

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

ATROCITY CRIMES RISK ASSESSMENT SERIES

DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

VOLUME 2 DECEMBER 2016



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Asia Pacific Centre for the Responsibility to Protect



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Acknowledgements

This report on the risk assessment for “Atrocity Crimes Risk Assessment Democratic People’s Republic of Korea ” was prepared in 2016 by **Mr. David Rodriguez Colmenero** whilst undertaking a voluntary internship at the Asia Pacific Centre for the Responsibility to Protect based at the School of Political Science and International Studies at the University of Queensland. His internship was supported by the Centre’s staff: Alex Bellamy, Sarah Teitt, Noel Morada and Phil Orchard.

The Asia Pacific Risk Assessment series is produced as part of the activities of the Asia Pacific Centre for the Responsibility to Protect (AP R2P). Photo acknowledgement: Devrig Velly EU/ECHO
Map acknowledgement: United Nations Cartographic Section

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INTRODUCTION

The following risk assessment for the Democratic People's Republic of Korea (DPRK). uses the Framework of Analysis for Mass Atrocity Crimes (2014) developed by the United Nations Special Advisers on the Prevention of Genocide and on the Responsibility to Protect ¹(hereafter referred to as 'the Framework'). As such, the risk factors, indicators and numerical references used throughout this assessment correspond with those set out within the Framework.

It must be noted that only the risk factors and indicators currently relevant to the situation in Democratic People's Republic of Korea (DPRK). will be mentioned in this assessment. The indicators serve as manifestations of each of the risk factors to be evaluated, but it is important to note that not all risk factors need to be present in order to assess that there is a significant risk of atrocity crimes occurring. Moreover, different risk factors may hold different weight depending on the particular context of the country being evaluated.

This report finds a very high level of risk of atrocity crimes in the DPRK over the short-to-mid-term. The perpetration of crimes against humanity in the DPRK is not a probability, but a daily reality. The Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea (henceforth "the Commission of Inquiry"), undertaken by the United Nations Human Rights Council and published in 2014, served as a definitive compilation of the history of human rights violations and of the atrocity crimes committed in the DPRK.² Many of its findings are necessarily referenced here. As such, this report finds of particular concern Risk Factors 2 ('Record of serious violations of international human rights and humanitarian law'), 3 ('Weakness of State structures'), 4 ('Motives or incentives'), and 6 ('Absence of mitigating factors') for the continued perpetration of atrocity crimes in the DPRK. These risk factors stress the role of the state in the systemic preparation, execution, and denial of practices that violate human rights and international humanitarian law, and that currently amount to crimes against humanity. The remaining common risk factors serve as auxiliaries for the maintenance of the state structures that enable atrocity crimes to be committed, and as such pose a direct risk to vulnerable populations. Lastly, the report sets out recommendations for addressing the problem of atrocity crimes in the DPRK. The key message is that the DPRK perpetrates atrocity crimes against its own population in order to maintain order and protect the political elite. Meanwhile, the international community has thus far proven itself unwilling or unable to mitigate or reduce the likelihood of atrocity crimes being committed due to, among other factors, the DPRK's nuclear arsenal.



FRAMEWORK OF ANALYSIS

The Framework of Analysis is comprised of 14 Risk Factors of atrocity crimes. Each Risk Factor has an accompanying set of more specific Indicators. The Framework is intended to be used "to guide the collection and assessment of information" regarding the potential for atrocity crimes.

The Risk Factors are separated into two different groups: the Common Risk Factors may apply to the potential risk for any atrocity crime, while the Specific Risk Factors are further broken down into the risks associated with genocide, crimes against humanity, and war crimes (risks of ethnic cleansing are integrated into those of the other atrocity crimes). The more Risk Factors and Indicators that are present, the greater the risk that atrocity crimes may be committed. However, not all Risk Factors must be present to represent a significant risk. The Risk Factors and Indicators are not ranked by importance and should be considered in a broader context, taking account for a society's politics, history, and culture.

COMMON RISK FACTORS		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian
Risk Factor	3	Weakness of State structures
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
SPECIFIC RISK FACTORS		
Genocide		
Risk Factor	9	Inter group tensions or patterns of discrimination against protected groups
Risk Factor	10	Signs of an intent to destroy in whole or in part a protected group
Crimes against humanity		
Risk Factor	11	Signs of a widespread or systematic attack against any civilian population
Risk Factor	12	Signs of a plan or policy to attack any civilian population
War Crimes		
Risk Factor	13	Serious threats to those protected under international humanitarian law
Risk Factor	14	Serious threats to humanitarian or peacekeeping operations

Each of these Risk Factors is a/so accompanied by 6-18 more specific Indicators, which can be used to more precisely and accurately address and analyze the risks of atrocity crimes. These Indicators and further information on the full UN Framework of Analysis for Atrocity Crimes can be found by clicking here or by visiting the UN website at www.un.org.

LIST OF TERMS

Democratic People's Republic of Korea (DPRK)

Worker's Party of Korea (WPK)

Republic of Korea (ROK)

United Nations (UN)

United States of America (US)

People's Republic of China (PRC)

Food and Agriculture Organisation of the United Nations (FAO)

United Nations World Food Program (WFP)

NGO: Non-Governmental Organisation

MSF: Médecins Sans Frontières (a.k.a. Doctors Without Borders)

LIST OF DEFINITIONS

Songbun: A State-allocated class system that divides populations across a socio-economic spectrum, and that determines the treatment offered to individuals by the state according to said categories.

Songun: North Korea's "military-first" policy.

Kwanliso: Literally 'management centres', the kwanlisos are North Korea's political prison camps.

Janessa: Small-scale, unregulated private commercial activities.

Yeonjwaje: North Korea's system of collective, inter-generational responsibility for acts against the state committed by a member of a family.

Juche: The WPK's version of nationalism, characterised by a strong isolationism and a desire for autarky and national self-determination.

Suryong: System that sustains the 'Mandate of Heaven' of the Supreme Leader, and it calls for group conformity and absolute obedience from its subjects (i.e. society at large).

COMMON RISK FACTORS

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

The first risk factor relates the background conditions that the state endures, like the presence of international or non-international armed conflicts, or the occurrence of severe political or economic crises. The DPRK is not currently waging an international armed conflict nor enduring a civil war. However, some other relevant elements have contributed to instability and heightened risk. Chief among them are the humanitarian crisis from the lack of basic goods, and the derelict state of the economy. In the DPRK, these crises facilitate the commission of acts considered crimes against humanity. At the same time, food deprivation is also a deliberate punishment for individuals and communities deemed to be dangerous by the elites. The crises in the economy and the system of allocation of resources can thus be seen as both a consequence and a reason why atrocity crimes are being committed in the DPRK.

Insecurity from Humanitarian Crisis

Indicator 1.3 relates to a 'humanitarian crisis or emergency, including those caused by natural disasters or epidemics'. The DPRK has endured a number of famines. The deadliest of them all occurred between 1993 and 1995, when the DPRK's government-run food distribution system collapsed.³ The extreme floods of the time destroyed the harvest, and the lack of international assistance led to a famine that caused mass starvation. The period between 1996 and 1999 was henceforth referred to as the DPRK's 'Arduous March', and it saw somewhere between 450,000 and 2 million people starve to death.⁴ The effects of the food shortages were distributed unevenly among the population. In particular, vulnerable groups residing in rural areas were made to bear a greater burden than populations in Pyongyang and surrounding areas, where the elites reside. Whilst the floods were outside the control of DPRK's ruling class, the pernicious and far-reaching effects of the famine can largely be attributed decisions made by officials regarding the request of international aid, and how it was eventually distributed. Several humanitarian organisations reported that they were not allowed into areas where populations were in dire need of aid, which aggravated the death toll.⁵

A consequence of the decline in agricultural production has been the accompanying reduction on food production, which has been particularly severe during 1996, 1997, 2000, 2007, 2009, and 2010.⁶ Although cereal production has been generally positive, it is still below the peak achieved during the late 1980s when the DPRK traded directly with the Soviet Union.⁷ The FAO/WFP Mission to the DPRK found that the country suffered from a deficit of 207,000 tons in food imports with regards to the target needed to properly nourish the population.⁸ Under these circumstances, 18 out of 24.6 million people, or 70% of the population of the DPRK, are considered to be food insecure and are undernourished.⁹ Malnutrition rates continue to be a public health concern, with the chronic malnutrition rate of children under five at 27.9%.¹⁰

Severe Political Repression

Indicator 1.6 pertains to 'political tension caused by autocratic regimes or severe political repression'. The North Korean regime sustains high levels of repression and political monitoring, expressed in its five pillar approach to policing and state security (see 11.6). The DPRK's violent repression is likely to be at least partly as a consequence of the diminishing capabilities of the state apparatus. Indeed, equipment obsolescence, training difficulties, and lowering standards for soldiers following the malnutrition of the population (see 1.3) has led the DPRK to focus on 'asymmetrical forces',

RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

such as nuclear and biological weapons,¹¹ and possibly an increase in the use of terror as a method of control. Political activism in the DPRK is only tolerated when it expresses the ideology sanctioned by the regime; dissent is met with incarceration or worse, according to a person's state-allocated status (see 2.1). Additionally, the state is isolated to a degree rarely seen elsewhere, with the purpose of sheltering the population from outside influences. The mere possession of media from another country, or even the possession of tools to obtain it – such as a radio without a government seal designed to prevent it accessing foreign signals – can also be met with harsh prison sentences. Despite the high degree of oppression, however, it is unknown whether there exist domestic resistance movements capable of stirring political tension in the DPRK.

Economic Instability

Indicator 1.7 addresses 'economic instability caused by scarcity of resources or disputes over their use or exploitation'. Whilst economic instability is caused by many different issues, a major contributor is the scarcity of resources. Agricultural production is very volatile, which contributes to an unstable economy and chronic health problems due to malnutrition.¹² The erratic performance of this sector has led to a decline in its contribution to the overall GDP of the DPRK, which has seen a drop from 30% in the early 2000s to 21% in 2010.¹³ Although the economy is chiefly state-run, starting from the famine of the mid-90s, the government started allowing small-scale private commercial activities, or *jangsa*, particularly with regards to the trading of food and other essential needs.¹⁴ Nonetheless, after a decade of increasing marketisation of the food delivery system, the government decided in 2005 to reinstate the state-run food allocation system that had been operating before the famine.¹⁵ However, this effort produced serious inefficiencies, and led to a highly precarious food situation in 2008, which could explain the willingness of the government to negotiate a large food aid package with the US in May 2008.¹⁶ The DPRK is extremely dependent on its very limited array of international partners. Since the fall in trade with the Soviet Union following its break-up, the DPRK has depended on the PRC for assistance.

Indicator 1.8 emphasises 'economic instability caused by severe crisis in the national economy'.

The DPRK has a centrally planned economy, which suggests that crisis in its economy can reflect crisis in its government. The state of the DPRK's economy has been portrayed as highly dysfunctional, with an inflation rate over 100%, a weak business environment, and a corrupted and biased system of allocation of resources.¹⁷ Nonetheless, other than the collapse of the food distribution system in the mid-90s, the government has over time lost its grip over the economy, which may have influenced a turn to a more Stalinist economic policy.¹⁸ There is certain hope that, with the opening up of new free trade areas, its economy will surge. But as long as governance remains poor, and corruption high, it does not appear like improvements in the performance of the economy will contribute to more stability. This is partly due to what Indicator 1.9 ('economic instability caused by acute poverty, mass unemployment, or deep horizontal inequalities') reveals: the citizens of the DPRK have highly unequal access to resources dictated by the songbun system (below). While very little trustworthy data is readily available, the hierarchical nature of its society, and its emphasis on differential treatment based on social status (see 2.1) reveals as much.

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

The second risk factor refers to evidence of serious violations of human rights and international humanitarian law. Less severe violations of human rights can also serve as a springboard to atrocity crimes. In the DPRK, there is evidence of both the widespread and systematic violation of human rights by government authorities and active policies and practices that promote and encourage atrocity crimes in some circumstances.¹⁹

Past and Present Violations of International Human Rights and Humanitarian Law

Indicator 2.1 refers to ‘past and present serious restrictions to or violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct and if targeting protected groups, populations, or individuals’. The DPRK has a demonstrated long record of activities that violate or severely restrict human rights and violate humanitarian law. What is presented here is just a summary of some of the most severe practices that the state has engaged in, which have had a profound impact in the livelihood of its citizens. All non-elites are subject to these practices, and it is thus impossible to surmise that the state targets only select groups. Nonetheless, the degree to which populations are made to suffer human rights violations is oftentimes determined by a person’s socio-political status.

Individuals and families are classified by the state into three categories with multiple subdivisions according to their perceived socio-political status. This is called the *songbun* system, and it groups people into the “loyal”, “wavering”, or “hostile” classes. These three broad classes are further broken down into approximately 51 more specific categories, although this number has changed over the years. Belonging to either of these groups has far-reaching consequences, from employment opportunities, to where a person can live and study, and how the state institutions treat him or her.²⁰ The *songbun* is not a strictly personal matter; the consequences of achieving positive – or negative – *songbun* are intergenerational, and the punishment for acts against the DPRK or the WPK is collective among all members of the family. Thus, the children, and even the grand-children of a perpetrator will be punished for the crimes of their forbearers. The *songbun* system results in systematic discrimination in the access to basic human needs and rights such as food, education, healthcare, or the right to choose one’s profession. This discrimination, the Commission of Inquiry found, marginalises individuals of lower *songbun*, and locks significant segments of the population into disadvantage.²¹

The UN’s Special Rapporteur on human rights in North Korea, Mazuki Darusman, stated in a report to the UN General Assembly in 2015 that labour conditions in the DPRK amount to human rights violations.²² Work is oftentimes mandatory (work units being key avenues through which surveillance and social control are maintained) and can reach up to 20 hours a day. The most tedious and dangerous jobs are assigned to individuals with the lowest *songbun*. Workers in these jobs are under constant surveillance and are fed insufficient food. Additionally, the state has employed forced labour, both as a method of coercion and punishment, as well as a method to palliate its dire finances. Government agencies, state-owned companies, the army, prisons, the police, and schools have been known to use forced labour to save on costs.²³ Even though these workers are in theory entitled to a salary, in practice they are often not compensated, which forces them to find other jobs in the “grey” private sector to survive.

DPRK citizens are not free to voice criticism of the political or economic situation of the country, or of the leadership of the regime. The regime has imposed severe penalties – such as long terms of

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

imprisonment or physical punishment – for expressing attitudes deemed to be excessively warm towards other countries, or for making any positive remarks about their scientific, technological or cultural achievements.²⁴ Exercising religion is also typically frowned upon. State propaganda with regards to practicing Christianity is particularly hostile, as it is compared to a drug, a sin, and a tool of Western and capitalist invasion.²⁵ Although the state publicly declares its toleration of religious diversity, the Commission of Inquiry found that the forces of the state made a concerted effort to identify Christians and to suppress religious activities. Christians are particularly targeted by the WPK.

Moreover, the population is indoctrinated from a young age to such a degree that the Commission of Inquiry found that the DPRK's practices suppressed the emergence and development of free thought and conscience.²⁶ This is related to the ubiquity of state propaganda, which permeates every aspect of the lives of the DPRK's citizens and which they cannot opt out of. Loudspeaker systems, as well as all forms of television and radio broadcasting, constantly bombard citizens with state propaganda, from teaching reverence to the party and the supreme leader, to reminding citizens of their duties and of the consequences of antagonising the state.²⁷ Individuals require special permits to own a radio or television, and these must be specially modified to prevent the reception of foreign broadcasts. Tampering with the seals in order to get around government restrictions is an offence sometimes punishable by imprisonment. The information that is disseminated to is highly reviewed and heavily censored, to ensure that the content is in line with the state ideology.

Additionally, the lives of DPRK citizens are constantly monitored. From an early age, children are taught to reveal their day-to-day behaviour and to confess their misdemeanours while criticising those of other children; they are forced to participate in mass games and mass propaganda events; and once they become teenagers, they are compelled to become members of mass organisations, thereby losing their right to freedom of association. A vast network of traditional bodies and secret informers ensure that no area of a person's life goes unchecked²⁸ (see 11.6). This vast surveillance apparatus of the state is set up to uncover seemingly anti-state or anti-revolutionary sentiments, for which there is little legal basis. Thus individuals are strongly compelled to enrol in state-directed association and to participate in mass events so as not to stain one's record, which could demote their personal *songbun*.²⁹

Atrocity Crimes in the DPRK

Indicator 2.2 relates to 'past acts of genocide, crimes against humanity, war crimes, or their incitement'. As the Commission of Inquiry has revealed, crimes against humanity have been, and are being committed in the DPRK. Most of the atrocities perpetrated in the DPRK have never been acknowledged by the North Korean executive, with the rare exception of a number of abductions and forced disappearances of Japanese citizens that former supreme leader Kim Jong-Il admitted the country had been involved with.³⁰ However, by the estimates of Japanese authorities, this might be just a small fraction of all the abductions promoted by the DPRK; indeed, they claim that hundreds of other Japanese nationals may have been forcibly disappeared by DPRK authorities. These evaluations exclude the thousands of people from other nationalities that the DPRK may have abducted. The Commission of Inquiry estimates that more than 200,000 people who were abducted from their countries to the DPRK could have become victims to these enforced disappearances.³¹ These abductions have been done systematically, on a large scale, and as a matter of state policy. The vast majority of these abductions were conducted during the 1950s; but hundreds of other

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

nationals were also abducted between the 1960s and 1980s, and there is evidence of more recent abductions of PRC nationals.³²

During the period of 1957-1960, the DPRK underwent massive purges that resulted in thousands of executions, both public and secret. The decision was enabled by the Standing Committee of the WPK, and required the security forces to evaluate the political background of every adult in the DPRK for counter-revolutionary tendencies. This gave rise to the system of socio-political categorisation known as the *songbun* (see 2.1), and served to justify the establishment of the first political camps or *kwanliso*.³³ These purges of ‘class enemies’ were extended to descendants up to the third generation of the alleged wrongdoer – in practice wiping out entire groups and families from general society.³⁴ This wave of massive executions, based on perceived and subjective state-issued classifications of political intent, lie somewhere between crimes against humanity and genocide; but they should be considered as nothing less than atrocity crimes, and can be considered the precursor to the continuation of practices that have reached the present.

Those suspected of political crimes are typically treated in a brutal and inhumane way in the interrogation centres set up by the State Security Department. Suspects are held in overcrowded cells and are often denied food to exert pressure to confess and to incriminate other people quickly. Inmates are also subjected to forced labour. The use of torture is widespread and systematic. Techniques include beatings, being forced to remain in a fixed posture for entire days, and denial of medical assistance.³⁵ Inmates are often held without trial and, where used, trials are held in secret with the accused denied representation (see 3.3).

Persons accused of political offenses typically are sent to political prison camps, or *kwanliso* (literally, ‘management centres’). Inmates of these *kwanlisos* are considered to have lost all of their rights as DPRK citizens and are subject to the total control of camp authorities.³⁶ Prisoners endure systematic abuses and deadly conditions in the *kwanlisos*. Facing near-starvation and offered virtually no medical care, prisoners are regularly mistreated, tortured, sexually abused, and summarily executed.³⁷ It must be noted that widespread malnutrition is the result of a deliberate policy used as a means of control and punishment,³⁸ and is not simply the result of the chronic lack of food that the country has been experiencing since the mid-90s. Prisoners in *kwanlisos* are often incarcerated for long periods, without any contact with the outside world – including with their closest family members.³⁹

Children can also end up incarcerated in *kwanlisos* through the system of collective responsibility known as *ironware* – or can even be born inside the camps and automatically become prisoners – and during their time inside the camps they are not spared from any of the punishments dealt to the adults.⁴⁰ They are forced to work from the age of 5 onwards and from 15-16 years of age they engage in the same working assignments as other adult prisoners do.⁴¹ Women who become pregnant while imprisoned without authorisation are subjected to forced abortion and other punishments, which include torture or even execution. Women oftentimes enter into sexual relations with prison guards in order to avoid harsh labour assignments or to receive additional food⁴² (for more, see 7.9).

The Commission of Inquiry estimated that hundreds of thousands of political prisoners have perished in the *kwanlisos* over the course of the five decades that they have been operating, via starvation, excessive forced labour, executions, torture, forced abortions and infanticide.⁴³ The Com-

RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

mission estimated that there are still around 80,000 to 120,000 political prisoners still in these *kwanlisos*. Perhaps due to mounting international pressure, the DPRK has dismantled a number of the *kwanlisos*. However, although in some cases prisoners appear to have been released into society, in other cases the authorities appear to simply have relocated the prisoners from one camp to another.⁴⁴

Denial of Human Rights Violations and Atrocity Crimes

Indicator 2.6 refers to the ‘justification, biased account or denial of serious violations of international human rights and humanitarian law or atrocity crimes’. The DPRK denies most of the accusations of human rights violations levied against it. A rare exception was the acknowledgement of the abduction of 9 Japanese nationals; but other than that, the country’s leadership has routinely denied other accusations of having committed atrocity crimes or having violated international human rights or humanitarian law. As a response to the report by the Commission of Inquiry, the state-controlled media publicly accused the Commission of slander and claimed that the evidence provided for it – witness testimony from escaped nationals – had been fabricated.⁴⁵ The authorities also misguide their own citizens to absolve themselves from responsibility. For example, shortages in food and other essential products, which have caused massive famines and have led to mass starvation, have been blamed on foreign powers.⁴⁶

DPRK authorities are given strict instructions to deny the existence of political prison camps, even though their existence has been documented since the 1980s.⁴⁷ The camps are deliberately concealed and disguised as military facilities, and referred to with euphemisms and code names. Diplomats of the DPRK are also instructed never to admit their existence, and testimonial evidence suggests that guards are supposed to “wipe out” all the inmates to “eliminate any evidence” in case of international conflict or war.⁴⁸

Absence of Reconciliation

Indicator 2.7 refers to the ‘politicisation or absence of reconciliation or transitional justice processes following conflict’. The legacy of the Korean War remains an unresolved issue for both Koreas. The Armistice Agreement of 1954, which called for three months of ceasefire, collapsed after only two months. Ever since then talks have not resumed, and there has not been a comprehensive peace treaty signed to settle the peace. Tensions between the two have been constant for many decades, having resulted in violence in multiple occasions. During the 1960s and 1970s, 900 soldiers and civilians died as a result of near-daily exchanges of fire along the demilitarised zone.⁴⁹ Consequently, there have been ongoing fears of invasion and infiltration from both sides of the border, which have fostered an environment of paranoia and an over-emphasis in security in the DPRK. These fears have served to justify actions against political dissidents, who are branded as spies in the service of foreign powers. This is also instrumental in maintaining a state of emergency where harsh rule by the government and human rights violations are tolerated in exchange for protection from the hostile outside world.⁵⁰

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

The third risk factor describes circumstances that negatively impact on the capacity of a state to prevent or halt atrocity crimes. In the case of the DPRK, state structures themselves are the principal source of risk of atrocity crimes. State structures – particularly those pertaining to the security apparatus – are centralised and far-reaching, a testament of their capacity to monitor and process the lives of millions of DPRK residents. As the Commission of Inquiry found, crimes against humanity are perpetrated in DPRK as a systematic element of state policy.

Lack of Ample and Effective Protection

Indicator 3.1 observes a ‘national legal framework that does not offer ample and effective protection, including through ratification and domestication of relevant international human rights and humanitarian law treaties’. The DPRK has ratified a number of international conventions and protocols, including the Convention on the Rights of the Child (accession in 1990), which it has failed to uphold. The DPRK is also party to the International Covenant on Economic, Social and Cultural Rights (accession in 1981), and the Convention on the Elimination of All Forms of Discrimination against Women (accession in 2001). Further, it ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2014, as well as accepting 113 of the 168 recommendations received during the second cycle of the Universal Periodic Review to expedite the ratification of the Convention on the Rights of Persons with Disabilities, which it had signed in 2013.⁵¹

However, the domestic legal framework for the safeguarding of human rights in North Korea remains extremely weak to the point of non-existence. Internationally, the DPRK remains one of the few countries worldwide that refuses to join the International Labour Organisation. In this context workers cannot freely associate, organise and bargain collectively. The only authorised trade union – the General Federation of Trade Unions of Korea – is controlled by the DPRK’s government.⁵² Domestically, the Constitution is not set out to be the supreme law of the land. Instead, it is the Party and the Supreme Leader who creates law and determines the constitution. The state and military effectively sit above the law, controlled only by the dictates of the Supreme Leader. The Criminal Code is sufficiently broad and vague in its definition of ‘Crimes against the State or the People’ (formerly known as anti-revolutionary crimes) so as to allow the regime to prosecute as a crime any exercise of human rights that is perceived as threatening to the status quo. Even where the state has set out a small degree of protection for its citizens, the regime can disregard these checks and balances with impunity, as the decisions of the party and of the Supreme Leader are typically recognised as overriding any sort of formal laws.⁵⁴ Victims of state abuses therefore have no means of seeking recourse through legal means.

Lack of Independent Judiciary

Indicator 3.3 refers to the ‘lack of an independent and impartial judiciary’. The DPRK’s judicial branch is a political tool for the maintenance of the state and the survival of the regime. The convergence of the judicial and executive branches began in 1958, when DPRK’s founding father Kim Il-sung stated that “the DPRK’s laws should serve as a weapon to champion socialism”, and that “all workers of the judicial organs should be true to the Party’s leadership and intensify the struggle against counter revolutionaries by firmly relying on the judicial policy of the Party”.⁵⁵ The political function of the judiciary is actually inscribed in the DPRK’s Constitution, whose article 162 requires the courts and judges to use its constitutional prerogatives to combat class enemies and to protect the socialist system.⁵⁶

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

Although there is a formal appearance of impartiality in the selection of judges – appointed by and accountable to the Supreme Assembly and its provincial assemblies – in practice judges are instead selected by and subject to the Supreme Leader and the WPK.⁵⁷ Moreover, judges are not impartial when judging crimes against the state. In articulating their decisions, judges take into consideration the state-assigned *songbun* of an individual, which will lead to different punishments for the same offence depending on the *songbun* of the perpetrator. The Commission of Inquiry found that a person of higher *songbun* would endure lighter punishment than one with lower *songbun* if both had committed the same crime.⁵⁸ The assumption made by DPRK institutions is that a person that comes from the core class (i.e. higher *songbun*) had no intention of betraying the country, and must thus be treated better than those from lower classes.

According to the Commission of Inquiry, for individuals of lower *songbun* the judicial process appears to take the guilt of the accused for granted.⁵⁹ Furthermore, the system lacks any reasonable concept of proportionality. Ordinary crimes or minor political infraction such as watching South Korean films can often receive lengthy terms in detention facilities.⁶⁰ Thus, the regime employs the formal appearance of ‘rule of law’ to instead rule through direct control over the judiciary. Insofar as the law and justice systems of the DPRK serve to legitimise violations of human rights, there is a rule *by* law in the DPRK but not a rule of law, upheld by independent and impartial judges.⁶¹ The lack of an impartial judiciary severely decreases the level of protection available to ordinary citizens in the DPRK.

High Level Corruption

Indicator 3.5 relates to ‘high levels of corruption or poor governance’. The DPRK considers itself to be a republic. In practice, however, there is very little doubt that the exercise of power is wielded by a ruling family with the support of a single totalitarian party. Succession in the DPRK has apparently been automatic both with former Supreme Leader Kim Jong-Il and with current Supreme Leader Kim Jong-Un. There are no indicators that the transition of rule has occurred under any sort of formal democratic process or any engagement with the people of the DPRK.⁶² This in and of itself suggests a degree of corruption in the composition of the top echelons of the North Korean hierarchy.

The corruption of the regime also manifests itself in the capacity that investigating agencies have to decide whether to punish suspects of crimes through the judicial process, or instead through extra-legal means.⁶³ This decision will generally be determined by the person’s *songbun*, the perceived gravity of the wrong and the political cost of subjecting the suspect to a judicial process. Generally, more serious cases are dealt with extra-legally, thus bypassing the judiciary. Discretionarily subjecting some criminal cases to the judicial process, while others are denied this basic element of procedural justice, violates both international law and the very own DPRK Code of Criminal Procedure. This level of blatant disregard for regulation reaches even ordinary – non-political – criminals, who are from the most part imprisoned without trial, or through a trial that disregards the principles of the due process established under international law.⁶⁴

Corruption is endemic across state and society. During the famine of the 1990s, people survived only by growing their own food, participating in informal markets, and travelling around the country without prior authorisation. All of these practices are, to some extent, unlawful, but recognising that they were necessary for human survival, regional and local authorities tended to look the other way in return for small bribes. Once the famine passed, the central government tried to crack-down on these activities to little effect. Instead, these informal practices have blossomed as has the paying of bribes to state officials at all levels to tolerate them. As a result, bribery is endemic but so too is non-compliance with many of the regime’s economic rules.

RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

Lack of Accountability

Indicator 3.6 relates to the ‘absence or inadequate external or internal mechanisms of oversight and accountability, including those where victims can seek recourse of their claims’. According to the Commission of Inquiry, the institutions and officials involved in violent acts to maintain the supremacy of the regime are not held accountable. In a system where civil, economic, political, and social rights have not progressed for decades, civil society has nearly zero capacity to influence how decisions are made. Since decision-making is such a centralised affair in the DPRK, decisions related to many important matters that affect the lives of its citizens – such as how food is allocated or how the economy should run – are ultimately determined by a small group of officials.⁶⁵ Under these conditions, impunity reigns.⁶⁶

Suspects of political crimes are regularly held without any communication with their family members. Families are also not typically notified why their family members have been arrested, nor what their ultimate fate will be. This refusal to disclose information is recognised by the Commission of Inquiry as a deliberate feature of the system to prevent accountability and to instil fear.⁶⁷ The DPRK Criminal Code criminalises torture and states that victims can report cases to the Prosecutor and obtain due compensation. However, the Commission found that in practice only a very small percentage of the victims are duly compensated through this procedure, and in no cases was this compensation adequate, effective and provided promptly as would be required by international law.⁶⁸

RISK FACTOR 4: MOTIVES OR INCENTIVES

Risk factor 4 refers to the reasons, aims or drivers that justify the use of violence against protected groups, populations or individuals. In the DPRK, crimes against humanity are committed by the state in order to maintain itself in power. Extreme violence is used to instil fear in the minds of would-be protesters, which in turn enables the elites to justify the practices of forced labour and to reap the associated economic benefits. Political and economic motives are hence intimately intertwined. The identities of ‘us’ and ‘them’ are very much existent in the DPRK, with the narrative dividing the ‘loyal classes’ with the ‘enemies of the state’. More accurately, it divides the core elites with the rest of the population, in an effort to maintain a tight grip on society and to maintain the lavish lifestyle of the Supreme Leader.

Consolidation of Power

Indicator 4.1 is related to the ‘political motives, particularly those aimed at the attainment or consolidation of power’. The DPRK has a strong incentive to maintain its reign of oppression and human rights violations. Lacking popular legitimacy and trailing far behind South Korea in terms of human development, the regime relies upon the systematic employment of violence to maintain itself in power. Elites in Pyongyang believe that any relaxation on this and openness to reform would lead, ultimately, to the regime’s demise and in all likelihood their own personal demise.

The concept of *jute*, or the strong isolationist nationalism propagated by the WPK (see 5.4), and the violations of human rights perpetrated in its name, have served to maintain a cult of personality on the Supreme Leader, and a dynastic succession line that has consolidated power around the Kim family. Since the ascension of Kim Jong-Il to power in 1974, when the Supreme Leader announced

RISK FACTOR 4: MOTIVES OR INCENTIVES

the ‘Ten Principles in Establishing Party’s Monolithic Ideological System’, the regime has called for the entire party and society to “adhere strictly to the one-ideology system” and to “establish the one and only leadership of the Central Party so as to complete in shining glory revolutionary achievements of the Great Leader”.⁶⁹

The Commission of Inquiry rightly found that the DPRK has avoided undertaking the structural reforms to the economy and agriculture that would ensure equal access to food for everyone because the regime is fearful it would lose control of the population otherwise.⁷⁰ The allocation of food has followed a logic of prioritisation of those populations that the authorities deemed crucial in maintaining the regime over those who were simply considered expendable. For example, during the period of the famine of the 1990s, official propaganda campaigns to collect food for soldiers and the rhetoric of the ‘Arduous March’ were established to unevenly distribute the effects of the food shortage. The distribution of food has thus been used as a method of controlling the behaviour of vulnerable populations via confiscation and dispossession of food from those in need.⁷¹

The use of brutal violence and disproportionate punishment serves to create a climate of fear that impedes any legitimate political contestation of the system of government or its underlying ideology to arise.⁷² For example, enforced disappearances of individuals while on detention are a deliberate feature of the system that instils fear in the population and that renders the reasons for the detention opaque to all but the involved authorities. Without a clear idea of how to avoid severe punishment, and with the fear of violence or disappearance at any moment, citizens are exposed to these gross violations of human rights in order to make them obey the orders of the regime and the WPK. In 2015 and 2016, high ranking officials have been publicly executed with anti-aircraft guns for exhibiting oppositionist tendencies such as falling asleep in a meeting with the Supreme Leader Kim Jong-un and proposing policies contrary to the government line in private government meetings.

One group especially targeted are those attempting to flee the DPRK, because they can be exposed to international influences that challenge the system of isolation, information control, and indoctrination imposed by the DPRK.⁷³ Traditionally, persons who flee are considered especially dangerous because they can relay information back into the DPRK which wrestles control away from the clutches of the orthodoxy of the WPK and the Supreme Leader. Since the famine in the 1990s, however, the regime has significantly relaxed punishment for illicit border crossings into China, recognising that these were sometimes necessary for survival. The punishment for illegal border crossing has been relaxed significantly over the past two decades. Moreover, endemic corruption means that border guards can be paid to not apprehend those crossing the border.

Economic Interests

Indicator 4.2 relates to the ‘economic interests, including those based on the safeguard and well-being of elites or identity groups, or control over the distribution of resources’. The DPRK engages systematic forced labour. It relies on forced labour to acquire foreign currency. There are around 50,000 North Korean workers forcibly employed outside of the DPRK working in mining, logging, and the construction industry, mainly in China and Russia. These workers endure hard working conditions (see 2.1). Through its forced labour practices, it is estimated that the DPRK earns between US\$1.2bn and US\$2.3bn in foreign currency for the country.⁷⁴

RISK FACTOR 4: MOTIVES OR INCENTIVES

The regime also employs forced labour within political prison camps. Domestically, forced labour is used with the objective of saving costs and improving performance. Government agencies, state-owned enterprises, and other employment bodies often do not pay their workers in order to save on labour costs.⁷⁵ Prisoners of the *kwanlisos* are forced to work in some of the most arduous and dangerous sectors, such as logging, mining, or farming, key industries for the DPRK's economy. This forced labour allows the regime to obtain politically important economic objectives, such as the generation of energy or the provision of supplies to the security forces, at a minimal cost.⁷⁶ It also provides the state with its primary export industries, which are traded for foreign currency earnings in the international market. These in turn sustain the political system and the elites upon which the bulk of the state apparatus is built upon.⁷⁷

Mining, for example, is one of the most important sectors for the DPRK's economy. In 2014 it accounted for 13% of the country's nominal GDP, 36% of its exports, and 53% of its domestic energy production through the mining of coal.⁷⁸ Tellingly, coal mining and other extractive industries are operations not exclusively owned by a central national manager. Instead, several subunits of the state also engage in extractive operations to increase their coffers. For example, each corps in the DPRK's military engages in alluvial gold mining; the Pyongyang Defence Command (among others) possesses its own lead and zinc factories, mainly for self-consumption; and so on and so forth.⁷⁹ These practices are a legacy of the "Arduous March" of the 1990s, when public companies 'mobilised' resources outside of official channels to raise currency or to obtain other crucial goods such as flour or soybeans.⁸⁰ Today, these public bodies still engage in practices of forced labour in order to ensure cheap and reliable access to resources. And while there is no evidence that all entities employ the forced labour of the *kwanlisos*, they do benefit from the practices of mass employment and state-assigned occupations determined by the state-assigned *songbun*, which typically allocate mining jobs to individuals with lower *songbun*.

Thus, many departments and public bodies, as well as the regime altogether, depend on the forced labour and the restrictions imposed on individuals based on their *songbun* to thrive economically. Moreover, the wealth generated by the exports of mined goods is spent on the privileged lifestyle of the Supreme Leader and the elites, the development of military technology – including nuclear weapons – and the maintenance of the *songbun* system.⁸¹

Perceived Threats

Indicator 4.5 analyses the 'real or perceived threats posed by protected groups, populations or individuals, against interests or objectives of perpetrators, including perceptions of disloyalty to a cause'. The Commission of Inquiry found that the DPRK was carrying out systematic and widespread attacks against individuals deemed by the state through opaque deliberations to be posing a threat to the political system and the leadership of the WPK.⁸² The DPRK's leadership has considered inmates of *kwanlisos*, persons attempting to flee the country, religious believers, and others to be challengers to their rule, and it has perceived them as susceptible of introducing subversive influences into the system (see the section on 'Specific Risk Factors: Crimes Against Humanity'). The crimes against humanity committed in political prison camps since the 1950s have thus served to eliminate three generations of factionalists and perceived class enemies.⁸³

RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

Risk factor 5 points to conditions that indicate the ability of relevant actors to commit atrocity crimes. As atrocity crimes require a level of planning over a sustained period of time, committing them is not easy. In the DPRK, the perpetration of atrocity crimes is facilitated by the strong culture of conformity and obedience fostered by the WPK. They are conducted as a matter of state policy. The ideological and cultural elements advanced by the regime have served to maintain the unequal distribution of resources (see 4.2) and the practices of severe repression, torture, and systemic extermination of what it perceives to be dissident and subversive groups within society.

Strong Culture of Group Conformity and Obedience

Indicator 5.4 refers to a ‘strong culture of obedience to authority and group conformity’. The basis of the rule by the WPK and the Supreme Leader in the DPRK is sustained by a series of ideological and cultural precepts promoted by the very regime that benefits from them. One of the key foundations of the DPRK’s political system is the domination of the single-party by a family dynasty. This family controls the party, the state, and the military. It sustains its tight grip over the population through rigid ideological tenets which justify state policy.⁸⁴ State authority is very much consolidated around the personalities from the Kim dynasty that have ruled since the 1954 Geneva Conference established an armistice between the two Koreas. The relationship between sovereign and citizen in the DPRK is one of absolute obedience to the Supreme Leader. The *suryong*, or the system that sustains the ‘Mandate of Heaven’ of the Supreme Leader, justifies the practices of the WPK as necessary to the generation of a prosperous and righteous society.⁸⁵ This cult of personality permeates all aspects of social life in the DPRK, and calls for complete conformity and total obedience under all circumstances.

Another element that justifies conformity and obedience is the concept of *juche*, or the policy aspiration to an extreme form of nationalism based on autarky and self-determination. According to it, citizens are guided by the Supreme Leader to advance the potential of the nation.⁸⁶ It is therefore the duty of the North Korean people to learn from the Supreme Leader however he may express himself. The principles of *juche* require self-sacrifice, hard work, and above all devotion to the Supreme Leader and to the nation. Through its tenets, the guidance of the Supreme Leader is undisputable, and any shortfall in the needs of the country is attributed to the lack of hard work of the people.⁸⁷

Another important ideological pillar for the maintenance of the regime, and in particular the military support of the WPK, is the *Songun*, or “military-first” policy (not to be mistaken with the *songbun*, or the state-assigned class system). This policy prioritises the Korean People’s Army in the allocation of the state’s resources.⁸⁸ Under *Songun*, the military comes to adopt three functions: to live and die with the leader; to achieve its goals no matter the cost; and to stay with the leader with defend the nation, the most enviable quality of a soldier.⁸⁹ With the DPRK’s recent possession of a nuclear arsenal, *Songun* has come to represent the necessity to support the nuclear program as a guarantee to the independence and self-reliance of the state. It accomplishes the dual objectives of delegitimising the calls from other states and international organisations to give up its nuclear capacity, whilst at the same time justifying the accumulation of resources into the hands of the military and the higher echelons of the DPRK’s elite.

The rule of the WPK is built not only on its guiding ideology, but also on system of governance articulated by a single mass party led a strong leader, a centrally-planned economy, a monopoly on the

RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

means of communication, and the use of terror and violence to police society.⁹⁰ The DPRK exerts a strict and totalitarian control over all aspects of its citizens' lives. UN Special Rapporteur on Human Rights Marzuki Darusman has found that the structure of the state absolutely denies the rights to its people through its centralised and hierarchical ruling structure, which is extended to the smallest unit of the society.⁹¹ According to his judgement, the continued denial of human rights to its citizens has a strong correlation to the aggressive military build-up of the state. The ability to exert power without any barriers or checks extends in ultimate instance all the way up to the Supreme Leader Kim Jong Un. It is thus through the enabling capacities of the state-issued ideologies that the regime is able to demand absolute obedience and group conformity; and to justify the perpetration of atrocity crimes whenever citizens do not meet their assigned duties.

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

Risk factor 6 refers to the absence of elements that, if present, could contribute to preventing or to lessening the impact of serious acts of violence against protected groups, populations or individuals.⁹² In the DPRK, there are very few elements that inhibit atrocity crimes since they are perpetrated as a matter of state policy and there is no independent civil society.

Civil Society with Limited Resources for Empowerment

Indicator 6.1 refers to 'limited or lack of empowerment processes, resources, allies, or other elements that could contribute to the ability of protected groups, populations or individuals to protect themselves'. It is relevant now to harken back to Indicator 2.1, in particular the *songbun* system. This categorisation of people according to their perceived socio-political status, is unchallengeable and inherited through the paternal line.⁹³ *Songbun* dictates the treatment that person will receive from the state and all other actors and determines an individual's life chances. There is little an individual can do to improve his or her *songbun* status.

Indicator 6.2 refers to the 'lack of a strong, organised and representative national civil society and of a free, diverse and independent national media'. As was observed previously (see 2.1), society can only be organised in party-approved ways, with little to no room for objection to established party lines. There is no independent civil society in the DPRK. National media is provided by state monopoly and heavily circumscribed. The DPRK declared in 2009 that there were 480 different newspapers published and circulated at the national and provincial levels; the Commission of Inquiry, however, found that all of the newspapers produce the same content, and are controlled by the Propaganda Department of the WPK.⁹⁴ Since editorial freedom does not exist in the DPRK, citizens are never exposed to alternative ideas. Accessing foreign media is unlawful. Radios and televisions can be obtained only with a special license (the granting of which is linked to *songbun*, party membership, and evidence of loyalty to the state) and are modified to ensure that they can only receive North Korean programming. Seals are attached to prevent tampering and the unauthorised breaking of seals is a criminal offence that can result in lengthy imprisonment.

Limited Presence of International Actors

Indicator 6.4 refers to the 'lack of or limited presence of the United Nations, INGOs or other international or regional actors in the country and with access to populations'. A number of humanitarian

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

NGOs have operated in the DPRK since the mid-1990s, normally offering aid and humanitarian relief to the regime, who will then administer it. In 2010, the South Korean Red Cross donated 10,000 tons of food to the DPRK. Other aid actors, such as the U.S. Agency for International Development (USAID), have also made contributions, such as offering a \$600,000 flood assistance fund.⁹⁵ South Korean NGOs have been active in their promotion of liberal ideas through the radio frequencies by establishing broadcasts that reach the DPRK's territory. Their goal, as one representative stated, is to 'let North Korean people know that, if personal farming markets are legalised, the economy opened and cooperation with South Korea, China and the US start, the North Korean economy can revive, and their hunger can end.'⁹⁶

The activities of these international actors are severely restricted by the regime. DPRK citizens are punished if found in possession of unauthorised radio-capable instruments, and so far it has proven difficult to estimate the efficacy of the broadcasts. Nationals are strongly discouraged from interacting at all with foreigners. Resident NGOs have limited mobility and the scope of their work is dictated by the state. Because of these restrictions, several notable NGOs, such as MSF and Oxfam, have withdrawn from the country altogether.⁹⁷ As it stands, the presence of international actors in the DPRK is so limited and with such little access to populations that it cannot be considered consequential.

Lack of Exposure and Openness, Both Political and Economic

Indicator 6.6 explores the 'lack of exposure, openness or establishment of political or economic relations with other states or organisations'. The DPRK is probably the most isolated country in the world. The DPRK maintains a moderate amount of economic cooperation with the ROK, which is both commercial and non-commercial (economic aid from the ROK to the DPRK).⁹⁸ The country's most significant relationship is undoubtedly with China which became the country's sole benefactor after the fall of the Soviet Union. During the 1990s, the DPRK became dependent on China for. The share of the DPRK's trade with China has increased steadily since 2001, as well as it has its dependence.⁹⁹ But even this relationship has soured in the past decade.

The lack of exposure and openness goes both ways, with international journalists – mainly coming from 'trusted' partners such as Cuba, China, or Russia – only allowed to write pieces complimentary of the DPRK, and prohibited from speaking to the population.¹⁰⁰ North Korean thought-leaders like to employ the term "mosquito net" as a metaphor for its type of engagement with other nations. It refers to the idea of allowing advanced technology to come in, while capitalist ideas are left out, thus 'letting the breeze come in whilst defending against mosquitoes'.¹⁰¹

The DPRK has encouraged economic relations somewhat with its establishment of four Special Economic Zones (SEZs), two of which are located in its northern border and the other two at its southern border; and there are plans for more to come. In these SEZs, trade and finance, tourism and amusement, and the development of new technology are allowed to a certain degree. Although the SEZs have not performed as the regime expected, they signal at the very least an effort to stimulate the economy by introducing an element of moderate liberalism in very limited areas.

However, from what was revealed during the 7th Congress of the WPK in May, 2016, there does not appear to be a major change of direction in the political and economic policies of the country, or with regards to the extent of its engagement with the international community. Indeed, the Congress, the first since 1980, appeared to consolidate power around current Supreme Leader

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

Kim Jong-Un and the policies inherited from Kim Jong-Il than to mark a radical shift towards new economic and social goals (though a new ‘five-year plan’ was announced, the first of its kind since 1980). How this new plan changes current practices will certainly be an aspect to monitor in the coming year.

Lack of participation in human rights mechanisms

Indicator 6.7 refers to the ‘limited cooperation of the state with international and regional human rights mechanisms’. The DPRK has refused on multiple occasions to permit the UN’s Special Rapporteur to enter the country. It also refused cooperation with the UN’s Commission of Inquiry. To this date no UN Special Rapporteur on Human Rights has been allowed entry to the country, since the inception of the mandate in 2004. The DPRK alleges that the establishment of such a position was a hostile act, a ‘product of political confrontation and conspiracy’.¹⁰²

In 2014, Special UN Rapporteur on Human Rights Marzuki Darusman was invited to undertake a full-fledged country visit, but only under the condition that all references to accountability of the North Korean Supreme leader, and to a potential referral to the International Criminal Court, be removed from the draft resolution over the human rights situation in the DPRK.¹⁰³ These conditions were unacceptable, which led to the halting of the talks.

To date the DPRK has not contributed to UN peacekeeping operations, and have voiced strong opposition to international intervention into any type of domestic matters. This includes situations of humanitarian crises. However, there are signs of a potential loosening of the trend of not engaging with the United Nations and its associated bodies. In September 2015, talks between the DPRK and the Office of the High Commissioner for Humanitarian Affairs resumed after a year-long hiatus; the High Commissioner even received an invitation to visit the country from the Minister of Foreign Affairs.¹⁰⁴

Unwillingness to Receive Support

Indicator 6.8 refers to the ‘lack of incentives or willingness of parties to a conflict to engage in dialogue, make concessions and receive support from the international community’. The attitude of the regime has been vociferous and aggressive towards international institutions. Perhaps as a consequence of its strong commitment to *juche*, North Korea has remained isolated in the international community, and has refused time and time again to maintain a stronger involvement with the UN or other regional institutions. One issue that has subtracted from its capacity to engage with the international community has been the regime’s bid for nuclear weapons. The North Korean nuclear program has received near-universal condemnation from all members of the international community, including from China. It has been thus a topic of much contention, and it appears to have limited the capacity of external actors to effectively engage with the regime.

For the most part, efforts by the UN to monitor and issue statements about the human rights situation in the DPRK are met with dismissals by its representatives, who tend to deny the legitimacy of panels set up for this purpose by branding them as politically motivated efforts to change the leadership of the country. There have been limited gestures towards the request of aid, the invitation to talks, or the demonstrable willingness to make concessions in order to engage with the international community.

RISK FACTOR 6: ABSENCE OF MITIGATING FACTORS

Lack of Support to Refugees

Indicator 6.10 is related to the ‘lack of support by neighbouring states to protect populations at risk and in need of refuge, including the closure of borders, forced repatriation or aid restrictions’. China has long supported the DPRK on the refugee issue and has a policy of returning all refugees who manage to cross into Chinese territory to face punishment in the DPRK. China does not tend to recognise these persons as refugees, but rather as economic migrants who can be forcibly repatriated into the DPRK. The PRC has also forbidden access to the areas closer to the Chinese side of the border with North Korea to journalists and UN and NGO workers alike. Additionally, there are reports that Vietnam transferred to the PRC a number of refugees from the DPRK, who were then reportedly transferred to a town close to the border with the DPRK.¹⁰⁵ Whether these activities of rejection of refugees are due to a request by the DPRK or whether they are autonomous initiatives by these states is impossible to know at this point.

RISK FACTOR 7: ENABLING CIRCUMSTANCES OF PREPARATORY ACTION

Risk factor 7 refers to events or measures, whether gradual or sudden, which provide an environment conducive to the commission of atrocity crimes, or which suggests a trajectory towards their perpetration. As the Framework contends, crimes against humanity cannot be explained in isolation, as they require a degree of preparation.¹⁰⁶ In the DPRK, these preparatory actions and enabling circumstances have been a structural component of the organisation of society since the creation of the songbun system. The DPRK’s strong security apparatus, discriminatory practices, and inflammatory rhetoric have existed for a number of decades now, and have come to enable the commission of atrocity crimes.

Strengthening of the Security Apparatus

Indicator 7.3 refers to the ‘strengthening of the security apparatus, its reorganisation or mobilisation against protected groups, populations or individuals’. The security apparatus of the DPRK is extensive and highly centralised,¹⁰⁷ and it is predominantly geared towards the uncovering and punishment of political criminals. Approximately 1 in every 200 DPRK citizens are prisoners of political prison camps,¹⁰⁸ which attests to the degree to which the relations between the regime and society at large have become securitised. Security forces have the discretion to decide whether to process criminals through the justice system or whether to discipline them themselves (see 3.3). The criminal justice system itself serves the dual function of punishing criminals and of directing a systematic and widespread attack against those deemed dangerous for the survival of the political system and its leadership.¹⁰⁹ Political preferences (whether real or imaginary) determine to a great extent the treatment that a citizen will receive from the security forces and the criminal justice system. For more information, indicator 11.6 provides further details on the organic structure of the security apparatus. Suffice here to note that the activities of the security apparatus are oriented towards the investigation of political offences and the dispense of punitive measures towards them.

Violence Against Women

Indicator 7.9 discusses ‘increased serious acts of violence against women and children, or the creation of the conditions that facilitate acts of sexual violence against those groups, including as tools of terror’. As with other indicators, these conditions are not new, nor have they increased

RISK FACTOR 7: ENABLING CIRCUMSTANCES OF PREPARATORY ACTION

recently but they do represent a daily reality in the lives of many North Korean women. Acts of gender-based violence have occurred since the beginning of the state-sponsored abductions during the 1950s and beyond, as women were particularly targeted and subject to sexual exploitation.¹¹⁰ Inside political prison camps, or *kwanlisos*, certain women are offered additional food or less arduous work in exchange for sexual favours. Although this is not prison policy, it is a widespread practice; and insofar as it is conducted under conditions of coercion, it has come to be classified as rape by international human rights lawyers.¹¹¹ If they become pregnant while in prison, typical women are forced to undergo abortions and will be severely punished for it. If the woman belongs to a 'permitted marriage' – that is, one allowed by the administration of the prison due to the exemplarity of the couple's behaviour – her child will not be aborted, but once born it will live in the prison camp under very similar circumstances to those of its parents. There are also reports of trafficking in women from the DPRK into the PRC to be forcibly married to Chinese men, or to be otherwise sexually exploited – all under the constant fear of being forcibly repatriated, where they would experience all the punishments directed to persons who flee the country.¹¹²

Incitement of Violence

Indicator 7.14 is related to 'increased inflammatory rhetoric, propaganda campaigns or hate speech targeting protected groups, populations, or individuals'. The state media and high level officials tend to brand people who commit political crimes, such as persons who flee the country, with terms such as "traitor" and "human scum", thus facilitating and encouraging the crimes against humanity. This is particularly relevant for the political prisoners in *kwanlisos*.¹¹³ The combination of negative propaganda and the rewards system for violence inside *kwanlisos* can be considered to be a contributing element to the commission of atrocity crimes in the DPRK.

RISK FACTOR 8: TRIGGERING FACTORS

Risk factor 8 relates to events or circumstances that, even if seemingly unrelated to atrocity crimes, may seriously exacerbate existing conditions or may spark their onset. In the DPRK, the most relevant element is the perception that the regime needs to employ violence in order to protect itself from collapse. The DPRK believes that foreign powers are intent of fostering regime change or collapse. Thus, measures taken by the international community can serve as triggering factors for the continuation of atrocity crimes in the DPRK.

Perception of a Threatening International System

Indicator 8.3 refers to the 'measures taken by the international community perceived as threatening to a state's sovereignty'. The DPRK has always been highly sensitive to the measures taken against it by the international community or by individual states within it. The UN has imposed sanctions on the DPRK, predominantly due to its nuclear program and its four nuclear tests to date. The most recent ones – S/RES/2087 in 22 January, 2013, and S/RES/2270 in 2 March 2016 – are both responses to 3rd and 4th nuclear tests, conducted in 2012 and 2016 respectively. When the UN passed its first round of sanctions following the DPRK's first nuclear test in 2006, North Korea's UN envoy rejected the resolution and called it 'unjustifiable', warning that any increase in pressure would be considered as 'a declaration of war'.¹¹⁴ The day after the latest sanctions were imposed, the DPRK's military fired a volley of short-range missiles into the sea off its East coast.¹¹⁵

RISK FACTOR 8: TRIGGERING FACTORS

Another matter that has sparked a great degree of inflammatory rhetoric from the DPRK's official channels is the issue of human rights, and the sanctions that are levied against it as a result. When the US blacklisted the DPRK's Supreme Leader Kim Jong-Un along with 10 other officials for their involvement in human rights abuses in the country, Pyongyang responded by calling this action "a challenge [to] the dignity of the Supreme Leadership", "a hideous crime" and "declaration of war".¹¹⁶ Similarly, when the South Korean parliament passed its first-ever law condemning human rights violations in North Korea and imposing sanctions, the DPRK's state media warned that enacting the law would result in "miserable ruin" for South Korea.¹¹⁷ Moreover, when international bodies such as the UN have attempted to access the DPRK's territory to verify claims about human rights violations, its government has promptly denied them entry into the country. Pyongyang has publicly claimed that the mere existence of a Special Rapporteur for Human Rights represents a hostile act, a "product of political confrontation and conspiracy". With regards to the human rights panel discussion organised by the Human Rights Council, the country's representative claimed that the panel "followed ill-minded political objectives and represented a product of conspiracy of the hostile forces led by the United States pursuing a plot against the DPRK".¹¹⁹ The report was furthermore dismissed since it was based on the "false information" provided by "defectors".

Relations are particularly bitter with the US. The US has been singled out by the DPRK as the greatest threat to its survival, to the point that a DPRK's spokesman has stated that the state it would only relinquish its nuclear weapons after relations with the US had been normalised.¹²⁰ Pyongyang often accuses the US of threatening its sovereignty. The DPRK's leadership also takes very seriously how other countries, or even private companies, portray its government and its rulers. Weeks prior to the release of 2014's Sony movie 'The Interview', a comedy which depicts a fictional American plot to assassinate Supreme Leader Kim Jong-Un, a DPRK foreign ministry's spokesman warned that releasing the movie would be an "act of war", and would be met with "merciless retaliation".¹²¹

These instances reveal a worldview that sees potential harm in nearly all types of engagement with the US and with the international community, insofar as the current world order is dominated by the liberal ideals promoted by the US. The prevalent fear is one of infiltration and sabotage, and as long as it persists one can reasonably expect the DPRK to continue its trend of perpetration of atrocity crimes.

SPECIFIC RISK FACTORS

CRIMES AGAINST HUMANITY

RISK FACTOR 11: SIGNS OF A WIDESPREAD OR SYSTEMATIC ATTACK AGAINST ANY CIVILIAN POPULATION

The Commission of Inquiry found that the discrimination exercised by the regime on the basis of songbun, gender, and ability has created many vulnerable groups in the DPRK that are subjected to systematic crimes against humanity.¹²² These groups include: an estimated 80,000-120,000 inmates of the *kwanlisos*; inmates of other prisons; persons who flee the country, in particular those who are forcibly repatriated; Christians and other religious practitioners; other people who introduce subversive influences, to the degree that these are perceived as such by the Communist Party; starving populations; other nationals, from Japan and Korea particularly, who become abducted. Their common denominator is being perceived by the administration to pose a threat to the political system of the DPRK and the leadership of the Communist Party.

Risk Factor 11 refers to signs of violent conduct including the use of force against any civilian population and that suggest massive, large-scale and frequent violence with periodicity, similarity and organisation. The presence of these elements would demonstrate the existence of a widespread and systematic policy against protected populations. The groups presented in the introduction to the ‘Specific Risk Factors’ have been particularly targeted on a massive scale and suffered indiscriminate amounts of violence against them. This meets both criteria of large-scale violence (quantitative element) and methodical violence (qualitative element), indicating the existence of crimes against humanity.

Use of Media to Incite Violence

Indicator 11.4 stresses the ‘use of the media or other means to provoke or incite violent acts’. Previously, it was observed how the guards and security forces stationed in the *kwanliso* are taught and encouraged to treat inmates as sub-human enemies who have been void of their rights due to their treasonous actions¹²³(see 7.14). Not only are these guards socialised into being ruthless with prisoners, but they are also rewarded for acts of cruelty that maintain order within the camps. These messages of hostility are reinforced by the constant barrage of propaganda from its managing department, which brand perpetrators of political crimes as ‘enemies of the people.’¹²⁴ As was asserted before, citizens, and especially those in charge of the creation of content for the diverse state-curated media outlets do not possess any freedom of speech or freedom of press (see 2.1). Due to the lack of parallel or alternative views, these violence-encouraging messages encounter no resistance in the public sphere.

Political and Military Structures for the Commission of Violence

Indicator 11.6 observes the ‘establishment of new political or military structures that could be used to commit violent acts’. In the DPRK, state surveillance permeates all aspects of the life of North Korean citizens, both in public and in private. The state apparatus has for a long time been geared towards the commitment of violent acts against political minorities and protected groups. The state security structure rests on five pillars that remain in place under the rule of current Supreme Leader Kim Jong-un.

RISK FACTOR 11: SIGNS OF A WIDESPREAD OR SYSTEMATIC ATTACK AGAINST ANY CIVILIAN POPULATION

The principal political policing body is the State Security Department, whose task is to investigate 'crimes against the nation' and to violently suppress threats to the party and the Supreme Leader. Its activities are normally associated with those of 'secret polices', including intelligence and counterintelligence responsibilities (both at home and abroad), surveillance over the entire population (especially those who have returned from other countries), and is charged with running the *kwan-lisos*.¹²⁵ The Ministry of People's security also has a number of political policing functions. Additionally, the party heavily monitors and polices its different internal branches as well. For example, the Military Security Command is the political police of the Korean People's Army; the Office of the Prosecutor exercises legal and political monitoring roles; and certain special bodies within the WPK also monitor and police senior officials and the security agencies themselves.¹²⁶ Moreover, citizens are encouraged and rewarded for reporting on fellow citizens that they suspect of having committed political crimes.¹²⁷ Therefore, no citizen, bureaucrat, or soldier's life goes unobserved or unevaluated.

The security apparatus is deliberately fragmented, to prevent the emergence of a security force that could challenge the Supreme Leader.¹²⁸ As a result, the various security departments monitor the activities of one another and compete for turf and competencies. This results in a system of extreme mistrust where seemingly every individual is scrutinised and could be the target of political violence if he or she should be recognised as a threat to the state. In such a cutthroat environment, an accusation of having committed a political crime can result in extreme violence. When combined with the twisted system of rewards for the recognition and punishment of enemies of the state (see 7.14 and 11.4), these surveillance bodies turn into actors capable of dispensing mass violence against protected populations.

RISK FACTOR 12: SIGNS OF A PLAN OR POLICY TO ATTACK ANY CIVILIAN POPULATION

Risk Factor 12 is related to the facts or evidence suggestive of a state or organisational policy, even if not explicitly stipulated or formally adopted, to commit serious acts of violence against any civilian population. In this context, crimes against humanity are not only being committed, but are also being promoted in order to further a state goal. In the DPRK, the policy of systematic crimes against humanity is facilitated by the songbun system – which evidences the regime's active classification of individuals into groups which will receive differential treatment.

Existence of documentation revealing classification of citizens into differential categories - (the *songbun* system)

Indicator 12.1 refers to the existence of 'official documents, political manifestos, media records, or any other documentation through which the existence of a state or organisational plan or policy to target civilian populations or protected groups is directly revealed, or could be inferred'. In the DPRK, information is systematically gathered about all adults living within its borders, the culmination of which heavily influences a person's songbun. The songbun system serves as a way to document the perceived differences between groups of civilians. The songbun is built by association – actions and songbun of other family members – and by individual actions through his or her life. Based on this assessment, individuals are grouped in categories that relate to the perceived threat that they may

RISK FACTOR 12: SIGNS OF A PLAN OR POLICY TO ATTACK ANY CIVILIAN POPULATION

pose to the regime. Decisions about their residency, occupation, or access to food, education, and healthcare will be decided on the basis of that individual's *songbun*.¹²⁹

The *songbun* is recorded in a comprehensive resident registration system which describes and archives details on the lives of all adult citizens (aged 17 and older) and their families.¹³⁰ The files contain biographical information that includes genealogical records, as well as observations of ideological steadfastness and political loyalty, ascertained through evaluations in different circumstances such as work or school. Lower *songbun* is attributed to, among others, formerly wealthy industrialists, alleged spies, Catholics or Buddhists, and their entire families. Because family affiliation is such a great determinant of an individual's *songbun*, much of their destiny was decided even before the establishment of the DPRK.

From the existence of the *songbun* system, which attributes to different social groups different perceived qualities, and which determines the state's rapport with these groups, one can infer the existence of a systematic policy to, at the very least, curb the perceived political threat posed by those of lower *songbun*. As was presented before (see 3.3), individuals with lower *songbun* receive harsher prison sentences, and are more likely to be sent to the *kwanlisos*, which is related to Indicator 12.2 ('adoption of discriminatory security procedures against different groups of the civilian population'). As individuals from this group are more prone to experience the full brunt of the state-issued violence, the atrocity crimes committed in the DPRK can be considered crimes against humanity.

The patterns of discrimination and indoctrination dependent on the *songbun* are reinforced and safeguarded by a policy of isolating citizens from one another and from contact with other countries. Citizens are not allowed to freely move from province to province, even temporarily, without official authorisation. Travel abroad is strictly forbidden, and those who are caught attempting to flee are subject to persecution, torture, incarceration, and in some cases sexual violence. These regional and national lock-outs serve to maintain the disparate living conditions of the different social groups in the DPRK, as well as to limit information flows and to maximise state control.¹³¹

CONCLUSION AND RECOMMENDATIONS

Crimes against humanity are ongoing in the DPRK as a matter of state policy. In the absence of any signs of reform, there is a very high likelihood of atrocity crimes continuing to be perpetrated for the foreseeable future.

DPRK exhibits many of the factors associated with heightened atrocity risk, especially:

- Record of serious violations of international human rights and humanitarian law
- Weakness of state structures
- Motives or incentives
- Absence of mitigating factors

The regime has a history of human rights violations and commission of atrocity crimes, motivated to continue with these practices to maintain the political and economic status of its elites, and lacks any mechanisms through which citizens might seek protection or redress. Several other risk factors were also evident, including

- Capacity to commit atrocity crimes
- Enabling circumstances or preparatory action
- Triggering factors
- Signs of a widespread or systematic attack against any civilian population
- Signs of a policy or plan to attack any civilian population

This pattern of behaviour is deeply entrenched and driven by a widely held perception that relaxing the control of the population would result in the collapse of the regime.

	RECOMMENDATIONS FOR THE GOVERNMENT OF THE DPRK
1	Immediately cease the systematic commission of crimes against humanity.
2	Work towards fulfilment of the Responsibility to Protect by ceasing human rights violations, abiding by UN sanctions, and reallocating the domestic budget away from disproportionate military expenditures toward improving its human rights situation.
3	Engage constructively with the UN Office of the High Commissioner for Human Rights (OHCHR), the new Special Rapporteur and the OHCHR field office in Seoul to develop plans for technical assistance to faithfully implement the universal periodic review recommendations that were accepted by the DPRK in 2014.
4	Cooperate with relevant United Nations mandate holders. Especially, the government should follow through on the September 2015 invitation from the DPRK's Minister of Foreign Affairs to the High Commissioner for Human Rights to visit the country, and respond favourably to the outstanding requests for country visits from five special procedure mandate holders, including the 2015 requests of the Working Group on Arbitrary Detention and the Working Group on Enforced and Involuntary Disappearances.
5	Resume bilateral and regional human rights dialogue with China, the Republic of Korea and Japan.

CONCLUSION AND RECOMMENDATIONS

	RECOMMENDATIONS FOR REGIONAL ACTORS
1	Respect the principle of non-refoulement and refrain from repatriating individuals to the DPRK where they are likely to face torture or other serious human rights violations. Russia should not implement recent extradition treaties with the DPRK. China should implement the recommendation of the Committee against Torture's fifth periodic report on China to allow the Office of the UN High Commissioner for Refugees access to DPRK nationals who have crossed the border to determine whether they qualify for refugee status.
2	Japan, the Republic of Korea and the US, as well as all other key diplomatic actors, should ensure that human rights accountability is an integral part of their diplomatic engagement with the DPRK.
3	Northeast Asian states, for whom the death penalty remains a difficult issue, should consider instigating a regional dialogue on the question of the death penalty, possibly in cooperation with the European Union.
4	The Chinese government, think tanks and civil society organisations should be encouraged to promote and facilitate dialogue with actors in the DPRK on political, human rights, and economic reform issues.

	RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY
1	The UN system should address grave human rights violations in the DPRK in a coordinated and unified manner in accordance with Secretary-General's Human Rights Up Front Initiative.
2	The Human Rights Council should extend the mandate of the Special Rapporteur; task the Special Rapporteur or OHCHR to devise a comprehensive policy on humanitarian assistance in the DPRK; establish a group of independent experts to devise practical mechanisms of accountability to secure truth and justice for victims of crimes against humanity in the DPRK.
3	The OHCHR should closely monitor human rights in the DPRK through its' new field office in Seoul. It should also use the office to investigate unresolved human rights issues, prepare to provide technical assistance, and deepen its support for the UN's engagement with DPRK.
4	The General Assembly should continue to maintain visibility of the human rights situation and call for accountability in the DPRK.
5	The Security Council should hold regular briefings on the issue with the participation of UN High Commissioner for Human Rights, Special Rapporteur and other relevant experts.
6	Civil Society actors should continue to raise awareness and visibility of the human rights situation, and advocate for accountability, including through supporting efforts to map suspected perpetrators of serious crimes and the related chain of command structure in the DPRK.

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