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Report on Human Rights in North Korea

2014





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REPORT ON HUMAN RIGHTS IN NORTH KOREA

Written by the Korean Bar Association

Translated into English language and edited by the International Bar Association, with support from the International Bar Association's Human Rights Institute

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Foreword

As the old saying goes, ‘blood is thicker than water’. Caring for one’s own ‘flesh and blood’ – oneself and one’s family – has been regarded as the true and proper defining characteristic of humanity, in all ages and in every society. When we speak of human rights, we mean that every human being must be guaranteed freedom, equality and existence itself. It is through such a guarantee that we can speak of living as people. At its bare minimum, human rights means guaranteeing the security necessary to care for oneself and one’s family in peace.

However, the reality for our North Korean compatriots is very different. Looking across the Korean Demilitarized Zone to the North Korean regime and its people – people who share our blood – makes one’s heart heavy. Although our duty as humans would require that we step forward to stop the appalling human rights violations there, active efforts to demand improvement have been made difficult by the deep wounds caused by the division of our land and the resulting differences in thinking.

In spite of such difficult circumstances, in 2005 the Korean Bar Association (KBA), in accordance with its decision that our North Korean compatriots should also be a target for human rights activities, established the Subcommittee on North Korean Human Rights as an affiliated organisation of the KBA Human Rights Committee. The KBA has also published a *Report on Human Rights in North Korea* biennially since 2006, making this year’s report the fifth such publication. Through the reports published during this period, the KBA has endeavoured to make known, in South Korea and abroad, the cruel reality of human rights in North Korea.

This year in particular, we might expect improved international cooperation in resolving North Korea’s human rights issues; having launched its activities in 2013, the United Nations Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea (COI) released its final report in February 2014, marking a milestone on the journey for the amelioration of human rights concerns. Because this report vividly depicts, at the UN level, North Korean human rights infringements in an authoritative and detailed manner, the report is having a great impact on the international community.

I hope that this report (published in Korean in 2014 and now in English in cooperation with the International Bar Association (IBA)) will be a stepping stone in improving human rights in North Korea. I also sincerely hope that the paper will act as a starting point for raising concern over North Korean human rights issues in South Korea and in all the countries of the world, bringing more proactive efforts and changing the behaviour of the North Korean authorities.

Finding great satisfaction in the strengthening of international cooperation at the non-governmental level, I would like to show my appreciation to Michael Reynolds, former President of the IBA (2012–2014), who contributed to this work.

I would also like to express my deep gratitude to: Lee Sae-joong, President of the KBA Human Rights Foundation, who gave permission for co-publication of the 2014 report; Min Kyung-han, Director of the KBA Human Rights Committee, who exerted special efforts on behalf of the publication; Lee Sock Bum, Chair of the Subcommittee on North Korean Human Rights; the members of the Subcommittee; the writers; and the staff members in the KBA Human Rights Division.

We Chul-Whan

President, Korean Bar Association

July 2014

The current human rights situation in North Korea is becoming a serious concern all over the world.

As North Koreans are our kin, it is disconcerting to look at the reality of North Korea, which, in terms of its human rights record, has lagged behind other countries, in spite of the attention and calls for improvement by the international community, including the UN.

Moreover, recent political killings and the compulsory detention of a missionary have devastated the international community, as have tragic cases of human rights violations occurring in political prison camps in North Korea.

We sincerely hope that the North Korean people will be freed from poverty and oppression to enjoy a life of human dignity. With this hope in mind, the KBA has published a *Report on Human Rights in North Korea* biennially since 2006 and published the 2014 *Report on Human Rights in North Korea* in February 2014.

I expect that the publication of this report will pave the way for people all over the world, as well as South Koreans, to grasp fully the North Korean human rights situation and seek to improve it.

The KBA Human Rights Foundation continues with its work, paying attention not only to the domestic human rights situation, but also to the improvement of human rights in North Korea. As part of this work, we consider it beneficial to participate in the publication of the report as a co-publisher with the KBA.

I would like to express my great respect and gratitude to We Chul-Whan, President of the KBA, who helped to publish the 2014 report, and to all the writers who collected and organised the data over a long period of time. I also would like to express my gratitude to all the staff members who worked hard on this publication.

I have confidence that this report will provide valuable materials for improving the North Korean human rights situation.

Lee Sae-joong

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July 2014

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Glossary of acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COI	United Nations Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea
<i>COI Report</i>	<i>Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea</i>
CNY	Chinese yuan
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DPRK	Democratic People's Republic of Korea
ECOSOC	Economic and Social Council
EU	European Union
FAO	United Nations Food and Agriculture Organization
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
INHL	International Network for the Human Rights of North Korean Overseas Labor
KBA	Korean Bar Association
KINU	Korean Institute for National Unification
KPW	North Korean won
KRW	South Korean won

MPS	Ministry of People’s Security
NDC	National Defence Commission
NGO	non-governmental organisation
NHRCK	National Human Rights Commission of Korea
NKDB	Database Centre for North Korean Human Rights
OHCHR	Office of the High Commissioner for Human Rights
PDS	Public Distribution System
POW	Prisoner of war
PSA	People’s Security Agency
R2P	Responsibility to Protect
SPA	Supreme People’s Assembly
SSD	State Security Department
The ‘Party’	Workers’ Party of Korea
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Council
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UPR	Universal Periodic Review
USCIRF	United States Commission on International Religious Freedom
WFP	World Food Programme
WHO	World Health Organization

Chapter One

Introduction

1.1 Significance of publication

Lee Sock Bum

The Universal Declaration of Human Rights (UDHR), recognised by many as ‘the most beautiful promise of humanity’, declares in its preamble that acknowledging the intrinsic dignity and the equal and inalienable rights of every human being is the foundation of freedom, justice and peace in the world.

Although the international community, including South Korea, has differing opinions as to the cause and extent of the issue, there is little disagreement today that the human rights situation in North Korea is grave. Human rights problems in North Korea have attracted the international community’s attention, as the reality of the situation has gradually been revealed. In the past, the reality of what was happening was not disclosed in any detail because North Korea’s closed system blocked public access. But the rising number of North Korean defectors since the 1990s has increased the amount of information available about human rights in North Korea, and the reports¹ based on that information have played an important role in informing the international community of the situation in relation to such rights.

As a result, on 21 March 2013, the United Nations Human Rights Council (UNHRC) approved a resolution to establish the Commission of Inquiry (COI). The COI reported extensive research findings produced by its year-long activities to the UNHRC on 17 March 2014.²

In addition to such activities in the international community, in South Korea,³ the legal expert-constituted KBA has published a *Report on Human Rights in North Korea*, which contains research on the North Korean government’s human rights policy and the North Korean human rights situation, in Korean and English every other year since 2006. The reports published until now have been distributed to the relevant domestic and foreign government organisations and research institutes, the embassies of various countries and the UN international human rights organisations, playing a huge role in actively revealing and ameliorating North Korean human rights violations.

In addition, the reports have promoted research on North Korean human rights issues and improvement activities to address them by preserving and accumulating the relevant data, and have suggested legal remedies by analysing and investigating the causes of human rights infringements committed by the North Korean government. This report, unlike the reports published by other institutions, is unique and has great significance in that it is the only one that covers North Korea’s

1 In particular, the *Report of the Special Rapporteur on the Human Rights Situation in the Democratic People’s Republic of Korea* (DPRK), and the UNHRC and General Assembly’s resolutions on the human rights situation in the DPRK accurately depict the past and present North Korean human rights situation.

2 On 27 August 2013, We Chul-Whan, President of the KBA, Michael Kirby, Chair of the COI, and Sonja Biserko, one of the COI members, held a meeting and sought cooperative measures to improve the human rights situation in North Korea. Michael Kirby stated that ‘South Korea’s research activities helped ascertain severe human rights violations in political prison camps in North Korea’ and declared that the KBA’s Reports have been of great assistance for the investigation. He further requested the legal expert-constituted KBA to continue its interest and effort in improving North Korean human rights.

3 Besides the KBA, two other institutions publish Reports on human rights in North Korea – the Korean Institute for National Unification (KINU) and the Database Centre for North Korean Human Rights (NKDB).

human rights policy and law, and it was written by lawyers and published by the KBA. In other words, to ameliorate the North Korean human rights situation in a practical and efficient way, it is essential that objective and trustworthy fact-finding should be performed first, and then the alternatives should be suggested through legal decisions after analysing and evaluating the cause based on the findings. The Subcommittee on North Korean Human Rights, an affiliated organisation of the KBA Human Rights Committee, has performed such practical work until now, and will continue to press harder to enhance the credibility of the reports through the objectivity, fairness and impartiality of the research and evaluation.⁴

1.2 Principles of survey and writing

The North Korean authorities deny that they have ‘human rights issues’, asserting that the advice of the UN, the EU and the rest of the international community, which recommends ameliorating human rights violations in North Korea, is an ‘infringement of its sovereignty’ and ‘fabrication and slander’. In fact, the North Korean authorities are known to have formally rejected the COI’s request for entry and even refused to take receipt of relevant questionnaires.

Under these circumstances, it seems reasonable for the KBA to confirm or investigate the sites of violations in order fully to grasp the human rights situation in North Korea. Since the start of the Kim Jong-un regime, the number of North Korean defectors has decreased and there appear to be signs of human rights improvements, such as a decrease in public executions and an improvement in the food situation. However, it is still possible to grasp the objective reality of the North Korean human rights situation to some degree by cross-verifying the accuracy of the accumulated data obtained by defectors who have entered South Korea and the relevant information leaked from inside North Korea, and by improving the credibility of the obtained data and information through scientific research techniques.

With such points in mind, and in order to publish the 2014 *Report on Human Rights in North Korea*, the Subcommittee on North Korean Human Rights determined the survey principles for how to select the target group, how to conduct the survey and how to write it as follows.

One hundred and three defectors⁵ who have escaped from North Korea since 2011 participated in the survey, but among them, those who recently escaped had priority (except those who had been confined in political or ordinary prison camps) while those who had already testified for the 2012 report were not to be included as subjects. The survey was conducted from October 2013 to January 2014 and was assisted by a specialised research institute, and the writers who belong to the Subcommittee on North Korean Human Rights participated in the part of the survey that is related to their writing.

4 Nevertheless, it must be observed that this report has its limits. It has primarily relied on personal experience and testimonies from North Korean defectors and data that can be obtained in South Korea and from the international community since it is impossible to approach the North Korean government or North Korean residents directly to obtain data on human rights in North Korea.

5 Forty-nine males and 54 females participated in the 2014 survey, including special respondents – four defectors who had worked abroad, three defectors who had been confined in a political prison camp and 17 defectors who had been confined in ordinary prison camps.

The writing of the 2014 report primarily described concrete facts that are identifiable and utilised existing reference books, various statistics, articles, research reports and survey results in order to verify the research results and to supplement objectivity.

The writers, based on concrete facts, recorded the facts derived from the statistics in a balanced way, and endeavoured to suggest legal analysis and evaluation, improvement measures and prospects as recommended by lawyers by comparing international treaties and North and South Korea's constitutions and laws related to human rights – all in order to distinguish this report from other reports.

The *Report on Human Rights in North Korea* contains meaningful data since it accumulates historical records regarding the human rights situation in North Korea. This fifth report has content similar to the 2012 report, but, to avoid redundancy, it does not include the addenda that have continued to be posted up until the fourth report.

1.3 Overview of North Korean human rights situation

The following is an overview of the North Korean human rights situation as understood by the Subcommittee on North Korean Human Rights according to the principles of the survey and writing it has adopted.

Main contents and problems in North Korean human rights law

North Korea defines law as 'the law of a socialist society and of our national sovereignty which performs the functions of a proletarian dictatorship'.⁶ Accordingly, it is necessary to keep in mind this difference in analysing North Korean laws, for North Korea's concept of law and its function are quite different from that of other law-governed countries, such as South Korea.

North Korea also emphasises respect for and compliance with laws. Article 18 of the Constitution, amended in 1992, states that 'the laws of the DPRK are a reflection of the intents and interests of the working people and serve as a basic weapon in state administration. Respect for the law and its strict observation and execution is the duty of all organs, enterprises, organizations, and citizens. The state shall perfect the socialist legal system and strengthen the socialist law-abiding life'. This provision made it compulsory to respect and comply with laws, and embrace in the Constitution 'the socialist law-abiding life', which had been emphasised previously. In addition, law in North Korea is 'a form of expression that reflects the socio-economic system and politics'. Accordingly, analysing the trend of North Korean laws shows changes in politics and the socio-economic system in North Korea. The recent trend of North Korean laws in particular contains a series of remarkable changes during the time the Constitution was amended in 2009.

The 'rules of the Workers' Party of Korea', the 'Ten Principles in Establishing a Party's Monolithic Ideological System' and the amended 'Constitution' have all employed a succession of the revolutionary tradition to justify and emphasise the appropriateness of the succession of the three generations of the Kim family. North Korea deleted the term 'communism' through the amendment

6 *The Selected Works of Kim Il-sung*, Vol 2 (1976), 142.

of Party rules and the Constitution, and claimed to be a North Korean style of socialist state that is distinguishable from other communist or socialist countries by defining the *Juche* ideology and the military-first ideology as North Korea's revolutionary as well as ruling ideology. The Kim Jong-un regime, in particular, considers the military-first politics as its basic political method.

One of the most remarkable trends in recent changes to North Korean laws is the enactment and amendment of laws related to the control of its residents, along with the succession of Kim Jong-un. The improvement of laws related to residential or social control is closely associated with North Korea's maintenance of its system. In the process of establishing the succession of Kim Jong-un, the Criminal Code and the Administrative Penalty Act were revised, and the People's Administration Law was enacted.

North Korea's representative laws relating to human rights for socially vulnerable groups are the Disabled Persons Protection Law, which was adopted as Political Directive No 3835 of the Standing Committee of the Supreme People's Assembly (SPA) on 18 June 2003, and the Elderly Protection Law, which was adopted as Political Directive No 2214 on 26 April 2007. Since then, the Women's Rights Protection Act was adopted as Political Directive No 1307 on 22 December 2010 and, on the same day, the Children's Rights Protection Act was adopted as Political Directive No 1309. In 2012, the Social Security Law was amended to grant a pension to those without economic ability. Also, by signing up to the Convention on the Rights of Persons with Disabilities (CRPD) on 3 July 2013, the North Korean government took visible action to express its will for human rights internationally. The 2014 survey on human rights in North Korea conducted by the KBA shows that only 34 per cent of the respondents replied that they knew about the existence of laws and systems that guarantee the human rights of North Korean residents. This calls into question whether the official laws and systems are properly observed and function as a guarantee of human rights. Also, the criminal laws appear to act as a means to control residents.

In June 2011, *The Kukmin Daily* reported that North Korea had a guidebook for its legal professionals, which is entitled *Guidebook for Workers in Legal Battles*. The guidebook, as an educational or work guide for North Korean workers in legal positions such as an agent of an investigation agency, explains how to interpret and apply the Criminal Code, the Code of Criminal Procedure and the Civil Code through specific cases. Although the guidebook contains important material that helps in the understanding of North Korea's application of its judicial system because it describes the laws in detail in relation to the current legislative system, it is questionable whether the guidebook is followed in practice.

Right to life

North Korea amended its entire Criminal Code on 29 April 2004, and created a provision specifying that 'the state shall impose criminal liability only for the crimes specified in the Criminal Code' by Article 6, succeeded by the current Criminal Code amended on 14 May 2012, as Political Directive No 2387 of the Standing Committee of the SPA . It also declared the principle of legality by deleting the provision set out in Article 10 of the previous Code that allows analogical interpretation. In addition, capital punishment is imposed within certain limits on criminals committing five specific crimes:

1. plotting the subversion of the state (Article 60);
2. terrorism (Article 61);

3. treason against the fatherland (Article 63);
4. treason against the people (Article 68); and
5. premeditated murder (Article 266).

However, the amended Criminal Code of 2009 allowed capital punishment for the crime of disloyal destruction for anti-state purposes (Article 65) in Article 64, and the current Criminal Code also imposes capital punishment for smuggling or trafficking drugs (Article 208), expanding the scope of application of capital punishment. However, among the seven crimes mentioned above, five are political crimes, except premeditated murder and smuggling or trafficking drugs. Moreover, the language of the provisions regarding the five crimes is ambiguous.

The elements of a crime that constitute capital punishment under the Criminal Code are ambiguous and vague, and these elements are drastically expanded by an Addendum to the Criminal Code, allowing a sentence of death for almost every crime. In reality, however, crimes that are not subject to capital punishment under criminal laws may be subject to arbitrary execution by decrees. Public or secret executions take place with or without formal trials, maximising residents' fear. The seriousness of violations of the right to life in ordinary and political prison camps, which are vulnerable places for human rights, needs no emphasis. In particular, since the Kim Jong-un regime came to power, the increase in public executions carried out in a cruel manner has been a matter of grave concern.

Torture and other cruel, inhuman or degrading treatment or punishment

In a 2013 North Korea Human Rights Resolution, the UN established the COI, deploring the grave, widespread and systematic abuse of human rights in North Korea, in particular the use of torture and labour camps against political prisoners and repatriated citizens of North Korea. Torture and inhuman treatment are also included in the range of the COI's investigation. The COI submitted its *Report of the commission of inquiry on human rights in the Democratic People's Republic of Korea* and the *Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea* in February 2014. These reports noted that the use of torture is an established feature of the interrogation process in the DPRK, especially in cases involving political crimes.

The 2014 survey on North Korean human rights, published by the KBA, reconfirmed that torture or cruel, inhuman treatment has been conducted by the North Korean authorities. It was described in the UN North Korean Human Rights Reports and COI reports on human rights in North Korea. The North Korean authorities apply systematic, continuous, widespread repression and political violence to their own residents at security agencies such as the State Security Department (SSD), the People's Security Agency (PSA) and detention facilities such as political prison camps (*kwanliso*) and ordinary prison camps (*kyohwaso*). North Korean residents are not protected from 'torture and other cruel, inhuman or degrading treatment or punishment' by North Korea.

The 2014 survey on human rights in North Korea confirms that the North Korean government implements torture and other cruel, inhuman or degrading treatment or punishment during the pre-trial process for an accused at the SSD or police station, or during their imprisonment at detention facilities. The survey reconfirms the facts pointed out by the Reports on 'Human Rights in North Korea' published by the KBA in 2006, 2008, 2010 and 2012, and shows that the situation has not

improved much each year. The KBA results are in accord with the UN North Korea Human Rights Reports, which show that torture and other cruel, inhuman and degrading treatment or punishment continue at a worrying level in North Korea.

The North Korean authorities have not tried to reduce the amount of torture or other cruel, inhuman or degrading treatment or punishment, despite the international community's concern and pressure for human rights improvement. The torture and other cruel, inhuman or degrading treatment or punishments that occur gravely, widely and systematically with the support of and under the oversight of the North Korean authorities violate Article 5 of the UDHR, Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment ('Convention against Torture'). In order to end torture and inhuman or other cruel, inhuman or degrading treatment or punishment in North Korea, international organisations such as UN need to urge the North Korean authorities to stop human rights violations that occur widely at security agencies and detention facilities by presenting a specific human rights violation case and evidence to the North Korean authorities.

Freedom of religion and belief

North Korea also guarantees freedom of religion through its Socialist Constitution (amended and supplemented in 2012). Article 68 of the Socialist Constitution states: 'Citizens shall have freedom of religion. This right shall be guaranteed by permitting the construction of religious buildings and the holding of religious ceremonies. Religion shall not be used in bringing in outside forces or in harming the state and social order.' In response to the international community's request for North Korea to guarantee freedom of religion, the North Korean authorities claim that the country allows freedom of religion under its Constitution, laws and the policies based on this article. However, the international community considers North Korea as the worst country for persecuting religion. The United States Commission on International Religious Freedom (USCIRF) in its *Annual Report 2013* designated North Korea as a country of particular concern and evaluated the state of its religious freedom. The report said that 'the government tightly controls all religious activity and perpetuates an extreme cult of personality venerating the Kim family as a pseudo-religion'.

The North Korean authorities explain religion as a tool of imperialistic intrusion that advocates exploitation by the ruling class in a hierarchical society. For example, North Korea's *Dictionary of Philosophy* mentions that 'religion historically was seized on by the ruling class to deceive the masses and has been used as a means to exploit and oppress, and that in modern times, religion has been used as an ideological tool for aggression by imperialists against the peoples of underdeveloped countries'. However, North Korea began using religion politically in its foreign relations in the late 1980s, while maintaining a 'parallel policy' that in reality continues to persecute religion. The North Korean authorities have cultivated religious organisations accredited only by the government and state-controlled religious people and have used them in foreign relations to seek diplomatic and economic benefits. Thus, religion in North Korea functions only as a political tool of considerable utility in foreign relations, but not as something with a function of its own.

Arbitrary detention

According to the Code of Criminal Procedure, in principle, compulsory measures such as arrest and detention cannot be used in the investigation stage (Article 143) but should be used in the pre-trial stage. The Code of Criminal Procedure specifies that investigation is the work of an investigator detecting a suspect and handing him or her to pre-trial (Article 10). The investigator who detects a suspect should immediately transfer the case to pre-trial officials, and collecting evidence should be limited to cases where it cannot be delayed (Article 140). The result of the 2014 survey conducted by the KBA shows that North Korea rarely applies procedural rules regarding detention of a criminal during the investigation and pre-trial stage. Most criminals were investigated while being detained after arrest, and they did not receive arrest warrants or any document showing the detention decision. Moreover, a meeting with a lawyer was rarely helpful, the detention period prescribed in law was not upheld and criminals were arbitrarily released through bribes. Thus, the most basic of human rights of suspects or defendants were not guaranteed.

The 2014 survey appears to be very similar to that of 2012. Nothing has changed from the previous human rights situation: custodial investigations and trials have still been customarily practised, and the right to a lawyer during the investigation and pre-trial stage has still existed only in law.

Freedom of opinion and expression

The 2014 KBA survey on human rights in North Korea shows that freedom of opinion and expression in North Korea have not advanced to cover the topics discussed in South Korea (freedom of assembly and demonstration, freedom of election, freedom of teenagers' expression, freedom of expression of inmates, soldiers, government employees, and teachers, and freedom of artistic activity) and occurs under strict control, and that freedom of opinion and expression in North Korea is only recognised as a formality but not allowed in reality.

Considering that the main way for North Koreans to encounter news from South Korea and overseas is through mediums such as DVDs and television, efforts on behalf of the KBA to improve the human rights of North Koreans should occur through these mediums that are accessible to them and should lead to offering views on formulating North Korean human rights laws. Sending flyers by balloon to North Koreans – something that has happened in the past – or similar methods cannot be realistic.

It is hoped that this survey regarding North Koreans' freedom of opinion and expression will be helpful to the improvement of human rights and support for North Koreans, and it is also hoped that research, investigation and record-keeping regarding North Korea's human rights condition will continue in the future.

Issues of coercive and involuntary disappearance

The Report on Human Rights in North Korea published by the KBA has dealt with coerced and involuntary disappearance issues in North Korea since 2008 through the survey on human rights in North Korea. In the 2014 survey on human rights in North Korea, such coerced and involuntary disappearance issues were investigated, and it confirmed that disappearances at an extensive and serious level still occur. The coerced and involuntary disappearances conducted by the North Korean

authorities can raise problems under international law or all kinds of agreements that North Korea has signed, but they are also illegal under North Korean law. Through reviewing the survey results, it can be confirmed that enforced and involuntary disappearances have remained a severe human rights issue in North Korea. Such enforced and involuntary disappearances are mostly conducted by state agencies and the main purpose behind them is social control through fear.

Meanwhile, if we look at the survey itself, there is the possibility that North Korean defectors may be considered disappeared persons in that enforced and involuntary disappearances are very rarely witnessed.

However, comparing the survey results from 2008 onwards shows that disappearances have been occurring consistently and extensively. Of course, it cannot be ruled out that some of those disappeared may have been North Korean defectors, considering that the North Korean defectors already settled in South Korea were major respondents to the survey. However, it can be viewed that a majority of the disappeared persons are the victims of actual disappearances committed by the North Korean authorities.

Discrimination and human rights of socially vulnerable groups

North Korea joined the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in February 2001, and submitted its initial report⁷ on implementing the Convention to the UN in September 2002. In this report, North Korea declared: ‘Discrimination against women has been abolished through a long history, and sex equality being not confined by simple equality, the policies and legislation of the State reflect the concept of attaching more importance to women.’ On 22 December 2010, the Standing Committee of the SPA announced the Women’s Rights Protection Act’ and the Children’s Rights Protection Act. The content of these laws has significance as they bring together the scattered regulations regarding women’s and children’s rights as a single law and protect the rights and benefits of women and children in every field. Although the Women’s Rights Protection Act has been enacted, North Korean women continue to suffer agonies relating to ‘general discrimination against women’, ‘inequality by systematic problems’ and ‘extreme life hardships by shortage of food’.

North Korea promulgated the Children’s Rights Protection Act consisting of six chapters and 62 articles on 22 December 2010. It compiled the laws related to children, which were scattered among the Socialist Constitution, the Pre-school Child Care Act, the Family Law, the Socialist Labour Law, the Nationality Law and the People’s Health Law. Compared to the previous laws, there are new regulations that can strengthen the enhancement of children’s rights in the Children’s Rights Protection Act. Children’s right to life and development, their right to petition and appeals, respect for children’s personalities and protection of child asylum are new provisions that were not regulated in the previous laws.

North Korea joined the Convention on the Rights of the Child (CRC) in September 1990 and submitted its first state report on the CRC in February 1996, the second state report on the CRC in May 2002 and the combined third and fourth state reports in December 2007. In the combined third

7 The second periodic report on the performance of CEDAW was due to be submitted to the Committee on the CEDAW, but as at January 2014, it had not been submitted.

and fourth reports, North Korea insists on the government's policies regarding children, which were enacted during the report period, conforming to the principles and demands of the CRC, and it also stated that it either adopted new laws or modified and complemented its existing laws regarding fulfilment of the Convention.

In April 2007, North Korea, which has a rapidly ageing population, enacted the Elderly Protection Law to ensure the health and life of the elderly. As for the law's contents, it imposes the primary duty to support older people on children and others who are obligated to support family, and the law provides for the state's duty to support only in a supplemental way that is limited to workers who have no family support provider and cannot live on their own.

The survey on how the Elderly Protection Law is applied in practice shows that virtually none of the measures to provide for support and to ensure health for the maintenance of basic living were implemented, not to mention those provisions to promote cultural life and social activities under that law. Ultimately, if children do not take care of their parents, they are unlikely to be supported by the state, and there is no means of maintaining a living in any other way. Even amidst such a situation, discrimination that bestows special favours on certain core class members such as persons of merit or war veterans was the only thing confirmed by the survey. Above all, it raises a serious concern that the right to life of a vulnerable group – that is, the elderly – is directly implicated when the pension system under the Elderly Protection Law, Social Security Law, and Socialist Labour Law as well as the free medical service system boasted by North Korea all fail to function properly.

According to the Report on Human Rights in North Korea, previously published by the KBA, North Korea has not improved special considerations or measures for persons with disabilities, despite the enactment of the Disabled Persons Protection Act in 2003. However, North Korea started taking visible actions by sending its very first team to the Paralympics in August 2012, establishing the Chosun Disabled Children's Recovery Treatment-Oriented Facility for treatment and education of children with disabilities, and launching the Chosun Hearing Impaired Recovery Treatment-Oriented Facility, which appears to be a welfare facility, in March 2013. In addition, North Korea signed the CRPD on 3 July 2013 and amended the Disabled Persons Protection Act to conform to the CRPD on 6 December 2013. Although these measures can be regarded as North Korea's acknowledgment of worldwide criticism and its effort to obtain international aid, it can also be considered its most notable effort for improvement since the enactment of the Disabled Persons Protection Act.

However, the survey of the specific application of the legislative provisions revealed no significant improvement compared to previous years. The 2014 survey could not reflect the revised Disabled Persons Protection Act as it was still undisclosed, and inevitably was only able to analyse the current application of legislative provisions based on the previous Disabled Persons Protection Act.

North Korea is a hierarchical society that disadvantages individuals based on their family background. The North Korean government has conducted a nationwide family background research project for the reason of classification and separation of anti-party individuals and counter-revolutionaries. The guidelines for the family background determination were socio-political status and role, political tendencies, participation in reactionary groups, family origin and background. Based on the results of this nationwide research, the North Korean government categorised and controlled its civilians according to the three strata and 51 classifications: the core class (core stratum); the basic class

(agitated stratum); and the complex class (wavering and hostile stratum). People who are potential threats to the regime are categorised as belonging to the complex class, which is strictly monitored and discriminated against. Such family background is hereditary and passed down to the next generation. Thus the whole of society regards discrimination based on family background as a destiny.

The 2014 survey on human rights in North Korea conducted by the KBA has once more verified the North Korean government's continuous violation of fundamental human rights through discrimination according to family background. Discrimination based on family background has become well institutionalised. The North Korean government excludes persons with a disadvantaged family background from joining the Party, politics and the army. They are discriminated against in education, joining the Party and the army, employment, marriage, promotion, housing and enforcement of the law.

However, the collapse of the planned economy and the rise of a market economy in North Korea have resulted in a partial breakdown of this discriminatory system. With money, even a person from a disadvantaged family background will not be discriminated against in education, joining the Party or military, employment, marriage, promotion or housing. However, the North Korean government continues to violate basic human rights by maintaining its systemised discrimination based on family background. It must put an end to discrimination based on family background and offer equal opportunities to all residents regardless of their state-assigned social class, as recommended by the international community.

Right to food

A violation of the right to food occurs when (1) an individual is suffering from starvation and (2) the state either institutionally denies the person's effort to improve his condition or fails to take appropriate measures to ensure the realisation of this right, even when the state institutionally recognises the person's effort. If the state uses all of its efforts but still cannot solve the person's suffering from starvation, it would be beyond human control and thus cannot be considered a violation of the right to food.

According to the 2014 survey, 89 out of the 103 respondents exhibited various opinions regarding the causes of and solutions to the food shortage. Twenty-three respondents (22.3 per cent) suggested that farms be privatised and the system be changed into one that pays wages for labour. On the other hand, 37 respondents (35.92 per cent) answered that they need reform and open market policies, not transformation of the system itself. According to the survey, the rate of responses suggesting that in order to resolve food shortage, corruption (which is the cause of food shortages) should be eradicated, was relatively low. That may be because the level of understanding that defectors have regarding the structure of food diversion is not high.

However, it is true that North Korea operates a systematic contradiction by establishing a food distribution system whereby the privileged classes, including the authorities and the military, have been diverting food from the vulnerable class, including farmers. Thus, if the North Korean authorities do not prevent food diversion being committed by the privileged class, the food situation of North Korean residents, including the vulnerable class, will not be improved. Thus, when South

Korea and the international community provide food to cover the shortage, they should carry out monitoring of its distribution to the vulnerable class among North Korean residents.

Human rights in detention facilities such as political prison camps (kwanliso) and ordinary prison camps (kyohwaso)

In general, people subject to detention in political prison camps under the provisions punishing political crimes are usually those convicted as political criminals; however, a significant percentage of prisoners are detained under collective punishment. This survey confirms that one person who attempted an escape to South Korea was detained in No 15 Yoduk camp and charged with treason against the people (treason against the fatherland) and another person was imprisoned in No 18 Bukchang camp in South Pyongan Province because he disgraced the reputation of the Party. Also, there was a case where a person who ultimately escaped to China owing to financial difficulties was sent back to North Korea and imprisoned in Yoduk camp.

Although North Korea continues to deny the existence of political prison camps, human rights violations in political prison camps encompass all types and methods. As a member of the UN, North Korea is obligated to obey the human rights regulations of the UN Charter. Also, as a member of the ICCPR and CEDAW, North Korea has violated the ‘prohibition of torture’ (Article 7), the ‘prohibition of forced labour’ (Article 8), ‘arbitrary detention’ (Article 9(1)), ‘the right to trial’ (Article 9(4)) and ‘the right to humanitarian treatment’ (Article 10) under the ICCPR. Despite the provisions of the North Korean Constitution, Criminal Code and procedures that guarantee people’s liberty and security, they are not practised in the actual execution of the law. Neither international regulations nor North Korean regulations allow harsh treatment, forced labour and severe conditions in ordinary prison camps that cause many deaths and can be considered as a means of criminal punishment. In other words, they have gone far beyond the limitations of tolerance. The violation of human rights, humanitarian standards and human dignity in detention facilities including political prison camps and ordinary prison camps deserves to be criticised. Therefore, all civilised states, international organisations, NGOs and individuals shall recognise that the fulfilment of universal values of human rights will be realised when political prison camps are dismantled and improvements are made to human rights in detention facilities, and diplomatic efforts should be continued until they bear fruit.

Exploitation of labour inside and outside North Korea

Chapter V, ‘Basic Rights and Duties of Citizens’, of the Socialist Constitution provides rights and duties regarding labour. The specific provisions regarding such rights and duties are as follows: Article 70 states that ‘citizens have the right to work. All citizens who have ability to work may choose occupations according to their wishes and skills and are guaranteed stable job position and working conditions. Citizens work according to their abilities and are paid in accordance with the quantity and quality of their work’; and Article 83 provides that ‘work is the noble duty and honour of a citizen. Citizens shall consciously and conscientiously participate in work and strictly observe labour rules and working hours’, recognising labour as a right and at the same time a duty.

Taking these constitutional provisions as a whole, it may be deemed that the North Korean citizens' duty to provide labour according to the demands of the state based on the socialist system is perfectly acceptable. However, demanding labour by forced means against citizens' wills is deemed exploitation of labour even though certain provisions of the Socialist Constitution specify labour as a duty because Article 70 of the Constitution guarantees the right to work and the right to choose occupations in accordance with wishes and skills.

Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which North Korea signed in 1981, earlier than South Korea, provides 'the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right' and Article 7 stipulates that every worker has the right to fair remuneration for labour. According to the aforementioned international covenant, labour mobilisation conducted in North Korea falls under labour exploitation in that the workers mobilised are not paid and North Korean citizens are not able to exercise freedom to choose work.

The KBA conducted a survey on exploitation of labour in North Korea in 2014, following its survey in 2012. Based on this survey, North Korea still imposes a duty of labour on North Korean residents widely in the form of labour mobilisation. It is confirmed that North Korea has been exploiting the labour of its citizens on the grounds that they hardly pay the cost of labour and the labour provided by the North Korean citizens is not based on concerns regarding their abilities or choice.

The following points have been confirmed with respect to sending workers overseas:

- workers sent abroad cannot work freely overseas;
- the North Korean government and the countries to which they are sent assign the jobs;
- workers sent abroad encounter exactions from their wages, embezzlement, poor working conditions and restrictions on movement and communications.

How does this reality measure up if one appeals to international labour standards, the Socialist Constitution and the Labour Law?

North Korean workers sent abroad involuntarily pay over large sums of money from their wages to the North Korean government. This control by the North Korean government is a serious human rights violation. In addition, failure to inform workers of matters regarding wages such as compensation paid for their labour is an affront to human dignity and a violation of the labour right to compensation and adequate working conditions. More specifically, it is against Article 7 of the ICESCR, which provides for the right to fair wages and equal remuneration for work of equal value. As for labour rights, the North Korean government guarantees labour rights by law at a level no less than international standards. Article 12 of the Socialist Labour Law specifies that 'protection of the worker's labour through the right combination of labour and rest is a natural demand of socialism, which values people the most'. Article 16 of the Socialist Labour Law provides for an eight-hour working day. Article 71 of North Korea's Constitution provides that North Korean citizens have the

right to rest, explicitly specifying the right to get paid for their labour and to take a rest. Accordingly, salary exploitation and poor workplace conditions possibly violate the Socialist Constitution and the Labour Law.

Restrictions on freedom of movement

North Korea has restricted freedom of residence and movement through various systems, such as rationing, compulsory job placement, personal identity registration and others. However, international pressure caused North Korea to amend its Socialist Constitution in September 1998, stipulating for the first time that ‘citizens have freedom of residence and travel’ under Article 75. In spite of this constitutional amendment, North Korea, fearing criticism of the North Korean regime owing to information exchanges among residents, has strictly limited freedom of residence and movement institutionally and practically. Article 12(3) of the ICCPR specifies that ‘the aforementioned rights [rights regarding freedom of movement] shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant’, enumerating the grounds for restrictions on freedom of movement. However, the reasons North Korea uses to restrict freedom of movement, apart from restrictions on freedom of movement in some North Korean-controlled areas, exceed the scope of the grounds for restrictions permitted in the ICCPR, resulting in comprehensive and excessive restrictions on freedom of movement.

According to the survey conducted by the KBA, when 103 respondents were asked ‘do North Korean residents hope to move to another place or to travel?’ 89 (86.4 per cent) amounting to a supermajority answered ‘yes, I hope to do so’. In addition, when they were asked ‘Did you see or hear of people who wanted to go to South Korea when you were in North Korea?’, 59 (57.3 per cent), more than a simple majority, answered ‘yes’, 21 (20.4 per cent) said ‘no’ and 23 (22.3 per cent) answered ‘I don’t know’, which shows that restrictions on freedom of movement in North Korea are excessive. When asked ‘what do you think is the most severe human rights infringement in North Korea, looking back on those times you were in North Korea and throughout the time you have been in South Korea?’, one of the respondents answered ‘In North Korea, people are not allowed to move anywhere without a travel certificate, and even if they have the certificate, they are under police surveillance wherever they stay. Also, innocent people are taken away to places from which they can never come back for verbal miscues. These are the most severe human rights violations happening in North Korea’.

Reality of human rights of North Korean defectors abroad

From the late 2000s, the number of escapees from North Korea or defectors in China has been decreasing, and the defectors in China are estimated to be around 10,000 to 20,000. The Chinese government has denied defectors refugee status and forcibly repatriated them to North Korea, treating them as illegal border crossers (illegal sojourners) based on ‘the Mutual Agreement for the Exchange of Escapees or Criminals between North Korea and China (Extradition Agreement)’ entered into with North Korea in 1960, ‘the Mutual Cooperation Protocol for the Work of

Maintaining National Security and Social Order in the Border Areas’ entered into in 1986 and ‘the Regulation of Jilin Province on Frontier Administration’, enacted in 1993.

The obligation to repatriate defectors to North Korea is imposed on China by the bilateral treaty between China and North Korea. However, performance of the obligation violates *jus cogens* under international law, which makes the treaty null and void. In conclusion, forcible repatriation by China is a violation of international law. The principle of *non-refoulement* under the Convention and Protocol Relating to the Status of Refugees (the ‘Refugee Convention’) and the prohibition of torture and the principle of *non-refoulement* under the Convention against Torture are fundamental principles of international human rights laws. That human rights laws are superior to all other international laws is one of the best-known *jus cogens* in international law. A treaty is void if it conflicts with a peremptory norm of general international law. If a treaty is in conflict with a peremptory norm when it is entered into, it is void. If a new peremptory norm of general international law emerges, any existing treaty that is in conflict with that norm becomes void and terminates (Articles 53 and 64 of the Vienna Convention on the Law of Treaties).

The number of defectors has consistently reached around 3,000 a year since the mid-2000s, then rapidly decreased to 1,500 a year from 2012. This decrease is thought to be attributed to the following: a strong official warning, newly issued after Kim Jong-il’s death on 17 December 2011, to the effect that three generations in a family would be eliminated if anyone defected; tightened border controls by installing barbed wire fences and surveillance cameras along the major defection routes; and a decline in the number of North Korean residents who attempted to escape from North Korea owing to the partial resumption of official grain rations to discourage defections.

In line with the 2012 survey, the 2014 survey shows that recent defections have been for political reasons or family reunion purposes rather than for economic reasons. The characteristic features of recent defections can be summarised as follows: group defections, especially defections by families; an increase in defectors heading directly to South Korea thanks to the establishment of systems set up for such defectors; shorter defection duration (meaning less time between fleeing North Korea and arriving in South Korea); and defection as a common occurrence in North Korea.

With respect to defection routes, most defectors went through Thailand, and Laos has begun to emerge as a new route for defection. The condition of detention facilities in third countries and the human rights situation there seem to have gradually improved. However, human rights violations such as sexual abuse by brokers or police have still not been rooted out. North Korean defectors who have been forcibly repatriated are reported to be receiving lighter punishment compared with past cases. However, the possibility of sampling error should not be discounted, which requires a careful approach to the survey results.

Human rights problems arising from relations between North and South Korea

Issues regarding abductees, prisoners of war (POWs) and separated families due to the division of the Korean peninsula and the Korean War have not yet been resolved. Even though issues with respect to long-term prisoners and separated families were handled at the humanitarian level to some extent during the June 2000 Inter-Korean Summit, efforts to resolve these issues have also been rather sporadic. In the case of abductees and POWs, they were captured in North Korea against their will

and have not been allowed to meet their families and even communication with them has ceased. In addition, they have been subjected to forced labour under poor conditions based on their social class and have been unfairly discriminated against.

Abductees and POWs raise not only concerns from a humanitarian perspective but also issues of fundamental human rights. Furthermore, abductees and POWs are the victims of crimes against humanity and civilisation, and fact-finding investigations should be conducted to restore the infringed human rights of these victims. Considering that POWs are citizens who made sacrifices for the nation, the nation should take full responsibility for them; and as they are mostly aged, issues involving POWs need to be resolved urgently. This 2014 Report on Human Rights in North Korea basically continues the general coverage of the 2012 Report while supplementing the existing research with materials that reflect changes after 2012. Also, information concerning returnees from Japan and separated families has been added. The 2014 Report focuses on detailed fact-finding about Korean War and post-war abductees, returnees from Japan and POWs by organising research data from the survey on human rights in North Korea conducted by the KBA in 2014 for these groups.

North Korea has been forcibly detaining abductees and POWs against their will. And North Korea's closed system has attributes that produce severe human rights violations in the form of the discriminatory treatment that they experience. In addition, to resolve the issues of North Korean human rights, international cooperation is required. Even though the South Korean government strives to improve North Korean human rights, the issues are complicated and cannot be resolved by South Korea alone. Therefore, issues of abductees and POWs should be handled effectively through cooperation among the South Korean government, civil society and the international community by allocating each role strategically and utilising proper methods – direct, indirect, public and private – whatever is necessary or useful in hoping for an effective resolution of the problem of abductees and detained POWs.

Chapter Two

North Korea's Human Rights Policy

2.1 North Korean government's perception of human rights

Hwang Jae-ok

In the international community, no country is free from human rights issues. But among the nations, the North Korean human rights situation is very poor and the degree of human rights violations is severe. In April 2012, the Kim Jong-un regime was officially launched. The Kim Jong-un regime is strengthening social control for the purpose of solidifying the leadership and stabilising the country. Above all, the regime deals with the issue of North Korean defectors as vigorously and hyper-sensitively as the Kim Jong-il regime. Considering that North Korea lacks the resources and finances to spend on improving the human rights of its residents, it is anticipated that the Kim Jong-un regime, too, will not be able to improve the residents' human rights, such as the right to survival, life, health, food and freedom.

Meanwhile, the international community has shown great interest in the improvement of North Korean human rights. During the Kim Jong-un regime as well, the international community approaches the North Korean human rights issues at the UN, regional and country level. The North Korean authorities, nonetheless, do not show any willingness or effort to improve their human rights situation. They ignore or refuse the international community's raising of human rights issues, contending instead that such actions by the international community amount to intervention in their domestic affairs and encroachment on their independence. Accordingly, the international community's critical attention and raising of concerns regarding the North Korean human rights situation will be ongoing unless the North Korean authorities demonstrate the will to make improvements.

The reason is that there is a huge gap between the logic of the international community, which raises concerns regarding the North Korean human rights situation, and that of the North Korean authorities, which oppose such actions by the international community. Whenever the international community raises concerns regarding human rights issues with the North Korean authorities, they resist, contending that the international community applies a 'double standard'. That is because the concept of human rights perceived by the North Korean authorities is different from that perceived by the Western international community. With the logic of the West versus Asia and universalism versus relativism, North Korea has responded to the Western logic of human rights. In addition, North Korea as a socialist state is asserting the Marxist human rights and 'our style of human rights', which is expressed as the opposite of universal human rights and escalates into the issue of applying a 'double standard' to human rights. Such differences between North Korea's perception of human rights and that of the international community cause North Korea to oppose and resist the Western concept, which is the universality of human rights. The starting line for North Korea's concept of human rights is considering state autonomy, the rights of the group and duty to the Supreme Leader (*surjong*) as superior to the rights of individuals.

The North Korean authorities' perception of human rights, which opposes the concept of universal human rights, comes from the uniqueness of the North Korean system. North Korea's concept of human rights is basically founded on the Marxist concept of socialist human rights and, at the same time, adheres to cultural relativism in order to counteract the West's concerns over human rights issues. Since Western culture and Asian culture are different, their concept of human rights cannot be the same.

Furthermore, because of its unique political and cultural characteristics, North Korea's concept of human rights even differs from that of China, which is also a socialist state in Asia.

North Korea does not perceive human rights as inherent rights of the individual, but understands them in the context of a state and collectivism, and a trinity made up of the Supreme Leader, a party and the public. Such a perception of human rights starts from North Korea's collective political culture, which was formed by the *Juche* ideology, the revolutionary leadership, the theory of socio-political being and the large socialist family. In other words, as a totalitarianism society under the monolithic guidance system controlled by a sole ruling ideology, North Korean society opposes the West's concerns regarding human rights issues by using the logic of 'our style of human rights'.

In order for the international community's efforts to improve North Korean human rights to be effective, understanding how the North Korean authorities and their residents, which are the parties directly involved, perceive human rights is a priority. That is, there must be an understanding as to the theoretical basis of North Korea's concept of human rights, which is the foundation for its opposition and resistance to the international community's suggestions regarding human rights issues. Understanding human rights as perceived by North Korean residents is also necessary because they are the victims of the human rights violations by the North Korean authorities and also the beneficiaries of the improvement of North Korean human rights in the future. It is from these understandings that it would be possible to find an effective way to improve human rights in North Korea.

Theoretical basis of human rights concept of North Korea

HUMAN RIGHTS CONCEPT OF NORTH KOREA AS A SOCIALIST STATE

North Korea perceives and defines human rights from the viewpoint of the Marxist theory of human rights because ideologically it supports the socialist system. Karl Marx regarded human rights not as a personal matter, but as that of a group. This is identical to North Korea's perception that puts a group's rights above an individual's rights. North Korean society, which has its basis in collectivism, does not acknowledge an individual's independence based on the collectivism in which a group's interests take priority over an individual's inherent and absolute rights.⁸

The 'Workers (*geunroja*)', an organ of the General Federation of Korean (*Chosun*) Trade Unions, defines human rights as follows: 'People's freedom and rights under socialism are to realize the interests of the society and a group, and are to be realized within them. Only such freedom and rights can be genuine freedom and rights of human beings, which are collective and social by nature.'⁹

The *Workers' Newspaper (Rodong Sinmun)*, the official newspaper of the Workers' Party of Korea (the 'Party'), also defines human rights as follows: 'The Great Leader Kim Jong-il said that "collectivism is a natural demand of a human being".' Accordingly, forming a social group and taking group action

8 Jang Myung-bong, 'North Korean Human Rights in Legal and Institutional Aspects'; Choi Sung-chul, 'Understanding of North Korean Human Rights' (Headquarters of North Korean Human Rights Improvement 1995), 268–273.

9 Kim Chang-ryeol, "Human Rights Advocacy" Claimed by Imperialists and its Anti-Revolutionary Nature' (Geunroja: Geunroja Publishing Company 1990), 96.

is a human being's method of survival, and only a socialist society founded on collectivism is the most advanced society in accord with a human being's autonomous nature.¹⁰

North Korea, which finds a human being's nature and method of survival in collectivism, emphasises its residents' duties rather than rights, claiming that the North Korean regime is the most 'advanced society'. As shown in Table 1, the absolute majority (73.8 per cent) of North Korea's defectors (hereinafter 'defectors') who responded to the 2014 KBA survey on human rights in North Korea replied that North Korean society puts a group above an individual.

Table 1: Do you think a 'group' takes priority over an 'individual' in North Korea?

Response	Number of respondents	Percentage (%)
Yes	76	73.8
No	26	25.2
I don't know	1	1.0
Total	103	100

Karl Marx recognised that man is a species-being, fulfilling self-realisation in social groups, and that liberalism and capitalism hinder man from becoming a social being. In other words, he stressed that man should realise that he or she is a species-being belonging to a collective group, that is, the human species. As such a species-being, man can realise that his or her power is derived from groups, not from individuals. And a human being who recognises social power considers his or her own power as the same as social power, not separating the two. According to Marx, only reaching such a state of mind can bring complete human liberalisation.¹¹

Marx said that human rights do not exist apart from a state because human rights are not about an individual but about a group, and are originally related to a group, especially a state. Furthermore, he said that human rights were mere fictions if not protected by a state. Such conceptualisation of the nature of society excluded the existence of human rights as individual rights that have their foundation on a natural status that existed even before a state was created. Marx considered that human rights could not cast off their hierarchical character due to their nature on the premise that no human right was abstract because a human being could not be free from a hierarchical system nor be abstract due to the hierarchical character of human society. Regarding a human as just a product of social relations, he also vigorously denied inherent human rights, defining the concept of inherent human rights as a product of idealism.

The Western theory of human rights originated from and was shaped by the relationship between an individual and the state. Human rights possess the characteristics of both absoluteness and universality in a sense that human rights cannot differ depending on the state or the individual. Whether the power of the state should be extended or limited in guaranteeing the rights of an individual has been the key issue in the development process of the Western theory of human rights. However, Marx pointed out that the Western theory of human rights rather impeded human liberalisation. He regarded human rights as only the product of the social relations that generated human rights, and denied the human rights that have their ground in ideology. Such an idea by Marx that human rights were not for an individual but for a group is different from the Western theory of human rights.

10 'Collectivism is Life of Socialism' *Workers' Newspaper (Rodong Sinmun)* (19 September 2007).

11 Karl Marx, *Karl Marx: Selected Writings* (David McLellan ed, Oxford University Press 1977), 57.

On the other hand, Marx sought the human liberation that is a logical consequence of freedom, which means that he did not criticise freedom but regarded it as grounds to criticise honourable human rights – private ownership. Because of this, the concept not of ‘freedom *of* ownership’ but of ‘freedom *from* ownership’ has arisen, reaching Marx’s conclusion, which insists upon human liberation from all kinds of hierarchical societies, not the selfish liberation of an individual from a feudal society.

As an extension of the Marxist theory of human rights, North Korea defines human rights as follows:

‘Human rights are not good fortune from the heavens and certainly not presents by international organizations or other countries. In the true sense, human rights are realized when each state guarantees the human rights that its people deserve to enjoy in all areas of social life, such as politics, the economy, and culture in a legal, systematic, and material way, not by the “pressures” or “instructions” of any foreign countries.’¹²

As the Marxist discourse on human rights has been entirely different from the reality of socialist states, North Korea’s claim stated above also differs considerably from the reality of the North Korean system. Although North Korea’s Constitution and laws specify that human rights shall be guaranteed, the answer to whether human rights exist and are fulfilled in reality is negative as shown in Table 2. A figure of 74.7 per cent of the defectors who participated in the survey replied that their human rights were violated. Yet these same respondents said that North Korea also guarantees fundamental rights under law, just as Marx supported freedom of speech and the press, universal suffrage and freedom of assembly and association.

Table 2: When you were in North Korea, did you ever think that your human rights were violated?

Response	Number of respondents	Percentage (%)
Yes	77	74.7
No	22	21.4
I don’t know	4	3.9
Total	103	100

Table 3: Do you know that North Korea has laws and institutions that guarantee human rights? If so, please explain what you know.

ID	Response
ID 001(2014)	I know that correspondence should be kept secret, human rights should not be violated, and human trafficking is prohibited.
ID 011(2014)	I know that the Constitution forbids hitting an innocent person.
ID 014(2014)	I know that the citizens’ duty and rights are to guarantee human rights.
ID 015(2014)	I know that the citizens’ rights and duty are to guarantee human rights.
ID 020(2014)	There are such laws and institutions, but each person is treated differently according to his or her class.
ID 022(2014)	I know some laws and institutions related to the respect for other people and others’ property.

12 ‘In Support of True Human Rights’ *Workers’ Newspaper* (24 June 1995).

ID 025(2014)	I know that the Constitution and the security agencies guarantee human rights.
ID 026(2014)	They say that there are human rights. But in reality, they do not guarantee human rights.
ID 027(2014)	The DPRK Criminal Code specifies that it emphasises the people, fairness and equality.
ID 036(2014)	There are such laws and institutions, but they are not enforced.
ID 039(2014)	I know the contents that a human being is most precious.
ID 047(2014)	There are such laws and institutions, but they are not carried out.
ID 048(2014)	I know that even a criminal should be treated as a human being.
ID 053(2014)	Human rights are guaranteed by laws.
ID 054(2014)	I don't know them well.
ID 057(2014)	I don't know them in detail.
ID 063(2014)	The law states that the rights of others should not be violated.
ID 066(2014)	The Constitution states that the state protects human rights and guarantees freedom of assembly and demonstration.
ID 070(2014)	The Human Trafficking Prohibition Act is the law that guarantees human rights.
ID 072(2014)	I know that the Central Party stated in its report that the amended Constitution has some provisions related to human rights.
ID 073(2014)	The Socialist Constitution is about human rights.
ID 074(2014)	The Socialist Constitution is the one related to human rights.
ID 082(2014)	I have heard that there are laws and institutions that guarantee human rights. However, we were not allowed to read any related documents. Only those who work in law can read them. Long ago, there was no ban on entering other's premises to cause violence. Recently, such behaviour is brought into question in human rights aspects. Thus, it seems that the systems exist, but they are not enforced.
ID 083(2014)	I think that the citizens' rights to elect and to be elected are about the guarantee of human rights.
ID 084(2014)	Legally, the laws and institutions that guarantee human rights are enshrined.
ID 086(2014)	I know that there is the guarantee of human rights in laws.
ID 094(2014)	I know that there are laws and systems that guarantee human rights, although they are not applied in detail.
ID 096(2014)	I think that the laws with which the people should comply are the laws that guarantee human rights in North Korea.
ID 097(2014)	I think that the citizens' duty and rights illustrated in the Constitution guarantee human rights in North Korea.
ID 098(2014)	The guarantee of human rights is said to mean that there is freedom, and a person can express his or her own opinions. But in North Korea, such a thing should not be expressed or told as it is.

Although the Constitution and Criminal Code specify that the residents' human rights are guaranteed, Table 3 shows that in a practical sense, the laws guarantee human rights differently according to a person's class (ID 020(2014)), and that human rights are not guaranteed in reality (IDs 026, 036, 047, 054, 057, 098(2014)). After all, the historical failure to realise the idea of socialism and its harmful effect on human rights are common phenomena found in any socialist state, in a greater or lesser degree, because the structural characteristics of the political system of a socialist state are against or unfriendly to human rights.

As shown in Table 4, the majority of the respondents (88.3 per cent, including the response of 'I don't know') replied that North Korean society imposes more duties on its residents than the rights conferred to them. In a socialist society, the development of the individual and society are interconnected. Accordingly, the daily life and self-realisation of one member of a society become essential elements to those of all other members of the society. In other words, meeting the needs of an individual's daily life and self-realisation are apparently rights to the individual, but it also becomes his or her duty to contribute to those of the other members of society. Thus, in the North Korean

society that is a socialist state, an individual's rights are also connected to the duties to a group, and the individual's rights cannot take priority over his or her duties to the group.

Table 4: When you were in North Korea, did you think that there were more duties than rights?

Response	Number of respondents	Percentage (%)
Yes	85	82.5
No	12	11.7
I don't know	6	5.8
Total	103	100

As illustrated in Tables 1 and 4, in North Korean society, which is a socialist system that emphasises an individual's duties to the group, the perception of an individual's rights and human rights cannot be formed, and an individual has no place in North Korean society, which puts the group above the individual.

Table 5: Have you ever heard about 'human rights' or 'our style of human rights' in North Korea?

Response	Number of respondents	Percentage (%)
Yes	39	37.9
No	42	40.8
I don't know	22	21.3
Total	103	100

According to Table 5, 62.1 per cent of the respondents answered that they never heard about 'human rights' when they were in North Korea. In addition, Table 6 shows that 85.5 per cent of the defectors replied that they never received instruction concerning human rights.

Table 6: Have you ever received instruction that taught you that human rights should be guaranteed?

Response	Number of respondents	Percentage (%)
Yes	15	14.5
No	70	68.0
I don't know	18	17.5
Total	103	100

Nevertheless, as shown in Table 7, 60.2 per cent (including the response of 'I don't know') of the respondents, even without the perception of an individual's rights and human rights, thought that they lived a sub-human life.

Table 7: When you were in North Korea, did you ever doubt ‘whether your life was the life of a human being’?

Response	Number of respondents	Percentage (%)
Yes	53	51.5
No	41	39.8
I don't know	9	8.7
Total	103	100

In short, despite the facts that North Korea is a closed society and that it repeatedly educates its residents to conform to the regime, North Korean residents appear to have a vague perception of the rights that a human being should be afforded. Recognising that North Korean residents, as opposed to the North Korean authorities, have their own perception of human rights will become critical for raising North Korean human rights issues and improving North Korea’s human rights situation.

However, in discussing North Korean human rights issues, this paper limits the concept of human rights to the one defined by the North Korean authorities because it is the North Korean authorities that establish and enforce human rights policy, even though not only the North Korean authorities but also their residents should be regarded as subjects that perceive human rights.

CULTURAL RELATIVISM AND NORTH KOREAN HUMAN RIGHTS

Cultural relativism is the theory that accepts universal rights while arguing that universal rights should be modified to suit culturally unique situations. Cultural relativists point out that universalists have a culturally biased tendency regarding the contents of human rights, although aiming for the universality of human rights. The cultural relativists particularly oppose applying the Western concept of human rights, which is based on individualism, to the cultures of non-Western countries in which the community is more important. The reason is because human rights are not just a separate element from a society, but an element that has an inseparable relationship with other elements of the society, which may maintain or alter its relations by interacting with other elements.¹³

After the Second World War – in the process of internationalisation, which aims for the stability and peace of the international system – the UN was established, and the UN Charter called for maintenance of international peace, and universal respect for human rights and fundamental freedom. The trend of internationalisation spread the understanding that human rights are principles that are universal and supranational. Thus, today, ‘universal human rights’ are taken as a matter of course to such an extent that, without the word ‘universal’, the concept of human rights is not human rights at all.

In particular, the triumph of liberal democracy after the end of the Cold War brought the diffusion of Western ideology and systems, and had a great influence on the spread of the universality of human rights. Human rights have become the most controversial issue in the current international community, where ideological conflicts have disappeared. Despite counterarguments, the Western concept of human rights has indeed been the standard of human rights in the international community.

13 Kim Jong-wan, ‘The Conflict of Human Rights Theories,’ (2001) 7(2) National Strategy, 142.

Arguments against the Western concept of human rights appear as relativist arguments for human rights. Among the arguments, the most typical is cultural relativity, which distinguishes specificity from universality based on cultural and regional uniqueness. A number of dictatorships, which rejected outside interference regarding human rights violations by reason of national sovereignty under the Cold War system, have recently had a tendency to reject international cooperation for human rights protection in the name of ‘culture’, expressing their resistance against the universal standard of human rights.

The human rights concept of Asia, where economic development has lagged behind that in the West, has a feature whereby a considerable number of Asian countries’ less-developed economic reality and some countries’ socialist political ideologies are mixed. In 1993, the Southeast Asian countries issued the ‘Bangkok Declaration’, in which human rights should be guaranteed according to culture, history and a level of economic development, and the West should not impose its views on others. In a speech at the UN General Assembly, the former Chinese president Jiang Zemin criticised aggressive human rights activities by Western countries, including the US, as interfering in the domestic affairs of other countries, thereby adhering to his position of cultural relativism.

The cultural relativism in the North Korean concept of human rights, on the other hand, appears as a critical discourse against the Western concept of human rights. Because the Western concept of human rights caused considerable displeasure in North Korea, North Korea manifested strong dissatisfaction with the international community, which assesses North Korean human rights issues according to the Western concept of human rights. Responding to Western pressure on human rights with the logic of ‘our style of human rights’, North Korea has opposed the Western position, which it believes judges human rights issues with a one-way standard of universal human rights that ignores the situation of each country.

North Korea criticised the Western approach to human rights in an article in the *Workers’ Newspaper* where it stated as follows:

‘Since the end of the Cold War, several serious and complicated issues have been raised in the international community. The imperialists are pretending that the Western approach is the standard to measure everything in the international community and taking strong measures on those who fall short of this standard by marking with a sign of warning and putting restrictions and pressure on them. Another method used by the imperialists as an international standard to interfere and press other countries is “human rights”. In addition, the imperialists, considering themselves as “judges on human rights matters”, claim that the Western style of human rights is the “human rights model” and the “standard of human rights” of the international community, forcing the Western style of human rights on other countries.’¹⁴

North Korea shows strong dissatisfaction with using human rights as a means of interfering with a country’s internal affairs. Such a response from North Korea implies that North Korea’s perception of human rights includes cultural relativism. North Korea contends that human rights standards and the way to guarantee them vary according to each country’s actual circumstances, and that ‘our style of human rights’ are the human rights that accord with the demands and interests of North

14 ‘The Western Approach Cannot Be the Standard of Everything’ *Workers’ Newspaper* (17 December 1997).

Korean residents.¹⁵ Moreover, North Korea reacts against the Western countries, which pressure other countries by relating human rights issues to all matters such as politics, economy, diplomacy and the military. North Korea regards the forcible demands for the uniform and universal standard, 'human rights', as the political intent of the imperialists that manifested itself after the colonial era.

Meanwhile, North Korea's loyalty to the 'Fatherly Leader' well represents the cultural relativism behind the North Korean concept of human rights. North Korea's cultural relativist characteristic is also well reflected in its emphasis on loyalty and duties toward the 'Fatherly Leader', the Confucian feature of a large socialist family, and its own people. In 2007, at the conference of the 'Non-Aligned Movement for Human Rights and Cultural Diversity' in Teheran, Park Ui-chun, the foreign minister of North Korea, addressed cultural relativism as follows:

'The aim and desire of humanity that longs for the 21st century face a real challenge. The superpowers' unilateralism and strong arm behavior, which blocks the way of the countries and their people to pursue autonomous choices and development, appear in the socio-cultural areas such as human rights. The Western values that are spread to the socio-cultural areas along with the flow of "globalization" have destroyed individual countries' inherent ethnicity, tradition, and custom as well as regional traits, and have created an enormous danger to cultural diversity, which is the common heritage of humanity.'¹⁶

North Korea's Confucian characteristic that stresses loyalty and duties is particularly emphasised in order to secure the right to survival among North Korea's perception of human rights. North Korea explains that its residents' human rights are guaranteed only by the dispensation of the Supreme Leader because the right to life is essential to wield the power of the socio-political being.

In conclusion, North Korea's objection to the West's raising human rights issues arises out of the different perceptions of human rights. Such reasoning, as a self-justification, is frequently applied by the North Korean authorities as the regime that oppresses human rights and is also a cognitive and systematic element that constitutes the North Korean authorities' counterargument.

NORTH KOREAN HUMAN RIGHTS UNDER THE MONOLITHIC GUIDANCE SYSTEM

North Korea denies the universality of human rights even though, since the 1970s, it has defined human rights as 'the political, economic, cultural, and social rights that should be given to the people'. North Korea – based on the theory of the large socialist family, which emphasises the *Juche* ideology, revolutionary leadership, the theory of socio-political being and collectivism – emphasises that it is the collectivist country 'where the people achieve the unity by having the "Supreme Leader" in the center of the unity'.

North Korean society carries out revolution and construction under a monolithic leadership system by considering the revolutionary ideas of the Supreme Leader as the sole guide. North Korea is a society in which all the Party, military and people move as one according to the Supreme Leader's commands and instructions. The reason why North Korea's political system is called the 'Supreme

15 *Workers' Newspaper* (2 March 2001).

16 'The DPRK and its people will do their duties and responsibilities to promote human rights and cultural diversity: An address delivered by the North Korean Foreign Minister at the Conference of the Non-aligned Movement on Human Rights and Cultural Diversity', *Workers' Newspaper* (6 September 2007).

Leader system’ or the ‘monolithic system’ is that the status of the ‘Supreme Leader’ is transcendent.¹⁷ The North Korean system may be called a society characterised as ‘a unified body of the Supreme Leader, the Party, and the people’, suggesting that North Korea has a political system in which the state almost completely subsumes the people. That is to say, the North Korean system is a monolithic system in which the entire society is united by revolving around the Supreme Leader.

The North Korean system differs from the early socialist systems of the Soviet Union and China, by virtue of the monolithic guidance system of the Supreme Leader, which is the unique characteristic of North Korea’s style of political culture. The reason why North Korea’s political culture is formed differently from other socialist countries is basically that its theoretical foundation is the *Juche* ideology and revolutionary leadership. In addition, North Korea developed the ‘theory of socio-political being’ and the ‘theory of the large socialist family’ and actively utilises them as the principles of operation or the theories that maintain its political culture.

Under the revolutionary leadership, the status of the Supreme Leader is defined as ‘the supreme leader of the people, the centre of the unity and solidarity, and the supreme commander of the revolutionary fight for independence’. The Supreme Leader is presented as ‘the one who best represents and realizes the people’s interests’. The essence of revolutionary leadership is ‘the opinion and view, and attitude and stance that treat the Supreme Leader as the absolute authority and always respect him’. Saying that the Supreme Leader, the Party and the people are a unified body, North Korea in fact requires people to have loyalty to the Supreme Leader. The characteristic of North Korean socialism is differentiated from other forms of socialism in that it emphasises the loyalty of the people to the Fatherly Leader.

North Korea defines collectivism as ‘something that treasures the interests of society and the group more than those of the individual and eventually achieves the great work of socialism and communism for the Party and the Supreme Leader’.¹⁸ According to North Korea, unlike individualism and egotism, ‘collectivism, where the means of production belongs to society, is the foundation of a socialism in which the interests of the individual and society coincide’.¹⁹ In the collectivist system, the interests and rights of the individual do not take priority over those of a group, while in North Korea’s large socialist family, the rights of the individual do not take priority over the duty to the Party and the Supreme Leader. Private interests cannot exist in collectivism in a North Korean society that is ruled under such principles. North Korean society aims at a communitarian society that rejects individualism and egotism and educates the people in collectivist ideas. Collectivism is the principle of the North Korean style of socialism, which forms the foundation of the society. The group and the individual pursue an inextricably organic unity and collectivism is the socialist principle that can realise such a unity.

17 Lee Jung-chul, ‘The Socialist North Korea’s Economic Dynamics and Political System’ (Seoul National University Doctoral Thesis, 2002), 3. Although the Supreme Leader system is the North Korean system’s core principle of operation, some conclude that it does not consistently explain North Korea’s political and economic dynamics. It is pointed out that such concepts make North Korea’s phenomenon excessively unique, underestimating the similarity with other socialist countries.

18 *Dictionary of Political Terminology*, 569–570.

19 *Ibid.*

North Korean human rights do not recognise the independence and identity of an individual. The object of human rights in North Korea is limited to a human being as a social being. That is, the right to survival recognised by North Korea is that of a group such as a country or the people rather than an individual, and it is only through the group’s survival that survival of an individual ultimately becomes meaningful.

Although human rights are for ‘humans’, the North Korean authorities consider the group and the ruling system rather than ‘humans’ to be the objects of the rights. Such extreme collectivism of North Korea is also shown by its slogan, ‘one for all, all for one’. North Korea regards individuals and groups as the common goal, making clear that ‘an individual exists only as a member of a group and only for the hierarchical benefit of the group’.²⁰

In the end, collectivism is best described as unending loyalty to the Supreme Leader. Such loyalty imposes duties on North Korean residents rather than giving them rights (Table 4), leading to the logic that human rights are guaranteed only if one is loyal to the Party and the Supreme Leader (Table 8).

Table 8: When you were in North Korea, did you think that human rights were guaranteed if a person is loyal to the Party and the Supreme Leader?

Response	Number of respondents	Percentage (%)
Yes	45	43.7
No	51	49.5
I don't know	7	6.8
Total	103	100

Table 9: Who did you think guaranteed the right of survival (basic livelihood security) in North Korea?

Response	Number of respondents	Percentage (%)
The Fatherly Leader	41	39.8
Oneself	50	48.5
Others	12	11.7
Total	103	100

Among the defectors who responded to the 2014 survey, 43.7 per cent believed that human rights are guaranteed if a person is loyal to the Supreme Leader while 49.5 per cent replied ‘no’. Almost half of the respondents perceived that the Supreme Leader guaranteed their human rights, which plainly shows the characteristic of North Korea’s monolithic system (Table 9). For North Korean residents who believe that their ‘basic livelihood’ is assured by loyalty to the Supreme Leader and his dispensation, the Supreme Leader is the one who controls and guarantees their human rights.

In North Korea, the status of the Supreme Leader is above the law. The ‘Supreme Leader theory’ is the most significant element of all the North Korean ideologies. North Korea itself explains

²⁰ Kim Chang-ryeol, ‘Human Rights Advocacy’ Claimed by the Imperialists and its Anti-Revolutionary Nature’, (1990) 2 Geunroja 93.

that the most important thing in the *Juche* ideology is a ‘perspective on the Supreme Leader’. The core of the *Juche* ideology’s function to maintain the system is the ‘unity and solidarity that revolve around the Supreme Leader’. Thus, loyalty to the Supreme Leader is required of the residents. In order to survive, loyalty to the Supreme Leader is absolutely necessary. Expressing complaints and discontentment that human rights are being violated or that the situation is poor is disloyal to the Supreme Leader. Table 10 well illustrates that the North Korean system revolves around the Supreme Leader with a unified heart and that North Korea is not a law-governed country but a country governed by the Kim Il-sung monolithic system.

Table 10: When you were in North Korea, what kinds of laws or guidelines were you required to follow? (If something was more important than law, please describe it.)

ID	Response
ID 002(2014)	The Ten Principles in Establishing Party’s Monolithic Ideological System are the most important guidelines.
ID 004(2014)	The DPRK’s Socialist Constitution is most important.
ID 006(2014)	The Supreme Leader’s instructions and the Party’s guidelines are most important.
ID 008(2014)	A position (authority) is important.
ID 010(2014)	I don’t know.
ID 011(2014)	Loyalty to the Party, that is, loyalty to Kim Il-sung and Kim Jong-il, was more important.
ID 015(2014)	The statements of Kim Il-sung and Kim Jong-il were considered as important.
ID 017(2014)	If there is something more important than laws, it is money.
ID 022(2014)	Idolisation was important.
ID 025(2014)	The <i>Juche</i> ideology and worship ideology are important.
ID 052(2014)	What is more important than law is that, first of all, no person should ever say anything negative about the Kim family in political terms. Even those who are close to the Kim family are not allowed to do so. Secondly, what is more horrible than law is the ideology, which sticks in North Korean people’s minds.
ID 085(2014)	Everything relevant to Kim Il-sung and Kim Jong-il was considered as the supreme order or law and as important.
ID 097(2014)	A human being’s basic conscience and morality were more important than law.
ID 098(2014)	The Party’s guidelines were most important when I lived in North Korea.

The defectors who responded similarly to IDs 002, 006, 011, 015, 022, 025, 085, 098(2014) in Table 10 are 71 (68.9 per cent) of the 103 respondents. Their answers show that the North Korean system puts the instructions of the Supreme Leader Kim Il-sung above the laws, including the Constitution, and that the Party’s guidelines direct all aspects of North Korean residents’ daily lives. North Korea controls its residents through the idolisation of Kim Il-sung and Kim Jong-il. Only seven respondents (6.7 per cent) gave answers similar to ID 017(2014) that money is important in North Korean society and so is material as a way of surviving. Also, only four respondents (3.8 per cent) replied like ID 004(2014) that laws such as the Constitution and Criminal Code are important guidelines. That best describes the characteristic of the Kim Il-sung monolithic system. Ten respondents (9.7 per cent) answered ‘I don’t know’ like ID 010(2014). It shows that they may not want to acknowledge the North Korean system that is operated by idolising the Kim family, which is distinguishable from the general management system of other countries.

North Korea also contends that because human rights are a political concept from the beginning, they have a hierarchical nature. Thus, it explains, the human rights of those in the protected class

differ from those of the unprotected class. This shows North Korea's prejudiced viewpoint in the two areas of human rights such as political and civil human rights, and economic and social human rights. In other words, hierarchical classification with respect to human rights exists in North Korea in that political human rights are for the bourgeoisie and economic human rights are for the socialist citizens. To conclude, a concept of human rights that is not hierarchical does not exist in North Korea because it regards every society as a class-based society. This is a very different point of view than the Western theory of universal human rights. Thus, for North Korea, which emphasises collectivism and classification of human rights, raising human rights issues using the Western concept of human rights applies a 'double standard' and infringes on the sovereignty of North Korea, where allegedly no human rights issue exists.

2.2 North Korea's enforcement of international norms on human rights and its human rights laws

North Korea's enforcement of international norms on human rights

The international community's current awareness of human rights arose and developed after the Second World War to prevent human rights violations. Orlando Patterson stated that human rights are 'a distinctive product of western civilization, crafted through the centuries from its contingent social and political struggles'.²¹ The Second World War presented a sweeping challenge to the universal character of human rights. Since the War, major declarations or treaties have stressed respect for human rights.²² The universal respect for human rights is considered a general foundation of international relations and a condition of peace.

The international community's agreement related to human rights was made clear in the UN Charter and the UDHR. Article 1 of the UDHR, which was promulgated in 1948, declares that 'all human beings are born free and equal in dignity and rights'. This shows that the UDHR is the most powerful international legal document that supports the universality of human rights.²³ The UDHR states that every person possesses rights that are considered a basic condition to live like a human being, solely because of his or her nature as a human being and without any additional qualification.

The UN Charter's provisions of human rights protection contain the substance of and standards for human rights. As the UN Charter became meaningful as a multilateral treaty, the member countries have come to owe an international duty pursuant to the human rights provisions. Since then, human rights have taken the path towards being institutionalised internationally. Human rights issues that were once within the exclusive jurisdiction of individual countries have risen from the national level to become worldwide concerns.

According to the UN Charter, the UN General Assembly and one of its affiliated organisations, the UN Economic and Social Council (ECOSOC), are primarily responsible for human rights.

21 Orlando Patterson, 'God's Gift?', *New York Times* (19 December 2006), A31.

22 The necessity of international protection of human rights was raised based on the four types of freedom suggested by then-US President Franklin Roosevelt in 1941 – freedom of speech and expression, freedom of religion and belief, freedom from poverty, and freedom from fear.

23 Christian Tomuschat, *Human Rights – Between Idealism and Realism* (Oxford University Press 2003), 58.

The UN Human Rights Commission was established under Article 68 of the UN Charter and ECOSOC Resolutions 5 and 9. It consists of 53 members as representatives of each country's government with a term of three years. But the nature of the Commission has its limits in that they are not politically free.

In June 2006, the UNHRC was founded in order to overcome such drawbacks and to reinforce the UN's function of human rights protection. Kofi Atta Annan, the UN Secretary-General at the time, spoke up for the establishment of the UNHRC by announcing, at the UN General Assembly, that 'there can be no development without security, and no security without development. Without respect for human rights, there can be neither development nor security'.²⁴ On 3 April 2006, the UN General Assembly adopted a resolution that reforms the Human Rights Commission and established the UNHRC as its subsidiary body, which replaced the Human Rights Commission – an affiliated organisation of ECOSOC. The UNHRC is a standing body. As such, it is an institutional mechanism that grasps and deals with human rights situations at a worldwide level.

In the meantime, primary responsibility for protecting an individual's human rights rests with the nation. However, because a nation with primary responsibility for human rights can become a perpetrator at any time, the international community ascertains human rights situations and endeavours to protect human rights by creating various mechanisms that supervise countries to see whether they are implementing international norms on human rights. A country that becomes a party to various international human rights treaties owes international duties related to the treaties, such as the duty to protect an individual's rights from others and actively realise relevant rights, as well as the duty not to passively violate an individual's rights. The UN Charter system with the UNHRC at its core supervises the implementation of international human rights, along with human rights treaties that monitor implementation. The UNHRC provides devices such as special procedures, complaint procedures and the Universal Periodic Review (UPR).

North Korea, as a party to various human rights treaties, also owes international duties with respect to a variety of rights to freedom and social rights. North Korea joined the ICCPR and the ICESCR in 1981; the Convention on the Prevention and Punishment of the Crime of Genocide in 1989; the CRC in 1990; and CEDAW in February 2001. North Korea has issued periodic reports as well. North Korea also received the UNHRC UPR in December 2009. The Special Rapporteur on the situation of human rights in North Korea was introduced in 2004, and has performed his tasks notwithstanding the North Korean authorities' objections.

The 2011 report submitted by Marzuki Darusman, who was appointed Special Rapporteur in August 2010, differs in some respects from the report submitted by Vitit Muntarbhorn, the previous Special Rapporteur. The 2011 report does not request alteration and reformation of North Korea's political structures, such as law reform. This demonstrates that the UN's recommendations on human rights in North Korea have gradually expanded from civil and political rights to social and economic rights. The UN's interest in North Korean human rights has also expanded from violations of political rights to violations of rights to food and life, focusing more on the quality of life of North Korean residents. That is to say, the 2011 report requires that North Korea, as a member of international covenants on human rights, endeavours to cooperate with the international community, performs its duties and

24 Na Yeong-ju, 'Human Rights Issues and the UN's Reformation' (2005) 11 *East Asian Studies*, 160.

makes efforts according to the international human rights standards, rather than demanding internal reformation of structures such as law reform.

Nevertheless, having concluded that its efforts had not improved the human rights of North Korean residents in a practical way or produced other fruitful results, the UN decided in March 2013 to establish the COI on North Korean human rights. On 17 February 2014 in Geneva, Michael Kirby, chair of the COI, announced the results of its year-long research into North Korean human rights. In spite of the difficulties encountered in this process, the special report was a comprehensive report about the substance of North Korean human rights. The investigators could not enter North Korea or China to conduct research because they were denied permission. Instead, the investigators wrote the report based on the testimonies of 80 defectors and specialists, and satellite data. The report covers the following nine areas in great detail – violations of the right to food, violations of human rights in political prison camps, torture and inhuman treatment, arbitrary arrest and detention, discrimination such as systematic denial and violations of fundamental human rights and freedoms, violations of freedom of expression, violations of right to life, violations of freedom of movement and enforced disappearances. In addition to the evidence of human rights violations, the report specifies the causes of the violations and where the responsibility lies, and even recommends how to improve human rights.

The report can be summarised in three significant points. First, it suggested that the responsibility for crimes against humanity lies with North Korea's three 'Supreme Leaders' (Kim Il-sung, Kim Jong-il and Kim Jong-un). Warning that Kim Jong-un could be subject to criminal prosecution, it also stated that the UN Security Council could submit evidence of North Korea's human rights abuses to the International Criminal Court (ICC) or an ad hoc tribunal temporarily established by the UN. The report further advised additional sanctions against North Koreans who are responsible for crimes against humanity.

Secondly, the report mentioned the international community's Responsibility to Protect (R2P) for North Korean residents. According to the report, since the North Korean authorities cannot protect their residents from crimes against humanity, the international community should step in to protect them. The R2P, which was established as an international norm through a resolution of the 2005 UN Summit and reconfirmed by the UN Security Council in 2006, states that the UN should come forward when a particular country cannot protect its citizens from crimes against humanity or genocide, or ethnic cleansing.

Thirdly, the report recommended that China and its adjacent countries should comply with the 'principle of *non-refoulement*'. In relation to China, it pointed out, in particular, that compulsory repatriation of North Korean residents who cross the China-DPRK border amounts to 'support and aid of crimes against humanity'. The report warned that China's repatriation of North Korean defectors to North Korea may constitute 'aiding and abetting of North Korea's crimes against humanity' because those who were repatriated were likely to face torture and execution. In other words, the report holds China responsible for North Korea's human rights violations.

Human rights laws in North Korea

North Korea has formally enacted various types of laws relevant to the rights stipulated in the UDHR and the international covenants on human rights. In reality, however, these laws are mostly not enforced. Laws related to labour rights, social security and medical treatment are rarely complied with owing to economic difficulties in North Korea. Although laws related to system maintenance and social control such as the Criminal Code and the Administrative Penalty Act are enforced in a relatively strict way, Kim Il-sung's instructions and Kim Jong-il's statements prevail and act as norms above the law because of the distinct characteristics of the North Korean system. In North Korea, law is considered a political means.

Meanwhile, North Korea has made into law most of the rights that are stipulated in the international human rights documents including the UDHR, with the exception of freedom of the press and freedom of peaceful assembly and association. Because of the uniqueness of the North Korean system, it is hard to acknowledge freedom of the press and of assembly and association. Since North Korea for the first time expressly specified 'respect for and protection of human rights' in its Constitution in April 2009, it has continued to revise its human rights laws. With regard to civil and political rights, North Korea reinforced the protection of its system by amending the Criminal Code and the Administrative Penalty Act. With regard to economic, social and cultural rights, North Korea has improved labour-related laws, such as the Goods Consumption Standard Law, the Labour Quota Law and the People's Economic Planning Law as a part of its continuing effort to build a strong and prosperous country. North Korea also enacted a series of laws related to promoting the human rights of its residents, such as the Maritime Procedure Law, the Labour Protection Law, the Nature Conservation Area Law, the Forest Preservation Law and the Mineral and Hot Springs Law. North Korea also revamped education laws such as the Compulsory Education Law and the Higher Education Law.

For the protection of vulnerable groups, North Korea enacted the Disabled Persons Protection Law and the Elderly Protection Law followed by the Women's Rights Protection Act and the Children's Rights Protection Act (Table 11). By enacting laws relating to human rights, North Korea is attempting to counter external criticisms of North Korean human rights.

Table 11: Human rights laws in North Korea.²⁵

	Rights	Relevant laws
UDHR/ ICCPR	Human dignity, right to life, freedom and security of one's body	Criminal Code, Addendum to the Criminal Code (General Crimes), Administrative Penalty Act, People's Security Control Act, Prosecutor Supervision Law, People's Administration Law
	Right to equality	Gender Equality Law, Women's Rights Protection Act, Pyongyang Management Law
	Right to protection of law, right to presumption of innocence	Criminal Code, Attorney-at-Law Act, Court Composition Law, Petitions and Claims Law, Court Decision Enforcement Law
	Right to judicial relief	Code of Criminal Procedure, Code of Civil Procedure, Maritime Procedure Law
	Freedom of residence, movement and travel	Immigration Law, People's Administration Law
	Right to political participation	People's Assembly Election Law
	Right to nationality	Nationality Law
	Freedom of opinion and expression	Publication Law
	Right to family, right to property	Family Law, Civil Code, Inheritance Law, Damage Compensation Law
	Rights	Relevant laws
UDHR/ ICESCR	Right to health	People's Health Law, Infectious Diseases Prevention Law, Medical Law, Medicine Control Law, Mineral and Hot Springs Law
	Social security	Social Insurance Law, Pre-school Child Care Act, Elderly Protection Law, Disabled Persons Protection Law, Children's Rights Protection Act
	Right to labour	Socialist Labour Law, Labour Protection Law, Labour Quota Law, People's Economic Planning Law, Goods Consumption Standard Law
	Right to receive education (right to education)	Education Law, Compulsory Education Law, Higher Education Law, On Implementing 12-year Compulsory Education
	Right to enjoy cultural life	Cultural Relics Protection Law, Natural Park and Monument Protection Law, Forest Preservation Law, Nature Conservation Area Law, Mineral and Hot Springs Law
CEDAW	Protection of women's rights	Gender Equality Law, Women's Rights Protection Act
CRC	Protection of children's rights	Pre-school Child Care Act, Children's Rights Protection Act

However, what one sees in the human rights laws differs entirely from the real human rights situation. According to the 2014 survey, ordinary residents did not know that North Korea has laws and policies that guarantee human rights (66 per cent, including the response of 'I don't know', Table 12) and have never received education on human rights (85.5 per cent) (Table 13).

²⁵ KINU, *Report on Human Rights in North Korea* (2013), 61.

Table 12: When you were in North Korea, did you know that North Korea has laws and policies that guarantee human rights including fundamental human rights?

Response	Number of respondents	Percentage (%)
Yes	35	34.0
No	36	34.9
I don't know	32	31.1
Total	103	100

Table 13: Have you ever received education that human rights should be guaranteed?

Response	Number of respondents	Percentage (%)
Yes	15	14.5
No	70	68.0
I don't know	18	17.5
Total	103	100

Table 14: Have you ever heard of the term 'human rights' or 'our style of human rights' in North Korea? (see Table 5, page 23)

Response	Number of respondents	Percentage (%)
Yes	39	37.9
No	42	40.8
I don't know	22	21.3
Total	103	100

The foregoing, when taken together, leads to the view that even though North Korea has enacted various human rights laws, they exist on paper only. However, it is significant that North Korean residents who have neither received education on human rights nor heard of human rights (62.1 per cent) think that their human rights have been violated. According to the 2014 survey, 74.8 per cent of the respondents replied that their human rights had been violated (Table 15).

Table 15: When you were in North Korea, did you ever think that your human rights were violated?

Response	Number of respondents	Percentage (%)
Yes	77	74.8
No	22	21.3
I don't know	4	3.9
Total	103	100

In conclusion, North Korea has enacted human rights laws not for the purpose of improving the human rights of its residents, but for urging residents and training labourers towards building a strong and prosperous country. In protecting vulnerable groups, North Korea has enacted the Women's Rights Protection Act and the Children's Rights Protection Act after enacting the Disabled Persons Protection Law in 2003 and the Elderly Protection Law in 2007, but it also appears that these

enactments were to counter criticisms from outside North Korea that take issue with human rights. The significance of revamping North Korean human rights laws should not be overlooked, but the North Korean authorities' implementation of their human rights laws is of the utmost importance since enactment of the laws has not improved North Korean residents' human rights.

2.3 Reality and changes in North Korea's human rights policy

Reality and changes in civil and political rights

Article 6(1) of the ICCPR, to which North Korea is a party, specifies that: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.' The ICCPR also provides, in Article 6(2), that 'In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide'. However, public executions, which are a typical example of a violation of the right to life, are conducted in North Korea, and on 7 December 2009 in the UNHRC UPR of North Korea, North Korea admitted carrying out public executions. Also in the 2014 survey, a majority of the defectors who answered the question (79.4 per cent) replied that they had witnessed public executions (see Table 16). Of the methods of capital punishment, public executions violate a 'human being's right to death with dignity'. Table 17 shows in particular that handing down death sentences in an open trial before a crowd of people has increased by up to 86.2 per cent since the 1990s, during which North Korea has gone through severe economic difficulties and food shortages. This demonstrates that North Korea's control of its residents has strengthened as social order has broken down because of food shortages.

Table 16: Have you ever seen a criminal executed in public?

Response	Number of respondents	Percentage (%)
Yes	50	48.6 (79.4 of those who answered the question)
No	13	12.6 (20.6 of those who answered the question)
No response	40	38.8
Total	103	100

Table 17: When was it that you saw a criminal sentenced to death in an open trial before crowds? (Multiple responses were allowed.)

Response	Number of respondents	Percentage (%)
Before the 1990s	11	13.8
1990s	29	36.2
From 2000 until the present day	39	48.8
I don't remember when I saw it	1	1.2
Total	80	100

The right to life is severely violated in detention facilities and political prison camps. Moreover, shooting defectors and killing infants are also typical violations of the duty to respect the right to life, and death owing to food shortages and the death of infants and pregnant women constitute North Korea’s serious violations of the right to life. It is of grave concern that the number of public executions has not decreased amid concerns over North Korea’s violations of various types of right to life. Furthermore, political prison camps, whose existence North Korea denies, exhibit all the elements of human rights violations, including the right to one’s body, and this is serious enough to constitute ‘crimes against humanity’ under international criminal law. According to the ICCPR, North Korea has violated the duty to respect and guarantee the ICCPR by violating Article 9(1) (ban on arbitrary detention), Article 9(4) (right to take proceedings before a court), Article 8 (compulsory labour), Article 7 (ban on torture) and Article 10 (right to be treated with humanity). There is no sign of amelioration of right-to-life violations, and with reinforcement of national crackdowns and control of residents under the Kim Jong-un regime, this tendency to violate the right to life is unlikely to change in the near future. Violations of the right to life of North Korean residents are expected to continue.

Violations of North Korean residents’ human rights relating to the right to equality are discriminative treatments on the basis of *songbun*, which is state-assigned social class or birth. In addition, North Korean residents’ right to be equally treated under law has been violated because of widespread corruption in North Korean society, such as bribes. Article 7 of the UDHR provides that all are equal before the law and are entitled without any discrimination to equal protection of the law. The ICESCR and ICCPR also prohibit ‘discrimination on any ground’.

Article 65 of North Korea’s Constitution specifies that ‘Citizens enjoy equal rights in all spheres of State and public activities’. Despite the constitutional guarantee of equal rights of its citizens, North Korea has on several occasions since 1945 conducted investigations into the people’s *songbun*. Residents are strictly classified by their family background and degree of loyalty to the regime and are treated discriminatorily. North Korea categorises its residents into three broad classes: core, wavering and hostile. The core class, comprising 28 per cent of the population, is the ruling class that leads the North Korean system. Forty-five per cent of the population is the wavering class, which consists of ordinary workers, technicians, farmers, office workers, teachers and their families who are not members of the Party. The hostile class consists of those branded as class enemies and national enemies, people with so-called impure and reactionary elements, and they experience isolation from society and lack of respect for their human rights. The hostile class accounts for approximately 27 per cent of the population. Through this classification the North Korean authorities have complete control over their residents.

Table 18: Do you think North Korea is a class-based society?

Response	Number of respondents	Percentage (%)
Yes	85	82.5
No	15	14.6
Unsure	3	2.9
Total	103	100

A majority of the defectors (82.5 per cent) who participated in the survey seem to have experienced class-based discrimination in North Korean society (see Table 18). As shown in Table 19, those with lower *songbun* suffer discrimination throughout all areas of life in society, including education and jobs.

Table 19: In North Korea, is a person of low *songbun* discriminated against in university entrance, job allocation, promotion, housing and marriage?

Response	Number of respondents	Percentage (%)
Yes	102	99
No	1	1
Total	103	100

Meanwhile, an atmosphere placing much importance on money has been spreading in North Korea, as there is no sign of North Korea recovering from its economic difficulties, and food distribution by the central government has not been proceeding smoothly (see Table 20). Privileges that used to be bestowed only to certain classes on the basis of *songbun* are now becoming accessible by means of money to hitherto prohibited classes. While traditional values emphasising *songbun* and a social tendency valuing material goods coexist, a tendency that values money is rapidly spreading. In particular, as Party membership and leadership appointments in which *songbun* is regarded as important become attainable through bribery, discrimination on the basis of *songbun* is becoming eroded because of money and material goods. This phenomenon will not disappear in North Korean society as long as economic difficulties and food shortages continue to exist. Despite the penalty provisions in the Criminal Code and Administrative Penalty Act, the current trend of materialism will permeate throughout North Korean society.

Table 20: Is it true that in North Korea money is more important than an individual's *songbun*?

Response	Number of respondents	Percentage (%)
Yes	49	47.6
Money is as important as <i>songbun</i>	34	33.0
<i>Songbun</i> is still more important	19	18.4
Others	1	1.0
Total	103	100

Article 13 of the UDHR expressly provides for freedom of residence and movement. The ICCPR also stipulates the same right in Article 12. Freedom of residence and movement is the right of freedom, which is one of the fundamental elements of human rights, and a human being's fundamental right to choose residence where he or she wants or freely relocate it (Table 21). North Korea has restricted an individual's right of residence and movement through various systems such as food distribution and residential registration under the pretext of maintaining a socialist economic system (Table 22). However, the international community's persistent pressure regarding freedom of residence and movement upon North Korea led to the express stipulation for the first time in September 1998, as Article 75 of the Constitution, that 'The citizens shall have freedom to reside in and travel to any

place'. Yet, despite this change in the Constitution, restriction of residents' freedom of residence and movement is still an institutional and practical reality in North Korea.

Table 21: Do North Korean residents wish to move or travel to other areas?

Response	Number of respondents	Percentage (%)
Yes	89	86.4
No	7	6.8
I don't know	7	6.8
Total	103	100

Table 22: Must North Korean residents carry a travel permit issued pursuant to the Travel Regulations when leaving a city or province of their current residence?

Response	Number of respondents	Percentage (%)
Yes	98	95.1
No	5	4.9
Total	103	100

As illustrated in Tables 21 and 22, ordinary residents are not free to move owing to systematic restrictions, even though the majority of people long for freedom of movement and travel. The residents are subject to identity inspection when they travel or stay in areas other than their residence. Recently, traveller's certificates and travel permits became more easily attainable by payment of bribes (see Table 23) and an increasing number of people who are caught in accommodation registration or inspection pay bribes to avoid punishment (see Table 24). As economic difficulties worsen, bribery becomes prevalent in North Korean society.

Table 23: Is it easy to get a traveller's certificate in uncontrolled areas by paying bribes?

Response	Number of respondents	Percentage (%)
Yes	97	94.2
No	4	3.9
I don't know	2	1.9
Total	103	100

Table 24: Can a North Korean resident escape from being punished through bribery even if caught without a travel permit?

Response	Number of respondents	Percentage (%)
Yes	70	68
No	2	1.9
Yes in non-restricted areas but no in restricted areas	14	13.6
Even in restricted areas, one may get away with bribes	13	12.6
I don't know	4	3.9
Total	103	100

North Korean society is currently undergoing a variety of changes. North Korean residents' perceptions have been changing in legal and systematic matters although the North Korean authorities continue to strengthen their control over residents. Such a change will not cease unless the North Korean economy improves. In particular, collapsing of the existing travel permit system due to bribery, relaxing of accommodation control, development of personal transport as a result of residents' increased movement and illegal housing sales are illustrations of the possibility that elements of capitalism may infiltrate North Korean society. Worsening economic conditions, increasing liberalism of thought amongst residents and social changes may to some extent contribute to enhancing the right to freedom through the residents' various forms of moving around and the strength of money transactions. The paradoxical situations involving increased control by government authorities and residents becoming more open-minded ultimately illustrate increased separation between state and society, which is a change in today's North Korea.

Freedom of religion is stipulated in North Korean laws. North Korea explains that religion is a 'tool of imperialistic intrusion' that defends exploitation by the ruling class. The *Dictionary of Philosophy* of North Korea explains that 'religion was historically used as a tool by the ruling class to deceive, oppress, and exploit the people, and recently the imperialists used religion as an ideological tool to invade citizens of underdeveloped countries'.²⁶ Due to such a view on religion, religious followers were regarded as being of bad *songbun* and tortured or executed. Christianity in particular was considered a 'spiritual tool of imperialist intrusion' and accordingly a large number of Christians were purged. In addition, those with religion and their family members were labelled as 'anti-revolutionary elements', being subject to oppression.

A figure of 92.2 per cent of the defectors who participated in the survey regarding 'freedom of religion and belief' replied that they had never heard that their family members believed in any religion (see Table 25). Moreover, 93.2 per cent of the respondents answered that they have never seen a person praying (see Table 26). Seven of the respondents who have religion were told to keep their belief completely secret (see Table 27). Despite a law that provides for freedom of religion, North Korean residents are reluctant to have religion or keep it secret for fear of being punished.

Table 25: When you were in North Korea, did you ever hear from your parents or grandparents that they were Buddhists, Christians or Catholics?

Response	Number of respondents	Percentage (%)
Yes	8	7.8
No	95	92.2
Total	103	100

²⁶ Academy of Social Science Institute of Philosophy, *Dictionary of Philosophy* (1985), 490.

Table 26: When you were in North Korea, did you ever see your parents or grandparents praying to Buddha, God or the Virgin Mary?

Response	Number of respondents	Percentage (%)
Yes	7	6.8
No	96	93.2
Total	103	100

Table 27: If yes, did your parents or grandparents forbid you from telling it to anyone?

Response	Number of respondents	Percentage (%)
Yes	7	100
Total	7	100

In North Korea, religious followers keep their religion secret because North Korea’s conventional perception defines religious followers and their family as ‘anti-revolutionary’ and they may be subject to treatment as political prisoners if caught (Table 28).

Table 28: Did you know that religious people would be punished if caught? Did you think that they would be treated as political prisoners?

Response	Number of respondents	Percentage (%)
Yes	55	53.4
No	18	17.5
I don’t know	30	29.1
Total	103	100

The North Korean authorities appear to respect freedom of religion by stipulating it in the Constitution. However, the view that religion is an instrument drawing foreign influences into the country and threatens the North Korean system remains unchanged. Accordingly, the authorities aggressively forbid residents from engaging in religious activities.

Article 67 of North Korea’s Socialist Constitution provides for freedom of expression and of the press as well as freedom of assembly and association. Nevertheless, it is unthinkable in North Korea to make mention of or criticise Kim Il-sung, Kim Jong-il, Kim Jong-un or the Party. Any gathering without permission from the authorities would be categorised as a reactionary group, and ordinary residents are not allowed to organise any form of voluntary association.

However, changes in North Korean society caused by the increasing use of mobile phones have had enormous influence on the residents’ views on freedom of assembly and association. This is of huge implication from the perspective of freedom of expression inside North Korea, despite the authorities’ strengthening control over the use of mobile phones. Since using mobile phones makes it possible for outside information to flow in, a gradual increase in using mobile phones will contribute to circulating outside information and the residents’ right to know. The North Korean authorities’ thorough surveillance and control have violated their residents’ right to expression and right to know, but mobile phones made by China, CD-R and UBSs, etc, enable residents to access outside information. Since the start of the Kim Jong-un regime, border controls and punishment for

electronic jamming and audio-visual recordings have been strengthened, but the influence of outside information on residents is bound to increase.

Reality and changes in economic, social and cultural rights

Article 11(2) of the ICESCR stipulates the right to food by providing that: ‘The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger.’ The right to food is guaranteed only when a State Party performs its duty to realise it.

North Korea has been suffering chronic food shortages since the 1990s, and insufficient food availability has continued since then. In 2014, the UN Food and Agriculture Organization (FAO) and the World Food Programme (WFP) announced the food supply/demand prospects for North Korea, which forecasted that with its own total grain production of 5,030,000 tonnes and the estimated grain consumption of 5,370,000 tonnes, there will be a shortfall of 340,000 tonnes. Although North Korea’s grain harvest has increased more than five per cent in each of the past three years, this is vastly insufficient to fix North Korea’s chronic food shortage problems. Eighty-four per cent of North Korean households are in a state of food shortage. The UN again designated North Korea as a country with food shortages where outside support is necessary. In March 2013, the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) revealed that 28 per cent of North Korean children were suffering from chronic malnutrition and four per cent of them were suffering from ‘extreme malnutrition’. The report also indicated that 2,800,000 North Korean residents are ‘in need of regular food aid amid concerns about chronic nutritional deficiency’.

North Korean residents’ right to food is threatened by grain shortages, discriminatory food distribution by the North Korean authorities and distorted budget allocations under military-first politics. Notably, as illustrated in Table 29, despite absolute shortages of food, more than half of North Korean residents are not supplied with food through the distribution system. As the Public Distribution System (PDS), which fails to play its role, still officially operates, ordinary residents are discriminated against in access to food due to differential distribution policy.

Table 29: Did you receive food from the food distribution centre from 2010 to 2012?

Response	Number of respondents	Percentage (%)
Yes	26	26.8
No	66	68.0
I don’t know	5	5.2
Total	97*	100

* Six respondents have been removed from this total because they left North Korea before 2010.

Because of absolute food shortages and differential distribution policy, ordinary residents are left in a situation where they should rely on markets for all or some of their food. Such a situation caused a discrimination in accessing food according to purchasing power, and has had a polarising effect on North Korea. Since the currency reform in late November 2009, ordinary residents have adapted to the reform, and the worst conditions in accessing food have been eased. Meanwhile, the polarisation of food access has threatened residents who have no purchasing power in markets. In particular, the lowest class, who cannot afford food, are said to resort to extreme measures such as blood donations

to procure food for themselves. Accordingly, it is known that ordinary residents' nutritive conditions have not been improved.

Article 12(1) of the ICESCR provides that 'The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. North Korea also has laws such as the Socialist Constitution and the People's Health Law that guarantee a free medical service and a preventive medicine system and call for the protection of human lives and the promotion of workers' health. However, the free medical service exists in name only, and the system supporting free medical services has now completely collapsed. The overall collapse of the free medical service has affected residents' right to health, and in particular the disruption of the medical service and the absolute shortage of medicines have disparately affected the right to health of each class.

The 2014 survey showed that in an absolute shortage of medicine, only the privileged class and officials receive medicine from hospitals, while ordinary residents pay for medicine themselves after getting medical treatment and prescriptions from hospitals. Ordinary residents' right to health has been violated as medicine is differentially supplied according to *songbun* and power.

2.4 Conclusion and recommendations

North Korea's concept of human rights basically originates from Marxist human rights and the socialist understanding of human rights. Human rights are viewed as the rights of groups, not of individuals, and apart from the state, no human rights exist as human rights are originally about groups, particularly the state. Human rights as understood by North Korea include the Marxist theory of human right, cultural relativism and a theory of Asian values. North Korea's understanding of human rights has it that the Western concept of universal human rights should not be forced upon other cultural regions as if it were a universal product of humanity for all cultures. Additionally, North Korea has formed and adhered to a unique understanding of human rights different from other socialist countries' as it understands human rights in the context of the trinity of the Supreme Leader, the Party and the people. Such an understanding of human rights is related to North Korea's collectivist political culture, which is distinctively formed based on the *Juche* ideology and revolutionary leadership, and theories of socio-political being and of the socialist extended family.

North Korea regards the international community's taking issue with its human rights problems by measuring them against Western universal human rights standards as a rejection of and injury to its own belief system and regime. In this respect, it seems apparent that arguing with North Korea about human rights is no longer an effective method for the improvement of North Korean residents' human rights. This is not to say, however, that the North Korean human rights situation should be left alone for such a reason.

The main issues are what are the root causes of North Korean human rights atrocities and how effectively to set strategic priorities that will guide the improvement of human rights situations in North Korea. With respect to these issues, it would be necessary to reflect on the concept of human rights and its process of historical development in the West.

Historically speaking, human rights have developed as a counter-authority protesting against any oppression that impeded human flourishing. A perfect society where no human rights are violated has never existed in history, and varying forms of oppression have appeared in different times and societies. It is historically proven that the power of human rights comes not from their theoretical conclusiveness but from the urgency with which they are asserted.

Since the end of the Cold War, human rights have emerged as a dynamic ideology, and the international community's human rights discourse has dramatically expanded. As human rights emerge as a political and diplomatic matter, conflicts and disputes arise between those who bring up human rights issues and those who are under pressure because of human rights issues. Nevertheless, human rights issues have become the principal agenda of the international community. In the post-Cold War era, the international community has faced criticisms and resistance that under the name of humanitarian intervention it interferes with domestic affairs, but the international community continually endeavours nonetheless to improve human rights by taking actions such as humanitarian intervention in severe human rights violations and presentation of bills.

Michael Kirby, Chair of the COI, announced the research results on the North Korean human rights situation on 17 February 2014. The report held the three 'Supreme Leaders (Kim Il-sung, Kim Jong-il, and Kim Jong-un)' responsible for North Korea's crimes against humanity, and it went so far as to specify Kim Jong-un subject to criminal punishment. That is, the report held the 'Supreme Leader', the person in charge of the monolithic guidance system, responsible for not properly performing his duties to improve the human rights situation of North Korean residents. In addition, the report mentioned the R2P that the international community has responsibility to protect North Korean residents in an affirmative manner if the North Korean authorities are not willing to improve human rights situations despite the international community's demand for improvement. This means that if the North Korean authorities are no longer able to protect their residents from crimes against humanity, the international community should step in to protect North Korean residents.

North Korea is a country that has great resistance to sanctions or pressure as well as any criticism by the international community. Rather, North Korea contends that the international community's presentation of human rights issues is a violation of its autonomy and represents an interference with its domestic affairs. Are there any solutions to improve the human rights of North Korean residents who are suffering in the world's worst human rights abuser country? North Korea has expressed its will, albeit formally only, to improve human rights by amending laws in response to the international community's suggestions regarding human rights issues. However, this has not led to any practical improvement in North Korean residents' human rights.

The most important factor to improve the human rights situation in North Korea is an awareness on the part of North Korean residents of human rights and a change in their consciousness of human rights. Although more than 60 per cent of the North Korean residents who participated in the 2014 survey had never heard of human rights and do not even know what human rights are, they recognised that life in North Korea is not the life of a human being. The human rights condition in North Korea will improve if North Korea residents individually and collectively pursue *eudaimonia* (human flourishing) against human rights violations by the North Korean authorities. Also, there will be room for improvement, albeit gradual, if a system can be formed for the North Korean authorities

and the residents in such a way that the international community's demand for human rights improvement has to be accepted.

To find ways to solve human rights issues in North Korea, it would be helpful to refer to the 'Helsinki Process'. The EU, with its experience in changing the Eastern European system and improving human rights situation there, held political dialogues and human rights dialogues with North Korea from the late 1990s to the early 2000s in parallel with humanitarian assistance to and economic cooperation with North Korea at the same time. The EU was able to gain desired results with regard to human rights issues by contacting and communicating with North Korea until the EU joined forces with the US on North Korea owing to the North Korean nuclear problem. Both the UN and the international community should pay attention to this historical precedent. As briefly mentioned in the 2014 *COI Report*, the structure that has to accept the international community's demand can be formed for North Korean authorities and residents if the international community increases its dialogues and exchanges with as well as its support for North Korea and then uses these as leverage to improve the North Korean human rights situation.

North Korean residents have begun to look after their own rights to life, food and health, which are not protected by the North Korean authorities. This can be said to represent a kind of capitalist element that has sprung up among North Korean residents even though they protect their own rights through bribery. With their daily lives improving through humanitarian assistance and economic cooperation, North Korean residents will recognise by themselves 'the rights of human beings'. Historical development of human rights in the West, together with China, a socialist country, should be good examples. A gradual improvement in North Korean human rights can be achieved if the international community, including the UN, endeavours to improve the human rights of North Korean residents under circumstances where dialogues rather than pressure, and interactions rather than criticisms are available. In this regard, compulsion rather than persuasion, and carrots rather than sticks should be used to induce the improvement of North Korean residents' human rights. It is critical to make North Korea as a member of the international community feel responsive to the international community's concern about its human rights, which may lead to small changes.

Chapter Three

North Korean Human Rights Laws and their Application

3.1 Main contents and problems of North Korean human rights laws

Han Myung Sub

North Korean legal system's characteristics and perception of law

North Korea's general legal system is usually explained to consist of the instructions or statements of the top officials, the rules of the Workers' Party of Korea, the Constitution and laws, in order of authority. The supra-constitutional status of the Party rules is found in Article 11 of the Constitution, which provides 'the Democratic People's Republic of Korea shall conduct all activities under the leadership of the Workers' Party of Korea'. That Kim Il-sung's instructions take priority over the Party rules is found in the preamble of the Party rules, before the 2010 amendment, that 'the Workers' Party of Korea is instructed only by the *Juche* ideology and revolutionary ideology of the Great Leader Kim Il-sung'.

'Law' and 'law of the socialist society' have different meanings in North Korea. North Korea has a negative view of 'law', defining it as 'the embodiment of rules of action which a country enacts and promulgates, and the compliance is guaranteed by the country's legal force in order to maintain and stabilize production relations and social order that are favourable to the ruling class'.²⁷ Unlike this definition of 'law', North Korea defines its law as 'law of the socialist society and national sovereignty that perform a function of the proletarian dictatorship'.²⁸ Accordingly, it is necessary to keep in mind such a difference in analysing North Korean laws, for North Korea's concept of law and its function is quite different from that of other law-governed countries, such as South Korea.

North Korea also emphasises respect for and compliance with laws. Article 18 of the Constitution, amended in 1992, states: 'the law of the DPRK reflects the wishes and interests of the working people and is a basic instrument for State administration. Respect for the law and its strict adherence and execution are the duty of all institutions, enterprises, organisations and citizens. The State shall perfect the system of socialist law and promote the socialist law-abiding life.' This provision made it compulsory to respect and comply with laws, and embraced in the Constitution 'the socialist law-abiding life' that had been emphasised previously.

In addition, law in North Korea is 'a form of expression that reflects the socio-economic system and politics'.²⁹ Accordingly, analysing the trend of North Korean laws shows the changes in politics and socio-economic system in North Korea. The recent trend of North Korean laws in particular contains a series of remarkable changes during the time of amending the Constitution in 2009. The following are the changes in the laws closely related to human rights:

1. Amendment of the Constitution, the Party rule and the Ten Principles in Establishing Party's Monolithic Ideological System to justify and stabilise the North Korean style of socialist system and the succession of Kim Jong-un.

27 Academy of Social Science Institute of Law, *Law Dictionary* (1971), 276.

28 *The Selected Works of Kim Il-sung*, Vol 2 (1976), 142.

29 *Ibid*, 141.

2. Enactment and amendment of laws related to the control of the residents, such as the Criminal Code and the Administrative Penalty Act.
3. Enactment and amendment of laws related to human rights for socially vulnerable groups, such as women and disabled persons.

Focusing on these recent enactments and amendments, the following section will examine the main contents of North Korea's human rights laws according to the three categories above and identify problems in the laws.

North Korea's legislative changes to justify socialist system and succession of Kim Jong-un

RULES OF WORKERS' PARTY OF KOREA

At the third conference of the Party representatives on 28 September 2010, North Korea amended the rules of the Workers' Party of Korea, which has higher authority than the Constitution, after 30 years' effectiveness of the amendment enacted on 13 October 1980. The main parts of the amendment are as follows.

First, the term 'Marxism-Leninism' was deleted in the first sentence of the preamble, personalising the Party by defining it as 'the Party of Kim Il-sung'.

Secondly, the preamble provides that 'the fundamental principle for the establishment of the Party is to maintain the monolithic ideology and leadership in the Party, and to guarantee the succession of the Kim family by uniting with the people'. In other words, the preamble justifies the succession of the Kim family through the establishment of the monolithic ideology and leadership system.

The establishment of the monolithic ideology and leadership system can be also found in Article 2 (Qualification of the Party Member), Article 7 (the Party Member Discipline), Article 23 (Tasks of the Party Central Committee) and Article 48 (Tasks of the Korean People's Army).

Thirdly, the term 'communism' was deleted throughout the rules. It is in the same vein that the term 'communism' was deleted in the 2009 amended Constitution. However, the preamble specifies that the ultimate goal of the Party is to completely realise the autonomy of the people through the *Juche* ideology. Some said that this shows North Korea's will to build a communist society.

Fourthly, the preamble reveals that military-first politics is a basic political method, providing that 'the Workers' Party of Korea upholds the military-first politics as the basic method of socialist politics, and carries out revolutionary and constructive tasks under the military-first ideology'. It is similar to the 2009 amended Constitution, which defines the military-first ideology as an instructed guideline.

Fifthly, Article 24, which provided that the plenary meeting of the Party Central Committee was to elect the General Secretary, was deleted, and Article 21 (4) was enacted to provide that the General Secretary, who is the head of the Party, is to be selected at the Party Convention.

Sixthly, Article 22 provides that the General Secretary of the Party also serves as the chairman of the Party Central Military Committee, so that the General Secretary can take the power of both the Party and the military at the same time. In addition, Article 46 states that entire political activities of the Korean People's Army should be conducted under the leadership of the Party by newly

defining the Korean People's Army as the Supreme Leader's Army, making clear the superiority of the Party's army.

TEN PRINCIPLES IN ESTABLISHING PARTY'S MONOLITHIC IDEOLOGICAL SYSTEM

In June 2013, North Korea revised the 'Ten Principles in Establishing Party's Monolithic Ideological System' for the first time in 39 years. The Ten Principles, which is an unofficial regulation announced after Kim Jong-il was nominated as successor in April 1974, has been appraised as the supreme standard that is above the Constitution and the Party rules in dealing with the lives of North Korean residents.³⁰ Before the revision, the Ten Principles comprised a total of ten articles and 65 clauses, which provide concrete and detailed guidelines to every official and member of the Party and every resident on how to think, act and live, in addition to the Four Principles, which deify Kim Il-sung, make absolute the authority of Kim Il-sung, regard the instructions of Kim Il-sung as a creed and enforce the instructions without any limitation. Given that the Ten Principles regulate how to think as well as how to act and live, their influence on the residents is presumably enormous. For instance, Article 5(1) of the Ten Principles provides that 'the Great Leader Comrade Kim Il-sung's instructions are considered as law and the supreme order, and must be completely and thoroughly fulfilled by exerting inexhaustible dedication and sacrifice without any trivial reasons or excuses'.

The Ten Principles were renamed 'the Ten Principles for the Establishment of the One-Ideology System' when revised. Also, the number of clauses in the Principles was reduced from 65 to 60.

Rather than modifying the specific guidelines for residents, the revision brought changes in each article, including the preamble, in that the word 'Kim Il-sung' was modified as 'Kim Il-sung and Kim Jong-il' so the 'Kim Il-sungism' became the 'Kim Il-sung and Kim Jong-ilism' so that Kim Jong-un is treated equally as Kim Il-sung and Kim Jong-il. Especially, Article 10 added the words '*Baekdu* bloodline' to solidify the succession system of Kim Jong-un by justifying the succession of the Kim family. In addition, as in the 2009 amendment of the Constitution and the 2011 amendment to the Party rules, the term 'communism' was deleted, and the expression 'nuclear forces' was newly added. Accordingly, the Ten Principles make North Korean residents loyal to Kim Jong-un as well as Kim Il-sung and Kim Jong-il in succession in every aspect of ideology and daily life. Article 4 added the 'bourgeois ideology' as a forbidden ideology, and Article 6 created a ban against blindly following a particular Party official, evidently meant to hold the Party officials in check. Furthermore, besides the requirement of loyalty, the Ten Principles demand practical project performance by adding 'project performance' as one of the Party officials' responsibilities.

30 Hyun Sung-il, 'The Study on the Organization Structure and Social Control System of the Workers' Party of Korea' (Master's Thesis, Graduate School of Policy Science, Hankuk University of Foreign Studies 1999), 20. With respect to the fact that the Ten Principles were established in 1974, some argues that the Ten Principles have already existed from the mid-1960s, and that Kim Jong-il adopted the Ten Principles to build his own succession system as he emerged as successor.

North Korea's *Law Dictionary* defines the Constitution as follows:

'Law that regulates the social system of a country, the fundamental rights and duties of the people, and the social relation associated with the organization and realization of the national sovereignty. The Constitution is the fundamental law of the country... The DPRK Constitution is the leading section in the country's socialist legal system, and the fundamental law of the DPRK... The Constitution is distinguished from other laws in that it consolidates the basic issues in the social system of the country, works as a legal foundation for all the laws and legislation, brings the utmost legal efficacy, and is adopted and amended only by a certain procedure of the supreme sovereign organization (by two-thirds of the votes of the representatives).'³¹

Consequently, also in North Korea, the Constitution as a statutory law is law that is fundamental, supreme and general (compared to sector law).

North Korea amended the revised Constitution of 1998 at the first session of the 12th SPA on 9 April 2009, for the first time in 11 years. Seemingly, the most significant feature of the revised Constitution of 2009 is the establishment of the monolithic leadership of Kim Jong-il, the chairman of the National Defence Commission (NDC). Articles 6(2) and 6(3) stipulate the chairman of the NDC as the Supreme Leader of North Korea and the Supreme Commander of the Korean People's Army by separating the chairman of the NDC as a constitutional institution from the NDC and building up the NDC-orientated national administration. Owing to such reinforcement of the authority of the chairman of the NDC, the authority of the Standing Committee of the SPA has relatively diminished.

However, a hidden side of the constitutional amendment suggests that the most significant meaning of the amendment is systematically to tighten the military-first politics by the military-first ideology. Although the preamble of the Constitution does not mention the military-first ideology because it was not revised, Article 3 provides that 'the DPRK is guided in its activities by the *Juche* idea and the military-first ideology', declaring that the '*Juche* ideology' and the 'military-first ideology' are North Korea's ruling ideology by specifying that the latter is also North Korea's revolutionary ideology together with the former. North Korea defines the military-first ideology as the 'great revolutionary ideology that lights the way to develop powerful revolutionary ability by having the revolutionary army as the main forces for the first time in history by request of the military-first era'.³² The recent documents introduce the military-first politics as Kim Jong-un's basic political method by explaining that military-first politics have been firmly maintained as the Party's basic political method and completely realised by Kim Jong-un who has most faithfully developed the ideology and leadership of Kim Il-sung and Kim Jong-il.³³ In addition, all instances of the term 'communism' were deleted from the amended Constitution (Articles 29, 40 and 43), although the basic concept of socialism and the planned economy has been maintained. In human rights aspects, however, the most distinct feature of the amended Constitution of 2009 is that a provision regarding respect and protection of human

31 *Law Dictionary*, 681–683.

32 Park Chul, 'The Military-first Ideology as the Revolutionary Ideology that Lights the Way to Develop Powerful Revolutionary Ability by Having the Revolutionary Army as the Main Forces' (2006) 2 *Political Legal Study* 17.

33 Joo Jang-il, 'The Military-first Politics of our Dear Comrade Kim Jong-un is the Regional Peace and Safety, and the Practical Security of Realizing Cooperation', September 2013, 1–2.

rights was established for the first time in North Korea's constitutional history. Article 8(2) states that 'the State... shall respect and protect the interests of the workers'.

After the 2009 amendment, North Korea's Constitution was revised on 9 April 2010, and amended and supplemented on 13 April 2012 and 1 April 2013 respectively.³⁴ However, there is no change in the aforementioned human rights-related provisions. The provisions on 'People's Fundamental Rights and Duties' in Chapter 5, which is most closely related to human rights, were not amended either.³⁵

EVALUATION

The Party rules, the Ten Principles and the amended Constitution have all employed the succession of the revolutionary tradition to justify and emphasise the appropriateness of the succession of the three generations of the Kim family. North Korea deleted the term 'communism' through the amendment of the Party rules and the Constitution, and claimed to be a North Korean style of socialist state that is distinguishable from other communist or socialist countries by defining the *Juche* ideology and the military-first ideology as North Korea's revolutionary as well as ruling ideology. The Kim Jong-un regime, in particular, considers the military-first politics as its basic political method.

No provisions in the aforementioned supra-constitutional rules and the Constitution have been amended to improve the guarantee of North Korean residents' human rights. Rather, control over the freedom and ideologies of residents has been tightened by the requirement of loyalty to Kim Jong-un. Accordingly, even without mentioning Article 18 of the UDHR, which states that 'everyone has the right to freedom of thought, conscience and religion', North Korean laws may not be free from the criticism that they have retrogressed in terms of human rights.

The final report issued by the COI on North Korean human rights on 17 February 2014 pointed out that in order to establish a system of absolute obedience to the Supreme Leader, North Korea has completely monopolised information, brainwashed its residents since childhood and strictly prohibited independent ideology and conscience, and freedom of expression and religion by watching the private lives of its people.³⁶

Reinforcement of laws related to social control over residents

OVERVIEW

One of the most remarkable trends of the recent changes in North Korean laws is the enactment and amendment of laws related to the control of the residents, along with the succession of Kim Jong-un.

34 The 2010 constitutional revision only changes the name of the Central Prosecutors' Office and the Central Court into the Supreme Prosecutors' Office and the Supreme Court. The 2012 constitutional revision and supplement, after the death of Kim Jong-il, mention nuclear power in the preamble and Kim Jong-il's achievements, which transform the existing Kim Il-sung Constitution as the Kim Il-sung and Kim Jong-il Constitution. The 2012 Constitution also has Kim Jong-un as the first chairman of the NDC, replacing Kim Jong-il's position as the chairman of the NDC by creating a position of the first chairman of the NDC. The 2013 Constitution is about an educational system. It extends the existing 11-year compulsory education including one year of compulsory pre-school education to 12 years.

35 As for the content of Chapter 5 of the Constitution, see KBA, *2012 Report on Human Rights in North Korea*, 94–95.

36 www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx accessed 15 April 2014.

The improvement of laws related to residential or social control is closely associated with North Korea's maintenance of its system. In the process of establishing the succession of Kim Jong-un, the Criminal Code and the Administrative Penalty Act were revised, and the People's Administration Law was enacted. The contents of the legislative improvement in residential control show North Korea's way of controlling its residents to maintain the system. This is an effort to suppress residents' complaints or resistance that may arise in the process of passing on power to Kim Jong-un, who is still young, and to stabilise the succession.

As mentioned earlier, the amendment of the Ten Principles in Establishing Party's Monolithic Ideological System, which is the most fundamental law relating to control over North Korean residents' social life, the amendment of the Criminal Code and the Administrative Penalty Act, which directly apply to residential control, and the enactment of the People's Administration Law and the Housing Act are the significant changes in North Korean laws.

On the other hand, it appears that the People's Security Control Act, which has been used as a means of residential control, has undergone no changes since it was amended on 26 July 2005. However, because North Korea has never officially revealed the Act, there is the possibility that the Act might have been revised but not become publicly known.³⁷ If there has been no amendment, this may be because the subject of the people's security control, of which substantive rules are stipulated in Chapter 2 of the Act, can be carried out by the amended Administrative Penalty Act, and there is no reason to amend since the other provisions are procedural rules related to how to control the people's security and sanction those who are caught.

SUBSTANTIVE CRIMINAL LAW

In general, criminal law is defined as rules of law related to crimes and punishments, including substantive criminal law, which regulates the relation between crimes and punishments, and criminal procedure law, which regulates specific procedures to execute punishments stated in the substantive criminal law. North Korea's substantive criminal laws are the Criminal Code, the Addendum to the Criminal Code, which can be regarded as a special criminal law, the Military Criminal Act³⁸ and the PSA's various decrees to punish certain crimes further. In addition, the Party's rules, the Constitution, the People's Security Control Act, the Secrets Act, the Court Decision Enforcement Law, the Prosecutor Supervision Law, the Criminal and Civil Appraisal Law and the Attorney-at-Law Act are part of criminal law. Moreover, since North Korea has various forms of regulations such as government ordinances, decisions, commands and instructions, most of them may bear a relation to criminal laws.³⁹

37 North Korea published the 'Democratic People's Republic of Korea's Legal Code (public edition)' in 2004 and its second edition in 2012. The 2012 Legal Code does not contain the People's Security Control Act. Since the Legal Code does not contain all the laws in North Korea, the fact that the Act is not included in the Legal Code does not lead to a conclusion that the Act has been abolished.

38 The Military Criminal Act applies to soldiers of the Korean People's Army and of the Korean People's Guard, and security agents. Park Seung-ryeol, 'Military Criminal Act' (Kim Il-sung University of Politics Press 2001), 14. As for the specific contents and issues of the Military Criminal Act, see KBA, *2010 Report on Human Rights in North Korea*, 167–170.

39 A government ordinance is one of the resolution forms of the 'Standing Committee of the SPA', like decision and commands. For reference, North Korean statutory laws are enacted by each institution. The SPA enacts laws in the form of the Constitution, ordinances and decisions, the NDC in the form of decision and commands, the cabinet in the form of decisions and instructions, the Regional People's Assembly in the form of decisions and the Regional People's Committee in the form of decisions and instructions.

Most of the North Korean laws, except those that were recently amended, state in their last provision that ‘any worker or citizen of institutions, companies, and groups, who violates this law and causes grave consequences to XX order, will be administratively or criminally liable’. In other words, there is no specific statement as to what kind of administrative or criminal liability will be imposed when a particular provision in the law is violated. Rather, specific types of offences and rules of punishment are regulated by the Criminal Code if related to criminal punishment or by the Administrative Penalty Act if related to administrative punishment.

The current North Korean Criminal Code was entirely amended in 2004. The Criminal Code before the 2004 amendment did not adopt the principle of legality, which is the great principle of criminal law, and even allowed analogical interpretation. However, since the complete revision in 2004, it was assessed that there was relatively considerable improvement in human rights aspects because the Criminal Code systematised the provisions, adopted the principle of legality, deleted the provision that allowed analogical interpretation, reorganised forms of punishment, relaxed statutory punishment, specified elements of a crime and actively reflected social changes such as economic crime.⁴⁰ However, subsequent amendments to the Criminal Code have again moved away from the protection of human rights.

Meanwhile, North Korea has amended the Criminal Code that was completely revised in 2004 as many as 15 times until 2012. In particular, in just three years, from 2009, when the succession of Kim Jong-un officially started, to 2012, the Criminal Code has been amended seven times. The main impetus for such frequent amendments may be new forms of crimes that require criminal punishment have arisen in North Korean society, or because North Korea wants to enhance statutory punishment. The frequent amendments may have positive aspects in terms of compliance with the principle of legality, but can be assessed negatively insofar as enhancing statutory punishment affects protection of human rights.

The major contents of the amendments to the Criminal Code since 2009 are as follows:

1. Capital punishment was added as a statutory punishment for the crime of disloyal destruction for anti-state purposes, which is one of the crimes against the state (Article 65) and crimes of failing to report were added to the categories of crimes against the people as well as crimes against the state (Article 72).
2. A monetary penalty was added to the categories of punishment so that those who are guilty of crimes against the state or the people can be fined as an additional penalty (Articles 27 and 28).
3. The provisions regarding crimes against the national defence order and management were drastically amended by establishing new categories of punishment and reinforcing statutory punishment.
4. In order to prevent the encroachment of a capitalist culture, keeping decadent materials also became punishable in addition to the existing crime of introducing and distributing decadent materials (Article 183).

40 As for the details of the Criminal Code, see KBA, *2010 Report on Human Rights in North Korea*, 135–151.

5. Punishment for crimes relating to using drugs (Article 217), crimes concerning riots (Article 207), crimes of interfering with enforcement (Article 210), crimes of fabricating and spreading false rumours (Article 211) and crimes of illegal border crossings that are grave in nature (Article 221) were reinforced.

The worst change in the Criminal Code is the enactment of the Addendum to the Criminal Code (general crimes), which was adopted on 19 December 2007 as Political Directive No 2483 of the Standing Committee of the SPA. The Addendum consists of 23 provisions. In spite of its name, the Addendum assumes the form of separate law, rather than the modification of or supplement to the Criminal Code. That is, the Addendum constitutes a special criminal law.

The Addendum to the Criminal Code has two major parts. One of the parts contains additional punishment provisions for some of the crimes stipulated in the Criminal Code that are 'extremely grave' in nature. North Korea's Criminal Code originally provided both general and aggravated punishments in most of the provisions. Aggravated punishment requires a certain crime to be (extremely) grave in nature. The Addendum allows aggravated punishment and also capital punishment as statutory punishment for crimes that are extraordinarily (or extremely, in the case of certain crimes) grave in nature, as follows:

- Article 1: extraordinarily grave crime of intentionally vandalising military facilities and combat equipment;
- Article 2: extraordinarily grave crime of plundering state property;
- Article 3: extraordinarily grave crime of stealing state property;
- Article 4: extraordinarily grave crime of intentionally vandalising state property;
- Article 5: extraordinarily grave crime of currency counterfeiting;
- Article 6: extraordinarily grave crime of smuggling or trafficking precious or coloured metals;
- Article 11: extraordinarily grave crime of smuggling or trafficking drugs;
- Article 14: extremely grave crime of escaping from prison;
- Article 17: extremely grave crime of delinquent acts;
- Article 19: extremely grave crime of deliberately inflicting grievous bodily injuries;
- Article 20: extraordinarily grave crime of kidnapping;
- Article 21: extremely grave crimes of rape; and
- Article 22: extraordinarily grave crime of stealing personal property.

The other part of the Addendum consists of the provisions newly established to regulate crimes that are not provided for in the existing Criminal Code, such as:

- Article 7: illegally selling strategic reserve supplies;
- Article 8: smuggling national resources;

- Article 9: evading foreign currency;
- Article 10: violating construction law;
- Article 12: violating public order by keeping drugs and the raw materials of drugs;
- Article 13: illegally cooperating with a person living abroad;
- Article 15: condoning crimes;
- Article 16: interfering with solving a case; and
- Article 18: illegally operating a business.

Capital punishment is imposed on those who violate the extremely grave crimes of smuggling national resources and illegally operating a business by organising prostitution in their restaurants or motels.

Owing to enactment of the Addendum, the amended Criminal Code of 2004, which received a somewhat positive evaluation, has lost much of its meaning. In particular, enactment of the Addendum will not be free from criticism that the principle of legality, which the Criminal Code explicitly specifies, became meaningless since Article 17 of the Addendum, which is the form of aggravated punishment in Article 258 of the Criminal Code, provides that ‘the extremely grave form of crimes of misconduct is subject to an unlimited term of reform through labour or capital punishment’, and Article 23 of the Addendum states that ‘a criminal who commits several crimes that are extremely grave or who is not willing to be reformed is subject to an unlimited term of reform through labour or capital punishment’. In addition, in light of the fact that the Addendum is for ‘general crimes’, it is not beyond the realms of possibility that another addendum for other special crimes will be brought into force.

CODE OF CRIMINAL PROCEDURE

The Code of Criminal Procedure was also widely reformed on 6 May 2004 as Political Directive No 436 of the Standing Committee of the SPA. Some of the provisions have been amended until the current Code of Criminal Procedure was attained, which was amended and supplemented as Political Directive No 2387 of the Standing Committee of the SPA on 14 May 2012.

The amended Code of Criminal Procedure of 2004 received a positive evaluation and was judged to be more elaborate and precise than its predecessor in terms of formalities, and took a major step forward in guaranteeing human rights.

Article 6 of the current Code of Criminal Procedure provides that ‘the State fully guarantees human rights in dealing with a criminal case’. The 2004 amendment shortens the detention period of a suspected or accused criminal, and specifies the detention period of a pre-trial and trial. The amendment introduces a number of provisions reinforcing the guarantee of human rights by clarifying the arrest warrant system and prohibiting the use of forced or induced statements. Moreover, it promotes the control of judicial power through law by providing specific grounds and methods for the investigation or pre-trial agency to exercise authority. Prohibiting overnight interrogation (Article 162), prohibiting forced interrogation or leading questions (Article 166),

informing a suspect of his or her right (Article 168) and the principle of prohibiting detaining an accused in court (Article 282) provide further guarantees of human rights.

Even though North Korea's Code of Criminal Procedure has been significantly improved in terms of human rights protection, the Code still contains a lot of problems. The most basic problem is that the Code, as a primary means to realise the proletarian dictatorship, has as its main purpose to protect the socialist system. Article 2 of the Code clarifies the principle to accomplish class alignment by stipulating that 'the state shall strictly identify friends and enemies in struggling against anti-State and anti-People crimes, and subdue the small minority of enemy leaders and embrace the majority of innocent followers. In its struggle against ordinary crimes, the state shall largely rely on social education along with a mix of legal sanctions'. Article 3 sticks to the principle to fulfil crowd alignment by stating that 'the state shall rely on the power and wisdom of the crowd in dealing with a criminal case'.

However, in an investigation or pre-trial proceeding, the agencies in charge of the investigation or pre-trial proceeding are allowed arbitrarily to exercise compulsory measures such as arrest, confinement, and search and seizure merely under the supervision and guidance of the prosecution without going through judiciary screening in the courts. Furthermore, long-term detention is allowed during investigation and pre-trial proceedings that are not controlled by the courts, and the opportunity to receive an attorney's practical assistance is not sufficiently offered.

Considering this matter in light of the independence of the judiciary, many problems still exist. Article 14(1) of the ICCPR stipulates the right to fair trial by providing that 'In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'. An 'independent tribunal' stated in the above provision not only means the judicial branch's independence from the legislative and executive branches, but also includes the independence of a judge who tries a case. In this respect, Article 271 of the Code of Criminal Procedure declares the guarantee of the courts' independence by stating that 'a court is independent in trial and tries a case according to the law'.

However, the provision does not contain the true meaning of the independence of the tribunal, since it does not guarantee the independence of each judge, but just declares that of a court as a judicial unit at the institutional level. A judge has political responsibility for the judgment he renders. According to Article 6 of the Court Composition Law, anyone with the right to vote can become a judge, and Article 66 of the Constitution grants the right to vote and run for an election to all North Korean residents who are age 17 or above, except those who forfeit the right to vote by a court's judgment and mentally incompetent persons. Thus, a person without any specialised knowledge of the law can become a judge, according to the laws. However, in reality, it is customary for judges to be elected after completing five years of legal education in the law department of Kim Il-sung University and subsequently working in a court as trainees, staff or assistant judges.⁴¹

The procedure for a trial follows the people's assessor system. Article 163 of the Constitution provides that a trial is generally administered by a court consisting of one judge and two people's assessors and,

41 Lee Seung-ryeon, 'North Korea's Judicial System', Study on North Korean Law, Vol 7 (North Korean Law Society 2004), 113.

in special cases, there may be three judges. The Standing Committee of the SPA has the authority to elect or call the judges and people's assessors of the Supreme Court (Article 116(13) of the Constitution), and the regional People's Assembly has the authority to elect or call the judges and people's assessors of provincial (or directly ruled city) courts, city (district) and the People's courts (Article 140(5) of the Constitution). The people's assessors have an equivalent status and authority to the judges, and in fact, act as the Party's means to control the judicial branch, interfering with the independence of the judicial branch.

With regard to the principle of a public trial, to guarantee fairness, the previous Code of Criminal Procedure specifies that 'a trial should be disclosed'. However, the current Code stipulates in Article 270(1) that 'the first trial should be disclosed', limiting the scope of the principle of a public trial to the first trial only. In addition, the Code allows broad exceptions by specifying in Article 270(2) that 'in case that it is necessary to keep the secrets of the State or an individual, or that a trial may have a bad influence on the society, a trial may not be open to the public in whole or in part'.

Most important of all, Article 53 of the Code of Criminal Procedure allows the Supreme Court to 'try any first trial on an ad hoc basis that is subject to the jurisdiction of other courts', and Article 358 provides that the Supreme Court's judgment and decision for any first trial should not be appealed or protested. That is, the Supreme Court can be a court of first instance for any case if necessary and in such a case, the right to appeal is not guaranteed. This runs counter to the provisions of Article 14(5) of the ICCPR, which provides the right to appeal in a higher court, which is one of the fundamental principles of criminal procedure, that 'Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law'.

ADMINISTRATIVE PENALTY ACT

North Korea amended the Administrative Penalty Act on 16 October 2011. This was the eighth amendment in seven years since its enactment on 14 July 2004. The Act was adopted for purposes of 'precisely regulating misconduct and administrative penalty, curbing illegality by strictly establishing a system and order, and building the law-abiding atmosphere throughout the society (Article 1)'. At the time of enactment, there were 199 provisions in the Act. Since then, the number of provisions has not increased even after several modifications and supplements, which only elaborated or supplemented individual provisions. It was in the 2011 amendment that the number of provisions dramatically increased by 254. The main contents of the 2011 amendment of the Administrative Penalty Act are as follows:

1. Chapter 1, which provides the basics of the Act, specifies the principle of non-retroactivity. The then existing Act is applied to a person who violates the law, but where the misconduct is no longer illegal or the punishment has become light under the current amendment, the amendment will be applied (Article 6).
2. The amendment supplemented the general principle of administrative penalty by defining misconducts (Article 8), specifying violations subject to administrative penalty (Article 10), adding labour education as an administrative penalty (Article 14), calculating the period depending on the type of administrative penalties (Article 27) and providing the factors to determine whether to apply a lighter or heavier punishment (Articles 28 and 29).

3. As for 16 ‘crimes against the national defence order and management’ regulated in Chapter 4 of the Criminal Code, 15 penalty clauses were established in Chapter 2(1) of the Administrative Penalty Act, which specifies ‘crimes against the national defence order and management’. Before the amendment, the Act did not regulate such crimes.
4. The following misconduct was newly regulated as crimes against the economic management order – violating contract provisions (Article 52), violating the pisciculture order (Article 56), violating the management order of production method (Article 59), conducting an illegal business and pretending to be a company (Article 60), conspiring to embezzle state property (Article 69), lending or borrowing state property (Article 75), violating an order of bank loan (Article 77), counterfeiting currency and using counterfeit money (Article 78), forging securities and using forged securities (Article 79), violating a currency exchange order (Article 80), illegally issuing, paying and using a cashless payment method (Article 81), engaging in illegal work or transport (Article 88), smuggling (Article 126), violating the order of foreign currency usage (Article 127) and trading currency (Article 130). The 2011 amendment also diversified the types of punishment for most of the violations specified in the previous Act.
5. Violations of the cultural management order were specified in 19 provisions amended previously, and now the number of relevant provisions has increased by 26. Specifically, the following provisions were established – violating the order of computer security and usage (Article 140), listening to a hostile broadcasting and collecting, keeping and spreading enemy material (Article 153) and violating the order of managing sedatives and sleeping pills (Article 157).
6. As for violations against the general administration order, undermining an authority of a national organisation (Article 162), human rights violation (Article 165), refusing to enforce a decision and order (Article 174) and illegal censorship and crackdown by an agent in charge (Article 180) were established.
7. New provisions relating to violations of community life order were made as follows: illegally using a national honour or title (Article 188), not offering an honorarium to the state in the course of a transaction (Article 199), enticing a minor to be involved in an illegal act (Article 201), engaging in a gang fight (Article 203), inflicting grievous bodily injuries in excess of self-defence (Article 205), dealing with plunder (Article 212), avoiding responsibility for protecting the elderly and children (Article 215) and bootlegging (Article 227).
8. A provision requiring a prosecutorial agency to supervise the application and enforcement of administrative punishment according to the Prosecutor Supervision Law was established.

The Administrative Penalty Act covers almost every category of conduct, beginning with a violation of the national defence order and management, which is subject to criminal punishment, and including violations of the order of economic management, cultural management, general administration and community life. It means that there are no significant differences in the elements of both violations subject to administrative punishment and crimes subject to criminal punishment. Accordingly, the authorities can arbitrarily enforce laws, as a matter of convenience, by imposing administrative or criminal punishment with regard to the same illegal act. Included in the methods of administrative punishment is unpaid labour for a period of more than a month and less than six months, which imposes labour that is difficult and harsh (Article 16). Thus, the

purpose of the Act is to reinforce control over residents through administrative punishment, which can be imposed after a swift and simple procedure, as opposed to criminal punishment, which necessitates a more complicated procedure.

Above all, imposing unpaid labour not as a criminal punishment but as an administrative punishment violates the ICCPR, which prohibits forced labour. Article 8(3) (a) of the ICCPR states that ‘No one shall be required to perform forced or compulsory labour’, and Article 8(3) (b) states an exception that ‘in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court shall not be precluded.’ Article 8(3) (c) provides that forced labour shall not include:

- ‘(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.’

However, unpaid labour specified in the Administrative Penalty Act does not fall within the above exceptions. It is not certain whether North Korea recognises this issue but it did not include the Act in its 2012 Legal Code, published after the enactment of the Act, treating it as a restricted document.

PEOPLE’S ADMINISTRATION LAW

North Korea adopted the People’s Administration Law as Political Directive No 944 of the Standing Committee of the SPA on 8 July 2010. The Law consists of four chapters and 39 provisions.

The Law specifies that its purpose is to ‘contribute to provide an independent and creative life for the people by establishing a strict system and order in the people’s administrative business’ (Article 1).

However, the Law contains provisions that regulate a resident’s duty to register their status (Article 12), requires the local cooperative organisation, ‘*inminban*’ (similar to the Neighbourhood Watch scheme in the UK, though in North Korea, membership is obligatory), to elect their head and vice-head through election in the *inminban*’s meeting (Article 10), requires the People’s Committee to define the territory of local institutions, corporations and neighbourhood watch and requires them to properly supervise maintenance of the territory (Article 21), requires the relevant agency’s approval when accommodation is provided for another person in one’s own house (Article 32) and requires anyone who detects abnormal situations including any conduct violating laws to report to the relevant agency (Article 33). Given the aforementioned provisions, the Law appears to have been enacted effectively to control the lives of residents, not to offer them assistance.

HOUSING ACT

North Korea adopted the Housing Act as Political Directive No 3501 of the Standing Committee of the SPA on 21 January 2009, and amended it twice, on 4 August 2009 and 25 October 2011, respectively.

The Act consists of six chapters and 63 articles. Chapter 1 is about the basics of housing; Chapter 2, the construction of housing; Chapter 3, the transfer, conveyance and register of housing; Chapter 4, the assignment and usage of housing; Chapter 5, the management of housing; and Chapter 6, the control and guidance of housing-related business.

The purpose of the Act is said to ‘guarantee a stable and cultural living condition to the people by strictly establishing the system and order for the construction, transfer, conveyance and register, assignment, usage, and management’ (Article 1).

Article 43 prevents an organisation, association or individual from exchanging housing for self-interested or improper purposes, cohabiting or supplying accommodation in housing by taking money or imposing an unfair condition, trading or illegally lending or brokering state-owned housing, and extending or reconstructing housing, or modifying the structure of housing without permission. A person who violates Article 43 is subject to administrative punishment (Article 62(8)), and if the violation constitutes a crime, criminal punishment will be imposed (Article 63). In the case of trading or using state-owned housing without permission, the housing will be re-claimed (Article 61).

Accordingly, the primary purpose of the Act is to regulate residents’ transactions relating to and usage of housing.

OTHER LAWS

On 30 March 2010, North Korea amended the Pyongyang Management Law, which was enacted in 1998, as Political Directive No 743 of the Standing Committee of the SPA. The amended Law still requires that ‘any resident who is to move from local areas to Pyongyang, or from periphery areas to central areas, shall receive a local agency’s permission to reside’ (Article 31). This not only limits freedom of residence guaranteed by North Korea’s Constitution, but also violates Article 12(1) of the ICCPR, which provides that ‘everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence’.

In addition to these laws, the Administrative Censorship Law was mentioned as being a North Korean law in a North Korean scholar’s dissertation published in 2011.⁴² The exact time of enactment and details of the Law are unknown because the North Korean authorities and media have never announced it. Given that the 2011 dissertation mentioned the existence of the Law, it is presumed that the law may have been enacted at the end of September 2010 or so, when Kim Jong-un officially became the successor to Kim Jong-il. More broadly, the law may have been enacted between January 2009 and September 2010, known as the period when Kim Jong-un was nominated as successor.

42 Kim Kyung-hyun, ‘The Origin of the Democratic People’s Republic of Korea’s Administrative Law’, *Kim Il-sung University Newspaper: History of Law*, Vol 57, No 1, 2001, 109.

The Administrative Censorship Law, going by its name, may be understood as a law that manages censorship on ‘administrative’ organisations or ‘administrative’ workers (public officials). However, the Law is believed to deal with censorship of or a crackdown on residents because the ‘Administrative’ Penalty Act also, unlike its name, provides rules regarding cracking down on and punishment for residents.⁴³

Improvement of human rights laws for socially vulnerable groups

OVERVIEW

In the provisions relating to the fundamental rights of North Korean nationals guaranteed in the Constitution, there has been very little change since the enactment of the Socialist Constitution in 1972, except for the 1998 amendment, which newly stipulated freedom of movement and residence in Article 75. As for law-making, however, the current trend in North Korea shows its effort to improve laws related to human rights, pressured by the international community’s criticism and suggestions on human rights in North Korea.

North Korea’s representative laws relating to human rights for socially vulnerable groups are the Disabled Persons Protection Law, which was adopted as Political Directive No 3835 of the Standing Committee of the SPA on 18 June 2003, and the Elderly Protection Law, which was adopted as Political Directive No 2214 on 26 April 2007.⁴⁴ Since then, the Women’s Rights Protection Act was adopted as Political Directive No 1307 on 22 December 2010,⁴⁵ and, on the same day, the Children’s Rights Protection Act was adopted as Political Directive No 1309. In 2012, the Social Security Law was amended to grant a pension to those without economic ability. Also, by signing up to the CRPD on 3 July 2013, the North Korean government took visible action to express its will for human rights internationally.⁴⁶

SOCIAL SECURITY LAW

Article 9 of the ICESCR sets forth the right to social security and social insurance by providing ‘the right of everyone to social security, including social insurance’.

North Korea modified and supplemented the Social Security Law as Political Directive No 2303 of the Standing Committee of the SPA on 3 April 2012. The Law was adopted as Political Directive No 2513 on 9 January 2008, and amended on 26 October 2008 for the first time.

The amended Social Security Law consists of six chapters and 49 provisions, which regulate:

43 Lee Gyu-chang, ‘North Korea’s Improvement on Law for Controlling the Residents and Maintenance of its Regime’, Online Series CO 2012-45, KINU, 2012, 3–4.

44 The Elderly Protection Law was revised and supplemented as Decree No 2333 of the Standing Committee of the SPA on 21 August 2007, and as Decree No 2303 on 3 April 2012 respectively.

45 The Women’s Rights Protection Act was amended and supplemented as Decree No 1743 of the Standing Committee of the SPA on 5 July 2011.

46 As for the details and problems of the Labour Protection Law, the Disabled Persons Protection Law, the Elderly Protection Law, the Women’s Rights Protection Act and the Children’s Rights Protection Act, see KBA, *2012 Report on Human Rights in North Korea*, 120–135.

- the basics of the Social Security Law (Chapter 1);
- the procedure of social security (Chapter 2);
- the expense of the social security grant (Chapter 3);
- the management of social security institutes (Chapter 4);
- the production and supply of assistant devices (Chapter 5); and
- the guidance and control of social security business (Chapter 6).

The primary purpose of this Law is to protect the people's health by strictly establishing the system and order of business related to social security, and guaranteeing a stable and happy living environment and conditions (Article 1).

Social security covers those who are old or unable to work because of illness or physical disability, children and elderly people without caregivers (Article 2). Revolutionary fighters, the family of a revolutionary martyr, the family of a patriotic martyr, the family of a socialist patriotic martyr, heroes, old veterans and honourably discharged soldiers are entitled to preferential treatment (Article 4).

To receive social security benefits, an organisation, corporation or group to which a person belongs should fill out an application and submit it to the Central Labour Administrative Agency or the People's Committee (Article 10). Once in receipt of the application, the Agency or Committee should determine to admit or reject the application after deliberation (Article 11). In case of admission, the Agency or Committee should register the applicant as a grantor, issue a certificate of social security grant and notify the admission to community centres in the village, town, labour zone or district in which the applicant resides (Articles 13 and 14). A financial bank agency and the relevant People's Committee provide the social security grant (Article 17) and the person receiving the grant will receive a social security pension and subsidy according to the certificate of social security grant (Article 19). In addition, the Law specifies provisions regarding a ban on spending a social security grant, the management of social security institutes, the production and supply of assistance devices that are essential life aids for the disabled and the grounds for administrative or criminal responsibility of perpetrators.

SIGNING UP TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

North Korea signed up to the Convention on the Rights of Persons with Disabilities (CRPD) on 3 July 2013. The CRPD, which is one of the UN covenants on human rights to guarantee the dignity and rights of every person who suffers physical, mental or intellectual disabilities, was adopted by the 61st UN General Assembly on 13 December 2006, and came into effect on 3 May 2008.⁴⁷

Before signing the CRPD, North Korea, for the first time, sent a team of 24 members to the Paralympics, which began on 30 August 2012, and drew the attention of the international community.

47 South Korea signed the CRPD on 30 March 2007, and ratified it on 11 December 2008 on the condition of reserving the provision in Art 25(e) that requires member states not to discriminate against persons with disabilities in health services. The CRPD came into effect in South Korea on 10 January 2009.

North Korea's signing the CRPD is interpreted as an expression of its interest in the international standard of human rights.

Before adopting the CRPD, North Korea adopted the Disabled Persons Protection Law as the Political Directive No 3835 of the Standing Committee of the SPA on 18 June 2003. The Law consists of six chapters and 54 provisions, which regulate:

- the basics of the Disabled Persons Protection Law (Chapter 1);
- the recovery of a disabled person (Chapter 2);
- the education of a disabled person (Chapter 3);
- the cultural life of a disabled person (Chapter 4);
- the working life of a disabled person (Chapter 5); and
- the guidance and control of businesses that deal with the protection of disabled persons (Chapter 6).

As shown in each chapter, the purpose of the Law is to 'provide the favourable living environment and condition for the disabled by strictly establishing the system and order of recovery cure, education, cultural life, and labour of the disabled' (Article 1).

A newspaper (*Choson Sinbo*) of the General Association of Korean Residents in Japan (*chongryon*) stated that North Korea reflected the contents of the CRPD in the Disabled Persons Protection Law when amending the Law on 26 November 2013.⁴⁸

PROBLEMS

As mentioned above, North Korea appears to have tried to guarantee the human rights of socially vulnerable groups by improving relevant laws. However, looking at the details of the laws reveals some serious problems.

Because of unique characteristics of the socialist state, North Korea has a duty to guarantee its residents' livelihoods. Article 25 of the Constitution provides that 'the DPRK regards the steady improvement of the material and cultural standards of the People as the supreme principle of its activities. The increasing material wealth of society in our country, where taxes have been abolished, is used entirely to promote the well-being of the working people. The state shall provide all working people with every condition for obtaining food, clothing and housing'. Article 72 also states that 'the people are entitled to free medical care, and all persons who are no longer able to work because of old age, illness or a physical disability, the old and children who have no means of support are all entitled to material assistance. This right is ensured by free medical care, an expanding network of hospitals, sanatoria and other medical institutions, state social insurance and other social security systems'.

48 'North Korea amended its "Disabled Persons Protection Law" reflecting the international standard' *Yonhap News* (6 December 2013).

North Korea's social security system has pursued universal welfare in which all workers not only pay insurance equally but also receive a subsidy equally.⁴⁹ However, Article 4 of the Social Security Law specifies the principle that gives preferential treatment to a particular class, providing that 'the state shall socially give preference to revolutionary fighters, the family of a revolutionary martyr, the family of a patriotic martyr, the family of a socialist patriotic martyr, heroes, old veterans, and honourably discharged soldiers'. In other words, the Law abandoned the previous system of universal welfare and rather discriminates in favour of a core class.

The policy of giving preferential treatment to the core class under the Social Security Law can be found in other laws relevant to social security. Article 5 of the Elderly Protection Law specifies that 'the state shall particularly give preferential treatment to the elderly who contribute to the protection of the country and the construction of the socialism such as revolutionary fighters, revolutionary struggle contributors, heroes, veterans, honourably discharged soldiers, and other contributors, and shall warmly care for their livelihood'. Even Article 7 of the Disabled Persons Protection Law provides that 'the state shall give preferential treatment to the disabled, including honourably discharged soldiers who sacrificed for the country and the people'.

In addition, it's worth pointing out that enactment of the Social Security Law has reinforced control over the recipients of social security. Before enactment of the Law, an individual who wished to receive social security could apply for it individually, but since the Law was enacted, an organisation, corporation or group to which the applicant belongs is required to apply on behalf of the applicant, making it generally difficult to apply for social security (Article 10). Moreover, if an individual applies for social security by reason of illness or injury, a written medical diagnosis issued by a health institution must be attached (Article 11).

A provision that requires a person who relocates his residency to submit a registration document of social security to a local People's Committee in which his new residency is located is also a means to reinforce control over the recipient of social security.

Consequently, the laws that North Korea has enacted or amended for socially vulnerable groups appear to be a measure to guarantee human rights by improving the social welfare of North Korean residents. However, in reality, by treating some core classes with preference, the laws induce residents to become loyal to the regime. Also, by restricting the welfare system for ordinary residents, the law is open to criticism since it has been improved not for their welfare, but to tighten control over them.

In particular, giving preferential treatment to some core classes goes against Article 1 of the UDHR, which provides that 'all human beings are born free and equal in dignity and rights', Article 7, which provides that 'all are equal before the law and are entitled without any discrimination to equal protection of the law' and Article 2(1) of the ICCPR, which prohibits any discrimination by reason of social origin.

49 Kim Yeong-hui, 'North Korea's Trend of Social Security System and its Enactment of "Social Security Law"', 199th Monthly Conference of the North Korean Law Society, 27 March 2014, 11.

3.2 North Korea's application of its criminal laws

Seong Bin

Introduction

OVERVIEW OF SURVEY ON HUMAN RIGHTS IN NORTH KOREA

For the purposes of researching North Korean human rights, the KBA conducted a survey of 103 North Korean defectors⁵⁰ from October 2013 to January 2014. The survey respondents consisted of 49 males and 54 females, including the special respondents⁵¹ – four defectors who worked abroad, three political prisoners and 17 from ordinary prison camps (*kyohwaso*). The survey on the application of North Korea's criminal laws was mainly concerned with the management of the criminal justice system and consists of questions regarding the process of investigation and trial, and execution of a sentence.

SOURCES OF NORTH KOREA'S CRIMINAL LAWS

Besides the Criminal Code as a substantive law and the Code of Criminal Procedure as a procedural law, the sources of North Korea's criminal laws are the People's Security Control Act, the Secrets Act, the Administrative Penalty Act, the Court Composition Law, the Court Decision Enforcement Law, the Prosecutor Supervision Law and the Attorney-at-Law Act. There are also various sources such as government ordinances, decisions and orders enacted by state organisations. In addition, the bilateral or multilateral conventions signed by North Korea with other countries or international organisations form part of the sources of North Korea's criminal laws.⁵²

North Korea had never publicly disclosed its laws until 2004, when it amended its laws extensively and published the DPRK's Legal Code (public edition), which is an official collection of laws and contains some parts of the laws. Since then, North Korea has continued to publish a revised edition of the Legal Code. However, given that the structure and contents of the Legal Code appear to be different depending on to whom it will be distributed, it has been said that there is a separate edition for North Korean officials, which is indicated as the 'executive edition'.

Some have pointed out that the survey conducted by the KBA may have problems in grasping how North Korea has applied its criminal laws. Since North Korea has not revealed all of its criminal laws and regulations, there is the possibility that other laws not yet identified could exist. In particular, 'the Addendum (general crimes) to the DPRK's Criminal Code',⁵³ which was adopted as Political Directive No 2483 of the Standing Committee of the SPA on 19 December 2007, has not yet been

50 The survey targeted 103 defectors who left North Korea since 1 January 2011.

51 As for the special respondents, unlike the other respondents, there was no time limit set on how long they escaped from North Korea.

52 Office of Court Administration, North Korea's Criminal Law, 2006, 20.

53 Only 32 per cent of those surveyed recognised that the Addendum was newly adopted. And 10.3 per cent of them heard about cases in which capital punishment was executed under the Addendum. This shows that the Addendum has been operative in a considerable way.

publicly disclosed. It is believed that the Addendum imposes capital punishment as an aggravated element on crimes that are ‘extremely grave in nature’, and creates a regulation that punishes new crimes arising from social changes. Considering these aspects, analysing all of North Korea’s criminal laws may be impossible from the beginning. Additionally, in order to grasp North Korea’s application of its criminal laws, conducting research by visiting an official institution such as the Ministry of Government Legislation in South Korea may be the most accurate way, rather than using questionnaires like the 2014 survey, but even the best way has room for error because it also cannot achieve the exact goal.⁵⁴

Some of North Korea’s criminal laws have expanded the elements of a crime in its provisions by penalising violations of various kinds of administrative orders of the state institution. Article 73 of the Criminal Code, in particular, imposes short-term labour of up to two years on those who do not accurately execute or execute as a mere formality the command of the Chairman of the NDC, the commands of the Supreme Commander, the decisions and instructions of the NDC, and the commands, decisions and instructions of the Party Central Military Committee. Moreover, even if no command exists while the Criminal Code is in effect, the Code provides that violating any further command declared by the state institution in the future can be criminally punishable. This is the problem with regard to the principle of legality.

The PSA decree⁵⁵ is not an enacted law, such as government ordinances, decisions and commands enacted by the state institution. For example, a decree of 1 March 2006, which ‘severely punishes those who cut a power or communications line or deal drugs’ and a decree of 28 December 2009, which ‘severely punishes those who circulate foreign currency in the territory of the DPRK’, are applicable as supplementary sources of law. However, these decrees, although they are one of the sources of criminal law, are frequently promulgated and apply without limitation on their range of application and the time periods involved.⁵⁶

NORTH KOREA’S APPLICATION OF ITS CRIMINAL LAWS

The 2014 survey on human rights in North Korea conducted by the KBA shows that only 34 per cent of the respondents replied that they knew about the existence of laws and systems that guarantee human rights to North Korean residents. This calls into question whether the official laws and systems are properly observed and function as a guarantee of human rights. Also, the criminal laws appear to act as a means to control residents.

In June 2011, the *Kukmin Daily* reported that North Korea had a guidebook for its legal professionals, which is titled ‘Guidebook for Workers in Legal Battles’.⁵⁷ The guidebook, as an educational or work guide for North Korean workers in legal positions such as an agent of an investigation agency, explains how to interpret and apply the Criminal Code, the Code of Criminal Procedure and the Civil Code through specific cases. Although the guidebook is a significant text that helps in the

54 KBA, *2010 Report on Human Rights in North Korea*, 172.

55 In the survey regarding the effect of a decree, 47.6 per cent replied that a decree has a limit on its effect for a certain period of time, and 30.1 per cent stated that a decree has no limit on its effect until its abolition. This shows that North Korean residents recognise the existence of a decree as criminal laws.

56 KBA, *2010 Report on Human Rights in North Korea*, 176–178.

57 ‘Revealing the People’s Security Agency of North Korea Internal Material First Time’ *Kukmin Daily* (19 June 2011).

understanding of North Korea's application of the judicial system because it describes the laws in detail depending on the current legislative system, it is questionable whether the guidebook is followed in practice.

Investigation procedures

North Korea's Code of Criminal Procedure distinguishes the investigation procedures for finding criminal facts from the pre-trial procedures for confirming a criminal and the criminal facts. Accordingly, after looking into the investigation procedures in general, a survey on pre-trial procedures was also conducted. Seventy of the 103 respondents said that they or their family have been under investigation by an investigation agency such as the People's Security Office, the SSD and the Prosecutors' Office. Among them, 69 replied that they underwent arrest and custodial investigation. This shows that there are higher rates of arrest and custodial investigation.

Under North Korea's criminal justice procedures, the procedures for criminal prosecution consist of investigation, pre-trial and indictment. A professional investigator of the relevant legal institution, or a worker with an investigation power if necessary, can investigate a crime (Article 10 of the Code of Criminal Procedure).

The survey result shows that some were arrested or investigated not by an official investigation agency but by the anti-socialist group (*groupppa*),⁵⁸ which is a censorship or inspection organisation that cracks down on and exposes North Korean residents' anti-socialist behaviour in their daily lives.⁵⁹ That is, an unofficial agency that has no legal power to investigate may perform investigations with authority in a criminal case.

ARREST AND CUSTODIAL INVESTIGATION

Arresting and detaining a criminal suspect without a prosecutor's approval is restricted to circumstances where the suspect is a flagrant offender or a quasi-flagrant offender, attempts suicide or flight and has no fixed abode (Article 142 of the Code of Criminal Procedure). In addition, within 48 hours of arrest, a document explaining the detention decision should be drawn up in order to secure the approval of a prosecutor, and if within 10 days of arrest, the suspect turns out not to be a criminal, he should be released immediately (Article 143).

However, according to the survey, 81.4 per cent of the respondents replied that they did not know that even if a criminal suspect can be arrested without a prosecutor's approval under the current laws, the suspect must be released immediately if a prosecutor's approval is not obtained within 48 hours. Of the respondents, 45.7 per cent stated that they had been arrested and detained for more than

58 As new types of socially deviant behaviour have become frequent among North Korean residents, owing to an increasing trend of liberalism since the collapse of the former Soviet Union and Eastern Europe in the late 1980s, the SSD and Prosecutors' Office, under the supervision of the Social Safety Agency (currently, the Ministry of People's Security – MPS), organised 'the anti-socialist group' (*groupppa*) to crack down on such anti-socialist behaviour.

59 According to 'North Korea's Application of its Criminal Laws' (169–170), the categories of anti-socialist behaviour on which the anti-socialist group cracks down include smuggling, river-crossing, illegal border crossing, drugs, excessive drinking and manufacture of alcohol. ID 004(2014) describes the anti-socialist group as 'an agency that receives the policy and is dispatched in the form of a campaign to each province, city, and county with authority to investigate and punish illegal behaviours'. ID 012(2014) illustrates that 'each neighbourhood watch (*inminban*) consists of two persons sent by the Party, the SSD, prosecutors' office, and the PSA (a train is organised on a nationwide scale, fully loaded)'.

48 hours after arrest without a prosecutor's approval.⁶⁰ Moreover, 57.1 per cent of the respondents mentioned that they never heard of the rule contained within the Code of Criminal Procedure that requires a suspect to be released immediately within ten days of the day of arrest if the suspect is not confirmed as a criminal, and 25.7 per cent of the respondents said that they had been detained for more than ten days after the day of arrest although they were not proved to be a criminal.⁶¹ Furthermore, although detaining a person with a serious illness is prohibited by law, 16 of the 70 respondents replied that their detention was not suspended even though they were very ill.

Only 26.1 per cent of the respondents received a document explaining the detention decision when arrested and detained, which means 73.9 per cent never received such a document. Article 183 of the Code of Criminal Procedure provides that where a decision is made to arrest and detain, a suspect should be informed immediately of the decision, and the suspect's family member or an affiliated group should also be informed of the reason why the individual has been detained and the location of custody within 48 hours of the arrest. However, only 47.8 per cent replied that such notification was sent to their family. As expected, there were higher rates of illegal arrest and detention that do not comply with the procedural rules.

Before being indicted, a criminal suspect is held in custody at a detention facility or a holding centre (*jipkyulso*) during the investigation or pre-trial – 1.4 per cent of the respondents said that they were detained in holding centres and 92.8 per cent in detention facilities in the process of investigation after their arrest.⁶²

60 The survey results contain the following cases:

- ID 009(2014): in June 2003, I was detained for a month at the Onsong SSD due to 'illegal border crossings'.
- ID 010(2014): I was detained at a police substation on charges of 'money dealing' without any notification until I was found innocent.
- ID 012(2014): I do not know whether there was a prosecutor's approval, but I was detained at a detention centre for nine days and six hours for 'smuggling'.
- ID 033(2014): while I was at my wife's parents' home for my father-in-law's memorial service, one of the three people who always drank with me was arrested for 'reactionary words' (unification will happen when Kim Il-sung dies). It was reported that I was there with him, and I was arrested for not reporting the reactionary words first. After 50 days, it was discovered that I was not there, and I was released after 70 days because it took 20 days to receive Kim Jong-il's approval.
- ID 043(2014): I was detained without the intervention of a prosecutor for 'illegal border crossings'.
- ID 049(2014): I was detained for ten days at the SSD for 'smuggling'.
- ID 060(2014): some people drove to my house and took my husband away for 'watching a Korean drama'.

61 The survey results contain the following cases:

- ID 005(2014): I was detained for 15 days for 'attempting to go to South Korea', but was released on bail for illness through a bribe.
- ID 010(2014): I was detained for 20 days owing to 'money dealing'.
- ID 017(2014): I was detained for more than ten days because of 'circulating South Korean CDs'.
- ID 021(2014): I was detained for ten days owing to 'stealing a tool'.
- ID 026(2014): I was detained for three years because of 'abetting a nationally wanted criminal'.
- ID 068(2014): I was detained for more than ten days owing to 'religious activity'.
- ID 084(2014): I was detained for 15 days due to 'smuggling'.

62 The following are various opinions from the respondents about holding centres and detention facilities. 'A suspect is first sent to a holding centre and then, a detention facility' (ID 033(2014)). 'A holding centre confines those who illegally crossed the border, and a detention facility is a facility to investigate general criminals' (ID 040(2014)). 'A holding centre investigates and a detention facility imposes unpaid labour' (ID 054(2014)). Some stated that they were detained in a place other than a holding centre and detention facility – 'the SSD' (ID 008(2014)), 'an inspection section' (ID 015(2014)) and 'a prosecutor's office that was one of the anti-socialist group' (ID 026(2014)).

RIGHT TO ATTORNEY DURING INVESTIGATION

Only 2.9 per cent of the respondents replied that they had a meeting with an attorney during the investigation. The right to an attorney is not guaranteed most of the time before pre-trial.

UNFAIR, COERCIVE AND HARSH TREATMENT TO OBTAIN A CONFESSION DURING INVESTIGATION⁶³

The Code of Criminal Procedure prohibits pre-trial investigators from forcing a confession or inducing testimony during interrogation (Article 166), and provides that a suspect may raise an opinion if not admitting a crime (Article 169). Thus, under the law, it appears that an investigation agency cannot force a confession and a suspect's right of reply is guaranteed. However, in reality, the criminal procedure rules related to the guarantee of human rights are just nominal. When asked whether they were forced to confess, suffered violence such as torture and abuse for confession, and induced to confess, 29 of the 37 respondents replied in the affirmative.

In addition, 13 of the 30 respondents answered 'yes' to the question of whether they had written a statement and been coerced to make a confession, and 14 of the 37 respondents said 'no' to the question of whether they had gone through the procedure in which a suspect is asked to sign an interrogatory, confirming that it is correctly written, after reading or listening to the contents of the interrogatory.

Reality of pre-trial procedures

Pursuant to the Code of Criminal Procedure, a pre-trial is a process to confirm a defendant and precisely disclose all criminal facts. Thus, during a pre-trial, all the facts that are relevant to a case, such as the nature of the crime, the motive and the purpose, the means and method of the crime, the degree of the criminal act and its result, the degree of the criminal responsibility and the defendant's role in committing a crime, should be revealed by objective evidence (Articles 147 and 148). A pre-trial investigator should determine to begin a pre-trial within 48 hours of receiving a criminal case (Article 156).⁶⁴

Among the 103 respondents who replied that they had been under investigation, only 49 said that they or their family member was allowed a pre-trial in the PSA, the SSD or the Prosecutors' Office.

Also, 49 per cent of the respondents replied that they did not have a chance of pre-trial within 48 hours. Once sufficient evidence is collected, a pre-trial investigator should decide whether to pursue criminal liability, and inform a suspect of the decision within 48 hours (Articles 157 and 158 of the Code of Criminal Procedure). However, 71.4 per cent of the respondents replied that they never received such notification.

63 The following responses show that coercive and unfair treatment during investigation can be severe. A suspect who denies criminal facts during the investigation is subject to 'assault' (ID 009(2014)), 'violent treatment' (ID 019(2014)). 'The investigation continues until the suspect admits his guilt' (ID 024(2014)). 'The suspect is detained until the investigation is resolved' (ID 033(2014)). 'The suspect is continuously detained in a detention facility' (ID 062(2014)).

64 However, unlike the rule, there were plenty of cases in which an accused did not go to pre-trial within 48 hours. The following responses show that the Code of Criminal Procedure rules are not properly respected. The respondents answered that they were just seated without pre-trial for 'four months' (ID 010(2014)), 'two months' (ID 039(2014)) or '15 days' (ID 053(2014)). ID 053(2014) said that after mental breakdown occurred, the respondent was brought to make an affidavit once or twice a week.

ARREST AND DETENTION IN PRE-TRIAL PROCEDURES

Where a suspect is arrested for detention during pre-trial, an identification card and an arrest warrant should be presented to the suspect (Article 181 of the Code of Criminal Procedure). However, only six of the respondents stated that the warrant was shown to them. That is, most of the suspects were arrested by pre-trial investigators without an arrest warrant. Article 182 of the Code of Criminal Procedure provides that if a pre-trial investigator decides to arrest and detain a suspect, the suspect's family member or an affiliated group should be informed within 48 hours of the reason for the arrest and detention and the location of custody. However, only 29.7 per cent of the respondents replied that such notification was given.

One hundred per cent of the respondents replied that while pre-trial investigators interrogated them, they were confined in detention facilities. This shows that when pre-trial procedures begin, a suspect is sent to a detention facility. When asked whether their family or relatives were allowed to meet the respondents while they were detained in the detention facility, 59.5 per cent replied that they were not allowed.

RIGHT TO ATTORNEY IN PRE-TRIAL PROCEDURES

If a pre-trial investigator decides to pursue criminal liability, the investigator should inform a suspect of his right to an attorney (Article 158 of the Code of Criminal Procedure). However, 64.9 per cent of the respondents replied that they did not meet an attorney during pre-trial. Moreover, 30.8 per cent responded that even when they had a meeting with an attorney, they just watched the meeting from the sidelines because there was no separate room for such a meeting.

When questioned whether assistance from the attorney was helpful, 84.6 per cent said 'no', suggesting that the right to an attorney is just perfunctorily guaranteed.⁶⁵

Malfeasance such as bribery and confiscation during investigation

The survey results showed that malfeasance on the part of an investigation agency is rampant during investigation and pre-trial. Fifty-six of the 103 respondents replied that they had heard about investigators who confiscated the criminal suspect's property irrespective of the criminal investigation, or took personal property or money belonging to the suspect, saying that they would reduce the suspect's criminal charges.⁶⁶

65 ID 014(2014) said that 'lawyers are all on the government's side and represent as a mere formality'. ID 024(2014) said that 'lawyers are not on a criminal's side, but a prosecutor's'. ID 060(2014) said that 'there is no attorney who conscientiously defends a criminal without any stake performing his duty as a lawyer'. This shows that North Korean residents have a great distrust of lawyers.

66 The survey results contain the following cases:

- ID 005(2014): the chief of the pre-trial raped females frequently with the excuse of reducing their sentences. He was demoted to chief of the Yusun police substation in 2007.
- ID 009(2014): I was released by giving them money because they told me I could save myself if I gave money to them.
- ID 014(2014): most of the judges were the same.
- ID 018(2014): my brother was imprisoned at the SSD and was about to be executed for 'Korean trade', but he was released after paying money.
- ID 056(2014): if you watch Korean drama, they search your home and pillage the original DVDs and foreign money. You can never recover them.
- ID 078(2014): such cases exist and happen so frequently that I have ceased to care.
- ID 091(2014): I was bribed with slaughtered pigs.

Trial procedures

JUDICIAL ORGANS

In North Korea, a court conducts a trial, and the court imposes punishment by its judgment (Article 13 of the Code of Criminal Procedure). Courts in North Korea consist of the Central Court, provincial (or directly ruled city) courts, city (district) and county courts, and special courts (Article 159 of the Constitution). The Military Court and the Railroad Court are special courts (Article 3 of the Court Composition Law).

Generally, the court system in North Korea consists of three different levels of court and allows two different levels of appellate review. The People's Court judges a case involving general crimes that the provincial (or directly ruled city) courts, special courts and the Central Court do not have jurisdiction over (Article 50 of the Code of Criminal Procedure). Provincial (or directly ruled city) courts are the courts of first trial for anti-state and anti-people crimes and general crimes for which the prosecution seeks capital punishment, and a lifetime term of reform through labour, and also has appellate jurisdiction over judgments rendered by the People's Courts.⁶⁷

The first trial of an ordinary court is composed of a judge, and two people's assessors (Article 163 of the Constitution, Article 9 of the Court Composition Law), but only 65.7 per cent of the respondents replied that they had been tried at such a court. When questioned as to what kind of qualifications the people's assessors had, 35 per cent of the respondents said that they did not know.⁶⁸

PUBLIC TRIALS

Trials in North Korea are required to be held in public in order to guarantee the propriety of the trial and human rights. However, when asked whether trials were held in public, 23 of the 35 respondents replied 'yes' while four replied 'no' and eight replied 'I don't know'. As for sentencing disclosure, 20 replied that the sentencing was open to the public while 14 replied that it was not and one replied 'I don't know'.

Article 164 of the Constitution and Article 270 of the Code of Criminal Procedure provide for the principle of public trials, but they also allow closed trials. Article 270 of the Code of Criminal Procedure provides that a trial may be in part or in whole closed to the public if necessary to protect the state or an individual's confidential information or if disclosure may have adverse social effects, suggesting that the principle of public trials is in fact meaningless.⁶⁹

67 Of the respondents who had been tried in courts, most were tried in the People's Court, and a few were tried in the SSD, provincial courts and the Military Court.

68 The respondents stated that 'several directors of the MPS judged a case' (ID 017(2014)), 'it was not a formal trial' (ID 022(2014)), 'there were two judges and more than four people's assessors' (ID 048(2014)) and 'the judiciary were 12 including prosecutors, agents of an investigation division, judges, and the people's assessors' (ID 059(2014)), suggesting that the provisions regarding composition of the judiciary are not consistently followed.

69 ID 014(2014) replied that 'trials were all closed to the public'. ID 02(2014) replied that 'trials were individually notified'. ID 039(2014) replied that 'the court internally tried a case'.

TRIAL HEARINGS

The court, upon reviewing the case record and determining in the preparation procedure of the court that the pre-trial examination is sufficient for a trial, transfers the defendant for trial (Article 291 of the Code of Criminal Procedure). First trials are composed of the opening statement, the factual hearing, arguments and defences, the closing statement by the defendant and the delivering of the judgment (Article 300 of the Code of Criminal Procedure).

All 35 respondents who claimed to have been tried were remanded in custody during the trial. Article 275 of the Code of Criminal Procedure provides that the trial hearing should be conducted in the presence of the prosecutor and defence attorney, but only 31 of the 35 respondents replied that both the prosecutor and the defence attorney were present during the trial.

Though the Code of Criminal Procedure specifies the examination of witnesses in detail (Article 311 et seq), only eight of the 35 respondents stated that the court called witnesses to testify for the defendant during trial hearing.

When asked about the fairness of trial procedures, 88.5 per cent of the respondents replied in the negative.⁷⁰ Article 329 of the Code of Criminal Procedure states that the defendant should be afforded an opportunity to make a final statement at the close of trial hearing, but only 18 of the 35 respondents replied that they were given such an opportunity.

DURATION OF TRIAL HEARINGS

Article 286 of the Code of Criminal Procedure provides that a trial hearing should take no more than 25 days, which period may be extended in certain cases by ten more days. When asked about the period that had elapsed between arrest and trial, and the detention period until the end of the trial, the responses were various, regardless of the number of trials held. Sixty per cent of the respondents said that it took about a month before the first trial hearing was held, 8.6 per cent said a month and 15 days and 8.6 per cent said two months.

ATTORNEY'S ASSISTANCE DURING TRIALS

Article 164 of the Constitution and Article 58 of the Code of Criminal Procedure guarantee the right to an attorney in trial procedures. However, Article 60 of the Code of Criminal Procedure states that a suspect and an accused may waive this right, and Article 275 of the Code of Criminal Procedure allows trials without an attorney present in order for the court to convene hearings without the presence of either a prosecutor or attorney where a defendant waives the right to an attorney.

Article 63 of the Code of Criminal Procedure provides that the court should appoint an attorney from a relevant bar association if an accused does not retain one. However, only 28.6 per cent of the respondents had heard about the right to an attorney during a criminal trial, and 91.4 per cent of the respondents replied that the court appointed a public defender for the trial.

⁷⁰ The following responses show that distrust of trials is very high. ID 004(2014) replied that 'I thought I was not guilty in doing something for a living'. ID 008(2014) replied that 'I felt the closed trial was unfair'. ID 009(2014) said that 'the term of the punishment was longer than I thought'. ID 017(2014) said that 'they charged me with a crime without reasons'.

Only 11 of the 34 respondents replied that they had had a meeting with an attorney, and 31 said that the attorney was of no help during the trial.⁷¹ These responses indicate a reality in which the provision regarding the right to an attorney does not fulfil any role in protecting human rights during judicial proceedings.

EXAMINATION OF OFFENCE

There were 35 survey respondents, who were involved in a total of 40 trials, some of whom were tried more than once. Of the 40 trials, 23 defendants were sentenced to reform through labour – which is a prison sentence – while three were sentenced to educative measures and nine to short-term labour. The prison term of the 23 respondents who were sentenced to reform through labour was three to 120 months, and the average term was five years.

APPEALS AND RETRIALS

Though the Code of Criminal Procedure guarantees the right to appeal (Article 356), only three of the 35 respondents who had been tried had appealed. Moreover, the respondents who had appealed said that it was no different from the first trial, and was not favourable.⁷²

LOCAL PUBLIC TRIALS

Article 285 of the Code of Criminal Procedure expressly stipulates the local public trial system that ‘to instil vigilance in the public and prevent crimes in advance, trial hearings may be held locally. In such cases, the representatives of institutions, corporations, and groups may expose and condemn the criminal’s actions’.

Seventy-nine of the 103 respondents replied that they had personally seen or heard of local public trial hearings. A number of responses indicated that local public trials utilised public places that are crowded with people such as a school playground, a square of a station or a cultural centre, and a public sports ground.⁷³

71 The satisfaction level regarding an attorney was quite low. ID 002(2014) said that ‘I had never met an attorney’. ID 020(2014) said that ‘attorneys in North Korea only follow the interest of the state’. ID 024(2014) said that ‘they play a role to make an accused acknowledge the crimes’. ID 068(2014) replied that ‘they judge everything siding with a judge. If the defendant denies the attorney’s statements and appeals, they lengthen the term of punishment’.

72 The following responses show that the appeal system is meaningless. The reason why they appealed was to ‘lighten the crimes’ (ID 019(2014)), ‘deny the criminal facts’ (ID 068(2014)) and ‘to see whether the punishment would be avoided due to bribery’ (ID 009(2014)). However, the result of the appeal was ‘the extension of the prison term’ (ID 068(2014)).

73 When questioned as to the reasons for local public trial hearings, ID 001(2014) said, ‘in order to set an example so that factory workers would not commit a crime’. ID 009(2014) said, ‘if the crime was something that all the people should know, such as illegal border crossings, watching foreign videos, smuggling and illegal dealings’. ID 022(2014) said, ‘when a criminal traffics in drugs or humans by illegally crossing the border’. ID 031(2014) said, ‘political prisoners’. ID 053(2014) said, ‘withdrawing state property, murder, or rape’. When asked as to the sentences handed down in local public trials, the respondents said, ‘capital punishment’ (ID 004(2014)), ‘reform through labour – I received a 15-year sentence and was released after seven years of imprisonment’ (ID 007(2014)), ‘short-term labour, reform through labour, and deportation’ (ID 009(2014)), ‘short-term labour or reform through labour depending on the type of crimes’ (ID 022(2014)) and ‘reform through labour or political prison camp’ (ID 029(2014)).

Application of provisions on execution of sentences

CAPITAL PUNISHMENT AND PUBLIC EXECUTION

Given that 40 of the 103 respondents had witnessed the execution of their acquaintances, it can be confirmed that capital punishment is widely practised in North Korea. Fifty respondents had witnessed public executions.⁷⁴ The types of crime that resulted in capital punishment being imposed on criminals were murder, treason, trafficking drugs, illegal border crossings and invasion of state property. Many respondents replied that the authorities give notice to residents when public executions are to take place and force them to gather there. Executions usually take place where crowds can gather and attract notice such as markets, public sports grounds and market squares.

REFORM THROUGH LABOUR

Reform through labour is equivalent to a prison sentence in South Korea's criminal law. It is carried out by sending a convicted criminal to an ordinary prison camp and forcing them to work, and suspends some of the rights of the criminal during the prison term (Article 30 of the Criminal Code).⁷⁵ Of the respondents who had experienced or knew of reform through labour, 97.2 per cent replied that everyone sentenced to reform through labour was sent to an ordinary prison camp.

SHORT-TERM LABOUR

Short-term labour is a punishment that sends a criminal to a certain place and forces him to work, and is regarded as a lighter sentence than reform through labour, which amounts to a prison sentence (Article 31 of the Criminal Code). However, 96.1 per cent of the respondents stated that while subject to short-term labour, they were in detention, suggesting that short-term labour is carried out in detention most of the time. Therefore, in reality, there is little to distinguish short-term labour from reform through labour.

The term of short-term labour ranges from six months to one year, and should not be more than one year even if the crimes are merged or the term of sentences combined (Article 31 of the Criminal Code). Nevertheless, according to the survey, eight respondents said that they saw criminals who were sentenced to short-term labour of more than one year.⁷⁶ Short-term labour is enforced at a so-called

74 When asked as to those who were sentenced to death and the crimes involved, the respondents replied, 'a colleague at work/illegal border crossings, human trafficking' (ID 009(2014)), 'heard from a friend/four people were shot to death because they produced "ice" and dealt with Chinese people' (ID 017(2014)), 'my father's friend, my friend's uncle/foreign exchange earnings (a video containing female sex)' (ID 053(2014)), 'an acquaintance/eating a cow' (ID 073(2014)) and 'a worker of the Party, 12 secretaries of the Party/squandering state property' (ID 092(2014)).

75 When asked as to the criminal's rights that are suspended, the respondents said, 'the right to vote' (ID 002(2014)), 'all rights' (ID 009(2014)), 'all the rights of the citizens (the right to vote and be voted for)' (ID 014(2014)), 'the rights of citizens' (ID 020(2014)) and 'the right to freedom' (ID 023(2014)).

76 When asked as to the duration of short-term labour, the respondents said, 'my brother/because he called in Musan [made an unauthorised telephone call in Musan]/six months of short-term labour' (ID 008(2014)), 'acquaintance/because he sent separated families to China/one year of short-term labour' (ID 019(2014)), 'I/because I did not bring my certificate/six months of short-term labour' (ID 030(2014)), 'I/because I had foreign currencies/six months of

labour training camp. Some locations are specifically designated as labour training camps while sometimes prisoners are mobilised to places such as construction sites in need of manpower.⁷⁷ As for the nature of short-term labour, it generally consists of all-day labour.⁷⁸ The state provides the meals (59.2 per cent) and visits by family and friends are allowed (89.5 per cent).

Short-term labour is imposed on criminals regardless of gender or age (85.5 per cent). 61.8 per cent of the respondents replied that they had been subject to, or witnessed, abusive treatment such as violence while being subject to short-term labour. 30.3 per cent of the respondents said that there were instances in which a prisoner died or became disabled due to severe treatment. 68.4 per cent of the respondents replied that some prisoners suffered due to illness, and 34.2 per cent said that accidents occurred in the camp or illness had caused death or disability.

SOCIAL EDUCATION MEASURES

30.1 per cent of the respondents testified to receiving or witnessing social education measures, which are provided for under Article 62 et seq of the Code of Criminal Procedure. These measures include writing an essay about their wrongdoing or self-criticism, or receiving ideology education.⁷⁹

PARDON SYSTEM

North Korea also has a system of special pardons and general pardons. Special pardons are issued by the chairman of the NDC, while general pardons are issued by the Standing Committee of the SPA.

The responses stated that special and general pardons are frequently issued on North Korean holidays, indicating that pardons are widely used.⁸⁰ When asked whether they knew of the existence of the pardon system, 85.4 per cent of the respondents said 'yes', and 47.6 per cent said that they knew of cases in which a pardon was granted.

Conclusion

The 2014 survey on human rights in North Korea conducted by the KBA proved that North Korea has hardly applied the procedural rules regarding a criminal and a criminal suspect during investigation, pre-trial and trial. Most of the criminals are investigated while arrested and detained, the right to

short-term labour' (ID 037(2014)) and 'my colleague /larceny/one year of short-term labour' (ID 058(2014)).

77 When questioned as to the places other than a labour training camp, the respondents replied, 'a construction or agriculture site' (ID 007(2014)), 'fruit farms in Gangwon Province' (ID 010(2014)), 'a construction site or a lumber camp' (ID 015(2014)), 'a place for logging or mining' (ID 022(2014)), and 'a construction site' (ID 026(2014)).

78 When asked as to working hours, there was no consistency in the respondents' answers – 'three eight-hour shifts' (ID 021(2014)), '17 hours' (ID 030(2014)), 'nine to ten hours' (ID 043(2014)) and '12 hours' (ID 047(2014)).

79 When questioned as to the social education measures, the respondents testified that 'I was detained in a police station because of a crime of attempting to cross the river in January 2007, and was released after I offered a bribe and received social education measures' (ID 006(2014)), 'my mother was sentenced to reform through labour for ten years because of using a cellular phone, but she received social education measures because of her good behaviour' (ID 026(2014)) and 'I was sent to a labour training camp due to illegal border crossing, but was released because of my good behaviour' (ID 020(2014)).

80 Special and general pardons generally take place during major national holidays – Kim Jong-il's birthday (16 February), Kim Il-sung's birthday (15 April), National Liberation Day (15 August), the North Korean Government Foundation Day (9 September) and the Labour Party Foundation Day (10 October). The respondents' answers were mostly the same.

attorney is of little avail, the detention period set out in the law is not complied with and a trial hearing is conducted arbitrarily. Even a bare minimum of human rights of suspects or defendants was not shown to be guaranteed.

Such results of the 2014 survey appear to be very similar to those of the 2012 survey, confirming that – deplorably – the current situation in North Korea has not improved compared to that in 2012. In fact, the dire human rights situation in North Korea has not been changed at all given that custody investigation and trials were corrupt, the right to an attorney during investigation and court procedures became perfunctory, the judiciary composition and the trial process were unfair, the assessment of punishment was unjust and the appeal system has become nominal. Even after the 2009 amendment of the Constitution, which contributed to an improvement in human rights to some extent, there has been no progress in guaranteeing rights under criminal procedures, suggesting that various laws including the Code of Criminal Procedure are in existence but not enforced.

Based on this material, it is hoped that investigating the human rights situation in North Korea and preserving the research record should continue.

Chapter Four

Types of Human Rights Violations in North Korea

4.1 Right to life

Kim Tae-hoon

Severe violations of right to life in North Korea

The right to life is a right that is most fundamental and basic, the origin of all the other human rights and should be most highly respected. Article 6(2) of the ICCPR, of which North Korea is a member, provides that:

‘In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.’

North Korea has severely violated the right to life since the 1950s. The Criminal Code provisions that stipulate capital punishment are vague and sweeping. Also, fair trials are not guaranteed because there is no independence of the judiciary. Public executions that are outside the scope of the rule of law and extrajudicial, summary or arbitrary executions and secret executions that ignore procedural laws have been frequently committed. The reign of terror violating the right to life is the very basis under which the North Korean regime is maintained.

Provisions regarding capital punishment

North Korea amended the entire Criminal Code on 29 April 2004, and created a provision specifying that ‘the state shall impose criminal liability only for the crimes specified in the Criminal Code’ by Article 6, succeeded by the current Criminal Code⁸¹ amended on 14 May 2012 as Political Directive No 2387 of the Standing Committee of the SPA. It also declared the principle of legality by deleting the provision set out in Article 10 of the previous Code that allows analogical interpretation. In addition, capital punishment is imposed within limits on criminals who commit any of the following five crimes:

1. plotting subversion of the state (Article 60);
2. terrorism (Article 61);
3. treason against the fatherland (Article 63);
4. treason against the people (Article 68); and
5. premeditated murder (Article 266).

However, the amended Criminal Code of 2009 allowed capital punishment for the crime of disloyal destruction for anti-state purposes (Article 65) in Article 64, and the current Criminal Code also imposes capital punishment for smuggling or trafficking drugs (Article 208), expanding the scope

81 Law Publisher, the DPRK’s Legal Code, 2012.

of the application of capital punishment. However, among the seven crimes mentioned above, five are political crimes, except premeditated murder and smuggling or trafficking drugs. Moreover, the language of the provisions regarding the five crimes is ambiguous.

The Addendum to the Criminal Code (general crimes) was enacted on 19 December 2007 as Political Directive No 2483 of the Standing Committee of the SPA. The 2007 Addendum consists of 23 articles, and among them, 16 articles impose capital punishment for crimes such as smuggling or trafficking drugs. In particular, the 16 articles contain abstract language such as ‘extremely grave in nature’ or ‘extraordinarily grave in nature’, which allows arbitrary interpretation. In addition, Article 17 provides that ‘a person who commits crimes that are extremely grave in nature shall be sentenced to unlimited term of reform through labour or capital punishment’, and Article 23 provides that ‘a criminal who violates several crimes that are extremely grave or who is not willing to be reformed may be subject to capital punishment’, allowing the North Korean authorities to impose capital punishment at their discretion for crimes that are not capital offences under law.

Reportedly, North Korea even imposes capital punishment on cases not specified in the Criminal Code, through decrees. According to the 2014 survey, 80 respondents (77.7 per cent) replied that they had seen decrees or instructions in North Korea that stated that those who commit crimes would be put to death. It was confirmed in the 2010 survey that such decrees were issued every few months and delivered to residents in the form of a lecture, and anyone who violated the decrees was subject to punishment.⁸²

For instance, a decree⁸³ that was declared on 28 December 2009 by the MPS (formerly the PSA), which was titled ‘Strict Punishment for Distributing Foreign Currency in the Territory of the DPRK’, provides that ‘anyone who sells or buys goods with foreign currency, or illegally distributes or plunders foreign currency shall be strictly punished, even by death’. Under the Criminal Code, dealing in foreign currency is punishable by up to three years of ‘reform through labour’, not imposing capital punishment (Article 104). Moreover, the decree only states that ‘this decree is effective as of January 1, 2010’, and does not specify the end date of its application. This shows that the decree is continuously effective, and due to such decrees, the provisions of the Criminal Code that impose capital punishment and the principle of legality apply in name only.

Public execution

One of the most representative examples of violating the right to life in North Korea is public execution. Public executions are normally conducted by firing squad in places where many people gather, such as markets, riversides, stadiums, parks, airfields, public sports grounds and under bridges, and residents are urged to watch. Public executions took place most frequently during the great famine in the 1990s under the instructions of Kim Jong-il in order to prevent unrest on the part of the people. Many people committing economic offences for survival such as larceny, embezzlement or slaughtering cows were sentenced to public execution. In numerous cases, dead bodies were left for a substantial period of time to act as a warning, and sometimes the victims of public execution were shot with dozens of rounds and their bodies scattered into pieces on the ground. Because

82 KBA, *2010 Report on Human Rights in North Korea*, 177–178.

83 KINU, *Report on Human Rights in North Korea* (2013), 72–73.

children from around the age of ten, and the family or relatives of the victim, are forced to witness the execution, it inflicts mental torture upon them.⁸⁴

Most defectors in South Korea testified to having witnessed public executions while they lived in North Korea. The testimonies collected by the KINU showed that 501 cases of public execution were reported from 2005 to 2012.⁸⁵ According to Amnesty International (an international human rights organisation), at least 70 cases of public executions occurred in North Korea in 2013. However, the number only includes public executions that were officially conducted, not counting unofficial executions. According to the Voice of America broadcast on 27 March 2014, Amnesty International published its annual report on sentences and instances of capital punishment and it confirmed that ‘at least 70 capital punishments were carried out in North Korea last year, and it is estimated that in reality, there may be much more than that’. The crimes subject to capital punishment are murder, eating human flesh, embezzlement, pornography (production), escaping to China, corruption, violating the rules of the Workers’ Party of Korea and watching videos relating to South Korea.⁸⁶

Seventy-eight respondents (75.7 per cent) of the 2014 survey replied that they had witnessed public executions in North Korea. As for when they had witnessed a public execution, of the 73 respondents (multiple responses were allowed), ten respondents (13.7 per cent) said ‘before the 1990s’, 29 respondents (39.7 per cent) said ‘after the 1990s and before the 2000s’, 27 respondents (37 per cent) said ‘since the 2000s till now’ and seven respondents (9.6 per cent) said ‘from before the 1990s until now’, suggesting that even before the 1990s and up until now, public executions have been continuously conducted in North Korea. When asked about the number of public executions they witnessed, of the 71 respondents, 20 respondents (28.2 per cent) answered ‘one’, 15 respondents (21.1 per cent) said ‘two’, 13 respondents (18.3 per cent) said ‘three’ and 23 respondents (32.4 per cent) said ‘four or more’, showing that public executions have taken place extensively and frequently in North Korea.

However, there is no legal ground for public execution as a method for carrying out punishment. Article 286 of the Code of Criminal Procedure regulates local public trials, but this article only requires trial hearings to be public; it does not regulate the method of execution. Thus, Article 286 cannot be a basis for public execution as an execution method. Article 32 of the Court Decision Enforcement Law only provides that capital punishment may be carried out by firing squad.

The Criminal Code bans the imposition of capital punishment on a criminal who is under the age of 18 at the time of committing the crime. However, according to the 2014 survey, a minor was executed for illegal trafficking and murder in 1989 (ID 059(2014)), a student aged 16 was executed for illegally sending a person from the Amnok River to China in 2007 (ID 037(2014)) and a friend’s acquaintance who was under the age of 18 was executed for murder (ID 028(2014)). The 2012 survey showed that there were seven cases in which public executions of those under the age of 18 were witnessed.⁸⁷

84 *Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea* (the ‘COI Report’), 267–268.

85 KINU, *Report on Human Rights in North Korea*(2013), 89–90.

86 *Chosun Ilbo* (28 March 2014).

87 KBA, *2012 Report on Human Rights in North Korea*, 157–158.

Article 29 of the Criminal Code prohibits the execution of pregnant women. However, the 2012 survey showed that there were two cases in which pregnant women were executed.⁸⁸ The 2014 survey also contains one response that a pregnant woman was executed for human trafficking (ID 012(2014)). This shows that public execution deprives the right to life in a way that does not conform to the contents and procedures of North Korea's criminal laws.

Crimes that were subject to public executions were, in many cases, not legally punishable by death. According to the 2014 survey, crimes, other than murder, which were subject to public execution were illegal border crossings and human trafficking in 2006 (ID 008(2014)), illegal border crossings and human trafficking in 2004 and 2005 (ID 009(2014)), human trafficking in 2004 (ID 010(2014)), illegally exchanging shoes in China for rice and distributing the rice in 2000 (ID 012(2014)), producing drugs ('ice') and dealing with China, year unknown (ID 017(2014)), human trafficking in 2009 (ID 018(2014)), trafficking drugs and humans in 2009 and 2011 (ID 022(2014)), human trafficking in 2006 (ID 028(2014)), dissipated behaviour, year unknown (ID 029(2014)), human trafficking in 2009 (ID 034(2014)), eating human flesh in 2009 (ID 036(2014)), stealing 150kg of aluminium that was state property in 1997 (ID 046(2014)), stealing copper wire in 1996 (ID 047(2014)), human trafficking, year unknown (ID 049(2014)), earning foreign money by videos of female sex in 2000 (ID 053(2014)), larceny in 1999 (ID 061(2014)), taking a bribe as a director of a camp in a paper factory in 1998 (ID 066(2014)), while visiting China, talking on the phone with relatives who lived in South Korea in August 1998 (ID 070(2014)), eating a cow during the great famine (ID 073(2014)), river-crossing in 1993 (ID 077(2014)), smuggling cows in summer 2011 (ID 083(2014)), smuggling five cows in 2011 (ID 084(2014)), stealing evaporated milk in 2001 (ID 086(2014)), squandering state property in 2000 (ID 092(2014)), human trafficking in 2005 and 2007 (ID 094(2014)) and illegally organising a group in 1997 (ID 095(2014)). The above responses show that most of the crimes that are not 'the most serious crimes' under the ICCPR were subject to public execution.

After reaching their peak during the great famine in the 1990s, public executions slowed down in the 2000s but have occurred frequently once again in recent years. Park Nam-gi, the former financial planning officer of the Party, was publicly executed in 2010 for the failure of the monetary policy implemented in late November 2009. In particular after the Kim Jong-un regime came to power, public executions by rifle mostly became executions by machine gun, making execution much more cruel. It is reported that Kim Chul, the former Vice Minister of the Ministry of the People's Armed Forces, was executed by a mortar in early 2012 for drinking during the mourning period of Kim Jong-il's death.⁸⁹ In March 2013, a male and female were publicly executed in the Seungpyeong area of Cheongjin by six machine gunners after being badly beaten on the charge of trafficking drugs in bulk, and children as well as adults were forced to witness the scene.⁹⁰ In August 2013, nine members of the Unhasu Orchestra were publicly executed on the charge of making pornography. In early November 2013, about 80 residents in seven major cities, including Wonsan in Gangwon Province, Sinuiju in North Pyongan Province, Pyeongseong in South Pyongan Province, Cheongjin in North

88 *Ibid.*, 157–158.

89 'Early this Year, Kim Chul, the Deputy Minister of the Ministry of the People's Armed Forces, Executed by Firing Squad for "Drinking during the Mourning Period of Kim Jong-il's Death"' Chosun.com (24 October 2012).

90 *COI Report*, 266.

Hamgyong Province and Sariwon in North Hwanghae Province, were publicly executed on the charges of watching South Korean dramas or films, or distributing pornography. In these two cases, media reports stated that because the executions were conducted not by rifle but by machine gun, the bodies of the victims were dismembered, and the residents who were forced to witness the execution trembled with fear.⁹¹

In late November 2013, Jang Song-thaek's close allies Lee Yong-ha and Jang Su-gil, vice directors of the Central Administrative Department of the Workers' Party of Korea, were publicly executed by machine gun and were incinerated by a flamethrower. Later, on 12 December 2013, Jang Song-thaek, Kim Jong-un's uncle, was sentenced to death for plotting the subversion of the state in the Special Military Court of the SSD four days after being arrested, and was instantly executed, which was a great shock. The judgment of capital punishment given at a single trial without any appeal process and the execution were an apparent violation of the ICCPR, of which North Korea is a member, regardless of where the decision was made. Article 14(5) of the ICCPR provides that 'everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law'.

Violation of right to life in detention facilities

VIOLATION OF RIGHT TO LIFE IN ORDINARY PRISON CAMPS

Ordinary prison camps, among North Korea's typical detention facilities where human rights are vulnerable, are places in which various forms of violations of the right to life, such as public or secret executions, frequently take place.

In July 2000, a prisoner from Musan was captured while escaping from Ordinary Prison Camp No 12 (*jeongori kyohwaso*), taken by jeep with his hands tied to the jeep, tied to a stake with his mouth gagged and his eyes wrapped and publicly executed by three marksmen who fired ten shots each. The execution was conducted after convening a special court in the backyard of the hospital in which a public trial was held in front of 500 to 600 prisoners. Even after the execution, the dead body was hung for a week with a sign that said 'escaping is self-destruction' on the stake located in a crowded place in the camp. In late December 2000, a security agent of the ordinary prison camp forced two prisoners in their early 20s to kneel down on the snow-covered yard because they picked up cigarette butts, and they froze to death after four days.⁹²

In May 2005, the prisoners in Ordinary Prison Camp No 11 (*chongsan kyohwaso*) were called to gather after 11pm and what they saw was the dead body of a 19-year-old prisoner who was hit on the head by a security agent with a gun while escaping. The face was beaten beyond recognition and the body was shown to prisoners as a warning against escaping.⁹³

91 '80 North Koreans were Executed in Public... Blindly Shot in Seven Cities' *Joongang Ilbo* (11 November 2003).

92 National Human Rights Commission of Korea (NHRCK), '2012 Collection of North Korean Human Rights Violations', 81–82.

93 *Ibid*, 123.

In 1997, it was reported that three to five prisoners were secretly executed every week in an ordinary prison camp in Taeheon in South Pyongan Province (closed in late 1997).⁹⁴ From May 1998 to late 1998, five to seven prisoners were secretly executed with their necks bound by metal wires once or three times a month in Ordinary Prison Camp No 12 (*jeongori kyohwaso*).⁹⁵

In ordinary prison camps, an enormous number of prisoners die owing to the poor conditions of the detention facilities, food that is not enough to survive on and forced labour that is harsh and dangerous. The defectors who had been confined in Ordinary Prison Camp No 12 testified one after another that four to five prisoners died every day from June 2000 to January 2001 – a total of 850 deaths during six months.⁹⁶ They further testified that prisoners died every month – 80 prisoners died every month from 2000 to 2003, 40 prisoners from 2004 to 2005, 20 prisoners from 2006 to 2007⁹⁷ and 70 prisoners from September 2007 to March 2010.⁹⁸ One defector who had been imprisoned in Ordinary Prison Camp No 12 from 2004 to 2007 testified that 60 to 70 prisoners were confined in a cell that was smaller than 66.12 square metres and could accommodate 15 people; the fetid stench of the toilet in the cell hung in the air; prisoners could not change their clothes and wash their faces or bodies; they suffered malnutrition because of insufficient food distribution that was less than 400g a day; and numerous prisoners suffered death en masse because of forced labour that was dangerous, such as felling operations and infectious diseases.⁹⁹

VIOLATION OF RIGHT TO LIFE IN POLITICAL PRISON CAMPS

The most severe violations of right to life occur in political prison camps because North Korea denies their very existence. Public and secret executions are committed as normal practice. Moreover, countless prisoners die of starvation or disease because of severe malnutrition and forced labour.¹⁰⁰

Other violations of right to life

The fundamental human right to be free from starvation is guaranteed by Article 11(2) of the ICESCR. The right to life in Article 6 of the ICCPR includes the right to request the state to eliminate malnutrition to lengthen the average life span (paragraph 496 of the *COI Report*).

During the great famine of the 1990s, North Korea concealed the collapse of its food distribution system, and ideologically brainwashed residents to maintain the regime under the slogan of the ‘Arduous March’, causing residents to miss every opportunity to survive on their own and impeding timely outside assistance. Residents who moved to other places in the state or abroad to find food or to work at a private market were punished. Grave doubt exists as to outside aid in that the number of victims of starvation increased because of inhuman conditions and prevention of aid from being supplied to vulnerable groups or areas.

94 *COI Report*, 268.

95 12 August 2013. Revealing interview with defector A in the learning centre in the eighth floor of the NHRCK. *COI Report*, 267–268.

96 NHRCK, ‘2012 Collection of North Korean Human Rights Violations’, 78–82.

97 *Ibid.*, 85–87.

98 *Ibid.*, 110–111.

99 *Ibid.*, 96–98.

100 KBA, *2012 Report on Human Rights in North Korea*, 356–363.

In the highly centralised North Korean regime, insufficient food production and distribution by policy decision-makers, including the supreme leadership, and failures of policy decisions and errors in allocating budgets, including outside aid, constitute systematic, extensive and severe human rights violations, which caused mass starvation and inflicted mental and physical damage to numerous residents, regardless of a natural disaster. This also constitutes a violation of the right to life, and there is the possibility that such mass starvation is still happening and collective violations of the right to life occur as long as the law and policy that infringe upon the right to food continue to exist after the 1990s.¹⁰¹ In particular, the problem of the deaths of pregnant women in poor health due to malnutrition and that of their infants is severe.

Since the Kim Jong-un regime came to power, shooting at those crossing the border to realise freedom of movement has also been a severe violation of the right to life. On 22 October 2011, a defector who crossed the Amnok River in the vicinity of Hyesan in Yanggang Province and stepped on to Chinese territory was seen being shot to death by North Korean guards.¹⁰² In January 2014, Kim Jong-un issued an order called the Command of Central Military Commission of the Workers' Party of Korea 'regarding severe punishment imposed on those who commit treason against the socialist Fatherland'¹⁰³ and stressed that 'the entire border guard shall carry live ammunition and merciless punishment such as being shot shall be imposed on those who commit illegal border crossings, defections, or espionage'.¹⁰⁴

Conclusion

The elements of a crime that constitute capital punishment under the Criminal Code are ambiguous and vague, and these elements are drastically expanded by the Addendum to the Criminal Code, allowing a sentence of death for almost every crime. In reality, however, crimes that are not subject to capital punishment as a judicial verdict under criminal laws may be subject to arbitrary execution by decrees. Public or secret executions take place with formal trials or even without formal trials, maximising the fear of residents. The seriousness of the violations of the right to life in ordinary and political prison camps, which see some of the worst abuses of human rights, needs no emphasis. In particular, since the Kim Jong-un regime came to power, the expansion of public executions in a cruel manner has been a matter of concern. The great famine in the 1990s that caused mass starvation could reoccur, along with violations of the right to life at the Supreme Leader level by deliberately depriving residents of the right of access to food. All of these violations of the right to life constitute crimes against humanity as severe violations of human rights committed in a systematic and extensive way. Nevertheless, the SSD, the MPS, the NDC, the Prosecutors' Offices and the courts have enjoyed the benefit of acting with impunity.

101 *COI Report*, 144–208.

102 '[Exclusive] North Korea – Shooting at the Scene of Border Crossings – “Stop Escapes”' *Dong-A Daily News* (7 November 2011).

103 An official document issued by the Party publisher states that 'the order is a top secret only for internal use and must be retrieved. Thus, it appears that the order was distributed only to the State Security Department or a high-ranking officer of the border guard'.

104 'Command of Merciless Punishment (Shooting) of Traitors (Defectors)' *Chosun Pub* (22 January 2014). *COI Report*, 108.

The 25th resolution of the UNHRC as of 28 March 2014 advised that North Korea's crimes against humanity, including violations of the right to life, should be submitted to an international criminal trial in order to punish those who have committed the crimes. Also, the same resolution suggested that the UN High Commissioner for Human Rights should establish an institution that has a field-based structure to collect cases of North Korean human rights violations, according to the *COI Report*. If such an institution is established in South Korea, it would be of great help in ameliorating North Korean human rights violations, including violations of the right to life.

4.2 Torture and other cruel, inhuman or degrading treatment or punishment

Oh Gyeong-seob

Introduction

The international community has endeavoured to stop 'torture and other cruel, inhuman or degrading treatment or punishment' committed by the state or by government institutions under the connivance of the state. The UN Charter declared that the state has a duty to respect and fulfil human rights and fundamental freedoms universally in order to protect human dignity. The International Bill of Human Rights established a provision that prohibits 'torture and other cruel, inhuman or degrading treatment or punishment'. Article 5 of the UDHR provides that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Article 7 of the ICCPR provides that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment', and Article 10(1) states that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'.

Since the UDHR prohibits torture and other cruel, inhuman or degrading treatment or punishment committed by a state, a consensus to prepare systematic and legal mechanisms for the prohibition of torture has developed in the international community. The UN adopted the Declaration against Torture in the 30th General Assembly on 9 December 1975, and the Convention against Torture in the 39th General Assembly on 10 December 1984, which went into effect on 26 June 1987. The Convention against Torture regulates the duty of the member states such as a duty to take effective measures, prevent torture, prohibit compulsory repatriation and have universal jurisdiction, and also regulates the establishment of the Committee against Torture that is an international institution supervising implementation.¹⁰⁵

North Korea did not join the Convention against Torture. However, because North Korea, as one of the members of the UN, has a duty to implement the UN Charter, the UDHR and the international covenants on human rights, it has an obligation to protect and improve its residents' human rights and fundamental freedoms and to perform its duty under the international conventions related to the prevention of torture. The UN has expressed great concern because reports continue to be issued

105 Park Gi-gap, 'Convention against Torture' in Lee Seok-yong et al, *International Human Rights Law* (Sechang Publishing Company 2006), 133–143.

stating that torture and other cruel, inhuman or degrading treatment or punishment take place systematically, extensively and with severity in North Korea. The UN has urged the North Korean authorities several times to stop the systematic, extensive and severe violations of human rights immediately through the UN resolution on the condition of human rights in North Korea. However, the North Korean authorities have denied the occurrence of torture and other cruel, inhuman or degrading treatment or punishment.

On 25 December 1999, the North Korean authorities contended in ‘the DPRK’s second periodic report on the implementation of the ICCPR’ that ‘torture and other inhuman treatments are forbidden by law. The Code of Criminal Procedure also prohibits in its provisions torture and other inhuman treatments’. North Korea’s Code of Criminal Procedure indeed prohibits such treatments. Article 5 provides that ‘the state thoroughly guarantees human rights in dealing with a criminal case’. Article 98 provides that ‘a statement of a suspect and accused cannot be used as evidence if procured by force or inducement’. Article 167 provides that ‘a pretrial investigator should not force a suspect to admit a crime nor induce a suspect to make a statement’.¹⁰⁶

However, the UN Human Rights Committee made its position on 27 August 2001 that ‘North Korea’s second periodic report on the implementation of the ICCPR’ did not appear to reflect reality. The Human Rights Committee expressed deep concern that it has been continuously alleged that North Korea has violated Article 7 of the ICCPR. The Human Rights Committee pointed out that based on the data collected, there have been a lot of claims that cases of harsh treatment and torture have occurred with considerable frequency, there existed cruel, inhuman or degrading treatment and environments in ordinary prison camps and detention facilities, and medical treatment was insufficient.¹⁰⁷

The North Korean authorities stated in the country report submitted to the executive group of the UPR in 2009 that ‘the Code of Criminal Procedure strictly prohibits confession procured in a forcible way such as torture or beating, and inducement of testimony’.¹⁰⁸ However, the UN expressed concern about the fact driven by the result of the UPR that torture and other inhuman treatment occurred in North Korea. The UN General Assembly expressed concern in the resolution on the situation of human rights in the DPRK about ‘cruel, inhuman or degrading treatment or punishment including torture and inhuman detention’. The UNHRC stated in the resolution on North Korean human rights adopted on 25 March 2010 that ‘it is beyond deplorable that in North Korea, there occur systematic, extensive, and severe human rights violations, and political prisoners and the residents who have been forcibly repatriated were tortured and detained in labour camps’.

In a 2013 North Korea Human Rights Resolution, the UN established the COI, deploring the grave, widespread and systematic human rights abuses in North Korea, in particular the use of torture and labour camps against political prisoners and repatriated citizens of North Korea. Torture and inhuman treatment are also included in the range of the COI’s investigation.¹⁰⁹ The COI submitted the *Report of the commission of inquiry on human rights in the Democratic People’s Republic of Korea* and the *Report of the detailed findings of*

106 Law Publisher, the DPRK’s Legal Code (Chosun Import and Export of Publication Company 2012), 127–178.

107 NHRCK, ‘Sourcebook on North Korea’s Implementation of International Human Rights Conventions’ (2005), 63–76.

108 NHRCK, ‘Report and Database on North Korean Human Rights regarding the 2009 UPR’ (2009).

109 UNHRC, The Situation of Human Rights in the Democratic People’s Republic of Korea, A/HRC/22/L.19.

the commission of inquiry on human rights in the Democratic People's Republic of Korea in February 2014. These reports noted that the use of torture is an established feature of the interrogation process in the DPRK, especially in cases involving political crimes.¹¹⁰

Torture and cruel and inhuman treatments by the North Korean authorities described in the North Korean human rights reports of the UN and COI were reconfirmed in the 2014 survey on North Korean human rights conducted by the KBA. The North Korean authorities apply systematic, continuous, widespread repression and political violence to their own residents at security agencies such as the SSD, the PSA and detention facilities such as political prison camps (*kwanliso*) and ordinary prison camps (*kyohwaso*). North Korean residents are not protected from 'torture and other cruel, inhuman or degrading treatment or punishment' by North Korea.

Investigation of human rights violations and cases

'Torture and other cruel, inhuman or degrading treatment or punishment' consistently occurs in North Korea. The execution of Jang Song-thaek, which occurred in December 2013, confirmed that political prisoners were tortured indiscriminately and treated cruelly and inhumanly in North Korea. The pictures released by the Korean Central News Agency show marks suggesting that Jang Song-thaek was tortured, beaten and battered by the North Korean authorities during the investigation.¹¹¹

In its 2014 survey on human rights in North Korea, it was confirmed that pre-trial investigators of the SSD or the police station tortured the accused during the interrogation process. The survey respondents answered as shown in the following table (Table 30) questions that asked whether they experienced torture or other cruel, inhuman, or degrading treatment in North Korea. Among the respondents, 41.7 per cent responded that they had experienced torture or other cruel, inhuman, or degrading treatment in North Korea. Such results were nearly consistent with the 2012 survey. It was confirmed that grave, widespread and systematic torture or other cruel, inhuman, and degrading treatments have not been ameliorated in North Korea.

Table 30: Experience of receiving torture or other cruel, inhuman or degrading treatment.

Response	Number of respondents	Percentage (%)
Yes	43	41.7
No	60	58.3
Total	103	100

The KBA conducted a survey as to whether North Korean defectors had experienced torture or other cruel, inhuman or degrading treatment in 2014. They testified in detail about their cases of such treatment in North Korea.

110 UNHRC, *Report of the commission of inquiry on human rights in the Democratic People's Republic of Korea*, A/HRC/25/63, 2014, 12. UNHRC, *Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea*, A/HRC/25/63, 2014, 213–218.

111 'Photo Taken just before the execution of Jang Song-thaek shows bruise on his face and hands – seems to have been tortured and beaten' Chosun.com (13 December 2013).

Case 1: ID 009(2014)

In January 2010, the victim was arrested at her house in Cheongjin, South Hamgyong Province on charges of 'aiding and abetting illegal border crossings' by the police station of Cheongjin. She was imprisoned in a detention facility of the police station in Cheongjin. The victim was beaten and coerced into confessing by a lieutenant of the police station at the office of the police station in Cheongjin. The lieutenant hit her head two or three times with a metal pipe and banged her head against the wall. The victim passed out due to the severe beating and woke up after two to three minutes. The lieutenant kicked her at least twice. The victim experienced headaches after her head was hit. Owing to the kicking, her knees ached and the back of her left hand turned black.

Case 2: ID 010(2014)

In 2011, the victim was arrested on charges of 'money dealing' by the police station and he was imprisoned in the Hoeryong detention facility. The victim was repeatedly beaten with a shovel at the detention facilities of the police station for 20 days because he had talked to an unidentified security agent of the police station. At this time, the security agent hit the back of his head and his upper back with a shovel. The victim was bruised on his right eye.

Case 3: ID 011(2014)

In October 1999, the victim was arrested at the victim's house on charges of 'illegal river crossing' by the Province Security Department of North Hamgyong Province and was detained at the Safety Agency's detention centre in Musan. The victim was beaten by the Safety Agency's security guard identified only by his surname Kim at the Safety Agency's detention centre. The victim had used the toilet, though he told the victim not to evacuate owing to clogged pipes. When the victim lost consciousness after receiving blows from a long club, the assailant poured a bucket of cold water over his body and forced the victim to wipe the water up by crawling on the floor of the detention centre. The victim suffers headaches, insomnia and nightmares to this day.

Case 4: ID 012(2014)

On 7 May 2008, the victim was arrested in front of Gowon Station in Gangwon Province on charges of 'smuggling' by the police station in that county. The victim was beaten by a project manager of the police station at the detention facility there because he had moved his body. The project manager ordered him to kneel down on a small piece of wood for a long time and hit the victim's face with his fist.

Case 5: ID 014(2014)

In 2008, at her house in Ryanggang Province, the victim was arrested on charges of 'smuggling and illegal border crossings' by the anti-socialist group (*grouppe*) of Ryanggang Province. He was imprisoned in the Ryanggang Province anti-socialist group office. The victim was beaten during the interrogation by an unidentified person of the anti-socialist group. The person beat the victim's face with his fist frequently and struck the victim's fingers while inserting a ballpoint pen between the fingers several times. The victim was wounded in his face and fingers.

Case 6: ID 015(2014)

On 18 December 2007, the victim was arrested on charges of 'impure recordings' at the police station in Changryeol, Rimgang, Musan in North Hamgyong Province and was detained in a detention facility of the police station in Musan. The victim was beaten at the detention centre by a security guard who belonged to the police station for talking with the person next to the victim. The assailant made the victim stretch out his hands through a lattice window and he beat them. The victim's hands were torn and bled. Also, the victim was beaten with a wooden stick.

Case 7: ID 016(2014)

In April 2007, the victim was arrested on charges of 'illegal border crossings' by the SSD of Sinuiju in North Pyongan Province. The victim was beaten for not making an honest confession to an agent identified only by his surname Lee, the security agent (a resident of Sinuiju), at a pre-trial room of the Sinuiju SSD. The victim was kicked for a week during the 20 days of the investigation. The assailant stamped on the victim until the victim fainted. The victim sustained wounds on the right arm, and the front and back of the thigh, and currently suffers after-effects.

Case 8: ID 017(2014)

In June 2008, the victim was arrested on charges of 'distributing copper' by the Safety Agency and was detained in the police substation. The victim was beaten by a young man who belonged to the county police station because the victim did not stand up when told to do so. The assailant hit the victim's eye with his fist, inflicting bruises, and kicked the victim's stomach three or four times. The victim received wounds to the eyes and stomach.

Case 9: ID 020(2014)

On 12 February 2008, the victim was arrested at the victim's house for 'using a cellular phone' by the County Security Department of Musan, North Hamgyong Province and was detained at the County Security Department's detention centre. The victim was beaten to coerce him to give a proper statement to five people including Kim XX, the director of counterintelligence of SSD at Gyeongseong, North Hamgyong Province and four others, and an agent identified only by his surname Ryo and Kim from the Musan SSD. Owing to the wounds inflicted in the beating, the victim's forehead and thigh were severely injured.

Case 10: ID 021(2014)

On 18 June 2001, the victim was arrested on charges of 'searching for separated families' in Yeonangun, South Hwanghae Province by the County Security Department and was detained. The victim was beaten for no reason by a security guard identified only by his surname Kim and others, who belonged to the Border Guard Headquarters and by several staff corporals and staff sergeants from the State Security platoon at Border Guard Headquarters' detention centre. The victim was frequently beaten with fists and a gunstock. The victim suffered a haemorrhage in the back of the head, and as an aftermath, the beaten areas ache even today.

Case 11: ID 022(2014)

In October 2010, the victim was arrested on charges of 'receiving money from China through a soldier' by the SSD of Hoeryong and was detained. The victim was beaten because the victim disobeyed and did not speak properly to an agent identified only by his surname Hwang, who belonged to the SSD of Hoeryong. The assailant kicked and beat the victim's face. At that time, the victim's left eye was bloodshot because of the heavy beating.

Case 12: ID 026(2014)

In February 2008, the victim was arrested at the victim's house on charges of 'complicity in connection with the victim's mother being publicly wanted' by the police station and was detained. The victim was beaten to coerce a confession during the interrogation by an officer of the police station and SSD and at the police station and SSD's detention centre. The assailants beat the victim with wooden sticks from morning to evening. The victim's fingers were bent, and the victim received wounds.

Case 13: ID 027(2014)

In May 2005, the victim was arrested at home and detained on charges of 'illegal trading of non-ferrous metal' by a patrol from the police station in Musan, North Hamgyong Province. The victim was beaten for not admitting to the crime to the patrol in the waiting room of the Musan county police station. The assailants beat the victim with a wooden stick and fists, and they tied the victim with shackles when they beat the victim. The victim was beaten for five days.

Case 14: ID 029(2014)

In April 2011, the victim was arrested on charges of 'illegal border crossings' by the SSD and was detained. From 11 April to 17 April 2011, the victim was beaten for not telling the truth by the SSD agent at the interrogation room of the SSD. Also, on 11 July 2011, the person in charge of the holding centre (*jipkyulso*) at the police station beat the victim, saying that the superior should be beaten when the subordinate does wrong. The assailant beat the victim ruthlessly with a stick and smashed the victim's back with a gunstock.

Case 15: ID 030(2014)

In August 1999, the victim was arrested on charges of 'not having a travel permit' from Yeomju and was detained at Yeomju labour training camp. The victim was beaten at the camp by a chief, military staff and a prefect who belonged to the labour training camp for asking them to send the victim home. The assailants beat the victim with sticks, wooden clubs and fists. The assailants beat the entire body of the victim, and the victim received blows until the victim's head was lacerated.

Case 16: ID 032(2014)

On 6 November 2011, the victim was arrested by the SSD of Hyesan, Yanggang because 'the victim had lived in China'. The victim was detained in the detention centre of the SSD of Hyesan, Yanggang. The victim was beaten by an unknown lieutenant of the SSD at the detention centre. The assailant tortured and beat the victim with a wooden stick. The victim suffered head, stomach and leg injuries.

Case 17: ID 049(2014)

In 2010, the victim was arrested on charges of 'smuggling and selling' by the Province Security Department of Hyesan and was detained at the Hyesan detention centre. The security agent beat the victim, telling the victim to give a proper statement. The assailant kicked and beat the victim's entire body. The victim suffered injuries to the entire body.

Case 18: ID 054(2014)

In March 2011, the victim was detained at the detention centre of the SSD in Saepyo, North Hamgyong Province. The assailant beat the victim's body and face with a wooden stick. The victim suffered injuries on his face, testies and abdomen.

Case 19: ID 060(2014)

In March 2006, the victim was detained from the victim's house at Sinheung, Rason, North Hamgyong Province at the detention centre of the Rason Safety Agency on charges of 'watching South Korean drama'. The victim was beaten by the security guard of the Rason Safety Agency at the detention centre because the victim moved slightly. From March to May 2006, the victim could only stand up and down two to three times a week. The victim was also kicked; the victim received beatings by a group of people. The victim had bruises on the legs and now has neuralgia.

Case 20: ID 061(2014)

In September 2004, the victim was detained at the SSD of Hoeryong, North Hamgyong Province by the Safety Agency. A lieutenant of the inspection department of the Safety Agency of Hoeryong beat the pregnant victim because she did not obey and listen when the lieutenant visited her at night. The victim received wounds on the buttocks and calf. The victim had a miscarriage when she was sent from the Safety Agency to a holding centre (*jipkyulso*).

Case 21: ID 068(2014)

In 1987, the victim was detained on charges of 'religious crimes' by the Gaecheon SSD. The victim was beaten by an agent identified only by his surname Kim, a pre-trial investigator – a major with the Safety Agency missionary district of Pyeongyang, who belonged to the Gaecheon SSD, for denying the religious crime. The assailant beat the victim's head with a cider bottle and trod on the victim's left thigh and right hand. After the beating, the victim received surgical sutures for the head injury. But the victim still has piercing pain in the head, so the victim is receiving treatment even today. Around the lips, which were torn, the victim lost sensation near the nose, and cannot smell. The hand, which was trampled, is undergoing treatment for rheumatoid arthritis, and for the left thigh, an x-ray showed that the femoral vein is blocked. Currently, the leg is numb. And the victim is taking medicine because of poor blood circulation.

Case 22: ID 077(2014)

In February 2008, the victim was arrested at home on charges of 'using a cellular phone' and was detained by the Musan SSD. The victim was beaten by an agent identified only by his surname Yeo, an investigator of the SSD, at the detention centre within the department for using a cellular phone to call China and South Korea. During the investigation, the assailant beat the victim several times. The victim suffered contusions on the head, lower chest, knee, back of the neck, above the waist and left calf.

Case 23: ID 086(2014)

On 4 July 2001, the victim was arrested at home on charges of 'economic crimes' and was detained at the police station detention centre of Daeheungdan. On 15 July 2001, the victim was beaten by an agent identified only by his surname Kim, an investigator, at the police station detention centre for denying the charges. The victim's ribs broke because of kicks from the assailant. The victim has headaches as an after-effect.

Case 24: ID 088(2014)

On 3 January 2011, the victim was arrested at home on charges of 'using a cellular phone' by Musan SSD and was detained at the department's detention centre. From 3 January to 28 January 2011, the victim was beaten by a pre-trial investigator to coerce a proper statement at the Musan police station detention centre. The assailant forced the victim to sit in a half-lotus position, put hands on the knees, be silent and not move for 24 hours. Due to the after-effects, the victim feels discomfort in the right leg and shoulder when walking.

Case 25: ID 101(2014)

On 2 October 2010, the victim was arrested at home on charges of 'illegal border crossings' by the Hyesan SSD and was detained at the counterintelligence office of the SSD. From 2 October to 4 October 2010, the victim was beaten there by a male security agent who belonged to the SSD for denying that the crimes were committed. The victim was slapped and beaten on the buttocks while bound in shackles.

It appeared that some respondents saw or heard of other prisoners being tortured or abused when they were imprisoned in North Korean detention facilities. As Table 31 shows, 27 (62.8 per cent) out of 43 valid respondents answered that they saw or heard of other prisoners being tortured or abused, and 16 (37.2 per cent) answered that they had not seen or heard of other prisoners being tortured or abused.

Table 31: Have you seen or heard of other prisoners being tortured or abused during imprisonment?

Response	Number of respondents	Percentage (%)
Yes	27	62.8
No	16	37.2
Total	43	100

Some North Korean defectors testified in detail about other prisoners being tortured or abused by a security agent or police officer, which they saw or heard of during their imprisonment in detention facilities.

Case 1: ID 002(2014)

Mr Lee (male, 56 years old) was beaten during detention after receiving reform through labour for using a cellular phone, and the victim's leg suffered a fracture. Mrs Kim (female, 32 years old) suffered a head injury and bled during detention at a labour training camp after being arrested for illegal border crossings by the Gyeongwon police station in April 2012.

Case 2: ID 009(2014)

Mrs Shin (female, 20 years old) was detained at the Cheongjin police station for attempting to go to South Korea in 2005 and was forced to confess. During the process, her head was hit with a wooden stick. She has had migraines as an after-effect, and although she was sentenced to stay at a labour training camp for two years, she paid money and was granted bail on medical grounds.

Case 3: ID 022(2014)

Mrs Koo (female, 44 years old), who lived in Hoeryong, was arrested in October 2010. When she denied that she had attempted to go to South Korea during the investigation, she was beaten with a wooden club. She was beaten further and died after she was transferred.

Case 4: ID 060(2014)

Mr Park (male, in 50s) was sentenced to disciplinary prison labour at Rason labour training camp for two years from 2006 to 2008 because of illegal border crossings. He died because of beatings with a wooden club and shovel.

This survey on human rights in North Korea confirms that some North Korean defectors received beatings, assaults and other cruel, inhuman and degrading treatment, while being forced to confess in North Korean detention facilities. Some of the victims suffered permanent injury or trauma due to the beatings and assaults received during the interrogation process. The cases,

confirmed through the survey, show that the North Korean authorities are clearly violating the International Bill of Human Rights and Convention against Torture.

Procedure of relief and medical treatment

The North Korean government did not provide a procedure for relief and medical treatment for the victims. The victims revealed that most of them did not receive any such procedure from the North Korean authorities. When the North Korean defectors were asked whether visits from lawyers, relatives or friends were allowed during their imprisonment (Table 32), 13 (30.2 per cent) out of 43 valid responders answered ‘yes’, and 30 (69.8 per cent) answered ‘no’. Since the North Korean authorities did not allow visits from lawyers, relatives or friends to seven suspects out of ten, there was almost no possibility for them to receive help by notifying outsiders of their torture and beatings.

Table 32: Visits from lawyers, relatives or friends during imprisonment.

Response	Number of respondents	Percentage (%)
Yes	13	30.2
No	30	69.8
Total	43	100

It was confirmed that most North Korean defectors thought that there was no procedure for requesting relief from a higher authority or a superior official when they were tortured. When the North Korean defectors were asked whether they knew that there was a procedure pursuant to which torture victims, family members or their agents could seek such relief regarding injury from torture in North Korea, seven (6.8 per cent) out of 103 valid responders answered ‘yes’, 72 (69.9 per cent) answered ‘no’ and 24 (23.3 per cent) answered ‘I don’t know’ (Table 33).

Table 33: Existence of procedure of requesting relief regarding torture.

Response	Number of respondents	Percentage (%)
Yes	7	6.8
No	72	69.9
I don’t know	24	23.3
Total	103	100

When the North Korean defectors were asked whether they had actually asked for relief or had seen others asking for relief, as shown in Table 34, three (2.9 per cent) out of 103 responders answered ‘yes’, 76 people (73.8 per cent) answered ‘no’ and 24 people (23.3 per cent) answered ‘I don’t know’.

Table 34: Experience of requesting relief or seeing others requesting relief.

Response	Number of respondents	Percentage (%)
Yes	3	2.9
No	76	73.8
I don’t know	24	23.3
Total	103	100

Also, the victims of torture received almost no medical treatment. When they were asked whether they had check-ups from a doctor regarding the wounds received during torture and abuse, four (9.3 per cent) out of 43 responders said they had a doctor's check-up, as shown in Table 35, and 39 (90.7 per cent) said that they did not have a doctor's check-up. Such survey results show that the numbers of those who received relief and medical treatment after torture decreased only slightly compared to 2012. The North Korean authorities did not allow doctor's check-ups for most of the cases even after they tortured the suspects during interrogations, and inflicted severe injury.

Table 35: Doctor's check-up for wounds inflicted by torture.

Response	Number of respondents	Percentage (%)
Yes	4	9.3
No	39	90.7
Total	43	100

Most of the torture victims could not receive proper treatment for the injuries inflicted by torture or beatings. The answers to the research question asking whether they received proper treatment for such injuries are shown in Table 36. Among 43 valid respondents, five (11.6 per cent) answered that they received proper treatment, and 38 (88.4 per cent) answered that they did not receive proper treatment. These results show a slight decrease in people receiving proper treatment for injuries caused by torture or beating compared to 2012.

Table 36: Proper treatment for injuries caused by torture or abuse.

Response	Number of respondents	Percentage (%)
Yes	5	11.6
No	38	88.4
Total	43	100

The North Korean government did not conduct an autopsy or forensic examination when most prisoners who were subject to torture or beatings died. When North Korean defectors were asked whether an autopsy or forensic examination was conducted when a victim of torture or abuse died during imprisonment, two (4.7 per cent) out of 43 valid respondents answered that an autopsy or forensic examination was conducted, and 41 (95.3 per cent) answered that they were not conducted as Table 37 shows.

Table 37: Were autopsies or forensic examinations carried out?

Response	Number of respondents	Percentage (%)
Yes	2	4.7
No	41	95.3
Total	43	100

The North Korean authorities did not conduct an autopsy or forensic examination on most of the accused when they died as a result of torture or beatings. Such research results indicate that the North Korean authorities are overlooking the torture or beating of the accused by investigators of the SSD or police station during interrogations and that the authorities do not hold them responsible when deaths occur. The North Korean government overlooks torture and beating that in reality frequently occurs in detention facilities.

Conclusion

The 2014 survey on human rights in North Korea confirms that the North Korean government implements torture, and other cruel, inhuman or degrading treatment or punishment during the pre-trial process for the accused at the SSD or police station, or during their imprisonment at detention facilities. The survey reconfirms the facts pointed out by Reports on Human Rights in North Korea published by the KBA in 2006, 2008, 2010 and 2012, and shows that the situation is not improving much each year. The KBA results are in accord with the UN North Korea Human Rights Reports, which show that torture and other cruel, inhuman and degrading treatment or punishment continue at a worrying level in North Korea.

The survey also confirms that reports by the North Korean authorities to international organisations such as the UN saying that it prohibits torture and inhuman treatment by law and by several provisions of criminal procedure code are lies. The North Korean authorities have not tried to reduce torture or other cruel, inhuman or degrading treatment or punishment despite the international community's concern and pressure for human rights improvement. The torture and other cruel, inhuman or degrading treatment or punishments that occur gravely, widely and systematically under the support and oversight of the North Korean authorities violate Article 5 of the UDHR, Article 7 of the ICCPR and the Convention against Torture. In order to resolve torture and inhuman or other cruel, inhuman or degrading treatments and punishments occurring in North Korea, international organisations such as the UN need to urge the North Korean authorities to stop the human rights violations that are occurring widely at security agencies and detention facilities by presenting specific human rights violation cases and evidence to the North Korea authorities.

Through a 2005 UN resolution on the human rights situation in North Korea, the international community recommended that North Korea ratify the Convention against Torture, which it had not joined, and guarantee that all necessary measures would be taken for North Korea to fulfil its obligations under the covenants on human rights. Following this resolution, the international community continued to urge improvement, while expressing concern regarding torture, and other cruel, inhuman or degrading treatment or punishments undertaken by the North Korean government. However, the 2014 survey on human rights in North Korea conducted by the KBA reconfirms that these occurrences remain widespread, continuous and severe.

4.3 Freedom of religion and belief

Oh Gyeong-seob

The international community declared a multilateral or natural right of freedom of religion¹¹² through an International Bill of Human Rights. The UDHR states in Article 18 that: ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.’

Article 18 of the ICCPR states as follows:

- ‘1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.’

The international community is trying to stop violations of freedom of religion by individual nations throughout the world and to guarantee freedom of religion, which is a natural right granted to all human beings, through the international human rights regime. Nations throughout the world have provisions in their constitutions that guarantee freedom of religion and assure an individual’s free religious activity and faith, though there are slight differences from country to country. North Korea also guarantees freedom of religion through its Socialist Constitution (amended and supplemented in 2012). Article 68 of the Socialist Constitution states as follows: ‘citizens have freedom of religious belief. This right is granted through the approval of the construction of religious buildings and the holding of religious ceremonies. Religion must not be used as a pretext for drawing in foreign forces or for harming the State or social order.’ In response to the international community’s demand for guaranteeing freedom of religion, the North Korean authorities claim that it allows freedom of religion under its Constitution, laws and policies based on this article.

However, the international community treats North Korea as the worst country for persecuting religion. The USCIRF in its Annual Report designated North Korea as a country of particular concern and evaluated the state of its religious freedom. The report said that ‘the government tightly controls all religious activity and

112 Freedom of religion means the freedom to believe in religion without anyone’s interference or illegal or undue restrictions. The freedom of religion includes freedom of faith, freedom of religious ritual (including worship) and freedom of assembly and association.

perpetuates an extreme cult of personality venerating the Kim family as a pseudo-religion'. Also the report said that 'individuals engaged in clandestine Protestant activity... are arrested, tortured, and even executed, and thousands of religious believers remain imprisoned in North Korea's notorious penal labour camps, including refugees repatriated from China'.¹¹³

In reality, the North Korean authorities regard religion as an anti-establishment and counter-revolutionary element and persecute it. The North Korean authorities' hostile perception of religion is shown in Kim Il-sung's comment and official documents. Kim Il-sung said: 'religion is one kind of superstition. Believing in Jesus, or believing in Buddha, the basis is superstitions.'¹¹⁴ He also wrote: 'religion is reactionary and of unscientific world view. We could say religion is something like opium.'¹¹⁵ The North Korean authorities explain religion as a tool of imperialistic intrusion that advocates the exploitation by the ruling class in a hierarchical society. For example, North Korea's *Dictionary of Philosophy* mentions that 'religion historically was seized on by the ruling class to deceive the masses and has been used as a means to exploit and oppress, and that in modern times, religion has been used as an ideological tool for aggression by imperialists against the peoples of underdeveloped countries'.¹¹⁶

After becoming a socialist country, the North Korean authorities treated religion as the enemy of revolution and brought religious people under the dictatorship of the proletariat. The North Korean government has not allowed freedom of religion. It has implemented a hostile policy towards religion and it systematically and emphatically persecutes individual religious activity in an organised manner at the national level. However, North Korea began using religion politically in its foreign relations starting in the late 1980s, while maintaining a 'parallel policy' that in reality continues to persecute religion.¹¹⁷ The North Korean authorities have cultivated religious organisations accredited only by the government and state-controlled religious people and has used them in foreign relations to seek diplomatic and economic benefits. Thus, religion in North Korea functions only as a political tool of considerable utility in foreign relations, but not as something with a function of its own.

Status of religion

North Korea does not allow freedom of religion and persecutes religious people and activity. However, the North Korean authorities train and support government-accredited religious organisations and government-patronised religious people and keep them under strict surveillance and control. As shown in Table 38, the North Korean government established and operates religious facilities for Christianity, Catholicism, Buddhism, Cheondogyo and the Russian Orthodox Church, and it cultivates religious clergy politically. The number of believers in the five religions reported

113 Katrina Lantos Swett et al, *Annual Report of the U.S. Commission on International Religious Freedom*, USCIRF, April 2013), 108.

114 *The Selected Works of Kim Il-sung*, Vol I (Publisher of Workers' Party of Korea 1967), 173.

115 *The Selected Works of Kim Il-sung*, Vol 5 (Publisher of Workers' Party of Korea 1972), 154. In addition, Kim Il-sung argued in his directive to the Social Security Bureau that 'we cannot take religious people along in socialist society' and 'religious people should die to cure their habit'.

116 Philosophy Research Institute, North Korean Academy of Social Sciences, *Dictionary of Philosophy* (Philosophy Research Institute, North Korean Academy of Social Sciences 1985), 490. KINU, *Report on Human Rights in North Korea* (2011), 236. For North Korea's view on religion stated in the *Dictionary of Philosophy*, Institute of Modern Society, 'Research on Religion in North Korea I', Research Report No 92-5 (Institute of Modern Society 1992), 18-73.

117 Yoon Yeo-sang, Chung Jai-ho and An Hyun-min, 'Report on Religious Freedom in North Korea 2013', NKDB, 2013, 43.

by the North Korean authorities to the international community is approximately 40,000, which is 0.2 per cent of the entire population, and the number of clergy is 855.

Table 38: Research on religion in North Korea (estimate in 2013).

Religion	Number of religious facilities	Number of clergy	Number of believers	Group name
Christianity	3 (500 house churches)	300 (30 pastors)	12,000	Chosun Christian League
Catholicism	1 Cathedral, 2 Catholic churches (3 districts, 500 house Catholic churches)	0	3,000	Chosun Catholic Association
Buddhism	64	300	10,000	Chosun Buddhist League
Cheondogyo	52 (801 temples within houses)	250	15,000	Chosun Cheondogyo Central Committee
Russian Orthodox Church	1	5	5	Chosun Orthodox Committee
Total	121	855	40,005 (0.2 per cent of the North Korean population)	5

Source : Yoon Yeo-sang, Chung Jai-ho and An Hyun-min, 'Report on Religious Freedom in North Korea 2013', Database Centre for North Korean Human Rights (NKDB), 2013, 43.

As for Christianity, the North Korean authorities revealed that there are approximately 500 house churches around the country and the number of Christians comes to 12,000. However, the respondents in the 2014 survey on human rights in North Korea conducted by the KBA showed that they rarely knew about the house churches (see Table 39). To the question, 'have you heard of house churches in North Korea?' 100 respondents (97.1 per cent) answered 'no'. To the question, 'how many Christians do you think are there in North Korea if house churches are operated?' 74 (71.8 per cent) answered 'I don't know' and 22 (21.3 per cent) answered 'below 100' (Table 40). Such research results demonstrate that most North Korean defectors are pessimistic about the North Korean government's official announcement that there are house churches.

Table 39: It is said that there are house churches in North Korea. Have you heard about them?

Response	Number of respondents	Percentage (%)
Yes	3	2.9
No	100	97.1
Total	103	100

Table 40: If there are house churches operated in North Korea, how many Christians do you think are there?

Classification	Number of respondents	Percentage (%)
Below 100	22	21.3
100–500	3	2.9
500–1,000	1	1.0
1,000–3,000	1	1.0
3,000–5,000	1	1.0
Above 10,000	1	1.0
I don't know	74	71.8
Total	103	100

Considering the fact that North Korea is implementing a policy of religious persecution, it is highly likely that the number of religious people and clergy reported by the North Korean authorities are figures fabricated to show the international community that North Korea guarantees freedom of religion. After establishing a socialist regime, the North Korean government treated religion as the enemy of the revolution and a target of class strife. The government isolated religious people from society and imprisoned them in political prison camps. While implementing its policy of religious persecution, the North Korean authorities imposed the *Juche* ideology as the monolithic ideology, and through ‘the Ten Principles’, systematised the personality cult of Kim Il-sung and Kim Jong-il.

To reinforce the personality cult of Kim Il-sung and Kim Jong-il, the North Korean authorities have erected statues of them and have established and operate facilities for their idolisation throughout the country. The North Korean authorities have also implemented Kim Il-sung and Kim Jong-il an idolisation programme through the entire education process of schools. Among the North Korean defectors, if they were discovered to have contacted religious people or to have books related to religion such as the Bible, they were imprisoned in political prison camps. People who were exposed as being secretly engaged in religious activity in North Korea were also executed or imprisoned in political prison camps. For these reasons, it is difficult to believe that the North Korean regime recognises religious people and clergy and even allows house churches.

It is understood that because freedom of religion is prohibited in North Korea, underground churches operate widely and Christians lead spiritual lives in secret. The senior editor of Radio Free Asia, Bonghyeon Park, estimates that there are approximately 100,000 Christians in North Korea.¹¹⁸ Pastor Isaac, who participates in the North Korea underground church mission, estimates that there are 1,500 underground churches and 135,000 underground Christians in North Korea.¹¹⁹

However, the 2014 survey respondents rarely knew about underground churches or responded that underground churches do not exist in North Korea (Table 41). To requests for an estimate of how many underground church members there are, 47 (45.6 per cent) answered that they did not know, 32 (31.1 per cent) answered that there are no underground churches and 13 (12.6 per cent) answered ‘below 100’. Hence 79 (76.7 per cent) of the total responded that they did not know about

118 ‘Park Bong-hyeon’s North Korea Observatory, Growing Underground Church Believers’ Radio Free Asia (6 August 2009).

119 Kim Jeong-woo, ‘Secret Story Mission Plan to North Korea, North Korea Underground Church’s Godfather Pastor Isaac’ *Monthly Chosun* (October 2009).

the underground church or that they did not think there were underground churches. Such survey results are plausible because the underground churches operate very secretly in North Korea and they have rarely been uncovered or prosecuted as a political crime to make most North Korean people aware of them.

Table 41: It is said that there are underground churches in North Korea. How many underground church members do you think are there?

Classification	Number of respondents	Percentage (%)
No underground churches	32	31.2
Below 100	13	12.6
100–500	2	1.9
500–1,000	2	1.9
1,000–3,000	1	1.0
3,000–5,000	2	1.9
10,000–50,000	3	2.9
100,000–200,000	1	1.0
I don't know	47	45.6
Total	103	100

Source: Yoon Yeo-sang, Chung Jai-ho and An Hyun-min, *2013 Report on Religious Freedom in North Korea*, NKDB, 2013, 60.

The North Korean authorities began establishing religious facilities and training clergy as a state policy in the late 1980s. North Korea established Bongsu Church and Jangchung Cathedral at the end of 1988, Chilgol Church in 1989 and Jeil Church in 2005. After Kim Jong-il visited a Russian Orthodox Church while travelling to Russia in August 2002, the North Korean government promoted the establishment of a Russian Orthodox Church in June 2003, and Jungbaek Russian Orthodox church was completed in Jungbaek-dong, Naklang, Pyongyang on 13 August 2006. In April 2003, four North Koreans studied at Moscow Theological Seminary, which trains priests for the Russian Orthodox Church, to serve at Jungbaek church after its completion. It is understood that two of the four individuals were baptised and currently serve as deacons there.¹²⁰

North Korea has begun the training of clergy for the major religions. The North Korean authorities established a school of religion under the school of history at Kim Il-sung University in 1989, where the doctrines and ceremonies of five religions – Christianity, Catholicism, Buddhism, Cheondogyo and Islam – are taught.¹²¹ In addition, the government authorities have set up and operate educational institutions (clergy training institutions) such as Pyongyang Theology Seminary and a Buddhist school established inside Gwangbeop Temple in Pyongyang.¹²²

North Korea establishes and operates religious facilities, trains clergy and uses them in the conduct of its foreign relations. First, North Korea uses its religious facilities and clergy to show that it recognises freedom of religion. This is in response to pressure for improvement from the international human

¹²⁰ KINU, *Report on Human Rights in North Korea* (2011), 238.

¹²¹ NKDB, *2011 Report on Religious Freedom in North Korea* (2011), 55.

¹²² KINU, 'Introduction to North Korea 2009' (2009), 437; Oh Il-hwan, 'Reality of Religions in North Korea and Prospect for Religious Exchange between North and South Korea', *Lectures on Unification Issue with Themes 17* (Institute for Unification Education 2006), 23–24; NKDB, *2011 Report on Religious Freedom in North Korea*, 59, 62.

rights regime. Also, North Korea uses its government-accredited religious organisations and clergy as a means of having religious exchanges with the international community, Korean religious institutions and other organisations. The government-accredited organisations and clergy conduct these exchanges under the direction of the Workers’ Party of Korea. In addition, North Korea uses its government-accredited organisations and clergy as a way of obtaining humanitarian aid from the international community, Korean religious institutions and other organisations.

Because religious facilities in North Korea are usually managed for foreign relations purposes, residents cannot participate in regular religious events. Many Pyongyang intellectuals and other residents knew that there were religious facilities. However, most thought that they were restricted areas where only people with permission could enter.¹²³ People in the countryside hardly knew that there were religious facilities at Pyongyang. Even if they knew, they saw the facilities as propaganda to show off to foreigners rather than as religious facilities.¹²⁴ North Koreans could not differentiate between Catholic churches and churches. Also, they thought that a Buddhist temple was not a religious facility, but rather a place of cultural heritage, a tourist attraction or ‘a place for foreigners to visit’. It appeared that they could not grasp the existence and role of Buddhist monks from a religious perspective.¹²⁵

Level of awareness and activity of North Koreans regarding religion

North Koreans have a very low awareness of religion and have almost no religious life. The results of the 2014 survey by the KBA show that most respondents did not come into contact with religious information in North Korea. Nor did they visit a religious facility or read religious texts. Above all, very few respondents obtained any information about religion from their parents or grandparents. Very few North Korean defectors heard that their parents or grandparents had religion or saw them lead a religious life in secret.

Table 42 shows that only eight out of 103 respondents (7.8 per cent) answered ‘yes’ to the question whether, when in North Korea, they had ever heard their parents or grandparents saying that they believed in Buddhism, Christianity or Catholicism. Some North Korean defectors among the respondents saw their parents or grandparents praying in secret. As Table 43 shows, seven (6.8 per cent) of the respondents answered ‘yes’ to the question whether, before escaping from North Korea, they had ever seen their parents or grandparents praying to Buddha, Jesus Christ or the Virgin Mary.

Table 42: Have you heard, while in North Korea, your parents or grandparents saying they believed in Buddhism, Christianity or Catholicism?

Response	Number of respondents	Percentage (%)
Yes	8	7.8
No	95	92.2
Total	103	100

123 KINU, *Report on Human Rights in North Korea* (2011), 239.

124 *Ibid*, 239–241.

125 *Ibid*, 239–245; United States Department of State (Bureau of Democracy, Human Rights, and Labour), *International Religious Freedom Report (July–December, 2010): Democratic People’s Republic of Korea*, 6.

Table 43: Before escaping North Korea, have you ever seen your parents or grandparents praying to Buddha, Jesus Christ or the Virgin Mary?

Response	Number of respondents	Percentage (%)
Yes	7	6.8
No	96	93.2
Total	103	100

In this survey, some North Korean defectors said that they either saw or heard about religious facilities in North Korea. Some knew that there were Buddhist temples or churches in North Korea. Thirty-six out of 103 respondents (35 per cent) answered ‘yes’ to the question whether they heard about the famous Buddhist temples in Mt Geumgang or Mt Myohyang, as shown in Table 44. To the question whether they had heard about the famous Buddhist temples at Mt Geumgang or Mt Myohyang or attended Buddhist services there, 12 respondents said that they heard about the temples from others, nine said that they saw them on television and eight said that they had seen them with their own eyes.

Table 44: Have you heard that there are famous temples in Mt Geumgang and Mt Myohyang?

Response	Number of respondents	Percentage (%)
Yes	36	35
No	67	65
Total	103	100

However, very few respondents who knew that there were Buddhist temples in North Korea also knew that Buddhist ceremonies were held there. Most North Korean defectors thought that Buddhist temples were tourist attractions or places of cultural heritage. Twenty respondents answered the question whether they knew what a Buddhist temple was for. Among the respondents, 12 people thought of the temples as tourist attractions or place of cultural heritage, four said that it was the place where Buddhist monks were, two people said that it was the place where one makes his or her wishes, one person said that it was a place for holding Buddhist ceremonies and another person said it was a place for conducting diplomacy with the world religious organisations.

In addition, to the question whether they had heard about Bongsu Church or Chilgol Church in Pyongyang or attended a worship service there, 17 defectors (16.5 per cent) answered ‘yes’, as shown in Table 45. This is a relatively high positive response rate because none of these respondents was from Pyongyang. The fact that 17 of them knew about Bongsu Church or Chilgol Church indicates that these churches are fairly well-known in North Korea.

Table 45: Have you heard about Bongsu Church or Chilgol Church in Pyongyang or attended a worship service there?

Response	Number of respondents	Percentage (%)
Yes	17	16.5
No	86	83.5
Total	103	100

On the other hand, it was discovered that people rarely knew about Jangchung Cathedral in Pyongyang or the theological seminaries in Pyongyang and Wonsan. It appears that the seminaries in particular are almost unknown to North Koreans (Table 46). Only seven people (6.8 per cent) answered that they knew or had heard about Jangchung Cathedral in Pyongyang when asked (Table 47), and only five people (4.9 per cent) answered that they heard about the seminaries in Pyongyang and Wonsan.

Table 46: Have you heard of Jangchung Cathedral in Pyongyang?

Response	Number of respondents	Percentage (%)
Yes	7	6.8
No	96	93.2
Total	103	100

Table 47: Have you heard that there is a theological seminary in Pyongyang or Wonsan?

Response	Number of respondents	Percentage (%)
Yes	5	4.9
No	98	95.1
Total	103	100

Although the defectors knew to some extent that there were Buddhist temples and churches, this does not indicate that religious activities actively take place there. While they knew of the existence of temples and churches in North Korea, most defectors understood these places to be cultural heritage or tourist sites. Also, Bongsu Church and Chilgol Church may be familiar because there were many Christians in North Korea before the Communist era.

Only a few defectors have actually seen religious texts, confirming the fact that Buddhist temples and churches in North Korea are only for display. Among the respondents, 13 (12.6 per cent) had seen the *Bible* or a hymn book (Table 48), four (3.9 per cent) had seen Buddhist texts or a Buddhist worship songbook (Table 49) and no one had seen a Catholic *Bible* or hymn book (Table 50).

Table 48: Have you ever seen the Bible or a hymn book?

Response	Number of respondents	Percentage (%)
Yes	13	12.6
No	90	87.4
Total	103	100

Table 49: Have you ever seen Buddhist texts or the Buddhist worship songbook while you were in North Korea?

Response	Number of respondents	Percentage (%)
Yes	4	3.9
No	99	96.1
Total	103	100

Table 50: Have you ever seen the Catholic Church’s Bible or hymn book?

Response	Number of respondents	Percentage (%)
Yes	0	0
No	103	100
Total	103	100

North Korea suppresses religion in an organised and systematic way at the national level by imposing a pseudo-religion on the North Korean people. As a result, the North Korean people’s understanding of religion is minimal. The North Korean people have almost no chance to encounter religion in North Korea. Those who have encountered religion got to know about religion through missionaries or religious people in China after escaping North Korea.

When the respondents were asked if they knew that there were people who taught about Buddhism or Christianity, some answered ‘yes’ (Tables 51 and 52). In response to the question whether they knew that there were people who taught about Buddhism among ethnic Koreans living in China or among South Koreans, 18 people (17.5 per cent) answered ‘yes’ (Table 51). When asked whether they knew that there were people who taught about Christianity among ethnic Koreans living in China or among South Koreans, 28 people (27.2 per cent) answered ‘yes’ (Table 52). Likewise, some defectors knew that South Korean religious people were actively engaged in missionary work in China.

Table 51: Did you know that there were people who taught about Buddhism among ethnic Koreans living in China or among South Koreans?

Response	Number of respondents	Percentage (%)
Yes	18	17.5
No	85	82.5
Total	103	100

Table 52: Did you know that there were people who taught about Christianity among ethnic Koreans living in China or about South Koreans?

Response	Number of respondents	Percentage (%)
Yes	28	27.2
No	75	72.8
Total	103	100

Pseudo-religious activities

The North Korean authorities impose monolithic ideologies such as the *Juche* ideology, the military-first ideology and the cult of Kim Il-sung, Kim Jong-il and Kim Jong-un while continuing anti-religious education and propaganda at a national level. North Korea educates its people through school education, social education and political education to have a negative perspective on religion, that religion is bad as a vestige of imperialism and that it is akin to a drug. Fifty-seven people (55.3 per cent) answered ‘yes’ to the question whether they had learned that religion is like opium or a drug of the people from school or political education (Table 53), and 54 people (52.4 per cent)

replied ‘yes’ to the question whether they had learned that practising a religion is not helpful to a socialist life, activity or to the revolutionary refinement of the people (Table 54).

Table 53: Have you learned that religion is like opium or a drug of the people from school or political education?

Response	Number of respondents	Percentage (%)
Yes	57	55.3
No	46	44.7
Total	103	100

Table 54: Have you learned that practising a religion is not helpful to socialist life, activity, or the revolutionary refinement of the people?

Response	Number of respondents	Percentage (%)
Yes	54	52.4
No	49	47.6
Total	103	100

In addition, the North Korean authorities have conducted anti-religious propaganda through broadcasting and news reporting, and produced a revolutionary opera called ‘Seonghwangdang’ (Shrine to the Village Deity), which disparaged religious people, spreading anti-religious awareness among the people. Among the respondents, 32 people (31.1 per cent) answered ‘yes’ to the question whether they had seen or read anti-religious propaganda through broadcasting or news reporting (Table 55), and 82 people (79.6 per cent) answered ‘yes’ to the question whether they had seen a revolutionary opera called Seonghwangdang, which belittled religious people (Table 56).

Table 55: Have you seen or read anti-religious propaganda through broadcasting or the news?

Response	Number of respondents	Percentage (%)
Yes	32	31.1
No	71	68.9
Total	103	100

Table 56: Have you seen a revolutionary opera called *Seonghwangdang*, which belittled religious people?

Response	Number of respondents	Percentage (%)
Yes	82	79.6
No	21	20.4
Total	103	100

It is highly possible that the North Korean authorities’ anti-religion education and propaganda may have influenced North Koreans to think that practising a religion is not socially helpful. Forty-two people (40.8 per cent) answered ‘yes’ to the question whether they had thought that having a religion was not socially helpful (Table 57).

Table 57: Have you ever thought that practising a religion was not socially helpful while living in North Korea?

Response	Number of respondents	Percentage (%)
Yes	42	40.8
No	57	55.3
I didn't know what religion is	4	3.9
Total	103	100

Rather than disapproving of all religion, the North Korean authorities impose the cult of Kim Il-sung, Kim Jong-il and Kim Jong-un and advocate *Juche* as the monolithic ideology. The North Korean authorities have institutionalised the deification, absolutisation and idolisation of Kim Il-sung and Kim Jong-il through the ‘Ten Principles in Establishing the Party’s Monolithic Ideological system’, which operates above the Constitution and the Party rules. The North Korean authorities conduct education that idolises Kim Il-sung, Kim Jong-il and Kim Jong-un as gods for students from nursery through to middle school.

The result of the survey shows that the North Korean authorities conduct idolisation education for Kim Il-sung or Kim Jong-il from nursery/pre-school. When asked to name three things that were most memorable about Kim Il-sung and Kim Jong-il from their nursery education, the respondents said that they were instructed that Kim Il-sung and Kim Jong-il are the Great Leaders or the Fatherly Leaders (Table 58).

Table 58: Name three things from your nursery education that are most memorable about Kim Il-sung and Kim Jong-il.

ID	Response
ID 002(2014)	Able to move between distant places by magic, someone given by heaven, children as kings.
ID 003(2014)	General star, magic method of contracting space, a tiger of Mt Baekdu.
ID 011(2014)	Kim Il-sung is the Sun of the people, Kim Jong-il is the Wise Leader, the Dear Leader.
ID 026(2014)	Father General, grandfather Commander-in-Chief, Our Father.
ID 029(2014)	Father Commander-in-Chief, the Best Father, like the sky.
ID 053(2014)	Father of the family, parent who gives gifts every year, the Sun in the sky.
ID 056(2014)	Fatherly Supreme Leader, Father General.
ID 071(2014)	Birthday education of Kim Il-sung and Kim Jong-il [learning about their birthdays and the importance of their births], bowing to their portraits, giving cookies and saying thank you.
ID 088(2014)	Father Commander-in-Chief, the story of childhood of Kim Il-sung and his grandparents.

When asked what the people’s school taught them to call Kim Il-sung, Kim Jong-il and Kim Jong-un, the respondents answered that they called Kim Il-sung Dear Father, Great Supreme Leader (*Suryong*), the Sun of the people, Father Commander-in-Chief, respectable Father Commander-in-Chief, Kim Jong-il Dear Leader Comrade, Wise Leader, General, Great Leader and Marshall, and Kim Jong-un the young people’s Commander and Marshall.

When asked to describe three things that were most memorable about Kim Il-sung or Kim Jong-il during middle school or a higher-level school, the respondents said that they learned about the revolutionary history and the greatness of Kim Il-sung (Table 59).

Table 59: Describe three things that were most memorable about Kim Il-sung or Kim Jong-il during middle school or a higher-level school.

ID	Response
ID 006(2014)	I remember learning that he had preternatural swiftness, flies around on a leaf and was sent from heaven.
ID 015(2014)	I remember learning that he was sent from heaven, a leader of the people and leader of the world.
ID 018(2014)	I learned that Kim Il-sung and Kim Jong-il were sent from heaven.
ID 023(2014)	I remember learning about the revolutionary history of Dear Supreme Leader Kim Il-sung.
ID 030(2014)	I remember learning about revolutionary ideology, the anti-Japanese struggle and his greatness.
ID 061(2014)	He made the country independent, cultivated a socialist heaven and turned this country into a strong and abundant nation.
ID 071(2014)	Kim Il-sung was the greatest genius of the world. He was a partisan revolutionary, independence fighter and hero of the people.
ID 078(2014)	I remember learning that he is the greatest person in the world.
ID 101(2014)	I remember learning that Kim Il-sung and Kim Jong-il are the Supreme Leaders, the Sun and parents given by heaven and about other revolutionary history.
ID 103(2014)	I remember learning that they were Fatherly Leaders sent from heaven and a bright star of Mt Baekdu.

It was discovered that the North Korean people learned the ‘Ten Principles’ while attending the people’s school and middle school. When asked when they first learned about the ‘Ten Principles’, 58 respondents (56.3 per cent) answered that they learned them from pre-school to middle school, and also by the time they entered the North Korean Democratic Youth League. Among the respondents (Table 60), 17 people (16.5 per cent) answered that they could recite the ten essentials of the ‘Ten Principles’.

Table 60: Can you recite the ten essentials of the Ten Principles in Establishing the Party’s Monolithic Ideological System?

Response	Number of respondents	Percentage (%)
Yes	17	16.5
No	86	83.5
Total	103	100

The students knew that they would be punished if they engaged in impolite behaviour in relation to Kim Il-sung and Kim Jong-il or spoke or behaved against the ‘Ten Principles’. When the respondents were asked which behaviour received the severest punishment and to give three examples of behaviour that would be punished, they said that slandering or smearing Kim Il-sung or Kim Jong-il was subject to punishment (Table 61).

Table 61: Which behaviour receives the severest punishment? Give three examples of behaviour that would be punished.

ID	Response
ID 001(2014)	Slandering and smearing Kim Il-sung or Kim Jong-il are the biggest crimes. We cannot speak their names freely and we should never point at their portraits.
ID 003(2014)	If we try to learn more about the family of Kim Il-sung or Kim Jong-il or speak against the monolithic ideology system, we are punished.
ID 008(2014)	If we speak out against Kim Il-sung or Kim Jong-il, three generations are exterminated and we become candidates for political prison camp or execution.
ID 009(2014)	We are punished if we don't use proper titles of honour or if we say that they conduct politics wrongly.
ID 030(2014)	We are punished when we speak against the 'Ten Principles' or criticise or complain about Kim Il-sung or Kim Jong-il.
ID 039(2014)	If we don't attach 'Commander-in-Chief' or 'General' to their names, if we say that they are conducting politics wrongly or if we say that we are hungry because of them, we get punished.
ID 079(2014)	Anything that belittles Kim Il-sung's family or his family history is punished.
ID 089(2014)	If we cut out a picture of Kim Il-sung from the newspaper, speak against the Party or belittle socialism, we are punished.

The North Korean authorities force all families and public organisations to hang portraits of Kim Il-sung or Kim Jong-il on the wall and to take care of them. In order to pass the authorities' inspection, the North Korean people maintain their portraits with great care. When asked when and how they clean the portraits of Kim Il-sung or Kim Jong-il at home, most of them said that they clean it with Jeongseongham¹²⁶ cloth every day, some of them once a week, or when there was an inspection. The North Korean government inspects the condition of the portraits frequently. When asked when the North Korean authorities inspected the portraits, most of the respondents replied that inspectors came out once or twice a year, during the holidays.

North Koreans are punished as political prisoners when they do not take care of the portraits or when the portraits are damaged by negligence. So North Koreans need to move their portraits of Kim Il-sung and Kim Jong-il into a safe place when there are emergencies such as accidents or disasters. The *Workers' Newspaper (Rodong Sinmun)* has reported on people who have died while trying to protect the portraits from floods or fire as model cases of protecting the Supreme Leader.

On 1 February 2013, the *Workers' Newspaper (Rodong Sinmun)* reported the death of a woman called Park Ae-sun as a model case for protecting the Supreme Leader. It stated that Park Ae-sun ran into a building engulfed in flames after hearing the news of a fire in a building, saved the portraits of Kim Il-sung and Kim Jong-il, and died.¹²⁷ Also, it reported that the crew of the *Daegakbong*, which sank on 29 October 2013, desperately tried to protect the portraits of Kim Il-sung and Kim Jong-il without thinking of their own lives, even amidst the crisis of the ship sinking. In early July 2013, the Japanese newspaper *Asahi* reported that portraits of Kim Il-sung and Kim Jong-il had been discovered with the six dead North Korean crew members found on the Japanese shore.¹²⁸

126 This term refers to a box for storing clean and dry cloths used to wipe portraits.

127 'North Korean Dies in an Effort to Save a Portrait', North Korean Defectors Independence Support Centre (accessed 15 March 2014, www.nkcenter.org/bbs/board.php?bo_table=bggroup4&wr_id=102).

128 'North Korea Propagandizes Sailors Who Died with Kim Il-sung and Kim Jong-il's Portraits in their Embrace' *Yonhap News* (29 October 2013).

The North Korean government forces its people to salute the portraits of Kim Il-sung and Kim Jong-il hanging inside their houses. When asked if they have saluted the portraits of Kim Il-sung and Kim Jong-il inside their homes, 73 people (70.9 per cent) answered ‘yes’ (Table 62). When asked when they started saluting the portraits, most answered that they had saluted the portraits since they went to pre-school or the people’s school.

Table 62: There are portraits of Kim Il-sung and Kim Jong-il inside the house. Have you saluted the portraits?

Response	Number of respondents	Percentage (%)
Yes	73	70.9
No	30	29.1
Total	103	100

The North Korean authorities have erected statues of Kim Il-sung and Kim Jong-il across the country and have managed them to this day, and it forces its people to worship them by creating Kim Il-sung’s revolutionary ideology research rooms or revolutionary historic sites. The North Korean people must regularly visit Kim Il-sung’s revolutionary ideology research rooms and be educated. When asked how many times a year a member of society needs to go to Kim Il-sung’s revolutionary ideology research rooms and be educated, most respondents responded, ‘once a week.’

The schools teach about the revolutionary activity and history of Kim Il-sung and Kim Jong-il through regular education and idolise Kim Il-sung and Kim Jong-il as gods. When asked whether they had ever heard that they should not believe in anything other than Kim Il-sung and Kim Jong-il, 87 people (84.5 per cent) answered ‘yes’ (Table 63). When asked if they had ever thought that Kim Il-sung was like a living god, 47 people (45.6 per cent) answered ‘yes’ (Table 64). When asked if they learned that Kim Il-sung was greater than the four sages, 58 people (56.3 per cent) answered ‘yes’ (Table 65).

Table 63: Have you heard that you should only believe in the Fatherly Leader and Leader Comrade, and should not believe in anything else while living in North Korea?

Response	Number of respondents	Percentage (%)
Yes	87	84.5
No	16	15.5
Total	103	100

Table 64: Have you ever thought that Kim Il-sung was like a living god?

Response	Number of respondents	Percentage (%)
Yes	47	45.6
No	56	54.4
Total	103	100

Table 65: Did you learn in North Korean schools that Kim Il-sung was greater than the four sages (Jesus, Confucius, Buddha and Mohammed)?

Response	Number of respondents	Percentage (%)
Yes	58	56.3
No	45	43.7
Total	103	100

The North Korean authorities impose the *Juche* ideology as the monolithic ideology. The Rules of the Workers' Party of Korea regard the *Juche* ideology as the only idea for guidance. Article 3 of the Socialist Constitution says, 'the DPRK... is guided in its activities by the *Juche* ideology, military-first ideology'. The North Korean authorities carry out ideology education continuously in order to arm the people with the monolithic ideology of Kim Il-sung and Kim Jong-il. The survey showed that the most influential devices for the formation of North Koreans' ideology were school education and all kinds of revolutionary books. When asked what had the biggest influence on forming their ideas, 40 people (30.8 per cent) selected the instruction of school teachers, 22 people (16.9 per cent) selected the books related to Kim Il-sung and Kim Jong-il and 21 people (16.2 per cent) selected books related to the *Juche* ideology (Table 66).

Table 66: What had the biggest influence on forming your own thoughts in North Korea?*

Response	Number of respondents	Percentage (%)
Books related to <i>Juche</i> ideology	21	16.2
Books related to Kim Il-sung and Kim Jong-il	22	16.9
Books related to the Korean War	5	3.8
Books related to revolutionary history	18	13.8
Workers' Newspaper (Rodong Sinmun) and broadcast media	17	13.1
Instruction of school teachers	40	30.8
Others	7	5.4
Total	130	100

* Multiple responses were allowed.

The North Korean authorities teach the *Juche* ideology in the regular education curriculum from the people's school. It was discovered that such education occurred so frequently that some of the respondents answered that they received one hour of education a day when asked how many hours of education the people's school students and high school students receive per year. The North Koreans who received such education actually thought that the *Juche* ideology was greater than any religion. To the question whether, while living in Korea, they thought that the *Juche* ideology was greater than any religion, 79 people (76.7 per cent) answered 'yes' (Table 67).

Table 67: Did you think that the Juche ideology was greater than any religion when you lived in North Korea?

Response	Number of respondents	Percentage (%)
Yes	79	76.7
No	24	23.3
Total	103	100

The percentage of respondents who thought they knew the *Juche* ideology well was relatively low, considering that North Koreans learned about the *Juche* ideology as part of the regular education curriculum. However, the survey showed that the percentage of respondents who were sceptical about the *Juche* ideology was only 30 per cent. When asked if they knew a lot about the *Juche* ideology, 39 people (37.9 per cent) answered ‘yes’ (Table 68). And to the question whether they were sceptical about the *Juche* ideology, 70 people (68.0 per cent) answered ‘no’ (Table 69).

Table 68: Do you think that you know a lot about the Juche ideology?

Response	Number of respondents	Percentage (%)
Yes	39	37.9
No	64	62.1
Total	103	100

Table 69: Were you sceptical about the Juche ideology when you lived in North Korea?

Response	Number of respondents	Percentage (%)
Yes	33	32
No	70	68
Total	103	100

The survey that the KBA conducted in 2014 confirms that the idolisation of Kim Il-sung and Kim Jong-il occurs widely, systematically and continuously in North Korea under the leadership of the government. There is a criticism that North Korea has been turned into a pseudo-religious society that presents Kim Il-sung, Kim Jong-il and Kim Jong-un as deities, and worships and adores them, while suppressing freedom of religion at the national level.¹²⁹

Cases of religious suppression

North Korea has continuously suppressed religion since the founding of the nation. After liberation, North Korea limited religious activities and confiscated the land and assets of religious organisations. After establishing a socialist regime, it began religious persecution by selecting religious people as the target of the proletarian dictatorship under the guise of removing anti-revolutionary elements. In North Korea, religious people were categorised as a hostile class and housed in political prison camps,

¹²⁹ According to www.adherents.com, *Juche* is the religion with the 10th most followers in the world.

thus being completely isolated from society.¹³⁰ Although North Korea has used religion for diplomacy since the late 1980s, for domestic purposes it systematically suppresses religion.

The North Korean authorities suppress individual religious activity and freedom of religion by using Article 68 of the Socialist Constitution, which provides that ‘no one may use religion as a pretext for drawing in foreign forces or for harming the State and social order’. Open Doors, an American missionary group, ranked North Korea as No 1 among countries that persecuted Christianity on its 2013 World Watch List, which was announced in January 2013.¹³¹ North Korea has ranked No 1 as the worst Christian-persecuting country for 11 consecutive years since 2002. Open Doors said that North Korea does not approve of any religious freedom, including Christianity, forces people to worship the Kim Il-sung family by making them a pseudo-religion and executes people when they believe in other gods.¹³² Open Doors determined that the Christians in North Korea suffered the worst persecution.

North Korean Christians suffer unimaginable levels of persecution. They hide their faith deep inside their hearts because of fear of exposure of being a Christian, and they never speak a word of their faith, especially to their young children, whose discretion cannot not be relied on. Since all independent entities that are not under the control of the government are exterminated, underground churches hide their identities as much as possible. The persecution that they experience in all aspects of their lives reaches extreme levels. All North Korean defectors testified that an individual’s having a religion is in and of itself a sufficient reason for persecution and that persecution certainly occurs.¹³³

Religious suppression in North Korea exerts a significant influence on North Koreans. When asked if they saw their parents or grandparents praying to Buddha, God or the Virgin Mary (Table 43), seven people responded ‘yes’, and they all said that they were told by their parents or grandparents not to speak of it to others (Table 70).

Table 70: Did you see your parents or grandparents praying to Buddha, God or the Virgin Mary? If so, did they tell you not to speak of it to others?

Response	Number of respondents	Percentage (%)
Yes	7	100
Total	7	100

130 Yoon Yeo-sang, Chung Jai-ho and An Hyun-min, ‘2013 Report on Religious Freedom in North Korea’ (NKDB, 2013), 44–56.

131 ‘North Korea Ranked #1 for Religious Persecution in Four Consecutive Years’ *Christian Times* (11 January 2012). The ranking of persecution of Christians is determined through questions in 50 categories. The persecution criteria assess the legal freedom of religion, degree of protection for Christians, persecution of Christians such as through acts of murder and violence, and actual violence such as Christians being sent to prison, labour training camp and mental institutions. Also, the freedom of church activity is a measure for persecution. The rankings consider whether church and Christian organisations are free to print and publish documents, whether there is censorship of Christian documents and whether the religious activities of Christians are attacked. Open Doors pointed out that for communist countries, including North Korea, the evil leaders who seek to maintain their dictatorships are deemed to be more of a fundamental problem than their ideologies.

132 Open Doors Korea website, ‘WWL 2014’ (accessed 7 March 2014, www.opendoors.or.kr/world-watch-list/country-profile-overview/north-korea).

133 *Ibid.*

North Koreans knew that they would be punished if they were exposed to be leading a religious life. To the question whether they thought they would be punished for a political crime, 55 people (53.4 per cent) answered ‘yes’ and 30 people (29.1 per cent) said ‘I don’t know’ (Table 71). It appears that the people who said ‘I don’t know’ did so because they had rarely seen others being punished after their secret religious life was exposed.

Table 71: Did you know that you would be punished if you were exposed? Did you think that you would be treated as a political prisoner?

Response	Number of respondents	Percentage (%)
Yes	55	53.4
No	18	17.5
I don’t know	30	29.1
Total	103	100

When asked whether they had actually heard or seen their neighbours being exposed and punished, eight people (7.8 per cent) said ‘yes’ (Table 73). They testified in detail as to how their neighbours were punished for to their religious activity (Table 72).

Table 72: How were your neighbours punished for their religious activity?

ID	Response
ID 008(2014)	Religious activities were discovered in Hoeryong, and people were punished.
ID 011(2014)	In December 1999, I saw a woman named Cha, who was the director of the Women’s Clothing Union of Musan, leaving after being sentenced to 15 years at Suseong ordinary prison camp in Cheongjin on charges of organising a Christian group in Musan at the Province Security Department detention centre.
ID 012(2014)	My neighbour was discovered performing superstitious acts and was punished.
ID 017(2014)	My mother’s friend was punished by being imprisoned at a political prison camp after her arrest at the site.
ID 020(2014)	In 2005, my neighbour was detained at a political prison camp for believing in Christianity in Musan, North Hamgyong Province.
ID 033(2014)	In the 1980s, a neighbour was arrested while holding a Buddhist service on a mountain side in Donggan, North Hamgyong Province.
ID 053(2014)	A neighbour, who was discovered while praying, was detained and interrogated at the Province Security Department in Cheongjin. After receiving reform through labour and completing a sentence from April 2005 to 2006, the neighbour was still under surveillance by the SSD.
ID 068(2014)	Religious activity was discovered within a group at the Hwanghae steel mill and the group was punished.

Most of the respondents – 90 people (87.4 per cent) – answered ‘no’. It is thought that respondents do not generally witness cases of people being punished after leading a secret religious life because North Koreans simply cannot have religious lives because of persecution by the authorities.

Table 73: Have you seen or heard of neighbours who were exposed and punished?

Response	Number of respondents	Percentage (%)
Yes	8	7.8
No	90	87.4
I don't know	5	4.8
Total	103	100

It appears that some North Korean defectors encounter religion through missionaries or religious people from South Korea in China. For North Korean defectors forced to return from China, if it is discovered during the investigation by the North Korean SSD that they had contacted missionaries or religious people from South Korea, most of them are imprisoned in political prison camps. The North Korean defectors knew well that if they contacted missionaries or religious people from South Korea, they would be punished. When asked what punishment they would receive after the fact that they contacted South Korean missionary was discovered, 88 people (85.4 per cent) said that they would either receive the death penalty or be imprisoned in political prison camps. Eight people (7.8 per cent) said that they would receive light reform through labour (Table 74).

Table 74: What kind of punishment would you receive if you were arrested and returned to North Korea after having contacted a South Korean missionary during your escape?

Response	Number of respondents	Percentage (%)
Receive death penalty	25	24.3
Receive light reform through labour	8	7.8
Be imprisoned in political prison camp	57	55.3
Receive death penalty and be imprisoned in political prison camps	6	5.8
Others	2	1.9
I don't know	5	4.9
Total	103	100

The NKDB provided information on North Korea's religious persecution cases in its 2013 Report on Religious Freedom in North Korea. As of July 2013, there was a total of 1,034 religious persecution cases in the NKDB combined human rights database. Among them, there were 517 cases of religious activity (50 per cent), 246 cases of having religious items (23.8 per cent), 120 cases of spreading religion (11.6 per cent) and 51 cases of contacting religious people (4.9 per cent). The victims were punished for religious activities such as praying, singing a hymn and worship, having religious items such as the Bible or a cross, and contacting missionaries or Christians in a third country.¹³⁴ People who were exposed to religious activity in North Korea experienced serious violations of human rights such as torture and beatings during their investigations. There are cases of people being imprisoned in political prison camps or ordinary prison camps, being executed publically or secretly, or going missing after being arrested when the religious activity was confirmed as true.¹³⁵

134 Yoon Yeo-sang, Chung Jai-ho, An Hyun-min, '2013 Report on Religious Freedom in North Korea', 128.

135 *Ibid*, 177-193.

4.4 Arbitrary detention

Seong Bin

Introduction

The KBA conducted a survey on human rights in North Korea in 2014. Based on that survey, this section will examine the reality of arrest and detention in the course of investigation and in pre-trial proceedings and point out the problems of arbitrary detention.

Reality of arrest and detention

INVESTIGATION STEP

Arrest and detention

According to the Code of Criminal Procedure, in principle, compulsory measures such as arrest and detention cannot be used in the investigation stage (Article 143), but should be used in the pre-trial stage. The Code of Criminal Procedure specifies that investigation is the work of an investigator detecting a suspect and handing them to pre-trial (Article 10). The investigator who discovers a suspect should immediately transfer the case to pre-trial officials, and collecting evidence should be limited to cases where the collection of evidence is time-sensitive (Article 140).

According to the survey on human rights in North Korea, 70 out of 103 respondents answered that they themselves or their family members had been investigated (Table 75), and 69 out of those 70 respondents answered that they had been investigated under arrest or detention, which amounts to 98.6 per cent out of those who had been investigated (Table 76). This survey result confirms that the provision set out in the Code of Criminal Procedure specifying that, in principle, compulsory measures such as arrest and detention cannot be conducted in the investigation stage is of no meaningful effect.

Table 75: Have you or a family member ever been investigated by the North Korean investigation agencies (PSA, SSD and Prosecution Office)?

Classification		Number of respondents	Percentage (%)
Yes	I have experience of being arrested or detained for investigation	46	44.7
	Family member has experience of being arrested or detained for investigation	10	9.9
	I and family member both have experience of being arrested or detained for investigation	14	13.6
No		33	32.0
Total		103	100

Table 76: Was the investigation under arrest or detention?

Response	Number of respondents	Percentage (%)
Yes	69	98.6
No	1	1.4
Total	70	100

Situation of guarantee of right to defence in investigation stage

In the investigation stage of criminal proceedings in North Korea, notice of arrest and detention (Article 182) or the right to consult with an attorney (Article 58) are not acknowledged. Because of that, there are severe restrictions on suspects or criminals exercising the right to defence against arbitrary arrest and detention committed by investigators. Unlike in the pre-trial stage, there are no provisions guaranteeing basic the rights of suspects or criminals in the investigation stage, such as provisions specifying prohibition on illegal arrest or detention, limitation of confinement or detention for those in pregnancy, presentation of arrest warrant, notice of arrest or detention, right to consult with an attorney, prohibition on night-time police interrogation or prohibition on interrogation against one's will. This shows that the system of criminal proceedings condones human rights violations.

The 2014 survey shows that 51 out of the 69 respondents answered they did not receive an arrest warrant or a written decision of detention (Table 77), which amounts to 73.9 per cent, and 52.5 per cent of the respondents answered that their families were not notified when they were arrested or detained (Table 78). In addition, 68 out of the 70 respondents, amounting to 97.1 per cent, said that they did not receive assistance from attorneys in the investigation stage before their cases went to the pre-trial stage (Table 79). These statistics show that the right to defence in the investigation stage has been guaranteed neither in reality nor under the law.

Table 77: Did you receive a written decision of detention when you were arrested or detained?

Response	Number of respondents	Percentage (%)
Yes	18	26.1
No	51	73.9
Total	69	100

Table 78: Did the investigation agencies notify your family when you were arrested or detained?

Notification method	Number of respondents	Percentage (%)	
Yes	Verbal notice	28	40.6
	Written notice	3	4.3
	Others	2	2.9
No	36	52.2	
Total	69	100	

Table 79: Can one receive an attorney’s assistance in the investigation stage before the case goes to a pre-trial agency?

Response	Number of respondents	Percentage (%)
Yes	2	2.9
No	49	70
I don’t know	19	27.1
Total	70	100

Handling of arrested suspects or criminals

In principle, compulsory measures are not allowed in the investigation stage. However, there are exceptions under Article 142 of the Code of Criminal Procedure. The provision specifies that the exceptions apply, for example, when a criminal is caught while embarking on or continuing with a crime, or immediately after committing a crime, when a victim or a person who witnessed the crime being committed catches or identifies the perpetrator, or when the evidence of crime is found on the person or in the place of residence of the suspect. Even in these cases, if the compulsory measures are not signed by a prosecutor within 48 hours of a suspect’s arrest and charges are not filed within ten days, the suspect should be released immediately under Article 143 of the Code of Criminal Procedure.

However, it was found that 32 out of 70 respondents, amounting to 45.7 per cent, were arrested and detained for 48 hours or more even though a prosecutor’s approval was not obtained (Table 81), and 18 out of 70 respondents, amounting to 25.7 per cent, were detained more than ten days even though their charges were not filed (Table 83). It shows that illegal arrest is arbitrarily conducted in the investigation stage where arrest or detention is prohibited by law.

In addition, 57 out of the 70 respondents, amounting to 81.4 per cent, did not know that even though a person was arrested by an investigator, if a prosecutor’s approval is not obtained within 48 hours from arrest, he or she should be released immediately (Table 80), and 40 out of 70 respondents, amounting to 40 per cent, did not know that a suspect should be released promptly if charges are not filed within ten days (Table 82). This suggests that most North Koreans are not aware of provisions prohibiting illegal detention in the investigation stage.

Table 80: According to the Code of Criminal Procedure, an investigator should release a suspect if a prosecutor’s approval is not obtained within 48 hours of arrest even though the investigator arrested the suspect while he or she was committing a crime in the presence of the investigator. Did you know this?

Response	Number of respondents	Percentage (%)
Yes	13	18.6
No	57	81.4
Total	70	100

Table 81: Have you been arrested or detained for 48 hours or more without a public prosecutor’s approval after being arrested by an investigator?

Response	Number of respondents	Percentage (%)
Yes	32	45.7
No	38	54.3
Total	70	100

Table 82: According to the Code of Criminal Procedure, an investigator should release a suspect immediately if charges against the suspect are not filed within ten days of arrest or detention. Did you know this?

Response	Number of respondents	Percentage (%)
Yes	30	42.9
No	40	57.1
Total	70	100

Table 83: Have you been detained 10 days or more, though it was not discovered that you were a criminal after the arrest or detention by an investigator?

Response	Number of respondents	Percentage (%)
Yes	18	25.7
No	52	74.3
Total	70	100

Under Article 143 of the Code of Criminal Procedure, a suspect can be detained for a maximum of ten days from the time he or she is arrested by an investigator to the time he or she is transferred to pre-trial agencies. However, the 2014 survey shows that this provision has hardly ever been enforced.

Excluding the four respondents who answered ‘I don’t know’, out of the 44 respondents, 31 per cent were detained for one month or more (22 out of 44), 21 per cent were detained for three months or more (15 out of 44) and eight per cent were detained for six months or more (six out of 44) (Table 84). In particular, six months of detention exceeds the legally allowed detention period by more than one month. The legally allowed detention period consists of a maximum ten days of investigation, four months of pre-trial and ten days of indictment by the prosecutor, and this shows that the Code of Criminal Procedure of North Korea does not work properly in reality.

Table 84: How long did it take for your case to be transferred to pre-trial agencies?

Response	Number of respondents	Percentage (%)
I don't know	4	9.1
Within 15 days	18	40.9
1 month	5	11.4
2 months	2	4.5
3 months	5	11.4
4 months	3	6.8
5 months	1	2.3
6 months	5	11.4
8 months	1	2.3
Total	44	100

PRE-TRIAL STAGE**Beginning of pre-trial**

The pre-trial stage under the Code of Criminal Procedure consists of collecting evidence by pre-trial investigators, confirming suspects and ascertaining accurate facts associated with the relevant crime. The activities occurring in the pre-trial stage are similar to those in the investigation stage set out in the South Korea Criminal Procedure Act. The pre-trial procedure is a process that reveals all the facts that have significance in solving the crime such as the characteristics of the crime committed by a suspect, the motive and purpose, the ways and methods of committing the crime, the degree of conduct and its result, and the role a suspect played and the scope of responsibilities imposed on the suspect in a committed crime (Articles 147 and 148 of the Code of Criminal Procedure). Pre-trial investigators should decide whether a case proceeds to a pre-trial stage within 48 hours after taking a criminal case from an investigator and should start the pre-trial accordingly (Article 156), and the pre-trial stage should be completed within two months of the beginning of the proceedings. If a case is complicated, the period can be extended up to a maximum of five months (Articles 150 and 151 of the Code of Criminal Procedure).

According to the 2014 survey, 51 per cent of the respondents (25 out of 49) who had gone through pre-trial answered that the pre-trial stage did not start within 48 hours of when their cases were transferred to the pre-trial investigator, showing that the provisions regarding pre-trial set out in the Code of Criminal Procedure do not work properly (Table 85). In addition, among the respondents whose family or themselves had gone through pre-trial proceedings, only 34.7 per cent (17 out of 49) knew that the pre-trial investigators should proceed with pre-trial within 48 hours (Table 86), which shows that awareness of the pre-trial system was very low.

Table 85: Did you go through pre-trial proceedings within 48 hours of your case being transferred to a pre-trial investigator?

Response	Number of respondents	Percentage (%)
Yes	24	49
No	25	51
Total	49	100

Table 86: Pre-trial investigators should decide whether a case proceeds to a pre-trial stage within 48 hours of taking a criminal case from an investigator and should start the pre-trial accordingly. Did you know this?

Response	Number of respondents	Percentage (%)
Yes	17	34.7
No	32	65.3
Total	49	100

Decision on whether to pursue criminal liability and notice of right to an attorney

Pre-trial investigators should decide whether to pursue criminal liability when they collect sufficient evidence necessary for determining a suspect (Article 157). The pre-trial investigator who decides to pursue criminal liability should notify the suspect of the decision within 48 hours, and in this case, the right to an attorney guaranteed to a suspect should be specified in the letter of decision to pursue criminal liability (Article 158). It is deemed that the decision whether to pursue criminal liability is equivalent to the institution of public action in South Korean law.

However, the fact that the right to an attorney is not guaranteed during this process could be identified as a problem.

Regarding the notice of the decision to pursue criminal liability within 48 hours, 35 out of the 49 respondents (71.4 per cent) answered that they did not receive it (Table 87), and regarding the right to an attorney, only five people (10.2 per cent) received the notice; the remaining 44 people answered that they did not (Table 88).

Table 87: Pre-trial investigators should decide whether to pursue criminal liability after sufficient evidence is collected and notify suspects of the decision within 48 hours. Where criminal liability was being pursued against you, did you receive such notice within 48 hours from a pre-trial investigator?

Response	Number of respondents	Percentage (%)
Verbal notice	10	20.4
Written notice	4	8.2
I didn't receive the notice	35	71.4
Total	49	100

Table 88: After deciding whether to pursue criminal liability, pre-trial investigators are obligated to notify suspects of the right to an attorney. Did the pre-trial investigator actually notify you of the fact?

Response	Number of respondents	Percentage (%)
Yes	5	10.2
No	44	89.8
Total	49	100

Pre-trial process

Pre-trial investigators are able to arrest or detain suspects who are evading pre-trial or trial or obstructing the investigation of criminal case and, in principle, the measures of arrest or detention should be taken after the decision on whether to pursue criminal liability is made. However, if a special need arises before the decision is made, they can arrest or detain after obtaining the approval of a prosecutor. If they do not decide whether to pursue criminal liability within ten days, they should dismiss the measures and release the suspect (Articles 175 and 177 of the Code of Criminal Procedure).

Among the respondents who went through pre-trial proceedings, 75.5 per cent (37 out of 49) answered that they were arrested or detained by a pre-trial investigator, which shows that the percentage of investigative detention is fairly high (Table 89).

Table 89: Have you been arrested or detained by a pre-trial investigator?

Response	Number of respondents	Percentage (%)
Yes	37	75.5
No	12	24.5
Total	49	100

Procedure of arrest or execution of detention or disciplinary lock-up in pre-trial stage

If a pre-trial investigator is to arrest a suspect and execute detention or disciplinary lock-up, he or she must present to the suspect a certificate to verify his or her identification and an arrest warrant (Article 181 of the Code of Criminal Procedure).

According to the 2014 survey, only six out of the 37 (16.2 per cent) respondents were arrested and detained by pre-trial investigators after they presented their identification and arrest warrant, and the rest were arrested and detained without the procedure, which shows that this provision is also nominal (Table 90). However, when the respondents were asked whether pre-trial investigators notified their families or the organisations they were affiliated with of the grounds for arrest or detention and the place of detention within 48 hours of arrest, 11 out of the 37 respondents answered they were verbally notified (Table 91).

Table 90: Did the pre-trial investigator present identification and an arrest warrant at the time of arrest?

Response	Number of respondents	Percentage (%)
Yes	6	16.2
No	31	83.8
Total	37	100

Table 91: Did the pre-trial investigator notify your family or organisation of the grounds for arrest or detention and the place of detention within 48 hours of the arrest?

Response	Number of respondents	Percentage (%)
Verbally notified	11	29.7
No	26	70.3
Total	37	100

Right to an attorney or right to assistance of counsel

Regarding the right to an attorney at the pre-trial stage, only 13 out of 70 (35.1 per cent) who were arrested or detained had a meeting with an attorney (Table 92), and among the 13 who saw an attorney, 11 met once, and only one met four times (Table 93). Also, only one said that there was a separate room to meet the attorney (Table 94) and only two said that the meeting with the attorney was actually helpful (Table 95). These responses show that the right to an attorney is perfunctorily carried out.

Table 92: Did you have a meeting with an attorney?

Response	Number of respondents	Percentage (%)
Yes	13	35.1
No	24	64.9
Total	37	100

Table 93: How many times was the meeting held?

Response	Number of respondents	Percentage (%)
Once	11	84.6
Four times	1	7.7
I don't know	1	7.7
Total	13	100

Table 94: Did the meeting with the attorney occur in a separate room so as to be kept confidential?

Response	Number of respondents	Percentage (%)
Yes	1	7.7
No	12	92.3
Total	13	100

Table 95: Was the meeting with the attorney helpful to you?

Response	Number of respondents	Percentage (%)
Yes	2	15.4
No	11	84.6
Total	13	100

Due process of arrest or detention

The following is the survey result regarding compliance with the due process of arrest or detention. Warrant requirement is meaningless. And not one element of the due process of law at the time of arrest or detention, such as notifying the gist of the crime, the reason for arrest and notice of the right to an attorney, is observed properly according to the law (Table 96).

Table 96: Explain how you were arrested in detail.

ID	Response
ID 002(2014)	In November 2011, my family and I were investigated at a counterintelligence office of the SSD for 'using a cellular phone'. After that I was detained and investigated at a county police station owing to an assault in February 2012.
ID 010(2014)	I was investigated for 'money dealing' at a police substation in 2010. Afterwards, I was transferred to the inspection department of the police station and then to the pre-trial department.
ID 018(2014)	In the summer of 1997, I was detained at the SSD for superstitions activity when I held a memorial service for my ancestors because of family troubles.
ID 032(2014)	I was investigated at the Musan county police station in 2011.
ID 043(2014)	I was investigated once at the SSD of Hyesan, Yanggang Province, because of visiting China in 2011.
ID 061(2014)	I was investigated in August 2004 at the SSD of Hoeryong, North Hamgyong Province.
ID 086(2014)	I was investigated once at the Prosecution Office in, Hyesan, Yanggang for 'stealing state property' in July 2001.

Detention period and standard of release

The following is the survey result on the detention period and the standard of release. The Code of Criminal Procedure provides rules regarding the detention period and release at the investigation and pre-trial phases; however, the following responses suggest that the rules exist on paper only (Tables 97, 98 and 99).

Table 97: Have you been arrested or detained for more than 48 hours without the approval of a prosecutor? Why?

ID	Response
ID 009(2014)	In June 2003, I was detained for a month as the Onsong SSD because of 'illegal border crossings'.
ID 010(2014)	I was detained at a police substation on charges of 'money dealing' without any notification until I was found innocent.
ID 012(2014)	I do not know whether there was an approval of a prosecutor, but I was detained at a detention centre for nine days and six hours for 'smuggling'.
ID 033(2014)	While I was at my wife's parents' home for my father-in-law's memorial service, one of the three people who always drank with me was arrested for 'reactionary words' (unification will happen when Kim Il-sung dies). It was reported that I was there with him, and I was arrested for not reporting the reactionary words first. After 50 days, it was discovered that I was not there, and I was released after 70 days because it took 20 days to receive Kim Jong-il's approval.
ID 043(2014)	I was detained without the intervention of a persecutor for 'illegal border crossings'.
ID 049(2014)	I was detained for ten days at the SSD for 'smuggling'.
ID 060(2014)	Some people drove to my house and took my husband away for 'watching a Korean drama'.

Table 98: Have you been detained for more than ten days, even though you were found not guilty? What were you charged with and what kind of sentence did you receive?

ID	Response
ID 005(2014)	Was detained for 15 days for 'attempting to go to South Korea', but was released on bail for illness through a bribe.
ID 010(2014)	Detained for 20 days due to 'money dealing'.
ID 017(2014)	Detained for more than ten days because of 'circulating South Korean CDs'.
ID 021(2014)	Detained for ten days due to 'stealing a tool'.
ID 026(2014)	Detained for three years because of 'abetting a nationally wanted criminal'.
ID 068(2014)	Detained for more than ten days due to 'religious activity'.
ID 084(2014)	Detained for 15 days due to 'smuggling'.

Table 99: While being investigated during the process of investigation and pre-trial, have you experienced or heard of any cases in which an investigator confiscated a criminal suspect's personal property that was not related to the investigation, or received property or money from the suspect under the pretext of lightening or clearing the charge? If you have, explain in detail.

ID	Response
ID 005(2014)	The chief of pre-trial raped females frequently with the excuse of reducing their sentences. He was demoted to chief of the Yusun police substation in 2007.
ID 009(2014)	I was told that my life would be spared if I paid them money. I gave them money after the investigation and I was released.
ID 014(2014)	Most of the judges were corrupt.
ID 018(2014)	My brother was imprisoned at the SSD and was about to be executed for 'Korean trade', but he was released after paying money.
ID 056(2014)	If you watch Korean drama, they search your home and pillage the original DVDs and foreign money. You can never get them back.
ID 078(2014)	Such cases exist and happen so frequently that I have ceased to care.
ID 091(2014)	I was bribed with slaughtered pigs.

Conclusion

The 2014 survey result conducted by the KBA shows that North Korea rarely applies the procedural rules regarding detention of a criminal during the investigation and pre-trial stage. Most of the criminals were investigated while being detained after arrest, and they did not receive arrest warrants or any document showing the detention decision. Moreover, a meeting with an attorney was rarely helpful, the detention period prescribed in law was not adhered to and criminals were arbitrarily released through bribes. Thus, even the minimal human rights of suspects or defendants were not guaranteed.

The 2014 survey appears to be very similar to that of 2012. Nothing has changed from the previous human rights situation: custodial investigations and trials have been still customarily practised, and the right to an attorney during the investigation and pre-trial stage continues to exist in law only. Based on this material, it is hoped that research into the North Korean human rights situation and preservation of the relevant records will continue.

4.5 Freedom of opinion and expression

Shin Sung-su

Introduction

In publishing the KBA's 2014 Report on Human Rights in North Korea, there have been some changes in comparison with the previous publication: the author of the part on freedom of opinion and expression is different, and the survey questions were modified and the answers therefore different.

The 2014 survey on human rights in North Korea conducted by the KBA included new questions in relation to how North Koreans perceive issues around freedom of expression, which is currently the subject of much discussion in South Korea, while keeping the questions of the previous survey in order to be consistent in publishing the Reports. So the following new questions were asked:

1. What do North Korean defectors think of the subject, area and range of freedom of opinion and expression?
2. What are the specific grounds on which freedom of expression is limited?
3. Specifically, what are the limits on and punishment for anti-state expression, production and sale of pornography and artistic activity?
4. Is there a case of freedom of expression by the press being limited?
5. Is freedom of assembly and demonstration guaranteed?
6. Is freedom of expression for elections limited?
7. Is freedom of expression for teenagers (middle and high school students) and college students limited?
8. Do inmates at detention centres, soldiers, government employees and teachers have freedom of expression?

In order to find out how things had changed for North Koreans since the last survey, the existing survey questions were asked, such as:

1. What is the media source that North Koreans encounter the most?
2. How do they encounter news from South Korea or overseas?
3. What are the methods of communication among North Koreans and the reason for limitation? In which cases are they punished?
4. How many North Koreans have computers and how do they use them?
5. What about the 'two-day and weekly life assessment meetings'?

In relation to the characteristics of the distribution group of survey respondents, 103 people complied with the survey on freedom of expression. They defected from North Korea after 2011. Among them, 75 people were general interviewees and 28 people were special subjects – one

abductee to North Korea, two prisoners of war (POWs), two Koreans deported to the North, three from political prison camps (*kwanliso*), 17 from ordinary prison camps (*kyohwaso*), four labourers who emigrated overseas and two religious people (with overlapping experience of ordinary prison camps).

Concept and range of freedom of expression perceived by North Koreans

With multiple responses regarding the areas that constitute freedom of opinion and expression, broadcasting (16.1 per cent) had the most votes, and the rest were films (12 per cent), the media (10.2 per cent), assembly and demonstration (9.9 per cent), internet (9.5 per cent) and song (8.4 per cent).

In relation to the discussion of freedom of expression in a classical sense, such as broadcasting, films and the media, the results of the survey on human rights in North Korea are not much different from that of South Koreans. However, only 19.4 per cent perceive freedom of assembly and demonstration and the internet as methods for freedom of expression. And this seems to be due to the fact that the internet is not yet actively used among North Koreans and freedom of assembly and demonstration is not allowed.

Most of the special subjects and general interviewees said that assembly and demonstration are not allowed when asked in which circumstances are assembly and demonstration allowed in North Korea. They also answered that assembly and demonstrations led by the Party (praise and loyalty rally, those that oppose the US and South Korea) are allowed; assembly and demonstration cannot take place without prior registration; if anyone takes part in assembly or demonstration, they are persecuted and taken to political prison camps or the SSD, and executed. So freedom of assembly and demonstration is not recognised in North Korea.

Also, only 30.1 per cent said 'yes' to the question whether they could have a computer and use the internet, and the rest (69.9 per cent) answered 'cannot use it', showing that the rate of internet access in North Korea is not high.

When the respondents were asked to choose among multiple responses to assess the range of freedom of expression, the result of the multiple responses were freedom to think freely (24.1 per cent), freedom of conveying one's thoughts (28.3 per cent), freedom of not forcing the expression of one's thoughts (18.2 per cent) and systematic guarantee not to be punished for exercising freedom of expression (27.8 per cent).

This shows that North Koreans put freedom of conveyance (28.3 per cent) and systematic guarantee not to be punished for exercising freedom (27.8 per cent) as top requirements for freedom of expression.

Regarding those whose freedom of expression had not been recognised, the results were inmates of detention centres (29.9 per cent), soldiers (16.6 per cent), teenagers (middle and high school) and college students (13.7 per cent), and government employees and teachers (13.1 per cent).

This surveyed the people who are in a special relationship of authority in relation to limits of freedom of expression. From the fact that people perceive that freedom of expression is limited not only for inmates at detention centres, but also for soldiers, students, government employees and teachers,

it could be said that North Koreans believe that freedom of expression is not recognised even for people who are in a special relationship of authority.

Regarding the reason why freedom of expression could be limited, the survey results were the nation's safety (46.7 per cent), stability of the regime (27.3 per cent), maintenance of order (18 per cent) and public welfare (eight per cent), which shows that respondents perceive that it could be limited to uphold the stability of the regime rather than for general reasons of limitation. It could be said that limits on freedom of expression by the North Korean regime are displayed strongly.

Regarding those who have violated the freedom of expression, the results were government organisations (54.5 per cent), the media (15.4 per cent) and neighbours (11.2 per cent), which suggests that violation of freedom of expression by neighbours has been a concern.

Limits on and punishment for political offenders, anti-state expression, production and sale of pornography, and artistic activity

North Koreans were punished as political offenders mostly when they criticised Kim Il-sung, Kim Jong-il and the Party, when they carried out anti-state activities and when their activities related to South Korea. And recording (ID 017(2014)) and distributing DVDs (IDs 028, 038, 050, 071(2014)), listening to Korean broadcasting (IDs 089, 101(2014)) and religion-related matters (IDs 077, 100(2014)) followed after that.

Since most of the North Korean defectors who had experience of political prison camps or ordinary prison camps (28 people) said that it was when there was criticism or reactionary acts regarding Kim Jong-il and Kim Il-sung, the main reason for being punished as a political offender seems to be for criticism regarding Kim Il-sung, Kim Jong-il and the Party.

The punishments were political prison camp, ordinary prison camp, labour training camp and execution.

In relation to punishment for anti-state expression in North Korea, the answers were divided into 'there is punishment' (50.5 per cent) and 'no' (40.8 per cent). In cases of punishment, the reasons were possession (35.2 per cent), distribution (36.4 per cent) and discussion (20.5 per cent).

Those who produce pornography in North Korea – materials containing images of sexual acts – are subject to punishment. It was also found that possession of South Korean TV dramas and music, foreign videos, Chinese television dramas, materials containing capitalistic comments and propaganda leaflets can lead to punishment. Sixty-five per cent of respondents were punished for these offences. Of the 65 per cent, 40.7 per cent described the punishment they received as 'other' (a term in an ordinary prison camp, detention at a detention centre or the Safety Agency or corrective in a labour training camp), while other respondents were subject to a term in a political prison camp (30.9 per cent) or execution by firing squad (28.4 per cent).

Regarding which videos were popular in North Korea, South Korean drama, Chinese drama, foreign films and sex videos were popular. As for the method of watching, the most general route was buying CDs and DVDs smuggled from China and watching them at home with family, and some respondents

watched Chinese television. There were many opinions that they should watch Korean drama in secret but could watch Chinese drama openly.

Punishment was a labour training camp (six months to two years) if it was a light case. The person went to ordinary prison camp (for Korean drama, two to three years to six years) and the family was exiled if it was a serious case. If respondents distributed and sold the CDs or DVDs, they received six years of reform through labour, or execution. Some said that they were able to cover up their crimes with bribes in the beginning.

In relation to whether North Koreans produce and distribute their own videos, 29.1 per cent of the respondents answered that they had, showing that there are not many individual productions of videos. The main production method was copying films or dramas. When the content of the video was critical of the regime, punishments of ordinary prison camp (29.4 per cent), political prison camp (26.5 per cent), labour training camp (17.6 per cent) and others (23.5 per cent) were imposed.

Regarding limits on artistic expression and performance in North Korea, the main reasons for limiting artistic activity in North Korea were violating the ideologies of Kim Il-sung and Kim Jong-il, system propaganda and sustaining the regime. Also, respondents answered that content related to capitalism, performances with obscene and decadent content, and songs related to South Korea were limited. Regarding prior censorship by the government, 83.5 per cent said that there was prior censorship, 13.6 per cent said that they did not know and 2.9 per cent said that there was no prior censorship, suggesting that strict prior censorship was conducted. Most opinions were that it is not possible to go on stage without passing the government's prior inspection and punishment for non-compliance included detention, reform through labour, short-term labour and severe punishments.

Also, in relation to whether there are cases of punishment being imposed by a court or other relevant organisation after expression or performance, the answers were 'I don't know' (50.5 per cent), 'yes' (22.3 per cent) and 'no' (27.2 per cent). The main reason why most of the respondents answered 'I don't know' was because in general only an art piece or performance that has been subject to prior censorship is performed, so there were not many cases of punishment. The opinion that people got punished afterwards came out as an exception because they were punished afterwards when capitalism was too severe.

When it comes to limits on freedom of expression by the media in North Korea, the opinion that freedom of expression was violated by the media in North Korea came out high at 76.7 per cent. When asked if there is a way to raise objections about reports by the media, 86.4 per cent said 'no'. North Koreans gain their information through television, radio and news, but since contents is limited and the method of raising objection is not recognised, freedom of expression by the media is severely limited.

In relation to freedom of assembly and demonstration in North Korea, 85.4 per cent answered that they could not report on a rally or demonstration in advance. Only one person (one per cent) said that they could and also said that they could do it if the instruction came down from the Party.

Regarding a rally and demonstration, there were opinions that there could not be control because an individual demonstration itself cannot occur and opinions were that all were controlled because they were repressed in advance by the army.

Regarding freedom of elections in North Korea, the absolute majority of opinion was that there was no freedom of election, but everyone should vote in favour of the designated candidate. Most of the opinions were that there was no election campaign in North Korea; only students held up placards, shouted slogans to vote or sang approvals; people voted in favour of the candidates who were selected by the recommendation of the Party on the day of announcement. There were many opinions that respondents did not know how people were dealt with in case of election campaign violations, and there were also many opinions that violations could not occur. There were opinions that if people do not participate in an election, they get taken by the SSD (ID 036, 039, 048, 051, 066, 073(2014)), and they are either sent to a political prison camp or executed in case of intentional violations (scribbling) (ID 062(2014)).

Regarding freedom of expression for students in North Korea, most of the opinions were that students' freedom of expression is not acknowledged, and most of the opinions were that since there is no freedom, there is no limit, or they did not know much about the limit itself. This is related to the survey that students are not the subject of freedom of expression, and it is because they do not regard students as the subject of special protection just because they are students.

A few respondents said when there are issues related to students' expression, students are expelled or sent to labour training camps, or their parents receive punishment. But most of them said that they did not know.

Regarding freedom of expression of inmates at detention centres, soldiers, government employees and teachers, little is known. Most of the answers suggested that it is not that any particular limit is placed upon them, but that they are subject to the same level of limit as ordinary people, or that they did not know.

The main reason is because the freedom of ordinary people is already excessively limited, so there is no need for a more severe limit on people in more senior positions, not that there is a concern to guarantee a particular level of human rights to those in positions of authority or to ordinary people.

Regarding existing survey items

The result of multiple responses for the media that North Koreans encounter the most was television (87.4 per cent), news (60.3 per cent), magazines (30.6 per cent) and radio (25.6 per cent). Media organisations include the Korean Central News Agency, Mansudae TV, Gaesung TV, *Soldiers News*, the *Workers' Newspaper (Rodong Sinmun)*, the Young People's Association News, *Minju Ilbo*, *Yanggang Ilbo*, *Pyongyang Newspaper*, *Province News*, *Boys News* and *Boys Scouts* (magazine). The methods for North Koreans to encounter South Korean or foreign news were DVD (43.9 per cent), television (27.7 per cent), radio (14.2 per cent), news (8.8 per cent), magazines (2.7 per cent) and the internet (1.4 per cent).

When asked whether there is an instruction for official tolerance regarding North Koreans exchanging opinions on domestic and foreign news, 76.7 per cent answered 'no'. And 66 per cent said that they heard or saw people who were punished for making the wrong comment, and it could be said that this result is related to the previous survey, in which 11.2 per cent answered that freedom of speech and the press in North Korea could also be violated by neighbours.

Regarding the method of communication among North Koreans, most of the opinions were that they communicated through mobile phone, home phone and through conversations with other people, and that they could not speak freely in general. There were opinions that they could not make any political comments over the telephone, and the opinion that they could not criticise the regime was the majority.

The following examples were considered as ‘making the wrong comment’: criticism of Kim Il-sung and Kim Jong-il, criticism of North Korea and praise for South Korean society. As for punishment, in most cases the person was taken to a political prison camp or SSD detention centre (without their families being informed) and in 30 per cent of cases family members were also implicated and were punished.

When the targets of criticism were Kim Il-sung, Kim Jong-il or the Workers’ Party of Korea, most perpetrators were taken to a political prison camp. Mostly, the organisation to report such criticism was the SSD, and the punishing organisation was also mostly the SSD. Afterwards, people were punished through the prosecution office and the court.

In answer to the question whether North Koreans could own computers and use the internet, 69.9 per cent said ‘no’, and 100 per cent said that they had not heard of people creating internet websites or criticising the North Korean government through email. Therefore, 100 per cent answered that they had not heard of people receiving punishment from the North Korean government for this activity.

Reflecting on these facts, it’s clear that opportunities for North Koreans to access computers and the internet are limited, with rich people, people living along the border and the families of executives being the most likely to have access. Most opinions suggested that although people could set up computers at home after buying them from a marketplace or through smuggling, they could not use the internet. Also, creating and launching a private website is not allowed.

Conclusion

The 2014 KBA survey on human rights in North Korea shows that freedom of opinion and expression in North Korea has not advanced to cover the topics discussed in South Korea (freedom of assembly and demonstration, freedom of election, freedom of teenagers’ expression, freedom of expression of inmates, soldiers, government employees, and teachers, and freedom of artistic activity) and occurs under strict control, and that freedom of opinion and expression of North Korea is only recognised as a formality but not allowed in reality.

Considering that the main methods for North Koreans to encounter news from South Korea and overseas are mediums such as DVDs and television, efforts on the part of the KBA to improve the human rights situation of North Koreans should occur through these mediums. Using DVDs and television as a way of offering views on legislating North Korean human rights law is likely to be more effective than sending flyers by balloons to North Koreans.

It is hoped that this survey regarding freedom of opinion and expression in North Korea will be helpful to the improvement of human rights and support for North Koreans, and also that research, investigation and record keeping with regard to human rights will continue in the future.

4.6 Issues of coercive and involuntary disappearance

Kim Yong-min

Introduction

Recently the UN COI extensively investigated the issue of human rights violations in North Korea and came up with a plan for prosecuting the leaders of the North Korean regime in the ICC. If the leadership of the North Korean government stands before the ICC, one of the most important charges would be the coercive and involuntary disappearances of North Koreans. The COI concluded that, based on the policies established by the leadership of North Korea, its human rights violations constitute ‘crimes against humanity’ defined by Article 7 of the Rome Statute of the ICC.¹³⁶ But the problem is that since North Korea does not fall under the Rome Statute of the ICC, the jurisdiction occurs only when the case is submitted to the ICC through a resolution by the UN Security Council.

The Report on Human Rights in North Korea published by the KBA has dealt with the coerced and involuntary disappearance issues in North Korea since 2008 through the survey on human rights in North Korea. In the 2014 survey, such coerced and involuntary disappearance issues were investigated, and it confirmed that disappearance issues at an extensive and serious level still occur.

The coerced and involuntary disappearances conducted by the North Korean authorities can raise problems under international law or all kinds of agreements that North Korea has signed, but they are also illegal under North Korean law. Article 79 of North Korea’s Constitution states that ‘[n]o citizens can be placed under control or be arrested nor can their homes be searched without a legal warrant’, regulating freedom of the person. However, such right under the Constitution would be realised through the Code of Criminal Procedure. The Code of Criminal Procedure, revised in 2012, states relatively detailed regulations. A person cannot be arrested or imprisoned without following the procedure regulated by law or through a procedure not regulated by law (Article 176, prohibition of illegal arrest and detention). Article 177 (period of arrest and detention) says that the measures of arrest and detention should be taken after the decision on whether to pursue criminal liability is made. However, if a special need arises

136 ICC Rome Statute Art 7 (crimes against humanity), ‘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 inhuman acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.’

before the decision is made, officials can arrest or detain after obtaining the approval of a public prosecutor. If they do not decide whether to pursue criminal liability within ten days, they should dismiss the measures and release the suspect. Article 179 (person in charge of arrest) says that the investigator and pre-trial investigator conduct the arrest. They cannot arrest without arrest warrants. Article 182 (notice of arrest and detention) says that when arrest or detention is decided, a pre-trial investigator should notify the suspect immediately and notify their families or the organisations they were affiliated with of the grounds for arrest or detention and the place of detention within 48 hours of arrest. Therefore, if coerced and involuntary disappearances occur, as suggested by the results of the survey on human rights in North Korea, this could be defined as behaviour that clearly violates the law of North Korea.

The following sections examine the specific violation cases of coerced and involuntary disappearances that occur in North Korea based on the results of the survey.

Specific cases of violation

As the 2014 KBA survey on human rights in North Korea shows, the issue of involuntary disappearance still exists and is an ongoing problem. Among the 103 North Korean defectors who responded to the survey, 49 people (47.6 per cent) answered that they experienced, saw or heard of their families, relatives or neighbours getting arrested by the Security Agencies (SSD, Safety Agency or County Security Headquarters) (Table 100). These results show figures lower than that of 2008, when the figure was 70 per cent, and that of 2012, when it was 55.4 per cent. However, considering that the rate of response that they did not experience such disappearances decreased from 28.7 per cent in 2012 to 24.3 per cent in 2014, the survey result shows that coerced and involuntary disappearance issues occur commonly even today.

Table 100: Have you experienced, seen or heard of a person or family disappearing among your family, relatives and neighbours after getting arrested by the Security Agencies (SSD, Safety Agency or County Security Headquarters)?

Response		Number of respondents	Percentage (%)
Yes	2008	70	70.0
	2010	104	52.3
	2012	56	55.4
	2014	49	47.6
No	2008	28	28.0
	2010	69	34.7
	2012	29	28.7
	2014	25	24.3
I don't know	2008	2	2.0
	2010	26	13.1
	2014	29	28.2
There aren't	2012	16	15.8
Total		100 respondents (2008), 200 respondents (2010), 101 respondents (2012) and 103 respondents (2014)	

Moreover, answers that indicate witnessing disappearances more than twice were as high as 42.9 per cent, showing that the issue of coerced and involuntary disappearances is very serious (Table 101).

Table 101: How many disappearances have you witnessed in North Korea?

Response	Number of respondents	Percentage (%)
Once	28	57.1
Twice	8	16.3
Four times	1	2.0
Ten times	1	2.0
17 times	1	2.0
Several times	10	20.4
Total	49	100

On the other hand, the period of disappearances is not limited to the past, with 30.6 per cent of answers stating that they had experienced disappearances after 2010, which adds gravity to the fact that involuntary disappearances occur in North Korea (Table 102).

Table 102: When did each disappearance occur?

Response	Number of respondents	Percentage (%)
1960s	2	4.1
1970s	8	16.3
1980s	3	6.1
1990s	8	16.3
2000s	10	20.4
After 2010	15	30.6
I don't know	3	6.1
Total	49	100

This begs the question why such coerced and involuntary disappearances occur in North Korea. The participants in the survey provided diverse reasons, as those shown in Table 103.

Table 103: Reason and charges for each disappearance case.

ID	Response
ID 003(2014) and six others	Testified that people disappeared because of reactionary words.
ID 009(2014) and four others	Testified that they did not know the reasons for disappearance.
ID 017(2014) and two others	Testified that people disappeared for illegal border crossings to China.
ID 015(2014)	Testified that friend's father disappeared after rumours surfaced that his father was a spy.
ID 022(2014)	Testified that someone disappeared because of receiving money from South Korea.
ID 034(2014)	Testified that the person disappeared because their son went to South Korea and exposed North Korea's secrets.
ID 037(2014)	Testified that the person went missing because the person was a relative of Hwang Jang-yop.
ID 051(2014)	Testified that the person disappeared because of damaging a picture of Kim Il-sung printed in the Workers' Newspaper (Rodong Sinmun).
ID 053(2014)	Testified that the person was taken by the SSD and disappeared because of talking on the phone with a family in South Korea.
ID 063(2014)	Testified that a person disappeared because of religious activity.
ID 073(2014)	Testified that a person disappeared via a method of human trafficking.
ID 090(2014)	Testified that a person went missing because the fact that the person was living off money that their daughter in South Korea had sent was exposed.
ID 097(2014)	Testified that a relative went missing because the parents of an older uncle made a mistake.

Analysing the testimonies of the respondents confirms that the missing North Koreans disappeared under the control or connivance of national organisations such as the County Security Department, the Province Security Department or SSD (but mostly the SSD). Their disappearance was rarely witnessed because it occurred when everyone was asleep late at night or at dawn (ID 061(2014)). Involuntary disappearances committed by national organisations are not only a concern for the individual who is missing but also for their families and their community, resulting in fear of the society around them. Consequently, the government controls North Korean residents through such fear. The remaining families testified that they were monitored by the government authority (Table 104) and under their control, and in some cases they were also captured. Moreover, almost every respondent testified that the property of the disappeared persons would be confiscated by the state or SSD.

Table 104: When one family member is caught by the Security Agency, are the remaining family members subject to monitoring or under the control of the government?

Response	Number of respondents	Percentage (%)
Yes	70	68.0
No	8	7.8
I don't know	25	24.2
Total	103	100

Another issue with respect to the enforced and involuntary disappearance committed by the North Korean authorities is collective punishment, which is extensively and arbitrarily recognised by the North Korean regime. According to the survey, many respondents testified that the remaining families of the disappeared persons are subject to collective punishment, which victimised them. For example, if the remaining family members are the ones in a direct line of the disappeared persons,

they would be caught along with the disappeared persons (ID 008(2014)). If the remaining family members are arrested by the Safety Agency, they can be released and stay where they are. However, if they are arrested by the SSD, they would disappear too (ID 033(2014)). In addition, they would be punished or sometimes banished according to the crimes the disappeared persons committed (ID 060(2014)). In particular, when it comes to family members in a direct line of disappeared persons, there are cases where they are taken with the disappeared persons or banished, or at least it is reported that they are discriminated against in society. In conclusion, it can be confirmed that after people disappeared in North Korea, the remaining families of the disappeared persons sustained actual damages.

The issue of enforced and involuntary disappearances causes secondary damage in that it makes other North Korean people not directly related to the disappearance fearful and therefore forces them to practise self-censorship.

Conclusion

Through reviewing the survey results, it can be confirmed that enforced and involuntary disappearances have remained a very severe human rights issue in North Korea. They are mostly conducted by state agencies and the main purpose behind them is social control through fear.

Meanwhile, if we look at the survey itself, there is the possibility that North Korean defectors may be considered disappeared persons in that enforced and involuntary disappearances are very rarely witnessed. However, comparing with the survey results from 2008 onwards, disappearances have indeed been occurring consistently and extensively. Of course, it cannot be ruled out that some of those disappeared may have been North Korean defectors, considering that the North Korean defectors already settled in South Korea were the major respondents. However, it can be viewed that a majority of the disappeared persons are the victims of actual disappearances committed by the North Korean authorities.

Enacting a 'North Korean Human Rights Act' in South Korea has been actively discussed in recent years, and notably setting up the North Korean Human Rights Record Depository is a hot topic of debate. If the North Korean Human Rights Record Depository is established, all the criminal charges committed by the North Korean authorities will be recorded and the relevant evidence will be stored in compliance with the domestic laws of South Korea and the international covenants on human rights that South Korea has joined. With respect to this, enforced and involuntary disappearances by the North Korean authorities will be one of the major criminal charges that must be dealt with.

The international community has been urging North Korea to improve the problem of enforced and involuntary disappearances, but it continues to deny their existence. Even so, the COI talks about criminal punishment for the North Korean leadership, and in fact the international atmosphere favouring it is growing, which gives a glimmer of hope for improvement on this issue.

4.7 Discrimination and human rights of socially vulnerable groups

Han Myung Sub and Oh Gyeong-seob

*Human rights of women*¹³⁷

DIGNITY OF NORTH KOREAN WOMEN

Article 3 of CEDAW¹³⁸ specifies that: ‘States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.’ In addition, Article 2(f) of the above Convention specifies that, ‘to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women’.

The UN General Assembly has adopted the North Korea Human Rights Resolution every year since 2005. The resolution contains content related to vulnerable groups. The resolution adopted in December 2012¹³⁹ evaluated the overall condition of social rights such as serious malnutrition and prevalent problems in public health and indicated that women, children and the elderly as the groups vulnerable to such difficulties. In particular, it expressed serious concern for women in general regarding issues of human trafficking, forced miscarriage, gender discrimination and sexual violation.

North Korea joined CEDAW in February 2001, and it submitted an initial report¹⁴⁰ to the UN on implementing the convention in September 2002. In this report, North Korea declared:

‘Discrimination against women has been abolished through a long history, and sex equality being not confined by simple equality, the policies and legislation of the State reflect the concept of attaching more importance to women. The DPRK has been making efforts to improve the social status and role of women by increasing the proportion of female cadres and officials in the central organs. 10 per cent of judges and 15 per cent of officials in the Ministry of Foreign Affairs were women.’

In the early part of the regime, North Korea claimed the liberation of women and equality among men and women because the male-centred and authoritative traditional family system of Confucianism became an obstacle to the socialist revolution and oppressed women’s political and economic activity. It also explained that ‘liberating women socially and realizing sex equality are parts of anti-imperialism and anti-feudal democratic revolution, and moreover, they are closely related to fulfilling tasks of higher level of revolution’.¹⁴¹

137 Selected excerpts taken from the 2013 Report on Human Rights in North Korea, published by Korea Institute for National Unification.

138 Adopted in 1979 and ratified in 1981, the Convention has 187 States Parties, including South and North Korea.

139 UN Doc A/RES/67/181 (20 March 2013).

140 The second periodic report on the performance of the CEDAW was to be submitted to the Committee on the CEDAW on 27 March 2006, but as of January 2014, it is still not submitted.

141 Kim Il-sung, ‘About the future task of Women’s League’ in *Kim Il-sung: Selected Works 2* (Publisher of Workers’ Party of Korea 1979), 206–208.

Based on this awareness, North Korea enacted the ‘Act on Sex Equality’ in 1946 before the establishment of the regime, and after the establishment of the regime, it guarantees women’s political and social roles through enacting laws such as its Socialist Constitution, Pre-school Child Care Act, Socialist Labour Law, Family law and Women’s Rights Protection Act. Also, it promotes women’s advancement in society and enhancement of status through systematic modification such as abolition of the family registry and enforcement of systems for taking care of children and socialisation of domestic labour. It argues that ‘North Korea is heaven for women’, saying that ‘there is no other country like North Korea where there are many laws and regulations for women and where social policies are endlessly given’.¹⁴²

It is indicated that half of the North Korean defectors who responded to the 2014 survey on human rights in North Korea conducted by the KBA thought that men and women are equal in North Korean society (Table 105).

Table 105: Do you think that gender equality is achieved in all areas of politics, economics and society in North Korea?

Response	Number of respondents	Percentage (%)
Yes	52	50.5
No	51	49.5
Total	103	100

This is thought to be related to the fact that North Korea guarantees gender equality by its law and systems and that the role of women is equal to that of men. However, according to a more specific survey, gender equality is not achieved properly in family and work, and women face more disadvantages compared to men (Table 107).

The socialistic remodelling of North Korean women’s domestic labour and policy for the social participation of women started from the aspect of the theory of class, not women’s liberation. Also, it was promoted from the aspect of using the women’s labour force to pursue extensional growth of the socialist establishment. However, unlike the claim of the North Korean authorities that it had guaranteed equal conditions for women’s advancement into society through socialisation of domestic labour and nurturing children, it had emphasised the traditional role of women in the family. Moreover, the feudal patriarchy system still continues in politics and social fields.

From the mid-1950s, the North Korean authorities set the family as the basic unit of society and developed a policy to accomplish socialist revolution through the family. In the 1960s, the role of women in families, especially the role of mothers, was emphasised, along with the revolution of the family. Kim Il-sung emphasised the primary influence of mothers and demanded that mothers should educate their children as proper communists through the instructions of ‘the duty of mothers in children education’.¹⁴³ In North Korea, which is a socialist nation, women reverted to having responsibility for educating their children, and this directly linked to the double responsibilities of women.

142 Oh Seong-Gil, *Creator of Happiness* (Pyongyang Publisher, 2006), 240.

143 Kim Il-sung, ‘Responsibilities of Mothers in Child Education’ in *Kim Il-sung: Selected Works 15* (Publisher of Workers’ Party of Korea 1981), 326–353.

Until the 1970s, North Korea advocated women’s labour stratification and emphasised socialistic remodelling of the family and housework, but the duplicate policy for women continued. Rather, as the monolithic system of Kim Il-sung was established and centred on the *Juche* ideology, patriarchy came back to society on a national level. Moreover, ‘the revolutionary leader concept’, the ‘theory of socio-political being’ and the ‘large socialist family’ exhibited in the monolithic system of Kim Il-sung, which was becoming more established after the 1970s and the process of solidifying the succession system of Kim Jong-il, emphasised the view of the patriarchal state, and the nominal liberation of women showed a gap with reality.

The shortage of food, financial difficulties and extreme hardships of life, which continue to be the Arduous March since the 1990s, worsened the human rights condition of ordinary North Koreans, except the few in the privileged class. The rights of women and children were diminished in reality. In particular, violations of the right to food, the right to health and the right to physical and psychological protection for women and children are even more severe. Moreover, women’s human rights are severely violated owing to excessive labour, poor health resulting from such labour, human trafficking and domestic violence under the patriarchal system with the idea of predominance of men over women.

Table 107 shows that the idea of predominance of men over women within families and subsequent burden of family care (IDs 008, 018, 036, 045, 051, 059, 069, 072, 080, 084, 085, 093, 094, 102(2014)) are the main reasons for the violation of women’s rights. Although North Korea emphasised the socialistic remodelling of the family from the beginning of the regime, it shows that the Confucian patriarchal influence still remains practically in the socialist nation, North Korea.

Table 106: Do you think that the North Korean authorities thoroughly guarantee women’s rights?

Response	Number of respondents	Percentage (%)
Yes	34	33.0
No	54	52.4
Was limited or violated	15	14.6
Total	103	100

Table 107: In which areas are women’s rights limited or violated the most?

ID	Response
ID 001(2014)	People talk down to them. There are many cases of beating, human trafficking, sexual harassment and prostitution. They are worthless and pitiful.
ID 002(2014)	Their human rights are not guaranteed.
ID 007(2014)	Their rights are only guaranteed in economics.
ID 008(2014)	The most severe violation occurs in their family.
ID 009(2014)	In legal punishment, they do not take consideration of women’s physical condition.
ID 010(2014)	They are discriminated against economically.
ID 011(2014)	The different ability in labour between men and women is only recognised in detention facilities.
ID 012(2014)	They are limited in important parts of society like the workplace.
ID 014(2014)	They are regarded the same as men when they commit crimes.
ID 015(2014)	Registering as a manager is difficult.
ID 018(2014)	There is no measure even when a husband drinks and beats his wife to near death.
ID 030(2014)	Human rights discrimination and prejudice against women are strong.
ID 033(2014)	They are discriminated against at work.
ID 035(2014)	I don’t know very well, but discrimination is prevalent.
ID 036(2014)	Women work very hard at marketplaces to feed their family.
ID 045(2014)	The degree of labour for women is very strong.
ID 051(2014)	Discrimination in the area of labour is prevalent.
ID 059(2014)	Women have to earn to live. They do speak out but are beaten back by men. Compared to men, there is discrimination in the right to speak out.
ID 069(2014)	Women are supposed to work, take care of the family and do everything.
ID 072(2014)	It is hard for women to get jobs because of the burden of running the household.
ID 080(2014)	The burden on women is huge because day-to-day life is very hard. The problems associated with survival have to be resolved.
ID 081(2014)	They are forced to take part in the Women’s League.
ID 084(2014)	Women are ignored in family and awareness of residents.
ID 085(2014)	There are many phrases talking about what women should be like.
ID 087(2014)	North Korean women are disadvantaged in all aspects compared to men.
ID 088(2014)	They work at worse places than men.
ID 089(2014)	They are not supposed to ride bicycles.
ID 093(2014)	Their rights are not protected at home.
ID 094(2014)	They are ignored at home.
ID 102(2014)	Each college has a separate group of men and women. They are discriminated against within family life.

STATUS OF NORTH KOREAN WOMEN IN SOCIETY

On 22 December 2010, the Standing Committee of the SPA announced the Women’s Rights Protection Act and the Children’s Rights Protection Act. These laws are significant in that they combine the scattered regulations regarding women’s and children’s rights into a single law and protect the rights and benefits of women and children in every field. Although the Women’s Rights Protection Act has been enacted, North Korean women continue to suffer double and triple agonies through ‘general discrimination against women’, ‘inequality by systematic problems’ and ‘extreme life hardships by shortage of food’.

The Women's Rights Protection Act consists of seven chapters and 55 provisions. Chapter One sets out the prohibition of discrimination towards women, the improvement of social interest and the protection of women's rights. Chapter Two states the provisions regarding women's social and political rights. Chapter Three provides for women's rights in education, culture and public health, and Chapter Four sets out the provisions regarding the right of labour. Chapter Five deals with provisions regarding rights of the human body and property. Chapter Six sets out the provisions regarding the rights to marriage and family and Chapter Seven consists of provisions regarding guidance and control on projects to guarantee women's rights.

However, in reality, the status and rights of North Korean women show a gap from those specified in the Women's Rights Protection Act (Table 106). For example, around 20 per cent of the SPA has consisted of women since the 1970s, but it is deemed as a policy consideration of the Workers' Party of Korea rather than a voluntary participation of women of their own will. The female representatives have symbolic significance only; they do not actually play a role in supervising and criticising the government administration. In other words, the reality of North Korea is that the political influence of women is not as high as is suggested from the number of their seats in the Assembly.

Also, North Korean women work as agents in the People's Committee or in a city, county and party. Women work as managers at social food ration centres, at collective farms and as foremen. However, women working as hotel managers, enterprise managers (administrative workers) and Party secretaries (political workers) are very rare, and that is because society favours men when appointing executives (Table 107) (ID 015(2014)). According to testimony from a North Korean defector, for women to become executives, they need to join the Party. In order to join the Party, they sometimes serve in the military, and there are reported cases of offering bribes or sexual favours.

And the actual rights of North Korean women in the fields of education, culture, public health and labour are not protected, as the responses (IDs 009, 010, 012, 015, 033, 045, 088, 102(2014)) in Table 107 show. Women are forced to work harder than men, and there is discrimination in college entrance. In this respect, North Korean women themselves think that their status is unequal.

On the other hand, women's participation in economic fields has expanded as the establishment of socialism, post-war reconstruction and farm collectivisation has progressed. Administrative measures for them have gradually been brought into force, but discrimination against women shows through the inequality between jobs and the wage gaps between men and women. Men take important roles with status, whereas women are placed in jobs with lower significance and wages. Women are concentrated in certain areas where the 'characteristics of women' are more or less required. In North Korea, where there is no freedom to choose a job, and where the labour force is allocated according to the national plan, women are placed in jobs with lower importance and wages compared to men. When the economy worsened, women lost their jobs before men. It is indicated that the economic status of women, who make up about 50 per cent of North Korea's economic population, is much lower than that of men.

According to the 2014 survey, 37 (35.9 per cent) out of 103 respondents answered that the most urgent reform needed to promote women's status in North Korea would be a change in the patriarchal attitude of North Korean society, which will ultimately lead to an overall improvement of women's status at home and in society. In particular, they said that women's rights will be guaranteed only when the nation and society protect gender equality.

Table 108: What would be the first thing to be fixed in order to promote women’s status in North Korea?

ID	Response
ID 002(2014)	The burden of domestic labour should be reduced.
ID 003(2014)	Women could undertake social activities when the food shortage is solved first.
ID 005(2014)	The problem of living should be solved first.
ID 006(2014)	Society and the nation should take this issue more seriously.
ID 008(2014)	Women should be treated equally.
ID 009(2014)	The country should be wealthy first.
ID 010(2014)	They should solve the food problem.
ID 012(2014)	There should be more women’s colleges.
ID 016(2014)	Women should have more chances to earn money.
ID 020(2014)	They need to protect gender equality.
ID 022(2014)	The patriarchal system should be improved.
ID 024(2014)	Women’s economic burden or responsibility should be reduced.
ID 027(2014)	They should teach people to respect women socially.
ID 030(2014)	The economic problem should be solved.
ID 033(2014)	They need to execute a law on gender equality. They just speak of it without carrying it out.
ID 038(2014)	They need to put more effort into protecting women’s human rights.
ID 041(2014)	The improvement of living standards is necessary.
ID 049(2014)	Living should get easier.
ID 052(2014)	Women and men should respect each other. It is wrong for women to obey men unconditionally.
ID 057(2014)	The difficulty of living should be solved.
ID 068(2014)	Solving the shortage of food is the most important.
ID 070(2014)	Economic life should be stabilised.
ID 074(2014)	The nation’s economy should thrive. Opening the door and reformation are necessary.
ID 075(2014)	The difficulty of living should be solved.
ID 076(2014)	The problem of eating and living should be solved.
ID 078(2014)	It should be solved systematically.
ID 079(2014)	Women should be liberated from the burden of financial difficulty and domestic labour.
ID 090(2014)	They should execute the distribution system.
ID 091(2014)	The improvement of food supply is necessary.
ID 093(2014)	The feudal attitude of men should be dispensed with.
ID 100(2014)	The economic part should be solved.
ID 103(2014)	The idea of dominance of men over women should be dispensed with.

NORTH KOREAN WOMEN’S STATUS WITHIN FAMILIES

Women’s status within families is hugely different from the gender equality that North Korea’s Socialist Constitution or system advocates. The North Korean authorities insisted on gender equality for the reasons that the existing Confucian and traditional family system, which is male chauvinistic and authoritative, hinders socialist revolution and oppresses women politically and economically. However, although the legal and systematic measures for gender equality are in place, actual family life is maintained by the traditional patriarchal order (Table 108) (IDs 022, 093(2014)). In particular, the old-fashioned tradition began to be emphasised as the monolithic system of Kim Il-sung and the father-son succession system solidified after the 1970s. The Family

Law enacted and announced in 1990 includes old-fashioned and patriarchal elements, such as the broad range of prohibition of marriage, the principle of following fathers and a wide range of family care measures.

There are no changes in the traditional role of women and mothers at home despite the socialisation of domestic labour and child care. North Korean women shoulder double burdens of economic activity and domestic/child care with social statuses inferior to men and patriarchal awareness based on a traditional value system and blood-line, which is rampant in North Korean society. Also, women's burden of economic activity is increasing, owing to the continuation of financial difficulties. And 18 people (17.4 per cent) among the 103 North Korean defectors answered that the 'problem of living' should be solved for women's status to improve (Table 108). This shows that the economic activity of women aggravated by financial difficulties constitutes a violation of women's rights, and that solving financial difficulties is related to the enhancement of women's status and human rights.

However, the woman's voice at home has become stronger as North Korean women started to gain economic power by engaging in diverse economic activities along with selling after the shortage of food. Among the women who held economic power by taking care of the family, cases of them proposing divorce due to the husband's economic incompetence or violence are increasing as they resist and rebel against their husbands (Table 109).

Table 109: What is the most important reason for North Korean women to divorce their husbands?

Response	Number of respondents	Percentage (%)
Economic incompetence	38	36.9
Affair	16	15.5
Difference in personality	12	11.7
Domestic violence	22	21.4
Financial difficulty	7	6.8
Being drunk	2	1.9
State-assigned social class (<i>Songbun</i>) discrimination	2	1.9
Infertility	1	1.0
Family trouble	3	2.9
Total	103	100.0

However, it is said that North Korean women mostly conform to the socially conventional ideas rather than resist. This shows that although the role of breadwinner was reduced as women took care of the survival of family, the traditional patriarchal awareness did not weaken the gender role of women. Although North Korea regards the idea of dominance of men over women as a reactionary ethical value and remnant of feudal Confucian thinking that should be eradicated, the idea of dominance of men over women is strong among North Koreans, and it is working as the element that limits the life of North Korean women along with the traditional patriarchal system.

CEDAW states that 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women' (Article 6). And it also states that 'gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men' (General Recommendations 19).

In North Korean society where the idea of dominance of men over women and patriarchal awareness are rampant, sexual assaults on women do not raise much of an issue. This reality is generated from the misguided conventional idea of men-centred gender and strict ideas of chastity for women that are prevalent in North Korean society, and it is the reason why sex education is absent from schools and society. When prostitution is uncovered, men are able to slip away with bribes, but most of the women get punished. Men's participation in prostitution is not something that is subject to criticism socially.

In North Korean society, sexual assault on women is not perceived as a problem. Most people do not hold a critical view of sexual assault, and the overall mood of society with the dominance of men over women does not make it a problem. When news of a sexual assault spreads at work, the victims suffer disadvantages in many cases, so they tend to hide the fact. It is known that sexual assaults on North Korean women worsened as women shouldered the burden of financial difficulties associated with food shortages. Unlike previous sexual assaults in exchange for improvement of treatment at work or joining the Party, sexual assaults by marketplace security agents or soldiers are increasing.

Sexual assaults on North Korean women worsened after the food shortage in the 1990s. Human trafficking and forced prostitution, in particular, increased noticeably. At the review by the UN Human Rights Committee of the second periodic report for the ICCPR that North Korea submitted in July 2001, the North Korean delegate completely denied any suspicions of human trafficking of North Korean women in North Korea. However, according to the report, the North Korean authorities were aware of human trafficking near the border region.

Human trafficking of North Korean women is carried out by kidnapping with violence, luring through brokers and volunteering for family support. Recently, human trafficking around the border area between North Korea and China has become known as a serious violation of human rights for women. There are cases of woman being kidnapped from North Korea to China, forced into marriage and being beaten. And there are cases of human trafficking, targeting women who illegally cross the river to China. Among the women who want to go to China, women who do not have any money or connection in China are deceived by trafficking criminals and are sold over to China.

There is also domestic violence, such as husbands beating their wives. According to the North Korean defectors, domestic violence is common in North Korea and, in particular, there are many cases of husbands who are drunk or high on drugs beating their wives. In North Korea, domestic violence is not viewed as a problem, and the Women's League does not intervene either. The adultery of husbands or domestic violence is considered as a family problem, so the Women's League does not get involved. When domestic violence arises, people sometimes call the police station, but it is not punished, and the Party only counsels husbands.

AGGRAVATED HEALTH

The most serious consequences of malnutrition of North Korean women due to famine are those related to pregnancy, birth and child care. The birth rate has decreased noticeably due to malnutrition, and when women get pregnant without sufficient nutrition, in many cases, they suffer miscarriage or stillbirth or give birth to pre-term infants or infants with low birth weight. This is directly related to the pregnant women's health aggravation.

According to a report on the nutrition condition of children and women that the UN Children's Fund (UNICEF) and the Central Bureau of Statistics¹⁴⁴ in North Korea conducted in September 2012, 31.2 per cent of women with children suffer from anaemia. Women living near the border areas between North Korea and China, such as Ryanggang Province (36.0 per cent) and Jagang Province (34.2 per cent), showed higher percentages, and Pyongyang showed a relatively low result (28.9 per cent). The death rate of infants due to the malnutrition of the mother is also high.

Another result caused by malnutrition due to famine is the health aggravation caused by gynaecology illnesses. The major diseases of North Korean women are women's diseases along with uterine disease, and most of them are due to malnutrition.

As the medical supply system collapsed because of worsening financial difficulties, safe contraception became difficult. Women with unwanted pregnancies proceeded with abortion in dangerous ways, thus threatening the lives of babies and mothers. Since women avoided giving birth after the food shortage, Kim Jong-il encouraged fecundity through a second conversation with mothers in 1998. Since abortion or contraception became impossible afterwards, illegal abortion increased. During secret abortions carried out through bribes, proper anaesthesia is not even provided, greatly harming the health of women. The health issues of North Korean women are not just malnutrition followed by difficulties in pregnancy, giving birth and child care. Where North Korean women are sustaining the survival of their family through selling as the main method, the pain is known to be great due to the physical and psychological burden that they experience.

Human rights of children

REGULATION RELATED TO RIGHTS OF CHILDREN IN NORTH KOREA

The CRC, in its preamble, states:

'Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up... in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that... the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.'

144 UNICEF, CBS: *Democratic People's Republic of Korea Preliminary Report of the National Nutrition Survey 2012* (October 2012).

The UN General Assembly emphasised the importance of humanitarian support for victims of natural disaster and other urgent situations through its resolution in 1991,¹⁴⁵ and the UNOCHA manages and adjusts humanitarian support activity within the UN. It also handles responses for all kinds of emergencies, food security and gender equality. In particular, it emphasises the necessity of interest and support for socially vulnerable people such as children, women and old people. The UNOCHA identified children, pregnant women and old people as the most vulnerable sectors of the population for North Korea and continuously emphasised the necessity of support for them. It categorised severely malnourished children, pregnant and lactating women and children under five (especially under the age of two) as the most vulnerable sectors of the population, and children in orphanages, school-age children, old people, disabled people, patients with chronic conditions and tuberculosis patients as other vulnerable members of the population through its research report on North Korea in 2004.¹⁴⁶

Ever since North Korea regulated the ‘nation as the subject of child care’ by the Pre-school Child Care Act in 1947, a series of laws was executed for school-age children from early on. For example, North Korea introduced the ‘promotion of guarantee of hygiene and epidemic prevention, observance of eating standards, and psychological and social growth and development of children’ for the Pre-school Child Care Act in 1976, and in 1972, it introduced an ‘11-year free and compulsory education system’ in its Constitution. And North Korea enacted the Children’s Rights Protection Act consisting of six chapters and 62 articles on 22 December 2010. It compiled the laws related to children, which were scattered among the Socialist Constitution, the Pre-school Child Care Act, the Family Law, the Socialist Labour Law, the Nationality Law and the People’s Health Law. Compared to the previous laws, there are new regulations that can strengthen the enhancement of children’s rights in the Children’s Rights Protection Act. Children’s right to life and development, to petition and appeals, respect for children’s personality and protection of child asylum are new provisions that were not regulated in the precedent laws.

North Korea joined the CRC in September 1990 and submitted its first state report on the CRC in February 1996, the second state report on the CRC in May 2002 and the combined third and fourth state reports in December 2007. In the combined third and fourth reports, North Korea insists on the government’s policies regarding children, which were enacted during the report period, conforming to the principle and demands of the CRC, and it also stated that it either adopted new laws or modified and complemented the existing laws regarding fulfilment of the Convention.

However, the North Korean authorities show an attitude of deferral in certain rights, though it enacted the Children’s Rights Protection Act based on the Convention (Table 110). In particular, the civil rights and right to freedom, which have the possibility of having a negative influence on sustaining the system of North Korea, are not reflected, and it also did not reflect drugs and human trafficking, which are rapidly surfacing as recent social problems in North Korea. However, legislation contained in the Children’s Rights Protection Act shows that the North Korean authorities are actively responding to the continuous interest and demand for improvement from the international community concerning North Korean children.

145 UN General Assembly Resolution 46/182 (19 December 1991), Annex, para 1.

146 UNOCHA, *Democratic People’s Republic of Korea 2004: Consolidated Appeals Process* (New York and Geneva: United Nations, 2003), 22–23.

Table 110: Children’s rights not incorporated in North Korea’s Children’s Rights Protection Act.¹⁴⁷

Convention on the Rights of the Child	Children’s Rights Protection Act
Article 14 Freedom of thought, conscience and religion	Not reflected
Article 15 Freedom of association and freedom of peaceful assembly	Not reflected/can join organisation for children such as Boys News
Article 17 Access to information and material from a diversity of national and international sources	Not reflected/can write and publish literary productions
Article 33 Protection of the child from the illicit use of narcotic drugs and psychotropic substances and prevention of the use of the child in the illicit production and trafficking of such substances	Not reflected
Article 34 Protection of the child from all forms of sexual exploitation and sexual abuse	Not reflected
Article 38 Refrainment from armed conflicts and recruitment of any person who has not attained the age of 15 years into their armed forces	Not reflected

RIGHT TO FOOD AND HEALTH

Children have the right to nutritious food, clean air and water to sustain life, to enjoy a proper level of life in a comfortable abode and to receive medical benefits to stay healthy. In other words, children need to be protected from hunger, malnutrition, assault by adults including physical abuse, poverty, dangerous work conditions, involvement in crimes (gangs, begging, drugs and theft) and diverse diseases.

However, the life of children in North Korea is under threat owing to chronic starvation and malnutrition due to financial difficulties and food shortages. In March 2013, the Central Bureau of Statistics of North Korea presented the 2012 Preliminary Report of the National Nutrition Survey. The North Korean government received technical support from the WFP, UNICEF and the World Health Organization (WHO) and conducted a survey across the nation from 17 September to 17 October 2012. This is the sixth survey of the nutrition of North Korean people after the ones in 1998, 2000, 2002, 2004 and 2009.

According to a survey of the Central Bureau of Statistics of North Korea, the total population of North Korea is 24,449,000. Among them, there are 1,705,000 children under five and 15.2 per cent of them (262,160 children) were underweight. Among the children under five, 27.9 per cent (305,195 children) had chronic malnutrition and 7.2 per cent among them had very severe malnutrition. The difference between Pyongyang and other areas is huge. For Pyongyang, 19.6 per cent of children suffered malnutrition while the figure was 39.6 per cent for Ryanggang Province, 33.3 per cent for Jagang Province and 32.9 per cent for South Hamgyong Province. According to the report, not only did children under five have serious health issues, but also children over six had tragic health conditions. And 29 per cent of all children had anaemia, and the cause of children’s anaemia was deficient nutrition.

147 KINU, ‘North Korea’s Legislation of Laws for Women’s Right and Children’s Right’, Analysis of Unification Condition, August 2011, June 2011, 21.

According to the survey targeting 103 North Korean defectors that the KBA conducted in 2014, 96.1 per cent of the respondents answered that North Korean children suffered severe pain because material support at a national level for children is not executed (Table 111).

Table 111: Do you think that the material guarantee for children is executed well at a national level in North Korea?

Response	Number of respondents	Percentage (%)
Yes	4	3.9
No	99	96.1
Total	103	100

And 76.7 per cent answered that the rights to life and health of children are seriously violated by neglecting them in harsh conditions (Table 112). According to the survey, the protection of the children’s right to life is not undertaken properly because of poor distribution and severe food shortages. When the food distribution system collapsed, the vulnerable class is affected first.

Table 112: Do you think that the protection of the children’s right to life is carried out well in North Korea?

Response	Number of respondents	Percentage (%)
Well protected	21	20.4
Not well protected	79	76.7
I don’t know	3	2.9
Total	103	100

However, North Korean food production improved a little bit in 2012 compared to that of 2011 because of good weather. According to the FAO, the grain output of North Korea in 2012 was 5.03 million tonnes, which showed a 5.9 per cent increase over the 4.75 million tonnes in 2011. According to research by the Hyundai Research Institute in South Korea, the trade volume between North Korea and China in 2012 reached \$5.93bn, which increased by 5.4 per cent compared to \$5.63bn in 2011. The trade volume between North and South Korea was \$1.98bn, which increased by 15.3 per cent compared to \$1.71bn in 2011. On the other hand, support from the international community to North Korea was \$120m, which is the largest since 2004, showing a 32 per cent increase compared to \$89.23m in 2011. According to the figures, the food and financial situations in North Korea have improved in the recent years, but according to the nutrition assessment that was conducted in a similar period, many North Korean children are still suffering chronic malnutrition.

Since the medical distribution system collapsed and anti-epidemic measures were not carried out properly because of financial difficulties, since the mid-1990s the health of many children has been threatened because of unhygienic water and living conditions. In particular, many children have died of contagious diseases such as paratyphoid fever, cholera, typhoid fever, tuberculosis and malaria. According to the combined third and fourth state reports on the CRC, the North Korean authorities stated that the death rate of children decreased very much after 2000, and the death rate of children under five was 40 (out of 1,000 children under five) as of 2005. However, according to the survey of the Central Bureau of Statistics of North Korea in 2012, the death rate of children under five was

252 out of 1,000 in 2011. According to the South Korea National Statistical Office (Statistics Korea) in 2011, the death rate of North Korean infants was 27.4 per cent (2005–2012), and the death rate of South Korean infants during the same period was 3.8 per cent. The death rate of North Korean infants was seven times higher than that in South Korea and the rate has not changed much in the past few years.

Since the establishment of the regime, the North Korean authorities have promoted the idea of children's rights being perfectly protected, saying that 'children are the future and king of the country'. But the reality in North Korea is very different. The most recent problem that appears to threaten the health of North Korean children is taking drugs among children. Taking and dealing drugs, which are spreading among North Koreans, is carried out by middle school students, and is not a rare occurrence. It is known that there are quite a few students who show symptoms of addiction. Regarding this, the UN Committee on the Rights of the Child showed concern for the inhibition of physical, emotional and psychological development due to drug abuse and accidents through drug abuse of North Korean children for the combined third and fourth state reports on the CRC.

RIGHT TO PHYSICAL AND PSYCHOLOGICAL PROTECTION

Although children need to be protected from discrimination, exploitation, abuse and neglect, artificial separation from family and evil practices of criminal law and abandoned children are increasing due to food shortages and financial difficulties in North Korea. According to the survey on human rights in North Korea conducted in 2014 by the KBA, 60.1 per cent of respondents answered that abandonment of children due to food shortage was the most urgent and desperate problem for North Korean children, including 59 people who said solving the food shortage and financial difficulties and three people who said 'homeless child beggars' (*kkot-je-bi*).

Although they become 'homeless child beggars' due to the deterioration in health or death of parents, they leave home because of starvation to beg or steal. The number of beggars decreased once, but has increased again after currency reform at the end of 2009. After currency reform, as the hardships of life of the people worsened due to chronic food shortages and a sharp rise in prices, the number of children who begged for food or stole around stations or marketplaces has increased. For the purpose of protecting and managing such homeless child beggars, the North Korean authorities have established and managed regional rescue centres since the end of the 1990s when food shortages worsened. However, the amount of food is insufficient or not provided at all at the rescue centres, so many of the children run away again. Also, the cruel treatment of children who are repatriated from China is severe, and they are subject to poor treatment and torture from the interrogation process. They also suffer beatings, harsh labour and hunger after imprisonment. Regarding this, the UN Committee on the Rights of the Child showed concern for the cruel treatment of homeless child beggars, children who cross the border without the authorities' permission and children detained by police or other national organisations from the final opinion on the combined third and fourth reports submitted by North Korea.

On the other hand, the CRC states: 'States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse'. The Children's Rights Protection Act rules that 'abducting or trading children is prohibited' (Article 18). North Korea insisted that it was executing the relevant article (Article 35) on the CRC as prostitution or unlawful sexual practices are strictly prohibited by law

in the second state report. In the combined third and fourth state reports, North Korea reported that there were no cases of children used for sexual exploitation, and there were no cases regarding child trade and abduction. However, according to the survey in 2014, 70.9 per cent answered that ‘there are’ or ‘they don’t know’, while 29.1 per cent answered ‘there aren’t’ (Table 113) cases of children being kidnapped or traded. Human trafficking targeting women increased in North Korea and China after the food shortages, and among them, human trafficking of teenage girls and underage girls is not uncommon (Table 114). A large number of North Korean children are exposed to sexual exploitation and abuse due to the shortage of food.

Table 113: Have you seen or heard of children being kidnapped or traded?

Response	Number of respondents	Percentage (%)
Yes	46	44.7
No	30	29.1
I don’t know	27	26.2
Total	103	100

Table 114: Have you seen or heard of girls being engaged in prostitution in North Korea?

Response	Number of respondents	Percentage (%)
Yes	25	24.3
No	41	39.8
I don’t know	37	35.9
Total	103	100

RIGHT TO DEVELOPMENT

North Korea’s Children’s Rights Protection Act has a separate chapter (Chapter Three) on free education and free treatment in order to regulate in detail the protection of children’s rights in education and health. North Korea began an 11-year compulsory education system according to the relevant law from September 1975, and it insists that the North Korea government provides free education and pays for the cost of education.

However, the cycle of stationery supply, which the North Korean authorities had been providing after the 1990s, extended to three to five years and even that has stopped now. Along with the aggravated financial difficulties, most of the students pay for textbooks and school supplies. According to the survey in 2014, 90.2 per cent of the North Korean defectors chose financial difficulties, hardships of life and financial burden to pay for schooling as the reasons for not receiving a free education, notwithstanding the 11-year free compulsory education system. Students said that they did not go to school in order to help or take care of their families to solve the problem of living or because they did not have clothes to wear. As the financial difficulties have continued, it is said that students and parents take care of building and managing schools and firewood for winter.

On the other hand, free medical treatment is just words. Hospitals only diagnose and prescribe, and individuals need to buy drugs themselves. In North Korea, the phrase ‘children are kings’ is just a motto, and there are no benefits and rights guaranteed for children as a priority.

Regarding the legal right of children that is stated in CRC Article 37, North Korea reported in the second state report and the combined third and fourth state reports on the CRC that it does not impose measures such as arrest, detention and imprisonment on children as a principle. Also, it stated that children are detained in certain places such as their houses after school under the permission of public prosecutors only for inevitable situations based on Articles 189 and 190 of the Code of Criminal Procedure, and it also stated that the detention period does not exceed one month. Also, it reported that North Korean laws were modified so that they could conform to the standard of the Convention, and the age of eligibility for the death penalty was raised from 17 to 18. It stated that there were no cases of children receiving torture or other cruel, inhuman and disrespectful treatment or punishment during the report period.

Regarding the legal rights of children, North Korea's Children's Rights Protection Act states that criminal charges are not brought against children under the age of 14, and the death penalty is not applied to children who reached the age of 14 at the time of committing the crime (Article 48). It also states that when children over the age of 14 commit crimes, the basic measure is applying social culture education (Article 49). However, unlike the arguments of North Korea, children who are repatriated from China receive cruel treatment and torture, and it is known that they are imprisoned at detention centres targeting adults, not for children, and suffer beatings and forced labour.

Regarding the right to nationality acquisition stated in CRC Article 7, North Korea says that children cannot be without nationalities and neglected without the protection of the nation, and if one of the parents is Korean, citizenship is granted automatically. However, the marriages of North Korean women who defected and married Chinese or ethnic Koreans living in China are not legally acknowledged, so their children do not receive legal protection as stateless persons. Stateless children who do not receive legal protection in education and treatment are increasing, along with the increase in North Korean women defectors.

Human rights of older persons

INTERNATIONAL STANDARDS FOR HUMAN RIGHTS OF OLDER PERSONS

According to the UN statistical data, persons over the age of 60 are called 'older persons', and the distinction of ageing or an ageing society is the percentage of the people over 65 out of the entire population: over seven per cent is considered an ageing society, over 14 per cent is an aged society and over 20 per cent is post-aged society or super-aged society. Eurostat regards a person over the age of 65 as an older person.

Nowadays, the increase in the population of older people is a global trend. And although the necessity for the protection of them is emphasised more, there are no international conventions that comprehensively regulate the areas needed for the protection of older persons, unlike other socially vulnerable classes such as women, children, disabled persons and refugees. Human rights for older persons can be found from individual articles such as those in the UDHR, the ICCPR and the ICESCR.

UDHR Article 25(1) states that ‘everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control’, thus regulating the right of older persons for enjoying the protection of social rights.

The regulation on the prohibition of discrimination stated in ICCPR Article 2(1) is interpreted as the basic regulation that prohibits discrimination against older persons. The C102 Social Security (Minimum Standards) Convention 1952 (No 102) and the C128 Invalidity, Old-Age and Survivors’ Benefits Convention 1967 (No 128) required the establishing of a compulsory old age insurance system and allowed domestic laws to decide the age for beginning supply and demand.¹⁴⁸ The Vienna International Plan of Action on Ageing, which was adopted in the World Assembly on Ageing held in Vienna in 1982, lists specific measures for each member country to implement in connection with the standards determined by the UN International Covenants on Human Rights. The UN Principles for Older Persons, which were adopted by the UN General Assembly (Resolution 46/91) on 16 December 1991, suggest 18 principles in five themes of independence, participation, care, self-fulfilment and dignity. In the preamble, it recalls many resolutions for applying a universal standard to a certain group and rights that are regulated from two international covenants on human rights and the natural rights of humans recognised by the Charter of the UN, and it demands that each country pursues the standards determined by the Vienna declaration adopted in 1982, the International Labour Organization (ILO) and WHO.¹⁴⁹

Welcoming the ten-year anniversary of the Vienna International Plan of Action on Ageing, the UN General Assembly adopted a Proclamation on Ageing in 1992. The UN General Assembly decided to observe the year 1999 as the International Year of Older Persons, encouraging support for old women, considering that they were not recognised properly, though they contributed to society, support for old men to continue self-improvement after the age to earn income has passed, support the families who take care of older persons and the expansion of international covenants.¹⁵⁰

The UN General Assembly adopted the International Plan of Action: Madrid Plan at the Second World Assembly on Ageing in 2002 and adopted the agenda of rights for development and ageing, urging the promotion and protection of all human rights and fundamental rights of freedom, including the abolition of age discrimination.¹⁵¹

In December 2010, the UN General Assembly established an open practice group for ageing with the purpose of strengthening the human rights of older persons. The follow-up report on the Second World Assembly on Ageing in 2011 of the UN Secretary General focused on the overall situation of older person’s human rights and emphasised ‘poverty and improper living conditions’, ‘discrimination related to age’, ‘violence and abuse’, ‘lack of special measure and device and service’ and especially ‘poverty and improper living conditions’.¹⁵²

148 Kang Byong-geun, ‘Protection of Older Person in the Perspectives of International Law with Specific Reference to General Comments by UNCESCR’, *Research on Seoul International Law*, Issue 15, No 2, 2008, 94.

149 *Ibid.*, 97–98.

150 *Ibid.*, 98.

151 *Ibid.*, 99.

152 KBA, *2012 Report on Human Rights in North Korea*, 276–277.

Legal regulation regarding elderly protection before the Elderly Protection Law

Before North Korea enacted the Elderly Protection Law in 2007, it had only some individual provisions of the Constitution and other laws for elderly protection, not a separate law.

Article 72 of the Constitution regulates the social protection system for older persons by stating, ‘citizens are entitled to free medical care, and all persons who are no longer able to work because of old age, illness or a physical disability, the old and children who have no means of support are all entitled to material assistance. This right is ensured by free medical care, an expanding network of hospitals, sanatoria and other medical institutions, state social insurance and other social security systems’.

Based on the above provision in the Constitution, Article 74 of the Socialist Labour Law provides that the state gives pensions to elderly men and women who reached the age of 60 or 55 respectively if they satisfy the requisite years of labour, and Article 78 from the same law provides that older and disabled persons who lost the capacity to work and are without any caregiver are to be cared for at nursing home centres for free.

Article 9 of the People’s Health Law provides for a free treatment system for all people, and Article 13 in particular provides that the state should responsibly take care of those who have lost their ability to work, children and patients with chronic conditions without any caregiver, and elderly patients so that the benefit of free treatment will be properly administered, and Article 3 of the Medical Law provides for a system of free medical treatment.

Elderly Protection Law

North Korea adopted the Elderly Protection Law as the Standing Committee of the SPA, Political Directive No 2214 on 26 April 2007.¹⁵³ Regarding the background of legislating the aforementioned law, the vice president of the Central Committee of Korea Elderly Care Foundation, Ryang Hui-chol, said that ‘the percentage of the older persons over the age of 60 as of the end of 2005 exceeded the population aging level that the UN determined, so the government took action to legally protect the health and life of the elderly’, according to a newspaper (*Choson Sinbo*).¹⁵⁴

The aforementioned law consists of six chapters and 47 articles. When the main contents for each chapter are examined, the first chapter of the Elderly Protection Law states that the mission of the law is protecting the rights and benefits of the elderly and enabling them to live happily and productively so that they are healthier psychologically and physically (Article 1). The ‘elderly’ means that men over the age of 60 and women over 55 who have finished their working years or are currently working are subject to the law (Article 2). The state should guarantee all kinds of conditions to the elderly so that they can fulfil their status and role as the seniors of revolution and superiors of society and family (Article 3). Also, it has a special protection principle for people of merit such as revolutionary

153 The aforementioned laws are modified and complemented as the Standing Committee of the SPA, Political Directive No 2333 on 21 August 2007 and the Standing Committee of the SPA, Political Directive No 2303 on 3 April 2012.

154 ‘North Korea Establishes the Elderly Protection Fund As It Welcomes Aging Generation’ *Yonhap News* (6 August 2007).

fighters and honourably discharged soldiers as other social welfare regulations state, such as the Social Security Law or Disabled Persons Protection Law (Article 5).

The second chapter urges the state to combine national support and social support for the elderly (Article 8) and regulates the family support obligor (Article 9) and social support obligor (Article 10) and, while granting the obligation of support for the elderly to family and society first, it regulates that the state will complement support for the elderly who have obstacles to living independently without a support obligor (Article 12). The elderly receive pensions and subsidies from the state, and the standards are decided by the central labour administrative instruction organisation (Article 14).

The third chapter regulates the protection of the overall free treatment system benefit for the elderly health protection (Article 17), protection of restorative longevity and nutritious food (Article 20), and production and supply of aids and treatment tools (Article 21). It provides that older people over the age of 100 are registered and obligated to introduce the experience of longevity, and older people over the age of 90 receive separate social benefits (Article 23).

The fourth chapter regulates the protection of an older person's cultural activity, and the fifth chapter regulates the older person's participation in social activity (Article 32) and the extension of work for those who wish to work (Article 33).

The sixth chapter regulates control over the protection of older persons, and it enforces the establishment of a temporary commission on elderly protection at the cabinet, province (cities under the direct control of the central government), city (section) and county people's committee (Article 38). The elderly protection organisation can establish the elderly protection fund, and the fund can be saved and used as the fund that the elderly protection organisation creates as well as other charity funds from international organisations, charities and overseas compatriots (Article 39).¹⁵⁵

REALITY OF APPLYING ELDERLY PROTECTION LAW

Current situation of old-age population

According to the 'State of World Population 2013' by the United Nations Population Fund (UNFPA), the total population of North Korea is 24.9 million. Based on 2010–2015, the life expectancy at birth is 66 for men and 73 for women, which is 12 years shorter than that of South Korean men (78) and South Korean women (85).¹⁵⁶ According to an estimate from the Central Intelligence Agency (CIA) regarding the percentage of older persons out of the entire North Korean population, it showed that the population over 65 comprised 8.5 per cent of the entire population as of July 2007.¹⁵⁷ According to the '2008 North Korea Population Census National Report', which was conducted from 1–5 October 2008 with support from the UN Population Fund, older persons over the age of 65 comprise 8.72 per cent and over 60 comprise 13.12 per cent as of 1 October 2008.¹⁵⁸ This indicates that North Korea has become the ageing society the UN determined. As the North Korean authorities revealed from the background of legislating the Elderly Protection Law, it could be known that North Korea is

155 For more specific contents, see KBA, *2012 Report on North Korean Human Rights*, 123–126.

156 www.unfpa.org/webdav/site/global/shared/swp2013/EN-SWOP2013-final.pdf accessed 4 April 2014.

157 'North Korea Establishes the Elderly Protection Fund As It Welcomes Aging Generation' *Yonhap News* (6 August 2007).

158 KBA, *2012 Report on North Korean Human Rights*, 280.

also aware of the necessity of measures for an ageing society. According to a newspaper (*Choson Sinbo*) of the General Association of Korean Residents in Japan, it is known that North Korea went into the operation after establishing the ‘elderly protection fund’ based on the regulations of the Elderly Protection Law on 16 June 2007, which is right after the enactment of the Elderly Protection Law.¹⁵⁹

Awareness of Elderly Protection Law

The Elderly Protection Law has a positive aspect in that it showed a willingness on the part of the North Korean government to protect older people by organising the regulations regarding older people, which were previously scattered around North Korea’s Constitution, the Socialist Labour Law, the Medical Law and the People’s Health Law. However, the regulations of the Elderly Protection Law have a strong sense of abstract and declarative characteristics, and specific realisation of the rights such as social protection and treatment that are regulated in the same law is guaranteed by the Social Protection Law, Medical Law and People’s Health Law. However, it is necessary to check the application reality of the regulations related to elderly protection that the aforementioned law regulates in order to comprehend what kind of consideration and system North Korea is specifically executing.

The answers to the question that asked how many North Koreans knew about the Elderly Protection Law showed that only 26 respondents (25.2 per cent) knew about the legislation (as Table 115 shows), and most respondents did not even know about the legislation, even though they defected from North Korea after the legislation came into force.

Table 115: Did you know that North Korea enacted the ‘Elderly Protection Law’ in 2007 in order to protect the rights and benefits of the older person?

Response	Number of respondents	Percentage (%)
Yes	26	25.2
I don’t know because I defected before the legislation	6	5.8
I don’t know though I defected after the legislation	71	68.9
Total	103	100

Reality of applying elderly welfare-related provisions under Elderly Protection Law

Regarding the question if it is proper to regard people over the age of 60 as older persons as prescribed in the Elderly Protection Law, 84.5 per cent answered ‘yes’.

Article 16 of the Elderly Protection Law prohibits a support obligor from disposing of the elderly person’s property such as household goods, assets and daily supplies without the consent of the elderly person. To the question that asked if the provision was actually enforceable, 12 people (46.2 per cent) out of 26 answered ‘no’, and seven people (26.9 per cent) answered ‘yes’, showing that the aforementioned provision is not enforced properly in reality (Table 116).

¹⁵⁹ See n 157 above.

Table 116: According to the Elderly Protection Law, a support obligor is not allowed to dispose of the older person’s property without the consent of the elderly. Is it actually enforceable?

Response	Number of respondents	Percentage (%)
Yes	7	26.9
No	12	46.2
I don’t know	7	26.9
Total	26	100

According to Article 9 of the Elderly Protection Law, family support obligors such as a spouse, children living together or separately and grandchildren are the primary support obligors for the elderly, and siblings can also be support obligors. Regarding this, to the question that asked if support obligors such as the children of the elderly take care of their parents when they become elderly, 68.9 per cent answered ‘yes’, which shows that children take care of their old parents in most families (Table 117). On the other hand, 32 people answered ‘no’.

Table 117: When North Korean people become elderly, do their children take care of them?

Response	Number of respondents	Percentage (%)
Yes	71	68.9
No	32	31.1
Total	103	100

To the survey question that asked who took care of them if support obligors did not, most of the respondents answered that they lived alone, and one respondent answered that there are cases where parents were starved or froze to death because their children were having a hard time making a living and were not able to look after their parents well (ID 018(2014)).

Article 12 of the Elderly Protection Law specifies that the state should support older people who live independently without support obligors. To the question that asked if the state actually took care of the elderly without any means of living and support obligors, only 26.2 per cent answered ‘yes’ and 71.8 per cent answered ‘no’, showing that Article 12 of the Elderly Protection Law is not properly observed in reality (Table 118). Meanwhile, to the question of how the state took care of the elderly, the respondents answered that the state gave subsidies to them or took care of them in nursing homes.

Table 118: Does the state take care of the elderly without the ability to live and without any support obligors?

Response	Number of respondents	Percentage (%)
Yes	27	26.2
No	74	71.8
I don’t know	2	1.9
Total	103	100

To be eligible for a nursing home, the elderly should have no support obligors. Those who wish to enter a nursing home should apply to the Labour Office of the city or county people’s committee, and admission to the nursing home will be decided after screening. A state-run nursing home is established in each province, and city workers, office workers or state-owned enterprise employees are given priority for entering nursing homes. For rural areas, nursing homes are provided by collective farms alone. In the past, the Ministry of Health operated them. Since 1964, under the control of the Labour Agency, the Labour Office of the city or county people’s committee has managed and operated nursing homes.¹⁶⁰

To the survey question that asked who would take care of the elderly if the state does not, most of the respondents answered that they would live on their own. Some respondents answered that there were no national measures (ID 012(2014)); that they would become homeless or pickpocket (IDs 014, 017(2014)); that they would wander the streets (ID 077(2014)); and that they would starve to death if they had no children to support them (ID 081(2014)).

Article 6 of the Elderly Protection Law specifies that the state should reinforce socialist moral education and customs education so that an ethos of caring, helping and respecting the elderly becomes highly established throughout society. However, to the question that asked if they were taught to respect the elderly or if there were special benefits for the elderly in family or society, only 34 per cent answered ‘yes’ whereas 65 per cent answered ‘no’.

Even before the enactment of the Elderly Protection Law, the Socialist Labour Law stated the term of labour of citizens to be 60 years old for men and 55 years old for women. Whether or not it is because of this, to the question that asked if there was an age-limit system at work, 73.8 per cent answered ‘yes’ and most of them gave answers that accorded with the legal regulation of 60 years of age for men and 55 years for women regarding retirement age. To the question that asked if there was a pension or subsidies system for the elderly, 78.6 per cent answered ‘yes’ (Table 119).

Table 119: Is there a pension or subsidies system for the elderly?

Response	Number of respondents	Percentage (%)
Yes	81	78.6
No	10	9.7
I don’t know	12	11.7
Total	103	100

However, for the survey question that asked how much the state paid for pension or subsidies, there were various answers regarding the amount. A considerable number of answers said that even if there is a system for it, it either did not pay or could not pay (IDs 007, 009, 012, 018, 061(2014)), and some answers said that the amount ranged from at least KPW10 to KPW150–170 monthly. Among them, the number of answers that said KPW700 monthly was the highest. Specifically, there were answers that said it paid KPW700 before 2007 and KPW1,700 after that (ID 065(2014)); one answer said that it paid KPW700 starting from 2010 (ID 051(2014)), while another answer said

160 Kim Jeong-sun, ‘Study on the Elderly Protection Law of North Korea’, *2009 South and North Korea Law Research Report (II)*, Ministry of Government Legislation, 2009, 121; <http://blog.naver.com/weigin.Redirect=Log&logNo=80002129136>.

that it was KPW500 in 2011 (ID 068(2014)). There were some answers that said it paid as much as KPW2,000–4,000. Among them, the answers that stood out were that a person of merit or a war veteran would be paid more (IDs 034, 042, 052, 066, 067(2014)). The reason why the answers were so varied seems to be because of the respondents' period of time of defection from North Korea and the region, and discrimination against the state-assigned social class (*songbun*). But one thing is certain: people cannot lead a normal life with only a pension or subsidies paid by the state.

Unlike the pension system, there were more negative answers to questions regarding special care or systems for the older person than positive ones, forming a contrast. For example, the question that asked if there were special benefits or facilities for the elderly in social amenities or cultural facilities such as transport or communications, 79.6 per cent answered 'no'. To the question that asked if there was special care or a system regarding the elderly in working hours at work or labour conditions such as holidays or breaks, 81.6 per cent answered 'no'.

Moreover, to the question that asked if there was special care when the elderly used medical facilities, 90.3 per cent answered 'no'. When taking a look at the content of the answers that said there was special care when using medical facilities, it was only in relation to medical treatment that was free of charge (IDs 012, 028(2014)) and special favours for persons of merit or war veterans (IDs 031,061(2014)), instigating consideration of the older person (ID 097(2014)), writing to first serve the older person and children in hospital, or saying that they were the first priority (IDs 097, 098(2014)). Also, only four respondents (3.9 per cent) answered 'yes' to the question that asked if they knew anything about special care or disadvantages regarding the older person, but what they meant was special care for persons of merit or war veterans (IDs 014, 091(2014)) or nursing home facilities. Therefore, it is in fact hard to see any special favours or system regarding the older person; rather, they are discriminated against because of their social class since only the core class such as war veterans receive any benefits.

CONCLUSION

North Korea, as it became an ageing society, enacted the Elderly Protection Law in April 2007 to ensure the health and life of the elderly. As for the law's contents, it imposes a primary duty to support the older person on to children and others who are obligated to support family, and the law provides for the state's duty to support only as supplemental and limited to workers who have no family support provider and cannot live on their own.

The survey on how the Elderly Protection Law is applied in practice shows that in reality virtually none of the measures to provide for support and to ensure health for the maintenance of basic living was implemented, not to mention those provisions to promote cultural life and social activities under that law. Ultimately, if children do not take care of their parents, it's not worth relying on the state's support and there is no measure to maintain a living in any other way. Even amidst such a situation, discrimination that bestows special favours to certain core class members such as persons of merit or war veterans was the only thing confirmed by the survey.

Above all, it raises a serious concern that the right to life of a vulnerable group is directly implicated when the pension system under the Elderly Protection Law, the Social Security Law and the Socialist Labour Law as well as the free medical service system boasted by North Korea all fail to function properly.

Disability rights

INTERNATIONAL NORMS ON HUMAN RIGHTS OF DISABLED PERSONS

The UDHR states in Article 1 that ‘all human beings are born free and equal in dignity and rights’, and in Article 22 that ‘everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality’.

Disabled persons naturally have the rights stated above. The Declaration on the Rights of Disabled Persons, which was adopted without voting by the UN General Assembly on 9 December 1975, stipulates that ‘disabled persons have the inherent right to respect for their human dignity’. The representative international rule that states the detailed rights of disabled persons is the CRPD. This UN human rights treaty protects the rights and dignity of persons with disabilities, including physical, psychological and intellectual disabilities, and was adopted by the UN General Assembly on 13 December 2006 and came into force on 3 May 2008.¹⁶¹ It consists of a preamble and 50 provisions. In terms of general principles, Article 3 states eight principles:

1. respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
2. non-discrimination;
3. full and effective participation and inclusion in society;
4. respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. equality of opportunity;
6. accessibility;
7. equality between men and women; and
8. respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identity.

Article 4 ensures and promotes the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability as general obligations of States Parties and stipulates specific details that States Parties should fulfil.

¹⁶¹ South Korea signed the Convention on the Right of Persons with Disabilities on 30 March 2007 and ratified this Convention on 11 December 2008 with reservations in relation to Art 25(e) of this treaty. Article 25(e) is about life protection. This treaty came into effect on 10 January 2009. The main contents of this treaty are in KBA, *2012 Report in Human Rights in North Korea*, 291.

NORTH KOREA'S DISABLED PERSONS PROTECTION LAW

Meanwhile, North Korea adopted the Disabled Persons Protection Law as Political Directive No 3835 of the Standing Committee of the SPA on 18 June 2003, before the aforementioned treaty was adopted. It consists of 54 articles in six chapters:

- Basics of Disabled Persons Protection Law (Chapter 1);
- Recovery of Disabled Persons (Chapter 2);
- Education of Disabled Persons (Chapter 3);
- Cultural Life of Disabled Persons (Chapter 4);
- Working Life of Disabled Persons (Chapter 5); and
- Guidance and Control of Protection Work of Disabled Persons (Chapter 6).

As shown in each chapter, the aim of this law is to contribute to providing a more favourable life environment and conditions for persons with disabilities by rigorously establishing a system and order in their rehabilitation treatment, education, cultural life and work (Article 1).

When compared to the CRPD, which is an international human rights norm, North Korea's Disabled Persons Protection Law has its problems. It has been pointed out that the law does not proclaim the principle of non-discrimination, which is the essence of the CRPD, and also that it does not include persons with intellectual or sensory disabilities, something that is covered by the CRPD, by defining disabled persons as citizens who are hindered for long in leading a normal life due to their limited or lost physical functions (Article 2).¹⁶²

Meanwhile, North Korea signed the CRPD of the United Nations on 3 July 2013. As of April 2014, it had not ratified the treaty, but if it does hereafter, then it is predicted that North Korea would revise the Disabled Persons Protection Law, reflecting the contents of the CRPD. According to a newspaper (*Choson Sinbo*), the organ of the General Association of Korean Residents in Japan (*Jochongryon*), North Korea revised the Law on 6 December 2013 in order to adjust disabled people's welfare to the international standard.

The full text of the revised law has not been made public, but according to a newspaper (the *Choson Sinbo*) report, Hyon Jung, the chief of the Chosun Disabled League Central Committee, who directs North Korea's welfare work for disabled persons, said that 'the revision of the law was to further expand and develop projects for the protection of the disabled in line with social development and global trends'. In the revised Law, an article stating that it will establish a 'sponsored fund for disabled persons' was added, reflecting the contents of the CRPD of the United Nations, and it also includes content that aims to increase investment in welfare work for disabled persons. Also, buildings and facilities will be designed in such a way that disabled persons can use them conveniently and an environment will be created where disabled persons can actively participate in social activities. It is understood that the Law has stated it will improve the way in which disabled persons are registered,

162 More specific content can be found in Lee Gyu-chang, 'Legal Tasks ahead for Promoting Human Rights of North Korean Persons with Disabilities – upon the Convention on the Right of Persons with Disabilities of North Korea' (2103) 25(2) *The Korean Journal of Unification Affairs*, Whole Volume Number 60, Institute for Peace Affairs, 9–10.

so that they receive an equal standard of education to non-disabled persons, and guarantee the provision of scholarships to students with disabilities.¹⁶³

PRESENT SITUATION OF DISABLED PERSONS AND RECENT PROTECTION ACTIVITY

The 2012 Report on Human Rights in North Korea revealed that in 1999 the population of disabled persons in North Korea was 763,237 comprising 3.41 per cent of the entire population, which was based on the disclosed by the World Association of Milal, which had obtained the results of North Korea's survey on the actual condition of disabled persons from the Chosun Disabled Persons Support Committee.¹⁶⁴

However, the aforementioned survey result was from approximately 15 years ago, and changes in the meantime are not known. The recent condition of disabled persons in North Korea was revealed through Kim Mun-chol, the vice chairman of the Chosun Disabled League Central Committee and also the delegation of North Korea, which for the first time participated in the 14th London Paralympics, which ended on 10 September 2012.

According to Mr Kim, as the result of a sample survey of disabled persons that was conducted in November 2011, the population of disabled persons in five categories of sight, hearing, limbs (extremities), mentality (including intelligence) and compound disability reached 5.8 per cent. The population of disabled persons, which was 3.41 per cent of the entire population, increased considerably to 5.8 per cent in approximately 12 years, and the specific reasons for this have not been found. Meanwhile, according to Mr Kim, North Korea ran an organisation for protecting disabled persons by setting up emergency disabled people's protection committees in the central region and each city, and county next year, following the Disabled Persons Protection Law, adopted as political directives by the Standing Committee of the SPA in June 2003. He also said that the Chosun Disabled League Central Committee, established in July 1998, made efforts towards the psychological and physical recovery of disabled persons, activities to guarantee social status, establishment of no-disability environment and prevention of disability, and that the Chosun Disabled Sports Association was also organised under the league in 2010.¹⁶⁵

As mentioned above, North Korea sent a team of 24 athletes to the London Paralympics on 30 August 2012 for the first time, which was before it signed the CRPD. It is said that, in March 2013, it established the Chosun Disabled Children Recovery Centre, which is a specialised facility for the treatment and education of disabled children and that it started the Chosun Hearing Impaired Recovery Centre, which seems to be a welfare facility for deaf people. Also, it became known that it is building the Pyongyang 'Dongdaewon Disabled Gym', which removed thresholds and stairs for the first time in North Korea in August 2013, and it also received membership eligibility for the International Paralympics Committee in November 2013.¹⁶⁶

163 'North Korea legislated Disabled Persons Protection Law according to the international standards' *Yonhap News* (6 December 2013).

164 KBA, *2012 Report on Human Rights in North Korea*, 293.

165 'The head of the North Korean Paralympics reports that the ratio of disabled people is 5.8%' *Yonhap News* (10 September 2012).

166 *Ibid.*

North Korea’s aforementioned recent activities relating to protecting disabled persons are deemed to be a way of dispelling criticisms from the international community while receiving financial support from the international community by assisting disabled persons.

ACTUAL APPLICATION OF THE DISABLED PERSONS PROTECTION ACT

As discussed above, even though North Korea revised the Disabled Persons Protection Act in December 2012, the full text of the amendment has not been disclosed. This research explores the extent of real-life implementation of the Disabled Persons Act provisions, enacted by the North Korean government, through a survey of North Korean defectors.

Recognition of Disabled Persons Protection Act

Responses to the question about North Korean residents’ level of awareness of the enactment of the Disabled Persons Protection Act showed that only nine out of 103 defectors who escaped after the Act came into force were aware of its enactment, as shown in Table 120. As stated above, while the North Korean government has self-promoted its activities for the protection of persons with disabilities in the international realm, the government has not informed the actual beneficiaries of such protection in North Korea about the enactment of the Disabled Persons Protection Act.

Table 120: Are you aware of the fact that the Disabled Persons Protection Act was enacted in 2003 by the North Korean government in order to provide favourable living conditions with regard to rehabilitation, education, cultural life and work for persons with disabilities?

Response	Number of respondents	Percentage (%)
Yes	9	8.7
I don’t know because I escaped before the Act’s enactment	2	1.9
I don’t know even though I escaped after the Act’s enactment	92	89.3
Total	103	100

Welfare and amenities for disabled persons

According to the Disabled Persons Protection Act, the state must organise specialised or general treatment institutions for persons with disabilities where necessary (Article 11) and medical facilities and related institutions must be at the disposal of every person with disabilities within the jurisdiction and must register them according to the different types of disability (Article 10). Also, medical facilities and related institutions must ensure a comprehensive free treatment system for persons with disabilities (Article 9). However, the absence of a medical system that can actually benefit persons with disabilities was evident according to the survey results, which showed 3.9 per cent of respondents who said that adequate local medical institutions are available, while 22.3 per cent answered that medical institutions are unable to provide much help owing to their insufficient numbers (Table 121).

Table 121: Are there specialised medical facilities for the treatment of persons with disabilities?

Response	Number of respondents	Percentage (%)
There are enough medical facilities in local areas	4	3.9
There are medical facilities; however, the number of medical facilities is insufficient	23	22.3
There are no medical facilities	45	43.7
I don't know	31	30.1
Total	103	100

In relation to awareness of special education systems specifically designed for persons with disabilities, 22.3 per cent of respondents said that they were aware of them, which was a higher percentage than for medical facilities, and most respondents answered that there are schools for the deaf and schools for the blind. Nine special education schools for the hearing impaired and three special education schools for the visually impaired are known to exist in North Korea (Table 122).¹⁶⁷

In North Korea's periodic report to the UN in 2009, it claimed that deaf and blind children received national scholarships in special education schools and children with other disabilities were included in the general education system.¹⁶⁸ However, when asked whether there were any special benefits or disadvantages for the disabled to attend school, 42.7 per cent respondents answered 'no', which is higher than the 7.8 per cent who said 'yes' (Table 123). Furthermore, seven respondents stated that it is not feasible for persons with disabilities to attend schools in reality.

Table 122: Do you have any knowledge about specialised educational facilities for persons with disabilities?

Response	Number of respondents	Percentage (%)
Yes	23	22.3
No	39	37.9
I don't know	41	39.8
Total	103	100.0

Table 123: Do persons with disabilities encounter any special benefits or disadvantages in attending school?

Response	Number of respondents	Percentage (%)
Yes	8	7.8
No	44	42.7
I don't know	51	49.5
Total	103	100.0

167 KBA, *2012 Report on Human Rights in North Korea*, 303.

168 DPRK, 'National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1', 27 August 2009; NHRCK, 'National Human Right Report of DPRK regarding 2009 Working Group on the Universal Periodic Review (UPR) and Reference for ROK Government, NGO, and INGO', 20.

Article 24 of the Disabled Persons Protection Act addresses the cultural life of persons with disabilities as an important project, which affords full enjoyment of cultural and emotional life and further states that ‘sports and cultural education institutions and applicable institutions must systematically organize and implement physical, cultural and entertainment activities’. However, only one respondent answered that they had heard of such institutions in Pyongyang (ID 046(2014)) responding to the question about awareness of sports or cultural institutions for persons with disabilities. Such a response was surely foreseeable considering North Korea’s lack of necessary medical and educational facilities for persons with disabilities, as shown above.

Article 14 of the Disabled Persons Protection Act requires health and cultural administrative institutions and other related institutions to systematically produce and guarantee assistive devices such as adjustment devices, wheelchairs, glasses and hearing aids, and requires qualitative production of assistive devices for easy use. However, concerning sufficient distribution of such assistive devices, only three respondents (2.9 per cent) answered that assistive devices are sufficiently provided, indicating an extremely inadequate supply of assistive devices for persons with disabilities (Table 124).

Table 124: Are assistive devices for persons with disabilities such as adjustment devices, wheelchairs, glasses and hearing aids sufficiently provided?

Response	Number of respondents	Percentage (%)
Provided sufficiently	3	2.9
Provided insufficiently owing to the lack of availability	65	63.1
I don’t know	35	34.0
Total	103	100

In response to the question whether they had seen or heard about any installation of accessible facilities or equipment for roads, buildings, transport or communication systems, only two respondents (two per cent) answered ‘yes’ in the 2012 survey and three respondents (2.9 per cent) answered ‘yes’ in the 2014 survey, which shows little difference.

Concerning whether they had seen or heard about a designated day for persons with disabilities and the holding of special events, only one person responded that they had seen it on Central TV. In addition, regarding knowledge of existing special considerations or disadvantages for persons with disabilities, 96.1 per cent answered that there are neither special considerations nor disadvantages, which suggests an actual lack of special considerations and measures for persons with disabilities, in contrast to the provisions of the Disabled Persons Protection Act (Table 125). One respondent mentioned cases of home telephone installation for disabled veterans, which confirmed the existence of discrimination among persons with disabilities as it evidences favour towards disabled veterans in accordance with Article 7 of the Disabled Persons Protection Act. Furthermore, one respondent answered that a train provided seats for persons with disabilities.

Table 125: Do you know anything regarding special considerations or disadvantages for persons with disabilities?

Response	Number of respondents	Percentage (%)
There are disadvantages	4	3.9
There are neither considerations nor disadvantages	99	96.1
Total	103	100

Employment and labour protections

Chapter 5 (Articles 30–41) of the Disabled Persons Protection Act contains provisions with considerations for persons with disabilities concerning labour. Specifically, Article 32 states: ‘Institutions, corporations, and organisations must strategically place persons with disabilities according to the degree of disability, gender, age, and physical constitution. Employers in these circumstances must sufficiently consider the opinions of persons with disabilities.’

In answer to the question regarding existence of national policies that require employment of persons with disabilities, 91.3 per cent said ‘no’ or ‘I don’t know’ as shown in Table 126. Two out of ten respondents answered that there is a policy for disabled veterans (IDs 046, 051(2014)), and others responded that there are amenities and light labour opportunities for persons with disabilities.

Table 126: Are there any national policies that require the employment of a certain number or percentage of persons with disabilities?

Response	Number of respondents	Percentage (per cent)
Yes	10	9.7
No	51	49.5
I don’t know	42	40.8
Total	103	100

Article 34 of the Disabled Persons Protection Act requires appropriate working conditions for persons with disabilities and prohibits forced labour of persons with disabilities without providing the necessary facilities. Also, Article 35 prohibits disabled people under the age of 16 from working. Article 36 limits labour to eight hours per day, which can be decreased according to the degree of disability, while Article 37 requires the guarantee of sufficient rest for persons with disabilities. However, in response to the question concerning special considerations or protection policies with work hours, breaks and facilities for persons with disabilities, 24 respondents (23.3 per cent) answered ‘yes’ and the same number said that people with disabilities are treated equally to people without disabilities, which suggests that facilities for people with disabilities vary among different workplaces (Table 127). Among the respondents who answered ‘yes’ to the special consideration for work hours, some answered ‘four hours’ and others answered ‘six hours’ for the working hours of persons with disabilities, indicating varying work hours among different workplaces.

Table 127: Are there special considerations or protective systems regarding the working hours, breaks and facilities for persons with disabilities?

Response	Number of respondents	Percentage (%)
Yes	24	23.3
Treated equally to persons without disabilities	24	23.3
Received disadvantages	6	5.8
I don't know	49	47.6
Total	103	100

Fifteen respondents (14.6 per cent) responded negatively to the question whether persons with disabilities under the age of 16 are required to work, which confirms that some workplaces employ persons with disabilities under the age of 16. To the question regarding the existence of special considerations for recruitment, including national examinations, driver's licence tests or other qualification tests, six respondents (5.8 per cent) said 'yes' including two who had no specific knowledge and four who answered that there are braille books (IDs 046, 048, 060, 079(2014)).

Concerning the degree of food distribution for persons with disabilities, the answer 'yes' was the most prominent, following the biggest number of the answer 'I don't know'. Yet 13 respondents (12.6 per cent) mentioned that less than the standard amount is apportioned to persons with disabilities and four people said that rather more than the standard amount is given to persons with disabilities. Article 2(2) of the Disabled Persons Protection Act states: 'the state is obligated to respect the personhood of persons with disabilities and to guarantee their social and political rights, freedom and interests, the same as for healthy residents.'

The Disabled Persons Protection Act ensures subsidies for persons with disabilities who have entirely lost the ability to work (Article 40) and stable living conditions at health care facilities or nursing homes according to their decision (Article 41). However, responses to the question concerning subsidy distributions and the social security system revealed poor implementation of the provisions, with 36 respondents (35 per cent) who answered 'no' outnumbering 26 respondents (25.2 per cent) who answered 'yes' (Table 128). Even those who responded 'yes' included answers that the benefits only apply to disabled veterans (IDs 018, 068(2014)); the subsidy is less than the price of two packs of cigarettes (IDs 075(2014)) or less than the price of 1kg of rice (ID 079(2014)); and that the subsidy amount is insufficient for minimum living expenses (ID 094(2014)).

Table 128: Is there a system for subsidy distribution or ensured living at healthcare facilities or nursing homes for persons with disabilities who have entirely lost their ability to work?

Response	Number of respondents	Percentage (%)
Yes	26	25.2
No	36	35.0
I don't know	41	39.8
Total	103	100

Discrimination in freedom of residence

One of the most representative examples of discrimination against persons with disabilities has been restriction of residence. The 2014 survey on human rights in North Korea confirmed continuing restrictions of residence for persons with disabilities, as 59.2 per cent of respondents answered that persons with disabilities cannot reside in Pyongyang or other big cities, while only 14.6 per cent responded ‘no problem’ to a question of the possibility for persons with disabilities to reside in Pyongyang or other big cities (Table 129). Moreover, 33 per cent answered that cases of forced moves for persons with disabilities exist regardless of their desires.

Table 129: Is it possible for persons with disabilities to live in Pyongyang or other big cities?

Response	Number of respondents	Percentage (%)
No problem	15	14.6
They cannot live in Pyongyang	48	46.6
They cannot live in other big cities	13	12.6
I don't know	27	26.2
Total	103	100

Killing of infants with disabilities

The negative perception towards persons with disabilities in North Korea can be affirmed through its official publications. The *Reference Book for Law Enforcement Officials*, published by the People's Safety Agency Press in 2009, recounts a mother of three daughters who delivered another daughter and intentionally left the newborn unfed after the midwife had gone, upon realising that the baby has physical disabilities from observing improper leg movements, causing the death of the infant. The book explained how the mother should not be criminally charged for the killing of an infant with disabilities since such action shows no ulterior motive or purpose.¹⁶⁹

The survey results also showed that 20 respondents (19.4 per cent) answered negatively to the question whether the action of killing infants with disabilities is punishable.

A question about awareness of or witnessing actual killing or killing from intentional neglect of infants who are born with disabilities was purposely asked to confirm the occurrence of infanticide owing to disability, to which 12 respondents (11.7 per cent) said ‘yes’. This result did not differ from the results of the 2012 survey, where 12 respondents (11.9 per cent) answered positively to the same question. Furthermore, answers included a comment that infants with disabilities are killed by the hospital, not the parents, by putting them face down (ID 096(2014)).

169 *Reference Book for Law Enforcement Officials* (People's Safety Agency Publishing Company 2009), 88. For the reader's reference, this book describes cases and situations that are likely to happen and provides solutions. A ‘secret’ mark at the top left of the book confirms that the book is strictly confidential.

CONCLUSION

According to the Report on Human Rights in North Korea, previously published by the KBA, North Korea has not improved its special considerations or measures for persons with disabilities despite the enactment of the Disabled Persons Protection Act in 2003. However, North Korea has started taking visible action by sending its very first team to the Paralympics in August 2012, establishing the Chosun Disabled Children's Recovery Treatment-Oriented Facility for treatment and education of children with disabilities, and launching the Chosun Hearing Impaired Recovery Treatment-Oriented Facility, which seems to be a welfare facility, in March 2013. In addition, North Korea signed the CRPD on 3 July 2013 and amended the Disabled Persons Protection Act to conform to the CRPD on 6 December 2013. Although these measures can be regarded as North Korea's acknowledgement of worldwide criticism and its effort to obtain international aid, it can also be considered the most notable effort for improvement since the enactment of the Disabled Persons Protection Act.

However, a survey of the specific application of the legislative provisions revealed no significant improvement compared to previous years. The survey in 2014 could not reflect the revised Disabled Persons Protection Act as it was still undisclosed, and inevitably was only able to analyse the current application of legislative provisions based on the previous Disabled Persons Protection Act. The survey results confirmed continuing shortcomings in practice for the given legislative provisions in the areas of welfare, medical and educational facilities, supply of assistive devices, employment and labour rights, and social security system for persons with disabilities. The results revealed no significant improvement in residence restrictions in Pyongyang or other big cities, along with forced relocation for persons with disabilities, and also affirmed cases of infanticide of newborns with disabilities.

Nonetheless, hope remains for North Korea to introduce actual measures for the improvement of the rights of persons with disabilities according to the revised Disabled Persons Protection Act, which conforms to the CRPD.

Discrimination based on family background

INTRODUCTION

The international community enacts various international human rights covenants and monitors human rights practice in individual countries to secure the right of all persons to be free from discrimination based on social status. Under Article 7 of the UDHR, 'All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination'.

Article 26 of the ICCPR states that 'All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. Article of 2(2) of the ICESCR provides that 'the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant

will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

The UN has pointed out that North Korea’s utilisation of discrimination based on social status and *songbun* as a tool to suppress the people’s resistance to political power was evident from the report of the Special Rapporteur on the DPRK, as well as from the report of the COI, and pressed for its improvement. However, North Korea insisted that it guaranteed equal rights for all residents in its second periodic report on the ICCPR on 25 December 1999. Moreover, in the state report (A/HRC/WG.6/6/P/1) submitted to the 6th Session of the UPR Working Group in the UN HRC, North Korea claimed that ‘the Democratic People’s Republic of Korea fully guarantees equality on the basis of unity and cooperation among the people. No one shall be discriminated against on the basis of race, color, sex, language, religion, education, occupation and status, wealth, and all people shall exercise equal rights in all areas of the state and public activity’. Likewise, Article 65 of the Constitution of the DPRK provides that ‘citizens, in all areas of social life of the country, have the same rights’, asserting the equal rights of all residents as a formal matter.

Yet North Korea implements a socialist class system that discriminates against individuals according to one’s social background. North Korea has conducted multiple nationwide surveys mainly concerning politics, social status and functions, political tendencies, participation in anti-government organisations, social background and social rank.¹⁷⁰ Based on the results of the nationwide surveys, the North Korean government categorised and managed all residents according to three strata and 51 classes, namely the core class (core stratum), the basic class (agitated stratum), who mostly belong to the middle stratum, and the complex class (wavering and hostile stratum), who are perceived as hostile to the regime.¹⁷¹ Such social statuses are inherent, thus remain unaltered unless one significantly contributes to the country or the family of Kim Il-sung.

Constituting 28 per cent of the population, the core class is the ruling stratum that leads the state system, comprising Kim Il-sung, Kim Jong-il, his family and their relatives, along with the anti-Japanese revolutionaries and their families, and the families of those killed in the Korean War. They live in the big cities such as Pyongyang, and enjoy preferential treatment in terms of recruitment to the Party, the government and high-ranking military positions, as well as in the areas of education, promotions, distribution, housing and health care.

The basic class accounts for 45 per cent of the population. The social background of the basic class is considered neither good nor bad, and it is mostly composed of blue-collar workers, including entry officials (including some mid-level officials), general labourers, farmers, clerks and their children, and lower-middle level professionals. Some may experience elevation of status to the core class under exceptional circumstances by making significant contributions.

The complex (wavering and hostile) class constitutes the remaining 27 per cent of the population. Those who are categorised in the complex class and their families are discriminated against in

170 Kim Byeong-ro and Kim Seong-chul, ‘Unfair System and Politic and Society’s Implication in North Korea’ (KINU 1998), 27.

171 KINU, *Report on Human Rights in North Korea* (2007), 120.

all areas of social life, including employment, education, housing and medical benefits under an implicative system. This class consists of pro-Japanese collaborators during the colonial period, landlords and merchants and their families, traitors, South Korean POWs and their families from the Korean War, returned North Korean POWs and their descendants, and anti-party, anti-revolutionary persons, all of whom are stigmatised as bourgeoisies, reactionaries or counter-revolutionaries. They are alienated from society and considered targets for special inspections, deprived of opportunities such as college education and promotion, and discriminated against in job placements and housing.

Songbun is hereditary in North Korea. Cases certainly exist where a core class or basic class member is punished for political crimes, resulting in an immediate fall to the complex class, or where a basic class member rises to the core class after making a significant contribution. Such shifts between classes are rare, however. Most of the respondents in the survey regarded North Korea as a hierarchical society (Table 130).

Table 130: Do you think North Korea is a hierarchical society?

Response	Number of respondents	Percentage (%)
Yes	85	82.5
No	15	14.6
Others	3	2.9
Total	103	100

HUMAN RIGHTS VIOLATIONS AND CASES OF DISCRIMINATION

The North Korean government discriminates in providing opportunities in education, joining a political party or army, employment, promotion and housing according to one’s state-assigned social class and discriminates in all areas of social life from social mobility to law enforcement. To the question, ‘which class is considered the worst in North Korea?’ responses included: landlords, merchants, pro-Japanese descendants, defectors to South Korea, members of the security corps during the Korean War, families of traitors, descendants of South Korean POWs and political criminals.

Persons in the lower state-assigned social class experience discrimination and are disadvantaged in society. To the question whether those in the lower state-assigned social class experience discrimination in college education, job placements, promotion, housing and marriage, 102 respondents (99 per cent) replied positively, as shown in Table 131. In Table 132, in answer to the question whether persons in the upper state-assigned social class have advantages in education, jobs, rations, housing and health care, 79 respondents (76.7 per cent) replied affirmatively. Concerning examples of discrimination for lower state-assigned social class, most respondents answered marriage, joining the Party, college education, job, promotion and military service. The survey results confirm that North Korea is a hierarchical society that discriminates against its people based on their state-assigned social classes.

Table 131: Is there discrimination with regard to education, job placements, promotions, housing and marriage for persons of the lower state-assigned social class?

Response	Number of respondents	Percentage (%)
Yes	102	99
No	1	1
Total	103	100

Table 132: Are there advantages in education, jobs, rations, housing and health care for persons of the upper state-assigned social class?

Response	Number of respondents	Percentage (%)
Yes	79	76.7
No	24	23.3
Total	103	100

However, as a market economy has emerged in North Korea in recent years, money is increasingly becoming more important than the state-assigned social class. Table 133 shows that 64 respondents answered 'yes' in response to the question, 'Is it true that a person from a lower state-assigned social class would be free from discrimination in jobs, army, education, punishment and marriage if he or she has money?' In addition, 49 respondents (47.6 per cent) replied 'yes' when they were asked if they think money is more important than state-assigned social class in North Korea. Only 19 respondents (18.4 per cent) said that state-assigned social class was more important than money.

Table 133: Is it true that these days a person from a disadvantaged state-assigned social class would be free from discrimination in jobs, the army, education, punishment and marriage if he or she has money?

Response	Number of respondents	Percentage (%)
Yes	64	62.1
No	24	23.3
I don't know	14	13.6
Others	1	1.0
Total	103	100

Table 134: Is it true that money is considered more important than state-assigned social class in North Korea nowadays?

Response	Number of respondents	Percentage (%)
Yes	49	47.6
Both money and state-assigned social class are important	34	33.0
State-assigned social class is more important than money	19	18.4
Others	1	1.0
Total	103	100

Survey respondents replied affirmatively to the question whether money is considered more important than state-assigned social class in North Korea nowadays in Table 134 above. Some said that people with money can do anything that they want nowadays in North Korea (IDs 007, 028, 037 (2014)) and that money solves all problems (IDs 061, 099 (2014)). The respondents testified that people with money are not subject to discrimination even if they are from a disadvantaged state-assigned social class (Table 135).

Table 135: What does having money mean in North Korea?

ID	Response
ID 015(2014)	Money solves issues in education or marriage.
ID 036(2014)	Having money frees one from discrimination in college or the workplace.
ID 052(2014)	Money makes even promotion possible.
ID 053(2014)	Although I am from a disadvantaged state-assigned social class, I attended a college by paying a bribe.
ID 076(2014)	With money, people can enjoy freedom of occupation and education.
ID 079(2014)	By paying money, even children of a North Korean defector were able to move their residence from a rural area to the city of Pyongsong.

Discrimination in college admissions

Persons from a disadvantaged family background or lower state-assigned social class are discriminated against in the college admission process. As shown below Table 136, 48 respondents (46.6 per cent) answered ‘yes’ and 47 respondents (46.0 per cent) said ‘no’ when they were asked if a person from a disadvantaged family background or lower state-assigned social class can enter college. These close-to-a-tie responses affirm that being a member of a disadvantaged state-assigned social class does not deter one from attending a college. Some North Korean defectors said that college entrance was possible with money (IDs 028, 066(2014)), that persons from a disadvantaged state-assigned social class could enter only colleges in rural areas (IDs 042, 088(2014)) and that they could enter college in special cases (IDs 102(2014)).

Table 136: Can a person from a disadvantaged family background or lower state-assigned social class enter college?

Response	Number of respondents	Percentage (%)
Yes	48	46.6
No	47	46.0
I don’t know	2	1.9
Others	6	5.8
Total	103	100

Persons from a disadvantaged family background or lower state-assigned social class, however, cannot enter Kim Il-sung University, Kim Chaek University of Technology (IDs 069, 088(2014)), Politics and State Security University, which trains state security agents, Kim Jong-il Political Military University for military officers or the International University for diplomats and tradesmen. A North Korean defector said that college entrance is possible with money except for Kim Il-sung University

(ID 028(2014)). Some North Korean defectors testified that persons from a disadvantaged family background cannot enter prestigious colleges (ID 056(2014)), entrance possibilities depend on each college and top-tier universities were difficult for them to enter (ID 097(2014)).

Discrimination in job placement, housing and promotion

North Korea does not guarantee individuals the freedom to choose their occupation. Family background has a major influence on job placement in North Korea. The state determines and places individuals according to their state-assigned social class and education and they must work where they are placed. However, persons from a disadvantaged state-assigned social class are assigned to heavy labour workplaces such as coal mines, farms and forest industries. They are also discriminated against in housing upon job placement. Regarding the usual areas in which persons from a disadvantaged family background live, the respondents answered ‘Hamgyong Province, and mining, farming and forestry regions in Ryanggang Province’.

Persons from a disadvantaged state-assigned social class can rarely enter the Party or the army (Table 137). In response to the question ‘whether there were workplaces that persons from a disadvantaged family background could not enter’, 46 respondents (44.7 per cent) said ‘no’, 36 respondents (34.9 per cent) answered ‘yes’ and 21 respondents (20.4 per cent) replied that ‘money is more important than the family background’. With the collapse of the planned economy of North Korea and the expansion of the market economy, cases of entering the Party or the army by paying bribes appear to have become more common. North Korea, however, imposes strict job restrictions for persons from a disadvantaged family background. Regarding the question about some of the workplaces that persons from a disadvantaged family background cannot enter, respondents answered the state and military organisations, the prosecution and state security agency, administrative and foreign agencies (Table 138). Furthermore, they are not assigned to national infrastructure entities such as munitions factories, railways and power stations.

Table 137: Are there workplaces that persons from a disadvantaged family background cannot enter in North Korea?

Response	Number of respondents	Percentage (%)
Yes	80	77.8
No	11	10.6
I don't know	12	11.6
Total	103	100

Table 138: Can persons from a disadvantaged family background enter the Workers' Party of Korea or the military?

Response	Number of respondents	Percentage (%)
Yes	36	34.9
No	46	44.7
Money is more important	21	20.4
Total	103	100

Persons from a disadvantaged state-assigned social class are rarely promoted (Table 139). In response to the question whether persons from a disadvantaged family background experience limitations in promotion, 88 respondents (85.4 per cent) said ‘yes’. Research respondents testified that even very competent individuals cannot reach entry-level political officer positions such as Party secretary, and are promoted to assistant manager, group leader positions or become farmers’ group leaders or foremen in the best cases.

Table 139: Are there limitations of promotion for persons from a disadvantageous family background?

Response	Number of respondents	Percentage (%)
Yes	88	85.4
No	4	3.9
I don’t know	11	10.7
Total	103	100

Discrimination under criminal law

Family background influences one’s treatment under the law. Equal crimes result in different penalties and sentencing according to each suspect’s family background. Fifty-six respondents (54.4 per cent) answered ‘yes’ in response to the question, ‘are you aware of or have you witnessed persons from disadvantaged family backgrounds receiving more severe punishment for the same crime committed as those from other classes?’ (Table 140).

Table 140: Are you aware of or have you witnessed persons from disadvantaged family backgrounds receiving more severe punishment after committing the same crime as those from other classes?

Response	Number of respondents	Percentage (%)
Yes	56	54.4
No	24	23.3
I don’t know	23	22.3
Total	103	100

Survey respondents testified about specific cases in response to the question of whether they are aware of or had witnessed cases in which persons from better family backgrounds were left unpunished or persons from disadvantaged family backgrounds received severe punishments (Table 141).

Table 141: Details of specific cases describing people from disadvantaged backgrounds who were subject to more severe punishment than those from better family backgrounds.

ID	Response
ID 002(2014)	For an illegal river crossing, a veteran was found not guilty but a regular citizen received six months in a labour training camp.
ID 027(2014)	For illegal metal trading, persons from disadvantaged family backgrounds were labelled as leaders and punished severely. They are a target for punishment.
ID 047(2014)	CVs in North Korea require an indication of family background, parent's and family members' jobs, which become a basis for discrimination.
ID 062(2014)	When I caused a fire in a sorghum field while cooking beans as a child, I was liable for 50kg because my brother was the Party secretary, but my friend had to pay for 100kg.
ID 069(2014)	A man who was to be assigned to a labour training camp for stealing food from a threshing floor after serving in the military was sent to the political prison camp because his father was found to be imprisoned in a political prison camp due to a slip of the tongue.
ID 073(2014)	A criminal from a favourable family background can be generously forgiven, but a criminal from a disadvantageous family background is treated in accordance with his background.
ID 079(2014)	For illegal viewing of a CD, one person from a favourable family background would be found not guilty and the other from a disadvantageous family background would be imprisoned in a prison camp.
ID 079(2014)	Anyone who makes degrading remarks about the Kim Il-sung family will be punished.
ID 089(2014)	Anyone who cuts out a photo of Kim Il-sung from a newspaper, says something against the Party or criticises socialism will be punished.

CONCLUSION

North Korea is a hierarchical society that disadvantages individuals based on their family background. The North Korean government has conducted numerous nationwide family background researches to clarify and separate anti-party individuals and counter-revolutionaries. The guidelines for the determination of family background were socio-political status and role, political tendencies, participation in reactionary groups, family origin and background.¹⁷² Based on the results of this nationwide research, the North Korean government categorised and controlled its civilians according to the three strata and 51 classifications: the core class (core stratum), the basic class (agitated stratum) and the complex class (wavering and hostile stratum). People who are potential threats to the regime are categorised as the complex class, which is strictly monitored and discriminated against. Such family background is hereditary and passed down to the next generation. Thus the entire society regards discrimination based on family background as destiny.

The 2014 survey on human rights in North Korea has once more verified the North Korean government's continuous violation of fundamental human rights through discrimination according to family background. Discrimination based on family background has become well institutionalised. The North Korean government excludes persons with a disadvantaged family background from joining the Party, the government and the army. They are discriminated against in education, joining the Party and the army, employment, marriage, promotion, housing and enforcement of the law.

However, the collapse of the planned economy and the rise of a market economy in North Korea have resulted in a partial breakdown of this discriminatory system. With money, even a person from

¹⁷² Kim Byeong-ro and Kim Seong-chul, 'Unfair System and Politic and Society's Implication in North Korea' (KINU 1998), 27.

a disadvantaged family background will not be discriminated against in education, joining the Party or the military, employment, marriage, promotion or housing. Without a doubt the North Korean government continues to violate basic human rights by maintaining its systemised discrimination based on family background. The North Korean government must abrogate discrimination based on family background and offer equal opportunities to all residents, regardless of their state-assigned social class, as recommended by the international community.

4.8 The right to food

Kim Woong-ki

Concept of the right to food

Article 25 of the UDHR¹⁷³ and Article 11¹⁷⁴ of the ICESCR¹⁷⁵ recognise freedom from hunger as a fundamental human right, and provide that everyone has the right to a standard of living adequate for the health and wellbeing of oneself and of one's family – including food, clothing, housing, medical care and social services. States must recognise and take appropriate steps to ensure that everyone has an adequate standard of living and that living conditions are continually improved. The Special Rapporteur on the right to food interprets this right as the right to have regular, permanent and unrestricted access to quantitatively and qualitatively sufficient food.¹⁷⁶

Thus, the right to food refers to the two conceptual elements that: (1) a person has the right to be free from hunger (in other words, to have sufficient food to maintain health and wellbeing); and (2) the state has a duty to recognise and take adequate measures to ensure that this right is met.

Therefore, a violation of the right to food results when: (1) an individual is suffering from starvation; and (2) the state either institutionally denies a person's effort to improve his condition or fails to take appropriate measures to ensure the right to food is met, even when the state institutionally recognises the person's effort. If, despite all its efforts, the state¹⁷⁷ cannot prevent a person from suffering from

173 Article 25 (1) of the UDHR provides as follows: 'Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.'

174 Article 11 of the ICESCR provides that: '1) The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognising to this effect the essential importance of international co-operation based on free consent; 2) The States Parties to the present Covenant, recognising the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed: a) to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources; and b) taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.'

175 North Korea joined the ICESCR in September 1981.

176 www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx.

177 This includes efforts to obtain foreign humanitarian aid.

starvation, the situation is deemed to be beyond human control and, thus, is not a violation of the right to food.

Violation of the right to food as a human rights issue in North Korea

If, in discussing the right to food as a human rights issue in North Korea, the concept, nature or scope of human rights violations are not precisely defined, misunderstandings such as the shortage of food itself being regarded as a violation of the right to food, or the tendency to view the right to food as being equivalent to the right to life, can occur. Due to the misuse of terminology, discussion of the right to food sometimes takes place as part of the discussion on social or civil rights, which causes confusion. Based on such confusion, and in light of attempts to highlight the right to food as a human rights issue in North Korea, some argue for unconditional food support without urging improved efforts from the North Korean government.

However, if the right to food has the two essential elements – the violation of individual rights and the breach of state duties – urging the North Korean government to improve the right to food should always come first; and, following this, if the North Korean government's efforts alone are insufficient, humanitarian aid from the international community, including the South Korean government, would then be needed. Furthermore, the economic cooperation between North and South Korea necessary for the recovery of the North Korean economy may be discussed from the perspective of a move towards reunification.

Socialist planned economy and violation of the right to food

In a capitalist economic system, the market determines food production and distribution, and everyone is permitted access to the amount of food appropriate to maintain their health and wellbeing, as well as to make personal efforts to improve their access to food. Where individuals do not have the capacity to meet their responsibility to feed themselves adequately, the state meets the right to food through a social welfare system.

Under a socialist planned economy, food production and distribution are decided not by the market but by state planning and, as such, it is a structure in which individuals cannot freely produce or distribute food; instead, people are forced to rely on the state production and distribution system. If the state production and distribution system operates well, the right to food is guaranteed, but if the system does not function well, violations of the right to food are much more likely to occur because the opportunity to access food through individual efforts is not readily available.

In North Korea, which doggedly adheres to a socialist planned economy, violations of the right to food arise not only from a shortage of food but also from structural problems within the production and distribution system.

Current situation regarding violation of the right to food in North Korea

INTERNATIONAL STANDARDS ON THE RIGHT TO FOOD

As we have seen, the right to food, derived from Article 25 of the UDHR and Article 11 of the ICESCR, includes the right of individuals to freedom from starvation and the right to enjoy adequate food to maintain health and wellbeing. From the perspective of the individual, the right to food should be construed, as in the Special Rapporteur's interpretation, as the right to have regular, permanent and unrestricted access to quantitatively and qualitatively adequate and sufficient food.

Therefore, with regard to the right to food, states should, first of all, institutionally guarantee the right of access to food; secondly, states should protect their citizens' right of access to food from deprivation by a third party; and thirdly, states should have a duty to provide a safety net for those who have difficulty in obtaining adequate food by themselves. The WFP recommends that at least 600g of food per person should be provided as a daily minimal standard.

NORTH KOREA'S CONSTITUTIONAL STANCE ON THE RIGHT TO FOOD

The North Korean Constitution provides that 'in the Democratic People's Republic of Korea the means of production are owned by the State and social cooperative organisations' (Article 20), 'the State provides all working people with every condition for obtaining food, clothing and housing' (Article 25), and that 'citizens work according to their abilities and receive distribution in accordance with the quantity and quality of their work' (Article 70). Food distribution is differentiated according to one's class and, in principle, one's class is determined by age and occupation. The food distribution classes range from the first (900g of food per person per day) to the ninth (100g); workers engaged in hazardous occupations and heavy labour are in the first class, general workers belong to the third class (700g), the elderly and housewives belong to the seventh class (300g), and infants under one year of age fall into the ninth class (100g). The ordinary residents' right of access to food was relatively well protected when the PDS, in which the state distributes food, operated well.¹⁷⁸

TYPES AND EXTENT OF RIGHT TO FOOD VIOLATION

The right to food in North Korea is violated when the standards of the international community and of North Korea itself are not met. According to the 2013 statistics of the NKDB (which conducts extensive investigations of North Korean human rights violation cases and produces a relatively meaningful statistical analysis), there were 1,557 cases of right to food violations accounting for 3.3 per cent of all cases (46,713 cases). Of those 1,557 cases, death from starvation accounted for 97.4 per cent (1,516 cases); illness from nutritional deficiency, 1.0 per cent (15 cases); suffering from starvation, 0.8 per cent (13 cases); and denial and reduction of food supply, 0.8 per cent (13 cases).¹⁷⁹ Such results may be due to the fact that the respondents tended to more frequently report cases

178 KINU, *Report on Human Rights in North Korea*, 2013, 261.

179 Yoon Yeo-sang et al, *Report on Human Rights in North Korea*, Database on Human Rights Violations in North Korea of the NKDB, 2013, 209.

involving death from starvation – the most serious of the right to food violations – and did not feel such a strong need to report more minor violations such as illness caused by nutritional deficiency. In reality, however, it is obvious that illness caused by nutritional deficiency, or similar violations, would make up a higher proportion of cases than death from starvation. Among 103 respondents to the KBA 2014 Survey on Human Rights in North Korea, 26 responded to the question, ‘was distributed food sufficient?’ and 22 of them (84.6 per cent) answered ‘no’, highlighting that a considerable majority of the respondents suffered from nutritional deficiency.¹⁸⁰

Death from starvation

Death from starvation is the most terrible situation resulting from the violation of the right to food. When the 1,516 cases of death from starvation in the NKDB survey were analysed by the period of their occurrence, the 1990s showed the highest proportion, accounting for 76.9 per cent (1,166 cases), and the 2000s showed a lower proportion, accounting for 14.6 per cent (221 cases). In the 1990s, a period of so-called Arduous March, North Korea faced terrible food shortages and the death toll from starvation was considerable. During that time, it is said that there were an estimated 0.3 to three million deaths from starvation due to food shortages and the collapse of the distribution system.¹⁸¹

Illness from nutritional deficiency

The most typical illnesses from nutritional deficiency are chronic malnutrition and pellagra,¹⁸² which occur due to extreme food shortages. If nutritional deficiency becomes chronic, the immune system is weakened and one becomes susceptible to diseases. Since illness from nutritional deficiency in North Korea occurs as part of daily life, people do not regard it as a human rights violation and there are fewer testimonies in relation to it.

Pain from nutritional deficiency

Cases where physical or emotional pain occurs due to nutritional deficiency are recognised as violations of the right to food even though illness does not result. However, there are relatively few testimonies regarding pain arising out of nutritional deficiency because having to cope with such pain has become a way of life in North Korea and is considered a more tolerable situation than illness caused by nutritional deficiency.

Refusal and reduction of food supply

Under the socialist state distribution system, food supply is a duty of the state. When the state does not provide food or reduces the amount of food to be provided, it means that the state is not

180 KBA, *2014 Survey on Human Rights in North Korea*.

181 See n 179 above, 215.

182 Pellagra is a disease of vitamin deficiency most frequently caused by a chronic lack of niacin (vitamin B3). Lack of niacin affects the digestive and nervous systems and skin. Symptoms include skin problems, diarrhoea and dementia. In 1907, pellagra occurred in epidemic proportions in the south of the US, where the staple food was corn. Poverty and consumption of corn were the most frequently observed risk factors since corn has no niacin. Meat such as beef or chicken is rich in niacin. Even though corn is the staple food of North Korea, it is not distributed sufficiently to North Koreans, and if they suffer pellagra along with chronic malnutrition, death may occur.

performing its basic duty. The food distribution system has collapsed in North Korea, where the right to movement is restricted, and North Korea's failure to distribute food has resulted in serious human rights violations, such as death from starvation.¹⁸³ In particular, the refusal to provide food or the reduction of the amount of food available in detention facilities is a more serious problem because personal liberty is not guaranteed there.

North Korea reduced the quantity of daily food distribution per person by 22 per cent from the average of 700g in 1985. In regional provinces, food distribution stopped in 1992, and the distribution system throughout North Korea had collapsed before 1995.¹⁸⁴ There was an attempt to expand the distribution system in 2005, but it failed. According to the KBA's 2014 survey, in response to the question 'have you received food from the food distribution centre from 2010 to 2012?', 66 out of 97 respondents (68 per cent) answered 'no'.¹⁸⁵

Currently in North Korea it is reported that, even in Pyongyang, only the working heads of households are supplied with food but the rest of their family members are not. This is the case even for the families of security agents who are regarded as secure beneficiaries of food distribution. In addition, it is said that the quantity of distribution has dropped to 380g since June 2012. Food shortages have somewhat eased since 2000, but over 70 per cent of North Korean residents still suffer from food shortages and 8.4 million people – 35 per cent of the entire population – are suffering from life-threatening malnutrition conditions.¹⁸⁶

TIME PERIODS FOR VIOLATIONS OF THE RIGHT TO FOOD

According to the periodical results of the survey regarding the 1,557 cases of right to food violations conducted by the NKDB, the violation cases occurred most intensively in the 1990s, when they constituted 76.1 per cent (1,185 cases), and the 2000s, when they accounted for 14.9 per cent (232 cases). This is because North Korea went through a severe food shortage in the 1990s and many deaths from starvation resulted. The frequency of deaths from starvation in the 2000s dropped to one in five compared to the 1990s, which showed that the food situation in North Korea had improved.¹⁸⁷ However, according to the KBA's 2014 survey, 103 respondents were asked 'have you seen or heard about deaths from starvation since 2010?' and 33 out of the 97 respondents answered 'yes'.¹⁸⁸

VIOLATIONS OF THE RIGHT TO FOOD BY REGION

According to the geographical results of the survey regarding the 1,557 cases of right to food violations conducted by the NKDB, North Hamgyong Province constituted 63.4 per cent (987 cases), South Hamgyong Province 14.1 per cent (219 cases), Ryanggang Province 3.8 per cent (59 cases), South Pyongan Province 3.7 per cent (58 cases), Gangwon Province 3.2 per cent (51 cases), North

183 See n 179 above, 210. A statistic shows that 68.3 per cent of cases regarding right to food violations (most are death from starvation) occur in victims' houses, which accounts for 1,064 cases. This means that even though the food distribution system collapsed, North Korean residents' right to movement was so restricted that escaping from North Korea to gain food was virtually impossible.

184 KBA, *2014 Survey on Human Rights in North Korea*.

185 *Ibid.*

186 KBA, *Report on Human Rights in North Korea*, 2012, 325.

187 See n 179 above, 210.

188 KBA, *2014 Survey on Human Rights in North Korea*.

Hwanghae Province 1.7 per cent (26 cases), South Hwanghae Province 0.6 per cent (9 cases), Jakang Province 0.8 per cent (13 cases), North Pyongan Province 1.3 per cent (21 cases) and Pyongyang 0.5 per cent (8 cases). A number of respondents did not give or could not remember the region in which violations took place, reducing the sample size for violations of the right to food by region from 1,557 to 1,451. The reasons why South Hamgyong Province and North Hamgyong Province show higher rates of right to food violations include the fact that most respondents were from these provinces.¹⁸⁹ However, it is more likely because the quantity of food production was very low due to its regional characteristic of being a relatively mountainous area, and because the North Korean government operates its distribution system in a discriminatory manner. Meanwhile, analysis reveals that North Hwanghae Province, South Hwanghae Province, North Pyongan Province and Jakang Province show lower rates because i) North Hwanghae Province and South Hwanghae Province are breadbaskets and ii) North Pyongan Province and Jakang Province are adjacent to the Chinese border, where the food situation is better than in other regions. Lastly, the percentage of cases of right to food violations in Pyongyang was very low because Pyongyang is categorised as a special area of distribution, allowing food to be consistently distributed, even during the Arduous March period.¹⁹⁰

The cause of right to food violations in North Korea

These days, famine resulting from natural disasters such as floods or drought can be alleviated with improved responses from governments and the international community. The famine in North Korea, which has continued to a greater or lesser extent since the 1990s, is not in itself the result of a natural disaster or from the disruption of aid from outside, but must be understood as the inevitable result of disastrous long-term policies.

If the amount of the food produced is more than the amount estimated to be needed, no one will die from starvation; accordingly, insufficient food production may result in famine. However, not all nations that fail to produce enough food for their populations suffer from famine; thus, shortages in food production cannot be a decisive reason for famine. The prolonged famine in North Korea should be considered caused by not only insufficient food production but also by other factors, as will be examined below.

SHORTAGE OF FOOD PRODUCTION

Insufficient grain production in North Korea

Since North Korea does not release official statistics regarding its amount of food production, in order to glean some statistics, there is no other way than to rely on the estimates of the Rural Development Administration in South Korea and the FAO. The statistics regarding grain production published by Statistics Korea in South Korea and the FAO are set forth in Table 142. Meanwhile, the FAO and the WFP have estimated that North Korea's annual (milled) grain demand quantity

189 *Ibid.* According to the analysis on the places of residence of the 103 respondents before defection, 53 respondents came from Hamgyong Province.

190 See n 179 above, 211–212.

amounted to 5,429,000 tonnes,¹⁹¹ approximately 5.4 million tons of grain production,¹⁹² consisting of 4,298,000 tonnes of food for 24.7 million of North Korea residents (174kg per person, per annum), 210,000 tonnes of seed, 120,000 tonnes of feed, 663,000 tonnes of loss and 137,000 tonnes of stock. Accordingly, it is estimated that North Korea is chronically insufficient in grain production.

Table 142: North Korea’s annual grain production (unit: 1,000 tonnes)

	1985	1990	1991	1992	1993	1994	1995	1996
Statistics Korea (KOSTAT)	4,193	4,020	4,427	4,268	3,884	4,125	3,451	3,690
FAO	5,841	6,257	8,814	8,681	9,137	7,215	3,805	2,592
	1997	1998	1999	2000	2001	2002	2003	2004
KOSTAT	3,489	3,886	4,222	3,590	3,946	4,134	4,253	4,311
FAO	2,864	4,420	3,852	2,942	3,879	4,211	4,393	4,485
	2005	2006	2007	2008	2009	2010, 2011	2012	2013
KOSTAT	4,537	4,484	4,005	4,306	4,108	Not published	4,676	4,806
FAO	4,645	4,675	3,892	4,701	4,454	4,227	4,450	4,920

The recent situation regarding supply and demand of food in North Korea

The FAO estimated that North Korea produced 4.45 million tonnes of food in 2012. In 2012, North Korea imported approximately 281,000 tonnes of food from China. The amount of grain brought in from outside North Korea, though difficult to quantify, was estimated at 410,000 tonnes, among which bilateral aid was made by China (220,000 tonnes of corn, 33,211 tonnes of rice) and Russia (34,000 tonnes of wheat), and multilateral aid (120,573 tonnes) through the WFP. It is estimated that a total of 5.2 million tonnes of food were supplied to North Korea and the amount of food shortage was estimated at 200,000 tonnes.¹⁹³

Even though the South Korean government had provided 300,000–400,000 tonnes of food almost every year as a form of loan, they stopped food aid in 2008 and did not supply free aid to North Korea through the WFP. In 2012, South Korea intended to provide North Korea with wheat and other grains as official aid for restoration of the flood damage in North Korea; however, such aid was not received because North Korea refused it. Small-scale humanitarian food aid projects made by non-governmental organisations were carried out.¹⁹⁴

It is said that North Korea imports approximately 300,000 tonnes of grain annually. The FAO and the WFP released a special report ‘Crop and Food Security Assessment Mission to the Democratic People’s Republic of Korea’ in November 2013. According to the report, the amount of grain

191 Kwon Tae-jin, ‘Food Supply of North Korea under Kim Jong-un Regime: Current Situation and Prospect’, Exim North Korea Economic Review by the Export-Import Bank of Korea (Korea Eximbank), Spring 2013, 13.

192 Kwon Tae-jin, ‘Insecure Food Situation in North Korea in the 100th anniversary of Kim Il Sung’s birth’, *Monthly North Korea Review*, April (Serial No 484) 2012, 80–85.

193 See n 191 above, 5–7.

194 *Ibid*, 7.

produced from the autumn of 2013 to the following spring was 5.03 million tonnes consisting of 1.90 million tonnes of rice, 2.25 million tonnes of corn and 0.5 million tonnes of potatoes. It was also estimated that the amount of grain to be consumed by the summer of 2014 in North Korea would be 5.37 million tonnes. Except for 0.3 million tonnes specified to be imported in the fiscal year of 2014 by the Ministry of Agriculture of North Korea, the absolute shortage of food amounted to approximately 40,000 tonnes. The report suggested that the international community should respond to the urgent need by providing international aid.¹⁹⁵

Causes of the shortage of food production

The shortage of grain production in North Korea is fundamentally attributed to the failure of policies carried out by the North Korean authorities.

First of all, growth of food productivity has been hampered by the inefficiency of the North Korean-style *Juche nongbub* (*Juche* agriculture). From 1960 to 1980, the agriculture of North Korea was more energy-intensive (electricity) and petroleum-intensive than that of South Korea. A framework for the modernisation of agriculture in North Korea is based on four principles: irrigation, chemicalisation, electrification and mechanisation. The agricultural development of North Korea was dependent on fuel imports at substantially less than the global market price from allied socialist nations such as the Soviet Union and China, abundant deposits of coal in North Korea, and the nationwide installation of an irrigation system run by hydropower from large-scale dams. The amount of chemical fertiliser used per unit area was far higher than that of South Korea. North Korea focused its full attention on single-crop farming including rice and corn and, as a result, these two items became the staple food of North Korea, meaning that North Korea could become self-sufficient in food.

However, as energy-intensive agriculture reached its limit and production began to stagnate in the 1980s, the North Korean government demanded terraced field (*darakbat*) cultivation and ‘close planting cultivation’. *Darakbat* cultivation increased, and the continued use of chemical fertilisers and close planting cultivation depleted the soil. Such an energy- and petroleum-dependent system faced a crisis when socialism collapsed in the late 1980s. As electricity generation drastically decreased, most irrigation systems that were run by electric power became useless, and the decreased use of chemical fertilisers resulted in low agricultural productivity. Furthermore, the useless irrigation systems began to offer less protection against droughts and floods. Deforestation, unavoidably, occurred on a large scale due to fuel demands. Accordingly, soil run-off continued and riverbeds got higher. As a result of all this, a series of droughts and floods took place continuously between 1995 and 1997 that completely disrupted North Korean society. Grain production dropped to around three million tons, which caused the starvation of millions. Although grain production was restored to the level of four million tons after 2002 due to good weather conditions, continued provision of fertiliser and pesticides by South Korea and international aid, it did not lead to an increasing trend.

Secondly, resources have not gone into grain production due to military-first politics and national defence policies. In the case of shortages of grain production, a nation should utilise available resources for the production of grains as an overriding consideration and, if it is still short, prioritise the utilisation of resources to import food. However, the North Korean government has instead used an enormous sum of money in order to develop nuclear weapons and missiles in order to maintain military

195 Radio Free Asia, 2 December 2013.

power. For instance, according to Seong Chai-ki, Director of the North Korean Military Research Division of the Korean Institute for Defence Analyses, domestic and foreign data reveals that North Korea spent around \$7.5bn on the development of nuclear weapons alone for the past 20 years.¹⁹⁶ Such a sum could buy 20 million tonnes of Chinese corn and is equivalent to the total amount of food distribution for all North Koreans for eight years, based on current food rations. Moreover, with the money that was used to develop nuclear weapons, if food shortage in North Korea is assumed to be 400,000 tonnes a year, the government could have filled the shortage of food for 50 years.¹⁹⁷

DIFFERENTIAL FOOD ACCESS RIGHTS

Even though grain production itself is insufficient, it must be observed that the numerous victims of starvation since the 1990s are victims of an unequal division system and that their victimisation cannot be attributed solely to an insufficiency of food. When the food shortage hit North Korea, the government differentiated people by class, region and job classification in respect of how much food they received. A policy evolved whereby only military officers, party leaders, the people in the munitions industry and Pyongyang citizens were given food, while the rest of the population was left outside of the food distribution system by neglect.¹⁹⁸ If the government had shared the burdens and pains of its residents, they could have survived; however, because it did not, the vulnerable classes of North Korean society were condemned to die from starvation.¹⁹⁹

Meanwhile, except for the Arduous March in the 1990s when food production was extremely low, the food shortage in recent years was 400,000–500,000 tonnes per annum, some seven to ten per cent of the total quantity of annual consumption. Had the government distributed food properly, lives could have been saved. However, the KBA's 2014 survey reveals that deaths from starvation continue: 33 of the 103 respondents replied that they had seen victims of starvation after 2010 and four respondents replied that they had seen seven victims in 2012.²⁰⁰ The fact that instances of starvation still exist means that ordinary residents, including the most vulnerable, continue to experience inequality which arises from structural inadequacies and systemic discrimination. Moreover, the vulnerable members of society, including farmers, are victimised not only by such a system of discrimination but also by the authorities and the military in various ways.

The impact of a dual-structured strategy: planned economy and market economy

When North Korea was faced with an overall food shortage after 1990, the government implemented the 1 July Improved Economic Management Measures of 2002. Under these measures, the North Korean authorities segregated the privileged economy (eg, political, military classes) from the resident economy and enforced policies which benefited the former but neglected the latter.²⁰¹

196 Seong Chai-ki, 'Listen to national security and defence of South Korea from a defence expert – Essence and sustainability of North Korea's parallel line between nuclear and economy', *Defence Ilbo*, 13 January 2014.

197 *Chosun Ilbo*, 20 March 2012; *Donga Ilbo*, 3 May 2012. It is calculated based on the investment expenses made at that time, which amounted to \$6.58bn.

198 In the KBA's 2012 survey, when asked: 'Were the number of rations and their quantity equally distributed to everyone in North Korea?' 88 (87.16 per cent) of respondents said 'no'.

199 KBA, *Report on Human Rights in North Korea*, 2012, 329.

200 KBA, *2014 Survey on Human Rights in North Korea*.

201 KBA, *Report on Human Rights in North Korea*, 2012, 327.

The present North Korean economy consists of state-planned mechanisms and market mechanisms. State-planned mechanisms include the following: the economy run by Office No 39 of the Workers' Party of Korea in order to raise funds such as Kim Jong-un's governing fund and Party operating expenses; the military economy operated by the Ministry of the People's Armed Forces in order to produce and trade munitions and to raise operating expenses for the military; the privileged economy run by the Party or the cabinet such as the special zone economy; and the resident economy operated by the cabinet.

On the other hand, market mechanisms include the market economy voluntarily formed by residents. Due to the dual-structured strategy, which maintains the coexistence of the state-planned economy and the market economy, the North Korean economy is compartmentalised and the rights of the privileged economy to access food are guaranteed in the distribution system. However, for those who are excluded from the privileged economy the rights to food are rejected or markedly denied. After the measures of 2002, most ordinary residents had no option but to buy food through the market; this resulted in a significant gap between the privileged class, who are able to purchase food at prices decided by the government, and ordinary residents, who must purchase food at a market price.

Food distribution inequality by social classes and regions

North Korea adopts a socialist planned economic system and food distribution system by providing in its Constitution that: 'the State and socially cooperative groups own the means of production. The State shall provide all the working people with all conditions for obtaining food, clothing and houses. Citizens work according to their abilities and are paid in accordance with the quantity and quality of their work.' Accordingly, the North Korean authorities have provided food according to the rules set by the PDS. In reality, however, the hierarchy of power determines who will receive food or who has priority in the distribution chain. While members of the privileged class, who are loyal to North Korea's dictatorial power, have discretion in food distribution and enjoy an exclusive and relatively stable food supply, more than 80 per cent of the population – ordinary residents who belong to the wavering or hostile class such as labourers and farmers – are excluded from the distribution system or lag behind in the priority list.²⁰²

Despite chronic food shortages, the residents of Pyongyang still have priority in respect of food distribution²⁰³ since most of them are part of the core class that maintains the system. However, in the aftermath of military provocations such as nuclear experiments, missile tests, the *Cheonan* warship's sinking, and the attack on Yeonpyeong Island, outside food aid was reduced sharply and long-term economic recession continued. As a result, even in Pyongyang there were privileged members of society who were supplied with enough food to feed their entire family while others received food only for the head of the household, forcing family members to make their living by trade. Other classes never received any food so all of the family members had to make their living by trade. Given that a number of

202 In the KBA's 2014 survey, when asked about discrimination in the distribution of food rations, 13 of 103 defectors answered that the privileged class, which includes Party officials, security agents, military officials, teachers, employees of Yangjeong business and joint corporations, received 100 per cent of their food rations. When asked how they obtained food when they were in North Korea, 19 (20.4 per cent) of 93 respondents answered that 'rations were distributed'. Only one respondent received 100 per cent of their food distribution and 18 received less than 30 per cent; the others purchased food in the market. Seventy-four respondents (79.6 per cent) replied that they never received food.

203 KBA, *Report on Human Rights in North Korea*, 2008, 234–235; KINU, *Report on Human Rights in North Korea*, 2012, 285.

people who depend on trade remarked that their livelihood was jeopardised when they were not able to trade because they were forced to work in construction and farming,²⁰⁴ it is presumed that the benefits of being a resident of the capital are reduced and are no longer as pronounced as before.

Table 143: Rations by social priority.

Priority	Persons included	Percentage of population	Rations
1	Central government / Pyongyang residents	5	Complete
2	Military personnel and their families	7	
3	Workers at munitions plants and state-owned enterprises and their families	20	Partial
4	Ordinary labourers	29	Minimal
Excluded	Farmers	39	None

Source: Good Friends Center for Peace, Human Rights and Refugees.

Between 1995 and 2000, the North Korean authorities displayed inappropriate behaviour such as ignoring decreases in food production or reducing food imports when outside food aid came in.²⁰⁵ After securing enough food to distribute to the core class of people who are absolutely necessary for maintaining the system, the North Korean authorities failed to secure food for vulnerable members of society. Instead, they spent the money saved on the privileged economy including nuclear weapons and missiles. Such behaviour is a deliberate violation of the right to food by using the distribution system as a means of controlling the people.

Recently, according to the *COI Report*, it was specified that:

‘North Korea has discriminately applied food access and distribution system only to the class necessary for the system maintenance and the preferable areas such as Pyongyang depending on the *songbun* system by using food as a means of control over its residents. During the great famine in the 1990s, North Korea concealed the collapse of the food distribution system, and ideologically brainwashed the residents to maintain the regime under the slogan of the “Arduous March”, causing the residents to miss every opportunity to survive on their own and impeding timely outside assistance. The residents who moved to other places in the State or abroad to find food or to work at a private market were punished. Grave doubt exists as to outside aid in that the number of victims of starvation increased due to inhuman conditions and the prevention of aid from being supplied to vulnerable groups or areas. North Korea used its available resources for military purposes such as nuclear development or for the Supreme Leader’s private goods or personal worship, violating its duty to use the resources for its residents in hunger. In the highly centralised North Korean regime, insufficient food production and distribution by policy decision-makers, including the supreme leadership, and failures of policy decisions in allocating budgets, including outside aid, are systematic,

204 Open Radio for North Korea, 27 June 2012.

205 KBA, *Report on Human Rights in North Korea*, 2006, 88.

extensive and constitute severe human rights violations, regardless of a natural disaster. This constitutes a violation of the right to life, and there is a possibility that mass starvation and violations of the right to life will continue to occur as long as the law and policy that infringe upon the right to food continue to exist after the 1990s.²⁰⁶

Pillage of farmers by government and military authorities

According to North Korea's planned economy and the food distribution system, farmers, in principle, engage in work at collective farms and 70 per cent of the total production from the farms is taken by the State. The rest is distributed to the farmers as their share. However, in reality, it is reported that the amount of food distributed to farmers at harvest season is not one third of the harvest but, rather, food for about three months. This happens because the North Korean authorities set a goal of producing six tons of rice, much higher than the actual rice harvest, which is two to three tons at best, after promising that two tons of rice will be given to farmers; however, when harvest season comes, the food distribution is made first to the General Bureau of Protective Force, the bodyguards of Kim Jong-un, espionage agencies targeting South Korea, and the SSD; the next distribution is made to the military. Food left after this distribution is given to farmers.²⁰⁷

It is reported that 'according to the internal document made by the leadership of the Workers' Party of Korea in the middle of March 2012, the Party admitted that the cause of death from starvation occurring this spring in South Hwanghae Province was due to the "excessive amount of mandatory food collection for the military"'.²⁰⁸ Another report states that 'thousands of deaths from starvation occur every year in South Hwanghae Province, known as the breadbasket of North Korea' and introduces the testimony of a North Korean defector who was formerly in charge of crop management in the People's Committee in Haeju, South Hwanghae Province that 'the famine is very severe and people would die from starvation if they did not steal rice at the harvest season. Under these circumstances, 30 to 40 people die from starvation every year in each town located in the plains where collective farms are the only places for farming because their harvests are all taken away.'²⁰⁹ Such accounts show that it is inevitable for the mandatory collection system under the planned economy to become degraded to the point where it allows the authorities to pillage farmers.²¹⁰

Deprivation of purchasing power and food aid through currency reform

The North Korean authorities carried out currency reform measures without prior notice in November 2009, making cash that the North Korean residents had saved through 'the market economy' – voluntarily formed by them over the last decade – worthless in a single day and plundering the residents of their private funds.²¹¹ Because of this, residents' food purchasing power declined dramatically, causing merciless violations of their right to food. Even though the North Korean

206 *COI Report*, 17 February 2014.

207 KBA, *2014 Survey on Human Rights in North Korea*.

208 *Mainichi* (Japanese newspaper), 1 June 2012.

209 North Korea Reform Radio, 18 June 2012.

210 KBA, *2014 Survey on Human Rights in North Korea*.

211 In the KBA's 2014 survey, when asked: 'What was the purpose of currency reform conducted by the North Korean government in November 2009?' 33 of 89 respondents said that 'it was for the North Korean Government to take money from individual pockets'.

authorities decided a new official price for major commodities on 13 December 2009, after the currency unit was changed, the purchase prices for most grains, including food, have been on the increase. This makes it difficult for ordinary residents to secure food because they can only obtain food through the market. In some areas two meals a day is common and some people make porridge with corn or rice.

Table 144: Long-term trends of North Korean market and commodity prices.

	Exchange rate: KPW per US\$1	Price of rice per 1kg in KPW	Price of rice per 1kg in US\$
February 2002 (Time period A) (before the 7·1 Measures – Economic Improvement Measure announced on 1 July 2002 by North Korean National Planning Commission)	260	60	0.230
November 2009 (Time period B) (immediately before the Currency Reform)	3,800	2,200	0.579
June 2011 (Time period C)	270,000	190,000	0.704
	Difference in exchange rate: KPW per US\$1	Difference in price of rice per kg in KPW	Difference in price of rice per kg in US\$
Time period B/Time period A	15 times	37 times	2.5 times
Time period C/Time period B	71 times	87 times	1.2 times
Time period C/Time period A	1,038 times	3,167 times	3.1 times

Source: Yang Mun-su, 'Economic Structure of North Korea', KBA Unification Legislation Cyber Academy, 2012.

The WFP established a series of international standards of humanitarian assistance and, among them, the core principles are exclusion of discrimination and distribution according to need. In other words, priorities of food assistance should first benefit the most vulnerable people, and such assistance should be based on the demand of the people who need assistance. The principle of exclusion of discrimination should apply regardless of age, gender, social class, race and political belief. If material aid is misappropriated or diverted to purposes contrary to the purpose of aid and the principles of distribution, it amounts to pillaging aid assistance from those who are in need.

When the Network for North Korean Democracy and Human Rights surveyed 500 defectors in April 2011, only one respondent (0.2 per cent) answered that residents enjoyed the benefit of food aid from the international community. Two per cent of respondents said that food aid was distributed to vulnerable children, 73.6 per cent said it was for the military, 69 per cent said it was for the Party and the military, 48.8 per cent said it was for government agencies, and 38.8 per cent replied that it was for the privileged class including Pyongyang residents. A defector from Ryanggang Province testified that: 'When there was international assistance, North Korea promoted that "the US bowed to the inevitable authority of the DPRK" and "the DPRK made great victory in confrontation of anti-Americans".' He also said that: 'As residents knew that the North Korean Government used food aid

as a means of displaying the greatness of the leader and his idolisation, they did not like international food aid.²¹²

North Korean authorities enriched by selling diverted food in the marketplace

One major change since the Improved Economic Management Measures of 2002 came into effect is that former small-scale marketplaces were developed into general and multi-functioning markets.²¹³ Currently, a minimum of one to a maximum of four or five general markets are operating in each city, county and district, and each market has stalls according to its scale. The number of stalls officially approved varies from dozens to 5,000.²¹⁴ Such markets have become the only place for ordinary residents whose food distribution has been cut off to do something to survive.

Meanwhile, North Korean farmers only receive food rations for three months on average, and the residents who are eligible for rations receive mainly 5–30 per cent of the supposed amount of food. There are also people excluded from receiving rations. It is testified that those who are not eligible for rations, or who receive partial rations, eventually buy food necessary to survive from small, privately owned gardens and markets.²¹⁵ The reason why most North Korean residents have not starved to death, in spite of the severe conditions, is that the rest of the food in the distribution system was diverted in several ways by the Party and then resold to the North Korean residents in the markets. It is difficult to give accurate statistics for the amount of food sold in a market after being diverted by the Party, the military or other people from the privileged class; however, it is presumed that a vast amount of food other than the food produced from privately owned gardens is commandeered and resold to North Korean residents on the ground that most farmers or residents eligible for food rations, other than the privileged groups who receive 100 per cent food rations, purchase food for eight to nine months a year from markets and that residents not eligible for food rations buy food for the entire period from privately owned gardens or markets.

Moreover, the 2012 and 2014 surveys on human rights in North Korea conducted by the KBA confirmed that international food aid was disguised as military grain or was used by the privileged classes as a means of accumulating wealth.²¹⁶ The respondents testified that, since the privileged class and the military had begun siphoning off food from South Korea and the international community, the food could be found in the market every day.²¹⁷ They also vividly described how international food aid ended up in the market.²¹⁸

212 *Daily NK*, 2 March 2012.

213 KBA, *Report on Human Rights in North Korea*, 2012, 334.

214 Open Radio for North Korea, 24 June 2011.

215 KBA, *2014 Survey on Human Rights in North Korea*.

216 In the KBA's 2014 survey, when asked whether it is true that executives of the Party, the judicial branch and the government agencies intercept food aid and supplies which were originally intended to be given to poor residents and sell them in the market, pocketing the profits from sales, 62 (63.9 per cent) of 97 respondents said 'yes'.

217 In the KBA's 2014 survey, when asked whether they had received food or supplies from international communities such as the UN, foreign states or South Korea, only 20 (20.6 per cent) of 97 respondents replied 'yes'. By contrast, when asked whether they had seen food supplied from the international community or South Korea in markets, 65 respondents (67 per cent) said 'yes'.

218 In the KBA's 2014 survey, in response to the question about the procedures regarding how food aid went to the market, the responses were summed up thus: 'When the North Korean government received food aid, the officials from the Party, the military, the SSD and Yangjeong business siphoned off the food and gave it to the managers of

In addition to abuses in the food distribution processes, vulnerable residents also faced other hardships including high levels of inflation, arising out of the currency reform, which deprived them of their purchasing power.

However, the North Korean government recognises that if activities for making a living were freely allowed, there would be a threat to the regime, and so market restrictions are tightly controlled: when large amounts of food flow in from the international community, restrictions are tightened but are subsequently relaxed when food shortages become severe.

People working for government agencies also abuse their powers by extorting bribes from vulnerable residents.²¹⁹ Such activities widen the gap between classes in North Korea and threaten the right to food of those who rely on the market for their living.²²⁰

Conclusion

The right to food, which has its basis in Article 25 of the UDHR and Article 11 of the ICCPR, is a fundamental human right. Accordingly, a state has a duty to guarantee that its people can have access to an adequate amount of food and can consume it freely. In 1999, ECOSOC declared in its general comment No 12 that ‘a state has a fundamental duty to alleviate starvation and take proper measures in order to avoid starvation’.

However, the North Korean authorities have poured astronomical sums of money into the development of nuclear weapons and missiles, while leaving more than 70 per cent of its population subject to food shortages, and have diverted food aid by deceiving the international community. In short, the right to food in North Korea has been violated by its own government authorities.

With respect to this violation, the recent *COI report* concluded on 17 February 2014 that the North Korean authorities committed crimes against humanity under the worst ever totalitarian system in history and recommended that the UN Security Council submit this situation to the ICC.²²¹

ABOLISHING THE PLANNED ECONOMY AND URGING REFORM AND OPEN MARKET POLICIES

North Korea’s total food production in 2012 – 46.76 million tonnes – divided by the then-population of 24.6 million, equals 520g for each person per day. This amount falls short of the WFP’s recommended allowance, which is 600g per day, but if even that amount of food had been equally distributed, death by starvation would rarely have occurred in North Korea. However, in the 2014 survey, 33 of 103 respondents said that they have seen deaths by starvation since 2010, and four respondents

the market, and then the food was traded in the market.’

219 In the KBA’s 2014 survey, when asked whether it is true that officials abuse their control of the market for the purposes of accumulating wealth because such abuse gives them an opportunity to connive with or take from sellers, 81 (83.5 per cent) of 97 respondents replied ‘yes’.

220 In the KBA’s 2012 survey, [Respondent ID 072(2014)] testified that: ‘The North Korean government declared that the Arduous March had ended and that the Government would be responsible for its people and, therefore, North Korean residents need not engage in trade. As a result, many people were starved to death in large cities such as Wonsan in Gangwon Province and Cheongjin in North Hamgyong Province, Hamhung and Kanggye.’

221 *COI Report*, 17 February 2014.

reported that they saw seven deaths by starvation in 2012, indicating that severe lack of food is a continuing problem.

Further, the fact that death by starvation still occurs is because there is a serious, systematic inequality among ordinary residents, including vulnerable groups, in the right to food which is caused by fundamental defects in the system. An enormous difference exists in the right to food between members of the privileged class, who can receive 100 per cent of their food distribution or purchase food at a price decided by the government, and ordinary residents, including the vulnerable, who have to purchase food in the market, at market price.

The food distribution system for ordinary residents has collapsed in North Korea. The government only maintains the distribution system for the benefit of the Party, the military and the privileged class. However, by abolishing the socialist planned economic system, which consists of a distribution system and quota delivery system, the government could restore the residents' right to food.

According to the 2014 survey, 89 of the 103 respondents voiced various opinions regarding the causes and solutions of food shortage. Twenty-three respondents (22.3 per cent) suggested that farms be privatised and the system be changed into one paying wages for labour. On the other hand, 37 respondents (35.9 per cent) answered that reform and open market policies are needed, not transformation of the system itself.

Table 145: Cause and solution of food shortages in North Korea, according to defectors.

Cause of food shortage	Number of respondents	Solution of food shortage	Number of respondents
System contradiction	11 (10.6%)	Change of system (Personalisation)	23 (22.3%)
Closed economy	11 (10.7%)	Reformation and open market policy	37 (35.9%)
Failure of policy	10 (9.7%)		
Corruption	6 (5.8%)	Fighting against corruption	4 (3.9%)
Excessive armaments	12 (11.7%)	Reduction of armaments	8 (7.8%)
[Insufficiency of fertiliser]	14 (13.6%)	Resolving problem of insufficient fertiliser	6 (5.8%)
I don't know	25 (24.3%)	I don't know	10 (9.7%)
No response	14 (13.6%)	No response	15 (14.6%)
Total	103 (100%)	Total	103 (100%)

Table 145 was created by the writer after categorising the respondents' answers to the survey questions. The arrangement and categorisation can be changed according to how the responses are interpreted.²²²

PREVENTING FOOD DIVERSION

According to the 2014 survey, the rate of responses answering that in order to resolve food shortage, corruption – in the form of food diversion – should be eradicated is relatively low. This may be because the level of understanding that defectors have regarding food diversion is not high.

²²² KBA, 2014 Survey on Human Rights in North Korea.

However, it is clear that North Korea has a defective food distribution system, which has allowed the privileged classes, including the authorities and the military, to divert food from the vulnerable. If the North Korean authorities do not put a stop to food diversion committed by the privileged class, ordinary residents' access to food will not be improved.

ESTABLISHING A MONITORING SYSTEM WHEN RECEIVING EXTERNAL SUPPORT

In order for North Korean residents to enjoy the right to food, the fundamental solution is that the authorities should change themselves or be changed. External support from the international community is just a short-term, supplemental and fragmentary solution to helping the North Korean authorities overcome temporary and coincidental disasters.

As seen above, food shortage in 2013 and 2014 was estimated at 0.34 million tonnes. The North Korean Agriculture Department announced that it would import 0.3 million tonnes of food in the 2014 financial year, but not the full 0.34 million tonnes. By reducing the amount of money it uses for the development of nuclear weapons or missiles, even just a little, the government could certainly import the total amount of food required; however, the decision not to do so demonstrates where Korea's priorities lie and leads to a natural conclusion that the authorities are using food shortages as means of controlling the people and maintaining the regime.

Accordingly, the international community, including South Korea, should urge the North Korean authorities to import, as a priority, the food required to end the shortages. In addition, humanitarian food aid given to North Korea should be monitored to ensure that it is not turned into military provisions or given to members of the privileged class to accumulate wealth.

4.9 Human rights in detention facilities such as political prison camps (*kwanliso*) and ordinary prison camps (*kyohwaso*)

Chung Jae-hoon

Introduction

Detention facilities in North Korea consist of: investigation facilities (*guryujang*) of the PSA and the SSD; holding centres (*jipgyeolso*), where suspects are gathered; labour training camps (*nodong dallryeondae*); educational centres (*kyoyangso*); ordinary prison camps (*kyohwaso*); and political prison camps (*kwanliso*). Table 146 shows a general classification of detention facilities.²²³

223 KBA, *Report on Human Rights in North Korea*, 2012, 341. Detention facilities in North Korea consist of a political prison camp (*kwanliso*) that holds political prisoners managed by the SSD and other facilities that investigate and hold suspects, the accused and general prisoners, and is administered by the MPS. The latter consists of a detention facility (*guryujang*) for confining pre-trial detainees, a holding centre (*jipgyeolso*) and an educational centre (*kyoyangso*) for temporarily detaining defectors in a border area, and a labour training camp (*nodong dallryeondae*) and an ordinary prison camp (*kyohwaso*) for punishing those whose are sentenced.

Among the detention facilities stated in Table 146, a political prison camp and ordinary prison camp are typical detention facilities that confine the life and freedom of the people for a long period. Ordinary prison camps correspond roughly

Table 146: Types of detention facilities in North Korea.

	Detention facility	Holding centre	Labour training camp	Educational centre	Ordinary prison camp	
					Political prison camp	General prison camp
Characteristic	A temporary detention facility for the efficient investigation of suspects	A temporary detention facility where forced labour, which is not stipulated in North Korea's Criminal Code, is imposed	A facility for detaining those who are sentenced to punishment on charges of carrying cell phones, petty theft, swindling, minor violence, being unemployed, absence without leave, watching unauthorised videos and illegal border crossing	A facility for detaining those who are sentenced to less than two years' imprisonment on charges of minor violence, economic crimes, theft and defamation	A rehabilitation-orientated facility for detaining those who have committed political crimes and treason against the people	A facility for confining those who are sentenced for economic crimes and other criminal offences
Persons to be confined	Suspects	Railroad regulation violator / minor criminals / defectors	Minor social criminals / defectors	Anti-socialist criminals / defectors	Political criminals	Economic criminals, violent offenders
Supervising institution	MPS/SSD	MPS / SSD	MPS / SSD	MPS	Correctional Management Bureau of the MPS	Correctional Management Bureau of the MPS
Detention period	Temporary	One week to several months	One month to two years	Less than two years	Three years to life term	Two years to unlimited term
Trial	Before trial	None	Exist/none	Exist/none	Exist	Exist
Sentencing	–	No punishment	Through trials, ratification by the SSD	Through trials, on the spot decision by the SSD, verification by the police	Through trials	Through trials
Capacity		20–500	250–500	100–200	400–4,000	
Deprivation of citizenship	None	None	None	None	Temporary suspension	temporary suspension

with the prison system in South Korea. On the other hand, political prison camps are special confinement facilities that are isolated from society. It is still unknown under what regulations of the current legislative and correctional system these facilities are established and operated. They are secret and their existence and operation can be determined only through the scant testimonies of former prisoners.

In order for Kim Il-sung and Kim Jong-il to maintain their authority over the years, North Korea, as a means of eradicating political opponents and restraining politically opposing actions, allowed the SSD to have jurisdiction over political prisoners, take charge in investigations, decide punishment without formal judicial process, detain political prisoners in political prison camps, and manage political prison camps. Accordingly, numerous cases of human rights violations have taken place in political prison camps, and there is no sign that this regime was abolished or changed even after Kim Jong-un appeared as the successor of Kim Jong-il.

Moreover, recent testimonies reveal that in ordinary prison camps, which exist as part of the ordinary criminal administration system, numerous human rights violations, including death cases, have occurred. Such testimonies regarding ordinary prison camps are a lot more common than those related to political prison camps, and this trend has continued.

Remarks	–	Unpaid forced labour, temporary detention facility	Unpaid labour training	Unpaid forced labour	Correctional prison labour	Correctional prison labour
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Source: Yoon Yeo-sang, Gu Hyeon-ja, Kim In-seong, Yi Ji-hyeon, 'Operation of Detention Facility in North Korea and Human Rights Situation', Database on Human Rights Violations in North Korea of the NKDB, 2011, 2–9.

As the KBA's Subcommittee on Human Rights in North Korea compiled the 2014 Report on Human Rights in North Korea, they planned to investigate and report on the human rights situation within political prison camps and ordinary prison camps. Following in-depth investigations and interviews with defectors, the KBA confirmed that the human rights situation in North Korea's detention facilities was poor, particularly in the political prison camps and ordinary prison camps. The 2014 Report on Human Rights in North Korea is mainly based on the 2014 survey on the human rights situation in North Korea that involved in-depth interviews with 103 defectors, including three defectors from political prison camps (one of whom had a work experience placement at a political prison camp). The 2014 survey also takes into account documents relating to political prison camps and ordinary prison camps, which were published after 2010.²²⁴ However, it should be noted that testimonies from the three political prison camp defectors were limited and so pre-existing testimonies and data was referred to.

Human rights situation in political prison camps

POLITICAL PRISONERS IN NORTH KOREA

Provisions regarding political crimes set forth in North Korea's Criminal Code

Until 2004, provisions relating to political criminals in North Korea's Criminal Code were as follows: Chapter 3 (Crimes against the State), which contained eight articles (44–51) in Section 1 (Crimes against National Sovereignty), two articles (52 and 53) in Section 2 (Crimes against the National Liberation Struggle), and two articles (54 and 55) in Section 3 (Crimes of Concealing and Failing to Report on Crimes against the State). The provisions contained vague language with respect to the elements of crime such as 'anti-revolutionary', 'persons with unsound ideas' and 'hostility', which enabled broad interpretation and could be applied to anyone who needed to be politically purged.²²⁵

The fifth revision of the Criminal Code in 2004 removed some of these vague terms and revised them to describe specific criminal acts. Chapter 3 (Crimes against the State and People) contains eight articles in Section 1 (Crimes against the State):

- Article 59 (plotting the subversion of the state);
- Article 60 (terrorism);

²²⁴ KBA, *2014 Survey on Human Rights in North Korea*.

²²⁵ Association for Research on North Korea's Law, *Current Complete Collection of Laws and Regulations of North Korea*, 2008, 164–165.

- Article 61 (propaganda against the state);
- Article 62 (treason against the fatherland);
- Article 63 (espionage);
- Article 64 (crime of disloyal destruction for anti-state purposes);
- Article 65 (abetting armed intervention and severance of foreign relations); and
- Article 66 (hostile acts against foreigners).

It also contains three articles in Section 2 (Crimes against the People):

- Article 67 (treason against the people);
- Article 68 (suppression of Korea's national liberation movement); and
- Article 69 (hostilities against the Korean people).

Lastly, it contains three articles in Section 3 (Crimes of Concealing and Failing to Report on Crimes against the State):

- Article 70 (concealing a crime against the state and the people);
- Article 71 (failing to report a crime against the state); and
- Article 72 (neglecting a crime against the state).²²⁶

In the most recent amendments of the Criminal Code in 2012, no change was made in respect of the provisions relating to political criminals, except for the provisions being renumbered.²²⁷

Application of political crime provisions in the Criminal Code

In general, people subject to detention in political prison camps under the provisions punishing political crimes are usually convicted as political criminals; however, a significant percentage of prisoners are detained under collective punishment.²²⁸ The 2014 survey confirms that a person who attempted an escape to South Korea was detained in No 15 Yoduk camp under a charge of treason and another person was imprisoned in No 18 Bukchang camp in South Pyongan Province because he disgraced the reputation of the Party.²²⁹ Also, there was a case where a person, who had escaped to China due to financial difficulties, was sent back to North Korea and imprisoned in Yoduk camp.²³⁰

²²⁶ *Ibid.*, 177–178.

²²⁷ LnBpress, DPRK Body of Laws, *Juche* 101, 2012, 100–102.

²²⁸ The NKDB has recently conducted research on the reasons for political prisoners' imprisonment. It analysed the 1,101 testimonies from those who had experienced or heard about political prison camps. As of 1 July 2011, there were 31,594 cases of human rights violations stored in the central database. The research revealed that 35.7 per cent of the respondents were imprisoned due to guilt by association, while 48.3 per cent were confined for political crimes per se.

²²⁹ KBA, *Survey on Human Rights in North Korea*, [Respondent ID 027, 072(2014)].

²³⁰ Lee Kum-lan, 'Family Tie That Yoduk Cannot Break', North Korean Human Rights, Serial No 180, Citizens' Coalition for Human Rights in North Korea, October 2013, 18.

North Korea's Code of Criminal Procedure and political prisoners

Articles 46 and 48 of the Code of Criminal Procedure provide that ‘investigators and pre-trial officers of the institutions in charge of security and defence undertake investigations for crimes against the State or the people’. According to these articles, the SSD takes charge of the arrest, investigation, pre-trial and imprisonment of political criminals.²³¹

A survey conducted as to how ex-detainees of the political concentration camps were arrested revealed that all of them were arrested on the spot by the SSD or by applicable departments in charge without an arrest warrant or reasons for arrest. Family members of political criminals were also arrested in the same manner where the only explanation given was ‘because there is something to be investigated’ or ‘one of your family members has been arrested’.²³²

Once arrested, political criminals are confined in a political prison camp after interrogation and a pre-trial, which in North Korea means the procedure of investigating and confirming a case. In principle, the pre-trial process must be completed within six months but it can last much longer, depending on the case. Political criminals are not guaranteed the fundamental rights of suspects – such as the right to a lawyer – as provided by the Code of Criminal Procedure.

Table 147: Reasons for imprisonment in political prison camps.

Types	Number of respondents	Effective rate (%)	Total rate (%)
Political crimes	402	48.3	36.5
Criminals	21	2.5	1.9
Economic crimes	24	2.9	2.2
Border control crimes	67	8.0	6.1
Misdemeanours	14	1.7	1.3
Guilt by association	297	35.7	27.0
Others	7	0.8	0.6
Subtotal	832	100.0	-
Unknown	269	-	24.4
Total	1,101	100.0	100

Source: Yoon Yeo-sang, Lee Ja-un, Han Seon-yoeng, ‘Operation System and Situation of Human Rights in Political Prison Camps in North Korea, Database on Human Rights Violations in North Korea of the NKDB, 2011, 139.

Moreover, political criminals are subject to torture and violence during the pre-trial, including water and electric shock torture, pricking the skin under the fingernails, finger twisting, sleep deprivation and beatings, which frequently result in severe injuries or deaths.²³³

231 Law Publication, DPRK Body of Laws, *Juche* 101, 2012, 132.

232 Yoon Yeo-sang, Lee Ja-un, Han Seon-yoeng, ‘Operation System and Human Rights Situation in Political Prison Camps in North Korea’, Database on Human Rights Violations in North Korea of the NKDB, 2011, 149.

233 Kim Seung-chul, ‘Situation of Underground Prison of State Security Department (SSD) in North Pyongan Province in North Korea’, North Korea, Serial No 399. Research Centre of North Korea, 2005, 176–178; KBA, *Survey on Human Rights in North Korea*, ID 023(2006), ID 082, 084(2008), ID 198, 199(2010).

Concept of prison camps

North Korean authorities have officially denied the existence of political prison camps. However, the testimonies of several defectors refute this.

According to respondents to the survey, No 15 Yoduk political prison camp has two parts, the edification district for revolution and the complete control district. It is also further divided into: the ‘family section’ for relatively minor crimes, where the family members of ideological turncoats among international students and diplomats overseas, those who attempted an illegal river-crossing, defectors, and families of returnees from Japan are held; and the ‘single section’ where unmarried men and women are confined and subjected to physical pain in order to make them obedient to the North Korean regime.²³⁴

Once the imprisonment period (one to ten years) for those in the edification district for revolution is over, political prisoners can be released following evaluation. At the time of release, they must write a covenant promising not to disclose anything about life within the camps and if the covenant is broken they will face reimprisonment. However, once released, they are subject to the life of the lowest class in society because they are categorised as hostile and are restricted in all areas of life including employment and travel, and they are kept under constant surveillance by the SSD.²³⁵

The complete control district is a life-term detention camp for serious crimes where those sentenced to unlimited reform through labour are held. Release from the camp is impossible, prisoners remain under constant control and surveillance, and there are four or five layers of security guards.

Prisoners confined in the complete control district endure much more severe living conditions than those in the edification district for revolution and have to undergo more than 12 to 15 hours of back-breaking forced labour every day for the rest of their lives. They constantly suffer from hunger because only the minimum amount of food necessary for life is distributed. All political prison camps that are operated by the SSD, with the exception of No 15 Yoduk camp, are total control zones.

Accordingly, inmates in total control zones do not receive ideological education; they only receive production-related training in areas such as mining and agriculture.

Operation of political prison camps

The exact number of political prison camps operated by the SSD and the number of inmates have not been disclosed. According to a report on the current status of political prison camps in North Korea which the National Intelligence Service of South Korea submitted to Congressman Yoon Sang-hyeon on 16 October 2009, it was estimated that North Korea had been operating ten political prison camps containing about 200,000 political prisoners in total until the 1990s and had shut down four camps in the late 1990s following criticism by the international community; about 154,000 remain imprisoned

234 Lee Keum-sun et al, *Report on Human Rights in North Korea*, KINU, 2004, 190.

235 Lee Keum-sun et al, *North Korea's Political Prison Camps*, KINU, 2013, 13–14.

in six political prison camps.²³⁶ No 22 political prison camp shut down in 2012 and it is believed that thousands of prisoners died before the camp closed. Some defectors testified that there were 30,000 prisoners in No 22 camp, but that the number dropped to 3,000; this suggests that an investigation should be carried out to establish why prison numbers fell so drastically.²³⁷

In 2013, the KINU provided a new estimate based on satellite images and defector testimonies that at least 80,000, but no more than 120,000, political prisoners are currently held in five prison camps throughout North Korea. This estimate is supported by the closing of Hoeryeong political prison camp and the downsizing and relocation of Bukchang camp, and by defectors' testimony that the accident and death rate was high because of intolerable working conditions.²³⁸

The operation and human rights situation of each political prison camp are shown in Table 148.

Table 148: Operation and human rights situation of each political prison camp.

Camp / Rights	No 14 Gaecheon	No 15 Yoduk		No 16 Myeonggan	No 18 Bukchang	No 22 Hyoryeong	No 25 Cheongjin
		Complete control district	Edification district for revolution				
Citizenship	deprived	deprived	maintained	deprived	maintained	deprived	deprived
Family union	–	separation from family	–	–	–	–	–
Marriage	none, reward marriages	none	none, reward marriages	none, reward marriages	none, reward marriages	none, reward marriages	none
Delivery	–	none	allowed	–	allowed	allowed	–
Hospital	–	–	exist, poor condition	–	–	exist, poor condition	–
Professional doctors	–	–	none	–	–	none, inmates	–
Operation	–	–	simple operation	–	–	–	–
Distribution	insufficient	–	insufficient	insufficient	insufficient	insufficient	–
Education	elementary school	elementary school	elementary and middle school	elementary school	elementary school	elementary school	–
Delivery of pregnant women	flexible	–	flexible	–	flexible	flexible	–
Life assessment	conducted	conducted	conducted	conducted	conducted	conducted	conducted
Execution	public execution in case of escape	summary execution in case of non-compliance	public execution in case of escape	public execution in case of escape	public execution in case of escape	public execution in case of escape	–

Source: Lee Keum-sun et al, 'Political Prison Camps in North Korea', KINU, 2013, 75.

236 *Yonhap News*, 17 October 2009.

237 Fox News, 5 September 2013.

238 KINU, *Report on Human Rights in North Korea*, 2013.

Accommodation and family life

Although there are different types of political prison camp, in No 1 Gaecheon camp, political prisoners live with spouses in so called ‘harmonica houses’, a linear type of multi-unit dwelling facility in which five to eight households live as a unit; Yoduk camp has a single-storey house where big groups of inmates live together; and No 18 Bukchang camp has a single-storey house where only a single person may stay.²³⁹ Such political camps have single sections, where only political prisoners are held, and family sections where families are managed together. In No 25 Cheongjin camp, only political prisoners are detained. No 14 Gaecheon camp and No 16 Myonggan camp allow families to live together. No 15 Yoduk camp has a single section and a family section, which are operated and managed separately.²⁴⁰ As for singles, 12–14 singles share a room (16.53m²) and 240 people live together in the barracks.

Each political prison camp differs as to whether marriage is possible or selecting a spouse is feasible, but normally marriage almost never occurs in camps;²⁴¹ exceptions occur when the SSD allows reward marriages²⁴² for the purpose of securing a new labour force and enforcing the loyalty of prisoners. Married couples cannot live together, however, they are allowed to sleep together in a house for a day as a special reward only when they demonstrate exemplary behaviour. Except for such cases, dating and marriage are not allowed and inmates who are found to be in a relationship are subject to confinement for ‘immoral relationships’ and their prison terms are extended; pregnant women must have a forced abortion.²⁴³ Also, family visits and letters are restricted and contact with the outside world is completely blocked.

Food

Corn is the staple food in political prison camps. Although the size of food rations for individuals varies from camp to camp, they are barely sufficient to sustain life and cabbage soup or a simple cabbage dish are usually given,²⁴⁴ which results in insufficient fat intake; prisoners have no choice but to supplement their hunger with frogs, mice and snakes.²⁴⁵ It is known that prisoners suffer from starvation as a result of high-intensity labour without sufficient quantities of food.

239 KBA, *Survey on Human Rights in North Korea*, ID 027, 045, 072(2014).

240 Lee Keum-soon et al, *North Korea's Political Prison Camps*, KINU, 2013, 15.

241 KBA, *Survey on Human Rights in North Korea*, IDs 027, 045, 072(2014).

242 According to the KBA's 2008 Survey on Human Rights in North Korea, Shin XX, who had been in Political Prison Camp No 14, testified that 60 per cent of those in their twenties in No 14 Gaecheon Camp were allowed to marry as a reward.

243 Yoon Yeo-sang, Lee Ja-eun, Han Seon-yeong, ‘Operation System and Situation of Human Rights in Political Prison Camps in North Korea’, Database on Human Rights Violations in North Korea of the NKDB, 2011, 398–415.

244 In the 2014 survey, ID 027, 045(2014) testified that members of a camp guard were given rice and corn in a ratio of 7:3, and a platoon was given four 70kg pigs once a month, while inmates were given 750g a day of rice (five per cent) and corn (95 per cent). ID 113(2012) testified that if work performance was satisfactory, a spoonful of rice soup was added to the evening meal. ID 050(2012), who had been detained in No 18 camp, testified that each ration is 100g. ID 198(2010) testified that meals are corn mixed with beans and, if an inmate fails to complete a work assignment, only three spoonfuls of rice and five to six spoonfuls of salty soup are given. ID 199(2010) testified that meals are corn mixed with some rice. Soy bean soup and kimchi are provided as side dishes.

245 KBA, *Survey on Human Rights in North Korea*, ID 088(2006).

According to one inmate: ‘Meals were usually corn rice porridge, salty cabbage and salty cabbage soup and I was given only half the rice when I could not meet the given work quota. I could only eat watery rice porridge when I fulfilled my work quota.’²⁴⁶

Distribution of clothes and other daily necessities

Political prison camps provide daily necessities such as shoes, winter clothes, toothpaste, toothbrushes, soap, towels and socks, yet other necessities are not provided; thus prisoners must bring their own utensils, bedding and clothes when they enter a camp.²⁴⁷

Daily routine and forced labour

The political prisoners’ daily routine revolves around forced labour. Although the schedules vary from camp to camp, during the summer prisoners normally get up at 5am, stretch and have a meal for 30 minutes, go to work at 6am, take a break for ten minutes at 10am, work again until midday, have lunch for 30 minutes, work from 1pm to 8:30pm and, after having their work checked, they go to the mountains from 9pm–11pm to gather flowers and mountain herbs. They twist straw rope and weave A-frames, and must finish the daily routine to be able to go to sleep at 1am or 2am. The daily routine in winter is similar to the summer routine with reduced night work.²⁴⁸

Work placement varies according to the needs of each camp. At the edification district for revolution in Yoduk camp, prisoners were put to such tasks as farming or the maintenance of rabbit hutches. Each prisoner must cultivate farmland of 9,917.4m² in size, and prisoners had to produce fuel for fire in the winter. In Gaechon camp, prisoners were put to work at coal mines and in the pasture.

Prisoners are never paid for their work. As for children and the elderly, they must engage in light labour such as gathering wild herbs or acorns.²⁴⁹ In the edification district for revolution, it is said that prisoners were educated about Kim Il-sung and Kim Jong-il instead of being put to labour.²⁵⁰

Holidays exist, but prisoners cannot rest during the busy farming seasons such as spring and autumn. The SSD checks whether holidays are being observed, but inmates must reply positively regardless of the truth in their response to the SSD’s question when asked whether they can rest on Sundays.

246 Lee Kum-lan, ‘Family Tie that Yoduk Cannot Break’, *North Korea Human Rights*, Vol 180, Citizens’ Coalition for Human Rights in North Korea, October 2013, 18.

247 KBA, *Survey on Human Rights in North Korea*, IDs 027, 072(2014), IDs 050, 113(2012).

248 Lee Kum-lan, ‘Family Tie that Yoduk Cannot Break’, *North Korea Human Rights*, Serial No 180, Citizens’ Coalition for Human Rights in North Korea, October 2013, 18 –19.

249 KBA, *Survey on Human Rights in North Korea*, IDs 027, 045(2014).

250 *Ibid*, ID 072(2014).

The right to life

Starvation and malnutrition

The camp authorities provide political prisoners with the bare minimum of food needed for survival and, due to the actions of security agents who siphon off food in the process of distribution, the prisoners are left with even less. Political prisoners suffer from chronic hunger so they have to resort to catching frogs, snakes, rats, salamanders, worms, squirrels and even edible grass.

A defector, Kim Hye-suk, testified that her family of seven was given 8kg of grain a month. She also said that they gathered wild herbs in the mountains for food, even on holidays, since there was no way to obtain rice.²⁵¹

Diseases and impoverished medical conditions

Even though many prisoners suffer from pneumonia, tuberculosis and pellagra because of malnutrition and hard physical labour, they are forced to work without exception. When a foreman decides that a prisoner can no longer work, he sends the prisoner to a sanatorium where they are often isolated and have no access to doctors or medicine.²⁵² In political prison camps, even though there are medical and care teams, they exist as a mere formality and so convicted political prisoners may serve as doctors; but in general, only simple medicine such as cold remedies, indigestion pills and anti-fever medicines are available. Doctors have been known to withhold medicine from prisoners who need it and penicillin is often sold to make a profit. Furthermore, the medical facilities are not properly equipped and sick prisoners are generally excluded from medical treatment in order to mobilise them for forced labour.²⁵³ Accordingly, political prisoners with weakness, pneumonia or distomatosis, which are easily treatable diseases, eventually die due to not receiving appropriate medicine.²⁵⁴

Institutionalised violence

The security agents in political prison camps have absolute authority to punish political prisoners. Punishments that are arbitrarily inflicted by security agents are tacitly condoned, thus violence is legally committed, and no one takes legal responsibility, even when a political prisoner dies from punishment.^{255 256}

251 Kim Hye-suk, *A Concentration Camp Retold in Tears* (The Zeitgeist, 2011), 73–76.

252 KINU, *Report on Human Rights in North Korea*, 2013, 138.

253 KBA, *Survey on Human Rights in North Korea*, ID 027(2014), ID 113(2012). ID 113(2012) testified that even those who suffer from a temperature of over 40°C are dragged to the workplaces like dogs and many prisoners, male prisoners in particular, die in their workplaces.

254 *Ibid*, ID 027(2014). Shin Dong-hyuk from No 14 Political Prison Camp (2008).

255 In the KBA's interview with a North Korean defector in 2008, Shin Dong-hyuk, who had once served his prison term at No 14 camp, said: 'In winter 1999, four elderly prisoners were trudging up the hill, carrying a full load of fertiliser on their A-frame carrier. They were caught taking a brief rest by the guidance officer. The officer had them take off their shoes and pants and kneel half-naked. After about two hours of being punished like that, they were put into a rest room and they were made to kneel on the heated floor by firewood. The floor was so hot that it burned them. The elderly prisoners' soles and knees were disfigured because they went from being frozen to suddenly being burned. All of them died.' He further testified that cruel treatment like beatings takes place as a routine practice.

256 In an interview with the KBA, a North Korean defector ID 050(2012) testified that he witnessed a male prisoner in his 40s

In the 2014 survey, one respondent, ID 027(2014), testified that an agent beat his face with a long stick because he fought with another prisoner. As a result, he was not able to work for several days and suffered a permanently disfigured nose.²⁵⁷

Abuse of children and women

Child abuse

Children in political prison camps are forcibly detained and suffer systemic abuse by state authorities because of collective punishment. They suffer from abuses such as starvation, malnutrition, lack of normal education, cruel forced labour and indiscriminate assaults. No 18 Bukchang political prison camp has a migrant school where the teachers are descendants of the MPS or the SSD who treat the students harshly. Middle school students have to keep night watch at the school from 9pm to 6am. All graduates from the migrant school become mine workers. When a student misses classes, all classmates must go to his home and drag him to the school, whereupon a teacher hits him with a rod and other classmates beat him. Students in elementary schools study in the morning then dig dirt and move it to a mine in the camp in the afternoon.²⁵⁸ Frequent deaths occur due to accidents, cruel beatings and punishment due to retreating from work, complaining or being negligent.²⁵⁹

Abuse of women

In political prison camps, no consideration is given to women's physiological needs and female prisoners suffer violent attacks and forced labour in the same way as men. Bras and sanitary protection are not provided. A defector, Kim Hye-suk, testified that she had to use ripped underwear as sanitary towels at the camp.²⁶⁰ Moreover, security agents rape political women prisoners in a forcible or non-forcible way.²⁶¹ Some testified that security agents at Bukchang camp sexually harassed pretty women prisoners and there was a testimony regarding a grandchild of Kim Man-guem from the Agriculture Department who was raped several times and transferred to a psychiatric hospital because of mental illness caused by the rape.²⁶²

Crimes against humanity

Summary, public and secret executions

In political prison camps, not only summary executions occur on a daily basis but secret executions are arbitrarily carried out by the security agents.²⁶³ In most cases, people are subjected to public

with heart trouble beaten to death by a security agent, because the prisoner was caught eating corn while weeding.

257 KBA, *Survey on Human Rights in North Korea*, ID 027(2014).

258 Lee Keum-sun et al, *Political Prison Camps in North Korea*, KINU, 2013, 75.

259 In the KBA's interview with a North Korean defector in 2008, Shin XX, who had been in No 14 camp, testified that in the summer of 1989 five grains of wheat were found in the pocket of an eight-year-old girl during a body search. The teacher hit the girl on the head with a pointer. The beating continued for one-and-a-half hours until she had passed out bleeding at her nose. The girl died that evening.

260 Kim Hye-suk, *A Concentration Camp Retold in Tears* (The Zeitgeist, 2011), 68.

261 KBA, *Survey on Human Rights in North Korea*, ID 086(2006), ID 082(2008).

262 *Ibid*, ID 072(2014).

263 *Ibid*, ID 072(2014) testified that public executions occurred once a month in No 18 Bukchang camp.

execution after being caught trying to escape. Even if a prisoner succeeds in escaping, if caught in other places like China, he could be brought back to the camp and executed by firing squad.²⁶⁴ In an interview conducted by KINU in 2013, a defector testified that when he went to work on a farm in North Hamgyong Province in the spring of 2006, he witnessed a female prisoner running towards a barbed wire fence to flee from No 22 prison camp in Hoeryeong; he believes that guards took her away and that she might have been executed. Another defector said that he was detained in the spring of 2006 at Gaecheon prison camp in South Pyongan Province, and witnessed an inmate being executed by firing squad on charges of attempting to flee.²⁶⁵

Even though there was no testimony about secret executions in the 2014 survey, a local correspondent with a non-governmental organisation – North Korea Intellectuals Solidarity – confirmed that after the ascension of Kim Jong-un, internal removal (secret executions) of political prisoners and special criminals in the SSD and security agencies have increased. Based on local information, the SSD carries out executions almost every week and the number of secret executions has also increased. North Korea has implemented internal removal to punish those who have committed offences against the system, such as crimes against the state and religious crimes, and execution for acts that may be hindrance to the maintenance of political system, or which are likely to adversely affect North Korea's social image, are also carried out.²⁶⁶

Human experimentation

A defector, Ahn XX, who was a former political prison camp guard, testified that a relationship between a prison guard and an inmate was likened to 'a relationship between a master and a slave'. He also said that prison guards learned and practiced *taekwondo* on inmates by using them as a training tool, and when high-level government officials visited political prison camps, they showed *taekwondo* techniques on inmates.²⁶⁷ Ahn XX and Lee Yong-guk testified that human experimentation was conducted by the Third Bureau (Pre-trial Bureau) of the SSD, which is made up of agents above the rank of second lieutenant who have graduated from the University of Politics and who have researched torture techniques or human experimentation. They also said that the bureau dispatches agents to branch offices near the political prison camps to conduct secret executions and experimentation on political prisoners, and more evidence and testimonies have followed to support these claims.^{268 269}

264 KBA interview with defector, ID 072(2014).

265 KINU, *Report on Human Rights in North Korea*, 2013, 88.

266 Global Multicultural News, 13 March 2012.

267 *National Post*, 27 September 2013.

268 Hwang Jang-yop, 'Sunshine Siding with Darkness Cannot Illuminate', *Monthly Chosun*, 2001, 126. When Hwang Jang-yop was a secretary of the Labour Party, a military secretary told Kim Jong-il that the military factory had developed a new weapon to be used by its spies and they had experimented using the weapons on a dog. Hwang Jang-yop witnessed Kim Jong-il saying that a dog was not the same as a man and 'I will order the political security department to send political prisoners for experimentation'.

269 Oh Gyeong-Sueb, 'The Study on the Structural Situation of the North Korean Human Rights Abuse – Focusing on the North Korean Gulag', Korea University Master Thesis, 111, available at www.riss.kr/link?id=T10363867. A refugee testified that North Korea had been conducting experiments for 25 years to determine the lethal dosage of poisonous gas required in an experimental lab in a political prison camp managed by the military. Abraham Cooper, of the Jewish international human rights organisation, the Simon Wiesenthal Center, raised suspicions about North Korea's continuing human experimentation based on his testimony and called on the international community to endeavour to establish the truth.

Human rights situation in detention facilities including ordinary prison camps

CURRENT SITUATION IN ORDINARY PRISON CAMPS

Ordinary prison camps have the same form as prisons in South Korea and are the places in which the MPS incarcerates those who commit the most serious crimes. Also, these camps imprison those who have been sentenced to death or to correctional labour, and it is ascertained that North Korea has established at least one ordinary prison camp in every province.

In the 2014 survey, however, the KBA encountered difficulties in ascertaining the current situation for all of the ordinary prison camps in North Korea because, while there were many testimonies about Jungeori ordinary prison camp, there were few testimonies regarding other ordinary prison camps.

Based on the findings of this survey, No 12 Jungeori ordinary prison camp is divided into five sections. It has 100 detention facilities for males and 24 for females (as of 2012) and there are separate solitary confinement facilities. Although many respondents answered that they did not know the total number of inmates, the number is understood to be 3,000–5,000 in 2010, among which female inmates exceeded 1,000 before 2010. This number decreased and there were 600 female inmates in 2012.²⁷⁰

No 1 Gaecheon ordinary prison camp has separate detention facilities for males and females in each building. There are five detention facilities for males (as of 2010) and 21 detention facilities for females (as of 1998) and the number of inmates was 3,000 in 1998, which fell to 1,500 in 2010.²⁷¹

Although the number of persons held in ordinary prison camps varies from camp to camp and the number of inmates fluctuates over time, it appears that two to three persons are accommodated for every *pyong* (3.3m²).²⁷²

FACILITIES AND LIVING CONDITIONS

Sanitary and medical conditions

In the survey, when asked about the condition of sanitary facilities such as toilets, toiletries and water, 94.1 per cent replied that they were poor and only five per cent said that they were good. More specifically, respondents testified that the ‘toilet was in a prison cell and it was hard to wash because there were too many inmates and the water was ice cold’ and that ‘since sanitary facilities were in poor condition, inmates could not wash’. Other comments included that ‘the toilet was in a prison room, it had a horrible stench’ and that ‘the water in Gaecheon camp was not good because the tank that stored rainwater was very dirty and rusty’.²⁷³ However, on the other hand, one respondent ID 024(2014) testified that he was imprisoned in Section 4 of Jungeori ordinary prison camp and that the toilet, toiletries and water were relatively good because they were separated from the main section.

270 KBA, *Survey on Human Rights in North Korea*, IDs 004, 016, 034, 042, 044(2014).

271 *Ibid.*, IDs 014, 068, 086(2014).

272 *Ibid.*, IDs 004, 020, 040(2014).

273 *Ibid.*, IDs 004, 016, 086(2014).

Tuberculosis and fever are the most common diseases. Inmates are susceptible to diarrhoea, pneumonia, infectious disease and skin disease all because of the poor sanitary facilities and malnutrition caused by food shortages. When asked whether inmates who suffered from diseases were provided with adequate treatment and medicine, 76.5 per cent of respondents replied negatively, which confirms that inmates could not expect proper treatment for disease in ordinary prison camps. One respondent (ID 014(2014)) reported that the condition of sanitary facilities at Gaecheon ordinary prison camp was terrible, and that fever and diarrhoea were common; he saw many inmates die from weakness because they could not receive medicine or treatment.

Solitary confinement cells are operated for those who violate regulations or officers' orders in an ordinary prison camp. When inmates make a slip of the tongue or are caught trying to escape, they are also put in solitary confinement cells.²⁷⁴ The cells are so small that it is impossible either to sleep on one's back or to sit up straight. There is no lighting and the conditions are extremely unsanitary, as there is just a hole for the toilet. The worst thing about solitary confinement is insufficient food rations, which causes death because of weakness.²⁷⁵ One respondent, ID 005(2014), testified that there were four solitary confinement cells at Jungeori ordinary prison camp and that their size was 1.5m by 0.8 or 0.9m.²⁷⁶

Food rations and distribution of daily necessities

Ordinary prison camps provide three meals a day with the maximum ration of 180g and the minimum of 100g. Meals are usually salty soups made of corn, rice and beans, and dried radish leaves are included on special occasions. Such meals are both quantitatively and qualitatively inadequate for the intense labour the prisoners have to undertake and have caused malnutrition and even death.

A defector, Kim Hyuk, reflected on life in Jungeori ordinary prison camp in Hyoryeong: 'Those who suffered from hunger at camp ate anything that there was to eat without hesitation. Rats and snakes inside the prison camp were special food for them. They roasted and ate lizards, salamanders and red-bellied frogs. I also ate rats and snakes as well as snake eggs. In dire need, they even drank polluted water. Spring is the most difficult and hungry season. People suffering from intense starvation devour grass as soon as it sprouts, which results in grass poisoning, causing swelling in their legs and faces, and even blindness. In attempts to fill their stomach with something, people even ate pine powder, which was used as diarrhoea medicine. Some became blind or lost their lives from oedema after consuming rotten potatoes.'²⁷⁷

Even though ordinary prison camps, which are long-term detention facilities, are required to supply daily necessities, research has proved that not much is being distributed. Only six out of 17 former ordinary prison camp prisoners were provided with prison uniforms during their imprisonment

274 *Ibid*, ID 004(2014).

275 *Ibid*, ID 042(2014).

276 *Ibid*, ID 005(2012).

277 Kim Hyuk, *Boy Stealing Freedom* (Plus Neulpum, 2013), 167–168.

period, five received blankets to keep out the cold during the winter, and five received shoes and soap. On the other hand, nine former inmates were never provided with any daily necessities.²⁷⁸

Daily routine, visits and holidays

Although physically weak persons are sometimes excluded from labour, prisoners' daily schedules are mostly filled with labour,²⁷⁹ usually followed by unity meetings and training after dinner and sleep at around 10pm. A respondent ID 020(2014) who had lived in Jungeori ordinary prison camp, testified that inmates rose at 5am, washed and worked until breakfast at 7am, continued with labour from 8am to noon, had lunch from 12pm to 1pm, laboured from 1pm to 5pm, followed by unity training between 5pm and 6pm, finished dinner by 7pm, had education and roll-call from 7pm to 10pm, and finally went to sleep at 10pm.

While prisoner visitation guidelines varied for individuals and different prison camps, four respondents said that there was no limit on the number of visitors and four respondents answered that visits are allowed once a month, but the allowed number of visits are perceived to occur once in three months on average. Such differences in visiting frequencies are not contingent on the rules but on the paying of bribes to security agents.²⁸⁰

On the other hand, prison camps are known to offer holidays, during which prisoners may enjoy rest. However, holidays are not given during the farming seasons of spring and autumn.²⁸¹ Furthermore, those who are assigned to specific tasks such as the knitting group or the firewood group are never given days off.

HUMAN RIGHTS SITUATION OF PRISONERS DETAINED IN ORDINARY PRISON CAMPS

Public and secret executions

The ordinary prison camps often use public executions as a way of instilling a sense of fear among prisoners and to control their behaviour. Nearly half (47.1 per cent) of respondents in this survey replied that they had witnessed a public execution or heard about secret executions.

One respondent (ID 014(2014)) testified that if a person was caught trying to escape due to hunger, he would be publicly executed or sentenced to additional years imprisonment. Another respondent (ID 051(2014)) said that a man in his 20s was caught trying to escape from the Chongsan Educational Centre and was publicly executed by a firing squad. Further respondents testified that they heard about a public execution at Gaecheon ordinary prison camp in March 2003 (ID 086(2014)) and that there were three or four public executions at Jungeori ordinary prison camp between 1997 and 2002 (ID 095(2014)).

278 KBA, *2014 Survey on Human Rights in North Korea*.

279 ID 095(2014) testified that labour is ten hours a day in ordinary prison camp.

280 ID 095(2014) testified that even though authorised visits were permitted once a quarter, visits were possible more than once a month if a bribe was paid.

281 However, in this survey, two of the 17 respondents who had been ordinary camp inmates testified that there were no holidays.

Although it seems that there are no public executions in the city of Sariwon, secret executions take place in seven ordinary prison camps behind the cigarette factory.²⁸²

Forced abortion/killing of infants

Female prisoners are required to have a blood test to determine whether they are pregnant at the time of their entrance to ordinary prison camps and pregnant women are generally forced to have an abortion. Due to international pressure regarding human rights, however, there are testimonies that pregnant inmates are now sent back home and are imprisoned after giving birth.

Table 149 Testimonies regarding pregnancy and abortion in prison camps.

ID 033(2012)	ID 033(2012) testified that for a case of infidelity, a female prisoner named Kim XX (female, 45) was sentenced to 15 years in the Gaecheon ordinary prison camp and her boyfriend was publicly executed. She became pregnant with a prison guard's baby and had a forced abortion during her imprisonment. ²⁸³
F75	F75 (female, Chongsan ordinary prison camp, June 1999 to February 2002) testified that: 'Pregnancy tests are conducted on all female prisoners. An 18-year-old prisoner, who concealed her pregnancy at the security agency, was forced to have an abortion when the pregnancy was confirmed at the Chongsan ordinary prison camp. She was assigned to another working group after she returned from the hospital. There are no babies in prison and all pregnancies end in abortion.' ²⁸⁴
F43	F43 (female, Chongsan ordinary prison camp, May 2006 to February 2007) testified: 'It is said that forced abortion is no longer being practised and pregnant prisoners are sent back home to give birth. That is because of the criticisms on human rights.' ²⁸⁵

Torture and violence

Harsh treatment such as torture and beating are still occurring in various prison camps and detention and correctional facilities. Harsh treatments are reported to cause serious injury, disease and even death. One respondent (ID 014(2014)) testified about the death of an inmate from an agent's beating, which resulted in a fatal blood clot; and another respondent (ID 086(2014)) testified that he became blind from a ruptured eyeball when being beaten by an agent after trying to smoke a cigarette that he picked up at Gaecheon ordinary prison camp. Testimony includes cases of being beaten with a rifle for helping out a weak fellow prisoner during mining labour, having lumbar pain from a beating by a police officer for not being able to work with a fever, witnessing another prisoner being beaten upon the discovery of a written complaint against a guidance agent, and the case of an inmate who, unable to properly carry buckets of filth as a punishment for stealing rice from the dining hall, was dragged on the ground and beaten to death by a foreman at Jungeori ordinary prison camp.²⁸³

Cruel treatments are conducted directly by guidance agents but are more often conducted by foremen or fellow inmates. A defector, Kim Hyuk, testified as follows about his experience of harsh treatment at an ordinary prison camp:

²⁸² KINU, *Report on Human Rights in North Korea*, 2013, 88.

²⁸³ KINU, *Report on Human Rights in North Korea*, 2013, 115.

‘One inmate group leader cruelly pressured weak inmates. Like a wild dog, he talked as if he was feeding the weak inmates and beat and pressured other inmates who did not listen to his demands. Two of my fellow inmates died from his pressure and beatings. Among 24 inmates who entered the prison camp on the same day, only I and another inmate have survived; the other 22 inmates died thinking of their families.’²⁸⁴

In the absence of strict rules for the managers, the prisoners are helplessly exposed to arbitrary punishment, assault and torture for trivial mistakes.

Sexual violence

Despite the North Korean Criminal Code provision that punishes rape (Article 279) and forced sexual relations with women under one’s supervision (Article 280), cases of female inmates who are raped by security agents at ordinary prison camps are regularly reported. Nearly a quarter (23.5 per cent) of respondents replied ‘yes’ when asked whether they were raped, or had witnessed or heard that female inmates were raped.

A number of respondents testified that they had witnessed or heard about sexual violence at ordinary prison camps.²⁸⁵ A female defector testified that during a ‘Mak-gal-ri’, which means a group of four females watching the rice paddy overnight and sleeping in a tent, a security agent got a young woman pregnant and the woman was released on bail when she was six months pregnant. Upon hearing about this, the security department began an investigation of the agent but because the agent’s brother was the assistant administrator at the camp, he was left alone. While the rape of female inmates by security agents is clearly unacceptable, some victims have boasted about it as it resulted in a reduced work quota or a promotion to foreman.²⁸⁶

Death

A high number of deaths in ordinary prison camps are caused by poor medical facilities, inadequate sanitary conditions and an absolute shortage of food that all together threatens the lives of prisoners, topped by high-intensity labour. Passive considerations such as exclusion from labour are given to inmates with serious conditions, but proactive measures such as medical treatment are not provided. In the survey, 94.1 per cent of respondents answered ‘yes’ when they were asked whether they had witnessed inmates who died from weakness, as opposed to by execution or from harsh treatment.

One respondent (ID 014(2014)] reported of witnessing the death from weakness of many inmates during his imprisonment at the Gaecheon ordinary prison camp. Another respondent, ID 051(2014), stated that in August 1989, a man in his 20s from Pyongyang, who was imprisoned in Chongsan ordinary prison camp for one year for trying to escape from the army, died of weakness. A further respondent, ID 040(2014), testified that with the impact of the North Korean currency reform in November 2009, prison visits sharply declined and the rate of inmate deaths greatly increased. One

284 Kim Hyuk, *Boy Stealing Freedom* (Plus Neulpum, 2013), 160.

285 KBA, *2012 Survey on Human Rights in North Korea*.

286 NHRCK, *Collection of North Korean Human Rights Violations*, 2012, 121.

or two died per day in Section 2 of the Jungeori ordinary prison camp and the impact of the currency reform lasted for approximately six months.²⁸⁷

One of the defectors surveyed testified that a high fever spread during May to July 2009, from which many inmates inside the Jungeori ordinary prison camp died; it caused the deaths of approximately 300 inmates in 2009, and more in 2010. He also testified that while the hygiene situation in the buildings for female inmates had been improved, the building for male inmates was old and dirty, which, in turn, led to a higher death toll. Another defector testified that he witnessed a fellow inmate die from disease and overwork at the Jungeori ordinary prison camp in December 2009 and that the dead body, after briefly being stored at the hospital, was carried by cart to Mount Bulmang where it was cremated. Other testimony reveals that an inmate (female, aged between 36 and 40 years old) died from malnutrition while she was detained at the Hamheung ordinary prison camp in Hamgyong Province in July 2010 and that the number of deaths in the camp increased rapidly in 2010, with people dying on a daily basis.²⁸⁸

Defector, Kim Hyuk, described in detail about his near-death experience when he was imprisoned in the Jungeori ordinary prison camp:

‘Not long after I suffered from pneumonia I was sick with diarrhoea. At that time, I experienced a near death experience. As the symptoms became severe, I was moved to the Section 3 nursing room. Nursing rooms were divided into Sections 1, 2 and 3. Section 3 was for people who became sick, Section 2 was for those who may die if appropriate medicine was not provided, and Section 1 was for those who may die any day even if they took medicine. My disease became more serious and eating was no help. When I could not even stand up, I was moved to Section 2 after three days. When I had been in Section 2 for one week, I felt that my soul had left me. No medicine worked. Death was knocking at my door. The leader of the nursing room disposed of my stools, yet I was eventually moved to Section 1. No one took care of me. Since no one left this room alive, there was no need to have a person to take care of me. They just brought rice gruel three times a day and other than that, no one came in or out. Only the leader of the nursing room came around 5:30am to check whether anyone had died. On my first morning after coming to Section 1, I woke up from a coma, and saw that a patient who had come in with me last night had disappeared. He was sent to the morgue. There was no light in Section 1. I had to lie alone in the dark from early evening. Two more patients came in. They were also facing death. They lay beside me. They were alive the next morning but I thought that we will also be dead soon... I faced the evening without having a meal all day. I could only wonder about whether I would die that evening. Not knowing how far I was from death’s door, I sent away several corpses before me.’²⁸⁹

Conclusion

Michael Kirby, the chair of the COI, obtained testimonies about harsh human rights violations in North Korea and demanded a response from the Kim Jong-un regime on 16 July 2013. However, the North Korean authorities did not present any documentation confirming or refuting the facts or the

287 KBA, *2014 Survey on Human Rights in North Korea*.

288 KINU, *Report on Human Rights in North Korea*, 2013, 118–119.

289 Kim Hyuk, *Boy Stealing Freedom* (Plus Neulpum, 2013), 158–160.

testimonies. Although North Korea continues to deny the existence of political prison camps, the human rights violations in such camps encompass all types and methods. As a member of the UN, North Korea is obligated to obey the human rights regulations of the UN Charter. North Korea is also a member of the ICCPR and CEDAW. North Korea has violated Article 7 (prohibition of torture), Article 8 (prohibition of forced labour), Article 9(1) (arbitrary detention), Article 9(4) (the right to trial) and Article 10 (the right to humanitarian treatment) of the ICCPR.

Despite the provisions of the North Korean Constitution, the Criminal Code and its procedures that guarantee people's liberty and security, they are not practised in the actual execution of the law. Neither international nor North Korean regulations allow harsh treatment, forced labour and severe conditions in ordinary prison camps and the treatment of the people at the hands of the regime has far exceeded the limits of tolerance. The violation of human rights, poor humanitarian standards and the disregard for human dignity in detention facilities, including political prison camps and ordinary prison camps, deserve harsh criticism. Therefore, all civilised states, international organisations, non-governmental organisations and individuals should recognise that the fulfilment of universal human rights can only be realised once political prison camps are dismantled and conditions in detention facilities are improved – and that this can only be achieved through continued diplomatic efforts.

4.10 Exploitation of labour inside and outside North Korea

Kim Yong-min and Kim Jinah

Exploitation of labour in North Korea

INTRODUCTION

The North Korean Constitution (amended on 13 April 2012) contains numerous provisions regarding labour. This is because North Korea owns the means of production, as distinguished from the South Korean Constitution, which maintains a free-market economy.

Article 8 of the North Korean Constitution specifies that 'the State defends the interests of the workers, peasants, soldiers, working intellectuals and all other working people who have been freed from exploitation and oppression and become the masters of the State and society, and respects and protects human rights', thus prohibiting all forms of exploitation including exploitation committed by the State. Constitutional provisions relating to labour include Article 29, which provides that: 'Socialism is built by the creative labour of the working people. Labour in the DPRK is the independent and creative labour of workers freed from exploitation and oppression'; Article 30 specifies that 'the working day shall be eight hours'; and Article 31 specifies that 'in the DPRK, the minimum working age is 16. The State shall prohibit the employment of children under the minimum working age'. In light of the fact that these provisions reside under the economy section of the Constitution, it is understood that the North Korean government sets forth principles with respect to labour under the socialist economic system.

Meanwhile, Chapter 5 of the Constitution, ‘Basic Rights and Duties of Citizens’, outlines rights and responsibilities regarding labour. The specific provisions regarding such rights and duties are as follows: Article 70 states that ‘citizens have the right to work. All citizens who have the ability to work may choose occupations according to their wishes and skills and are guaranteed a stable job and working conditions. Citizens work according to their abilities and are paid in accordance with the quantity and quality of their work’ while Article 83 provides that ‘work is the noble duty and honour of a citizen. Citizens shall willingly and conscientiously participate in work and strictly observe labour rules and working hours’.

Taking these constitutional provisions as a whole, it may be deemed that North Korean citizens have a duty to provide labour and that, under the socialist system, providing labour according to the demands of the state may not be inherently problematic. However, demanding labour by force against citizens’ wills is deemed to be an exploitation of labour, even though certain provisions of the Constitution specify labour as a duty, because Article 70 of the Constitution guarantees the right to work and the right to choose occupations in accordance with individuals’ wishes and skills.

Article 6 of the ICESCR, which North Korea signed in 1981, provides that ‘the States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right’ and Article 7 stipulates that every worker has the right to fair remuneration for labour. According to the ICESCR, labour mobilisation conducted in North Korea falls under labour exploitation in that the workers mobilised are not paid and North Korean citizens are not able to exercise freedom to choose work.

The KBA’s 2014 survey on labour exploitation in North Korea, following on from its 2012 survey, highlights that North Korea continues to impose a duty on residents in the form of labour mobilisation. Specifically, North Korea has been exploiting its citizens through poor pay and because the labour provided is not based on citizens’ abilities or choice.

DETAILED REVIEW

The 2014 survey conducted a detailed investigation of labour exploitation committed inside and outside North Korea. According to the survey, 87.4 per cent of respondents testified that they had been summoned for labour mobilisation, a slight decrease from the 2012 survey, which showed a 93 per cent response rate. However, the percentage is still high enough to indicate that labour is very frequently exploited across North Korea. The 2014 survey also shows that labour mobilisations are mostly compulsory.

Table 150: Have you been summoned for labour mobilisation?

Response		Number of respondents	Percentage (%)
Yes	2012	94	93.1
	2014	90	87.4
No	2012	7	6.9
	2014	13	12.6
Total		101 (2012) / 103 (2014)	

Table 151: Is labour mobilisation in North Korea compulsory or voluntary?

Response	Number of respondents	Percentage (%)
Voluntary	5	4.9
Compulsory	98	95.1
Total	103	100

In response to the question ‘What were the negative consequences you would suffer if you did not participate in labour mobilisation?’ (multiple answers were allowed) most of the respondents answered that they would have to pay some sort of financial penalty (42 respondents) or would be sent to a labour training camp (nine respondents), which clearly indicates that labour mobilisation is forced labour exploitation. Other answers included ‘I would be criticised’ (15 respondents) and one respondent even said ‘I have to go to labour camp even if I felt I would die’. In conclusion, labour mobilisation is thought to be compulsory as there are consequences for failing to participate.

When asked how long had they been mobilised in a year, 70 per cent of the respondents who had participated in labour mobilisation said ‘one month’ or ‘less than three months’ and ten respondents replied ‘six months or above but less than one year’. This result highlights the impact of compulsory labour mobilisation on citizens’ personal lives.

Table 152: How many days did you participate in labour mobilisation in a year?

Response	Number of respondents	Percentage (%)
One month	21	23.3
Less than three months	42	46.7
Less than six months	17	18.9
Less than one year	10	11.1
Subtotal	90	100
Never mobilised	13	–
Total	103	100

In North Korea, residents are subject to labour mobilisation regardless of sex or age. Of the 103 respondents, 49 were male and 54 were female and a total of 90 respondents said that were summoned for labour mobilisation – which confirms that North Koreans are extensively mobilised for forced labour, regardless of their gender. In addition, the respondents testified that 93.2 per cent of children of elementary school and middle school age are summoned for labour mobilisation.

Table 153 Did children (of elementary and middle school age) participate in labour mobilisations?

Response	Number of respondents	Percentage (%)
Yes	96	93.2
No	3	2.9
I don’t know	4	3.9
Total	103	100

Respondents who participated in such labour mobilisations gave various answers regarding the types of mobilisation. Twenty-five per cent of the respondents, the highest percentage, answered ‘I have experienced farm mobilisation’ and 15.9 per cent, the second biggest number of respondents, said ‘I was mobilised for road construction’. It is true that the percentage of respondents who said that they experienced farm mobilisation has decreased slightly since the 2012 survey, however, farm mobilisation is still significant, which implies that food problems continue to be serious in North Korea.

Table 154: Which type of labour mobilisation did you participate in? (Multiple responses were allowed.)

Response		Number of responses	Percentage (based on number of respondents)
Farming	2012	93	25.7 (%)
	2014	74	25.0
Road construction	2012	70	19.3
	2014	47	15.9
Tree planting	2012	67	18.5
	2014	44	14.9
Maintenance of rivers	2012	53	14.6
	2014	31	10.5
Construction of houses	2012	24	6.6
	2014	19	6.4
Construction of apartments	2012	21	5.8
	2014	14	4.7
Generating foreign currency	2012	19	5.2
	2014	20	6.7
Military facilities	2012	8	2.2
	2014	13	4.4
Never mobilised	2012	6	1.7
	2014	13	4.4
Others	2012	1	0.3
	2014	20 (construction of power plant)	6.7
Total		362 (2012) / 295 (2014)	

Only 3.3 per cent of those summoned for labour mobilisation were paid and the remaining 96.7 per cent testified that they did not receive anything in exchange for their labour. In addition, 78.9 per cent answered that meals were not provided during labour mobilisation and workers had to prepare meals for themselves, which confirms the severity of labour exploitation. Furthermore, 88.9 per cent of respondents stated that they have been mobilised on Saturdays, Sundays and holidays, which demonstrates that workers summoned for labour mobilisation are not given adequate time to rest.

Table 155: How did you have meals during labour mobilisation?

Response	Number of respondents	Percentage (%)
I prepared meals for myself	71	78.9
Meals were provided by the party mobilising me	14	15.6
I don't know	5	5.6
Subtotal	90	100
Never mobilised	13	–
Total	103	100

It should be noted that ordinary North Korean residents are mostly subjected to labour mobilisations; Party officials are very rarely expected to participate.

CONCLUSION

As described above, the labour mobilisation to which North Korean residents are subject amounts to labour exploitation or forced labour on the grounds that citizens are not given a choice to participate and are not paid for their labour in most cases. Moreover, young people (under the age of 16) are forced to labour and workers summoned for labour mobilisations are supposed to work at weekends and on holidays.

Of particular importance, North Korean citizens are forced to labour without taking sufficient rest during labour mobilisation periods. Article 64 of the Socialist Labour Law stipulates that workers are guaranteed to enjoy a holiday once a week and that national holidays and Sundays are days off. However, as most respondents testified, this is not the case.

Such labour mobilisation is a violation of the Constitution, relevant laws, and the international covenants to which North Korea is party; therefore, the North Korean government should stop labour mobilisations immediately. Even though the government tries to strengthen its control over its society and residents through labour mobilisations, the government should recognise that labour mobilisation ends results in animosity against the regime.

Exploitation of labour outside North Korea

INTRODUCTION

Human rights violations in political prison camps are relatively well known to South Korea and the international community. However, human rights violations of workers sent abroad to earn foreign currency in Russia, China, the Middle East or Southeast Asia are comparatively unknown. This section will examine North Korea's practice of sending workers overseas, their exploitation, and what measures are being taken to improve the situation.

PURPOSE OF EXPORTING LABOUR OVERSEAS

The export of labour has two purposes: to benefit the North Korean government and to motivate individual workers.

As a part of its national policy, North Korea has been sending workers overseas to earn foreign currency. In light of the fact that external assistance from South Korea has stopped, the illegal trade of weapons and drugs has been significantly reduced due to international pressure and monitoring, and the foundations for agriculture and manufacturing industries have been significantly weakened, sending workers overseas to earn foreign currency has become one of the best means to secure funds for the Kim Jong-un regime and overcome economic difficulties. Since Kim Jong-un came to power in 2012, the North Korean government has actively engaged in sending workers overseas to meet financial shortfalls.^{290 291}

According to the 2014 KBA survey, four respondents had been sent overseas to work; three of the four former workers said that they ‘went to work abroad to earn dollars’ and the other respondent described a motivation ‘to work abroad in order to avoid labour mobilisation’. In other words, individual workers volunteered to work overseas because they needed dollars or because they received better treatment when compared to forced labour in North Korea. Of particular note, these days it is reported that those who want to go to work abroad pay bribes to the relevant government officials because working overseas has become competitive and there are certain limitations on qualification.

Table 156: What motivated you to work abroad?

ID	Response
ID 045 (2014)	To earn dollars.
ID 046 (2014)	To save money for my daughter's education.
ID 063 (2014)	To earn dollars.
ID 070 (2014)	To avoid labour mobilisation in North Korea.

SCALE AND CURRENT STATUS OF OVERSEAS WORKERS

At present, the current scale of overseas workers can only be roughly estimated and varies widely, from about 40,000²⁹² at the lowest estimate to 60,000, 70,000 or sometimes 110,000.²⁹³ Such variation

290 KBS News, 26 November 2013, http://news.kbs.co.kr/news/NewsView.do?SEARCH_NEWS_CODE=2761669&ref=A. In contrast to the Kim Jong-il regime, which was not willing to send workers abroad, the Kim Jong-un regime takes the position of encouraging working abroad, saying: ‘If you can, go abroad and generate profits.’ Under the Kim Jong-il regime, approval from Kim Jong-il had to be obtained in order to go to work abroad; however, now a manager in charge of a work unit has authority to grant approval. It is no exaggeration to say that foreign currency received from workers abroad accounts for half of the North Korean economy.

291 *Chosun Ilbo*, 27 April 2012. In 2012, it was estimated that if the North Korean government sent 10,000 workers abroad per year, the government could earn US\$30m, which could be used to fund the regime. With respect to overseas workers sent by North Korea, a diplomatic source reported that: ‘Kim Jong-un would have thought the financial situation of North Korea was too tight for him to do what he wanted such as giving presents to his close associates and holding parties frequently’, and that: ‘He would have concluded that the only way to raise funds was to send workers abroad. That is why North Korea has been fully committed to sending workers abroad.’ Lee Yong-su, ‘Kim Jong-un with no financial source, “Send workers abroad to earn foreign currency despite the possibility of one or two defectors”’ (KBA, *Report on Human Rights in North Korea*, English translation, 2012, 498, n 9).

292 When Kim Jong-il died in December 2011, the number of North Korean workers sent overseas was approximately 36,000. However, as of January 2013, the figure was approximately 46,000.

293 *Donga Ilbo*, ‘North Korea sending 60,000 to 70,000 workers abroad to earn foreign currency by extorting millions of dollars from workers’ wages’, 11 May 2011. As of May 2011, it is estimated that North Korea dispatched about 60,000 to 70,000 workers abroad to earn foreign currency. This estimate resulted from a comprehensive analysis of testimonies of field workers from human rights organisations including the Organisation for Improvement of North Korean Human Rights, which supports North Korean overseas workers who escaped from their workplaces. According to the *Trafficking in Persons Report 2009*, published by the US Department of State’s Office to Monitor and Combat Trafficking in Persons on 16 June 2009, available at www.state.gov/documents/organization/123357.pdf, the estimated number of the North Korean residents sent abroad by the

seems inevitable as the North Korean regime has maintained a principle of secrecy and has not disclosed the statistics regarding overseas workers. Nevertheless, continuing efforts will be necessary to figure out the exact number of North Korean workers sent abroad.

It is reported that North Korea has sent its workers to about 40 countries, including China, Russia, Mongolia and countries in the Middle East. If it is assumed that 60,000–70,000 workers had been sent to work overseas as of 2011, 20,000–30,000 workers were sent to Russia, 15,000 workers were sent to the Middle East and Southeast Asia respectively, 7,000–8,000 were sent to Africa, 5,000 were sent to Eastern Europe, 5,000 were sent to Mongolia and 3,000 were sent to China.²⁹⁴ However, North Korea has recently sent tens of thousands more workers to China in order to earn foreign currency²⁹⁵ and, it is estimated that, as of the end of 2013, more workers were sent to China than any other destination.²⁹⁶ Meanwhile, the number of workers sent to Russia has recently been increasing. In the past, North Koreans were sent to Russia to work as loggers, but more recently people have been assigned to roles such as construction worker, seamstress and farmer. The period of work in Russia is normally three years and the payment received there is higher than in China; thus, increasing numbers of workers hope to work in Russia.²⁹⁷

Table 157: Eligibility for applications to work abroad.

ID	Response
ID 045 (2014)	Eligibility for application is restricted according to state-assigned social class, educational background and criminal record.
ID 046 (2014)	Eligibility for application is restricted according to state-assigned social class, educational background and criminal record. Applicants should not have relatives in South Korea or foreign countries.
ID 063 (2014)	Eligibility for application is restricted according to state-assigned social class, educational background and criminal record.
ID 070 (2014)	State-assigned social class is an important factor.

North Korean authorities, vulnerable to labour exploitation, was 70,000. *Chosun Ilbo*, which reported this, stated that as of 2 July 2009, if North Korea sends an additional 40,000 workers to China, the number will increase to a maximum of 110,000 (KBA, *Report on Human Rights in North Korea*, 2012, 396, n 8). Reportedly, the Trafficking in Persons Report 2013, published on 19 July 2013, published by the US Department of State, did not mention the number of North Korean overseas workers.

294 KBA, *Report on Human Rights in North Korea*, 2012, 397.

295 *Hankuk Ilbo*, ‘Two years of the Kim Jong-un regime: although the economy and productivity wages became somewhat associated with each other... But real income dropped even though nominal wages have increased nominal wages’, 9 December 2013.

296 KBS News, 26 November 2013. There are many North Koreans in border cities such as Dandong and Tumen in China. It is estimated that over 30,000 workers are employed legally or illegally in Dandong. A significant number of North Koreans are working in construction sites, restaurants and facilities other than in factories. About 10,000 North Koreans are known to be working in the cities surrounding Dandong, such as Dalian, Anshan and Shenyang. More than 2,000 North Korean workers are also working in the Tumen development zone. It was expected that the number of North Koreans who officially visited China in 2013 would exceed 200,000, which is more than twice the number counted three years previously, in 2010.

297 News 1, ‘North Korea intensively sent workers to Russia to earn foreign currency’, 20 April 2014. According to Radio Free Asia, it is very difficult to be selected as an overseas worker because workers have to go through very strict screening procedures by the North Korean authorities. For example, singles or those who are married but have no children are not eligible for application. Also, those who have relatives in South Korea, China or Japan, or whose relatives defected or have been missing, are excluded. According to the 2014 survey conducted by the KBA, the qualifications for applicants of overseas workers are limited based on factors such as a state-assigned social class or educational background.

Reflecting this current trend, North Korea and Russia held a meeting to simplify procedures for the reciprocal sending of workers in December 2013.²⁹⁸ Among the respondents to the 2014 survey, all of the four defectors who had worked overseas were sent to Russia.

Table 158: Have you worked overseas?

ID	Response	
	Workplace	Duration
ID 045(2014)	I worked in a logging camp in Russia from 1995 to 2003.	Over five years
ID 046(2014)	I could work overseas by giving a bribe to the chief official of the Foreign Department (No 2 Department of the Provincial Party) in the Provincial People's Committee in September 2005. Planning to work for three years, I worked at the headquarters (eight business offices) in Tynda, Amurskaya and the No 21 business office in Sakhalin.	Six months to one year
ID 063(2014)	When I gave a call to the Provincial Party because of hardships of life, they allowed me to work in Russia in 1987.	One to two years
ID 070(2014)	I was selected when the North Korean government selected those with disadvantaged family backgrounds and sent them to the Soviet Union in 1970.	Over two years

The backdrop for the rapid increase in the number of North Korean workers in China is this: North Korean workers are skilled with their hands and are diligent. Also, it is suggested that because Chinese people avoid so-called 3D jobs (dirty, dangerous and difficult), North Korean workers fill the manpower gap. In other words, entry to the Chinese market is widening due to manpower shortages in areas of China and the North Korean government's desire to export manpower.

North Korean workers sent overseas are employed in various fields, such as logging, civil engineering, construction, toll processing and the restaurant business. In the case of workers sent to Africa, including Ethiopia (where chiselling and engraving skills are needed for presidential palaces, various memorials and large statues), North Koreans are very welcome because they are known to be skilled with their hands.²⁹⁹ Workers sent to the Middle East usually engage in the construction of buildings, refineries, roads and waterways. In Eastern Europe, many female North Korean workers work in toll processing, while North Korean workers in Southeast Asia work in construction and the restaurant trade. North Korean workers in China and Mongolia mainly work in toll processing and mining.³⁰⁰

Meanwhile, as the number of North Korean workers sent abroad has increased, it has been reported that the Mongolian regulation limiting overseas workers to 25 per cent of the workforce has been violated, and state-run defence industries prohibited from employing overseas workers have illegally hired North Korean workers.³⁰¹

298 *Yonhap News*, 'North Korea and Russia held a meeting to simplify procedures on sending workers', 12 November 2013.

299 *KBS News*, 26 November 2013.

300 *Donga Ilbo*, 'North Korea sending 60,000 to 70,000 workers abroad to earn foreign currency by extorting millions of dollars from workers' wages', November 2011.

301 *Segye Ilbo*, 'Mongolian and Russian companies were caught because they illegally hired North Korean workers', 12 January 2014.

North Korean workers are sent overseas by various routes. For example, the North Korean government may send them directly or it may enter into a contract with overseas employment agencies that take charge of arrangements.

According to the 2014 survey, it is reported that the North Korean government assigns the country of stay, the place of residence and the type of work to be engaged in, taking into consideration the worker's educational background and work experience.

Table 159: Procedures for working abroad.

ID	Response
ID 045(2014)	The North Korean government assigned the country of employment, place of residence and type of work.
ID 046(2014)	Once I submitted my application, the North Korean government assigned the country of employment, place of residence and type of work based on the requests.
ID 063(2014)	The North Korean government assigned the country of employment, place of residence and type of work.
ID 070(2014)	The North Korean government assigned the country of employment, place of residence and type of work.

EXPLOITATION OF NORTH KOREAN OVERSEAS WORKERS

Wage-related matters – wage exploitation, embezzlement and non-notification of wages

Wages for overseas workers are provided in accordance with the principles of payment based on the countries overseas workers are sent to, which are established by North Korea's Ministry of Finance, regardless of the contracts entered into with local businesses. The North Korean government deducts 50–70 per cent from workers' wages to cover such things as payments to dispatch agencies, embassy operation expenses, Party membership fees and loyalty contributions and, thus, workers are poorly paid. For example, the average monthly wage of workers in Russia engaged in logging and mining is \$200; workers in information technology receive \$150–\$200; workers in factories receive \$30–\$150; workers in construction are paid \$10–\$200 depending on skill and area; doctors receive \$200–\$300 and female restaurant workers are paid \$40–\$300.

On 25 September 2012, the inaugural general meeting of the International Network for the Human Rights of North Korean Overseas Labour (INHLO) was held by South Korean organisations advocating human rights in North Korea. In the general meeting, a defector and former worker sent to Russia in 2007, Kim Yong-sok (an assumed name), testified that since competition was keen among North Koreans wanting to go overseas to work, they sold houses and gave bribes to the officials involved and then they finally obtained a position. However, the labour conditions in Russia were extremely poor – housing was delapidated and most workers slept on a cold floor on which planks had been laid. They had to work from 6am to 11pm and could not take a rest except on national holidays, such as the birthdays of Kim Il-sung and Kim Jong-un. Of the monthly salary, only 15 per cent was given to the workers, which amounted to \$150–\$200, and the company took the rest in the name of Party contributions. Another defector, Lim Il, a writer who defected to South Korea and had experience

of working in the Middle East, was outraged saying: ‘I worked for two months for \$20, but I was originally scheduled to get paid \$100 for my labour.’³⁰²

In the case of about 200 workers sent to Dandong in China, the average monthly wage was approximately CNY2,200 (approximately KRW400,000). However, the actual amount they received for their labour was CNY600–700 (KRW120,000–130,000) because contributions to North Korea – the fatherland – and accommodation fees were deducted from the scheduled wage.³⁰³

Since 2006 the US Department of State has raised concerns over forced or coerced labour and the exploitation of North Korean workers sent overseas.³⁰⁴ According to officials from the US Department of State, it had been reported that the North Korean government took away most of the salaries earned by North Korean workers in the Czech Republic. A source in the South Korean government said that: ‘North Korean overseas workers earn \$200 to \$1,000 a month depending on the region and occupation, but the actual amount of money they receive is 10–20 per cent of their monthly wage. The rest is remitted to Office No 39 of the Workers’ Party of Korea³⁰⁵ in the name of the loyalty money, taxes, insurance and accommodation fees.’³⁰⁶

According to the Trafficking in Persons Report 2013 published in July 2013 by the US Department of State,³⁰⁷ workers’ wages are controlled by the North Korean government, which takes most of the money in the name of voluntary contributions for various government projects. North Korean workers employed in logging camps in Russia reportedly have almost no holidays during their contractual period and are subject to punishment if they fail to meet their production targets. In addition, workers’ wages are deposited into accounts controlled by the North Korean government, and a significant proportion of their wages must be given to the North Korean government, which is imposed on them against their will. Workers reportedly received only a fraction of their wages and the wages of some North Korean workers in Russia reportedly were not paid at all; money was withheld by the North Korean government until the workers returned home. Instances such as these reinforce the fact that the human rights of North Korean overseas workers are being violated.

The North Korean government also forces overseas workers to pay additional contributions, exacting fees for supporting military provisions, constructing infrastructure projects such as power plants, and modernising Pyongyang, the capital of North Korea. In addition, the government sometimes collects

302 *Yonhap News*, ‘South Korean organisations advocating North Korean human rights established the International Network for the Human Rights of North Korean Overseas Labour (INHL)’, 25 September 2012.

303 KBS News, 26 November 2013.

304 *Kyungghyang Shinmun* Newspaper, ‘North Korea monitors overseas workers and exploits their wages’, US Department of State, 6 June 2006. The US has been publishing annual reports on human trafficking, Trafficking in Persons Reports, and addressing the current situation on human trafficking in primary countries including North and South Korea. Since 2006, North Korean overseas workers’ labour exploitation has been dealt with in the reports in line with human trafficking issues.

305 Office No 39 of the Workers’ Party of Korea is an organisation administering funds for the Kim Jong-un regime. It has 17 overseas branches and 100 trading companies as affiliated organisations, and it directs various businesses earning foreign currency. Reportedly, the amount of foreign currency Office No 39 earned under the Kim Jong-il regime amounted to \$300–\$400m annually, comprised of (i) remittances from workers aboard (\$100m), (ii) exports of weapons, distribution of counterfeit money, and income from drug trafficking (\$100–\$200m), and (iii) profits from North-South economic cooperation (\$100m).

306 KBA, *Report on Human Rights in North Korea*, 2012, 400–401.

307 Trafficking in Persons Report 2013, 221. www.state.gov/j/tip/rls/tiprpt/2013/?utm_source=Subscribers&utm_campaign=35f27bd04c-Trafficking_Bulletin_Issue_9_July_20137_22_2013&utm_medium=email&utm_term=0_1002a3b355-35f27bd04c-92744149.

fees for flights and accommodation. Moreover, North Korean workers sent abroad are highly dissatisfied with the corruption and embezzlement frequently committed by local supervisors, particularly in cases where local supervisors repeatedly embezzle money to cover their own entertainment and living expenses and their bribes to higher officials. Such corruption means that overseas workers have to resort to earning extra money to overcome the economic hardships they face.³⁰⁸

In the 2014 survey, there is evidence that local supervisors embezzled and delayed paying wages. Two of the four respondents testified that they experienced overdue wages: one respondent, ID 045(2014), said that his overdue wages for two years amounted to \$2,000 and another (ID 046(2014)) said that over three years he had been paid just \$1,000 because there was not much work, and that two months of his wages were unpaid. In addition, all four of the respondents said that their wages were paid not by the companies they were working for but by the North Korean government. One respondent (ID 46(2014)) testified that: 'A platoon leader pocketed some of the wages a worker earned after receiving them to transfer to the worker, and a manager pocketed some of the rest. Also, if workers were detected by a security guidance agent while watching a prohibited movie, they had to offer a bribe in order not to be repatriated and to ease the threat of repatriation by the agent.'

Two of the four respondents said they were not informed of the original amount of the wages they were supposed to receive. The other two respondents testified that even though one was told \$500 and the other \$5,000, each of them actually received \$100 in exchange for their labour.

As mentioned above, it is clear that overseas workers suffer from wage exploitation, embezzlement by officials and supervisors, undisclosed wage amounts and salaries far lower than were contracted for. Along with poor labour conditions (discussed below), overseas workers are highly dissatisfied with their grossly insufficient wages, which bear no comparison to the labour they have provided. All four respondents revealed that they did not receive sufficient payment for the labour provided while working overseas because the government took away almost all the wages.

Three out of four respondents stated that they were allowed to transfer money saved from wages earned overseas to their family in North Korea. The money was transferred in various ways such as through a person returning to North Korea, via official requests to the government for transfers, or on the instructions of the government for overseas workers to transfer 50 per cent of their wages to North Korea.

Excessive levels of forced labour and poor working conditions

In the 2014 survey, when asked whether holidays and working hours were observed, three out of four respondents answered 'no'. One respondent, ID 046(2015), said there were no holidays and he could not even take a rest because of the pressure on him to earn money; and even though he worked 15 hours a day, he barely made \$150 per month. Another respondent, ID 063(2014), the only person who answered positively to the question, testified that he did extra work to earn more money. These testimonies confirm that there were no workers who actually enjoyed holidays and whose working hours were observed.

308 Voice of America, *Special report on North Korean overseas workers. Workers sent abroad increased by 10,000 over five years*, 22 May 2012.

Table 160: What kind of work did you do and how many hours per day did you work on average?

ID	Response
ID 045 (2014)	Forestry, 8 hours.
ID 046 (2014)	Forestry, 15 hours.
ID 063 (2014)	Restaurant, I made breakfast, lunch and dinner.
ID 070 (2014)	Forestry, 12 hours.

According to the Trafficking in Persons Report 2013 published by the US Department of State, it was estimated that 10,000–15,000 North Korean overseas workers were employed in logging camps in the far east of Russia, where they reportedly took only two days off per year and were punished if they failed to meet production quotas.

A defector, sent to Russia as a construction worker, said: ‘I started to work from 6am after having breakfast and continued to work till 11pm, and the only days off were New Year’s Day and the birthdays of Kim Jong-il and Kim Il-sung.’

According to the Radio Free Asia report of 6 February 2014, about 100 North Korean workers sent to work in Russia over several years escaped from their workplace and applied to the Russian government for asylum, possibly because they could not bear the poor working conditions and the deductions from their salary. However, the Russian government granted refugee status in very few cases after going through its evaluation process. Given that North Korean workers who escape and request asylum are subject to severe punishment if repatriated, some have questioned the Russian government’s passivity in granting refugee status and the delays in processing refugee requests. Moreover, it is known that many North Korean overseas workers who escaped from their workplaces are living in hiding in Russia instead of requesting asylum.³⁰⁹

Severe control, monitoring and restrictions on movement and communications

Many workers are subjected to forced labour and monitoring, and face restrictions on movement and communications. Moreover, they suffer strict controls, collective labour and cruel treatment at the hands of the North Korean authorities.

The Trafficking in Persons Report 2013 published by the US Department of State revealed that North Korea has signed bilateral agreements with other countries and, accordingly, North Korean workers have been dispatched to Russia, Africa, Eastern Europe, Southeast Asia, Mongolia and the Middle East. The North Korean government continually monitors and restricts the movement and communications of workers sent abroad. In February 2013, five North Korean workers who were employed in construction in Russia died because a door was locked from the outside and, as a result, they could not escape. In addition, it is reported that when a North Korean worker attempts to escape to another workplace or complains about his conditions, he or his family in North Korea suffer threats and revenge.

The reason that the North Korean government strictly controls its overseas workers is that sending workers abroad is a double-edged sword. While it is beneficial that workers sent abroad earn foreign

309 Chosun Ilbo, ‘About 100 North Korean workers employed in logging camps in Russia applied for asylum’, 6 February 2014.

currency, there is a perceived risk that the workers will become ‘impure elements’ who are dissatisfied with the political and economic system. In order to support North Korea’s economy by earning foreign currency, the government has to send more workers abroad. That, however, poses a dilemma: sending more workers abroad increases the political burden on the government. To prevent this, workers returning to North Korea from abroad undergo rigorous ideological education by the SSD to discourage them from unthinkingly disclosing what they saw and heard in foreign countries.³¹⁰

In the 2014 survey, in response to the question ‘What did you feel when working abroad?’, one respondent, ID 046(2014), said that: ‘There were lots of workers who escaped from their workplace. They all escaped in the summer season. Even though they complained about the North Korean system, they could not say anything in front of security guidance agents’. Another respondent, ID 063(2014), testified that: ‘When I lived in a foreign country, I realised that the country I was living in was richer than North Korea. I thought the foreign country was a good place to live’, while a third respondent (ID 070(2014)) said that: ‘While learning singing from a Russian woman, I felt that Russia has more freedom than North Korea’. It is apparent that workers sent abroad eventually realise the closed nature of the North Korean system through their experiences and become disaffected.

VIOLATIONS OF INTERNATIONAL LABOUR STANDARDS, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND NORTH KOREA’S CONSTITUTION AND LABOUR LAWS

As noted above, workers sent abroad cannot work freely overseas; jobs and the countries to which workers are sent to are assigned by the North Korean government; and workers sent abroad encounter deductions from their wages, embezzlement, poor working conditions and restrictions on movement and communications.

How does this reality measure up when looked at alongside international labour standards, the North Korean Constitution and labour law?

North Korean workers sent abroad involuntarily pay large sums of money from their wages to the government. This is a serious human rights violation. In addition, failure to inform workers of matters regarding their wages is an affront to human dignity and a violation of the labour right to compensation and adequate working conditions. More specifically, it is against Article 7 of the ICESCR, which provides for the right to fair wages and equal remuneration for work of equal value.

The UDHR clearly defines a right to work, which is one of the basic human rights. Article 23 states that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to equal pay for equal work without any discrimination. Article 24

310 KBS News, 26 November 2013. Reportedly, when North Korean residents asked a returned overseas worker about life in a foreign country, the worker said to them that: ‘When drinking with my friends, if one asks me, “Hey, what is a foreign country like?”, I say to him, “Don’t talk to me, don’t ask me.” After having a few drinks, I say, “Our country pays lip service by saying we live in one of the richest countries in the world; however, in reality, we live in the poorest country in the world.”’ As the overseas workers who went beyond the borders of North Korea start to realise the effectiveness of a market economy and competitiveness of private enterprises, they will be motivated for the reform and opening up of North Korea. It is expected that they will play a leading role in changing North Korea in the future.

provides that everyone has the right to rest and leisure, including reasonable working hours and periodic holidays with pay. However, North Korea's salary exploitation and testimonies that North Korean workers sent abroad suffer from long periods of work, almost every day without holidays, directly violate these international standards. Moreover, the situation of North Korean workers sent abroad directly violates the ICCPR and ICESCR, which North Korea has ratified. These conventions guarantee freedom of association and the right of collective bargaining, and workers can establish labour unions (occupation alliance organisations) in order to fairly claim the protection of their economic and social interests and betterment under these covenants. However, it is difficult for North Korean workers to exercise their rights to protection against labour exploitation and human rights violations by the government and its guidance agents. According to international sources and the testimonies of defectors who had been sent abroad to work, workers who tried to take collective action were sent back to North Korea and subjected to severe punishment; their families also suffered oppression at the hands of the government.

As for labour rights, the North Korean government guarantees labour rights by law at a level no less than international standards. Article 12 of the Socialist Labour Law specifies that 'protection of the worker's labour through the right combination of labour and rest is a natural demand of socialism, which values people the most'. Article 16 sets forth an eight-hour working day. Article 71 of North Korea's Constitution provides that citizens have the right to rest and explicitly specifies the right to get paid for their labour and to take rest breaks. Accordingly, salary exploitation and poor working conditions possibly violate these provisions.

SUGGESTIONS FOR IMPROVEMENT

With respect to wage exploitation, the North Korean government has made excessive deductions from most of the wages of overseas workers, which clearly violates international labour conventions. Some are of the view that such violations should be resolved by filing a petition with the ILO for North Korea's (and the countries to which workers are sent) breach of international conventions, including those regarding the freedom of association, the right to collective bargaining and the right to strike. However, there are limits in that North Korea has not joined the ILO or ratified international conventions regarding the protection of labour rights, which prevents the ILO from taking measures applicable to its member states.

However, establishing an international consensus regarding North Korea's violation of international labour standards would be an initial step to resolving the plight of North Korean overseas workers.³¹¹

The ILO member states to which North Korean workers are dispatched have agreed to make every effort to observe the international standards and take a generous approach in granting asylum.

311 On 25 September 2012, the inaugural general meeting for the INHL was held in order to report the situation on slave labour of North Korean workers to the international community and to improve their human rights. The organisation is expected to focus on investigating human rights and wage exploitation through interviewing North Korean defectors living in South Korea who had experienced work overseas, and on reporting the current human rights situation in respect of overseas workers, partnering with international organisations such as the UN and the ILO.

4.11 Restrictions on freedom of movement

Kim Tae-hoon

Introduction

Article 13 of the UDHR proclaims the right to freedom of residence and movement for everyone. The relevant provisions of the ICCPR, to which North Korea is a party, guarantees specified rights regarding the right to freedom of residence and movement: Article 12(1) specifies that ‘everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence’; Article 12(2) specifies that ‘everyone shall be free to leave any country, including his own’; and Article 12(4) specifies that ‘no one shall be arbitrarily deprived of the right to enter his own country’.

The right to choose one’s work is closely linked to freedom of residence. Article 23 of the UDHR declares that everyone has the right to choose work. The relevant provision of the ICESCR, to which North Korea is also a party, guarantees specific rights regarding the right to choose work: Article 6(1) prescribes that ‘the States Parties recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right’. Furthermore, according to Article 70 of the North Korean Constitution, citizens have the right to work; all able-bodied citizens may choose occupations in accordance with their wishes and skills; and they are entitled to the right to enjoy stable jobs and working conditions.

North Korea has restricted freedom of residence and movement through various systems, such as rationing, compulsory job placement, personal identity registration and others. However, international pressure caused North Korea to amend its Constitution in September 1998, stipulating for the first time that ‘citizens have freedom of residence and travel’ under Article 75. In spite of this constitutional amendment, North Korea, fearing criticism of the regime due to information exchanges among residents, has strictly limited freedom of residence and movement institutionally and practically. It seems that most North Koreans are not aware of their constitutional right to free movement. The KBA survey on human rights in North Korea, which collected the testimonies of 103 defectors who had escaped from North Korea after 1 January 2011, revealed that 77 respondents (74.8 per cent) answered ‘no’ when asked: ‘Did you know that the 1998 Constitution provides that citizens have freedom of residence and travel?’

Restrictions on freedom of residence and movement within North Korea

RESTRICTIONS ON FREEDOM OF RESIDENCE WITHIN NORTH KOREA

In North Korea, residents’ places of work are determined by the state, as are their places of residence. The Workers’ Party of Korea monopolises the work placement of North Korean residents based on the manpower supply plan, and the standards of work placement are based largely on a state-assigned social class (*songbun*) or family background, rather than an individual’s will, aptitude or ability. Those

who have inferior *songbun* or whose family members or relatives oppose North Korea's ideological system are sent to workplaces such as farms or coal mines where rigorous physical labour is required. In workplaces where manpower is insufficient, such as factories, coal mines or other construction sites, workers are assigned in the form of 'collective (group) labour' which involves placing a group of required workers under the instruction of the Party. By contrast, the children of Party officials and members of the government who have superior *songbun* are assigned to workplaces in preferred areas, including Pyongyang, without consideration of their abilities. After work placement, transfer to another workplace is decided at the discretion of the Party according to an individual's *songbun*, rather than with regard to their abilities or their wishes.

For women, compulsory work placement is less restrictive than for men. Women, like men, are assigned to jobs compulsorily after graduating from school or finishing their military service, however, it is said that if married women have a child, they can leave their original job within a short period of time.³¹² Men, on the other hand, must go to the assigned job. This greater flexibility is the fundamental reason why more North Korean women defect from North Korea, which has remained the case even though factories are now operating at only 20–30 per cent of capacity.³¹³

North Korea prescribes that being absent from work constitutes 'unemployment', which is recognised as an anti-social phenomenon and, subject to punishment. Furthermore, one cannot move residence without the permission of the authorities. Article 146 (Violation of Regulations for the Use of a State-Owned Dwelling Place) of the North Korean Criminal Code (amended and supplemented by Decree No 2387 of the Standing Committee of the SPA on 14 May 2012) provides that someone in breach of the regulations shall be punished by short-term labour for one year or less. In cases where the person commits a grave offence, they shall be punished by short-term labour for three years or less. According to Article 149 (Illegal Transfer of a State-Owned Dwelling Place) of North Korea's previous Criminal Code, as amended before 2012, a person who hands over or receives a dwelling place owned by the state for money or goods shall be punished by short-term labour for two years or less. In cases where the person commits a grave offence, they shall be punished by reform through labour for three years or less.

However, when defectors were asked to name the most influential factor in deciding one's work placement, a significant number of answered, 'economic power'; in other words, offering a bribe. This is due to changes in North Korean society and the impact of capitalism following the financial hardships of the 1990s. Also, housing sales are actively taking place 'under the table'.³¹⁴ Residents enlist the aid of house management agents and offer a bribe. Subsequently, they exchange a big house with a small house or buy and sell a house. Pyongyang has more real estate transactions than local areas, and it is reported that rich people living in local areas possess several houses in Pyongyang, which has not been heard of before.³¹⁵

According to the survey conducted by the KBA, when asked whether it is true that a person cannot obtain a citizen card and is subject to punishment if he moves his residence without permission of the

312 *COI Report*, 102.

313 *Ibid*, 106.

314 *Ibid*, 101.

315 *North Korea Intellectuals Solidarity Newsletter*, No 5, 2014.

authorities, 74 respondents (71.8 per cent) answered ‘yes, but it is possible to move if offering a bribe’, seven (6.8 per cent) responded ‘no, it is not possible to move even if offering a bribe’, 20 (19.4 per cent) replied ‘I don’t know’ and two (1.9 per cent) said ‘no’.

Meanwhile, forcible expulsions are frequently committed in North Korea as a typical example of infringement on the freedom of residence. When asked whether it is true that residents are forcibly transferred to another place on policy grounds by the North Korean government, 83 respondents (80.6 per cent) answered ‘yes’, a mere five respondents (4.8 per cent) said ‘no’ and 15 (14.6 per cent) replied ‘I don’t know’.

The authorities have long used forcible expulsion as a political weapon against impure elements, dissidents and their families, and have moved large numbers of Pyongyang citizens with poor family backgrounds to provincial areas. North Korea issues separate citizen cards for residents of Pyongyang and citizens who are resident elsewhere. If there is a defector within a family, the whole family is often expelled from Pyongyang. In response to the question on the survey ‘Is it true that if a family member is discovered to have fled to South Korea, the remaining family is forcibly expelled to another place?’ 56 of the 103 respondents (54.4 per cent) answered ‘yes’, 16 respondents (15.5 per cent) said ‘no’, 29 respondents (28.2 per cent) replied ‘either can happen’ and two respondents (1.9 per cent) said ‘I don’t know’.

Forcible expulsions are frequently committed due to smuggling, bootlegging or human trafficking in border areas such as Hyesan in Ryanggang Province. In addition, forcible expulsion cases associated with anti-socialist activities such as using mobile phones have been increasing. As for families of persons whose whereabouts are unknown, they were expelled to rural areas until 2011. However, since 2012, forcible expulsions have been conducted only after confirming whether the grounds for forcible expulsion are satisfied. It is reported that forced expulsion often took place at dawn without any notice; neighbours were unaware of the reasons for the expulsion, or the place to which the person or family was sent, and could only assume what had happened.³¹⁶

RESTRICTIONS ON FREEDOM OF MOVEMENT IN NORTH KOREA

In principle, North Korean residents should possess a travel permit under Article 6 of the Regulation of Travel when they move out of the city or county in which they currently reside. According to the survey, 98 of the 103 respondents (95.1 per cent) acknowledged that they have a duty to possess a travel permit in North Korea. Article 30 of the People’s Security Control Act prescribes that: ‘The People’s Security Agency shall crack down on violations of travel orders or passage orders.’ Travelling without a permit is a violation of a travel order, and if someone violates a travel order or illegally enters a controlled area, the authorities punish them with warnings, fines or forced unpaid labour under Article 194 of the Administrative Penalty Act. According to the survey, when respondents were asked about punishments for travelling without a travel permit within North Korea (and some gave multiple responses), 39 (35.1 per cent) answered ‘fines’, 31 (27.9 per cent) responded ‘unpaid labour for six months or less’, 19 (17.1 per cent) said ‘short-term labour for six months to two years’, 20 (18.0 per cent) responded ‘I don’t know’ and two (1.8 per cent) gave ‘other’ as their response. There was a total of 111 responses because a number of respondents gave multiple answers.

316 KINU, *Report on Human Rights in North Korea*, 2013, 208–209.

Minors to whom a citizen card is not issued cannot get a traveller's certificate by themselves; they must be accompanied by a guardian to whom a travel permit has been issued. Together with general travel permits, North Korea operates a system that restricts travel to special areas. In other words, those who do not have a Pyongyang citizen card or Pyongyang temporary residence permit are not able to enter Pyongyang unless they bring a traveller's certificate with an approval number granted by Pyongyang City. This is confirmed by 98 (95.1 per cent) of respondents to the KBA's survey. In order for ordinary citizens to travel to a city or county which falls under the administrative districts such as the Tumen River, the Amnok River and the Demilitarized Zone, they must possess a traveller's certificate with an approval number issued by both the province of the residential district and the No 2 Department of the People's Committee in North Pyongan Province, Chagang Province, Ryanggang Province or North Hamgyong Province. In addition, they should obtain an approval number issued by a security guidance agent when travelling to Pyongyang, the front lines or border areas.

Responding to the 2014 survey question about the time needed to apply for and receive a travel permit to travel to uncontrolled areas, 39 of the 103 respondents (37.9 per cent) stated that 'it takes more than four days' and 23 (22.3 per cent) stated that 'many times a travel permit is not issued'. In addition, 22 (21.4 per cent) answered 'two to three days' and 19 (18.4 per cent) answered 'I don't know'. In respect of travel to controlled areas, 47 of the 103 respondents (45.6 per cent) answered 'about seven to 15 days', 22 (21.4 per cent) said that 'many times a travel permit is not issued', 20 (19.4 per cent) said '15 days or more' and 14 (13.6 per cent) said 'I don't know'. These responses indicate that obtaining a travel permit in North Korea is neither easy nor certain. When a traveller with a travel permit arrives at a town or a village, he or she must receive confirmation from the head of the neighbourhood watch for the destination area, register on the travel roster, and then finally receive a stamp of approval on the travel permit from the MPS.³¹⁷

However, contrary to what the law specifies, restrictions on travel have actually been relaxed due to North Korea's economic difficulties. In principle, a domestic travel permit is issued for free. However, as mobility has increased due to trade or other reasons, it has become common to receive a travel permit in exchange for money or cigarettes; otherwise, the procedures for obtaining a travel permit are long and complicated. According to the survey, when applying for a travel permit to uncontrolled areas, 97 (94.2 per cent) said 'a travel permit is easily obtained if a bribe is offered', four (3.9 per cent) answered 'it is difficult to receive a travel permit' and two (1.9 per cent) replied 'I don't know'. As for travel to controlled areas, 66 (64.1 per cent) said 'a travel permit can be obtained if a bribe is offered', 18 (17.5 per cent) said 'it depends on the controlled area' and 12 (11.7 per cent) said 'even though a bribe is offered, it is difficult to obtain a travel permit'. In addition, the number of people travelling without a travel permit has been on the increase. In the event that they are caught in a crackdown, they could attempt to avoid punishment by offering a bribe. When asked whether it is possible to avoid punishment when caught in crackdown by offering a bribe, 70 (68.0 per cent) answered 'yes, it is possible', 14 (13.6 per cent) answered 'if they are caught in an uncontrolled area, it is possible; however, in controlled areas, it is impossible', 13 (12.6 per cent) answered 'even if they are in a controlled area, they can avoid punishment by offering a bribe' and four (3.9 per cent) said 'I don't know'.

317 *Ibid*, 196–198.

One of the reasons for the aforementioned phenomenon is that it has become increasingly common in recent years for North Korean residents to travel by truck or other motor vehicle rather than by train. The drivers of these work unit trucks and other vehicles (so called ‘servi-vehicles’, short for ‘service vehicles’) transport people to their destination in and around major cities in return for a fee, even though they are not officially authorised to do so. It seems that North Korean residents use servi-vehicles instead of going through the travel permit process, which is costly and time-consuming.³¹⁸

Along with cracking down on unauthorised travellers, the authorities also inspect the accommodation in which travellers stay. Those who violate public accommodation registration rules are penalised with warnings, a fine or up to three months of unpaid labour or labour education (Article 173 of the Administrative Penalty Act). Such inspections are conducted by the people’s security agencies (Article 33 of the People’s Security Control Act). Inspection of accommodation is conducted by military security agents, who target unregistered guest houses or people who do not possess a citizen’s ID or travel permit. Reportedly, registration and inspection of accommodation are not mandatory these days, and surveillance by the head of the neighbourhood watch is not that strict. Even if accommodation is inspected, penalties can be avoided if money or cigarettes are offered.

Restrictions on freedom to travel overseas

According to Articles 2 and 9 of North Korea’s Immigration Law, overseas travel by North Korean residents is possible with the issuance of a border area immigration certificate (a passport or other document such as a certificate or a visa in lieu of a passport). Overseas travel is classified into two categories: long-term stays for employment or official business and short-term stays for tourism or visiting relatives. Overseas travel opportunities for long-term stays are selectively granted to certain classes of resident who have a superior family background and who are regarded as having ideological integrity. Overseas travel on a long-term basis has steadily increased with the expansion of overseas employment opportunities to earn foreign currency in areas such as logging, construction, textiles and restaurant work.

According to the 2014 survey, when asked whether North Korean residents can stay overseas on a long-term basis if they apply for travel to China or other places for employment in logging, construction and other industries, 48 (46.6 per cent) answered that ‘it is very difficult for ordinary citizens to travel overseas even if they offer a bribe’ and 29 (28.2 per cent) said ‘I don’t know’. However, 26 (25.2 per cent) responded that ‘ordinary citizens can do so by paying a bribe’, which indicates that it is possible for ordinary citizens to obtain long-term employment by offering bribes. According to a report on the current status of North Korean overseas workers submitted to the South Korean National Assembly’s Foreign Affairs and Unification Committee by the Ministry of Foreign Affairs and Trade on 13 October 2013, North Korea dispatched approximately 46,000 workers to around 40 countries, including China, Russia, Mongolia and countries in Africa. Reportedly, in many cases the workers live as a group in remote places near the worksite in unfavourable conditions.³¹⁹

In most cases, ordinary North Korean residents travel to China to visit their relatives or to engage in trade. North Korean residents are only allowed to visit relatives in China. In order to apply for a

318 *Ibid.*, 199–205.

319 *Yonhap News*, ‘An estimated 46,000 North Korean workers dispatched for earning foreign exchange’, 13 October 2013.

passport, an invitation letter from their relatives in China must be submitted. According to the survey, 80 respondents (77.7 per cent) answered that 'China is the only country that North Korean residents are allowed to visit' and only two (1.9 per cent) answered that 'North Korean residents can visit countries other than China if they offer a bribe'. Currently, by law, North Korean residents aged 45 or over who have no criminal record and possess citizen cards can apply for a passport for the purpose of visiting relatives in China. Also, the foreign affairs section of the SSD in each city and county reportedly prescribes regulations prohibiting people aged 70 or above from travelling overseas and lineal family members from travelling together.³²⁰ On the travel document of the resident planning to travel overseas, the names of the relatives in China, the details of the place where they will be staying and other basic information must be recorded.

The KBA survey also questioned the 103 respondents with respect to the system for issuing 'river-crossing passes' on a 24-hour or 48-hour basis when a North Korean resident in the border region visits China to engage in trade for a short period of time. When asked whether it is true that a river-crossing pass system exists, 26 (25.2 per cent) said 'it is true', 36 (35.0 per cent) said 'it is not true' and 41 (39.8 per cent) answered 'I don't know'. When asked whether it is true that large bribes should be paid in order to obtain a river-crossing pass, 44 (42.7 per cent) answered 'it is true', whereas 13 (12.6 per cent) said 'it is not true' and 46 (44.7 per cent) answered 'I don't know'. It appears that the river-crossing pass system has not been widely used.

However, due to financial difficulties in North Korea and the shortage of foreign currency, most North Korean residents obtain their passports by paying money instead of going through the required procedures. Even obtaining a passport via a money payment occasionally takes a long time.³²¹ According to the survey, when asked whether ordinary North Korean residents travel to China for a short period of time if they receive an invitation letter from their relatives residing in China, 61 of the 103 respondents (59.2 per cent) said 'it is possible only if offering a bribe', 12 (11.7 per cent) said 'bribery is common but not always possible', seven (6.8 per cent) said 'it is possible even if a bribe is not offered', 20 (19.4 per cent) said 'I don't know' and, finally, three (2.9 per cent) said 'it is not possible'.

Punishment imposed on overseas travellers

Many North Korean residents have been crossing the Chinese border without a relevant travel permit or a traveller's certificate since the great famine in the 1990s in search for food or yearning for freedom. In cases of illegal border crossing, short-term unpaid labour will be imposed under the Administrative Penalty Act,³²² the People's Security Control Act, or under North Korea's immigration laws. Also, under Article 221 of the 2004 amendment to North Korea's Criminal Code, which penalises illegal border crossings, up to five years of reform through labour will be imposed. However, in cases where North Korean residents have been in contact with South Korean nationals or Christian

³²⁰ KINU, *Report on Human Rights in North Korea*, 2013, 205.

³²¹ *Ibid.*, 206–207.

³²² Article 167 of the Administrative Penalty Act (Violations of Travel Order) specifies that: 'If a person violates a travel order, or enters controlled areas or crosses the border lines without authority to do so, the person will be subject to a penalty, a warning or stern warning, or unpaid labour for three months or less and labour education. In cases where the person commits a grave offence, unpaid labour for three months or more and labour education will be imposed.'

churches, or have made attempts to enter South Korea, Article 63 of North Korea's Criminal Code (treason) applies and, as a consequence, a minimum of five years of reform through labour, an unlimited term of reform through labour or capital punishment is meted out. Sometimes, the illegal border crossers are sent to political prison camps or are subject to summary execution.

According to the 2014 survey, when the respondents were asked about the kinds of punishment North Koreans are subject to when they cross the border, solely to earn money, without a border area traveller's certificate (and some gave multiple responses), 57 (47.1 per cent) answered 'paying a fine', 35 (28.9 per cent) said 'a maximum six months of unpaid labour', 14 (11.6 per cent) answered 'six months to two years of short-term labour' and 15 (12.4 per cent) answered 'I don't know'. However, in response to the question 'what kinds of punishment are North Koreans subject to when they illegally cross the border to South Korea?' (multiple responses were allowed), 13 (11.4 per cent) answered 'three to ten years of reform through labour', 82 (71.9 per cent) answered 'ten or more years of reform through labour or political prison camp', 13 (11.4 per cent) said 'capital punishment' and six (5.3 per cent) said 'I don't know'.

Since 2009, and especially after Kim Jong-un took power, the strict public security ruling has been significantly reinforced. As a result, in July 2010, North Korea's Defence Commission issued 'Instruction 0082' to the Chinese border region authorising the military units to shoot to kill defectors crossing the border to China.³²³ On 22 October 2011, a defector who had stepped on to Chinese territory after crossing the Amnok River was witnessed being shot dead by border security guards near Hyesan in Ryanggang Province.³²⁴ In January 2014, Kim Jong-un issued an order called the Command of the Central Military Commission of the Workers' Party of Korea 'regarding severe punishment imposed on those who commit treason against the socialist fatherland'.³²⁵ The order specified that 'the Central Military Commission of the Workers' Party of Korea commands that border guards of the Korean People's Army, the SSD, and the People's Home Army impose severe punishment on traitors and strict border controls' stressing that 'all border guards shall carry live ammunition and merciless punishment such as being shot shall be imposed on those who commit illegal border crossings, defections or espionage'.³²⁶

According to the 2014 survey, when 103 respondents were asked whether they knew that a command was given to the troops in the border areas in 2010 to shoot on the spot defectors crossing to China, 65 (63.1 per cent) answered 'yes, there was such a command', three (2.9 per cent) answered 'that is not true' and 35 (34 per cent) said 'I don't know'.

Now, significantly fewer North Korean residents attempt to defect because of the tightest-ever controls of the China–North Korea Amnok and Tumen border region. Since January 2014, following the execution of Jang Song-taek, border guards have operated a password system to prevent illegal border

323 *Donga Ilbo*, 'North Korea having Kim Jong-un as Supreme Leader running "Bright Star Comrade Party"', 21 July 2010.

324 *Donga Ilbo*, 'North Korea "Must stop defection" shot dead on spot in border areas', 7 November 2011.

325 According to the document issued by the publisher of the Workers' Party of Korea, it is marked: 'Top secret. Only distributed internally and intended to be disposed of after reading. It is known that the command was delivered to the State Security Department or high-ranking officers of border guards.'

326 *Chosun Pub*, 'Kim Jong-un, command of merciless punishment (shooting) of traitors (defectors)', *COI Report*, 108.

crossings, which involves changing the password twice a day. Reportedly, if anyone gives them a wrong password, the guards are ordered to shoot the defector immediately.³²⁷

North Korean residents forcibly deported from China are being sent to military units along the border and then to the SSD detention centres in repatriation areas located mainly in Hoeryong, Hyesan, Musan, Onsong and Sinuiju for basic interrogation and identity checks. After that, they are sent back to their hometown. Deported North Korean nationals are detained in SSD detention centres in repatriation areas after a strip search, a personal belongings inspection and a health examination (HIV test). During the body search, the detainees are subject to body cavity searches to check for money, are forced to perform numerous 'stand-up and squats' while naked, or are subject to a bowel movement examination. Also, the deportees are subject to battery, verbal violence or threat under investigation processes in safety agency detention centres or provincial holding centres. Forced abortion and infanticide are conducted on pregnant women repatriated from China and their newborn children, in contravention of Article 106 of North Korea's Code of Criminal Procedure, which prohibits the detention of women three months before or seven months after giving birth.

Reportedly, the families of defectors have frequently been forcibly expelled from the border region and have been detained in collective villages established in the more remote cities of South Hamgyong Province, such as Changjin, Pujon, Hochon and Kumya, which are rugged and cold areas. Persons subject to transfer to these collective villages are the families of North Korean residents who have defected since 2012, when the Kim Jong-un regime officially started. Recently, North Korea has dispatched 200 SSD agents to Ryanggang Province and North Hamgyong Province in order to search out accessories to defection from North Korea.³²⁸

Meanwhile, China actively cooperates with North Korea in searching out defectors and blocking defection, in violation of an international human rights principle called 'the principle of *non-refoulement*', which forbids the rendering of a victim of persecution to their persecutor. Aiming to seal off the border between China and North Korea, China finished the installation of wire-entanglements at a height of two to three metres to block essential defection routes such as Helong, Sanhe and Tumen, and also undertook the installation of wire-entanglements in Kaishantun.³²⁹

Restrictions on the right to return to one's own country

The right to movement includes the right to return to one's own country as specified in Article 12(4) of the ICCPR. Here, the scope of one's own country is broader than the concept of one's country of nationality, which encompasses an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien.³³⁰

South Korea's Act on the Confirmation of Life or Death and the Promotion of Exchange of Inter-Korean Separated Families was enacted on 25 March 2009 and implemented on 26 September 2009. Its purpose is to alleviate separated families' suffering and to contribute to North-South reconciliation by specifying the details needed to confirm the status of separated families in North and South Korea

327 *Donga Ilbo*, 'Hushed border region, current angles of North Korea (65)', 17 March 2014.

328 *Chosun Ilbo*, 'North Korea, collectively detaining the families of defectors in Hamgyong Province', 23 January 2014.

329 *Donga Ilbo*, 'North Korea, "Stop defection under any circumstances" shooting on border region', 7 November 2011.

330 *COI Report*, 141.

and to promote their exchange. Under Article 2(1) of the Act ‘inter-Korean separated families’ are defined as: ‘Those who are relatives within the eighth degree of consanguinity, relatives by marriage and those who are, or were, a spouse dispersed in areas south of the Military Demarcation Line and areas north of the Military Demarcation Line at present, irrespective of the reasons for and circumstances of separation.’ There are many reasons for family separation, including: the division of the Korean peninsula due to the Korean War, voluntary defections to the North or South, abductions occurring during the Korean War, volunteering for military service, repatriation to North Korea from Japan, failure to return after the armistice agreement, kidnapping and defections from North Korea. The number of separated families has been determined differently depending on who conducted the survey and when, and on which standard was applied in order to define the scope of separated families. According to a population and housing census conducted in 1955 by South Korea’s Central Statistical Office, the total number of North Korean nationals who went to South Korea amounted to 735,501. According to more recent surveys conducted by the same organisation asking whether the respondents were born in North Korea, a total of 418,000 persons in South Korea in 1990 said they were born in North Korea. The number in 1995 was 403,000; in 2000, it was 355,000; and in 2005, it was 161,605.³³¹ At the end of 2013, the Unified Information Centre for Separated Families, established and operated jointly by the South Korean Ministry of Unification, the Korean Red Cross and the Committee of Five North Korean Provinces, had 129,264 persons on its register of separated families (71,480 alive, 57,784 deceased). Among those alive, 81.5 per cent are in their 70s or older, and every year about 3,000 to 4,000 persons are known to have died.³³²

Separated families are not able to confirm whether their family members in North Korea or South Korea are alive or deceased, and neither can they exchange letters or see each other whenever they want. More fundamentally, they are not able to live with their families. This is a violation of the right to family protected by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 (the Geneva Convention), Article 23 of the ICCPR, Article 36(1) of the South Korean Constitution and Article 78 of the North Korean Constitution. Concerning the issues of displaced persons raised by almost all separated families in North and South Korea, the Guiding Principles on Internal Displacement of the UNHRC of 1998 urge their resolution as matters of human rights.

On 12 August 1971, the Korean Red Cross proposed to the North Korean Red Cross an inter-Korean Red Cross meeting to discuss a campaign for the reunion of separated families. Starting with the first preliminary meeting, held on 20 September 1971, inter-Korean Red Cross talks began. Subsequently, the South Korean government tried to resolve separated families issues through various channels, including the Red Cross talks and ministerial meetings. From 2000 to 2010, there were a total of 18 family reunion meetings and seven video reunions. As a result, a total of 4,321 families (21,734 persons) have met their family members. However, because of North Korea’s insincerity, family reunions did not take place for three years and four months, until the 19th meeting was held from 20–25 February 2014. This meeting resulted in the reunion of 705 families. Moreover, the next family reunion meeting has not been set and its occurrence is not assured. The need to resolve the issue of

331 KINU, *Report on Human Rights in North Korea*, 2013, 426–427.

332 *The Asia Economy Daily*, ‘Reunion of the separated families after three-and-a-half years... President Yoo Jung-keun urged to have a regular reunion programme’, 3 March 2014.

the remaining separated families has intensified because of the rapid increase in deaths among the family members due to their age.

The separated families issue should be dealt with in light of fundamental rights, such as the right to movement or the right to family. However, the past pattern of depending on special dispensation from North Korea or looking solely at the humanitarian character of these events should be avoided. As inter-Korean relations have entered a cooling-off period and the North Korean authorities are approaching this humanitarian issue from a political perspective, resolving the issue of separated families may not be easy. However, confirmation of whether separated family members are living or deceased and their addresses, the free exchange of letters, and a system for reunions on a regular basis must be provided using an international human rights mechanism such as the UN High Commissioner for Human Rights, the Special Rapporteur on the situation of human rights in North Korea, the UN Special Rapporteur on the Human Rights of Internally Displaced Persons, or the International Committee of the Red Cross.

Conclusion

Article 12(3) of the ICCPR specifies that ‘the aforementioned rights (rights regarding the freedom of movement) shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant’, enumerating the grounds for restrictions on the freedom of movement. However, the reasons North Korea gives for restricting the freedom of movement, except in some North Korean controlled areas, exceed the scope of the grounds for restrictions permitted in the ICCPR, resulting in comprehensive and excessive restrictions on the freedom of movement.

Freedom of movement is a fundamental human right. According to the KBA survey, when 103 respondents were asked whether they hoped to move to another place or to travel, 89 (86.4 per cent) answered ‘yes, I hope to do so’. In addition, when they were asked whether they had seen or heard of North Koreans who wanted to go to South Korea, 59 (57.3 per cent) answered ‘yes’, 21 (20.4 per cent) said ‘no’ and 23 (22.3 per cent) answered ‘I don’t know’, which shows that restrictions on the freedom of movement in North Korea are excessive. When asked ‘What do you think is the most severe human rights infringement in North Korea, looking back on those times you were in North Korea and throughout the time you have been in South Korea?’, one of the respondents (ID 007(2014)) answered: ‘In North Korea, people are not allowed to move anywhere without a travel certificate, and even if they have the certificate, they are under police surveillance wherever they stay. Also, innocent people are taken away to places from which they can never come back for simple verbal blunders. These are the most severe human rights violations happening in North Korea.’ These results reinforce the notion that North Korea is a giant prison camp.

The COI, established by the 22nd UNHRC Resolution of 21 March 2013, concluded in its final report, submitted to the 25th UNHRC on 17 May 2014, that there are widespread and systematic human rights infringements on the freedom of movement, especially overseas travel, which amount to crimes against humanity, and the UN Security Council should refer the situation in North Korea to the ICC to hold Kim Jong-un responsible for this situation. Also, for the first time, the report strongly urges the government of China to stop the forced repatriation of North Korean defectors in China immediately. Subsequently,

the 25th UNHRC Resolution on Human Rights in North Korea, passed on 28 March 2014, confirmed the aforementioned *COI report* and recommended that the Security Council refer the situation in North Korea to the ICC for action. The same resolution also recommends that the Office of the High Commissioner for Human Rights establishes a field-based structure to collect cases regarding human rights infringement in North Korea, based on the *COI report*. If such a system is established in South Korea, it would help improve human rights in North Korea, including the right to movement.

4.12 The reality of human rights for North Korean defectors abroad

Kim Hyeon-seong

Introduction

From the late 2000s, the number of escapees from North Korea or defectors in China has been decreasing, and the number of defectors in China is estimated to be around 10,000 to 20,000.^{333 334} The Chinese government has denied defectors refugee status and has forcibly repatriated them to North Korea, treating them as illegal border crossers based on the Mutual Agreement for the Exchange of Escapees or Criminals between North Korea and China (Extradition Agreement), entered into in 1960 with North Korea, the Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas, entered into in 1986 with North Korea, and the Regulation of Jilin Province on Frontier Administration enacted in 1993.³³⁵

The obligation to repatriate defectors to North Korea is imposed on China by the bilateral treaty between China and North Korea. However, performance of the obligation violates *jus cogens* under international law, which makes the treaty null and void. Therefore, forcible repatriation by China is a violation of international law. The principle of *non-refoulement* under the Convention and Protocol Relating to the Status of Refugees (Refugee Convention) and the prohibition of torture and the principle of *non-refoulement* under the Convention against Torture are fundamental principles of international human rights laws. That human rights laws are superior to all other international laws is one of the best-known peremptory norms in international law.³³⁶ If a treaty is in conflict with a peremptory norm when it is entered into, it is void. If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void (Articles 53 and 64 of the Vienna Convention on the Law of Treaties).³³⁷

333 Yoon Yeo-sang, 'China's forcible repatriation of defectors and the relevant issues', Peace Foundation Emergency Specialist Forum, 16 March 2012, 5.

334 However, there is another estimate that the numbers reach 50,000 to 100,000 due to the absence of exact statistics. *Munhwa Ilbo*, "Defectors equal illegal migrants", China forcibly repatriated around 100,000 defectors over nine years', 2 March 2012; Yeo Yeong-mu, 'Chinese government should comply with principle of *non-refoulement* under international law', KONAS Net Column, 2 March 2012.

335 Jeong Cheon-gu, 'Chapter 7. Korean Chinese, Defectors, and China-South Korea Relation', Reunification Strategy 6(1), August 2006, 207.

336 Kim Myeong-gi et al, 'Study of the Legal Status of Defectors in China', Collection of International Law Society 42(2), February 1997, 21–22.

337 *Kukmin Ilbo*, 'Forcible repatriation of North Korean defectors is a violation of international law', 19 February 2012; Naver Encyclopedia, 'peremptory norm'.

This article argues the case for an assessment under international law of the human rights of defectors from North Korea and is based on the 2014 KBA survey of 103 defectors entering South Korea between 2011 and 2013. The survey has limitations in that the responses of 103 defectors cannot explain all aspects of defection or the entire situation regarding human rights infringements. However, the survey does shed light on the modes and causes of defection, human rights violations committed in the process of defection, the reality of defector status in China and human rights violations there, the reality of the prison camps in third countries, including Thailand, and human rights infringements against forcibly repatriated defectors. Moreover, the results from the 2014 survey can be compared with similar surveys conducted in 2008, 2010 and 2012.

Patterns and causes of defection

AGE AND GENDER DISTRIBUTION

The total number of defectors who had entered South Korea as of December 2013 was 26,122, consisting of 7,947 males and 18,175 females.³³⁸ The unbalanced gender ratio, conspicuous from the period between 2002 and 2003, has continued since the mid-2000s, with the female ratio consistently exceeding 70 per cent. Between 2007 and 2008, the female ratio reached 78 per cent. The female ratio was also high between 2011 and 2013, when it ranged from 70 to 76 per cent. This phenomenon is generally attributable to the involvement of third parties in forms such as human trafficking.

The number of defectors consistently reached around 3,000 a year from the mid-2000s, then rapidly decreased to 1,500 a year from 2012. This decrease is thought to be attributed to the following: a strong official warning, newly issued after Kim Jong-il's death on 17 December 2011, to the effect that three generations in a family would be eliminated if anyone defected; tightened border controls by installing barbed wire fences and surveillance cameras along the major defection routes; and a decline in the number of North Korean residents who attempted to escape from North Korea due to the partial resumption of official grain rations to discourage defections.³³⁹

338 Ministry of Unification Statistics, www.unikorea.go.kr/content.do?cmsid=1440 (last accessed 12 April 2014).

339 KINU, *Report on Human Rights in North Korea*, 2013, 389–390.

Table 161: Defectors entering South Korea (as of the end of December 2013).

Year	Male	Female	Total	Female ratio (%)
Pre-1998	831	116	947	12
1999–2001	565	478	1,043	46
2002	510	632	1,142	55
2003	474	811	1,285	63
2004	626	1,272	1,898	67
2005	424	960	1,384	69
2006	515	1,513	2,028	75
2007	573	1,981	2,554	78
2008	608	2,195	2,803	78
2009	662	2,252	2,914	77
2010	591	1,811	2,402	75
2011	795	1,911	2,706	70
2012	404	1,098	1,502	72
2013 (tentative)	369	1,145	1,514	76
Total	7,947	18,175	26,122	70

Source: The Ministry of Unification of South Korea (website).

The age distribution in Table 162 shows that people in their 20s or 30s, who are very active physically, made up the largest percentage of defectors – about 58 per cent. By contrast, defectors in their teens and 40s were relatively few, accounting for 13.2 per cent and 15 per cent, respectively, and the percentage of defectors in their 50s is even lower – less than five per cent. It appears that the remarkably high percentage of defectors in their 20s and 30s is closely related to the fact that more than 70 per cent of defectors are female. That fact, in turn, is not irrelevant in light of the preferences of human trafficking groups.

Table 162: Age distribution of defectors entering South Korea (as of the end of June 2013).

Age/gender	0–9	10–19	20–29	30–39	40–49	50–59	60 or more	Total
Male	586	1,525	2,081	1,825	1,050	387	280	7,734
Female	590	1,826	5,032	5,748	2,759	841	785	17,581
Subtotal	1,176	3,351	7,113	7,573	3,809	1,228	1,065	25,315
Percentage (%)	4.6	13.2	28.0	29.9	15.0	4.9	4.2	100

Source: The Ministry of Unification of South Korea (website). Percentages calculated by the author.

OCCUPATIONAL AND EDUCATIONAL DISTRIBUTION

Table 163 lists the occupations that defectors held in North Korea. About 86.5 per cent of the defectors were either ‘unemployed dependents’ or ‘workers’. This shows that occupation is a relevant factor affecting defection. Of course, a more credible analysis would require an accurate comparison with the occupational distribution of the entire North Korean population. However, the survey results show at a minimum that those who have inferior occupations have a greater tendency to escape from North Korea than those with a better profession. This tendency is reflected in the occupational distribution that results from the 2014 survey and set forth in Table 164. According to the table, the

total for ‘worker’ and ‘farmer’ amounts to 44.7 per cent and the total for ‘unemployed’, ‘housewife’ and ‘others’, which fall under the category ‘unemployed dependents’, amounts to 33 per cent. This results in a total of 77.7 per cent showing the same tendency, as indicated in the entire occupational distribution of defectors. On the other hand, only 3.6 per cent of defectors had occupations of manager or professional. In fact, this figure conflicts with the 2014 survey results, which showed that the percentage of office workers is 14.6 per cent. It seems that the survey results could be the product of a sampling error.

Table 163: Occupation of defectors before entering South Korea (as of the end of June 2013).

Occupation/ Gender	Manager	Soldier	Worker	Unemployed	Volunteer	Art and Physical Education	Professional	N/A (children)	Others	Total
Male	307	572	3,332	2,873	69	65	180	238	98	7,734
Female	98	77	6,227	9,457	921	145	323	184	147	17,581
Subtotal	405	649	9,559	12,332	990	210	503	422	245	25,315
Percentage	1.6	2.6	37.8	48.7	3.9	0.8	2.0	1.7	1.0	100

Source: The Ministry of Unification of South Korea, www.unikorea.go.kr/main.do. Percentages calculated by the author.

Table 164: Occupation of defectors in North Korea.

Response	Number of respondents	Percentage (%)
Worker	42	40.8
Farmer	4	3.9
Clerk	15	14.6
Student	5	4.9
Soldier	3	2.9
Unemployed	16	15.5
Housewife	14	13.6
Others	4	3.9
Total	103	100

According to the statistics of the Ministry of Unification shown in Table 165, about 80 per cent of the defector population consists of middle school graduates (previously described as having ‘high and middle school education’) or less. This indicates that educational background is closely related to the motivation for defection. Also, educational background in North Korea seems relevant to the occupational distribution there. Interestingly, a supermajority of the defectors is comprised of middle school graduates, amounting to 70.1 per cent; whereas, according to the 2014 survey results shown in Table 166, only 54.4 per cent of the respondents were high school and middle school graduates and 40.7 per cent were community college and college graduates. This figure differs considerably from the percentage derived from the entire defector population (16.2 per cent). This difference is deemed to be attributable to sampling error. Also, many respondents in the 2014 survey were highly educated people, which naturally produced many office workers in the occupational distribution that appears in Table 164.

Table 165: Educational background of defectors in North Korea (as of the end of June 2013).

Education level/ gender	Preschool	Kindergarten	Elementary school	Middle school (high and middle school)	Community college	College or above	Others (unknown)	Total
Male	335	114	680	4,703	660	859	383	7,734
Female	325	143	1,015	13,034	1,658	917	489	17,581
Subtotal	660	257	1,695	17,737	2,318	1,776	872	25,315
Percentage (%)	2.6	1.0	6.7	70.1	9.2	7.0	3.4	100

Source: The Ministry of Unification of South Korea (website). Percentages calculated by the author.

Table 166: Educational background of the respondents.

Response	Number of respondents	Percentage (%)
Elementary school graduates or less	4	3.9
High and middle school graduates or less	56	54.4
Community college graduates or less	26	25.2
College graduates or less	16	15.5
Not applicable (abductees)	1	1.0
Total	103	100

PLACE OF BIRTH AND RESIDENCE DISTRIBUTION

According to Table 167, which shows the place of origin in North Korea for the entire defector population, 75.8 per cent are from North Hamgyong Province and Ryanggang Province, which amounts to 65 per cent and 10.8 per cent, respectively. Likewise, as in the 2010 and 2012 surveys, the 2014 survey shows that the respondents' places of birth and residence in North Korea were mostly in Hamgyong Province and Ryanggang Province. These statistics indicate that the defector's place of origin is closely related to defection.

According to the 2014 survey, 62.8 per cent of the respondents were born in remote regions of North Korea, the North Hamgyong Province and Ryanggang Province where North Korean residents the so-called inferior *songbun* live. These results confirm that place of birth is closely related to defection, as indicated in Table 168. As for the residence distribution indicated in Table 169, the distribution shows that 84.5 per cent of defectors lived in the aforementioned two provinces.³⁴⁰ This means that factors such as the distance from the central region of North Korea and the distance to the Chinese border – in other words, the extent of physical and geographical obstacles and hardships defectors must confront in escaping – are relevant to defection.

Songbun is significantly connected to the mode of defection. However, geographical considerations play a larger role in defection. Factors such as how far the North Korean authorities can exercise their power and the extent of that power have a direct influence on defection. In conclusion, the results

³⁴⁰ According to the 2012 survey, 62.4 per cent of respondents were born in North Hamgyong Province and Ryanggang Province, and 77.2 per cent of the respondents lived in North Hamgyong Province and Ryanggang Province. This pattern is followed in the 2014 survey.

suggest that weaker control by the North Korean authorities in a territory may be an important element in encouraging defection elsewhere.

Table 167: Place of birth of defectors in North Korea (as of the end of June 2013).

Birthplace													
Gender	Gangwon	Nampo	Ryanggang	Jagang	South Pyongan	North Pyongan	Pyongyang	South Hamgyong	North Hamgyong	South Hwanghae	North Hwanghae	Others	Total
Male	206	58	812	57	395	329	297	702	4,399	242	149	88	7,734
Female	295	61	1,923	108	503	361	192	1,610	12,057	151	200	120	17,581
Subtotal	501	119	2,735	165	898	690	489	2,312	16,465	393	349	208	25,315
Percentage	2.0	0.5	10.8	0.7	3.5	2.7	1.9	9.1	65.0	1.6	1.4	0.8	100

Source: The Ministry of Unification of South Korea (website). Percentages calculated by the author.

Table 168: Defectors' place of birth.

Response	Number of respondents	Percentage (%)
North Hamgyong	42	40.8
South Hamgyong	5	4.9
North Pyongan	4	3.9
South Pyongan	5	4.9
Pyongyang	5	4.9
Ryanggang	33	32.0
Gangwon	3	2.9
South Hwanghae	1	1.0
South Korea	2	1.9
China	1	1.0
Japan	2	1.9
Total	103	100

Table 169: Defectors' place of residence.

Response	Number of respondents	Percentage (%)
North Hamgyong	46	44.7
South Hamgyong	7	6.8
North Pyongan	3	2.9
South Pyongan	3	2.9
Pyongyang	2	1.9
Ryanggang	41	39.8
South Hwanghae	1	1.0
Total	103	100

Indicators reflecting family background or *songbun*, such as the standard of living, occupation, education and party membership are closely related to defection. Survey results reveal that the relationship between standard of living, occupation, education and defection is similar to the relationship between place of birth and defection.

However, statistics on party membership show the opposite result.³⁴¹ Generally, 13 to 14 per cent of the North Korean population belongs to the Workers' Party of Korea. But according to the 2014 survey, 21.4 per cent (30 per cent in 2006, 19 per cent in 2010, and 29.7 per cent in 2012) of respondents said that they were Party members, which is much higher than the national average. On the one hand, this disparity may have resulted from the dissolution of the regime. On the other hand, it may be because Party members, who have superior *songbun* are better able to obtain outside information and secure opportunities and means to escape from North Korea. However, in the survey conducted in 2008, Party members made up only eight per cent of respondents, which was much lower than the percentage for the population as a whole. These results suggest the possible presence of a sampling error. It follows that it is difficult to generalise about the relationship between party membership and defection.

Table 170: Standard of living in North Korea.

Response	Number of respondents	Percentage (%)
Highest	2	1.9
Upper	11	10.7
Middle	54	52.4
Lower	26	25.2
Lowest	10	9.7
Total	103	100

Table 171: Did you have Party membership?

Response	Number of respondents	Percentage (%)
Yes	22	21.4
No	79	76.7
Other	2	1.9
Total	103	100

MOTIVATION FOR DEFECTION

According to the 2014 survey, recent defections have been for political reasons rather than economic ones, which is in line with the surveys conducted in 2010 and 2012. If the responses 'doubt about the regime' (11.1 per cent) and 'political repression' (9.6 per cent) are treated as political reasons, along with 'yearning for freedom' (23.7 per cent), the percentage of defections motivated by political reasons amounts to 44.4 per cent, which outweighs the defections for

³⁴¹ For the percentage of party membership of respondents in 2006, 2008, and 2010 respectively, see the KBA Report on Human Rights in North Korea, 2010, 470.

economic reasons (19.3 per cent) and family reunion purposes (11.9 per cent). Defections for ‘going to South Korea’, which account for 22.2 per cent of responses, are considered the result of other factors. Interestingly, in regard to violation of the right to food, the survey also shows that, when asked about the major reasons for defection, ‘political freedom’ (53.3 per cent) outweighed ‘economic conditions’ (26.2 per cent).

Regarding the pattern of defections, the 2014 survey shows that respondents’ defections have been motivated by a ‘yearning for freedom’ (23.7 per cent), ‘going to South Korea’ (22.2 per cent) and ‘economic hardship’ (19.3 per cent). These results differ from the 2012 survey results, in which ‘economic hardship’ ranked first among the reasons for defection.³⁴² The 2014 survey results are the first to show political motivations as the number one reason for defections. Another interesting feature is that defections for ‘economic hardship’ have been gradually decreasing, accounting for 36.5 per cent in 2010, 30.4 per cent in 2012 and, finally, 19.3 per cent in 2014. Also, defections for the reason of ‘going to South Korea’ have been increasing, amounting to 16.3 per cent in 2012 and 22.2 per cent in 2014. One can infer from several recent phenomena considered together – the increase in direct defections to South Korea, defections by families, and support from family members in South Korea – that family reunion cannot be ignored as a significant motivating factor for defection.

Table 172: Motivation for defection (multiple responses were allowed).

Response	Number of respondents	Percentage (%)
Political repression	13	9.6
Family reunion	16	11.9
Economic hardship	26	19.3
Doubt about regime	15	11.1
Yearning for freedom	32	23.7
Going to South Korea	30	22.2
Other	3	2.2
Total	135	100

Table 173: Major reasons for defection (multiple responses were allowed).

Response	Number of respondents	Percentage (%)
Economic conditions	28	26.2
Political freedom	57	53.3
Other	22	20.6
Total	107	100

³⁴² According to the 2012 KBA survey, ‘economic hardship’ accounted for 30.4 per cent of responses and ‘political repression’ for 17.8 per cent, which ranked these motivations first and second, respectively, among the reasons for defection.

Table 174: Motivation for defection, 2012 Survey on Human Rights in North Korea (multiple responses were allowed).

Response	Number of respondents	Percentage (%)
Political repression	24	17.8
Family reunion	14	10.4
Economic hardship	41	30.4
Doubt about regime	13	9.6
Yearning for freedom	21	15.6
Going to South Korea	22	16.3
Total	135	100

Table 175: Motivation for defection, 2010 Survey on Human Rights in North Korea.

Motivation	Number of respondents	Percentage (%)
Political repression	35	17.5
Family reunion	44	22.0
Economic hardship	73	36.5
Doubt about regime	18	9
Yearning for freedom	21	10.5
Other	9	4.5
Total	200	100

PATTERNS OF DEFECTION BY GROUPS

According to the 2014 survey, 74.8 per cent of the respondents answered that at least one of their family members had already fled from North Korea (see Table 176) and 74.8 per cent answered that at least one of their family members had fled and is already in South Korea (see Table 177). This is in line with the trend shown in the 2012 survey. In other words, the likelihood of defection is very high in the event that a person’s family members have already fled from North Korea or their family members have defected and are in South Korea. The trend toward defections by families (Tables 172–176) is more clearly marked if the respondents with no or unknown family defectors are excluded.

Table 176: Number of family members escaping from North Korea.

Response	Number of respondents	Percentage (%)
0	13	12.6
1	15	14.6
2	14	13.6
3	23	22.3
4	10	9.7
5	2	1.9
6	1	1
7	6	5.8
8	1	1
11	1	1
13	3	2.9
20	1	1
Unknown	13	12.6
Total	103	100

Table 177: Number of defectors whose family members are in South Korea.

Response	Number of respondents	Percentage (%)
0	16	15.5
1	15	14.6
2	17	16.5
3	22	21.4
4	10	9.7
5	1	1
6	2	1.9
7	4	3.9
8	1	1
10	1	1
11	1	1
13	2	1.9
20	1	1
Unknown	10	9.7
Total	103	100

Some 31.4 per cent of respondents said they fled North Korea by themselves. Conversely, 47.6 per cent of respondents said that they fled the country with ‘family members’, and 21 per cent said ‘friends or neighbours other than family members’. These responses show the trend of defections by group has grown stronger (see Table 178). Also, among respondents who fled North Korea along with family members, 82 per cent said ‘I fled with one to four family members’. Among respondents who fled North Korea along with their friends or neighbours, 59.1 per cent said ‘I fled with one to three people’.

Table 178: Groups of people with whom respondents fled from North Korea (multiple responses were allowed).

Response	Number of respondents	Percentage (%)
Family members	50	47.6
Friends or neighbours other than family members	22	21
Escaping alone	33	31.4
Total	105	100

INCREASING FAMILIARITY WITH DEFECTION

A total of 62.1 per cent of respondents who were aware of the situation said they knew that families in the neighbourhood watch group to which they belonged had members who had defected. Three-quarters of the neighbourhood watch groups had at least one family member who had defected in their group.

Table 179: Number of families in defectors' neighbourhood watch group.

Response	Number of respondents	Percentage (%)
0	16	25
1–5	35	54.7
6–10	9	14.1
20–29	3	4.7
50	1	1.6
Total	64	100

The survey results also show that most family members who were left behind in North Korea intend to flee. In fact, only 18.7 per cent (15 per cent in 2012) of remaining family members have no intention of fleeing North Korea. It is known that most remaining family members have a strong desire for defection and are looking for opportunities to get out of the country. Some remain in North Korea because of insufficient funds for defection; others had tried to defect but failed. Over a quarter (26.2 per cent) of respondents said that family members remained in North Korea for 'other reasons', such as fear of forcible expulsion or punishment if they tried but failed to defect, or of being arrested, physical illness, the large size of their family, or dangers arising out of strict surveillance.

Table 180: 'Why do you have family members left behind in North Korea?' (Multiple responses were allowed.)

Response	Number of respondents	Percentage (%)
No intention to defect	20	18.7
Insufficient funds for defection	29	27.1
Tried to defect but failed	3	2.8
Looking forward to opportunities for defection	27	25.2
Other reasons	28	26.2
Total	107	100

According to the survey, the time taken from making the decision to defect to actually fleeing from North Korea is not long – less than a week for 33 per cent of respondents. If the number of respondents taking less than a month is added, the total is 47.6 per cent. If the number taking less than three months is added, the total is 57.3 per cent. It seems that once they make the decision to defect, respondents do not hesitate to do so apart from preparing by watching for an opportunity to defect or meeting a broker. This shows that defection has become common in North Korea. In addition, compared with the 2012 survey, which indicated that 52.4 per cent of respondents took less than three months and 25.7 per cent took less than a week to defect, the 2014 survey shows the current trend of a gradual shortening of the time between decision and defection.³⁴³

Table 181: Duration of time between making decision to defect and actually fleeing from North Korea.

Response	Number of respondents	Percentage (%)
Less than one week	34	33.0
One week to one month	15	14.6
One to three months	10	9.7
Three to six months	10	9.7
Six months to one year	9	8.7
One year or more	25	24.3
Total	103	100

TIME BETWEEN DEFECTION AND ARRIVAL IN SOUTH KOREA

In general, the longer North Korean defectors stay in other countries before entering South Korea, the broader and more severe their experience of human rights infringement and the greater the impoverishment of their character and personality. However, it is impossible to measure with precision the extent to which the amount of time North Korean defectors stay in other countries affects their personality. That said, it is certain that the amount of time North Korean defectors spend in China and other countries in the course of defecting has an impact on the human rights violations they suffer as a result of their illegal and economically unviable status.

According to the 2014 survey, when asked how long it takes between fleeing from North Korea and entering South Korea through third countries such as Thailand, 82.5 per cent answered that ‘it takes three months or less’ and 98.1 per cent answered that ‘it takes 12 months or less’. These results confirm that the amount of time North Korean defectors spend before entering South Korea has decreased (see Table 182). The establishment of private means of helping people to flee from North Korea, such as the use of brokers, and an increase in the number of ways in which North Korean defectors can directly enter South Korea may be reasons for the reduction in time spent defecting.

The percentage of respondents answering that ‘it takes two years or more to enter South Korea after fleeing North Korea’ was 22 per cent in the 2008 survey (see Table 184), 9.44 per cent in the 2010 survey (see Table 183), 11.9 per cent or less in the 2012 survey³⁴⁴ and 1.9 per cent or less in the 2014

343 KBA, *Report on Human Rights in North Korea*, 2012, 421.

344 KBA, *Report on Human Rights in North Korea*, 2012, 421–423.

survey³⁴⁵ (see Table 182). In particular, the percentage of respondents answering that ‘it takes one year or more’ was 37 per cent in the 2008 survey (Table 184), 30.6 per cent in the 2010 survey (Table 183) and 1.9 per cent in the 2014 survey. These results confirm that, for North Koreans who enter South Korea, the percentage who stay in other countries before entering South Korea for more than one or two years has significantly decreased in recent years.

Likewise, North Korean defectors are spending less time in China. The percentage of respondents answering that they stayed in China ‘for less than a month’ was 44 per cent in the 2010 survey,³⁴⁶ 44.5 per cent in the 2012 survey³⁴⁷ and 71.8 per cent in the 2014 survey (see Table 199). This trend is directly related to reductions in the total time North Korean defectors take to enter South Korea.

Table 182: Time taken to enter South Korea through third countries (Thailand, Cambodia, Laos, Vietnam, Mongolia, China and others) after fleeing from North Korea.

Response	Number of respondents	Percentage (%)
Less than a month	7	6.8
One to three months	78	75.7
Four to six months	11	10.7
Seven to 12 months	5	4.9
13 months	2	1.9
Total	103	100

Table 183: Time taken from crossing the border of North Korea to entering South Korea, 2010 Survey.

Response	Number of respondents	Percentage (%)	Notes
Less than a month	0	0	Considering the error range for the time spent in third countries, these two categories cannot be broken down separately.
One to three months	3	2.4	
Three to six months	47	37	
Six months to one year	38	30	
One to two years	27	21.2	
Two years or more	12	9.4	
Total	127	100	

345 The 2014 survey covered only cases exceeding 13 months, which amounted to 1.9 per cent. Therefore, it is presumed that the respondents answering that it takes two years or more would be 1.9 per cent or less.

346 KBA, *Report on Human Rights in North Korea*, 2010, 473.

347 *Ibid*, 436.

Table 184: Time taken from crossing the border of North Korea to entering South Korea, 2008 Survey.

Response	Number of respondents	Percentage (%)
Less than one month	10	10
One to three months	17	17
Three to six months	17	17
Six months to one year	19	19
One to two years	15	15
Two years or more	22	22
Total	100	100

Violations of human rights in the course of fleeing from North Korea

DEFECTION ROUTES AND EXPENSES

According to the 2014 Survey, 85.4 per cent of respondents said that their final destination after fleeing from North Korea was South Korea, and a vast majority (94.2 per cent) said the way they chose to flee to China was by crossing the river secretly.³⁴⁸ In this case, 68 per cent said ‘a guide accompanied me during the course of defection’. There are many ways for defectors to meet a guide and, in most cases, a family member or an acquaintance introduced one to them. An interesting point to note is that defection was already so common that a guide could visit the house of the person planning to defect, and that defection system seems to be somewhat established.

Table 185: Final destination after fleeing from North Korea.

Response	Number of respondents	Percentage (%)
Specific place in China where they can meet their family members	4	3.9
Undecided place in China	4	3.9
South Korea	88	85.4
Going to China with intention to go back to North Korea	4	3.9
Others	3	2.9
Total	103	100

³⁴⁸ The response ‘others’ in Table 186 includes respondents that crossed the river with the assistance of border guards or the army in exchange for bribes. If these responses are added to the responses of ‘crossing the river secretly’, that percentage would increase even more and show that almost all North Korean defectors illegally crossed the river when they fled from North Korea, but excludes responses from defectors assigned to Russian logging operations.

Table 186: Ways to flee to China.

Response	Number of respondents	Percentage (%)
Going through legal procedure (passport)	1	1
Crossing the river secretly	97	94
Others	5	5
Total	103	100

Table 187: Did a guide accompany you during the course of defection?

Response	Number of respondents	Percentage (%)
Yes	70	68
No	33	32
Total	103	100

Also, 65 per cent of respondents said that they ‘paid expenses incurred in the course of defecting’. Most of them paid in Korean won or Chinese yuan and some paid in US dollars. When paying in Korean won, the average payment was KPW3.5m (excluding the total expenses incurred until entering South Korea) and expenses amounted to CNY7,275 on average.³⁴⁹ As to how defection expenses were obtained, a slight majority of respondents said they received financial support from family in South Korea (50.7 per cent). Also, some said that they paid the expenses with the resettlement funds they received from the Settlement Support Centre for North Korean Refugees (Hanawon) after entering South Korea and others said they received support from their families living abroad or from churches.

Table 188: Did you pay defection expenses?

Response	Number of respondents	Percentage (%)
No	36	35
Yes	67	65
Total	103	100

³⁴⁹ If payment is calculated using the exchange rate as of 4 May 2014 (164.55 won/yuan), it amounts to 1,197,101.25 Korean won, which is much less than the payment made directly in Korean currency.

Table 189: Payment of expenses (in millions of Korean won).

Response	Number of respondents	Percentage (%)
(Expenses incurred to enter South Korea) three in total	1	2.8
(Expenses incurred to enter South Korea) four in total	2	5.6
(Expenses incurred to enter South Korea) 4.5 in total	1	2.8
(Expenses incurred to enter South Korea) five in total	1	2.8
(Expenses incurred to enter South Korea) seven in total	2	5.6
(Expenses incurred to enter South Korea) eight in total	1	2.8
1	3	8.3
1.1	1	2.8
1.5	3	8.3
2.5	2	5.6
3	7	19.4
4	5	13.9
5	1	2.8
6	3	8.3
6.4	1	2.8
7	2	5.6
Total	36	100

Table 190: Payment of expenses (Chinese yuan).

Response	Number of respondents	Percentage (%)
300 yuan	1	6.3
600 yuan	1	6.3
1,000 yuan	1	6.3
2,000 yuan	2	12.5
2,500 yuan	1	6.3
5,000 yuan	3	18.8
10,000 yuan	4	25.0
13,000 yuan	1	6.3
20,000 yuan	2	12.5
Total	16	100

Table 191: How did you raise defection expenses?

Response	Number of respondents	Percentage (%)
Money saved in North Korea	9	13.4
From family in China	4	6
From family in South Korea	34	50.7
Others	20	29.9
Total	67	100

According to the 2014 survey, in the course of fleeing from North Korea to China, the surveillance by North Korean border guards tended to be somewhat strict, whereas the surveillance by Chinese border guards tended to be comparatively weak. This differs little from the 2010 and 2012 surveys. 11 respondents (10.7 per cent) answered that they were ‘arrested by North Korean border guards or Chinese Public Security Officers and then forcibly repatriated to North Korea’. When escapees were repatriated, they were subject to punishments ranging from education measures to short-term labour. The punishments imposed varied but there were no heavy penalties.

Table 192: What is the degree of surveillance by North Korean border guards?

Response	Number of respondents	Percentage (%)
Strict	63	61.2
Normal	23	22.3
Weak	14	13.6
I don't know	3	2.9
Total	103	100

Table 193: What is the degree of surveillance by Chinese border guards?

Response	Number of respondents	Percentage (%)
Strict	20	19.4
Normal	42	40.8
Weak	36	35
I don't know	5	4.9
Total	103	100

Table 194: Have you been arrested by North Korean border guards or Chinese Public Security Officers in the course of fleeing from North Korea (crossing the river)?

Response	Number of respondents	Percentage (%)
No	91	88.3
Once	11	10.7
Three times	1	1
Total	103	100

Table 195: If arrested, what was the punishment imposed?

ID	Date	Punishment
ID 005(2014)	December 2006	Four months' detention
ID 006(2014)	December 2006	Education measure
ID 016(2014)	2003, 2004, 2007	Ordinary prison camp, labour training camp twice
ID 027(2014)	1996	Detention in a political prison camp
ID 029(2014)	November 2001	Holding centre
ID 032(2014)	June 2011	Holding centre for five months
ID 035(2014)	April 2010	Forced repatriation to North Korea
ID 040(2014)	April 2009	Detention in an ordinary prison camp
ID 041(2014)	2007	Labour training camp for one month
ID 044(2014)	March 2004	Ordinary prison camp
ID 048(2014)	December 2009	Short-term labour for six months
ID 054(2014)	March 2011	Avoided through bribery

VIOLATIONS OF HUMAN RIGHTS SUCH AS HUMAN TRAFFICKING

Like the 2010 and 2012 surveys, the 2014 survey indicates that a very low percentage of respondents experienced human trafficking. Some 92.2 per cent, when asked 'have you ever married a Chinese person or been trafficked to a specific workplace after fleeing from North Korea (crossing the river)?', answered 'no'. When asked 'did you think that you were going to be trafficked in China right before escaping from North Korea?' 25 per cent answered 'yes'.

The low percentage of respondents who said that they had experienced human trafficking is thought to arise from sampling error or avoidance of honest answers. In other words, according to the 2014 survey, 68 per cent of respondents said 'a guide accompanied me in the course of defection' (see Table 187) and yet only 65 per cent answered 'I paid defection expenses' (see Table 188). One of the reasons why these two percentages are not identical may be because some escaped from North Korea via human trafficking.

However, it is presumed that the defection pattern has changed in that the 2014 survey produced results similar to the 2010 and 2012 surveys. Taking into consideration several factors such as that more people were able to cover their defection expenses with the support of their families living in South Korea or abroad, that punishment for human trafficking in China has been strengthened, that private systems helping people to flee from North Korea have been established, that the number of defectors directly entering South Korea has been increasing and that the duration of defection has been shortened, it can be concluded that the possibility of human trafficking occurring in the course of defection has been gradually reduced.

Table 196: Have you ever married a Chinese person or been trafficked to a specific workplace after fleeing from North Korea (crossing the river)?

Response	Number of respondents	Percentage (%)
Yes	8	7.8
No	95	92.2
Total	103	100

Table 197: Did you think you were to be trafficked in China right before escaping from North Korea?

Response	Number of respondents	Percentage (%)
Yes	2	25
No	6	75
Total	8	100

This does not mean that human trafficking in the course of defection has disappeared. Like the 2012 survey, the 2014 survey shows human trafficking by brokers, which has not yet been rooted out. This can be seen in the answers from respondents when asked to explain in detail the human trafficking committed in the course of defection (see Table 198).

Table 198: Answers from respondents when asked to explain in detail the human trafficking committed in the course of defection (eg, forced trafficking, violence or brokers).

ID	Response
ID 004(2014)	I was traded by a broker.
ID 028(2014)	I learned that I had been trafficked in the course of defection. I refused and resisted but was forcibly sold.
ID 038(2014)	I was trafficked by a broker to China.
ID 042(2014)	I was traded through a Chinese broker.
ID 044(2014)	I was traded by a broker.

Conditions of stay in China and human rights violations

DURATION OF STAY AND LIFE IN CHINA

According to the 2014 survey, 89.3 per cent of respondents answered they stayed in China ‘for less than six months after escaping from North Korea’ (67.3 per cent in 2012). Interestingly, 71.8 per cent answered ‘less than a month’ (25.7 per cent in 2012), which indicates that the length of stay in China has been significantly reduced. It seems that the respondents preferred to go directly to South Korea rather than stay in China.

Table 199: Duration of stay in China.

Response	Number of respondents	Percentage (%)
Less than a month	74	71.8
One to six months	18	17.5
Seven to 12 months	2	1.9
13 to 36 months	1	1
49 months or more	6	5.8
Overseas workers in Russia	2	1.9
Total	103	100

When asked what occupations they had in China, 93.2 per cent of the respondents answered ‘unemployed’ which accounts for an overwhelming majority. Meanwhile, when asked what they did

in China to earn money, 6.8 per cent of the respondents answered ‘I became a spouse of a Chinese person’. Responses including ‘I was employed to earn money’ and that ‘I engaged in activities regarding North Korean defectors or South Korea’ accounted for 1.9 per cent each. However, 81.6 per cent said ‘I went directly to South Korea’ (see Table 201). This seems to be the major reason for the shortening of time between escaping North Korea and entering South Korea.

Table 200: Occupations in China.

Response	Number of respondents	Percentage (%)
Unemployed	96	93
Service industry	2	2
Agricultural industry	2	2
Manufacturing industry	1	1
Overseas workers in Russia	2	2
Total	103	100

Table 201: What did you do in China?

Response	Number of respondents	Percentage (%)
I became a spouse of a Chinese person	7	6.8
I was employed to earn money	2	1.9
I engaged in activities regarding North Korean defectors or South Korea	2	1.9
Others	8	7.8
I went directly to South Korea	84	81.6
Total	103	100

CRACKDOWNS AND HUMAN RIGHTS VIOLATIONS IN CHINA

In connection with human rights violations North Korean defectors might have encountered during their stay in China, respondents were asked to explain their experience in China of crackdowns and arrests by Chinese Public Security Officers. The respondents who stayed in China for a short time answered that ‘there was no crackdown’ or ‘I do not know’. The respondents who stayed in China for a long time answered that crackdowns were conducted not on a regular basis but at the request of North Korea, or that crackdowns became severe before holidays or national events. In the event of being arrested, the defectors were forcibly repatriated to North Korea.

When asked about human rights violations (such as physical or sexual assault by the Chinese) experienced in China, most respondents answered that ‘I did not experience human rights violations’, which indicates that the number of human rights violations committed by ordinary Chinese citizens rather than Chinese Public Security Officers has been reduced. This phenomenon seems to be related to the shortened duration of stay in China. Generally, human rights violations are committed by Chinese people who take advantage of the vulnerability of North Korean defectors in China. However, as we have seen, North Korean defectors are staying in China for shorter periods

and, as a result, North Koreans have less frequent contact with Chinese people; this gives Chinese people fewer opportunities to find out that they are defectors from North Korea.

On the other hand, there are still human rights violations such as domestic abuse by a Chinese husband or failure to pay for work rendered, which shows that when Chinese people find out the status of North Korean defectors, human rights violations attributable to their vulnerable status as defectors occur.

Table 202: Human rights violations that North Korean defectors experienced in China.

ID	Duration of stay	Type of crackdown	Experience of human rights violations
ID 001(2014)	One month	On the way to Yanji from Changbai by two cars, one of the cars moved first to confirm whether everything was okay. When we saw Chinese Public Security Officers moving around, we got out of the cars and climbed up to the mountain and proceeded with our journey. We walked for four or five hours to get to the meeting point and then took another car and continued our journey. No Chinese Public Security Officers were found on the way to Shenyang from Yanji.	No
ID 007(2014)	Ten years	Usually, no crackdown is conducted. However, the officials know where defectors live.	Drunkenness of a Chinese husband.
ID 013(2014)	Three months	Chinese Public Security Officers try to run after North Korean defectors. Once they catch the defectors, they send them back to North Korea.	
ID 018(2014)	Eight months	I had not seen any crackdown because I was busy with work.	No
ID 028(2014)	Three months	I do not know.	No
ID 029(2014)	Six months	Crackdowns are conducted on the National Day of China.	No
ID 031(2014)	Two months	I do not know.	No
ID 032(2014)	Three months	Severe crackdowns were conducted.	No
ID 033(2014)	One month	I do not know.	No
ID 038(2014)	Six years and two months	If illegal acts are committed, the Chinese Public Security Officers arrest the wrongdoer.	No
ID 042(2014)	Ten years and three months after the first defection	Very severe crackdowns were conducted.	No
ID 044(2014)	One year and seven months	No crackdowns.	
ID 045(2014)	16 years in Russia	The SSD has sent the agents to Russia. However, the agents could not handle North Korean defectors since the number is too many.	Because I did not have an ID card, I was not able to get paid and had to avoid the police.
ID 048(2014)	11 months	I do not know.	No

ID 059(2014)	Three months	I do not know.	No
ID 060(2014)	20 days	I do not know.	
ID 061(2014)	Three months	I do not know.	I was harassed by brokers.
ID 062(2014)	Seven days	The crackdown was not so severe.	No
ID 064(2014)	Four months	Crackdowns became severe on holidays.	An owner of the restaurant I was working for made me work 15 hours instead of 12 hours and gave me 1,200 won instead of 1,500 won by taking advantage of me being a North Korean defector.
ID 071(2014)	Three months	No crackdown.	No
ID 073(2014)	One month	Chinese Public Security Officers could not find North Korean defectors because they hid.	No
ID 081(2014)	14 days	Very severe crackdowns were conducted.	No
ID 100(2014)	Seven years	Frequent crackdowns. Chinese Public Security Officers conduct a crackdown when an event occurs. When the North Korea government requested China to catch a certain number of North Korean defectors, the Chinese Public Security Officers conducted a crackdown.	No
ID 103(2014)	Four months	I do not know.	No

The reality of prison camps in third countries and human rights violations

DEFECTION ROUTES AND TRAVEL EXPENSES TO SOUTH KOREA

According to the 2014 survey, 98 of the 103 respondents said they came to South Korea from China via Thailand at some point on the journey. For the rest of the respondents, each individual took a different route, such as China to Laos to Vietnam, China to Vietnam, Russia to Germany, China to Myanmar or China to Mongolia. Seven came to South Korea via Vietnam. Sixty-six respondents said they went through Laos en route to South Korea. Thailand and Laos are the most frequently visited countries on the routes for defection.

Table 203: The countries North Korean defectors went through after leaving China and before reaching South Korea.

ID	First country	Second country	Third country
ID 001(2014)	Vietnam		
ID 002(2014)	Thailand		
ID 003(2014)	Laos	Thailand	
ID 004(2014)	Laos	Thailand	
ID 005(2014)	Thailand		
ID 006(2014)	Thailand		
ID 007(2014)	Laos	Thailand	
ID 008(2014)	Thailand		
ID 009(2014)	Thailand		

ID	First country	Second country	Third country
ID 010(2014)	Thailand	Thailand	
ID 011(2014)	Thailand		
ID 012(2014)	Laos	Thailand	
ID 013(2014)	Thailand		
ID 014(2014)	Laos	Thailand	
ID 015(2014)	Laos	Thailand	
ID 016(2014)	Laos	Thailand	
ID 017(2014)	Thailand		
ID 018(2014)	Laos	Vietnam	Thailand
ID 019(2014)	Laos	Thailand	
ID 020(2014)	Laos	Thailand	
ID 021(2014)	Thailand		
ID 022(2014)	Laos	Vietnam	
ID 023(2014)	Thailand		
ID 024(2014)	Thailand		
ID 025(2014)	Laos	Thailand	
ID 026(2014)	Laos	Thailand	
ID 027(2014)	Laos	Thailand	
ID 028(2014)	Laos	Thailand	
ID 029(2014)	Laos	Thailand	
ID 030(2014)	Laos	Thailand	
ID 031(2014)	Thailand		
ID 032(2014)	Laos	Thailand	
ID 033(2014)	Vietnam	Laos	Thailand
ID 034(2014)	Laos	Thailand	
ID 035(2014)	Thailand		
ID 036(2014)	Laos	Thailand	
ID 037(2014)	Laos	Thailand	
ID 038(2014)	Vietnam	Thailand	
ID 039(2014)	Thailand		
ID 040(2014)	Laos	Thailand	
ID 041(2014)	Thailand		
ID 042(2014)	Thailand		
ID 043(2014)	Laos	Thailand	
ID 044(2014)	Thailand		
ID 045(2014)	Russia	Germany	
ID 046(2014)	Thailand		
ID 047(2014)	Laos	Vietnam	Thailand
ID 048(2014)	Laos	Thailand	
ID 049(2014)	Thailand		
ID 050(2014)	Thailand		
ID 051(2014)	Laos	Thailand	
ID 052(2014)	Laos	Thailand	
ID 053(2014)	Laos	Thailand	
ID 054(2014)	Thailand		
ID 055(2014)	Thailand		
ID 056(2014)	Thailand		
ID 057(2014)	Thailand		

ID	First country	Second country	Third country
ID 058(2014)	Thailand		
ID 059(2014)	Thailand		
ID 060(2014)	Laos	Thailand	
ID 061(2014)	Laos	Thailand	
ID 062(2014)	Laos	Thailand	
ID 063(2014)	Laos	Thailand	
ID 064(2014)	Laos	Thailand	
ID 065(2014)	Laos	Thailand	
ID 066(2014)	Laos	Thailand	
ID 067(2014)	Vietnam	Laos	Thailand
ID 068(2014)	Thailand		
ID 069(2014)	Laos	Thailand	
ID 070(2014)	Thailand		
ID 071(2014)	Thailand		
ID 072(2014)	Laos	Thailand	
ID 073(2014)	Laos	Thailand	
ID 074(2014)	Laos	Thailand	
ID 075(2014)	Laos	Thailand	
ID 076(2014)	Laos	Thailand	
ID 077(2014)	Laos	Thailand	
ID 078(2014)	Laos	Thailand	
ID 079(2014)	Laos	Thailand	
ID 080(2014)	Laos	Thailand	
ID 081(2014)	Laos	Thailand	
ID 082(2014)	Laos	Thailand	
ID 083(2014)	Laos	Thailand	
ID 084(2014)	Laos	Thailand	
ID 085(2014)	Thailand		
ID 086(2014)	Laos	Thailand	
ID 087(2014)	Laos	Thailand	
ID 088(2014)	Laos	Thailand	
ID 089(2014)	Thailand		
ID 090(2014)	Laos	Thailand	
ID 091(2014)	Laos	Thailand	
ID 092(2014)	Laos	Thailand	
ID 093(2014)	Laos	Thailand	
ID 094(2014)	Laos	Thailand	
ID 095(2014)	Laos	Thailand	
ID 096(2014)	Laos	Thailand	
ID 097(2014)	Laos	Thailand	
ID 098(2014)	Laos	Thailand	
ID 099(2014)	Laos	Thailand	
ID 100(2014)	Laos	Thailand	
ID 101(2014)	Laos	Thailand	
ID 102(2014)	Myanmar		
ID 103(2014)	Mongolia		

Like the 2012 survey, most respondents in the 2014 survey (94.2 per cent) answered that they went through a third country from China with the assistance of a broker. Also, 90 respondents (87.4 per cent) said that they paid fees to brokers in order to get to South Korea. Seventy-eight of these respondents (86.6 per cent) said that they ‘paid in Korean currency’; the average payment was about KPY4,267,900 (the answers of respondents who calculated their expenses from the moment of escaping from North Korea were excluded). In addition, 46.7 per cent said that funds for travel expenses to South Korea were raised by family members in South Korea. Nearly half (45.6 per cent) answered that they ‘raised funds for defection in other ways’ and most of them (34 out of 40) covered the expenses incurred for defection with the resettlement funds from the Settlement Support Centre for North Korean Refugees (Hanawon), which indicates that the resettlement funds from Hanawon have been used as one of the primary financial resources to cover the expenses to come to South Korea.

Table 204: Did you meet a broker in order to go to a third country from China?

Response	Number of respondents	Percentage (%)
Yes	97	94.2
No	4	3.9
Not applicable	2	1.9
Total	103	100

Table 205: Whether or not defectors paid fees to brokers in China in order to enter South Korea.

Response	Number of respondents	Percentage (%)
No	13	12.6
Yes	90	87.4
Total	103	100

Table 206: Paid travel expenses (in millions of Korean won).

Travel expenses in Korean won	Number of respondents	Percentage (%)
(From the moment of escaping) 3	1	1.3
(From the moment of escaping) 5	1	1.3
(From the moment of escaping) 7	1	1.3
1	1	1.3
1.2	1	1.3
1.5	2	2.6
2	3	3.8
2.5	18	23
2.7	1	1.3
3	18	23.1
3.5	5	6.4
4	7	9
4.5	1	1.3
5	4	5.1

Travel expenses in Korean won	Number of respondents	Percentage (%)
6	2	2.6
7	3	3.8
8	4	5.1
9	1	1.3
10	1	1.3
11	1	1.3
25	1	1.3
30	1	1.3
Total	78	100

Table 207: How did you raise funds for your trip to South Korea?

Response	Number of respondents	Percentage (%)
Collecting money in North Korea	3	3.3
Earned by the respondent in China	1	1.1
Supported by a family in South Korea	42	46.7
Supported by a family in China	1	1.1
Supported by a Chinese husband (and his family)	2	2.2
Others	41	45.6
Total	90	100

HUMAN RIGHTS VIOLATIONS IN THIRD COUNTRIES

Contrary to the 2010 survey, the 2012 and 2014 surveys showed that cases of human rights violations of defectors travelling to or through third countries have decreased significantly. This may be because the duration of defection has been reduced and alternative means of defection have been established. Of course, greater awareness in each country of the North Korean defectors' human rights could also account for the reduction in human rights violations.

According to the 2014 survey, when asked to explain the human rights situation occurring in the course of staying in a third country before entering South Korea, only three respondents answered that their human rights were violated, in the form of searches, physical assaults, insults and threats of repatriation. The rest of the respondents answered that they did not experience any human rights violations.

Table 208: Human rights violations occurring in the course of staying in a third country before entering South Korea.

ID	Response
ID 060(2014)	I was searched and physically assaulted in Mae Sai in Thailand.
ID 081(2014)	A staff member at the South Korean embassy in Thailand yelled at and insulted a woman from Ryanggang Province because she had answered back at the immigration detention centre in Thailand. The staff told a representative of the North Korean defectors that she would not be able to get on a plane.
ID 103 (2014)	I stayed in hiding in China and was threatened in Mongolia with being sent back to North Korea.

However, 47.4 per cent of the respondents had the experience of being arrested by the police or border guards in third countries, mostly in Thailand. Also, in response to the question ‘how did the police or guards of the third country that you went through treat you when you were arrested?’ some replies included ‘I was not treated badly but occasionally I was robbed’ or ‘I was looked down upon or treated like a criminal’, which confirms that human rights violations have occurred.

Table 209: Were you arrested by the police or guards while staying in a third country?

Response	Number of respondents	Percentage (%)
Arrested	45	47.4
Not arrested	50	52.6
Subtotal	95	100
Not applicable	8	–
Total	103	100

Table 210: How did the police or guards of the third country that you went through treat you when you were arrested?

ID	Arresting country	Treatment
ID 009(2014)	Thailand	I was detained in the police station in Chiang Rai for 20 days.
ID 019(2014)	Thailand	They demanded money.
ID 032(2014)	Thailand	They made a request for the bus fare to the police station which was 500 yuan.
ID 060(2014)	Thailand	Badly treated. Two meals per day. Insufficient food.
ID 062(2014)	Laos	Eight soldiers blocked us but the driver gave money to them and they let us cross the border to Thailand.
ID 074(2014)	Thailand	I was sent to the police station and then I slept in a tent for two nights. After a trial, I was transferred to Mae Sai.
ID 079(2014)	Thailand	They did not even give me a spoon so I had to have a meal with my hands. I was treated as a criminal in a prison.
ID 081(2014)	China	I was arrested when they conducted a drug inspection. They took a picture of me and provided me with interpreters of different languages such as English, Russian and Chinese to confirm my nationality. I told a lie that I was from Yanji. They took me to an inn and I ran away.
	Thailand	I was detained in a prison of the police substation for two days and was transferred to a local prison.
ID 088(2014)	Laos	The police arrested me and threatened to deport me, demanding money. I had to pay 1,200 yuan to them.
	Thailand	Not bad.
ID 102(2014)	Myanmar	I was looked down on.
ID 103(2014)	Mongolia	I was held in solitary confinement for a week. After that, I went to Ulan Bator and stayed in a hotel for 15 days, receiving help from the South Korean embassy.

Meanwhile, in response to the question regarding experiences of sexual harassment or sexual violence that female defectors suffered in the course of entering South Korea from China, none of the respondents answered that they had personally experienced sexual abuse or sexual harassment. However, 11 respondents answered that they had heard stories about a North Korean woman being sexually abused by a broker or a Thai police officer and ending up being pregnant, which confirms that sexual violence against North Korean females has not been eradicated.

In addition, when asked about cases in which a defector was not able to receive medical care or who died in the course of coming to South Korea through China, none of the respondents answered that they had personally experienced a lack of medical care but some responded that they had witnessed or heard of cases in which people were unable to receive medical care and died as a result.

Table 211: Experiences of sexual harassment or sexual violence suffered by female defectors in the course of entering South Korea from China.

ID	Experience of sexual harassment or sexual violence	Reports of sexual harassment or sexual violence
ID 008(2014)	No	A woman was sexually abused by a broker in China and became pregnant.
ID 009(2014)	No	It is heard that two North Korean women (a mother and a daughter) stayed in Yanji and the daughter, who was 19 years old, was raped by a Chinese broker. It is known that many North Korean women are exposed to sexual violence after fleeing to China. It was also heard that a man being chased fell off a cliff and hurt his leg in Thailand and ended up dying there.
ID 042(2014)	No	A woman injured her waist while resisting rape by a broker in Kunming.
ID 052(2014)	No	It was heard that a woman was raped by a Chinese broker and became pregnant.
ID 054(2014)		It was heard that some people were sexually harassed by a broker and ended up being pregnant.
ID 061(2014)	A Chinese broker sexually harassed a woman in my group.	A Thai policeman sexually harassed a North Korean woman.
ID 062(2014)	No	A girl in another group, who was 13 or 14 years old, was raped by a Thai policeman and became pregnant.
ID 071(2014)	No	When I was in Thailand, I heard that a female North Korean defector was raped by a broker in Kunming, China and became pregnant.
ID 081(2014)	No	A broker forcibly raped a North Korean woman in a different group that came to China around the same time.
ID 086(2014)	No	It was heard that Chinese brokers had sex with pretty North Korean women.
ID 100(2014)	No	It was heard that Chinese brokers sexually harassed or abused North Korean women before trafficking them.

Table 212: Cases in which a defector was unable to receive medical care or where a defector died in the course of travelling to South Korea through China.

ID	Experience of no medical care or death	Reports of no medical care or death
ID 025(2014)	No	A man suffered a leg injury but could not receive medical care for it.
ID 079(2014)	No	A tuberculosis patient was not able to receive medical care on the way to South Korea through Thailand and finally died right after arriving in South Korea.
ID 081(2014)	No	A lady who accompanied us had a limp. She borrowed medicine for her leg from someone because she did not have medicine and was unable to visit a hospital.

CONDITION OF DETENTION FACILITIES ACCORDING TO WHERE NORTH KOREAN DEFECTORS WERE LOCATED

The survey then addressed the condition of the third-country detention facilities in which North Korean defectors were detained. The defectors were asked to explain the condition of each detention facility in which they were detained and gave various answers. In the case of detention facilities in Thailand, the answers regarding the duration of detention varied from ‘one day’ to ‘three months’. The answers regarding the frequency of taking a bath also varied, including ‘two or three times per day’, ‘whenever I wanted’, ‘once a week’ and ‘no time for taking a bath’. In respect to frequency of exercise, various responses were given including ‘anytime I wanted’, ‘one hour per week’ or even ‘no time for exercise’. In relation to the conditions of food, medical treatment and hygiene, the responses varied from ‘good’ to ‘poor’. Interestingly, respondents detained in the same detention facility gave differing responses; differences even arose in responses to the questions regarding the frequency of taking a bath and the frequency of exercise. These inconsistent responses indicate that respondents answered according to their subjective assessments.

Table 213: Condition of detention facilities in each country.*

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 001(2014)	N/A	N/A	–	–	–	–	–	–
ID 002(2014)	Thailand	Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Twice per week
ID 003(2014)	Thailand	Mae Sai prison	One week	Good	Good	Good	Daily	Every other day for one to two hours
ID 004(2014)	Thailand	Bangkok immigration detention centre	Seven months and 20 days	Good	Good	Poor	Daily	Once a week

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 005(2014)	Thailand	Local prison	One week	Good	Good	Good	Daily	Daily
		Mae Sai prison	11 days	Good	Good	Good	Daily	Daily
		Bangkok immigration detention centre	23 days	Good	Good	Good	Daily	Daily
ID 006(2014)	Thailand	Local prison	One week	Good	Good	Good	Daily	Daily
		Mae Sai prison	11 days	Good	Good	Good	Daily	Daily
		Bangkok immigration detention centre	23 days	Good	Good	Good	Daily	Daily
ID 007(2014)	Thailand	Bangkok immigration detention centre	1.5 months	Good	Good	Good	Daily	Every third day
ID 008(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Poor	Poor	Daily	Every third day
ID 009(2014)	Thailand	Mae Sai prison	Five days	Good	Good	Poor	Daily	No exercise
		Bangkok immigration detention centre	45 days	Good	Good	Poor	Daily	No exercise
ID 010(2014)	Thailand	Bangkok immigration detention centre	Two months	Good	Good	Poor	Daily	Every third day
ID 011(2014)	Thailand	Mae Sai prison	Five days	Poor	Good	Poor	Whenever I want	Freely
		Chiang Mai police station	One day	Good	Do not know	Do not know	Freely	Freely
		Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Daily
ID 012(2014)	Thailand	Bangkok immigration detention centre	20 days	Poor	Good	Poor	Daily	Every third day
ID 013(2014)	Thailand	Mae Sai prison	10 days	Good	Good	Good	Daily	Daily
		Bangkok immigration detention centre	Three months	Good	Good	Good	Daily	Daily

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 014(2014)]	Thailand	Chiang Mai	Seven days	Good	-	Good	Daily	Seven hours
		Mae Sai prison	20 days	Poor	Poor	Poor	Daily	No exercise
		Bangkok immigration detention centre	20 days	Good	Poor	Good	Daily	Two hours
ID 015(2014)	Thailand	Chiang Mai	Nine days	Good	Good	Good	Daily	Daily
		Mae Sai prison	One month	Good	Good	Good	Daily	Every few days
		Bangkok immigration detention centre	One week	Good	Good	Good	Daily	Daily
ID 016(2014)	Thailand	Local prison	One week	Good	Poor	Poor	One time	One time
		Bangkok immigration detention centre	One week	Good	Poor	Poor	One time	One time
ID 017(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Poor	Poor	Daily	Once a day
ID 018(2014)	Thailand	Refugee centre	Five days	Poor	Poor	Poor	Whenever I want	I did not exercise
		Mae Sai prison	15 days	Poor	Poor	Poor	Whenever I want	I did not exercise
		Bangkok immigration detention centre	15 days	Poor	-	Good	Whenever I want	Every third day for an hour
ID 019(2014)	Thailand	Mae Sai prison	Seven days	Good	Good	Good	Daily	Twice a week
		Bangkok immigration detention centre	40 days	Good	Good	Good	Daily	Twice a week
ID 020(2014)	Thailand	Local prison	Seven days	Poor	Poor	Poor	Daily	Daily
		Mae Sai prison	Six days	Poor	Poor	Good	Daily	Daily
		Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Daily
ID 022(2014)	Thailand	Local prison	Seven days	Poor	Good	Good	Whenever I want	Freely
		Mae Sai prison	Nine days	Poor	Poor	Poor	Freely	Freely
		Bangkok immigration detention centre	1.5 months	Good	Good	Good	Freely	Freely

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 023(2014)	Thailand	Local prison	Three days	Good	Good	Good	Daily	Daily
		Mae Sai prison	One week	Good	Good	Good	Daily	Daily
		Bangkok immigration detention centre	25 days	Good	Good	Good	Daily	Daily
ID 024(2014)	Thailand	Local prison	One week	Good	Good	Good	Daily	Daily
		Bangkok immigration detention centre	40 days	Good	Good	Good	Daily	One to two days
ID 025(2014)	Thailand	Local prison	One week	Good	Good	Good	Daily	Daily
		Mae Sai prison	11 days	Good	Good	Good	Daily	Daily
		Bangkok immigration detention centre	Three weeks	Good	Good	Good	Daily	Daily
ID 026(2014)	Thailand	Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Every third day
ID 027(2014)	Thailand	Mae Sai prison	Five days	Good	Good	Good	Daily	No exercise
		Bangkok immigration detention centre	22 days	Good	Good	Good	Daily	Every third day
ID 028(2014)	Thailand	Mae Sai prison	Two days	Poor	Good	Poor	Daily	No exercise
		Bangkok immigration detention centre	23 days	Poor	Good	Poor	Daily	No exercise
ID 029(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Good	Poor	Every other day	Every third day
ID 030(2014)	Thailand	Local prison	One to two days	Good	Good	Good	Not allowed	Not allowed
		Mae Sai prison	One week	Good	Good	Good	Daily	Freely
		Bangkok immigration detention centre	21 days	Poor	Good	Good	Daily	Freely

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 032(2014)	Thailand	Local prison	One day	Poor	Good	Good	Whenever I want	No exercise
		Mae Sai prison	Two days	Good	Good	Poor	Whenever I want	No exercise
		Bangkok immigration detention centre	28 days	Good	Good	Good	Whenever I want	Whenever I want
ID 033(2014)	Thailand	Bangkok immigration detention centre	Do not know	Good	Good	Good	No	No
ID 034(2014)	Thailand	Bangkok immigration detention centre	25 days	Good	Good	Good	Daily	Seven times per week
ID 035(2014)	Thailand	Local prison	11 days	Good	Good	Good	Daily	Daily
		Mae Sai prison	15 days	Good	Good	Good	Daily	Daily
		Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Daily
ID 036(2014)	Thailand	Local prison	Three days	Poor	Poor	Poor	No	No
		Mae Sai prison	One week	Poor	Poor	Poor	No	No
		Bangkok immigration detention centre	One month	Poor	Poor	Poor	No	No
ID 037(2014)	Thailand	Local prison	Seven days	Good	Good	Good	Daily	Daily
		Mae Sai prison	16 days	Poor	Poor	Poor	Daily	No
		Bangkok immigration detention centre	28 days	Good	Good	Good	Daily	Daily
ID 038(2014)	Thailand	Local prison	One day	Poor	Good	Poor	Two to three times	One time
		Bangkok immigration detention centre	40 days	Poor	Good	Poor	Two to three times	Every other day
ID 039(2014)	Vietnam	Ho Chi Minh hotel	Three days	Good	Good	Good	Daily	Freely
ID 040(2014)	Thailand	Local prison	Seven days	Good	Good	Good	Daily	Daily
		Mae Sai prison	Three days	Good	Good	Good	Daily	Daily
		Bangkok immigration detention centre	15 days	Good	Good	Good	Daily	Daily

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 041(2014)	Thailand	Local prison	Four days	Good	Good	Good	Daily	No
		Mae Sai prison	One week	Good	Good	Poor	Daily	No
		Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Every third day for one hour
ID 042(2014)	Thailand	Bangkok immigration detention centre	One month	Good	Good	Good	Twice per week	Twice per week
ID 043(2014)	Laos	Embassy	20 days	Good	Good	Good	Daily	Whenever I want
ID 044(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Good	Good	Daily	Every third day
ID 045(2014)	Russia	Russian detention centre	Six months	Good	Good	Good	Freely	Freely
ID 046(2014)	Russia	UN Refugee Agency in Moscow	One year	Good	Good	Good	No	No
ID 047(2014)	Thailand	Local prison	Seven days	Good	–	Good	Whenever I want	Whenever I want
		Bangkok immigration detention centre	One month	Good	–	Good	Whenever I want	I did not exercise
ID 048(2014)	Thailand	Chiang Mai police station	20 days	Good	Poor	Poor	Daily	Freely
		Bangkok immigration detention centre	40 days	Good	Poor	Poor	Daily	Freely
ID 049(2014)	Thailand	Mae Sai prison	Ten days	Poor	Poor	Poor	Daily	Ten minutes
		Bangkok immigration detention centre	20 days	Poor	Poor	Poor	–	–
ID 050(2014)	Thailand	Mae Sai prison	Ten days	Poor	Poor	Poor	Daily	Indoor exercise
		Bangkok	20 days	Poor	Poor	Poor	Daily	30 minutes
ID 051(2014)	Thailand	Local prison	One week	Good	Good	Poor	Daily	Whenever I want
		Bangkok immigration detention centre	25 days	Good	Good	Good	Daily	Three times per week

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 052(2014)	Thailand	Chiang Mai prison	One week	Poor	Poor	Poor	Daily	Daily
		Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Daily
ID 053(2014)	Thailand	Bangkok immigration detention centre	Three months	Good	Good	Good	Daily	Every third day
ID 054(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Poor	Poor	Daily	Every third day
ID 055(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Good	Poor	Every day for a set time	Every third day
ID 056(2014)	Thailand	Mae Sai prison	Five days	Poor	Poor	Poor	Once a day	30 minutes
		Bangkok immigration detention centre	1.5 month	Poor	Poor	Poor	No	No
ID 057(2014)	Thailand	Local prison	15 days	Poor	Good	Poor	Daily	Daily
		Bangkok immigration detention centre	One month	Poor	Good	Poor	Daily	Once a week
ID 058(2014)	Thailand	Local prison	One week	Poor	Poor	Poor	Daily	Two hours per day
		Mae Sai prison	Two days	Poor	Poor	Poor	Daily	Two hours per day
		Bangkok immigration detention centre	One month	Poor	Poor	Poor	Daily	Two hours per day
ID 059(2014)	Thailand	Mae Sai prison	14 days	Poor	Poor	Poor	Freely	I did not exercise
		Bangkok immigration detention centre	12 days	Good	Poor	Poor	Freely	I did not exercise
ID 060(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Poor	Poor	Seven times	One hour every day

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 061(2014)	Thailand	Local prison	One week	Poor	Poor	Poor	Once in every other day	One hour
		Bangkok immigration detention centre	Two months	Poor	Poor	Poor	Freely	One hour
ID 062(2014)	Thailand	Local prison	12 days	Good	Good	Poor	Daily	Daily
		Bangkok immigration detention centre	28 days	Good	Good	Good	Daily	Daily
ID 063(2014)	Thailand	Do not know	One day	Good	Good	Good	No	No
		Do not know	One day	Good	Good	Good	No	No
		Bangkok immigration detention centre	One month	Good	Good	Good	No	No
ID 064(2014)	Thailand	Local prison	One week	Good	Good	Good	Daily	Daily
		Bangkok immigration detention centre	27 days	Good	Good	Good	Daily	Daily
ID 065(2014)	Thailand	Local prison	Seven days	Poor	Good	Poor	Whenever I want	Whenever I want
		Mae Sai prison	Two weeks	Poor	Good	Poor	Whenever I want	No
		Bangkok immigration detention centre	Three weeks	Good	Good	Good	Whenever I want	No
ID 066(2014)	Thailand	Bangkok immigration detention centre	One month	Good	Good	Good	Daily	No
ID 067(2014)	Laos	Laos Embassy residence	Two months	Good	Good	Good	No	No
ID 068(2014)	Thailand	Bangkok police station	One month	Good	Good	Good	Twice a day	No
		South Korean Embassy	One month	Good	Good	Poor	Twice a day	No

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 069(2014)	Thailand	Local prison	Three days	Good	Good	Poor	Possible	Possible
		Mae Sai prison	Five days	Good	Good	Good	Daily	Whenever I want for 30 minutes
		Bangkok immigration detention centre	Seven days	Good	Good	Good	Daily	30 minutes in the morning
ID 070(2014)	Thailand	Mae Sai prison	Six days	Poor	Good	Good	Once	Not allowed
		Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Every day
ID 071(2014)	Thailand	Chiang Mai	15 days	Poor	Poor	Poor	Daily	Freely
		Mae Sai prison	Ten days	Good	Good	Poor	Daily	Eight hours per day
		Bangkok immigration detention centre	30 days	Good	Good	Poor	Daily	One day per week
ID 072(2014)	Thailand	Local prison	One week	Good	Good	Good	Daily	Seven times per week
		Mae Sai prison	One week	Poor	Poor	Poor	Daily	No
		Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Daily
ID 073(2014)	Thailand	Mae Sai prison	Nine days	Good	Poor	Poor	Daily	No
		Bangkok immigration detention centre	29 days	Good	Good	Poor	Daily	One hour every third day
ID 074(2014)	Thailand	Mae Sai prison	Seven days	Poor	Poor	Poor	Daily	No
		Bangkok immigration bureau	29 days	Good	Good	Good	Daily	Once every other day for one hour
ID 075(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Good	Good	No	No
ID 076(2014)	Thailand	Thai Embassy	1 month	Poor	Good	Good	Daily	One hour
ID 077(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Poor	Poor	Daily	Freely

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 078(2014)	Thailand	Chiang Mai	Two days	Poor	Poor	Poor	Whenever I want	I did not exercise
		Bangkok immigration detention centre	Two months	Poor	Poor	–	Whenever I want	I did not exercise
ID 079(2014)	Thailand	Saengkong prison	Eight days	Good	Poor	Poor	No	No
		Mae Sai prison	Seven days	Good	Poor	Poor	Daily	As much as I want
		Bangkok immigration detention centre	26 days	Good	Poor	Poor	Daily	Once every third day
ID 080(2014)	Thailand	Local prison	Four days	Good	Good	Good	Daily	Seven days
		Mae Sai prison	Four days	Good	Poor	Poor	Daily	Seven days
		Bangkok immigration detention centre	28 days	Good	Good	Good	Daily	Seven days
ID 081(2014)	Thailand	Local prison	Five days	Poor	Poor	Good	Daily	8 hours per day
		Mae Sai prison	Five days	Poor	Poor	Poor	Daily	No
		Bangkok immigration detention centre	One month	Good	Poor	Good	Daily	Once every third day for one hour
ID 082(2014)	Thailand	Bangkok immigration detention centre	Three weeks	Poor	Poor	Poor	Daily	Once in seven days
ID 083(2014)	Thailand	Local prison	Three days	Poor	Poor	Poor	Daily	No
		Local immigration detention centre	Ten days	Poor	Poor	Poor	Daily	No
		Bangkok immigration detention centre	Four weeks	Poor	Poor	Poor	Daily	No
ID 084(2014)	Thailand	Mae Sai prison	Three days	Good	Good	Poor	No	No
		Bangkok immigration detention centre	One month	Good	Good	Poor	Several times per day	Once every other day
ID 085(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Poor	Poor	Daily	No

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 086(2014)	Thailand	Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Seven times a week
ID 087(2014)	Thailand	Mae Sai prison	One day	Poor	Poor	Poor	No	No
		Bangkok immigration detention centre	28 days	Good	Good	Good	Daily	Once every other day
ID 088(2014)	Thailand	Local prison	Three days	Good	Good	Poor	Daily	Eight hours per day, as much as I want
		Bangkok immigration detention centre	One month	Good	Good	Poor	Daily	Freely
ID 089(2014)	Laos	Laos	Two months	Good	Good	Good	Daily	Freely
ID 090(2014)	Laos	Laos	Two months	Good	Good	Good	No	No
ID 091(2014)	Thailand	Local prison	Six days	Poor	Poor	Good	Daily	Daily
		Mae Sai prison	Seven days	Poor	Poor	Good	Twice a week	No
		Bangkok immigration detention centre	22 days	Poor	Good	Poor	Twice a week	One day per week
ID 092(2014)	Thailand	Local prison	Seven days	Good	Good	Good	Daily	Daily
		Mae Sai prison	Five days	Poor	Good	Good	Daily	No
		Bangkok immigration detention centre	Seven days	Good	Good	Good	Daily	Twice a week for 1 hour
ID 093(2014)	Thailand	Local prison	One day	Poor	Unknown	Good	No	No
		Mae Sai prison	Six days	Poor	Good	Good	Daily	Freely
		Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Once every other day
ID 094(2014)	Thailand	Bangkok immigration detention centre	22 days	Poor	Good	Good	Daily	30 minutes per day

ID	Country	Location of detention facilities	Duration of detention	Food	Medical treatment	Hygiene	Frequency of taking a bath	Frequency of exercise
ID 095(2014)	Thailand	Local prison	One week	Good	Good	Good	Daily	Once every other day
		Bangkok immigration detention centre	28 days	Good	Good	Good	Daily	Once every other day
ID 096(2014)	Thailand	Mae Sai prison	Eight days	Good	Good	Poor	Daily	No
		Bangkok immigration detention centre	One month	Good	Good	Poor	Daily	15 minutes per day
ID 097(2014)	Thailand	Bangkok immigration detention centre	One month	Good	Good	Good	Daily	Once every other day
ID 098(2014)	Thailand	Bangkok immigration detention centre	One month	Poor	Poor	Poor	Daily	30 minutes per day
ID 099(2014)	Thailand	Bangkok immigration detention centre	One month	Good	Poor	Good	Daily	30 minutes every other day
ID 100(2014)	Thailand	Local prison	Two to three days	Poor	Poor	Poor	Once a day	Not allowed
		Bangkok immigration detention centre	One month	Good	Good	Poor	Twice a day	Freely
ID 101(2014)	Thailand	Local prison	One week	Good	Good	Good	Daily	No
		Bangkok immigration detention centre	One month	Good	Good	Good	Daily	One hour per day
ID 102(2014)	Myanmar	International prison	Three years	Poor	Poor	Poor	Daily	No
ID 103(2014)	Mongolia	Guards prison	15 days	Poor	Poor	Poor	No	No

* IDs 021(2014) and 031(2014) declined to answer this survey question.

Among responses to the question ‘what was the hardest thing you had to bear when you were in the detention facilities?’, answers such as communal living that limits freedom, insufficient space, lack of exercise, hot weather, food and poor hygiene were the most common among the respondents. Also prominent were replies that the respondents suffered psychological problems such as boredom and feelings of anxiety about repatriation.

Meanwhile, when asked what medical supplies or daily supplies were needed in detention facilities, many answered with medical supplies such as cold medicine, mosquito repellent, headache pills, heart medicine, prickly heat powder and diarrhoea medicine, and daily supplies such as soap,

toothpaste, toothbrushes and underwear. There were some unusual answers as well: Korean food and ingredients such as rice, kimchi and red pepper paste; better ventilation and larger facilities; and movies or videos to help them understand South Korean culture.

Table 214: What was the hardest thing to bear when you were in the detention facilities?

ID	Response
ID 002(2014)	Not being allowed to exercise.
ID 003(2014)	Food was tasteless.
ID 004(2014)	Food was tasteless and everyone had to share one room.
ID 005(2014)	Insufficient free time.
ID 006(2014)	Food was tasteless.
ID 007(2014)	Not adjusting to the weather and food was tasteless.
ID 008(2014)	The weather.
ID 009(2014)	Hygiene conditions.
ID 011(2014)	Eating food with hands in Mae Sai police station and having sticky rice every meal time.
ID 012(2014)	Hunger.
ID 014(2014)	Heat and isolation.
ID 015(2014)	Boredom.
ID 016(2014)	Tasteless food.
ID 017(2014)	Poor hygiene.
ID 018(2014)	Being anxious, I was not able to sleep well.
ID 022(2014)	Too many people in a small room and lack of space.
ID 024(2014)	Very hot weather and boredom, which made me feel like time had stopped.
ID 025(2014)	Not allowed to travel freely in Mae Sai, which made me feel like I was a caged beast.
ID 027(2014)	Very hard because of the hot weather.
ID 028(2014)	Too many people in the detention facility.
ID 029(2014)	Uncomfortable to get sleep.
ID 030(2014)	Loneliness/longing to go South Korea as soon as possible.
ID 032(2014)	Heat, too many people, which caused me to have a fever.
ID 034(2014)	Not allowed to smoke.
ID 035(2014)	Forced to have a haircut and bound with chains in a local prison.
ID 037(2014)	In Mae Sai, hygiene was poor and food was tasteless.
ID 038(2014)	Psychological burden from fear of being caught.
ID 040(2014)	Hard to communicate.
ID 041(2014)	Unbearable hot weather.
ID 042(2014)	Hunger and illness.
ID 044(2014)	Miserably hot weather.
ID 045(2014)	Tasteless food.
ID 047(2014)	Exhausted over a long wait before going to South Korea.
ID 048(2014)	Feeling insecure.
ID 049(2014)	Tasteless food.
ID 050(2014)	Tasteless food and treatment like a criminal.
ID 051(2014)	Tasteless food.
ID 052(2014)	Chiang Mai prison was very dirty.
ID 054(2014)	Tasteless food and the hot weather.

ID	Response
ID 055(2014)	Tasteless food and the hot weather.
ID 056(2014)	Living in a group.
ID 057(2014)	Deprivation of liberty.
ID 058(2014)	Confinement.
ID 059(2014)	Imprisonment.
ID 060(2014)	Insufficient food, body search and human rights violations.
ID 061(2014)	Hunger and despair. Outrageous and unimaginable conditions.
ID 062(2014)	Local prison infested with insects.
ID 063(2014)	Confined behind bars for about a month.
ID 064(2014)	Tired of long wait to go to South Korea.
ID 065(2014)	Hot weather and mosquitoes.
ID 066(2014)	Food.
ID 068(2014)	Too many people to sleep among.
ID 070(2014)	Not allowed to do outdoor activities.
ID 071(2014)	Sleeping sitting up because of lack of space.
ID 072(2014)	Unbearable hot weather.
ID 073(2014)	Extremely hot weather.
ID 074(2014)	Extremely hot weather.
ID 079(2014)	Thin air and fast-spreading illness in a small room packed with people.
ID 081(2014)	Psychological stress.
ID 082(2014)	Poor medical conditions.
ID 083(2014)	Detained for a very long time.
ID 084(2014)	Hot weather and food.
ID 085(2014)	Inhumane treatment, verbal abuse and treatment like a criminal.
ID 087(2014)	Not allowed to wash myself as much as I wanted to in the hot weather.
ID 091(2014)	Hot weather.
ID 092(2014)	No difficulties.
ID 095(2014)	Boredom.
ID 096(2014)	Hot weather and confinement.
ID 097(2014)	Not allowed to do outdoor activities and no freedom.
ID 098(2014)	Very smelly. Food was very greasy and tasteless. The weather was extremely hot.
ID 099(2014)	Hot weather.
ID 100(2014)	Food (annam rice and chicken soup were served in Bangkok but they were tasteless. I had to buy a meal).
ID 101(2014)	My child was too young to look after.
ID 102(2014)	Danger of being deported to North Korea.
ID 103(2014)	Solitary confinement.

UNFAIR TREATMENT BY KOREAN EMBASSY STAFF

Like the 2012 survey, the 2014 survey indicates that when the respondents were asked to describe their experiences of unfair treatment from the South Korean embassy staff in a third country, they related domineering and disdainful attitudes and unfair or inhuman treatment. Such inappropriate behaviour by the embassy staff, on whom North Korean defectors cannot help but rely, could be tackled promptly and thoroughly if the South Korean government is willing to take measures to do so.

Table 215: Unfair treatment by South Korean embassy staff in third countries.

ID	Response
ID 014(2014)	The staff member swore at me because I did not stand up when he came in.
ID 034(2014)	I was not allowed to smoke.
ID 036(2014)	The female staff member violated North Korean defectors' human rights.
ID 058(2014)	The staff abused their official authority by entering a room where North Korean defectors slept wearing shoes without permission.
ID 074(2014)	The staff entered a room that had been cleaned without taking off their shoes when they visited an immigration detention centre.
ID 077(2014)	The Korean Ambassador to Thailand swore at us.
ID 081(2014)	Verbal abuse by a female staff member of the Korean embassy.
ID 082(2014)	A staff member had us stand in a row and treated us like criminals. Even though I understand we need discipline for group living and must bear unpleasant situations like this, it made me feel really bad that the staff member entered a room where people sleep without taking off his shoes.

Human rights violations of forcibly repatriated North Korean defectors

FORCED REPATRIATION TO NORTH KOREA AND LEVELS OF PUNISHMENT

It is difficult to determine the full extent of forced repatriation to North Korea. However, according to data from the Chinese Academy of Social Science, at a conservative estimate 4,800 to 8,900 North Korean defectors were forcibly repatriated annually between 1998 and 2006.

The 2014 survey indicates that 16 respondents were forcibly repatriated, and it was reported that most of them were arrested by Chinese Public Security Officers or by police either in a train station, on the road or at a house where they had hidden while on their way to South Korea. Cases were also reported in which defectors were arrested following a report made by someone in the area.

Table 216: Places where North Korean defectors were arrested before being repatriated.

ID	Total number of times	Year of repatriation	Place of arrest
ID 004(2014)	1	2008	Jilin Province, China
ID 007(2014)	1	2009	Jilin Province, China
ID 009(2014)	1	2004	Yanji, Jilin Province, China
ID 013(2014)	1	2010	Jilin Province, China
ID 016(2014)	3	2003, 2004, 2007	A railway station in Yanji
ID 024(2014)	1	Unknown	Jilin Province, China
ID 029(2014)	2	2011, 2011	Liaoning Province, China
ID 032(2014)	1	2011	Jilin Province, China
ID 035(2014)	1	2010	By border guards at Tumen, Jilin Province, China,
ID 037(2014)	2	Unknown	Unknown
ID 040(2014)	1	2009	Jilin Province, China
ID 041(2014)	1	2007	Unknown
ID 042(2014)	1	2009	Hebei Province, China
ID 044(2014)	1	2009	Shandong Province, China
ID 054(2014)	1	2011	Jilin Province, China
ID 100(2014)	3	2001, 2001, 2008	Yanji, China

Table 217: Situation at the time of arrest.

ID	Response
ID 004(2014)	Arrested at home.
ID 007(2014)	Arrested by the police in front of a station.
ID 009(2014)	Arrested in the course of crackdowns in Yanji by Chinese Public Security Officers.
ID 013(2014)	Arrested while fighting with Korean Chinese and detained in a detention centre in Yanji.
ID 016(2014)	Arrested on the road on the way to South Korea.
ID 024(2014)	Chinese Public Security Officers came to my office and took me to the Yanji police substation, where I was investigated for eight days and transferred to a border patrol battalion.
ID 029(2014)	Seven of my close friends tried to go to South Korea but failed and instead came to my house, where they were found.
ID 032(2014)	Trying to go to South Korea.
ID 035(2014)	Arrested in the Changchun station while on the way to South Korea.
ID 040(2014)	Arrested in Longjing in April 2009, on a road that leads into Yanji. A Korean Chinese household reported me to Chinese Public Security Officers when I came into the house to change my clothes, wet from the rain. Three Chinese Public Security Officers came to take me. I stayed that night in a police substation and went to a border patrol battalion. After six days, I was repatriated and sent to an ordinary prison camp in Hoeryong.
ID 041(2014)	I went to see my wife, who had gone to China before me, and a man in the house reported me to Chinese Public Security Officers; then I was arrested.
ID 042(2014)	Chinese Public Security Officers came to my place to arrest me at around 7am.
ID 044(2014)	I came downtown from a suburban area of Qingdao to earn money and was arrested with five others in my friend's house.
ID 054(2014)	Chinese Public Security Officers searched the train and I was arrested, with my wrists shackled. After a two-day stay in the Tumen border area, I was repatriated to North Korea.
ID 100(2014)	In 2001, I was arrested after a report by a woman from Onsong surnamed Kim. Five Chinese Public Security Officers came to take me. The Korean Chinese among them said they should release us but the Han Chinese arrested me. In 2008, I was arrested by five or six Han Chinese in the course of attempting to go to South Korea.

The legal basis for penalising North Koreans who have been forcibly repatriated can be found under either Article 63 of the Criminal Code, which punishes treason against the fatherland, or Article 221, which punishes illegal border crossings. The provision regarding treason against the fatherland in Chapter 3, ‘Crimes against the State and the Nation’, states that: ‘A citizen of the Republic who commits treason against the fatherland by defection, surrender, betrayal, or disclosure of secrets shall be punished by reform through labour for more than five years. In cases where the person commits a grave offence, he or she shall be punished by reform through labour for life or the death penalty and confiscation of property.’ Treason against the fatherland is a political crime, which reportedly penalises North Korean defectors who attempt to escape to South Korea. By contrast, the provision regarding illegal border crossings is found in Chapter 7, ‘Criminal Violations of the Regulations for General Administration and Maintenance’, which states that: ‘A person who illegally crosses a border of the Republic shall be punished by short-term labour for less than one year. In cases where the person commits a grave offence, he or she shall be punished by reform through labour for less than five years.’ If North Korean defectors who were forcibly repatriated are not considered as committing treason

against the fatherland – in other words, if they cross the border simply to visit their family in China or for smuggling – they are, in most cases, penalised under the category of illegal border crossings.

The 2012 survey revealed that once it was discovered that a North Korean defector’s destination was South Korea, the defector was sent to a political prison camp, even if they had crossed the border for the first time. This result indicates that defecting in order to go to South Korea is considered a crime against the state and the person committing this offence is a political prisoner. In addition, with respect to final sentencing, the defector in one out of 35 cases was sentenced to a political prison camp; there were 14 cases (40 per cent) of reform through labour, considered to be a severe punishment; and there were 20 cases (57.14 per cent) of short-term labour. This also confirms that defecting in order to go to South Korea is generally penalised with severe punishment.³⁵⁰

Interestingly, the 2014 survey produced the unexpected result that 15 out of the 16 respondents who were forcibly repatriated were penalised for illegal border crossings and received relatively light punishment. However, it would be reasonable to conclude that this unexpected result is due to sampling error considering that, after the death of Kim Jong-il, the North Korean government declared that the ‘seed’ of defectors must be ‘eliminated through three generations’ and then strengthened border controls. It is still possible, of course, that North Korea had relaxed the level of punishment for defection, considering that the level of punishment fluctuates with government policy. Moreover, penalising all North Korean defectors as political prisoners is, in practical terms, impossible, especially when instances of defection are on the increase, and it is also difficult to predict future policy and punishment in regard to defection given Kim Jong-un’s reckless and spontaneous personality.

Table 218: Final sentence imposed on North Korean defectors repatriated from China or another third country after arrest.

ID	Year of repatriation	Court venue	Final punishment	Crime convicted of	Notes
ID 004(2014)	2008	Safety Agency	Three years of reform through labour	Illegal border crossings	
ID 007(2014)	2009	No venue	Three months of short-term labour	Illegal border crossings	
ID 009(2014)	2005	Safety Agency in Hoeryong	Release	Illegal border crossings	Released on bail for reasons of illness through bribery
ID 013(2014)	2010	–	–	–	Ran away in the course of being transferred
ID 016(2014)	2003	Court in Cheongjin	Reform through labour	Illegal border crossings	
	2004	Court in Cheongjin	Reform through labour	Illegal border crossings	Second repatriation
	2007	Court in Cheongjin	Reform through labour	Illegal border crossings	Third repatriation

³⁵⁰ KBA, *Report on Human Rights in North Korea*, 2012, 468–471.

ID	Year of repatriation	Court venue	Final punishment	Crime convicted of	Notes
ID 024(2014)	2010	Court in Musan	One year of reform through labour	Illegal border crossings	
ID 029(2014)	2011	No venue	Detention in a holding facility	Illegal border crossings	Released through bribery
	2011	No venue	Detention in a holding facility	Illegal border crossings	Second repatriation, bribery
ID 032(2014)	2011	No venue	Detention in a holding facility	Defection to go to South Korea	Released through bribery
ID 035(2014)	2010	No venue	Detention in a holding facility	Illegal border crossings	Released as a minor
ID 040(2014)	2009	Court in Hoeryong	Two years of reform through labour	Illegal border crossings	
ID 041(2014)	2007	No venue	One month of short-term labour	Illegal border crossings	
ID 042(2014)	2009	Court in Hoeryong	Five years of reform through labour	Illegal border crossings	
ID 044(2014)	2009	Court in Yonsa	Three years of ordinary prison camp	Illegal border crossings	
ID 054(2014)	2011	No venue	Six months of labour training camp	Illegal border crossings	
ID 100(2014)	2001	No venue	Three days of labour training camp	Illegal border crossings	
	2001	No venue	Two days of labour training camp	Illegal border crossings	Second repatriation
	2008	Court in Onsong	Three years of reform through labour	Illegal border crossings	Third repatriation

HUMAN RIGHTS VIOLATIONS IN DETENTION FACILITIES

Arrested North Korean defectors are temporarily detained in Chinese police substations for a basic investigation, and then they are transferred to a Chinese border patrol battalion located in the China-North Korea border area (on the Chinese side of border). The border patrol battalion to which they are sent depends on the place where they are arrested. The best-known border patrol battalions are located in Tumen, Longjing, Helong in Jilin Province, and Dandong in Liaoning, which is close to Sinuiju.³⁵¹

According to the 2014 survey, 50 per cent of respondents answered that ‘I was detained in the border patrol battalion in Tumen before being repatriated to North Korea’. In addition, when asked ‘whether human rights violations occurred in the border patrol battalions, 50 per cent of respondents answered that ‘no human rights violations occurred’, which shows significantly

351 NHRCK, Survey on Political Prison Camps in North Korea, 2009 Survey Report on North Korean Human Rights, December 2009, 180–181; KBA, 2012 *Human Rights Report*, 480.

improved treatment at the border patrols. However, human rights violations such as a battery still occur in the course of investigation.

Table 219: ‘In the event of being arrested in China, where were you detained before being repatriated to North Korea?’ (Multiple responses were allowed.)

Response	Number of respondents	Percentage (%)
Tumen	8	50
Longjing	2	12.5
Helong	1	6.25
Dandong	3	18.75
Others	2	12.5
Total	16	100

Table 220: Human rights violations that North Korean defectors experienced in border patrol battalions located on the Chinese side of the border.

Response	Number of respondents	Percentage (%)
Battery in the course of investigation	2	12.5
Long-term detention	1	6.25
Insufficient food supply	2	12.5
Negligent medical treatment of patients	1	6.25
No violations	8	50.0
Others	2	12.5
Total	16	100

North Korean defectors repatriated from border patrol battalions on the Chinese side of border are transferred and detained, in consecutive order, in a detention facility of the SSD in the North Korean border area, a holding facility, a police station within the jurisdiction of the defector’s place of birth, or a detention facility of the SSD within that jurisdiction. The decision as to whether the case should go through judicial proceedings is usually made in a police station.³⁵² As for human rights violations that defectors experienced in detention facilities of the SSD or at police stations, the largest number of respondents to the 2014 survey answered ‘insufficient food supply’ – according to the 2012 survey, the largest number of respondents said ‘battery in the course of investigation’. As for human rights violations they experienced in holding facilities, ‘forced labour’ was the majority answer given in both the 2012 and 2014 surveys. In addition, a significant number of respondents said that medical treatment was poor, which indicates that forcibly repatriated North Korean defectors face a variety of severe human rights violations.

³⁵² KBA, *2012 Survey on Human Rights in North Korea*, 481.

Table 221: Human rights violations that defectors experienced in detention facilities of the SSD (multiple responses were allowed).

Response	Number of respondents	Percentage (%)
Battery in the course of investigation	8	29.6
Long-term detention	3	11.1
Insufficient food supply	9	33.3
Negligent medical treatment	5	18.5
No violations	2	7.4
Total	27	100

Table 222: Human rights violations that defectors experienced in holding facilities (multiple responses were allowed).

Response	Number of respondents	Percentage (%)
Battery in the course of investigation	3	12.5
Forced labour	9	37.5
Long-term detention	1	4.1
Insufficient food supply	4	16.7
Negligent medical treatment	4	16.7
No violations	3	12.5
Total	24	100

Table 223: Human rights violations that defectors experienced in detention facilities at police stations (multiple responses were allowed).

Response	Number of respondents	Percentage (%)
Battery in the course of investigation	4	18.2
Long-term detention	3	13.6
Insufficient food supply	7	31.8
Negligent medical treatment	6	27.3
No violations	2	9.1
Total	22	100

Table 224: Have you ever experienced forced abortion or infanticide in a detention facility, holding facility, labour training camp or ordinary prison camp after being repatriated?

Response	Number of respondents	Percentage (%)
Yes, I have experienced or personally witnessed it	4	26.7
I have heard of it	3	20
No	8	53.3
Total	15	100

According to the 2014 survey, four out of 15 respondents (26.7 per cent) answered that they experienced a forced abortion or the killing of an infant soon after birth in a detention facility, a holding facility, a labour training camp or an ordinary prison camp after being repatriated, and three respondents (20 per cent) said that they witnessed forced abortion or infanticide (Table 224). These results indicate that such crimes against humanity continue to be committed in detention facilities, further to the 2010 and 2012 surveys.

HUMAN RIGHTS VIOLATIONS AFTER RELEASE FROM DETENTION FACILITIES

The human rights violations that North Korean defectors experience do not end on completion of investigation procedures. According to the 2014 survey, after being released from detention facilities, not only defectors but also their family members are kept under surveillance and subjected to control. Multiple monitoring by the SSD, the police station or the neighbourhood watch is carried out intensively, and most respondents answered that ‘monitoring is conducted for the most part through mobilisation of the people in my neighbourhood, centred around the neighbourhood watch leader’. In addition, it was reported that surveillance is conducted by secret informants or publicly. Some respondents reported that the scope of surveillance does not include family members. Compared to the 2012 survey, the 2014 survey shows that levels of surveillance and human rights violations have been decreasing, which is consistent with the 2014 survey finding that the respondents received relatively light punishment for illegal border crossings.

Table 225: Surveillance and monitoring of repatriated North Korean defectors and their family members.

ID	Response
ID 002(2014)	If I was not sent to a detention facility, I was sent to a holding facility. I was monitored intensively.
ID 003(2014)	I do not know how but I was always under surveillance.
ID 004(2014)	Cannot be promoted to a higher rank.
ID 005(2014)	The head of the local neighbourhood watch, the SSD and the police station kept watch on me.
ID 006(2014)	The head of the local neighbourhood watch, the SSD and the police station kept watch on me.
ID 007(2014)	A security guidance agent kept watch on me. Even when I went to the bathroom, I was asked a question. If I said I was sick, they sent an agent to keep watch on me.
ID 008(2014)	The neighbourhood watch and a spy kept watch on me.
ID 009(2014)	People from the neighbourhood watch were requested to keep watch on me secretly.
ID 010(2014)	Surveillance by people in my neighbourhood.
ID 012(2014)	They kept watch on me, worrying about escape.
ID 013(2014)	Enhanced surveillance.
ID 014(2014)	I was under hidden surveillance by a police officer, the SSD and the head of a neighbourhood watch.
ID 015(2014)	The police officer in charge kept watch on the local neighbourhood watch.

ID	Response
ID 016(2014)	The neighbourhood watch kept watch on me. The security guidance agent in charge came to watch over me from time to time.
ID 019(2014)	The neighbourhood watch came to watch over me every day.
ID 020(2014)	A spy designated by the head of the local neighbourhood watch kept watch on me wherever I went.
ID 024(2014)	The police station kept watch on me and I was under surveillance by an agent.
ID 026(2014)	Less severe surveillance was imposed on the rest of my family members.
ID 027(2014)	The SSD and the police station designated a person close to me so that the person could keep watch on me.
ID 028(2014)	I was under surveillance.
ID 029(2014)	The SSD made another person keep watch on me.
ID 030(2014)	The SSD kept watch on my family members as well as me to prevent me from escaping once again.
ID 032(2014)	No harm to my family members.
ID 034(2014)	The head of the local neighbourhood watch made my neighbourhood keep watch on me.
ID 035(2014)	My neighbours kept watch on me.
ID 037(2014)	The head of the local neighbourhood watch kept watch on me.
ID 038(2014)	If I was caught after escaping, systematic surveillance would be imposed on me. If I was convicted of illegal border crossing, all of my family members would be banished.
ID 040(2014)	For a period of time right after being released from an ordinary prison camp, surveillance by the police officer in charge and the head of the local neighbourhood watch was strict.
ID 041(2014)	The head of the local neighbourhood watch kept watch on me.
ID 042(2014)	The head of the local neighbourhood watch, the information agent of the police station and the information agent of the SSD came to my house or asked my parents as to my whereabouts every day. The guidance agent of the SSD and the guidance agent of the police station came to my house three to four times per week. Unknown people kept watch on me at night.
ID 044(2014)	No particular surveillance. The SSD agent and the head of the local neighbourhood watch came frequently to check whether I went to China again.
ID 048(2014)	I was under surveillance by my neighbourhood, but my family members were excluded from that surveillance.
ID 049(2014)	The head of the local neighbourhood watch and the person in the next house kept watch on me.
ID 050(2014)	I was under surveillance by the head of the local neighbourhood watch and a close friend living next to my place.
ID 054(2014)	Under surveillance. The head of the local neighbourhood watch asked my son's whereabouts.
ID 056(2014)	I was detained as if I was in prison. I was criticised and banished to a local area.
ID 057(2014)	The SSD agent and the agent from the police station kept watch on me.
ID 060(2014)	The head of the local neighbourhood watch, as well as the police officer in charge and the security guidance agent in charge, kept watch on me every day.
ID 062(2014)	The head of the local neighbourhood watch kept watch on me. Ordinary village people also kept watch on me – to receive a reward – by frequently coming to my house and checking who came to see me.
ID 066(2014)	After being repatriated, I was under weekly surveillance. Once it was proved that I tried to go to South Korea, I would be banished or imprisoned in a political prison camp.
ID 069(2014)	The SSD kept watch on me every day to check whether I would go to China. Even in my workplace, the SSD kept watch on me checking my attendance every day.

ID	Response
ID 071(2014)	The head of the local neighbourhood watch kept watch on me under the supervision of the SSD.
ID 072(2014)	The head of the local neighbourhood watch kept watch on me.
ID 073(2014)	I was always under hidden surveillance.
ID 074(2014)	I was under surveillance by a spy from the neighbourhood watch.
ID 075(2014)	Agents from the SSD, the MPS or the neighbourhood watch came to watch over me.
ID 077(2014)	Intensive surveillance.
ID 078(2014)	Intensive surveillance.
ID 079(2014)	The agents from the SSD or the Safety Agency came to my place every day and kept watch on my family. People from the neighbourhood watch also kept watch on me.
ID 080(2014)	The head of the local neighbourhood watch kept watch on me.
ID 081(2014)	The chief of the police station, police officers or people from the SSD watched over my every movement and reported it to the security guidance agent.
ID 084(2014)	A command to keep watch on rest of my family members was delivered to the police officer in charge, the security agent, or the head of the local neighbourhood watch.
ID 086(2014)	A spy designated by the head of the local neighbourhood watch among his or her close acquaintances kept watch on me wherever I went.
ID 087(2014)	The head of the local neighbourhood watch kept watch on me.
ID 088(2014)	The neighbourhood watch made agents keep watch on those who were forcibly repatriated and their family members so that they could never illegally cross the river again.
ID 089(2014)	The agent designated by the SSD kept watch on me.
ID 091(2014)	No strict surveillance. My family members were not bothered.
ID 092(2014)	I was under surveillance by a spy from the neighbourhood watch.
ID 094(2014)	The head of the local neighbourhood watch or the security agent kept watch on my house.
ID 096(2014)	The SSD kept watch on those who were forcibly repatriated. However, their family members were excluded from monitoring.
ID 098(2014)	The rest of my family members were under surveillance.
ID 100(2014)	I was under surveillance by the SSD or the police station. The agents kept watch on my every movement and reported it to the SSD and the police station.
ID 101(2014)	I was monitored by the security guidance agent and the County Security Department. They came to my place and asked questions. Also, they kept watch on me through a spy they sent to the neighbourhood watch.
ID 102(2014)]	Intensive surveillance.
ID 103(2014)	The head of the local neighbourhood watch kept watch on me.

Conclusion

In line with the 2012 survey, the 2014 survey shows that recent defections have been for political reasons or family reunion purposes rather than for economic reasons. The characteristic features of recent defections can be summarised as follows: group defections, especially defections by families; an increase in defectors heading directly to South Korea as a result of the establishment of systems set up for such defectors; and a reduction in the time it takes to defect (specifically, defectors spend less time between fleeing North Korea and arriving in South Korea).

With respect to defection routes, most defectors went through Thailand, however, Laos has begun to emerge as a new route. The condition of detention facilities and the human rights situation in third countries seem to have gradually improved. That said, human rights violations such as sexual abuse by brokers or police have yet to be eliminated. North Korean defectors who have been forcibly repatriated are reportedly receiving lighter punishment than was the case historically. However, the possibility of sampling errors should not be discounted, which requires a careful approach to the survey results.

4.13 Human rights problems arising from relations between North and South Korea

Kim Jinah

Introduction

Concerns regarding abductees, prisoners of war (POWs) and separated families³⁵³ due to the Korean War and the division of the Korean peninsula and the Korean War have not yet been resolved. Even though the issues with respect to long-term prisoners and separated families were handled, at the humanitarian level, to some extent during the June 2000 Inter-Korean Summit, efforts to resolve these issues have been rather sporadic. In the case of abductees and POWs, they were captured in North Korea against their will and have not been allowed to meet with their families; even communication with their families has ceased. In addition, they have been subjected to forced labour under poor conditions based on their social class and have been unfairly discriminated against.

The plight of abductees and POWs raises concerns not only from a humanitarian perspective but also in regard to fundamental human rights. Furthermore, abductees and POWs are the victims of crimes against humanity, and investigations are needed with a view to restoring their rights and preventing future human rights abuses. Considering that POWs made sacrifices for their country, the nation should take full responsibility for them; and as they are now mostly aged, issues involving POWs require urgent resolution.

This article focuses on Korean War and post-war abductees, POWs, returnees from Japan and separated families by drawing upon research data from the 2014 KBA Survey on Human Rights in North Korea.

Abductees

Generally, abductees are classified as Korean War abductees and post-war abductees.

353 Heo Man-ho, 'Will you remain silent on human rights Problems in North Korea?', North Korea, Serial No 407, November 2005, 68. Issues regarding POWs along with those regarding residents, abductees, defectors and separated families are recognised as one of the five major areas in North Korean human rights.

Definition of post-war abductees

Under Article 2(1) of the Act on Compensation and Support for Victims of Abduction after the Signing of the Armistice, ‘post-war abductees’ means ‘citizens from the Republic of Korea who entered North Korea (north of the 38th parallel) from South Korea (south of the 38th parallel) against their will and resided there after the signing of the Korean War armistice on 27 July 1953’.

Current status and types of post-war abductees³⁵⁴

After the vessel *Daesung-ho* was captured by North Korea on 28 August 1955, the total number of post-war abductees was approximately 3,835, of which 3,310 people (86 per cent) were returned to South Korea within one-and-a-half years; eight have subsequently escaped and returned to South Korea since 2000. Currently, about 517 South Korean citizens are estimated to remain detained by North Korea.

Table 226: Current status of post-war abductees

	Total	Abduction of fishermen	Abduction by hijacked Korean Airlines aircraft	Abduction of soldiers and police	Others	
					Domestic	Abroad
Abductees	3,835	3,729	50	30	6	20
Returnees	Deportees	3,310	3,263	39	–	8
	Return through defection	8	8	–	–	–
Remained detained	517	458	11	30	6	12

Source: Abductee Support Directorate, Ministry of Unification, Report on Compensation and Support for Victims of Abduction after the Signing of the Armistice 2011, 21.

Table 226 shows that post-war abductees include fishermen, South Korean citizens abducted in South Korea or abroad, soldiers, police and abductees from a hijacked aircraft.

Fishermen were mostly abducted in the course of fishing in the Yellow Sea or the East Sea, and the number of fishermen abducted – including fishermen on the *Daesung-ho* – was 3,729, which amounts to 97 per cent of the total.³⁵⁵ Some 3,310 of the total abductees were repatriated from North Korea,

354 Abductee Support Directorate, Report on Compensation and Support for Victims of Abduction after the Signing of the Armistice, 2011. It seems that there have not been any updated Reports on this matter since 2011.

355 Thirty-three of the abductees were recognised as victims of abduction by North Korea when the Deliberation Committee on Compensation and Support for Victims of Abduction confirmed cases involving vessels such as the *Gilyong-ho*, *Jinbok-ho* and *Daehan-ho* as official abduction cases.

and eight people from the remaining 466 escaped to return to South Korea. The estimated number of the remaining abducted fishermen is 458.³⁵⁶

Regarding the aircraft abductees, a Korean Airlines aircraft (YS-11) en route from Gangneung to Seoul was hijacked by a North Korean agent, Cho Chang-hee, while flying over Daegwallyeong on 11 December 1969. Thirty-nine passengers were released by North Korea on 14 February 1970 and returned to South Korea. However, North Korea claimed that 11 passengers and crew voluntarily entered and remained in North Korea of their own will. These 11 are still forcibly detained.³⁵⁷

Regarding the abduction of soldiers and maritime police, 20 crew members were captured in 1970 and two maritime police were abducted in 1974 by North Korea. In addition, Sergeant Park Seong-yeol and Staff Sergeant Ahn Hak-su, officially regarded as defecting to North Korea in 1965 and 1966, respectively, have been recognised as abductees. Also, it is known that a small number of intelligence agents have been detained in North Korea.³⁵⁸ None of the abducted soldiers or maritime police have been returned to South Korea.

Abduction of civilians in South Korea occurred when high school students were kidnapped by North Korean spies while playing on the beach during the summers of 1977 and 1978.³⁵⁹ Reportedly, after

356 Yoon Mi-ryang, 'Progress and outcome of negotiations with North Korea with respect to abductees', *Unification Way*, July Issue, 2004, 22–25. Fishermen were abducted because their boats may have ventured across the Northern Limit Line (NLL) due to engine trouble in the course of fishing, or the boats were captured illegally by North Korean patrol ships. North Korea delayed repatriation of the abductees, claiming routinely that the vessels 'voluntarily crossed into North Korea' or the fishermen were 'spies'. North Korea has repatriated 90 per cent of abducted crew members and captured vessels. The remaining fishermen have not been repatriated. These are cases in which the fishermen have relatives in the region in which they were captured, they ventured across the NLL twice or more, or in the course of abduction they had attempted to escape in spite of North Korean warnings and were shot.

357 As international criticism over the hijacking of the Korean Airlines flight mounted, North Korea sent 39 passengers back to South Korea 66 days after the hijacking, on 14 February 1970, but 11 people, including the pilots and other crew members, were not released. In a 27 December 2012 speech, testimony was given on the hijacking of the Korean Airlines aircraft. Hwang In-cheol, the representative of the Korean Air Flight YS-11 Families Committee, pointed out that the issues raised by the aircraft hijacking incident remain unresolved after 43 years and urged continued awareness.

358 On 5 June 1970, a South Korean naval scout ship, I-2, was hit with a surprise attack by a North Korean vessel on the high seas on the western side of Yeonpyeong Island. The scout ship sank and 20 crew members were captured by North Korea. On 28 June 1974, when a maritime police vessel, No. 863 was patrolling the fisheries conservation zone in the East Sea, the vessel was attacked by a North Korean patrol ship and sank. Two maritime police, Jin Jong-yeong and Shin Myeong-seon, were abducted. The Deliberation Committee on Compensation and Support for Victims of Abduction has recognised as an abductee, Staff Sergeant Ahn Hak-su, who disappeared on 9 September 1966, while he was serving as a soldier dispatched to Vietnam and was officially known as a defector to North Korea after the Committee conducted a fact-finding investigation. The Committee has also recognised Sergeant Park Seong-yeol as an abductee. Sergeant Park disappeared while on a security mission in Quy Nhon, Vietnam and was officially recorded as a defector to North Korea after deserting from a military base. He was treated as an abductee through a fact-finding investigation after confirmation that the Chosun Central News Agency had reported that he attended a mass gathering in the outdoor theatre Moranbong in Pyongyang on 11 May 1967. (Abductee Support Directorate, *Report on Compensation and Support for Victims of Abduction after the Signing of the Armistice*, 2011, 103, 144, 145.) Moreover, it has been confirmed that a small number of intelligence agents have been captured in North Korea based on the testimonies of those who experienced life of North Korea and North Korean defectors (Yoon Yeo-sang, 'Current Situation on Abductees and Measures to be Taken', 299.)

359 KINU, *Report on Human Rights in North Korea*, 2009, 302. Lee Min-gyo and Choi Seung-min, who were attending Taekwang High School in Pyeongtaek at the time, were abducted from Hongdo Beach, South Jeolla Province in August 1977. Kim Yeong-nam, who was attending Kunsan Mechanical and Technical High School at the time, is believed to have been abducted from Seonyu Island Beach, Kunsan, on 5 August 1978. Hong Jin-pyo, who was attending Cheonan Commercial High School, and Lee Myeong-woo, who was attending Cheonan Agriculture High School, were abducted from Hongdo Beach, South Jeolla Province, on 10 August 1978.

being abducted, they went through ideological and espionage training and have not been returned South Korea.

As to South Korean citizens who have been abducted from overseas by North Korea, only 15 have been identified and, of them, currently 12 people, including Shin Suk-ja,³⁶⁰ the wife of Oh Gil-nam, and Oh Hye-won and Oh Gyu-won, daughters of Oh Gil-nam, are thought to be kept in North Korea. In May 2012, the UN determined that Shin Suk-ja and her two daughters had been forcibly detained in North Korea since 1987 and officially announced that they were requesting the North Korean government to take necessary measures to resolve the issue of forced detention, such as immediate release or reasonable compensation.

Treatment of abductees in North Korea

Investigation and pledge of allegiance

Abductees were investigated by the North Korean intelligence service mainly with regard to family, military life and social life for a certain period of time. Abductees with special status, such as navy or maritime police and intelligence agents, were supposed to undergo an in-depth investigation concerning the South Korean military, police or intelligence agencies. It has been reported that abductees were forced to prepare resolution letters pledging allegiance to Kim Il-sung.

Ideological education

After investigation, abductees take an intensive educational course for six to 16 months in areas near Pyongyang or Wonsan. The course involves learning about the North Korean Socialist Criminal Code, social life, land reform, Kim Il-sung's revolutionary ideas, idolisation of Kim Il-sung and Kim Jong-il, and Kim Il-sung's revolutionary history.^{361 362}

Decision on repatriation and social placement

The North Korean authorities decide whether to repatriate abductees while proceeding with ideological education for a certain period of time. Some abductees refused to return to South Korea, either to appease their captors or under threat by North Korea. Other abductees were considered to be worth keeping for use in North Korean espionage operations. The North Korean authorities also classified those whom North Korea decided to capture according to their allegiance and usefulness, and provided additional educational training. After that, they were assigned as personnel for anti-South Korea operations or dispatched to suitable places in society. Once their social placements were decided,

360 Nocut News, 'UN confirmed that daughter of Tongyeong Shin Suk-ja and her family were convicted and sentenced to forced detention in North Korea', 29 May 2012. North Korea answered a UN OHCHR inquiry, made in early May 2012, saying that 'Mrs Shin died from hepatitis, and her death has nothing to do with arbitrary detention'. Mrs Shin, who was from Tongyeong, South Gyeongsang Province, had been dispatched to Germany as a nurse. She married Oh Gil-nam, who was studying in Germany at the time, and they were abducted to North Korea in 1985. Mr Oh escaped from North Korea by himself in 1986.

361 KBA, *2008 Survey on Human Rights in North Korea*.

362 The Institute for Peace Affairs, 'Desperate escape breaking eight years of red chains', *The Unified Korea*, No 28, April 1986, 10–14. Shin Sang-ok and Choi Eun-hee, husband and wife, were forced to take part in North Korean filmmaking activities while being brainwashed for ten hours a day with education on Kim Il-sungism and the superiority of North Korea.

the abductees were assigned a place to live and a place to work. However, some abductees, deemed useless by North Korea, were imprisoned in political prison camps.³⁶³

Abductees are not permitted to know the places of residence or work of other abductees, and are unable to meet or contact them. Once the Workers' Party makes a decision on placement for work and residence, a guidance agent of the Party takes the abductees to their designated workplaces.³⁶⁴ Housing and work duties for abductees are provided by employers. In most cases, they are simply classified as labour workers. The North Korean authorities solicit and strongly recommend abductees for marriage so that they can settle in North Korea quickly, with little time to think about going back to South Korea. However, because they are of inferior social class, it is difficult for them to meet a spouse with a good *songbun*.

Surveillance and discrimination

The North Korean authorities keep a thorough watch on abductees by establishing multiple monitoring systems. Abductees are under surveillance through various organisations such as the military, a local SSD, the Safety Agency and the neighbourhood watch. In light of the fact that North Korean authorities monitor the ideological beliefs of abductees through their colleagues or friends, abductees must take care regarding who they speak to and what they say. As mentioned above, abductees consistently receive ideological education on socialism and the idolisation of Kim Il-sung and Kim Jong-il. Abductees should behave properly for their allegiance to North Korea to be recognised, in order that they are not disadvantaged socially. Through a strict verification process, the North Korean authorities have those abductees who were recommended based on their allegiance to Kim Il-sung and Kim Jong-il join the Workers' Party. However, even though abductees join the Party, they are not able to become a Party officer, workplace promotion is almost impossible and external activities such as purchasing materials for housing and manufacturing are prohibited.

Abductees inhabit the lowest class in terms of standard of living in North Korea. Abductees and their children are discriminated against in entering universities and military service because of their social status and background. In addition, it is hard for abductees' children to enter the army; even if they enter the army, they are assigned mostly to difficult branches unless they offer a bribe.³⁶⁵

363 KINU, *Report on Human Rights in North Korea*, 2014, 444. According to the special report, *North Korea: New Information about Political Prisoners*, published in 1994, an abductee believed to be detained in Seungho-ri prison camp until 1990 was mentioned. In January 1999, the National Intelligence Service (NIS) of South Korea confirmed that 22 abductees or defectors including Lee Jae-hwan were being detained in political prison camps.

364 Oh Gil-nam, 'Kim Il-sung, Please Return My Wife and Daughters', Ja-yu Munhaksa, 1993, 308. The Oh Gil-nam and Shin Suk-ja family received ideological education for three months in a hotel and were placed at the Chilbo Mountain Liaison Office as broadcasting staff of the 'Voice of National Salvation' affiliated with the National Democratic Front of South Korea, a broadcasting station for propaganda for South Korea, located in Heungbu-dong, Pyongyang.

365 NHRCK, '2012 Collection of North Korean Human Rights Violations', 270. A fisherman of the vessel Bongsan No 22, Lee Jae-geun, who was captured while fishing, testified as follows: 'I had a really difficult time after social placement. Even though I completed spy training, my entire life had to be monitored. I was monitored by seven people, including an SSD agent, the Safety Agency agent, the prosecution, a Party committee member at the factory, a security guidance agent in charge, a head of the neighbourhood watch, and the head of a medical team. The hardest thing to endure was starvation. Public food distribution was the only way to get food and because public food distribution was stopped from 1995, I witnessed and heard of public executions of people on grounds of killing another person to eat or sell the flesh.'

Survey outcomes in respect of post-war abductees

The abduction process and the life of abductees in North Korea will be examined on the basis of responses to the 2014 survey by a post-war abductee, A (ID 001 (2014)), who escaped from North Korea. A was kidnapped by a North Korean patrol ship while fishing on the Yellow Sea in 1972. Claiming that a South Korean fishing boat had ventured across the fishing restriction line, North Korea captured 26 crew members, including A. Under the surveillance of the North Korean authorities, the captured fishermen stayed two persons to a room in luxurious accommodation for three months. There, they read and conducted research on a book referred to as a sea story, written with respect to Kim Il-sung's anti-Japanese struggle under the supervision of the Committee for the Peaceful Reunification of the Fatherland. In addition, the abductees went through ideological education for four years and remained under surveillance. The abductees, including A, were prohibited from going about freely or engaging in conversation with people staying in other rooms. From January 1973, the year after the abduction, A started to attend the Central High Class Party School. He studied socialist politics until 25 June 1976, taking three to four classes per day. The classes he took were about principles of Kim Il-sung-ism, basic principles of the *Juche* ideology, selected works of Kim Il-sung, the socialist economic system and the capitalist economic system. Every schedule was planned and managed by the Committee for the Peaceful Reunification of the Fatherland.

None of the abductees could take issue with the schedule; they did what North Korea commanded them to do and could not ask North Korea to send them back home. Among the five colleagues staying with A, only one person is alive and the remaining four are deceased. A was not able to determine how many abductees were in North Korea; he knew only the people around him, including 30 people he met in the course of taking classes. Seven or eight of them were abducted with him. Others were abducted at different times. He was assigned to work repairing equipment as a factory mechanic and worked until the Arduous March.³⁶⁶ After that, he worked as a gate guard for ten years due to a labour surplus. He got to know a North Korean woman through a friend and married her a week after first meeting her. While he stayed in North Korea, the Party kept constant watch on him and because North Korea had an institutional system for everything, the time for meals, time for sleep and time for instruction were designated and managed by the Committee for the Peaceful Reunification of the Fatherland. A had heard that a security guidance agent was monitoring him but he was never treated with contempt. At first, the Committee for the Peaceful Reunification of the Fatherland designated a place of residence but it was possible to move to other places up to three times. He contacted his family in South Korea three or four days before escaping from North Korea through a broker. He did not know, when he was in North Korea, that the issue of abductees had drawn attention in South Korea. When he was asked whether changes in the relationship between North and South (eg, President Kim Dae-jung's visit to North Korea or the Inter-Korean summit) had affected North Korean policies or foreign relations, A said he knew that the South Korean president had visited North Korea but there was no change after the visit because unification issues had not been mentioned. Even after the death of Kim Jong-il, the treatment of abductees in North Korea did not change. A made up his mind to defect to South Korea in 2006, however, he didn't actually escape until 2013. He crossed the Amnok River to China and stayed

³⁶⁶ Arduous March is the term used to describe the famine, natural disasters and general economic hardship suffered by North Koreans in the mid-to-late 1990s, which caused several million deaths from starvation.

there for a month. After that, with the assistance of another individual, he went to Vietnam and took a flight to South Korea. It took two months and ten days between escaping North Korea and entering South Korea.

A's testimony confirms that abductees are investigated and subjected to ideological education, decisions on repatriation, social placement, surveillance and discrimination by North Korea.

KOREAN WAR ABDUCTEES

Current situation

Under Article 2(1) of the Act on Investigating Abductions during the Korean War and Abductees' Honour Restoration, 'Korean War abductees' means citizens from the Republic of Korea (soldiers are excluded) who are kidnapped and relocated to North Korea against their will while residing south of the 38th parallel during the Korean War (from 25 June 1950 to the signing of the armistice on 27 July 1953).

Current human rights situation for Korean War abductees in North Korea³⁶⁷

The human rights of Korean War abductees have been severely violated in North Korea. North Korea purged those who were deemed useless or who did not comply with the North Korean system. North Korea tried to educate abductees for the purposes of maintaining the regime. If the abductees were against the regime, they were imprisoned in political prison camps or ordinary prison camps, to live in isolation. Except for a small number of people deemed useful to North Korea, most of abductees were purged. They were categorised as members of the hostile class and banished to coal-mining regions or mining areas, where they lived under strict surveillance and control. North Korea keeps watch on abductees through the SSD or the MPS. In addition, the daily lives of abductees are monitored in their workplaces or through the neighbourhood watch. The families of abductees have been classified as members of the hostile class solely because they are relatives of an abductee. This classification prevented them from taking important positions at their workplaces and has resulted in unfair discrimination in many areas of life such as university education, military service, job selection and promotion.

The South Korean Act on Investigating Abductions during the Korean War and Abductees' Honour Restoration was passed on 2 March 2010 and implemented on 26 March 2010. The Act's purpose is to investigate the plight of abductees and to restore the damaged reputations of victims of wartime abduction. The Act established the Committee on Investigating Abductions during Korean War and Abductees' Honour Restoration under the office of the Prime Minister and has been conducting fact-finding and rehabilitation activities for Korean War abductees. On 15 October 2012, the Committee recognised an additional 364 non-military persons abducted by North Korea during wartime. Up until now, a total of 1,107 people have been recognised as Korean War abductees through four separate determinations by the Committee.³⁶⁸

367 KBA, *Report on Human Rights in North Korea*, 2012, 491–492.

368 Ministry of Unification, North Korean Information Portal System, 24 October 2013. (<http://nkinfo.unikorea.go.kr/nkp/term/viewKnwldgDicary.do?pageIndex=6&dicaryId=138&searchCnd=0&searchWrds=>)

Meanwhile, in October 2012, the Korean War Abductees' Family Union submitted a petition to the UN Working Group on Enforced or Involuntary Disappearances of the UNHRC, requesting assistance in uncovering details about the abductees' fates.

SOUTH KOREAN ACTS REGARDING FACT-FINDING AND SUPPORT OF ABDUCTEES

The South Korean government has been enforcing the Act on Compensation and Support for Victims of Abduction after the Signing of the Armistice as of 28 October 2007 and the Act on Investigating Abductions during Korean War and Abductees' Honour Restoration as of 26 October 2010 in order to compensate abductees and their families for the injuries they have sustained and to support them.³⁶⁹

Prisoners of war

CURRENT SITUATION

Under Article 2(1) of the Act on the Repatriation, Treatment of the Republic of Korea Armed Forces Prisoners of War, 'prisoner of war' means a soldier of South Korea who was captured while taking part in a war or carrying out a mission, and is currently detained by a hostile country (including an anti-state organisation), an armed mob or a group of rebels, or escaped from the place of detention but has not returned to South Korea.

At the time of the Korean War, the UN forces estimated that 82,000 members of the South Korean Armed Forces were missing. However, only 8,343 POWs were returned to South Korea by North Korea.³⁷⁰ In other words, a significant number of POWs were not repatriated and are believed to have been forcibly detained. By 2010, 80 former Korean War POWs had returned to South Korea by defection, following Second Lieutenant Cho Chang-ho's return by defection in October 1994. Based on the testimonies of returned POWs and North Korean defectors, the South Korean government estimated that approximately 560 POWs survived and were still being held in North Korea as of December 2010.^{371 372}

369 Ministry of Unification, North Korean Information Portal System, Database on North-South Relations, Issues of Abductees and Prisoners of War, 4 October 2013. (<http://nkinfo.unikorea.go.kr/nkp/term/viewKnwldgDicary.do?pageIndex=1&dicaryId=138>)

370 KBA, *Report on Human Rights in North Korea*, 2012, 495. The screening for repatriation conducted by North Korea was involuntary. Only those who were classified as 'bad elements' through their *songbun* screening or deemed useless for post-war reconstruction were designated for repatriation.

371 *Ibid.*, 492–493.

372 By way of reference, the 2014 survey described the situation of three POWs at the time of their abduction as follows: ID 033(2014), 25 June 1950 at the 38th parallel guard post in Paju. 'I was engaged in North South trade by the Hantan River, on the side on which the guard post was located. On the very day the Korean War began, there were only two or three military police in the guard post and the other three were out because soldiers were usually allowed to go out from Saturday to Sunday, 8pm and the day the war started was a Sunday. In the early morning on 25 June, gunshots rang out and I was surrounded by the Korean People's Army.'

ID 039(2014): During the Korean War. The respondent, whose father was a POW, did not know the details of his abduction. The respondent knew only that his father was captured in Asan, South Chungchong Province.

ID 031(2014): 14 July 1953 at Geumhwa District, Gangwon Province. 'Usually, men aged 18 to 22 were drafted as soldiers. However, in 1953, men aged 24 to 26 received a draft notice. I was trained for six months at a boot camp and sent to a military base in June. I was captured by Chinese troops on 14 July. At that time, three army divisions had been combined into one division and every soldier in the division was captured and became POWs.' (The respondent was a soldier.)

Conditions for POWs before their 1956 release

After signing the armistice agreement, North and South Korea agreed to comply with the Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (the ‘Geneva Convention’). However, members of the South Korean Armed Forces who were captured during the Korean War were not treated as prisoners of war as defined in the Geneva Convention. It was confirmed that they were forcibly drafted into the Korean People’s Army and employed in the war.

By categorising POWs according to their *songbun*, North Korea made the POWs with better *songbun* re-enlist in the Korean People’s Army and employed them in the war. In addition, they were grouped into construction brigades, where they were forced to work restoring facilities such as railroads, constructing airfields or removing unexploded shells.

The human rights of the POWs in prison camps were severely violated. Among the many prisoners detained in the prison camps,³⁷⁴ POWs were served a very small amount of food, causing them to struggle with starvation, and they suffered severely due to poor hygiene conditions.³⁷⁵

According to the 2014 survey, a POW from a detention facility in Hamgyong Province (ID 033(2014)) testified as follows: ‘POWs were forced to construct an air-raid shelter or to go through close-order drills. Some selected by North Korea were drafted into the military. Those who used to be military police, police officers, or intelligence agents were sent not to the military but to the coal mines. They were engaged in ideological education or village reconstruction work.’ A POW from an unknown detention facility, ID 031(2014), testified that: ‘Some POWs mined coal, and others mined gold in Holdong Mine in Goksan, Hwanghae Province. Later, they were taken to North Hamgyong Province and worked in a coal mine until death.’ These testimonies highlight the severe conditions experienced by POWs.

After the signing of the armistice agreement, POWs were regrouped into the Home Office Construction Unit and were subjected to forced labour in mines. North Korea regrouped ‘construction brigades’ and ‘construction raiders’ affiliated with the Cabinet Construction General Bureau – and made up entirely of more than 50,000 POWs and about 100,000 returned North

373 KBA, *Report on Human Rights in North Korea*, 2012, 495–496.

374 According to the Survey on Human Rights in North Korea conducted by the KBA, 1,200 prisoners were detained in companies of about 100 each in detention facilities in Hoeryong, North Hamgyong Province, and at the Aoji coal mine prison camps (ID 033(2014)). Also, more than 500 prisoners were detained in an unknown prison camp (ID 031(2014)).

375 NHRCK, *Collection of North Korean Human Rights Violations*, 2012, 252–253. A North Korean defector with the surname Kim, who came to South Korea in 2000, testified that: ‘On the very first day of working in the Aoji coal mine, a POW died because he was forced to enter a mine without any previous instruction. Every meal time, the same menu in tiny portions was provided – half a bowl of millet with a cold salt soup. The temperature of the workplace, which was located 2,000 or 4,000 metres down was above 40°C, which made it hard for the workers to breathe. Ordinary workers could bring a lunchbox and eat in the middle of their shift, but this was not allowed for the POWs. The assigned workload per day was eight tons of coal, which could hardly be fulfilled except by working eight hours straight without a break. If the workload quota was not fulfilled, the workers were sent to a political prison camp. Even if the POWs were sick, they were not able to receive medical treatment from a medical room in the Home Office Construction Unit until they fainted. The medical room had only four beds and no chairs, and no medicine was provided. The treatment a patient could receive from the medical room was at best lying on a bed for a couple of hours.’

Korean soldiers who had been prisoners of war in the South – in order to employ them in post-war reconstruction work, exploiting the labour of POWs.³⁷⁶

Conditions for POWs after their 1956 release

All POWs were discharged from the military and became civilians as of 25 June 1956 according to Cabinet Order No 143 (regarding the advancement of POWs into society). This measure was taken to allow North Korea to justify its official position that there were no POWs in North Korea and to hold the POWs permanently and use them as human resources for post-war reconstruction work.

Most POWs complied with the North Korean policy of assimilation as North Korean citizens under North Korea's active agitation policies or by forming a family through marriage. However, North Korea did not treat the POWs as North Korean residents and imposed more severe surveillance and controls over them than before. At the same time, North Korea adopted a conciliatory policy toward POWs by proposing qualification for badges or entry into the Workers' Party in exchange for maximum labour. Even though the POWs devoted their life to North Korea, hoping their children would not face discrimination, their descendants also suffered from the discrimination levied against the POWs explicitly or implicitly.^{377 378}

CURRENT SITUATION OF POWS BASED ON THE 2014 SURVEY

POWs who were not returned to South Korea and who remain detained in North Korea are treated similarly to abductees who remain detained in North Korea.

According to the 2014 survey, two out of three respondents who answered the question regarding the treatment of POWs said that they were forced to take ideological educational classes or convert their ideology after becoming prisoners (ID 033, 031(2014)). According to ID 033(2014), this was done in the following way: 'A military officer gave a lecture every day for six to eight hours and asked about my willingness to convert. The fact was, not every POW could convert. For example, former military police or police officers were not able to convert technically.' ID 031(2014) explained: 'I was forced to confess how many of the Reds I killed. I also took a communist education course teaching that there is no wealth and no poverty. We all have to enjoy equal life. If something is sold for five jeon [one hundredth of a won] under Baekdu Mountain, the same thing should be sold for five jeon in Pyongyang as well. This is our spirit. To sum up, it is about one spirit everyone should have, that is the *Juche* ideology.' Other survey results revealed that if POWs refused

376 According to the above testimony of a North Korean defector surnamed Kim, there were about 450 POWs in what was called the '1701 Unit of the Home Office Construction' in the Aoji prison camps. These 20 or so mines and steel mills were known as the hardest and the most dangerous workplaces in North Korea. The name 'Home Office Construction Unit' was used to disguise a prison camp, and about 50,000 POWs were employed in forced labour there.

377 You Young-bok, *Two Days of Destiny* (WON Publication, 2011).

378 NHRCK, Collection of North Korean Human Rights Violations', 2012, 253–254. According to the above testimony of a North Korean defector with the surname Kim, even though he married a North Korean woman and became a member of the Party, his treatment remained the same. It turned out that Party membership was in name only and he was continuously under surveillance and subjected to punishment. In contrast with ordinary workers, eight of his family members had to live together in a small room. However capable his son was in his job, he was not able to join the Party even after reaching the age of 40. It was almost impossible even to talk about marriage with a family of higher *songbun* and his children were denied access to college. However hard he worked, he was never recognised.

to take ideological education or would not agree to convert, they were subject to punishment and had to take ideological education until they agreed to convert (ID 033(2014)). One respondent said that some people died while going through this process (ID 031(2014)) and another said that POWs were confined to prison camps, not allowed to go out, and eventually were dispersed, making it impossible to confirm their fates (ID 033(2014)).

All three respondents referred to discrimination against themselves and their families: 'I always do very hard work in my workplace. There could be no place other than North Korea in which people suffer such discrimination and contempt. None of my children, who are very smart, were allowed to go to college' (ID 033(2014)); 'My children were not able to join the Party' (ID 039(2014)); and 'We were completely isolated from North Korean citizens. We did not get along with them well and when we cooked food or had a party, we gathered by ourselves' (ID 031(2014)). These answers indicate that POWs and their children suffered discrimination and unfair treatment in all aspect of their lives.

The respondents answered consistently that places of residence and housing were designated by the North Korean authorities. With respect to relocation of residence, ID 033(2014) said: 'Unless the government relocated us, we are not able to move. We are just dragged around like a cow or horse.' ID 031(2014) said 'if we have money, we can move'. It is understood that, unofficially, POWs can relocate, for example, if a bribe is paid.

All three respondents said that there was no system to petition against or obtain a remedy for various violations under, or the injuries they sustained from, surveillance, investigation, work or relocation.

All three respondents were married in North Korea. In the case of ID 033(2014), a North Korean from the same coal mine introduced him to a woman with whom he could settle down, saying that: 'You could be in big trouble. You could be unfairly treated. It is always good to get married to a North Korean woman. Who knows when unification will come?' In the case of ID 039(2014), his family introduced a woman to him to marry. Finally, in respect of ID 031(2014), another POW introduced a woman to him to marry. All three respondents worked for a coal mine which the government had designated.³⁷⁹ According to one survey response, POWs were predominantly sent to the military or to coal mines.

According to the 2014 survey, all three respondents said they were under surveillance and subject to inspection by the Party during their stay in North Korea, and that the surveillance was conducted secretly. Even the respondents did not know, and everyone in the local community kept watch on one another.³⁸⁰ When they were asked a question regarding contact with their families in South Korea, ID 033(2014) said that, in order to contact his father and sister, he tried to send a relative living in Japan a picture, an address and their names. However, the SSD found out about this and he finally had to escape from North Korea.³⁸¹ ID 031(2014) said he had an

379 ID 033(2014) worked as a coal miner and later became a labour safety agent in the mine. ID 039(2014) worked as a coal miner. ID 031(2014) worked as a coal miner, coal digger, or a pump or machinery mechanic.

380 ID 033(2014) 'Everyone is under surveillance. People do not know whether they are under surveillance or not, and persons monitoring others are also monitored by others. Basically, all the people in a local community monitor each other.' ID 039(2014) 'Do not know in detail.' ID 031(2014) 'Everyone in my town monitored each other. If I dressed up and went out, even a small child asked me where I had been.'

381 The respondent asked a person to deliver a letter he wrote. The person intending to deliver the letter made a memo about it in his notebook. The notebook, which revealed the fact that the respondent had contacted his family, was found when the person was investigated for an unrelated matter. Subsequently, a security agent came to confirm this

older sister in South Korea, but could not make contact with her, while ID 031(2014) said he asked to make a phone call to his wife and son through a broker, but the call was not connected. These answers indicate that it is extremely difficult for POWs to make contact with their families in South Korea and, if it is discovered that they have tried to contact their family in South Korea, it will not be to their advantage.

The respondents were asked whether internal changes in North and South Korea or changes in the relationship between North and South – such as reunions of separated families, North-South talks or the death of Kim Jong-il – had affected the daily lives of POWs or resulted in better treatment. Two of the respondents did not answer and one said that there was no change (ID 031(2014)). Further, ID 033(2014) and ID 039(2014) said that they never applied to be reunited with their separated families, while ID 031(2014) said that he applied for a reunion, but his application was not accepted. In addition, respondents ID 031(2014) and ID 033(2014) said they never knew that South Korea had become interested in the issues of Korean War abductees or POWs detained in North Korea. These answers indicate that changes in the relationship between North and South Korea and the separated families' reunion programme have not had a practical effect on POWs detained in North Korea, and it is clear that special measures should be taken for POWs to receive better treatment.

Some POWs, who could not endure such unfair and discriminatory treatment, defected to South Korea. Among the three respondents, one said he defected in April 2003 and the other said he defected in February 2004, and both came to South Korea with the help of a broker who escorted defectors to embassies.

VIOLATIONS OF THE GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Under Article 13 of the Geneva Convention, POWs must at all times be humanely treated and, under Article 16, all POWs shall be treated alike by the detaining power, without any adverse distinction based on race, nationality, religious belief or political opinions, or any other distinction founded on similar criteria. In addition, Article 118 provides that 'prisoners of war shall be released and repatriated without delay after the cessation of active hostilities'. Article 13(2) of the UDHR also specifies that 'everyone has the right to freedom of movement and residence within the borders of each state'.

However, as discussed, North Korea has officially denied the existence of POWs forcibly detained in North Korea. The POWs were unfairly treated in a discriminatory manner and subjected to forced labour in severe working conditions. These treatments, preventing the POWs from being released and repatriated, are clear violations of the Geneva Convention and the UDHR.³⁸²

with the respondent and said that he would come back to ask questions after the 15 April holiday, two or three days later. The respondent said he defected right away.

382 Shin Hyo-seon, 'Issues on Separated Families, Abductees and Prisoners of War', Settlement Support Centre for Prisoners of War, 108.

The South Korean government enacted and enforced the Act on the Repatriation, Treatment of the Republic of Korea Armed Forces Prisoners of War as of 1 January 2007, in order to promote patriotism and improve the social stability and welfare of POWs and their families by conducting fact-finding investigations, repatriation and by prescribing provisions for treatment and support for POWs and their families.

Since 2000, the South Korean government has regularly raised the issue of abductees and POWs at South-North ministerial meetings, South-North defence ministerial talks and South-North Red Cross meetings. As a result, at the 15th South-North defence ministerial talks, both parties agreed in principle that they will continue to discuss and resolve humanitarian issues at Red Cross meetings. This was just the starting point. Later, in the 7th Red Cross meeting held in February 2006, North and South Korea agreed to address the matter of separated families.

In the 18th South-North defence ministerial meeting held in April 2006, South Korea expressed its willingness to cooperate with North Korea if North Korea agreed to proposals relating to the fundamental issues of POWs and abductees. At first, North Korea was very sensitive to the proposals, however, after persuasion from the South, both parties agreed to cooperate to practically resolve the issues of people whose identities were not known during war time and thereafter. However, because good progress in solving the issues of abductees and POWs was not made, the South Korean government, in combination with inter-Korean talks, started to determine the fate of abductees and POWs and to promote family reunions through the separated families' reunion programme. From the year 2000 until the separated families' reunion programme held in October 2010, during the *Chuseok* holiday, the South Korean government requested confirmation of the life or death of the 257 POWs and abductees to North Korea, and 37 families and 157 POWs and abductees were reunited.³⁸³

Table 227: Confirmed life or death of POWs and abductees and family reunions (from 2000 to the 2010 reunions of separated families).

Response	Number of confirmation requests for fate	Confirmed alive	Confirmed dead	Unknown	Number of reunited families (number of people per family)
POWs	116	9	14	93	17 families (69)
Korean War abductees	21	–	2	19	2 families (7)
Post-war abductees	120	17	22	81	18 families (81)
Total	257	26	38	193	37 families (157)

³⁸³ After the South-North Summit talks held on 15 June 2000, a total of 17 separated families' reunion programmes were carried out and about 17,000 people from separated families were reunited. This caused the families of post-war abductees taken to North Korea against their will to want to meet members of their own families held in North Korea. Also, the South Korean families of the POWs who did not fall within the scope of the armistice agreement, which had provided for the exchange of war prisoners, wanted to meet members of their families held in North Korea as well. North Korea continued to maintain that 'there is not one South Korean POW in North Korea'. However, North Korea changed its position after adopting the 15 June 2000 South-North Joint Declaration, and the constant pressing of this issue by the South Korean government through South-North Red Cross meetings also had an effect on North Korea's position. As a result, abductees and POWs started to be unofficially included in the separated families' reunion programmes after 2000, and this inclusion has become official since 2006. From 2000 to the separated families' reunion programme held during the *Chuseok* holiday in 2010, South Korea requested North Korea to confirm the life or death of 257 abductees and POWs, and 37 families were reunited.

On 9 September 2013, the Director of the National Intelligence Service of Republic of Korea invited 11 former POW defectors in their 80s for a face-to-face talk with him, emphasising that this country will remember and honour those who had devoted their lives to the country.³⁸⁴

Private organisations, led by the Korean War Abductees' Family Union, conducted the campaign to wear Mulmangcho (forget-me-not) badges in order to raise nationwide awareness of abductees. Mulmangcho, a non-profit corporation whose chief director is Park Sun-young, a former member of the Liberty Forward Party,³⁸⁵ hosted a discussion meeting between returned POWs and Mulmangcho on 6 July 2012. Eighty POWs have escaped from North Korea over the past 18 years, starting with Lieutenant Cho Chang-ho, now deceased, who had escaped from North Korea by boat. Of these, 23 had died or were too old to attend. Of the remaining 57 POWs, 25 participated. Reportedly, it was the first time that the POWs, who had been living all over South Korea, had gathered together. In the discussion meeting, the participants urged the South Korean government to take action for the safe return of the remaining POWs in North Korea and to raise awareness of this issue, stressing that around 350 POWs are still being detained. In addition, Korean Americans participated in the meeting and expressed their intention to support construction of a nursing home for POWs.³⁸⁶

Korean residents living in Japan moving to North Korea

THE 'RETURN TO PARADISE' PROPAGANDA CAMPAIGN

The 'return to paradise' propaganda campaign was a movement of Korean residents living in Japan to be registered as North Korean nationals under the General Association of Korean Residents in Japan (*Chongryon*) and to return to North Korea. It began in 1959 in accordance with an agreement entered into between North Korea and Japan.

In February 1955, North Korea officially declared that it would promote the return of Korean residents living in Japan to help alleviate a labour shortage caused by the Korean War, and that North Korea would take responsibility for the returnees' living arrangements. Responding to this, the Cooperation Association for the Return of Korean Residents in Japan, which included important political figures from each party, was established, and other movements to promote the return of Korean residents in Japan to North Korea were organised. On 13 August 1959, Japan and North Korea entered into an agreement on returning Korean residents in Japan to North Korea, in Calcutta, India. Starting with the first group of 975 returnees who departed from the port of Niigata on 14 December 1959, 77,288 Koreans had returned to North Korea by 12 November 1962, when the agreement ended.³⁸⁷ The majority of the returnees were ethnic Koreans but quite a few were

384 *Donga Ilbo*, 'Nam Jae-jun, South Korea was cowardly enough not to act knowing that POWs were still alive in North Korea', 10 September 2013.

385 Remembering that the government is responsible without limitation for the life and wellbeing of its constituents, and that those who have been unprotected and victimised during recent times continue to experience many hardships, Mulmangcho, a non-profit corporation, was established in May 2012 for the purpose of reaching out to elderly former POWs who finally came back to their home country in their 80s, and to defectors, and supporting protection for abductees and POWs (www.mulmangcho.org).

386 KINU, *International Trends on North Korean Human Rights and Response of North Korea*, January 2013, 40.

387 Meanwhile, when the Mangyongbong, the ship taking returnees from Japan, initially crossed over to North Korea, the Korean Residents Association in Japan, a group supporting South Korea, held a protest against the return to North

Japanese nationals who were the spouses of Korean residents in Japan. The principal occupations of the returnees varied and included construction workers, day labourers, factory workers, members of commerce and industry, and students. North Korea and Japan agreed to extend their agreement and continue the ‘return to paradise’ propaganda campaign. However, as the severe conditions under which the returnees were living became known, the number of returnees rapidly decreased. Nonetheless, the return movement continued until 1984, sending a total of 93,339 returnees on 186 separate occasions to North Korea.³⁸⁸

RESULTS OF THE 2014 SURVEY REGARDING RETURNEES FROM JAPAN

In the 2014 survey, three returnees or children of returnees from Japan testified about their personal experience of the reality of life in North Korea. To sum up, like abductees and POWs, returnees from Japan are treated in a discriminatory manner compared to North Korean nationals. However, they have been allowed to contact family members left behind in other countries by sending letters or travelling to visit their families.³⁸⁹ In addition, as members of North Korean society, they have been unable to avoid sharing the suffering in times of difficulties such as the Arduous March.

Koreans in Japan were motivated by dreams that they would have a better life back in North Korea and that they would receive free education and medical care.³⁹⁰ However, contrary to their expectations, returnees from Japan were unfairly treated and discriminated against, and it was confirmed that the standard of living in North Korea was extremely poor.³⁹¹

For example, ID 053(2014) said that ‘North Korean residents did not want to marry returnees from Japan’ and ID 102(2014) said that ‘Pyongyang distributed poor quality rice to returnees until May 1964. Later, surveillance of returnees became severe and they were discriminated against compared to North Korean residents.’ In addition, ID 103(2014) said that: ‘Housing was provided to those who had a family, but no other benefits were given to them. In a boarding house in a forest product

Korea in front of the ship. Likewise, South Korea was strongly against the return movement.

388 Naver Knowledge Encyclopedia, Return Movement for Korean Residents in Japan (Dictionary on Current Affairs and Common Sense, Bakmoongak).

389 ID 053(2014): ‘It was possible.’

ID 102(2014): ‘It was possible only for the family members of the General Association of Korean Residents in Japan (*Chongryon*).’

ID 103(2014): ‘From 1961 to 1980, I sent mail two or three times per year. Because my cousin’s husband was a member of *Chongryon*, he came to North Korea about two times. I met him in Hoeryong in 1980 and in Pyongyang in 1985. After that, communications ceased.’

In contrast with abductees and POWs, returnees from Japan may have been allowed to make a telephone call or send mail to their families in Japan. However, because of the frequent interception of calls, sending mail through people who were travelling was the preferred way to contact families in Japan (IDs 102, 103(2014)).

390 There was a case in which an older man elected to go to North Korea with his two children after listening to propaganda portraying North Korea as a better place than Japan (ID 053(2014)), and another in which two respondents went to North Korea by Russian ship, one in July 1960 (ID 102(2014)) and the other in June 1961 (ID 103(2014)).

All of the respondents said that the organisation hosting the return to North Korea was the General Association of Korean Residents in Japan (*Chongryon*).

In response to the question ‘What had you heard about North Korean life before landing in North Korea?’,

ID 102(2014) answered ‘paradise on earth’ and ID 103(2014) said: ‘I got on a ship by myself after I heard that North Korea provided free college education and medical treatment.’

391 However, it is not clear whether the poor standard of living was a general condition of North Korea at the time or resulted from the discriminatory treatment received by the returnees.

processing facility, three or four people lived in one *ondol* room, and the washbasin and bathroom were public. There was no shower room but a public bathhouse was provided. The bathhouse was not operated after the 1980s due to a lack of electricity and wood for heating. So, I had to bathe in the river in the summer and warm up the water in a cauldron for a bath in the winter. After getting married, I was provided a studio. I had to use a public bathroom.’

One respondent said he married a returnee from Japan, the same as he, and because of their status as returnees his family experienced social disadvantages.

It also seemed that there was no freedom to choose one’s occupation; instead, the Party designated where returnees were to work.³⁹²

In respect to their place of residence in North Korea, all three respondents gave consistent answers – the authorities decided their place of residence, as was the case with with abductees. Among them, one respondent ID 102(2014) explained that ‘in general, moving one’s residence to another place is not permitted; however, I could move to another place by offering a bribe’.

When asked whether the North Korean authorities monitored and investigated them, each respondent had a different answer. For example, respondent ID 053(2014) said that he was frequently investigated; ID 102(2014) said he was monitored and investigated,³⁹³ while ID 103(2014) said there was no strict surveillance.

It was confirmed that like abductees and POWs, returnees were treated in a discriminatory manner compared to North Korean residents. For example, one returnee, ID 053(2014), said that they were not allowed to become members of the Party or join the military. Another returnee, ID 102(2014), said that, unlike North Korean residents, returnees were under constant surveillance, which always made them nervous. Also, one respondent (ID 103(2014)) said that at first, they were prohibited from serving in the military, joining the Party or becoming an officer. In their workplace, they were not promoted to the head of their group or above. In choosing their spouses, they were limited because they were from Japan. In addition, another respondent, ID 053, 102(2014), said that, regardless of North Korea’s official announcement that they would give better treatment to returnees, in reality, the returnees faced limitations in many areas of life, including entering the military, becoming police officers, accessing a college education, working and getting a promotion.

Furthermore, when returnees were monitored and investigated, or when they suffered from various social disadvantages in respect of their workplace or place of residence, a common response was that there was no method for obtaining relief from the North Korean authorities for the damages they sustained. According to one respondent, if they complained, it produced the opposite result, much to their disadvantage.

392 ID 053(2014) said his grandfather worked in a textile factory and his father worked in a food factory. ID 102(2014) said he worked in a hospital. ID 103(2014) said he was assigned to work in a coal mine and he worked there for 40 years.

393 A respondent also answered that: ‘Even when I was a student at the people’s school, I was monitored by a student assistant. The student assistant reported on the daily life of students to a teacher in charge. I heard directly from a classmate after discharge from military service that he had indeed monitored me. He said that a female teacher had had him monitor me all day and report to her every day. One of my friends, who was a security agent, warned me to be careful around a person who was a spy. He let me know that there were security agent spies and safety agent spies, and he taught me how the agents entice people with political statements. My entire life in North Korea was under surveillance.’

When asked whether changes in North-South relations or the position taken by the Japanese government affected North Korean policies concerning returnees in North Korea, one respondent said those changes did not affect them, especially returnees living in rural areas, not Pyongyang.

As a result, because of the unfair treatment of returnees and their poor living conditions, some returnees have attempted to escape from North Korea. For example, one of the three respondents, ID 102(2014), said he was sick and tired of North Korean society and defected to South Korea in June 2006, after a year and a half of preparation. Another respondent, ID 103(2014), said he crossed the Tumen River and defected to South Korea in November 2000 because public food distribution was cut off during the Arduous March and because his father's hometown was in South Korea and he wanted to visit there.

Separated families

Under Article 2(1) of the Act on Confirmation of Life or Death and Promotion of Exchange of Inter-Korean Separated Families, separated families mean those who are relatives within the eighth degree of consanguinity, relatives by marriage and those who are or were a spouse dispersed in areas south of Military Demarcation Line and areas north of the Military Demarcation Line, irrespective of the reasons for and circumstances of separation.

The separation of families was triggered by the Korean War in 1950. Since 2000, many separated family members have deceased due to old age and the total number of living relatives continues to rapidly decrease. Following the 18th separated family reunion in 2010,³⁹⁴ as of October 2012, 41 per cent of separated family members are deceased. According to data released from the Korean Red Cross, of the 128,747 people who submitted applications for the separated families' reunion after 1988, as of the end of August 2012, 41 per cent of the applicants, which is 52,744 people, were already deceased. In addition, of the 76,003 who are still alive and in their 70s or above, only 3.3 per cent have met their families in North Korea. Among the applicants for the separated families' reunion, 5,714 (7.5 per cent) are in their 90s or above, 29,444 (38.7 per cent) are in their 80s, 25,113 (33.1 per cent) are in their 70s, 9,361 (12.3 per cent) are in their 60s and 6,371 (8.4 per cent) are in their 50s or under, which indicates that 79.3 per cent of the applicants are in their 70s or older.³⁹⁵ These

394 The current situation concerning confirmation of life or death of separated family members and family reunions is as follows: Korean Red Cross, 'Finding separated families for 60 years', 18. On 12 August 1971, the Korean Red Cross suggested to the DPRK Red Cross a South-North Red Cross meeting as preparation for a campaign to reunite separated families. North Korea accepted the suggestion, and on 20 September 1971 the first preliminary talks were held. This was the beginning of the South-North Red Cross meetings.

Ministry of Unification, Report on Unification, 2012, 137. The South Korean government has, to date, endeavoured to resolve the issue of separated families through South-North Red Cross meetings and South-North ministerial meetings. Between 2000 and 2011, 18 separated families' reunions and seven video reunions were held and 4,321 families, amounting to 21,734 family members, were reunited. Following Korean Thanksgiving Day (*Chuseok*) reunions in 2009, separated families' reunions during *Chuseok* in 2010 were held at Mt. Geumgang by entering into agreements through Red Cross working-level meetings, held three times from 17 September to 1 October 2010. From 30 October to 5 November 2010, 97 North Korean separated families (110 people) were reunited with 426 people from South Korean separated families. In addition, from 3 November to 5 November, 94 South Korean separated families (137 people) were reunited with 203 people from North Korean separated families. Since the 18th reunion held from 30 October to 5 November 2010, reunions of separated families hosted by the governments of North and South Korea have been at a standstill. This has resulted from the strained relations between North and South Korea and the unchanged position of North Korea, which treats the matter of separated families from a political standpoint.

395 KINU, *International Trends on North Korean Human Rights and Response of North Korea*, 42.

statistics show that measures such as holding separated families' reunions regularly, confirming the life or death of separated family members and allowing relatives to communicate by mail or other means should be taken without delay.^{396 397}

Conclusion

It is evident that North Korea has been forcibly detaining abductees and POWs against their will and that the North Korean regime infringes their human rights in the form of discriminatory treatment.³⁹⁸ To resolve the issues surrounding these human rights violations, international cooperation is required.³⁹⁹ Even though the South Korean government strives to improve human rights in North Korea, it is clear that the issues are complicated and cannot be resolved by South Korea alone. This is demonstrated in the fact that, despite the separated families' reunions, minimum humanitarian demands such as confirmation of the life or death of abductees and POWs have not been met due to the prolonged division of, and strained relations between, North and South Korean.

However, it is a nation's obligation to take complete responsibility for its soldiers and their families when the soldiers have risked their lives fighting the enemy in times of war, are captured by the enemy, and become prisoners. It is also the duty of a nation to secure and protect the life and property of its citizens, and the very reason for its existence. Most POWs are already aged and no one can guarantee how long they can live under such harsh conditions in North Korea. In conclusion, through consistent policy-making and implementation, the issues of abductees and POWs should be addressed without delay.⁴⁰⁰ The plight of abductees and POWs should certainly not be neglected or delayed due to their political sensitivity and complexity.

396 When separated families' reunions resumed as of 30 July 2012, the Ministry of Unification normalised the operation of a family reunion centre and announced a 'Basic Plan for the Promotion of Separated Family Exchanges', which contains matters with respect to holding separated family reunions on a regular basis; confirmation of the life or death of separated family members and exchanging mail; and supporting the activities of private organisations for the exchange of separated families by granting funds for expenses incurred to carry out the activities. In addition, on 30 September 2012, the Ministry of Unification urged North Korea to change its stance, pointing out that the obligation to resolve separated families issue is imposed not only on South Korea but also North Korea. For further information on the current situation of separated families and family reunion applications, refer to the 'Integrated Information System for Separated Families' run by the Ministry of Unification (<https://reunion.unikorea.go.kr/reunion/index>).

397 Ministry of Unification, Report on Unification, 2012, 138. Apart from the separated families' reunion programme, North and South held a South-North Red Cross meeting to resolve separated families issues. In the South-North Red Cross meeting held from 26–27 October 2010 in Kaesong, the South Korean government demanded 'fundamental resolution of the separated family issue such as confirmation of life or death of separated family members, the exchange of mail, regular family reunions, and hometown visitation of aged people from separated families'. North and South Korea were to continue discussions of humanitarian issues, including separated family issues, by holding the next South-North Red Cross meeting on 25 November 2010; however, the meeting was cancelled due to the North Korean attack on Yeonpyong Island on 23 November of the same year.

398 Cho Sung-hwan, 'Research on solution to issues of POWs – from humanitarian and human rights perspectives', *The Journal of Unification Studies*, 2011, (Serial Number 56), 300.

399 On 30 October 2013, South Korea urged North Korea to resume separated family reunions and resolve the issues of abductees and POWs through a keynote speech before the UN General Assembly's third committee, held to handle North Korean human rights.

400 Pressian, 10 October 2013. Japanese policy toward North Korea has changed along with the external relations in Northeast Asia and the position each Japanese administration has taken in domestic affairs. However, as for the issue of abducted Japanese, Japan has kept to a consistent policy. If the Japanese government raises human rights issues with North Korea, the issue of abducted Japanese nationals is the main focus. When the economic crisis in North Korea and the nuclear missile issues were intertwined, the international community raised general human rights issues with North Korea, whereas Japan consistently raised the issue of Japanese abductees.

The evidence discussed above indicates that returned POWs have been treated unfairly, which may be sufficient to hold North Korea liable for violations of international law in respect of its duty to repatriate war prisoners after the Korean War. It is important that a thorough examination of returned POW's living conditions in North Korea, and their experiences surrounding defection, is conducted, in order to establish if there has been any further violation of international laws applicable to POWs. Such an investigation would help to confirm the number of POWs unaccounted for and would put pressure on North Korea to return all surviving POWs; however, this can only be achieved with the collaboration of the international community.

At the same time, it is necessary to deliver a nationwide message that the South Korean government and its citizens will fight to the bitter end for the return of their POWs still in North Korea. Issues relating to abductees and POWs could be handled most effectively through cooperation between the South Korean government, civil society and the international community by allocating to each party a strategic role and by utilising a variety of methods – direct, indirect, public and private – whatever is deemed most necessary or useful⁴⁰¹ in order for a successful resolution of the plight of abductees and detained POWs to be achieved.

Specifically, Japan sought confirmation of whether abducted Japanese people are alive or dead and confirmation of the human rights situation of living abductees. When Japan had diplomatic talks with North Korea to improve their relationship, Japan raised the issue of repatriating abducted Japanese as a bargaining chip. The COI, after completing its fact-finding investigation of North Korean human rights by visiting South Korea and interviewing North Korean defectors, visited Japan on 28 August 2013 to obtain additional testimony with respect to the Japanese abductees. Once again, the Japanese government strongly expressed its intention to resolve the issue of abducted Japanese citizens. In that regard, Japan, after expressing its concern on the systematic and widespread violations of human rights in North Korea, stated explicitly that there would be no normalisation of diplomatic ties between Japan and North Korea until the issue of abducted Japanese was resolved. This is very different from the policy the South Korean government takes regarding abductees.

401 Cho Sung-hwan, 'Ideas to Resolve the Issue of South Korean POWs', *The Journal of Unification Studies*, 2011, (Serial Number 56), 23–24.

Chapter Five

Conclusion

5.1 Conclusion

Lee Sock Bum

Taking into account the evidence discussed throughout this Report, we conclude that the human rights situation in North Korea is generally poor and we sympathise with the international community's concerns regarding human rights violations there. However, it should be pointed out that North Korean human rights issues are very closely tied to the division between North and South Korea and to military tensions in Northeast Asia. Therefore, we believe that the way forward requires an integrated effort to improve North Korean human rights, comprised of cooperation and constructive criticism.

North Korean human rights issues should not be confined to matters arising in North Korea alone. Rather, concern with North Korean human rights must incorporate matters affecting the rights of every North Korean, their family and other relatives, regardless of where they are found. Specifically, North Korean human rights include the rights of all those affected by the North-South division and the resulting humanitarian issues: North Koreans who actually live in North Korea, North Korean defectors in South Korea and third countries, separated families, abductees and POWs.

The principal causes for North Korean human rights violations can be divided into two categories: internal factors and external factors. Internally, the North Korean political and economic system (often represented by the 'supreme leader (*suryong*)' system and the military-first policy) is the primary cause. Externally, the prolonged, 60-year division of the Korean peninsula and the containment policy and sanctions applied by the US since the founding of North Korea have also had an effect. In other words, North Korean human rights issues are not confined solely to North Korea. Rather, North Korean human rights matters affect the entire Korean peninsula, which has been greatly affected by the division between North and South since the armistice agreement that ended the Korean War. Therefore, narrowing the scope of North Korean human rights concerns and holding the North Korean government alone responsible for human rights violations would show not only a failure to fully comprehend the reality of the situation, it would also risk politicising any discussion on improving matters.

We suggest four principles for improving North Korean human rights.

The first is compliance with international human rights principles. As is the case with human rights issues in other countries or regions, North Korean human rights should be improved based on the universal principles of international human rights. Furthermore, it is important to closely adhere to the three elements that apply when the international community concerns itself with the human rights issues of a specific country – 'peacefully', 'with respect and reciprocity' and 'by enhancing human rights practically'.

The second principle is balancing human rights with peace. The fundamental spirit of the UN Charter cannot be reconciled with the war the Korean peninsula has experienced and the continuing military tensions. Improvement of North Korean human rights should be conducted in harmony with efforts to establish peace throughout the Korean peninsula. In other words, peace on the Korean

peninsula would be in vain unless North Korean human rights are improved, and improvement of North Korean human rights would be meaningless if the restoration of peace on the Korean peninsula is ignored. Both aspects must be dealt with simultaneously.

The third principle relates to the substantive improvement of human rights. All discussions of North Korean human rights should contribute to their substantive improvement. In pursuit of this, North Korea's circumstances must be considered: It is a socialist country, exposed to a security threat, and underdeveloped.

The fourth principle is the cooperative improvement of human rights. If the substantive improvement of North Korean human rights is to be sustainable, North Korea needs to develop a willingness and ability to protect and promote human rights of its own volition. It follows that the proper role for the international community and its policy toward North Korean human rights should be that of an assistant, guiding North Korea in monitoring and promoting the process of human rights improvement on its own. It should be noted that excessive interference from the international community, based on feelings of superiority, hostility towards North Korea or on a pessimistic assessment of North Korean human rights, may result in a worsening of the human rights situation.

Based on these four principles, we suggest the following guidelines for policies to improve human rights in North Korea:

First, the North Korean government must play the principal role in improving the human rights of its citizens. The international community should monitor and evaluate the situation by encouraging North Korea to improve its inadequate human rights adherence and by suggesting measures that North Korea can take to improve human rights there. In addition, the international community should play the role of facilitator by supporting North Korea's efforts to develop a human rights infrastructure.

Secondly, all discussion and approaches with respect to North Korean human rights should be focused on substantively improving the human rights situation there. Attempts to pursue a different goal in the name of human rights or to criticise unproductively without suggesting effective measures to be taken should be avoided.

Thirdly, approaches to North Korean human rights should not be confined to specific areas of human rights. Rather, they should be treated comprehensively, in a harmonised way. In addition to the five international conventions North Korea has joined – the ICCPR, the ICESCR, CEDAW, CRC and CRPD – any discourse on North Korean human rights should also encompass, given the unity and mutual inseparability of human rights, the right to development, the right to peace, and the right to preserve and enjoy national culture. In addition, to assure that all residents of the Korean peninsula, North and South, have the right to live in peace, the economic sanctions imposed on North Korea should be lifted and the confrontational relationship between North and South should be transformed into a cooperative one.

Fourthly, the various parties participating in improving North Korean human rights – including the government, civil society, concerned countries and international organisations – need to cooperate through a mutual and complementary relationship. If each party cooperates with the others based on an understanding of the situation and the interests and capacity of others, their cooperation

will contribute significantly to the improvement of North Korean human rights. Among the various parties, the active role of the South Korean government will be very important in terms of protecting and promoting human rights across the entire Korean peninsula. History suggests that North Korean human rights improve when the relationship between North and South improves. That the international community has pointed this out is quite meaningful.⁴⁰²

Fifthly, North Korean human rights should be improved in concert with other universal values. The harmonious pursuit of universal values shared by the international community, together with human rights, has been confirmed repeatedly in the UN Charter, in the Declaration of the World Conference on Human Rights held in Vienna, and in international conventions. Put another way, any approach that pressures the North Korean regime in the name of human rights improvement but ignores resolution of the other humanitarian issues between North and South or undermines efforts to achieve a peaceful settlement on the Korean peninsula should be avoided.

According to the four principles for improving human rights in North Korea and the guidelines for policies set forth above, we urge the North Korean government to undertake the following: devise various measures to guarantee and protect the human rights of its residents and take substantive measures without delay; accept resources and methods that the international community offers for improving human rights; and respond to international dialogue regarding human rights without condition.

At the same time, we urge the international community to continue to monitor the overall situation of North Korean human rights, and support, enter into a dialogue with, and cooperate with North Korea. The UN should continue discussions with North Korea regarding its human rights situation and provide technical assistance. The international community must also provide humanitarian aid and developmental assistance in tandem for sustainable improvement, beyond the mere assurance of the right to survive. In addition, the international community must encourage South-North talks to solve various humanitarian issues. Lastly, the international community must support efforts to convert the relationship between North and South from one governed by an armistice agreement to one settled through a peace treaty, in order to promote and preserve the right to peace for the residents of the Korean peninsula. As part of this initiative, the international community must support the improvement of South-North, US-North and Japan-North relationships, and must urge an end to military pressure and sanctions against North Korea.

So far, the UN's human rights mechanisms have attempted to tackle the North Korean human rights situation by requesting that North Korea takes steps to improve the human rights of its citizens and by urging international attention and participation. In response, North Korea has partially cooperated with the UN and has entered into talks with a few countries. However, in many cases, North Korea has refused to cooperate. It is certainly not effective to attempt to tackle North Korean human rights issues without North Korea's cooperation; doing so only causes political controversy. Therefore, continued effort must be made to enable the international community and North Korea to maintain a constructive and cooperative relationship through regular communication and technical cooperation.

The current situation, in which South Korea and North Korea have different political and economic systems and are opposed ideologically and militarily, imposes a double hardship: South Korea should

402 See recommendations specified in the conclusion of the UN *COI Report* published on 17 February 2014.

take an active role in improving human rights in North Korea without raising human rights issues solely as a means of putting political pressure on North Korea. We would like to point out that pressurising and isolating North Korea, or using human rights issues as a means to do so, will not bring about a positive outcome.



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