

**A Communication to the International Criminal Court Regarding the
Continued Detention of South Korean POWs by North Korea**

(국제형사법정에 제출한 문건)

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Luis Moreno-Ocampo, Esq.
Office of the Prosecutor
Communications
PO Box 19519
2500 CM The Hague
The Netherlands

February 15th, 2011

Dear Sir, or Madam:

We are NGO of POW Affairs Committee dealing with Korean War POW being detained in the hand of North Korean regime (Democratic People's Republic of Korea) still today.

We hereby bring you our legal suit against the authority of North Korean regime for their criminal acts against POW of Korean War.

The attached are all the evidences of criminal acts committed by North Korean(DPRK) Regime, with regard to handling of Korean War POW held in the hand of North Korean (DPRK) regime.

We put all our efforts to repatriate the POW through South Korean Government (Republic of Korea), but all have failed.

This is our last resort to solve this matter through the hand of Justice, and let the world know that the justice is still alive.

We will wait anxiously for your response.

Respectfully yours,



Thomas Y. Chung, Ph.D.
Chairman of POW Affairs Committee

Feb 21, 2011

To: The International Criminal Court, Office of the Prosecutor

Dear Prosecutor Moreno-Ocampo:

Jurisdiction of the ICC over War Crimes Against ROK POWs held in the DPRK since 1953

We write to you regarding the situation regarding ROK(South Korean) prisoners-of-war held by the DPRK(North Korea) since the Korean War Armistice. They have been held unlawfully for over 57 years.

Unlike other Human Rights situations in North Korea, such as the notoriously brutal Prison Camps in North Korea, the mistreatment of ROK POWs by the DPRK, satisfies the ICC's jurisdictional preconditions, even though the state of the accused, the DPRK, is not a State party.

The rule, according to legal scholar Markus Wagner, is that *rationae tertiis* is met when the effects of the conduct occur on the territory of a State party. The mistreatment of POWs who are captured in combat has lasting effects on their home country. Here, their home country is the ROK which is a State party to the ICC.

Even from a lay perspective, it would be contradictory for the home country to not have jurisdiction over grave breaches of the Geneva Conventions against its servicemen who have been taken prisoner. Therefore, the ROK POWs here have stronger standing than other victims in the DPRK.

The unlawful detention has continued past 2002, *rationae temporis* is also met. The *rationae tertiis* (based upon the ROK's jurisdiction over grave breaches against its servicemen) should also continue past 2002 when the Rome Statute comes into force.

We also present a *rationae personae* argument that the accused DPRK officials have an effective dual nationality of the ROK. This argument is based upon rulings by the UN High Commissioner for Refugees that North Korean refugees hiding in China have an effective South Korean dual nationality. Because of this dual nationality, North Koreans hiding in China to escape famine and persecution are not afforded the protection of full Convention Refugee Status. We think it is only fair that the same dual nationality extends to DPRK leaders accused of War Crimes.

We urge that the Article 11 and 12 jurisdictional preconditions regarding this situation are distinguished from other Human Rights situations in the DPRK and hope for a thorough review of our case.

Thank you,

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Korean POW Affairs Committee
Los Angeles, California

Summary

We request an investigation by the International Criminal Court (ICC) into War Crimes and Crimes Against Humanity committed by military and civilian officials of North Korea. They have illegally detained South Korean prisoners of war (POWs) since 1953. The accused have refused to provide information on the fate of these POWs. Evidence of violations from testimonies of recently escaped POWs and declassified Soviet Foreign Ministry documents are now available. The conduct violates in particular, the following Rome Statute Articles:

Article 8(2)(a)(vii) regarding the unlawful confinement of POWs.

Article 8(2)(a)(ii) or (iii) regarding inhuman treatment or causing great suffering.

Article 8 (2)(a)(vi) regarding denial of a regular and fair trial to POWs.

Article 7(1)(i) regarding enforced disappearance of persons.

The ICC has temporal jurisdiction over these violations under Article 11(1) because the violations, which although started far earlier than 2002, continue to this day.

These violations meet the Article 12(2)(a) jurisdictional precondition regarding the location of the crime. South Korea is a state party to the ICC and the effects of the conduct occur on its territory.

The violations also meet Article 12(2)(b) preconditions regarding the nationality of the accused. The UN High Commissioner for Refugees recognizes North Koreans as possessing "effective South Korean nationality." Therefore, the accused North Korean leaders effectively possess dual nationality of South Korea, a State Party, as well as North Korea, a non-State Party. Applying customary international law defined in the 1935 Harvard Draft Convention, their North Korean nationality should not immunize them from ICC investigation.

We request that the Office of the Prosecutor initiate an investigation *proprio motu* under Article 15(1) on the basis of the information provided here.

I. Nature of the Crimes

This communication reports to the International Criminal Court (ICC) the following War Crimes in the Rome Statute committed by North Korean military and civilian leaders against South Korean POWs that continue to this day.

Article 8 (2)(a)(vii) regarding unlawful confinement of POWs. The North Korean officials detained secretly as many as 50,000 POWs, even after they had signed the 1953 Korean War Armistice. Surviving POWs have been held for over 57 years as of 2010. The conduct violates multiple Geneva Convention articles regarding the internment of POWs.

Article 8 (2)(a)(ii) regarding inhuman treatment or (iii) causing great suffering. North Koreans officials willfully held the 50,000 POWs incommunicado. The POWs never had an opportunity to contact their next of kin. This has caused and continues to cause great suffering for the POWs themselves and their bereaved families in South Korea. Alternatively, this conduct could fall under enforced disappearance, a Crime Against Humanity that violates Article 7(1)(i).

The POWs also suffered restrictions in their residence and kept under stricter surveillance than other North Koreans throughout their lives. They were forced to work in mining and other hard labor occupations that they were assigned to during the war and denied opportunities to improve their lives. This resulted in further suffering.

Article 8 (2)(a)(vi) regarding the denial of a regular and fair trial to POWs. North Korean officials denied jurisdiction of the 50,000 POWs to the Neutral Nations Repatriation Commission as stipulated in the Korean War Armistice of 1953. This conduct resulted in the denial of a legal right to choose to be repatriated. North Korean officials continue to deny this right.

The POWs have been detained for an extremely long time without contact with the outside world. Many started families in North Korea who also suffer extreme discrimination and abuses. An investigation may reveal further serious crimes committed against the POWs and their families in North Korea.

II. The Victims

The victims include personnel of the Republic of Korea (South Korea) military forces who were taken prisoner during the Korean War (1950-1953) by Communist military forces of the Democratic People's Republic of Korea (North Korea) and the Chinese People's Volunteer Army (China). The victims were not listed in the POW rosters by their captors and purposely excluded from the POW exchange and repatriation process when the 1953 Korean War Armistice was signed [HERMES 1992, Ch. 7].