

The unlawful conduct continued past the year of 2002 when the ICC enters into force because North Korean officials continue to disallow contact or provide a full accounting of the surviving POWs.

Claims by North Korean officials that any POW who stayed with them did so voluntarily after being released at the front contradict the testimonies of escaped POWs who testify that they (and other “number 143’s”) were kept under surveillance all their lives. The claims also contradict the Soviet Archives.

Therefore, the conduct of the accused violates Article 8 (2)(a)(vii) by violating Geneva Conventions III Articles 69, 70, 71, 122 and 118.

### **3. Article 8 (2)(a)(ii)-2 Inhuman treatment**

The conduct by North Korean officials meet the element specific to this violation.

#### **1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons . . .**

Denial of contact with family in South Korea caused the POW victims suffering and pain. The systematic discrimination and forced hard labor, as well as summary executions and other actions by North Korean authorities during detention in North Korea also caused suffering.

Alternatively, the same conduct could apply to a crime under the following violation:

Article 8 (2)(a) (iii) Willfully causing great suffering.

Where the element of the crime would be:

1. The perpetrator caused great physical or mental pain or suffering to, or serious injury to body or health of, one or more persons. . .

Therefore, the abuses inflicted upon the POWs by the accused violates Article 8 (2)(a)(ii) or (iii).

### **4. Article 8(2)(a)(vi) War Crime of Denying a Fair Trial**

The conduct by North Korean officials meet the element specific to this violation.

#### **1. The perpetrator deprived . . . persons a fair and regular trial by denying judicial guarantees . . . defined, in particular, in the third and fourth Geneva Conventions . . . .**

The wording “in particular,” was used and understood to indicate that “judicial guarantees” defined here can also include other guarantees as well as just those listed in the Geneva Conventions protocols.

The Neutral Nations Repatriation Commission (NNRC) was to “take jurisdiction” (The Korean War Armistice Annex about POWs specifically uses this word) over any POWs reported as wishing not to be repatriated to their home military, and wishing to stay with their captors.

Although the NNRC was not strictly a judicial body, it sought to verify the truthfulness of a POW’s desire to stay with captors. The consequences of the NNRC ruling would have great legal consequences for a individual regarding his legal nationality status. Therefore, the POW’s right to have a meeting with the NNRC should be construed as a judicial guarantee.

Therefore, withholding a POW (whom the Communists claimed joined their side voluntarily) from the NNRC’s jurisdiction violates Article 84 of the Geneva Conventions III, which guarantees the POW’s right to be judged by an independent and impartial court. This Geneva Convention violation, which continues to this day, also violates Rome Statute Article 8 (2)(a)(vi)

#### **4. Article 7 (1) (i) Crime against humanity of enforced disappearance of persons**

If the status of the POWs held in North Korea changed to that of a civilian during some point in their captivity, at that point in time, the War Crimes in the Rome Statute Art. 8(2)(a)(ii) or (iii) may have changed to a violation of the Crime Against Humanity of Enforced Disappearance.

Elements of this crime are:

##### **1. The perpetrator:**

- (a) Arrested, detained 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.**

Here, South Korean POWs were kept in detention after the Armistice while North Korean authorities continued to refuse to acknowledge such detention.

##### **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.**

For years, even during periods when North and South Korea engaged in peace negotiations (e.g., Joint Communique in the 1972; various negotiations during the 1990’s and Summit Meetings in the 2000 and 2007) North Koreans claimed they

did not have any information on South Korean POWs. However, testimonies from escaped POWs indicate that North Korean State Security agents and police kept strict surveillance over the POWs and their families. Therefore, the claims are untrue.

**3. 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.**

The presence of "number 143's," which was the term that North Koreans used when referring to the South Korean POWs, was widespread in North Korea. The restrictions placed on their liberties and the surveillance was also widely known. Yet, North Korea has never provided any information about these people in spite of repeated requests from South Korea. The perpetrators must have been aware that they are hiding information.

**4. Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.**

Here, evidence from Soviet Archives show that the detention of the POWs was known to even the head of state Kim Il Sung. The implementation of Cabinet Order 143 by North Korea indicates that the North Korean government has purposely controlled the fate of these POWs for decades.

**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.**

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**6. The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.**

Soviet archives show that North Korean leader Kim Il Sung was aware that South Korean POWs were being transported to the remote Northeast regions to prevent their escape and contact with NNRC or Red Cross.

**7. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.**

If the POWs status changed to be civilians during their detention, the purposeful surveillance and restrictions on their freedoms, as well as the policy of discrimination against them indicate that the detention and exploitation of their labor was a systematically planned action by the North Korean state.

**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.**

North Korean officials involved in the detention and surveillance of the “number 143’s” were aware of the policies against the POWs. There was widespread knowledge amongst North Korean citizens that the “number 143’s” belonged to the Hostile Stratum within North Korea’s caste system. Officials must have known they were enforcing a systematic policy against the POWs.

Therefore, the conduct of the accused would violate this crime if the POWs during their extended detention within North Korea have had their status changed to that of civilians.

### **VIII. Request for Investigation by the ICC**

There already is strong evidence of possibly thousands of counts of violations of several Article 7 and 8 crimes from the limited information gathered so far. An investigation into these crimes may reveal further crimes. We respectfully request the ICC to open an investigation into these serious crimes against so many victims that have gone on for many years.