’, *Guardian*, 4 April 2003, on the abduction of the South Korean director Shin Sang-Ok and his wife Choi in 1978 on the orders of Kim Jong-Il. North Korea officially admitted that it had abducted 11 Japanese nationals in the 1970s and 1980s. *Ibid.* and section 8.1 above.

³⁰⁵ Hwang Jang-Yop, ‘The Problems of Human Rights in North Korea’, (II) in *KEYS Quarterly* of NKNet, Spring 2002, in particular pp. 39 et seq.

³⁰⁶ *Prosecutor v. Kayishema and Ruzindana*, ICTR-95-1-T Trial Chamber Judgment, (21 May 1999), paras 203 et seq. and *Prosecutor v. Limaj et al.*, IT-03-66 Trial Chamber Judgment, (30 November 2005), para. 510.

³⁰⁷ See e.g. Article 25 (3) (d) of the ICC Rome Statute. See also *Prosecutor v. Tadic*, IT-94-1, Appeals Chamber Judgment (15 July 1999), para. 190; *Prosecutor v. Krstic*, IT-98-33 Trial Chamber Judgment, (2 August 2001), para. 601, *Prosecutor v. Kvocka et al.*, IT-98-30/1, Trial Chamber Judgment (2 November 2001), para. 307.

The common purpose doctrine encompasses the so-called ‘concentration camp’ cases. The notion of common purpose was applied to instances where the offences charged were alleged to have been committed by members of military or administrative units such as those running concentration camps; i.e. by groups of persons acting pursuant to a concerted plan.³⁰⁸

In North Korea, criminal liability for a criminal enterprise is particularly relevant in the context of the political prison camp policy because available evidence indicates that violations are part of a concerted plan. A plurality of persons participate in this policy, from ordering the establishment of the camps, organising the camps and specifying the camp regime, to running the camps and the commission of individual crimes. The ICTY has recognised that those responsible for the establishment and operation of prison camps in which crimes against humanity are systematically committed can be liable for participating in a joint criminal enterprise.³⁰⁹ In order to prove a common plan as an element of a joint criminal enterprise, it must be shown that they acted with a common purpose.³¹⁰ Responsibility of those involved can thus be proved either by inference from the organised manner in which the prison system and other forms of persecution are operated in North Korea, in particular by demonstrating patterns of abuse as identified above, or by providing direct evidence such as official documents that would link those responsible to a common plan or purpose.

Even where a common plan can be inferred, it still needs to be proved that a particular person has incurred individual responsibility. This requires a level of contribution to the common criminal purpose that does not need to be either substantial or significant.³¹¹ The mental element requires that the co-perpetrator ‘shares the intent to carry out the joint criminal enterprise and performs an act or omission in furtherance of the enterprise’, which may be ‘inferred from knowledge of the criminal enterprise and continued participation.’³¹² The powers of the alleged perpetrator and his or her role in respect of certain policies and activities have to be clearly identified, both to satisfy the objective element, namely significant contribution, and the knowledge element. Given the strictly hierarchical and well-organised system of control in North Korea, there is a strong indication that Kim Jong-Il and other high-ranking officials, including those in charge of camps, have engaged in a joint criminal enterprise to commit crimes against humanity whereby specific evidence would be needed to establish individual criminal liability.

10.1.3 Command or superior responsibility

The criminal liability of command or superior responsibility is important to capture the responsibility of political leaders and others in higher-ranking positions, which is by its nature often extremely difficult to prove. Command or superior responsibility recognises that an active commission need not be proved where a commander or superior fails to prevent crimes he or she knew or should have known about even though he or she could or should have stopped those crimes.³¹³

The elements that need to be proved are the existence of a superior-subordinate relationship, the mental element of knowledge or constructive knowledge of the commission of crimes and the failure to take preventive or repressive measures.³¹⁴ The superior-subordinate relationship could be a formal or informal hierarchy of command and need not be strict military command-style structure.³¹⁵ The accused must possess effective control over the subordinates and this could be *de jure* or *de facto* control, in either a military or a civilian capacity.³¹⁶ There can be little doubt about the existence of such a relationship in the case of Kim Jong-Il, who is the head of state and is in command of the Party, the army and other key agencies. According to Hwang Jang-Yop, the former Secretary of the Korean Workers’ Party, Kim Jong-Il maintains close control of the day-to-day running of government affairs.³¹⁷

³⁰⁸ *Prosecutor v. Tadic*, IT-94-I, Appeals Chamber Judgment (15 July 1999), paras. 202 et seq. and *Prosecutor v. Limaj et al.* IT-03-66, Trial Chamber Judgment (30 November 2005), para. 511.

³⁰⁹ *Prosecutor v. Kvočka et al.*, IT-98-30/1 Trial Chamber Judgment, (2 November 2001), paras 188, 202, 216, 222, 229, 235, 752, 755, 758, 761.

³¹⁰ *Prosecutor v. Brđjanin and Zupljanin*, IT-99-36, Appeals Chamber Judgment (3 April 2007), paras 415 et seq.

³¹¹ *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Appeals Chamber Judgment (28 February 2005), para. 97 and para. 421.

³¹² *Prosecutor v. Kvočka et al.*, IT-98-30/1, Trial Chamber Judgment (2 November 2001), para. 284.

³¹³ See Article 28 of the ICC Rome Statute.

³¹⁴ *Prosecutor v. Limaj et al.*, IT-03-66, Trial Chamber Judgment (30 November 2005), para. 520; *Prosecutor v. Kordic and Cerkez*, IT-95-14/2 Trial Chamber Judgment (26 February 2001), para. 401; *Prosecutor v. Blaskic*, IT-95-14 Trial Chamber Judgment (3 March 2000), para. 294; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Trial Chamber Judgment (7 June 2001), para. 38.

³¹⁵ *Prosecutor v. Semanza*, ICTR-97-20, Trial Chamber Judgment (15 May 2003), paras 401; *Prosecutor v. Mucic et al.*, IT-96-21, Appeals Chamber Judgment (20 February 2001), paras 248 et seq.

³¹⁶ *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Trial Chamber Judgment (26 February 2001), para. 416; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Trial Chamber Judgment (7 June 2001), para. 45.

³¹⁷ See Hwang Jang-Yop Holds Press Conference To Explain Why He Defected from North Korea, 21 July 1997: <http://www.fas.org/news/dprk/1997/bg152.html>.

The accused possesses or is imputed the requisite *mens rea* if it is shown by direct or circumstantial evidence that he or she had actual knowledge that subordinates were about to commit or were committing crimes.³¹⁸ Knowledge can be inferred from the number, type and scope of illegal acts, the time span, the logistics, their scale, the way in which operations are carried out and the officers and staff involved.³¹⁹ The mental element is also satisfied where the accused had information that put him or her on notice of the risk of such offences being committed, or the absence of knowledge is the result of negligence in the discharge of the superior's duties.³²⁰ The position of the superior is a significant factor but in and of itself not sufficient to infer knowledge.³²¹ The political leadership in North Korea ordered the establishment of prison camps under Kim Il-Sung and maintains the system under Kim Jong-Il. It is also responsible for categorising the population into separate classes and establishing policies and practices that are discriminatory, punitive and deny basic due process. Kim Jong-Il and heads of the SSPA and MPS must be aware, or have at least reason to know, of the violations committed in the system of imprisonment and detention facilities, both as part of their tightly organised system of internal reporting and informants and on the basis of the serious allegations that have been made by UN bodies, states and others concerning the commission of international crimes in the prison system and elsewhere.³²²

Failure to take measures necessary or reasonable to prevent or repress the commission of crimes is determined on a case-by-case basis considering the effective control of the superior and his or her pattern of conduct which may have encouraged the crimes.³²³ The superior must use every means in his or her power to prevent or punish the crimes.³²⁴ Available first-hand and documentary evidence points to a tightly controlled hierarchy in which orders and instructions are followed, as disobeying the leadership is seen as a serious crime.³²⁵ Kim Jong-Il himself would therefore certainly have the power to stop the commission of international crimes by ending the policy of persecution or by introducing a system that strictly punishes any acts constituting such crimes. It is not clear to what extent other high-ranking officials have such a power if its exercise were contrary to the decisions and/or views of Kim Jong-Il.

In the context of North Korea, liability on the grounds of command or superior responsibility can be used to investigate and prosecute those bearing the greatest responsibility without having to show direct involvement of the person concerned in the crime. This applies to all persons having positions of responsibility in the command structures running through the system, from the leadership down to the administration of imprisonment and detention facilities. The degree of effective control and the powers to prevent and punish crimes against humanity will vary depending on the position of the superior in the system, and may be limited to reporting the facts of the crime to the competent authorities.³²⁶ As a general rule, the more it is shown that a superior knew or ought to have known about the commission of a crime by his or her subordinates, and the more he or she is shown to be in a position of effective control, the stronger the case for a prosecution. This applies in particular to the level of responsibility for the organisation and running of the prison system.³²⁷ For individuals in positions of authority, a criminal prosecution will have to prove what they knew and/or what they ought to have known about the crimes, which can also be, at least partly, inferred from the way the system operates, as well as the steps they have taken or failed to take to respond to any such crimes.

³¹⁸ *Prosecutor v. Blaskic*, IT-95-14, Trial Chamber Judgment (3 March 2000), para. 307 and *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Trial Chamber Judgment, (26 February 2001), para. 427; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Trial Chamber Judgment (7 June 2001), para. 46.

³¹⁹ *Prosecutor v. Limaj et al.* IT-03-66, Trial Chamber Judgment (30 November 2005), para. 524 and *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Trial Chamber Judgment (26 February 2001), para. 427.

³²⁰ *Prosecutor v. Mucic et al.*, IT-96-21 (Appeals Chambers), (20 February 2001), paras 222 et seq.; *Prosecutor v. Akayesu*, ICTR-96-4-T, Trial Chamber Judgment (2 September 1998), para. 479.

³²¹ *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Trial Chamber Judgment (7 June 2001), para. 45.

³²² See sections 3 and 4 above.

³²³ *Prosecutor v. Blaskic*, IT-95-14, Trial Chamber Judgment (3 March 2000), para. 335; *Prosecutor v. Bagilishema*, ICTR-95-1A-T, Trial Chamber Judgment (7 June 2001), paras 45 et seq.

³²⁴ *Ibid.*; *Prosecutor v. Limaj et al.* IT-03-66, Trial Chamber Judgment (30 November 2005), paras 526 et seq. and *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Trial Chamber Judgment (26 February 2001), para. 445.

³²⁵ See sections 3 a) (i) and (ii), and 4 above.

³²⁶ *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Trial Chamber Judgment (26 February 2001), para. 446.

³²⁷ See KINU *White Paper*, 2006, p. 244 on the division of labour within camps: 'Prisoners sent to the camps are selected and managed in practice by the SSPA under the supervision of the Guidance Department of the Secretariat of the Central Committee. Each of the camps under the control of Bureau No. 7 of the SSPA consist [sic] a political section, security section, management section, security guards section and supply service section.' The KINU *White Paper* provides detail of the duties of each section.

“The prison camps are directly the responsibility of Kim Jong-Il. It is a dictatorship and he has authority over practically everything. His command is everything.”

Hwang Jang-Yop, former Secretary of the Korean Workers' Party

10.2 Heads of agencies, camp directors and others

The considerations regarding the criminal responsibility of the political leadership also apply by and large to those responsible for implementing policies and running institutions, such as officials making decisions to send particular individuals to a political prison camp or a camp director responsible for decisions concerning the administration of the camp. Besides incurring responsibility for a more active involvement in the commission of international crimes, such officials are also responsible for other crimes committed by their subordinates that they could and should have prevented. This is of particular relevance in cases of arbitrary killings by camp guards where the camp director knew about the killings or could have found out about them easily but did not take any action against the perpetrators or institute measures to stop such violations.

10.3 Direct perpetrators

There are a large number of individuals in North Korea who have either themselves committed international crimes, i.e. personally or physically participated in the relevant acts,³²⁸ or have aided or abetted, i.e. substantially assisted or facilitated the commission of such crimes.³²⁹ This includes officials who have arbitrarily arrested and forcibly transferred prisoners, and camp guards and prison officials who have executed, killed and tortured prisoners and subjected them to forced labour. It also encompasses those who have performed forcible abortions and infanticide as well as agents who abducted foreign nationals and concealed their fate and whereabouts. It also includes anyone who has collaborated or aided in the commission of these crimes, such as intentionally denouncing someone in the knowledge that the denounced person will be sent to a prison camp where he or she will be subjected to the said crimes.

In order to prove this form of direct liability, there must be proof of personal involvement, including the commission of a crime, identification of the perpetrator, his or her contribution to the commission of the crime by act or, exceptionally, omission. It also needs to be shown that the alleged perpetrator had the required knowledge and intent corresponding to the crime in question. This should generally be the case for the international crimes committed in the prison system, as evidenced by the testimonies of former guards who were or became aware of the magnitude of crimes.³³⁰ Testimonies by victims and witnesses, films, photos and documents that show the presence of the perpetrators at the scene of the crime and their involvement at the alleged time of commission are of prime importance in determining responsibility. Victims and witnesses have identified a number of alleged individual perpetrators of crimes against humanity.³³¹

³²⁸ *Prosecutor v. Limaj et al.*, IT-03-66, Trial Chamber Judgment (30 November 2005), para. 509, *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Trial Chamber Judgment (26 February 2001), para. 376 and *Prosecutor v. Semanza*, ICTR-97-20, Trial Chamber Judgment (15 May 2003), paras 383.

³²⁹ *Prosecutor v. Limaj et al.* IT-03-66, Trial Chamber Judgment (30 November 2005), paras 516 et seq., *Prosecutor v. Krstic*, IT-98-33, Trial Chamber Judgment (2 August 2001), para. 601 and *Prosecutor v. Rutaganda*, ICTR-96-3, Trial Chamber Judgment (6 December 1999), para. 43.

³³⁰ See testimonies of Ahn Myeong-Cheol and Choi Dong-Cheol, in *Are They Telling Us the Truth?*, pp. 133, 134, 191, 217.

³³¹ See further references to individual officers, either by name or rank, in various testimonies *ibid.*, pp. 133, 134, 153, 154, 221, 243, 258.

II. The Responsibility of States and the United Nations to Respond to International Crimes in North Korea

II.I Responsibility to take action in the face of international crimes

The *prima facie* findings that serious human rights violations amounting to crimes under international law have been, and continue to be, committed result in but are not confined to the legal consequences of North Korea's state responsibility and the individual criminal liability of those responsible. In addition, states and the United Nations are obliged to prevent international crimes and hold those responsible to account.

States have a responsibility under both treaty and customary international law to prevent and punish certain crimes under international law. A duty to enact legislation, to investigate with a view to prosecuting and punishing (or extraditing, as appropriate, where the duty is expressed as an 'extradite or prosecute' duty as opposed to a duty to seek out those responsible to ensure that they do not avoid justice) and to cooperate in the prevention and punishment of such crimes, exists with regards to genocide, war crimes, the crime of torture and the crime of enforced disappearances.³³² Under the ICC Rome Statute, States Parties also have a duty to cooperate in the investigation and prosecution of the crimes of genocide, crimes against humanity and war crimes.³³³ Beyond these specific obligations, states are entitled and often obliged to establish and exercise universal jurisdiction over the most serious crimes (according to which states have jurisdiction to prosecute and punish these crimes, irrespective of where the crime has been committed and the nationality of the victim or perpetrator).³³⁴

States are therefore obliged to take steps to prosecute alleged perpetrators of international crimes in North Korea, especially genocide, torture and enforced disappearances, in particular where the suspects are present on their territory. Silence and apathy are not options; positive steps are required and long overdue.

The preamble to the ICC Rome Statute emphasises that 'the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation'. The UN Security Council equally '[e]mphasises the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity [and] war crimes...'.³³⁵ In addition to national prosecutions, states should cooperate with any international mechanism set up to investigate and prosecute perpetrators of international crimes.

The United Nations has a specific responsibility to take steps to prevent and suppress international crimes. Article I of the UN Charter expressly recognises that the purposes of the UN include responding to threats to international peace and security and international cooperation to solve international problems, including promoting and encouraging respect for human rights and for fundamental freedoms. In practice, the UN has failed to respond adequately to prevent instances of genocide and other atrocities. The failure of the UN to act during the Srebrenica massacres and the genocide in Rwanda was generally considered to have undermined the very essence of the UN, and triggered UN reports and inquiries to examine the reasons behind the failures and to draw lessons for the future.³³⁶

³³² *Convention on the Prevention and Punishment of the Crime of Genocide*, 78 U.N.T.S. 277, Article I [Genocide Convention]; *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v. Yugoslavia)*, Preliminary Objections, Judgment, July 11, 1996, (1996) I.C.J. Reports 595, at 615 (para. 31); *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 75 U.N.T.S. 31 [Geneva Convention I] Article 49, 50 for the obligation to prosecute and punish grave breaches; *Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, U.N.T.S. 85, [Geneva Convention II] Article 50; *Convention (III) relative to the Treatment of Prisoners of War*, 75 U.N.T.S. 135 [Geneva Convention III], Article 129; *Convention (IV) relative to the Protection of Civilian Persons in Time of War*, 75 U.N.T.S. 287 [Geneva Convention IV], Article 146; *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 1125 U.N.T.S. 3, [Additional Protocol to the Geneva Conventions of 1977], Article 85(1); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, GA res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], Articles 5-8 for obligation to extradite or prosecute suspected perpetrators of torture; *Convention on Enforced Disappearances*, Articles 9-11. See Amnesty International, *Universal Jurisdiction - The duty of states to enact and enforce legislation*, IOR 53/014/2001, 1 September 2001.

³³³ Article 86 et seq. of the ICC Rome Statute.

³³⁴ See e.g. Christopher Keith Hall, 'Universal Jurisdiction: New Uses for an Old Tool', in Mark Lattimer and Philippe Sands (eds.), *Justice for Crimes against Humanity*, Hart Publishing, 2003, pp. 47 et seq.

³³⁵ UN S/RES 1325 (2000) on Women and Peace and Security, para. 11.

³³⁶ See Report by the Secretary-General, *The fall of Srebrenica*, UN Doc. A/54/549, 15 November 1999 and *Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda*, UN Doc. S/1999/1257, 16 December 1999.

The Inquiry on Rwanda recommended that:

*'The United Nations - and in particular the Security Council and troop-contributing countries - must be prepared to act to prevent acts of genocide or gross violations of human rights wherever they may take place. The political will to act should not be subject to different standards.'*³³⁷

The UN Secretary-General acknowledged the findings and stressed that:

*'Of all my aims... there is none to which I feel more deeply committed than that of enabling the United Nations never again to fail in protecting a civilian population from genocide or mass slaughter.'*³³⁸

Subsequently, UN bodies have repeatedly stressed the obligation of the UN to act to prevent serious violations amounting to international crimes. The UN Security Council, in particular, has adopted a series of resolutions in which it emphasises states' obligations to act in the face of mass violations and to put an end to impunity by fulfilling their international obligations and enhancing cooperation.³³⁹ It has emphasised its readiness to respond to serious violations and has taken measures under Chapter VII. It has acted by imposing individual sanctions against those said to be responsible for violating international human rights and humanitarian law, and by establishing international justice mechanisms, such as setting up the International Commission of Inquiry in Darfur and referring the Darfur situation to the Prosecutor of the International Criminal Court.³⁴⁰

The UN Security Council has expressly affirmed the 'responsibility to protect', which places a primary responsibility on each state to protect its population from international crimes³⁴¹ and recognises that the international community equally has a responsibility, through the United Nations, 'to help to protect populations' from international crimes. The Security Council confirmed the 'responsibility to protect' following its articulation in the 2005 World Summit Outcome Document adopted by the UN General Assembly, which states:

'138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it...

*139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in co-operation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law...'*³⁴²

³³⁷ Ibid., p. 53, Recommendation No. 3.

³³⁸ The Secretary-General, *Statement on receiving the report of the independent inquiry into the actions of the United Nations during the 1994 genocide in Rwanda*, 16 December 1999.

³³⁹ See in particular UN S/RES 1265 (1999), 1325 (2000), 1591 (2005) and 1674 (2006), mainly in relation to violations committed during armed conflict but equally applicable to serious human rights violations committed outside of armed conflict.

³⁴⁰ See UN S/RES 1564, 18 September 2004, para. 12 and UN S/RES 1593, 31 March 2005, para. 1.

³⁴¹ See *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, December 2001.

³⁴² General Assembly resolution on 2005 World Summit Outcome, UN Doc. A/RES/60/1, adopted 16 September 2005.

In April 2006, Security Council resolution 1674: 'reaffirm[ed] the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.³⁴³

The responsibility to protect is the clearest expression to date that the United Nations has its own responsibility to respond effectively to international crimes. This is not least in recognition of past failures of the UN to act in the face of serious crimes.

In the case of North Korea, a growing body of evidence points to the ongoing commission of a range of crimes under international law as 'state crimes'. It is manifest that the national authorities are failing to protect their population from international crimes, being the very authorities and persons responsible for such crimes. This situation triggers the responsibility of the United Nations to protect the North Korean population, in particular victims of crimes against humanity. The UN General Assembly has already expressed very serious concern at serious human rights violations in North Korea, following earlier resolutions by the Commission on Human Rights and reports by the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.³⁴⁴ However, neither the UN General Assembly nor the UN Security Council has taken action to date; the Security Council has not yet considered what action to take in order to protect the North Korean population from international crimes.

11.2 Responding to international crimes in North Korea: the case for an international commission of inquiry

11.2.1 The need for an international commission of inquiry

The sources available provide sufficient evidence to conclude on a *prima facie* basis that crimes against humanity have taken and continue to take place in North Korea. They also point towards the commission of genocide against religious groups, specifically Christians. The concerns expressed by the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, drawing on information gathered from various sources, including victims, humanitarian organisations, UN agencies and others, confirm the persistence of serious human rights violations in North Korea, many of which amount to crimes against humanity.³⁴⁵ However, there is still a considerable lack of information and evidence regarding both the exact nature and the scale of violations, and in particular regarding individual responsibility. This is primarily due to the lack of access granted to outside human rights monitors because North Korea has persistently refused to cooperate with UN bodies or to engage with independent human rights defenders. The difficulties faced by North Korean refugees and others also contribute to the current situation in which the evidence available elsewhere has not been fully compiled and assessed.

It is precisely in such circumstances that a commission of inquiry can play a useful role, in particular in preparing the ground for further action on a sound factual basis. International commissions of inquiry are often set up where some evidence of the commission of serious human rights violations and/or international crimes exists but there is a need to further clarify the factual situation or to establish individual responsibility, or both. The purpose of such commissions of inquiry is frequently to establish the facts, to identify those responsible and to recommend what action should be taken by the body concerned. Recent examples are the International Commission of Inquiry on Darfur,³⁴⁶ the International Commission on East Timor³⁴⁷ and the commission of inquiry set up under the Linas-Marcoussis peace agreement in Côte d'Ivoire.³⁴⁸

³⁴³ Security Council resolution on Protection of civilians in armed conflict, UN Doc. S/RES/1674, adopted 28 April 2006, para. 4.

³⁴⁴ UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/60/173, 16 December 2005; UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/RES/61/174, 19 December 2006; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the Human Rights Council, UN Doc. A/HRC/4/15, 7 February 2007, esp. paras 38-9. For an in depth consideration of the implications of the responsibility to protect doctrine, see DLA Piper and U.S. Committee for Human Rights in North Korea, *Failure to Protect: A Call for the UN Security Council to Act in North Korea*, October 2006.

³⁴⁵ *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to the Human Rights Council, UN Doc. A/HRC/4/15, 7 February 2007, see esp. para. 70; *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/61/349, 15 September 2006.

³⁴⁶ See *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, pursuant to UN Security Council resolution 1564 of 18 September 2004, Geneva, 25 January 2005.

³⁴⁷ See *Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste*, Geneva, 2 October 2006, and for an earlier example the *Report of the International Commission of Inquiry on East Timor to the Secretary-General*, UN Doc. A/54/726, S/2000/59, 31 January 2000.

³⁴⁸ See *International Commission of Inquiry into allegations of serious violations of human rights and humanitarian law committed in Côte d'Ivoire since 19 September 2002. Impunity, Report of the Secretary-General*, UN Doc. E/CN.4/2006/89, 15 February 2006, paras 26 et seq.

Practice demonstrates that commissions of inquiry are usually set up by UN bodies, such as the UN Security Council, for example in the case of Burundi,³⁴⁹ Darfur³⁵⁰ and in regard to the killing of Rafiq Hariri and others in Lebanon,³⁵¹ or undertaken by UN bodies, such as by the Office of the High Commissioner for Human Rights, following a governmental request, as in the case of the commission of inquiry in Côte d'Ivoire.³⁵² Commissions of inquiry are used as a means to facilitate the decision-making process, addressing such questions as whether there is a need to take further action given the seriousness of the situation, what the action should be, against whom such action ought to be taken and how this should be done in the given situation.

In the context of North Korea, a commission of inquiry is warranted not least on the basis of the serious concerns expressed by various UN bodies, in particular the UN General Assembly and the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea established by the Commission on Human Rights.³⁵³ A commission of inquiry with a strong mandate could, if vested with sufficient powers and resources, investigate facts, clarify the nature and scale of violations, identify individual responsibility within the system and recommend what measures should be taken in light of the findings. This would enable the United Nations to respond and to identify the most appropriate mechanism(s) for dealing with the situation, both in terms of protection and accountability.

11.2.2 Mandate for an international commission of inquiry

There are various types of inquiry mechanisms, which differ with regard to:

- **Consent:** in particular whether it is established by a UN organ without the consent of a state (e.g. Darfur/Sudan), or established with the consent or at the request of a government (e.g. East Timor);
- **Mandate:** in particular whether its role is confined to establishing facts and reporting findings (e.g. Special Session of the Human Rights Council regarding Lebanon³⁵⁴) or whether it is tasked with providing its legal conclusions on the available evidence (e.g. Commission of Experts in the former Yugoslavia), or whether it is able, in addition, to recommend what action to take (e.g. Burundi, Darfur);
- **Scope:** whether it concerns violations of human rights only (e.g. East Timor) or specific incidents (e.g. Lebanon, Hariri inquiry), or a broader scope (e.g. Darfur: violations of international humanitarian law and international human rights and individual responsibility);
- **The nature of the inquiry:** whether it takes place in the form of a fact-finding mission³⁵⁵ or a comprehensive investigation;³⁵⁶
- **The powers of the inquiry:** in particular whether states are required to cooperate in the investigation (e.g. Darfur). The powers can be agreed upon where a government requests a commission of inquiry (e.g. Côte d'Ivoire, East Timor) or can be imposed with binding force under Chapter VII by the Security Council (e.g. Darfur).

Only the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea has played a monitoring role to date, although one hampered by the lack of cooperation from North Korea.³⁵⁷ A commission of inquiry set up by the UN Security Council could build on the work of the Special Rapporteur and should be vested with a strong mandate to establish facts, to identify the

³⁴⁹ See S/RES 1012 (1995) and *International Commission of Inquiry for Burundi: Final Report*, UN Doc. S/1996/682, 22 August 1996.

³⁵⁰ S/RES 1593 (2005).

³⁵¹ Set up under UN Doc. S/RES 1595 (2005) and ongoing.

³⁵² See UN Doc. E/CN.4/2006/89, *supra*, pp. 21.

³⁵³ See section 11.3 below.

³⁵⁴ See section 11.3 below.

³⁵⁵ E.g. OHCHR fact-finding mission at the request of the UN Secretary-General to investigate and establish facts concerning responsibility for alleged atrocities committed in Abidjan, Côte d'Ivoire, on 25 March 2004.

³⁵⁶ E.g. Commission of Experts set up by the Security Council in 1992 to analyse information with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia, UN Doc. S/RES 780 (1992). See also the *International Commission of Inquiry on Darfur to the United Nations Secretary-General*, pursuant to UN Security Council resolution 1564 of 18 September 2004 and, for further examples, UN Doc. E/CN.4/2006/89, *supra*.

³⁵⁷ See section 11.3 below.

individuals responsible and to recommend appropriate action both to prevent further crimes and to hold perpetrators to account.

The commission of inquiry should be composed of independent experts and be given sufficient resources, including the support of bodies such as the OHCHR.³⁵⁸ It should have a timeframe of sufficient duration to produce a report in which it can detail its findings and propose measures to be taken to ensure the prevention of further crimes, as well as justice for victims and accountability of those responsible.

The work of the commission of inquiry should consist of collecting, collating and analysing information sent to or requested by the commission of inquiry as well as undertaking investigative missions to North Korea and other countries to obtain additional information. Testimonies should be taken and facts verified with the collaboration and assistance of the relevant governments in gathering and sharing information,³⁵⁹ in particular from the relevant South Korean, Japanese and other intelligence agencies.

The powers of the commission of inquiry should include unhindered access to any places in North Korea, including free access to prisons, to examine as fully as possible the nature and extent of serious human rights violations amounting to international crimes in North Korea and to identify those most responsible for such violations. North Korea should be obliged to provide access to interrogation facilities, to cooperate with the commission of inquiry and to ensure the safety of anyone coming into contact with the commission of inquiry.³⁶⁰ A similar practice was pursued by the International Commission of Inquiry on Darfur with which states were obliged to cooperate on the basis of the Chapter VII resolution establishing the Commission.

International commissions of inquiry have encountered various difficulties in fulfilling their mandates. In addition to security concerns and other obstacles, the lack of cooperation, in particular the limited or total lack of access to imprisonment and detention facilities and official documents, has hampered the work of commissions of inquiry. This happened during the International Commission of Inquiry for Burundi and to some degree in the International Commission of Inquiry on Darfur.³⁶¹ There is a distinct possibility that North Korea would deny a commission of inquiry access, or undermine the effectiveness of its work through lack of cooperation, which would constitute a violation of its obligations should the commission of inquiry be based on a Chapter VII mandate. This would put the commission of inquiry and the Security Council in a difficult position. However, experience to date shows that commissions of inquiry can succeed in securing a remarkable degree of cooperation, such as in the Darfur case, although the political situation was markedly different. It is not clear how the Security Council would respond to any intransigence on the part of North Korea in this respect. Ideally, the Security Council would take appropriate measures, including sanctions, to compel North Korea to provide access and to cooperate with the commission of inquiry. It would also need to examine additional measures necessary to protect potential victims and witnesses present in third countries, in particular China, such as a halt to repatriations for the duration of the commission of inquiry's work. Specific provision needs to be made for the protection of those repatriated or potentially in danger of retribution, such as the strict anonymity of witnesses and the development of a system under which North Korea needs to account for the fate of repatriated individuals in a transparent manner. If North Korea were to persist in refusing access and/or failing to cooperate, the commission of inquiry would have to rely exclusively on information available outside North Korea. While this would inevitably have an adverse impact on the inquiry, a systematic and thorough examination of sources available in third countries should enable the commission of inquiry to reach authoritative findings on the nature and scope of the crimes and the individuals bearing criminal responsibility.

³⁵⁸ See overview of OHCHR principles and practices on Commissions of Inquiry, *Impunity*, Report of the Secretary-General, UN Doc. E/CN.4/2006/89, 15 February 2006, paras 2 et seq.

³⁵⁹ See Commission of Experts Final Report, S/1994/674, 27 May 1994.

³⁶⁰ See on the relevant practice and experience of human rights commissions of inquiry, *Observations of the United Nations High Commissioner invited in Application of Rule 103 of the Rules of Procedure and Evidence*, ICC-02/05-19, 10 October 2006, para. 7.

³⁶¹ International Commission of Inquiry for Burundi: Final Report, UN Doc. S/1996/682, 22 August 1996, paras 45 et seq. and 109 et seq. and Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, pursuant to UN Security Council resolution 1564 of 18 September 2004, Geneva, 25 January 2005, paras 29 et seq.

The High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101, which was refused access to Sudan, is a case in point.³⁶² A further example is the refusal of the Government of Uzbekistan to grant access to an independent international investigation into killings in Andijan in May 2005, which had been requested by the High Commissioner for Human Rights (OHCHR). Confronted with this refusal, the OHCHR proceeded to send an investigative mission to neighbouring Kyrgyzstan. Based on the mission's finding that 'grave human rights violations... were committed by Uzbek military and security forces' and requests from the OHCHR to Uzbekistan to allow a full inquiry, the General Assembly, in resolution 60/174, called upon the Government of Uzbekistan 'to implement fully without any delay the recommendations contained in the report of the mission of the [OHCHR] in June 2005, most notably with respect to granting permission for the establishment of an international commission of inquiry into the events in Andijan.'³⁶³ While not a case of a commission of inquiry under Chapter VII, it shows that alternative means can be utilised to carry out at least an initial inquiry.

As a second step, on the basis of the commission of inquiry's recommendations, the UN Security Council would have to consider what measures to take to prevent further violations and to ensure justice and accountability. In this regard, it is essential that the commission of inquiry report and recommendations should not be seen as ends in themselves, but as part of a process designed to prevent further crimes and ensure accountability. Past experiences, such as in the case of the International Commission of Inquiry for Burundi set up in 1995, the findings of which have not been acted upon a decade later, serve as reminders that a strong political will and commitment is needed within the Security Council to act upon recommendations.

11.2.3 Accountability mechanisms that could follow a commission of inquiry

A. International Criminal Court (ICC)

Main features of the ICC

The ICC is the first permanent international criminal jurisdiction. It is based on the ICC Rome Statute, an international treaty adopted in Rome in 1998. The statute has been in force since 1 July 2002, and the ICC has 104 States Parties as of 1st January 2007.

The ICC has been set up to prosecute and punish those most responsible for international crimes, which may include political leaders and heads of armed groups. The Court has jurisdiction over:

1. The crimes of genocide, crimes against humanity and war crimes, if:
2. Committed on or after 1 July 2002, where:
3. (i) The crimes have been committed on the territory or by a national of one of the States Parties, or (ii) a state submits voluntarily to the jurisdiction of the ICC, or (iii) the United Nations Security Council refers a situation to the ICC, i.e. asking it to investigate with a view to prosecution.

Even when the above criteria are satisfied, the ICC will commence investigation and undertake prosecutions of relevant crimes only if the state concerned is unable or unwilling to investigate or prosecute. This principle of complementarity respects the primacy of national criminal justice systems.

- Jurisdiction over international crimes committed in North Korea or by North Korean nationals

The ICC has no direct jurisdiction over North Korea because the latter is not a state party. However, States Parties could raise the issue of abductions that have occurred on their territory or against their nationals and request the ICC to exercise jurisdiction pursuant to Article 13 (a) in conjunction with

³⁶² See *Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101*, UN Doc. A/HRC/4/80, 7 March 2007.

³⁶³ *Impunity*, Report of the Secretary-General, UN Doc. E/CN.4/2006/89, 15 February 2006, para. 39.

Article 12 (2) (a) of the ICC Rome Statute. This would apply particularly to South Korea which is a party to the ICC Rome Statute but not to states such as China and Thailand.³⁶⁴ The latter would, however, as non-state parties be able to accept the exercise of the jurisdiction of the Court in relation to these specific crimes only pursuant to Article 12 (3) of the ICC Rome Statute.³⁶⁵ Such a request would have obvious limitations. It would concern only one of the many international crimes that are said to have been committed in North Korea. In addition, most abductions have taken place before July 2002. Disappearances are normally continuing crimes, which means that earlier abductions that are still ongoing, i.e. where the whereabouts and fate of the disappeared are not acknowledged, are considered current offences. However, the ICC may be guided by the footnote to the ICC Elements of Crimes which states that the crime of enforced disappearances ‘falls under the jurisdiction of the Court only if the attack referred to in elements 7 and 8 [widespread or systematic attack] occurs after the entry into force of the Statute’.³⁶⁶ In light of this, it is not clear whether the comparatively limited number of known abductions after July 2002 when the ICC Rome Statute came into force may prove sufficient to meet the threshold for opening investigations unless it can be shown that they are based on an ongoing organisational policy and thus occurring at the widespread or systematic level. Indications of a policy can be seen in the admission of abductions of Japanese citizens and the evidence of North Korean agents that abductions were carried out under the direction of the SSPA.³⁶⁷

- Legal basis for referral

The UN Security Council may refer the situation in North Korea to the Prosecutor of the ICC on the basis of Chapter VII of the UN Charter. The establishment of criminal tribunals or referral to the ICC falls within the broad discretionary power of the Security Council. The Security Council has invoked Chapter VII to refer the Darfur situation to the ICC prosecutor. The Security Council’s role is expressly mentioned in the ICC Rome Statute itself (Article 13 (b)), which paves the way for the ICC to investigate and prosecute in such situations.

- UN Security Council referral to the Prosecutor of the ICC

A referral by the UN Security Council would enable the Prosecutor of the ICC to investigate any crimes within the jurisdiction of the ICC Rome Statute that are said to have been committed in North Korea or by North Korean agents since 1 July 2002, focusing on those bearing the greatest responsibility for such crimes. This would exclude many crimes that have been committed in North Korea in earlier years. Moreover, while some evidence exists to prove that international crimes have been committed since July 2002, most of the currently available evidence relates to incidents before that date. However, over time this will naturally change. Further problems that would lie in wait in the event of a referral are the complexity of the investigations and prosecutions, the likely difficulty of gaining access to North Korea and securing the cooperation of the Government of North Korea as well as issues of victims and witness protection.

An ICC referral would, on the other hand, have several advantages as a justice and accountability tool. Available evidence indicates that most, if not all, of the crimes committed in the context of the long-established prison system and entrenched practice in imprisonment and detention facilities continue to have been committed since July 2002. The ICC could therefore have jurisdiction over these key crimes. Moreover, the Court would arguably have to examine the historical origins and continuous nature of the system, which would allow the Court to address its salient features. Another important feature of the ICC Rome Statute is that it does not recognise personal immunity, which means that the ICC could prosecute Kim Jong-Il himself if sufficient evidence were available. Moreover, the ICC is unique in giving victims an active role. Victims may make their views and concerns heard in proceedings, and have the right to apply for reparation, which may be provided either by the perpetrators or through a specially designated Trust Fund for Victims.

³⁶⁴ At the time of writing, Japan is not a party to the Rome Statute, but ratification is imminent.

³⁶⁵ Countries referred to by those cataloguing abductions as being states in which the crime took place or nations of citizenship of victims which are already States Parties include Denmark, France, Italy, Jordan, the Netherlands, Norway, Romania, South Korea, Spain, and the United Kingdom. Countries that would need to make the declaration are China, Japan, Lebanon, Malaysia, Singapore and Thailand.

³⁶⁶ Footnote 24 to the ICC Elements of Crimes, Article 7 (1) (i).

³⁶⁷ See 8.I. above.

Further considerations mentioned by the UN commission of inquiry that recommended the referral of the situation in Darfur to the ICC also apply to a possible referral of the North Korean situation. These include the fact that the ICC is best-placed to deal with ‘crimes likely to threaten peace and security’; is the ‘only truly international institution of criminal justice’; has significant authority backed up by the UN Security Council; is an international institution best-suited to ensure a fair trial; ‘could be activated immediately’; and ‘would not necessarily involve a significant burden for the international community’.³⁶⁸ Essentially, the ICC is the only body competent to deal with crimes of such magnitude that would have the required weight and impact when operating with the backing of the UN Security Council.

The Darfur precedent

The conflict in Darfur erupted in 2002. Throughout 2003 and 2004, a series of reports about atrocities committed in Darfur and civilians fleeing the region alerted the world community. In response, the UN Security Council decided to establish an International Commission of Inquiry on Darfur in September 2004. The Commission of Inquiry went to Darfur to investigate the situation and published its report in January 2005. It found that the Government of Sudan and the Janjaweed militias were primarily responsible for serious violations amounting to crimes against humanity and war crimes. The Commission of Inquiry recommended that the UN Security Council request the ICC to investigate and prosecute international crimes committed in Darfur.³⁶⁹

On 31 March 2005, the UN Security Council voted to adopt resolution 1593 (2005) referring the situation in Darfur to the Prosecutor of the ICC. The referral was significantly influenced by the findings and recommendations of the Commission of Inquiry, as well as the following factors: the need to end the ongoing conflict situation; the violations of humanitarian and human rights law in the context of the conflict situation; the need to promote peaceful settlement, something considered to be most readily achievable through ICC involvement; and the need to end impunity.

The conflict situation in Darfur that led to the referral differs considerably from the situation in North Korea. The factors prompting Security Council members to vote for the referral can therefore not be easily invoked as a precedent. What is significant, however, is the fact that China, Russia and the United States only abstained from the vote, in the light of the strong case for the ICC made by the International Commission of Inquiry. With the present focus on the nuclear weapons and ballistic missiles threat emanating from North Korea, the permanent members of the Security Council mentioned above have so far not seriously considered the options of setting up a commission of inquiry and/or referring the situation to the Prosecutor of the ICC. However, if sufficient impetus to act were generated by UN human rights bodies, the UN General Assembly, civil society worldwide and individual states, the Security Council might well be willing to consider setting up a commission of inquiry as a first step towards fulfilling its responsibility to protect the North Korean population from further international crimes.

B. Ad-hoc or mixed tribunals

Ad-hoc tribunals, such as the ones established to deal with international crimes committed in the former Yugoslavia and Rwanda,³⁷⁰ would have the advantage that they could be vested with jurisdiction tailor-made to the situation in North Korea, being based on findings of a prior commission of inquiry or a similar body. Such tribunals could in particular have a broader timeframe than the ICC.

However, several challenges have been identified in relation to the role and practice of ad-hoc tribunals that would need to be addressed when considering such an option in the case of North Korea. The report of the International Commission of Inquiry on Darfur indicates the problems of ad-hoc tribunals, namely concerns over cost and time and the apparent lack of political will on the part of the international community to establish similar tribunals in the future.³⁷¹ However, where opposition to the ICC makes an ICC referral in the North Korea situation unfeasible, an ad-hoc tribunal may serve as an alternative option provided its statute allows for the investigation and prosecution of the most serious international

³⁶⁸ *Report of the International Commission of Inquiry on Darfur to the Secretary-General*, 25 January 2005, paras 572.

³⁶⁹ *Ibid.*, paras 571 et seq.

³⁷⁰ UN S/RES 827 (1993) and UN S/RES 955 (1994).

³⁷¹ *Report of the International Commission of Inquiry on Darfur to the Secretary-General*, 25 January 2005, paras 574, 575.

crimes and those most responsible, including, as appropriate, Kim Jong-Il. Its establishment would still need to be backed by the UN Security Council and thus requires support or at least the lack of opposition on the part of the permanent council members.

A third option in the face of large-scale or systemic atrocities is to establish courts that mix international and national elements, which means that they have at least some support from the state concerned.³⁷² Such courts are commonly located in the country concerned and composed of both national and international judges and prosecutors, such as in Kosovo, East Timor, Bosnia and Herzegovina and Cambodia. Alternatively, mixed courts may be international in nature, that is, freestanding tribunals not part of the national judiciary, as is the case in Sierra Leone, where some of its judges and other officials are nationals of the country involved, giving it a hybrid character which makes it different from other international criminal courts, such as the ICC, the ICTY and the ICTR.

Mixed tribunals can have the advantage of combining the best of international and domestic systems to respond to specific crimes alleged to have been committed in a particular context, though financial and time implications have led to a downturn in their popularity.³⁷³ However, such tribunals will not be a feasible option as long as the present regime remains in power in North Korea because there are no indications that the current government would agree to the establishment of a mixed tribunal with a genuine mandate to investigate and prosecute international crimes.

11.3 International responses to date and recommended further action

International responses to the situation in North Korea have focused largely on the security situation, humanitarian access and, in a more recent development, on the human rights situation. This has been the case particularly at the UN, but is also true of regional organisations, such as the European Union, and individual states. There have been no serious efforts to inquire into the legal nature of the violations taking place with a view to holding those said to be responsible to account and providing justice for victims.

11.3.1 Human rights bodies: Treaty bodies, UN Commission on Human Rights, UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

The United Nations has only recently taken action in response to human rights violations in North Korea.

The Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination against Women (CEDAW) have each considered reports submitted by North Korea since 2000. Each of these bodies expressed serious concerns on a number of issues and made recommendations on steps to be taken by North Korea to improve the human rights situation.³⁷⁴ North Korea has engaged with these treaty bodies and two members of the CRC even visited North Korea in 2004.³⁷⁵

The Commission on Human Rights, which used to be the principle UN organ concerned with the promotion and protection of human rights, responded to reported human rights violations in North Korea by adopting a series of resolutions expressing concern over 'systematic, widespread and grave

³⁷² See on mixed courts Cesare P. Romano, André Nollkaemper, and Jann K. Kleffner (eds.), *Internationalized Criminal Courts, Sierra Leone, East Timor, Kosovo, and Cambodia*, Oxford University Press, 2004.

³⁷³ The Report of the International Commission of Inquiry on Darfur to the Secretary-General, 25 January 2005, paras 578 et seq., also considers arguments for and against establishing mixed courts.

³⁷⁴ Committee on Economic, Social and Cultural Rights, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Democratic People's Republic of Korea*, UN Doc. E/C.12/1/Add.95, 12 December 2003; Human Rights Committee, *Concluding Observations of the Human Rights Committee: Democratic People's Republic of Korea*, UN Doc. CCPR/CO/72/PRK, 27 August 2001; *Concluding Observations of the Committee on the Rights of the Child: Democratic People's Republic of Korea*, UN Doc. CRC/C/15/Add.239, 1 July 2004; Committee on the Elimination of Discrimination against Women: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Democratic People's Republic of Korea*, UN Doc. A/60/38, 22 July 2005, paras 19–76.

³⁷⁵ See *Summary Record of the 965th meeting: Second periodic report of the Democratic People's Republic of Korea*, UN Doc. CRC/C/SR.965, 3 May 2005, para. 7.

³⁷⁶ CHR resolutions on the situation of human rights in the Democratic People's Republic of Korea: UN Doc. E/CN.4/RES/2003/10, 16 April 2003; UN Doc. E/CN.4/RES/2004/13, 15 April 2004; UN Doc. E/CN.4/RES/2005/11, 14 April 2005.

violations of human rights'.³⁷⁶ These actions have kept the international spotlight on human rights violations in North Korea and raised the level of scrutiny on North Korea's human rights record. However, North Korea has rejected any dialogue and cooperation on human rights with the UN outside the treaty bodies, including that offered by the UN High Commissioner for Human Rights in 2005. In response to this offer, North Korea's representative 'stated that his Government did not recognise the resolution adopted by the Commission on Human Rights on the situation of human rights in the Democratic People's Republic of Korea and was therefore unable to accept the High Commissioner's offer'.³⁷⁷

The UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

One of the most significant measures taken by the Commission on Human Rights was the appointment of a Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea. This mandate was established under resolution E/CN.4/RES/2004/13 'to investigate and report on the situation of human rights in the Democratic People's Republic of Korea and on the Government's compliance with its obligations under international human rights instruments'. The Special Rapporteur, Professor Vitit Muntarbhorn, has submitted five reports in 2005, 2006 and 2007.³⁷⁸

The Special Rapporteur plays a crucial role in collecting information and monitoring the human rights situation in North Korea, although his effectiveness is hampered by his lack of access to the country. He continues to exercise a critical role in proactively focusing on country-specific human rights concerns that are not and cannot by their nature be fully covered by thematic rapporteurs. At present, the Human Rights Council, the successor of the UN Commission on Human Rights, is considering whether to continue country-specific mandates, and there are considerable voices within the Council that would prefer to abolish country-specific mandates.³⁷⁹ This would be a serious setback in the case of North Korea as the Special Rapporteur is uniquely placed to monitor the human rights situation and to brief the various UN bodies, including the Human Rights Council, the General Assembly and the Security Council, on the situation. He has regularly briefed the Commission on Human Rights and the General Assembly which has recognised many of his concerns. He has yet to brief the Security Council.

The Special Rapporteur can raise the question of accountability and how to ensure justice in his reports. He can also play an influential role in calling on the various UN bodies to consider setting up a commission of inquiry or other mechanisms that are seen as capable of providing accountability for international crimes in North Korea. If a commission of inquiry were to be set up, the Special Rapporteur would play an invaluable role in sharing information and working with the commission members, potentially even having a formal role in the commission.

The 2006 and February 2007 reports of the Special Rapporteur detail the situation in North Korea and rely *inter alia* on information gathered during a visit by the Special Rapporteur to South Korea. The Special Rapporteur has been constrained in his monitoring of the human rights situation because North Korea continues to refuse to recognise his mandate and to allow him access. His reports highlight general concerns over the right to food and life; the right to security of the person; humane treatment; non-discrimination; access to justice under the non-democratic and repressive regime in power, including issues of punishment and abduction; the question of freedom of movement, asylum and refugee protection; the rights to self-determination and political participation, access to information, freedom of expression, belief, opinion, association, conscience and religion. There is a notable and considerable overlap between the findings of the Human Rights Committee, the resolutions of the Commission on Human Rights and the reports of the Special Rapporteur.

North Korea's continued refusal to recognise the mandate of the Special Rapporteur is evident in its response to his communications. This response was previously noted in the Commission on Human Rights' resolution 2005/11 expressing its 'grave concern that the Government of the Democratic

³⁷⁷ Situation of human rights in the Democratic People's Republic of Korea, *Note by the Secretariat*, UN Doc. E/CN.4/2006/32, 25 January 2006, para. 5 (meeting occurred 28 November 2005, see para. 3).

³⁷⁸ Reports of the Special Rapporteur on the situation of Human Rights in the Democratic People's Republic of Korea: UN Doc. A/HRC/4/15, 7 February 2007; UN Doc. A/61/349, 15 September 2006; UN Doc. E/CN.4/2006/35, 23 January 2006. pp. 7-9; UN Doc. A/60/306, 29 August 2005 and UN Doc. E/CN.4/2005/34, 10 January 2005.

³⁷⁹ See International Service for Human Rights, *Open-Ended Informal Consultations on the Human Rights Council*, Geneva, 23 June 2006.

People's Republic of Korea has not accepted the mandate of the Special Rapporteur... has not extended any cooperation to the Special Rapporteur... [and] has not engaged in technical cooperation activities with the United Nations High Commissioner for Human Rights'. To date there has been no invitation extended to the Special Rapporteur to visit North Korea. Following concerns expressed in late April 2006 over the scheduled execution of Son Jong Nam, made by the Special Rapporteur on extrajudicial, summary or arbitrary execution, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, the Government on 5 May 2006 responded to those concerns as follows, saying they were:

'a product of conspiracy undertaken in pursuit of the ill-minded aim of spreading fabricated information while following the attempts of those hostile forces to defame, disintegrate and overthrow the state and social system of the DPRK on the pretext of human rights. The letter [sent by the four UN experts] has no relevance to genuine human rights'.³⁸⁰

These responses show that North Korea rejects the non-consensual country-specific mandate of the Special Rapporteur, in contrast to the work of the UN human rights treaty bodies vis-à-vis North Korea, which is based on its consent. Nevertheless, the Special Rapporteur has succeeded in talking to victims and gathering information from a range of sources, thereby both monitoring the situation and raising awareness of the nature of human rights violations in North Korea.

The UN Human Rights Council

The Human Rights Council is an important body able to respond to serious violations in North Korea, being mandated, *inter alia*, to 'address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon'. It will be critical for the Human Rights Council to build on the record of the UN Commission on Human Rights in dealing with North Korea and to adopt further measures that respond adequately to the seriousness of the violations.

The Human Rights Council was created by the UN General Assembly in April 2006. Its creation was part of broader UN reform, which addressed making human rights bodies more effective in the light of the criticism levelled at its predecessor, the UN Commission on Human Rights.³⁸¹ The Human Rights Council is responsible 'for promoting universal respect for the protection of all human rights and fundamental freedoms for all'.³⁸² It will in particular act rapidly in response to serious violations. Although still in its early stages, it has already taken significant action, such as calling for special sessions and setting up commissions of inquiry to respond to developments of serious concern, such as the violations committed during the war in Lebanon in July 2006.³⁸³ However, the commission of inquiry is controversial because it excludes violations committed by Hizbollah and other groups fighting against Israel.³⁸⁴ Moreover, there is a strong group of like-minded states seeking to abolish country-specific mandates, a move that signals a general reluctance to adopt country-specific resolutions or even country-specific commissions of inquiry. While the Lebanon inquiry could initially be seen as proving to be the exception rather than the rule, the subsequent decision to 'dispatch a High-Level Mission to assess the human rights situation in Darfur and the needs of the Sudan in this regard...' may indicate a willingness on the part of the Human Rights Council to respond to serious violations through means of fact-finding missions and inquiries.³⁸⁵

Several members of the Human Rights Council remain in favour of strong country-specific action, not least in regard to North Korea. Given the nature, scale and duration of ongoing human rights violations, and the limited effectiveness of engagement efforts to date, the Human Rights Council clearly has a responsibility to consider more effective responses. This includes the setting up of a commission

³⁸⁰ UN Daily News, 31 May 2006, p. 16 and for further communications along similar lines see *Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, UN Doc. A/61/349, 15 September 2006, paras 48 et seq.

³⁸¹ UN General Assembly resolution, UN Doc. A/RES/60/251, *Human Rights Council*, 15 March 2006.

³⁸² *Ibid.*

³⁸³ UN Human Rights Council, *The grave situation of human rights in Lebanon caused by Israeli military operations*, Special Session resolution S-2/1, 2006. The General Assembly is set to consider the findings of the inquiry in its 61st session.

³⁸⁴ Human Rights Watch, *Lebanon/Israel: UN Rights Body Squanders Chance to Help Civilians, Failure to Condemn Abuses by All Parties Damages Credibility*, 11 August 2006.

³⁸⁵ See UN Human Rights Council, Decision S-4/101, *Situation of human rights in Darfur*, 13 December 2006.

of inquiry into serious human rights violations amounting to international crimes in North Korea. It is premature to assess the effectiveness of the Human Rights Council but it will be an important forum in which to raise and address North Korea's human rights record, following on from the earlier work of the Commission on Human Rights.

11.3.2 The UN General Assembly

The UN General Assembly, being composed of all UN member states, is an important body in which to generate consensus and to build the momentum for further action on the human rights situation in North Korea.

Following the resolutions by the Commission on Human Rights and the reports of the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, the UN General Assembly adopted resolution 60/173 in 2005 and resolution A/RES/61/174 in 2006.³⁸⁶ In the latter resolution, the General Assembly expresses very serious concern at 'continuing reports of systemic, widespread and grave violations of human rights in the Democratic People's Republic of Korea, including:

- (i) Torture and other cruel, inhuman or degrading treatment or punishment, public executions, extrajudicial and arbitrary detention, the absence of due process and the rule of law, the imposition of the death penalty for political reasons, the existence of a large number of prison camps and the extensive use of forced labour;
- (ii) The situation of refugees expelled or returned to the Democratic People's Republic of Korea and sanctions imposed on citizens of the Democratic People's Republic of Korea who have been repatriated from abroad, such as treating their departure as treason, leading to punishments of internment, torture, cruel, inhuman or degrading treatment or the death penalty, and urges all States to ensure respect for the fundamental principle of non-refoulement;
- (iii) All-pervasive and severe restrictions on the freedoms of thought, conscience, religion, opinion and expression, peaceful assembly and association, and on equal access to information and limitations imposed on every person who wishes to move freely within the country and travel abroad;
- (iv) Continuing violation of the human rights and fundamental freedoms of women, in particular the trafficking of women for the purpose of prostitution or forced marriage, forced abortions, and infanticide of children of repatriated mothers, including in police detention centres and camps;
- (v) Unresolved questions of international concern relating to the abduction of foreigners in the form of an enforced disappearance, which violates the human rights of the nationals of other sovereign countries;
- (vi) The violations of economic, social and cultural rights, which have led to the severe malnutrition and hardship of the population in the Democratic People's Republic of Korea;
- (vii) Continuing reports of violations of the human rights and fundamental freedoms of persons with disabilities, especially on the use of collective camps and of coercive measures that target the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children'.³⁸⁷

The General Assembly strongly urged the Government of the Democratic People's Republic of Korea 'to respect fully all human rights and fundamental freedoms and, in this regard, to implement fully the

³⁸⁶ UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/RES/60/173, 16 December 2005, 88-21-60; UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/RES/61/174, 19 December 2006, 99-21-56 (see Annex 4).

³⁸⁷ UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/RES/61/174, 19 December 2006, para. 1 (b).

measures set out in the above-mentioned resolutions of the General Assembly and the Commission on Human Rights, the recommendations addressed to the Democratic People's Republic of Korea by the United Nations special procedures and treaty bodies, and to extend its full cooperation to the Special Rapporteur, including by granting him full, free and unimpeded access to the Democratic People's Republic of Korea, and to other United Nations human rights mechanisms'.

North Korea's representative opposed and rejected the resolution, calling it a political plot of the United States and its satellite countries, as well as an illegal document to debase his country's sacred sovereignty.³⁸⁸

The 2006 resolution A/RES/61/174 is a significant step forward in responding to human rights violations in North Korea because of the stronger language used and the support it received from an increasingly large number of states, including most notably, for the first time, South Korea. It is particularly noteworthy for its request to the Secretary-General to 'submit a comprehensive report on the situation in the Democratic People's Republic of Korea', the contents of which will be extremely important for the next steps to be taken by UN actors, not only the General Assembly itself but in particular the Security Council.³⁸⁹

Resolution A/RES/60/173 and the 2006 resolution A/RES/61/174 are important steps, in particular because, pursuant to Article 11 of the UN Charter, the General Assembly may:

- *make recommendations to the members or to the Security Council concerning 'questions relating to the maintenance of international peace and security' and*
- *'call the attention of the Security Council to situations which are likely to endanger international peace and security'.*

It will be critical that the Secretary-General, in the report requested by the General Assembly in the 2006 resolution A/RES/61/174, deals with the question of how to end violations. He should equally consider victims' rights and how they can be implemented in North Korea, and examine the case for a commission of inquiry and possible accountability mechanisms given the serious nature of violations seemingly amounting to crimes against humanity. If the Secretary-General finds evidence of serious ongoing violations and North Korea continues its refusal to engage, the General Assembly should bring this situation to the attention of the Security Council calling on it to take appropriate action, including measures under Chapter VII of the UN Charter if necessary.

11.3.3 The UN Security Council

The UN Security Council holds the key to effective action to protect the population of North Korea from international crimes, in particular crimes against humanity and genocide. It is the only body that can both seek to engage with the Government of North Korea and take effective coercive action regarding serious human rights violations amounting to international crimes in North Korea.

The Security Council has taken action in response to the missile and nuclear tests conducted by North Korea, in particular by imposing targeted sanctions under resolution S/RES 1718 (2006).³⁹⁰ It has to date considered neither the human rights situation in North Korea nor accountability mechanisms for holding those responsible for international crimes in North Korea to account. However, as the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea has recognised, 'in the preamble to Council resolution 1718 (2006)... the issue of human rights is referred to indirectly'³⁹¹ when the Security Council underlines 'the importance that the DPRK respond to other security and humanitarian concerns of the international community'.³⁹²

³⁸⁸ Third Committee approves draft resolution urging full respect for all human rights by Democratic People's Republic of Korea, GA/SHC/3874, 17 November 2006.

³⁸⁹ UN General Assembly resolution, *Situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/RES/61/174, 19 December 2006, para. 5.

³⁹⁰ See also the earlier resolution S/RES 1695 (2006).

³⁹¹ *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, submitted to UN Human Rights Council, UN Doc. A/HRC/4/15, 7 February 2007, para. 35.

³⁹² UN Security Council resolution, UN Doc. S/RES/1718 (2006), 14 October 2006, p. 1.

The Security Council has a range of means at its disposal once it decides that a situation constitutes a threat to international peace or security. In other situations of serious violations amounting to international crimes, the Security Council has responded in various ways, in particular by: (i) imposing sanctions against groups or individuals held responsible for human rights violations, such as in the case of the Côte d'Ivoire (UN S/RES 1572 (2004)) and in Sudan (UN S/RES 1591 (2005) and 1672 (2006)); (ii) establishing a Compensation Commission to compensate victims of the Iraqi invasion in Kuwait in 1990/1991 (UN S/RES 692 (1991)); (iii) establishing commissions of inquiry, such as in the case of Burundi (S/RES 1012 (1995) and Darfur (S/RES 1564 (2004)); (iv) setting up an ad-hoc tribunal for the former Yugoslavia (ICTY) (S/RES 827 (1993)) and Rwanda (ICTR) (S/RES 955 (1994)) and (v) referring the situation in Darfur, Sudan, to the Prosecutor of the ICC following the recommendations of a commission of inquiry it had established earlier on (S/RES 1593 (2005)).

The Security Council could therefore establish a commission of inquiry, acting on the basis of either Chapter VI or Chapter VII of the UN Charter, the latter having binding force on all UN member states. The Security Council has broad discretion in making a determination in relation to a particular country that a situation constitutes a threat to international peace and security. It has done so mainly in situations of conflict that had an impact on neighbouring countries or a broader region. In the Yugoslavia, Rwanda and Darfur cases, international crimes had been committed in the course of armed conflict which resulted, among other things, in large cross-border refugee flows. The situation in North Korea differs because the threat to international peace or security stems mainly from its nuclear weapons and ballistic missile programme.³⁹³

However, the serious violations of human rights amounting to international crimes that have taken and continue to take place in North Korea can in themselves constitute a threat to peace and security, as recognised by the UN Security Council.³⁹⁴

An important consideration in this respect is the United Nations' 'responsibility to protect', which should be applied in instances of the apparent commission of crimes against humanity and other international crimes by state authorities, such as in North Korea. Against North Korea's apparent failure to protect its population, the United Nations, including the Security Council, has the responsibility to act in order to ensure protection. An additional threat to international peace and security are the cross-border repercussions of the dire human rights situation in North Korea, namely the large number of North Koreans who try to escape the country.

The link between human rights violations in North Korea and the humanitarian and security concerns has also been outlined in a joint message of several NGOs to the Security Council:

'Ongoing constraints on human rights and a deeper humanitarian crisis in North Korea will clearly have implications for the stability of the region. Those tensions, and the division of the Peninsula from which they arise, are far more likely to be overcome as North Korea becomes a more open society, where human rights are respected, and basic human needs are met...'

Because of the lack of respect for basic human rights and poor governance, millions of North Koreans also continue to suffer chronic malnutrition, in part because access to food and other basic services is provided according to a classification scheme based on the government's assessment of an individual's and his or her family's political loyalty. During the 1990s, the government's policies contributed to a famine that killed an estimated one million North Koreans, while pushing hundreds of thousands more to seek food and refuge in China. Decisions by the North Korean government over the past year to place restrictions on the operations of the World Food Programme, ban the private sale of grain, and fully reinstate its discredited Public Distribution System, in addition to reportedly severe floods this summer, could lead to renewed hunger for North Korea's already poor and destitute people, and a further exodus of North Koreans across the country's frontiers.

³⁹³ A potential link between the nuclear threat and the issues of political prisons and repression is the report that political prisoners were used to build the nuclear test site. See 강철환, 북핵실험 지하갱도 건설 정치범 동원, NK조선 17/10/2006 (Kang Cheol-Hwan, *Political prisoners mobilised to mine for nuclear test*, NKChosun, 17 October 2006, Korean available only). See: http://nkchosun.com/news/news.html?ACT=detail&cat_id=7&res_id=87061&page=1. David Hawk gives the co-ordinates for Camp 16 as 41.3N, 129.2E (*Hidden Gulag*, p. 41). According to the United States Geological Survey (USGS), the co-ordinates for the epicentre of the earthquake on 9 October 2006, the same date as the nuclear test, are given as 41.3N, 129.1E (See <http://earthquake.usgs.gov/eqcentre/eqinthenews/2006/ustqab> and <http://cryptome.org/dprk-test.htm>). Clearly states are in the best position to verify such accounts.

³⁹⁴ See for example resolutions on Somalia, S/RES 794 (1992), Bosnia-Herzegovina, S/RES 819 (1993); S/RES 824 (1993), S/RES 836 (1993); Rwanda S/RES 812 (1993), Afghanistan S/RES 1076 (1996); Sierra Leone S/RES 1132 (1997) and Darfur S/RES 1564 (2004).

Even if North Korea abandons its nuclear program, a regime that continues to repress and starve its people remains highly unstable. The Security Council itself has on several occasions recognized the link between repression and human rights abuses and threats to peace and stability.³⁹⁵

An analysis of the factors given by the Security Council in justifying initial resolutions where it found a more serious ‘threat to the peace’ existed under Chapter VII of the UN Charter led the authors of *Failure to Protect* to conclude that North Korea represents a threat to the peace. The report points to widespread internal humanitarian/human rights violations, refugee outflows and other cross border problems, namely drug trafficking and money counterfeiting and laundering.³⁹⁶

“ When such a situation is happening in North Korea, how can the international community be silent? This is not an issue of North Korea; it is an issue of people killing people. How can someone else stand by while that is happening? Everyone is talking about the nuclear issue, but it is not as important. The nuclear situation exists because of the political prison system. The only way to solve the nuclear situation is to solve the prison camps. The UN does not know what North Korea is about. North Korea needs weapons for Kim Jong-Il’s survival. The political prison camps are his means of survival. He controls society through the camps and he tries to control the world through the weapons. If there were no political prison camps there would be no nuclear weapons. The camps are the symbol of his control. In order to solve the military problem you have to solve the prison camps. If you get rid of the camps, human rights can be restored, and then there will be the opening-up of North Korea and the nuclear issue will be resolved. If you only address the nuclear issue and don’t get rid of the camps and the root issues nothing will change in North Korea. ”

Kang Cheol-Hwan, former child prisoner at Yodeok Political Prison Camp

A realistic course of action is for a UN Security Council member to raise the issue informally first before the human rights situation in North Korea is formally put on the agenda or a resolution introduced. The Burma situation is instructive in this regard.

Burma’s regime has been responsible for serious human rights violations amounting to international crimes, a situation that has also resulted in a considerable number of refugees.³⁹⁷ Following reports by NGOs and UN bodies and US efforts to bring the situation to the attention of the Security Council, the Under Secretary-General for Political Affairs, Professor Ibrahim Gambari, informally briefed the Security Council on the situation in Burma on 1 June 2006. The US succeeded in formally adding the situation in Burma to the agenda of the Security Council when the required quorum of votes was obtained (ten votes with China, Russia, Qatar and Congo voting against and Tanzania abstaining - the veto does not apply in regards to procedural questions). As a result, the Under Secretary-General briefed the Security Council on 29 September 2006.³⁹⁸ However, a draft resolution on the human rights situation in Burma voted upon on 12 January 2007 failed to secure the required number of votes because it was vetoed by Russia and China, on the grounds that the situation did not constitute a threat to international peace and security.³⁹⁹

³⁹⁵ Human Rights Watch, Refugees International, U.S. Committee for Human Rights in North Korea, Anti-Slavery International and Citizens’ Alliance for North Korean Human Rights, *Joint NGO letter to the United Nations Security Council on North Korea’s lack of human rights*, 16 September 2006.

³⁹⁶ DLA Piper and U.S. Committee for Human Rights in North Korea, *Failure to Protect, A Call for the UN Security Council to Act in North Korea*, 2006, pp. 94-100, 134-135.

³⁹⁷ See DLA Piper Rudnick Gray Cary, *Threat to the Peace: A Call for the United Nations Security Council to Act in Burma*, September 2005.

³⁹⁸ Security Council Report, *Update Report No.4, Myanmar*, 27 September 2006.

³⁹⁹ *Double veto for Burma resolution*, BBC News, 12 January 2007.

This constitutes a setback for any comparable efforts in regard to North Korea where similar difficulties can be expected. However, efforts should still be made to have the initial informal briefings in order to sensitise members of the Security Council and raise questions relating to prevention, accountability and possible responses. An informal briefing can be held on the basis of an internal consensus and may trigger a favourable response even on the part of China if the broader issues of refugee flows are appropriately addressed. A briefing and consideration of the situation would put the Security Council in a better position to consider appropriate responses and concrete action. It has been suggested that the Security Council adopt a resolution under Chapter VI focusing in particular on securing humanitarian access, the release of political prisoners and the access of the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea to the country as a means of engaging with North Korea on human rights concerns.⁴⁰⁰ Additional or alternative coercive action on the grounds of North Korea's human rights record and lack of cooperation should focus on the state and individuals responsible. The establishment of a commission of inquiry vested with a strong mandate as outlined above would be an appropriate first step with a view to ending violations, holding perpetrators accountable and providing justice for victims.

A note on sanctions imposed by the UN Security Council

UN Security Council sanctions are coercive measures designed to compel the target to change its behaviour so that international peace or security can be maintained or restored. Sanctions could be used to compel North Korea to take the measures considered necessary by the Security Council with regard to human rights protection and accountability for international crimes in order to maintain or restore peace. It is for the Security Council in the light of the available evidence to determine which steps North Korea would have to undertake to this end, for which it should rely on the recommendations and advice of other relevant UN bodies, in particular the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.

The Security Council may impose sanctions in response to the ongoing serious human rights violations amounting to international crimes and/or in response to a possible failure of North Korea to comply with any measures requiring its cooperation, such as setting up a commission of inquiry (see above). Sanctions can comprise a range of measures, from targeted travel bans and freezing of assets to partial and comprehensive economic sanctions.⁴⁰¹ The Security Council has already, in resolution 1718, imposed limited sanctions in response to the nuclear test by North Korea, including an arms embargo, a travel ban, the ban of luxury goods and the selected freezing of assets. The task of the Sanctions Committee established by the UN Security Council in resolution 1718 is to identify individuals who are involved in the weapons programme with a view to freezing their funds and ordering travel bans (which would also be effective against those individuals' family members). The individuals involved in the weapons programme are not necessarily identical to those responsible for the commission of crimes against humanity or other crimes under international law. However, the Sanctions Committee can play an important role in clarifying responsibilities and identifying individuals who are in high positions and who are responsible for threatening peace and security. This information would be useful for any subsequent measures taken by the Security Council in regard to human rights violations and/or international crimes, in that it would have already helped to identify the perpetrators, freeze their funds and order travel bans.

The Security Council may consider adding further sanctions, such as further financial measures, and may commission the Secretary-General to identify measures that are likely to enhance the effectiveness of sanctions without having detrimental consequences for the population. However, the scope of measures that can be taken is limited because the Security Council should not impose further economic sanctions that would have an adverse impact on the already precarious humanitarian situation in North Korea.⁴⁰²

⁴⁰⁰ See in this respect, in particular, DLA Piper and U.S. Committee for Human Rights in North Korea, *Failure to Protect, A Call for the UN Security Council to Act in North Korea*, 2006, p. v and *Joint NGO letter to United Nations Security Council on North Korea's lack of human rights*, signed by Human Rights Watch, Refugees International, U.S. Committee for Human Rights in North Korea, Anti-Slavery International and Citizens' Alliance for North Korean Human Rights, 16 September 2006.

⁴⁰¹ For an overview, see the website of the UN Security Council Sanctions Committees, <http://www.un.org/Docs/sc/committees/INTRO.htm>.

⁴⁰² See exceptions in S/RES 1718, 14 October 2006, paras 9 and 10. It is recognised, and reflected in its practice, that the Security Council should not impose measures that have adverse humanitarian consequences.

Any sanctions should be imposed for a limited period with the proviso that the measures can be lifted at any time should the Security Council find that North Korea has complied with its obligations. Security Council sanctions may also be complemented by sanctions imposed by individual states or regional organisations, including 'positive sanctions', such as financial support or renewal of trade in the event of engagement and compliance by North Korea.

While any targeted sanctions would be largely symbolic, they would signal the willingness of the Security Council to act on human rights concerns in North Korea. Sanctions can play an important role in the range of coercive measures at the disposal of the Security Council, if integrated into a broader strategy of using such measures as a means of fostering compliance with human rights obligations.

12. Looking Ahead:

Domestic Justice and Accountability for Serious Human Rights Violations Amounting to International Crimes in North Korea

There is at present no realistic prospect that the Government of North Korea itself will take measures towards providing accountability for the perpetrators of international crimes and justice for victims. Indeed, this report is predicated on this basic assessment. Yet governments change, and if this were to happen in North Korea, the question of how to deal with serious crimes committed in the past would inevitably arise. There is a growing body of experience in countries around the world concerning such challenges, not least in neighbouring South Korea following the Kwangju uprising in 1980 and the eventual end of the military dictatorship.⁴⁰³

Measures taken in countries around the world in response to serious violations committed in the past have included the setting-up of special courts, truth and reconciliation commissions, compensation boards and large-scale reforms of state institutions.⁴⁰⁴ While these options may appear far-fetched in the North Korean context for the time being, it is nevertheless important to begin considering the challenges ahead.

There will be many challenges once the opportunity arises, not least the prolonged absence of any genuine civil society. However, a full and inclusive series of measures for dealing with the past will inevitably be needed for North Korean society. Until then, all available international avenues must be urgently pursued to ensure a measure of justice and accountability and ultimately to prevent future crimes.

⁴⁰³ See e.g. *Third Periodic Report of the Republic of Korea to the UN Human Rights Committee*, UN Doc. CCPR/C/KOR/2005/3, 21 February 2005, paras 2 and 126.

⁴⁰⁴ See e.g. Cesare P. Romano, André Nollkaemper, and Jann K. Kleffner (eds.), *Internationalized Criminal Courts, Sierra Leone, East Timor, Kosovo, and Cambodia*, Oxford University Press, 2004; Priscilla B. Hayner, *Unspeakable Truths, Facing the Challenge of Truth Commissions*, Routledge, New York and London, 2002 and Pablo de Greiff (ed.), *The International Centre for Transitional Justice, The Handbook of Reparations*, Oxford University Press, 2006.

13. Conclusions

North Korea has institutionalised a repressive system characterised by serious violations which has been operating over the span of many decades and continues to function today. At the heart of this system is the North Korean version of the gulag, in which hundreds of thousands have been denied their basic rights, severely ill-treated, tortured and killed. There is a sufficient amount of evidence available from various sources, in particular eyewitness accounts, to allow for a *prima facie* assessment of the criminal nature and criminal responsibility for such violations. The gulag and broader system of punishment and repression is widespread and systematic, targeting a large number of persons over a considerable time and being based on state policy. Any of the most serious violations committed as part of the system thus constitute crimes against humanity. This report finds that the following crimes against humanity have been, and continue to be, committed:

- Murder
- Extermination
- Enslavement/Forced labour
- Forcible transfer
- Imprisonment or other severe deprivation of physical liberty
- Torture
- Persecution
- Enforced disappearance of persons
- Other inhumane acts

In addition, the crime against humanity committed through acts of rape and sexual violence may have been, and may continue to be, committed: while the offences do not appear to be systematic, there is evidence that they may be widespread.

The crime of enforced disappearance of persons has been committed not only against those labelled as political opponents of the regime but also against foreign nationals and on foreign territories.

The mass killings and violations against supposed political opponents of the regime do not qualify as genocide because political groups are not protected under the genocide definition. In relation to the practice of infanticide and forced abortion of babies carried by North Korean mothers coming from China there is insufficient evidence to make a finding of genocide. However, there are indicators of genocide against religious groups, specifically Christians, implemented in particular in the 1950s and 1960s.

While more detailed information and evidence needs to be collected and examined in order to conclusively determine the responsibility of any particular person in North Korea, the widespread and systematic nature of the attacks means that a large number of perpetrators have incurred criminal responsibility for international crimes committed in North Korea. This applies in particular to the political leadership on the grounds of orders, criminal conspiracy and superior responsibility.

States and the United Nations have a responsibility to respond effectively to international crimes. This has been recognised expressly in the notion of 'responsibility to protect', which is triggered where 'national authorities are manifestly failing to protect their population' from international crimes, as is the case in North Korea. While the former Commission on Human Rights, the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and the General Assembly have repeatedly expressed their concern over serious violations, North Korea to date has succeeded in fending off more vigorous action on its dismal human rights record. The establishment of a strong commission of inquiry mandated to clarify facts, to establish responsibility and to propose suitable responses by appropriate UN bodies and others would be a first crucial step towards this end. In the light of precedents in former Yugoslavia and Rwanda, and action taken with regard to international crimes committed in Darfur, the UN Security Council appears best-placed to take the lead in responding to violations with a view to ensuring effective protection and accountability. Other UN bodies and individual states are equally called upon to act upon their individual and collective responsibility to end violations and bring to account those responsible for one of the worst situations, if not the worst situation, of ongoing international crimes committed anywhere in the world. The scale of the abuses creates an urgent and compelling need to protect the North Korean population from international crimes and prevent further violations.

14. Recommendations

“It is a shame to world democracy that this kind of system still exists in the world. If the UN does not do anything it can only mean they do not understand what is happening. If they knew the situation, they would have no choice but to act.”

Hwang Jang-Yop, former Secretary of the Korean Workers' Party

The following recommendations are based on consultations with North Korean survivors and organisations working to promote human rights in North Korea. They are designed to expedite international responses to ongoing international crimes in North Korea. The recommendations are addressed to several key actors and can be taken together or separately. They support and are supported by the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea's invitation to the international community in his February 2007 report to:

- ‘Mobilize the totality of the United Nations to promote and protect human rights in the country;
- Support processes which concretize responsibility and accountability for human rights violations, and an end to impunity.’⁴⁰⁵

“I believe your intervention today will make the difference between death and life for so many victims tomorrow.”

Lee Min-Bok, former detainee at a police detention centre in Hyesan City

UN Security Council

It is recommended that the UN Security Council should:

- Put the human rights situation in North Korea on its agenda, mindful of its responsibility to act in the face of ongoing crimes against humanity that threaten international peace and security;
- Invite the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and/or the UN High Commissioner for Human Rights to provide a comprehensive and thorough briefing on the situation in North Korea with regard to serious human rights violations and international crimes;
- Determine the most appropriate course of action to protect the North Korean population from the commission of international crimes and to secure accountability;
- Task the Secretary-General with establishing a UN commission of inquiry composed of eminent experts mandated to investigate the nature and scale of serious violations of international human rights and international crimes committed in North Korea, and in this regard:
 - to mandate the commission of inquiry to clarify the facts, identify those most responsible for violations amounting to international crimes and propose mechanisms best-suited to secure an end to the violations and the accountability of those responsible, such as a referral to the International Criminal Court;
 - to ensure that the commission of inquiry is given broad powers to fulfil its mandate, including unhindered access to imprisonment and detention facilities in North Korea, freedom to speak without hindrance to anyone, in particular prisoners, in North Korea, and North Korean refugees in China, South Korea and elsewhere;
 - to secure the assistance of relevant intelligence agencies which should be expressly encouraged to share any documents and other evidence they hold that are pertinent to the inquiry.

⁴⁰⁵ Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, UN Doc. A/HRC/4/15, 7 February 2007, para. 72.

UN General Assembly

It is recommended that, in view of the failure by North Korea to take action as urged in General Assembly resolutions 60/173 and 61/174, the UN General Assembly should:

- Call on the UN Security Council to consider the human rights situation in North Korea as a matter of urgent concern triggering the responsibility to protect;
- Take an active role in determining the most appropriate mechanism for ending serious violations amounting to international crimes in North Korea, and for providing justice and ensuring accountability;
- Set up a commission of inquiry composed of eminent experts, mandated to investigate the nature and scale of serious violations of international human rights and international crimes committed in North Korea, and to propose steps to halt ongoing violations.

UN Secretary-General

It is recommended that the UN Secretary-General should:

- Analyse and articulate, in the report to be submitted pursuant to the 2006 General Assembly resolution A/RES/61/174, the serious human rights abuses and *prima facie* case for the commission of international crimes, including crimes against humanity, proposing, if necessary, the steps needed to obtain a more adequate picture of the nature and scale of violations as well as state and individual responsibility for any such violations;
- Address the human rights situation in North Korea as a matter of urgency, taking a proactive role in a variety of forums to raise concerns about ongoing violations in North Korea and calling upon states and UN organs to act upon their responsibility to protect;
- Recommend courses of action to be pursued to bring an urgent end to violations, including, as appropriate, the establishment of a commission of inquiry and the referral of the matter to the UN Security Council;⁴⁰⁶
- Give public support to the work of the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.

UN Human Rights Council

It is recommended that, in pursuit of its mandate conferred in General Assembly resolution A/RES/60/251 to 'address situations of violations of human rights, including gross and systematic violations... and contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies',⁴⁰⁷ the UN Human Rights Council should:

- Maintain and fully support country-specific mechanisms that are uniquely placed to provide information on human rights situations, and thereby continue the mandate of the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea;
- Adopt resolutions on the human rights situation in North Korea that address the seriousness of violations, in particular their nature as international crimes and the consequences thereof;
- Prioritise North Korea as a particularly serious human rights concern and propose and actively pursue measures to bring an effective end to abuses;

⁴⁰⁶ See in this regard also the *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, UN Doc. A/HRC/4/15, 7 February 2007, para. 36: 'The Assembly castigated the country for not cooperating with the Special Rapporteur and requested reports from both the Secretary-General and the Special Rapporteur at its next session. This may be an opportunity not only to provide the human rights situation analysis which the Special Rapporteur has undertaken to date, but also to open the door to other policy options in a broader United Nations context based on the totality of the United Nations system.'

⁴⁰⁷ UN General Assembly resolution, *Human Rights Council*, UN Doc. A/RES/60/251, 15 March 2006, paras 3 and 5 (f).

- Consider the human rights situation in North Korea in a special session, and establish a 'commission of inquiry comprising of eminent experts on human rights law', with 'the possibility of inviting the relevant United Nations special procedures to be nominated to the Commission';⁴⁰⁸ and to task the commission with investigating the nature and scale of serious human rights violations in North Korea and recommending appropriate action to bring an end to abuses and provide mechanisms for ensuring accountability.

UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

It is recommended that the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea should:

- Continue to pursue vigorously his important mandate on the protection of human rights in North Korea;
- Urge the international community to take all necessary steps at all levels to address the human rights situation in North Korea;
- Call for support and engage in processes aimed at holding those responsible for serious violations in North Korea to account and ensuring justice for victims.

States and/or regional bodies

It is recommended that states and/or regional bodies should:

- Secure a special session of the Human Rights Council on the situation of human rights in North Korea in the light of available evidence of serious violations and the intransigence shown by North Korea;
- Initiate and support General Assembly resolutions that address the human rights situation in North Korea, establish a commission of inquiry and call on the Security Council to take effective action to stop further violations and respond to ongoing international crimes;
- Initiate and support, where they are in a position to do so, the adoption of a Security Council resolution establishing a commission of inquiry and other adequate measures aimed at preventing and responding to serious violations amounting to international crimes in North Korea, through steps such as raising the issue of violations in North Korea at the Security Council to have it put on the agenda, initiating a briefing and discussion, sponsoring a draft resolution and voting for any resolutions in line with the objectives outlined above;
- Cooperate with and assist any commission of inquiry established, in particular by sharing intelligence or other evidence they may hold;
- Consider the use of the International Court of Justice to address the issue of genocide in the light of North Korea being a party to the Genocide Convention;
- Provide support for human rights organisations seeking to respond to and end violations in North Korea, in particular in their work to document violations and to make such documentation available as evidence to be used in legal proceedings;
- Provide asylum and sanctuary for refugees, in conformity with international obligations, in particular by: taking active steps to prevent North Korean agents from carrying out abductions; desisting from repatriating North Koreans who have fled;⁴⁰⁹ allowing access to asylum procedures and facilitating resettlement;

⁴⁰⁸ See UN Human Rights Council special session resolution S-2/1, *The grave situation of human rights in Lebanon caused by Israeli military operations*, 11 August 2006, para. 7.

⁴⁰⁹ See also in this regard the recommendations of the UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, UN Doc. A/HRC/4/15, para. 72 (b): 'Respect the rights of refugees, particularly the principle of non-refoulement, desist from forcibly returning them to their country of origin, and exempt them from the strictures of national immigration laws which might otherwise lead to the detention of refugees/those seeking refuge.'

- Enable those who are victims of international crimes committed in North Korea to exercise their rights in accordance with international standards, such as on the basis of universal jurisdiction;
- Provide treatment and assistance for victims of serious violations who have left North Korea, in particular for physical injuries and mental trauma suffered as a result of abuses, or make financial provision for such support;
- Take action to raise awareness of, and provoke response to, the situation of human rights in North Korea, by providing a platform for survivors and refugees from North Korea to share insights into the factual and political situation, issuing reports, appointing envoys and raising the issue directly with the Government of North Korea.

Civil society

It is recommended that civil society organisations should:

- Give appropriate prioritisation to North Korea in view of the gravity of its violations of human rights and international criminal law;
- Advocate for the rights of victims of international crimes in North Korea and urge relevant states to take steps to ensure an effective end to the violations committed by North Korea, including through the UN Security Council;
- Provide assistance, treatment and rehabilitation services for survivors of international crimes committed by North Korean state agents.

“ The word “justice” is insufficient to describe what North Koreans are crying out for. Defectors testify of unspeakable abuses and vast numbers of people have died of hunger. We weep as we speak of these things, but not many people are listening. We need the outside world to know what is happening and to act. Countless numbers of North Koreans and defectors desire international action and justice. It will be a difficult and complicated process, but it must be done soon. ”

Kim Sung-Min, former captain in the North Korean army

Annex I

Key UN Documents on North Korea

(in reverse chronological order)

UN Security Council Resolutions

S/RES/1718 (2006), 14 October 2006

S/RES/1695 (2006), 15 July 2006

UN General Assembly Resolutions

Situation of human rights in the Democratic People's Republic of Korea

UN Doc. A/RES/61/174, 19 December 2006

UN Doc. A/RES/60/173, 16 December 2005

UN Commission on Human Rights Resolutions

Situation of human rights in the Democratic People's Republic of Korea

UN Doc. E/CN.4/RES/2005/11, 14 April 2005

UN Doc. E/CN.4/RES/2004/13, 15 April 2004

UN Doc. E/CN.4/RES/2003/10, 16 April 2003

UN Sub-Commission on Prevention of Discrimination and Protection of Minorities Resolutions

Situation of human rights in the Democratic People's Republic of Korea

UN Doc. E/CN.4/SUB.2/RES/1998/2, 19 August 1998

UN Doc. E/CN.4/SUB.2/RES/1997/3, 21 August 1997

UN Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

Situation of human rights in the Democratic People's Republic of Korea

UN Doc. A/HRC/4/15, 7 February 2007

UN Doc. A/61/349, 15 September 2006

UN Doc. E/CN.4/2006/35, 23 January 2006

UN Doc. A/60/306, 29 August 2005

UN Doc. E/CN.4/2005/34, 10 January 2005

UN Human Rights Treaty Bodies

Committee on the Elimination of Discrimination against Women: Concluding comments of the Committee on the Elimination of Discrimination against Women: Democratic People's Republic of Korea, UN Doc. A/60/38, paras.19–76, 22 July 2005

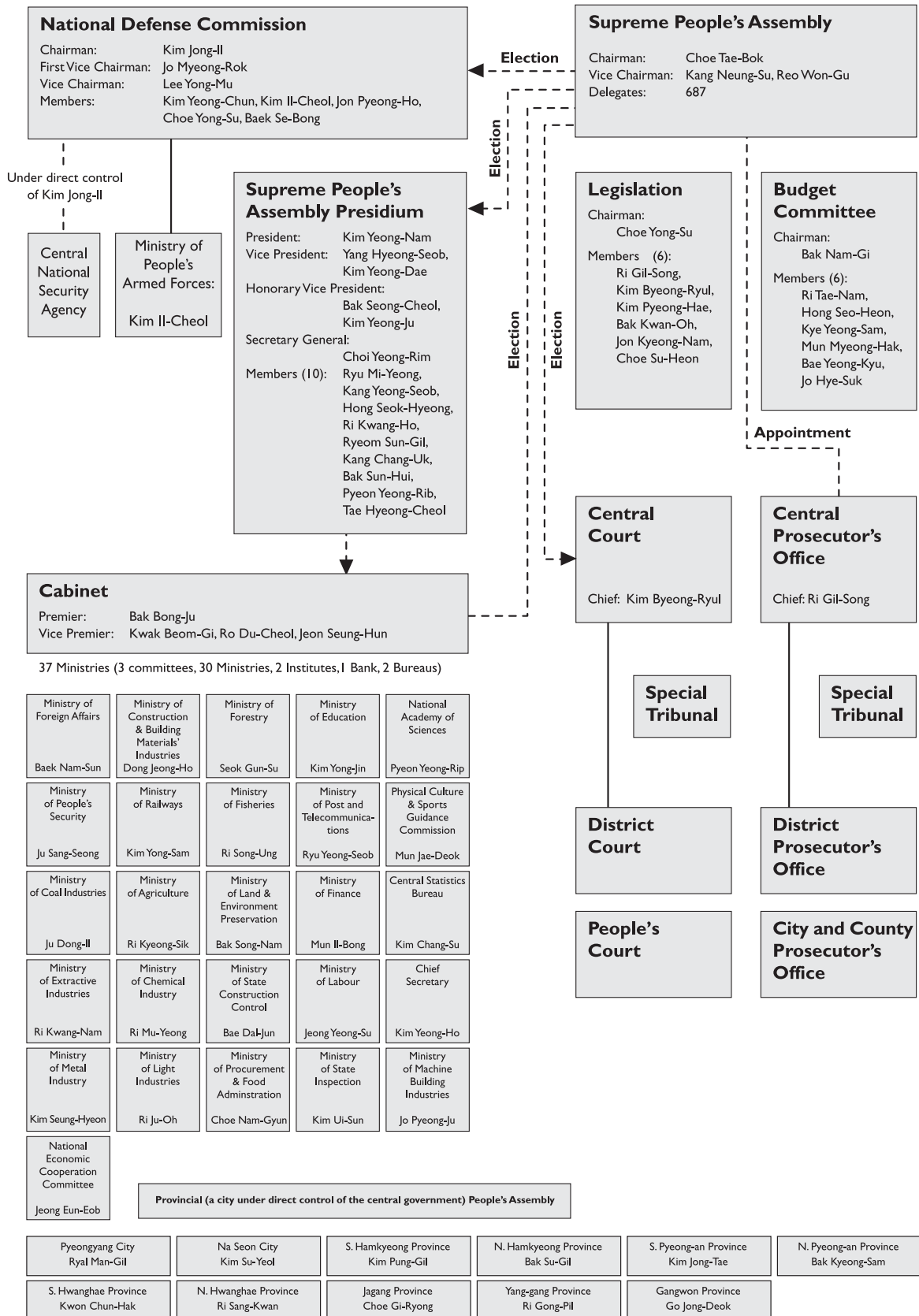
Committee on the Rights of the Child: Concluding Observations of the Committee on the Rights of the Child: Democratic People's Republic of Korea, UN Doc. CRC/C/15/Add.239, 1 July 2004

Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee on Economic, Social and Cultural Rights: Democratic People's Republic of Korea, UN Doc. E/C.12/1/Add.95, 12 December 2003

United Nations Human Rights Committee, Concluding Observations of the Human Rights Committee: Democratic People's Republic of Korea, UN Doc. CCPR/CO/72/PRK, 27 August 2001

Annex 2

The Political Structure of North Korea



Original source, in Korean only: Republic of Korea, Ministry of Unification, 17 April 2007

Annex 3

Rome Statute of the International Criminal Court: Articles 5-7, 9-14, 25-33

Article 5

Crimes within the jurisdiction of the Court

- I. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
 - (a) The crime of genocide;
 - (b) Crimes against humanity;
 - (c) War crimes;
 - (d) The crime of aggression.
2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

Article 6

Genocide

For the purpose of this Statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

Article 7

Crimes against humanity

- I. For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:
 - (a) Murder;
 - (b) Extermination;
 - (c) Enslavement;
 - (d) Deportation or forcible transfer of population;
 - (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (f) Torture;
 - (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
 - (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
 - (i) Enforced disappearance of persons;
 - (j) The crime of apartheid;
 - (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) 'Extermination' includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) 'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) 'Deportation or forcible transfer of population' means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) 'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) 'Forced pregnancy' means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) 'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) 'The crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;
- (i) 'Enforced disappearance of persons' means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term 'gender' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above.

Article 9 Elements of Crimes

- 1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.
- 2. Amendments to the Elements of Crimes may be proposed by:
 - (a) Any State Party;
 - (b) The judges acting by an absolute majority;
 - (c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

- 3. The Elements of Crimes and amendments thereto shall be consistent with this Statute.

Article 10

Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.

Article 11**Jurisdiction *ratione temporis***

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.

Article 12**Preconditions to the exercise of jurisdiction**

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
 - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
 - (b) The State of which the person accused of the crime is a national.
3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall co-operate with the Court without any delay or exception in accordance with Part 9.

Article 13**Exercise of jurisdiction**

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 14**Referral of a situation by a State Party**

1. A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.
2. As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.

Article 25**Individual criminal responsibility**

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
 - (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
 - (d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 - (i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 - (ii) Be made in the knowledge of the intention of the group to commit the crime;
 - (e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;
 - (f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.

Article 26

Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.

Article 27

Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

- (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
 - (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
- (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
 - (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 29

Non-applicability of statute of limitations

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.

Article 30

Mental element

1. Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
2. For the purposes of this article, a person has intent where:
 - (a) In relation to conduct, that person means to engage in the conduct;
 - (b) In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
3. For the purposes of this article, 'knowledge' means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly.

Article 31

Grounds for excluding criminal responsibility

1. In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:
 - (a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;
 - (b) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;
 - (c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an

imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;

- (d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. Such a threat may either be:
 - (i) Made by other persons; or
 - (ii) Constituted by other circumstances beyond that person's control.
2. The Court shall determine the applicability of the grounds for excluding criminal responsibility provided for in this Statute to the case before it.
3. At trial, the Court may consider a ground for excluding criminal responsibility other than those referred to in paragraph 1 where such a ground is derived from applicable law as set forth in article 21. The procedures relating to the consideration of such a ground shall be provided for in the Rules of Procedure and Evidence.

Article 32

Mistake of fact or mistake of law

1. A mistake of fact shall be a ground for excluding criminal responsibility only if it negates the mental element required by the crime.
2. A mistake of law as to whether a particular type of conduct is a crime within the jurisdiction of the Court shall not be a ground for excluding criminal responsibility. A mistake of law may, however, be a ground for excluding criminal responsibility if it negates the mental element required by such a crime, or as provided for in article 33.

Article 33

Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
 - (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
 - (b) The person did not know that the order was unlawful; and
 - (c) The order was not manifestly unlawful.
2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.

Annex 4

ICC Elements of Crimes

Preparatory Commission for the International Criminal Court, 2 November 2000

UN Doc. PCNICC/2000/1/Add.2

Article 6

Genocide

Introduction

With respect to the last element listed for each crime:

- The term ‘in the context of’ would include the initial acts in an emerging pattern;
- The term ‘manifest’ is an objective qualification;
- Notwithstanding the normal requirement for a mental element provided for in article 30, and recognizing that knowledge of the circumstances will usually be addressed in proving genocidal intent, the appropriate requirement, if any, for a mental element regarding this circumstance will need to be decided by the Court on a case-by-case basis.

Article 6 (a)

Genocide by killing

Elements

1. The perpetrator killed² one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (b)

Genocide by causing serious bodily or mental harm

Elements

1. The perpetrator caused serious bodily or mental harm to one or more persons.³
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (c)

Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

Elements

1. The perpetrator inflicted certain conditions of life upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The conditions of life were calculated to bring about the physical destruction of that group, in whole or in part.⁴
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

² The term ‘killed’ is interchangeable with the term ‘caused death’. [Footnote 1 to the Elements of Crimes comes in the introduction, which is not reproduced here.]

³ This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment.

⁴ The term ‘conditions of life’ may include, but is not necessarily restricted to, deliberate deprivation of resources indispensable for survival, such as food or medical services, or systematic expulsion from homes.

Article 6 (d)**Genocide by imposing measures intended to prevent births****Elements**

1. The perpetrator imposed certain measures upon one or more persons.
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The measures imposed were intended to prevent births within that group.
5. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 6 (e)**Genocide by forcibly transferring children****Elements**

1. The perpetrator forcibly transferred one or more persons.⁵
2. Such person or persons belonged to a particular national, ethnical, racial or religious group.
3. The perpetrator intended to destroy, in whole or in part, that national, ethnical, racial or religious group, as such.
4. The transfer was from that group to another group.
5. The person or persons were under the age of 18 years.
6. The perpetrator knew, or should have known, that the person or persons were under the age of 18 years.
7. The conduct took place in the context of a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.

Article 7**Crimes against humanity****Introduction**

1. Since article 7 pertains to international criminal law, its provisions, consistent with article 22, must be strictly construed, taking into account that crimes against humanity as defined in article 7 are among the most serious crimes of concern to the international community as a whole, warrant and entail individual criminal responsibility, and require conduct which is impermissible under generally applicable international law, as recognized by the principal legal systems of the world.
2. The last two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack.
3. 'Attack directed against a civilian population' in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7, paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that 'policy to commit such attack' requires that the State or organization actively promote or encourage such an attack against a civilian population.⁶

⁵ The term 'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment.

⁶ A policy which has a civilian population as the object of the attack would be implemented by State or organizational action. Such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. The existence of such a policy cannot be inferred solely from the absence of governmental or organizational action.

Article 7 (I) (a)**Crime against humanity of murder****Elements**

1. The perpetrator killed⁷ one or more persons.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

Article 7 (I) (b)**Crime against humanity of extermination****Elements**

1. The perpetrator killed⁸ one or more persons, including by inflicting conditions of life calculated to bring about the destruction of part of a population.⁹
2. The conduct constituted, or took place as part of ¹⁰ a mass killing of members of a civilian population.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (c)**Crime against humanity of enslavement****Elements**

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.¹¹
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (d)**Crime against humanity of deportation or forcible transfer of population****Elements**

1. The perpetrator deported or forcibly¹² transferred,¹³ without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

⁷ The term 'killed' is interchangeable with the term 'caused death'. This footnote applies to all elements which use either of these concepts.

⁸ The conduct could be committed by different methods of killing, either directly or indirectly.

⁹ The infliction of such conditions could include the deprivation of access to food and medicine.

¹⁰ The term 'as part of' would include the initial conduct in a mass killing.

¹¹ It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

¹² The term 'forcibly' is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.¹³ 'Deported or forcibly transferred' is interchangeable with 'forcibly displaced'.

Article 7 (I) (e)

Crime against humanity of imprisonment or other severe deprivation of physical liberty

Elements

1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.
2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (f)

Crime against humanity of torture¹⁴

Elements

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
2. Such person or persons were in the custody or under the control of the perpetrator.
3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (g)-1

Crime against humanity of rape

Elements

1. The perpetrator invaded¹⁵ the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.¹⁶
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (g)-2

Crime against humanity of sexual slavery¹⁷

Elements

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.¹⁸

¹⁴ It is understood that no specific purpose need be proved for this crime.

¹⁵ The concept of 'invasion' is intended to be broad enough to be gender-neutral.

¹⁶ It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity. This footnote also applies to the corresponding elements of article 7 (I) (g)-3, 5 and 6.

¹⁷ Given the complex nature of this crime, it is recognized that its commission could involve more than one perpetrator as a part of a common criminal purpose.

¹⁸ It is understood that such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956. It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children.

2. The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (g)-3

Crime against humanity of enforced prostitution

Elements

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (g)-4

Crime against humanity of forced pregnancy

Elements

1. The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (g)-5

Crime against humanity of enforced sterilization

Elements

1. The perpetrator deprived one or more persons of biological reproductive capacity.¹⁹
2. The conduct was neither justified by the medical or hospital treatment of the person or persons concerned nor carried out with their genuine consent.²⁰
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (g)-6

Crime against humanity of sexual violence

Elements

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. Such conduct was of a gravity comparable to the other offences in article 7, paragraph I (g), of the Statute.

¹⁹ The deprivation is not intended to include birth-control measures which have a non-permanent effect in practice.

²⁰ It is understood that 'genuine consent' does not include consent obtained through deception.

3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (h)

Crime against humanity of persecution

Elements

1. The perpetrator severely deprived, contrary to international law,²¹ one or more persons of fundamental rights.
2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible under international law.
4. The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.²²
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (i)

Crime against humanity of enforced disappearance of persons^{23 24}

Elements

1. The perpetrator:
 - (a) Arrested, detained^{25 26} or abducted one or more persons; or
 - (b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.
2.
 - (a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or
 - (b) Such refusal was preceded or accompanied by that deprivation of freedom.
3. The perpetrator was aware that:²⁷
 - (a) Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons;²⁸ or
 - (b) Such refusal was preceded or accompanied by that deprivation of freedom.
4. Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.
5. Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization.
6. The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.

²¹ This requirement is without prejudice to paragraph 6 of the General Introduction to the Elements of Crimes.

²² It is understood that no additional mental element is necessary for this element other than that inherent in element 6.

²³ Given the complex nature of this crime, it is recognized that its commission will normally involve more than one perpetrator as a part of a common criminal purpose.

²⁴ This crime falls under the jurisdiction of the Court only if the attack referred to in elements 7 and 8 occurs after the entry into force of the Statute.

²⁵ The word 'detained' would include a perpetrator who maintained an existing detention.

²⁶ It is understood that under certain circumstances an arrest or detention may have been lawful.

²⁷ This element, inserted because of the complexity of this crime, is without prejudice to the General Introduction to the Elements of Crimes.

²⁸ It is understood that, in the case of a perpetrator who maintained an existing detention, this element would be satisfied if the perpetrator was aware that such a refusal had already taken place.

7. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
8. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (j)**Crime against humanity of apartheid****Elements**

1. The perpetrator committed an inhumane act against one or more persons.
2. Such act was an act referred to in article 7, paragraph 1, of the Statute, or was an act of a character similar to any of those acts.²⁹
3. The perpetrator was aware of the factual circumstances that established the character of the act.
4. The conduct was committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups.
5. The perpetrator intended to maintain such regime by that conduct.
6. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
7. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Article 7 (I) (k)**Crime against humanity of other inhumane acts****Elements**

1. The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act.
2. Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute.³⁰
3. The perpetrator was aware of the factual circumstances that established the character of the act.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

²⁹ It is understood that 'character' refers to the nature and gravity of the act.

³⁰ It is understood that 'character' refers to the nature and gravity of the act.

Annex 5

UN General Assembly Resolution 61st session, adopted 19 December 2006

Resolution adopted by the General Assembly

[on the report of the Third Committee (A/61/443/Add.3)]

61/174. Situation of human rights in the Democratic People's Republic of Korea

The General Assembly,

Reaffirming that States Members of the United Nations have an obligation to promote and protect human rights and fundamental freedoms and to fulfil the obligations that they have undertaken under the various international instruments,

Mindful that the Democratic People's Republic of Korea is a party to the International Covenant on Civil and Political Rights,¹ the International Covenant on Economic, Social and Cultural Rights,² the Convention on the Rights of the Child³ and the Convention on the Elimination of All Forms of Discrimination against Women,³

Noting the submission by the Democratic People's Republic of Korea of its second periodic report concerning the implementation of the International Covenant on Economic, Social and Cultural Rights,⁴ its second periodic report on the implementation of the Convention on the Rights of the Child⁵ and its initial report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women,⁶ as a sign of engagement in international cooperative efforts in the field of human rights,

Taking note of the concluding observations of the treaty monitoring bodies under the four treaties, the most recent of which were given by the Committee on the Elimination of Discrimination against Women in July 2005,⁷

Recalling its resolution 60/173 of 16 December 2005 and Commission on Human Rights resolutions 2003/10 of 16 April 2003,⁸ 2004/13 of 15 April 2004⁹ and 2005/11 of 14 April 2005,¹⁰ and mindful of the need for the international community to strengthen its coordinated efforts aimed at urging the implementation of those resolutions,

Taking note of the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea,¹¹ including the specific concerns relating to women's rights, the rights of the child, the rights of the elderly, the rights of persons with disabilities and refugee rights addressed therein,

1. Expresses its very serious concern at:

- (a) The continued refusal of the Government of the Democratic People's Republic of Korea to recognize the mandate of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea or to extend co-operation to him;
- (b) Continuing reports of systemic, widespread and grave violations of human rights in the Democratic People's Republic of Korea, including:

¹ See resolution 2200 A (XXI), annex.

² United Nations, *Treaty Series*, vol. 1577, No. 27531.

³ *Ibid.*, vol. 1249, No. 20378.

⁴ E/1990/6/Add.35.

⁵ CRC/C/65/Add.24.

⁶ CEDAW/C/PRK/1.

⁷ See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 38 (A/60/38)*, part two, paras. 26–76.

⁸ See *Official Records of the Economic and Social Council, 2003, Supplement No. 3 (E/2003/23)*, chap. II, sect. A.

⁹ *Ibid.*, 2004, Supplement No. 3 (E/2004/23), chap. II, sect. A.

¹⁰ *Ibid.*, 2005, Supplement No. 3 and corrigendum (E/2005/23 and Corr.1), chap. II, sect. A.

¹¹ See A/61/349.

- (i) Torture and other cruel, inhuman or degrading treatment or punishment, public executions, extrajudicial and arbitrary detention, the absence of due process and the rule of law, the imposition of the death penalty for political reasons, the existence of a large number of prison camps and the extensive use of forced labour;
 - (ii) The situation of refugees expelled or returned to the Democratic People's Republic of Korea and sanctions imposed on citizens of the Democratic People's Republic of Korea who have been repatriated from abroad, such as treating their departure as treason, leading to punishments of internment, torture, cruel, inhuman or degrading treatment or the death penalty, and urges all States to ensure respect for the fundamental principle of non-refoulement;
 - (iii) All-pervasive and severe restrictions on the freedoms of thought, conscience, religion, opinion and expression, peaceful assembly and association, and on equal access to information and limitations imposed on every person who wishes to move freely within the country and travel abroad;
 - (iv) Continuing violation of the human rights and fundamental freedoms of women, in particular the trafficking of women for the purpose of prostitution or forced marriage, forced abortions, and infanticide of children of repatriated mothers, including in police detention centres and camps;
 - (v) Unresolved questions of international concern relating to the abduction of foreigners in the form of enforced disappearance, which violates the human rights of the nationals of other sovereign countries;
 - (vi) The violations of economic, social and cultural rights, which have led to severe malnutrition and hardship for the population in the Democratic People's Republic of Korea;
 - (vii) Continuing reports of violations of the human rights and fundamental freedoms of persons with disabilities, especially on the use of collective camps and of coercive measures that target the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children;
2. *Expresses its strong concern* that the Government of the Democratic People's Republic of Korea has not engaged in technical co-operation activities with the United Nations High Commissioner for Human Rights and her Office, despite efforts by the High Commissioner to engage in a dialogue with the authorities of the Democratic People's Republic of Korea in this regard;
 3. *Expresses its very deep concern* at the precarious humanitarian situation in the country, compounded by the mismanagement on the part of the authorities, in particular the prevalence of infant malnutrition, which, despite recent progress, continues to affect the physical and mental development of a significant proportion of children, and urges the Government of the Democratic People's Republic of Korea, in this regard, to facilitate the continued presence of humanitarian organizations to ensure that humanitarian assistance is delivered impartially to all parts of the country on the basis of need in accordance with humanitarian principles;
 4. *Strongly urges* the Government of the Democratic People's Republic of Korea to respect fully all human rights and fundamental freedoms and, in this regard, to implement fully the measures set out in the above-mentioned resolutions of the General Assembly and the Commission on Human Rights, and the recommendations addressed to the Democratic People's Republic of Korea by the United Nations special procedures and treaty bodies, and to extend its full co-operation to the Special Rapporteur, including by granting him full, free and unimpeded access to the Democratic People's Republic of Korea, and to other United Nations human rights mechanisms;
 5. *Decides* to continue its examination of the situation of human rights in the Democratic People's Republic of Korea at its sixty-second session, and to this end requests the Secretary-General to submit a comprehensive report on the situation in the Democratic People's Republic of Korea and the Special Rapporteur to report his findings and recommendations.

81st plenary meeting
19 December 2006



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