

Ensuring accountability for human rights violations in the DPRK

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Good afternoon. Ladies and Gentlemen!

I'm honored to present here in this important event.

The assassination of Kim Jong-nam, older half-brother of North Korean Supreme leader Kim Jong-un in Malaysia last month, is widely known as an execution of a “standing order” given to North Korean operatives by Kim Jong-un. This terrorist attack by exposure to the nerve agent VX, a lethal weapon banned by international conventions even in wars, made the international community realize once again how brutal and barbarous Kim Jong-un is and how dire the North Korean human rights situation is. North Korean dictator Kim Jong-un has ordered 340 people to be executed since he came to power in 2011.¹ Of those killed, about 140 were senior officers in the country's government, military and ruling Korean Worker's Party.²

The key element of the totalitarian state, DPRK's idolized hereditary Supreme Leader(*Suryong*) system is the massive political security system which can suppress all opposition with the strategic use of surveillance, coercion, horror and punishment. Public execution and involuntary disappearance are the final means to make the residents obey the regime. According to the Korean Bar Association (KBA) survey which has conducted a survey of North Korean refugees on human rights for every two years from 2006 to 2016, one of the most seriously violated human rights that all surveyed refugees pointed out is 'the horrors inside the political prison camps'.

(1) All efforts should be made to persuade the Security Council(SC) to refer the situation in the North Korea to the International Criminal Court (ICC) immediately pursuant to the 2014 COI recommendation, so that the perpetrators of such grave human rights violations which amount to crimes against humanity, stand trial and justice to be realized. It is of utmost importance that the international community should investigate and compile records of the entire human rights violation system and its perpetrators. In mapping of perpetrators of grave human rights violations and the chain of command, the Center for Investigation and Documentation on Human Rights in North Korea which was established by the long-awaited North Korean Human Rights Act of the Republic of Korea(ROK) last year are playing an important role in cooperation with the OHCHR office in Seoul which was installed two years ago.

(2) However, the key recommendation to refer a case to the ICC has been stalled in the SC, where China and Russia are preventing it from coming to a vote. But even without a SC

1 The Institute for National Security Strategy, a South Korean think tank, released "The misgoverning of Kim Jong-un's five years in power" on 29 Dec. 2016, detailing how the North Korean leader uses executions to tighten his hold on power.

2 CNN, December 29, 2016

referral, or the DPRK ratifying the Rome Statute or accepting the ICC's jurisdiction, the ICC may exercise jurisdiction following referral of a State Party (Rome Statute, article 14) or at the initiative of the Prosecutor (Rome Statute, article 15), including on the basis of communications received from civil society. For example, we, LHUK, has submitted communications to the ICC 2015 and 2016 with NK Watch.

We think ICC is able to try Kim Jong-un. This is due to the fact that Kim, in spite of his obvious North Korean citizenship, is also, by law and in practice, a national of South Korea who is a State Party, being met the precondition of jurisdiction contained in Article 12 (2)(b).

The DPRK and the ROK both claim jurisdiction over each other's territory and population. Such claims are clearly made in their constitutions and in practice as well. Even though the DPRK is recognized as a sovereign state under international law and a member of the United Nations, it must be noted that on 13 Dec. 1991, the two Koreas signed the "Inter-Korean Basic Agreement". The Agreement expressly states that the South and North recognize that "their relations, *not* being a relationship between states, constitute a special interim relationship stemming from the process towards reunification". With emphasis on "special interim relations" instead of interstate relations; it can be construed that both Koreas continue to deny the legitimacy of the respective states and allow the dual nationality each other.

Moreover, the United Nations High Commissioner on Refugees (UNHCR) has recognized the dual nationality of North Koreans under international law. Since the 1990s, the number of North Koreans fleeing into China to escape famine and oppression has reached tens of thousands, resulting in a humanitarian crisis. The UNHCR determined that the escaped North Koreans were "refugees *sur place*" but did not grant full Refugee Status under the 1951 Refugee Convention based upon the North Koreans' "dual nationality" by which "they can avail themselves of protection in South Korea".³ The ICC, which is also an international body with fundamental connections to the UN, should also recognize this ruling of effective dual nationality of North Koreans, including Kim.⁴

Allowing the ICC to exercise jurisdiction it has over a Kim also seems justified from a practical perspective. The effective South Korean dual nationality of a North Korean asylum seeker hiding in China bars him from attaining full Refugee Status, and denies him the international protection such status would afford. It would be patently unjust and contradictory if the same dual nationality were not recognized as a precondition for jurisdiction in the case of a North Korean perpetrator. It would be especially absurd if it had

³ The UNHCR *Handbook* paragraph 106 interprets the 1951 Refugee Convention as excluding from Refugee Status "all persons with dual or multiple nationalities who can avail themselves of the protection of at least one of the countries of which they are nationals." Paragraph 107 clarifies that this exclusion can only occur when the nationality is "effective". This shows that the UNHCR concluded that North Koreans had an effective dual South Korean nationality and that a genuine connection existed between South Korea and the North Korean asylum seekers.

⁴ In addition to the UN, many other national governments, namely the United Kingdom, France and Australia also treat North Koreans as dual nationals of South Korea based on the Constitution, the Nationality Act and the North Korean Refugee Protection and Settlement Support Act of South Korea.

been the very conduct of the North Korean perpetrator that had forced the North Korean asylum seeker to flee.

(3) In parallel, civil society organizations need to establish such as an informal public tribunal, of the kind that has been held for Vietnam, Iran and the so-called Japanese 'comfort women', comprising a panel of retired senior judges from perhaps the six continents or the five permanent member countries of the SC. It would be a way of further ratcheting up the pressure and further enhancing the world-wide attention.

(4) Member States should not turn a blind eye on the systematic practice of forced labour perpetrated by the DPRK on their overseas' workers hired in the Member States' territories, with respect to which, we urge the Member States to conduct an inspection and an investigation on regular basis, and to observe debit pay principle and to enforce a repatriation of the DPRK supervisors who are responsible for the violations.

(5) We call upon Member States to undertake to ensure that the people of the DPRK can have the right of access to information as stipulated in Article 19 of the ICCPR to which the DPRK is a signatory. We're convinced that breaking the information monopoly of the DPRK government is a key determinant of freedom and the short cut of helping to bring about internal change. So we must accelerate the information influx into the DPRK by improving its means and content.

(6) Finally, where such grave violations, of such variety, intensity and duration appear established, international community should secure appropriate accountability.

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