

For decades, North Korea continued to deny that any South Korean prisoners had been held against their will. [OH, YOON and HUR 2008, p. 41]. For years, North Korea denied any contact with the POWs and no one outside of North Korea had any idea of even how many South Korean prisoners survived and continued to be detained in North Korea.

Evidence about the South Korean POWs from escaped POWs and Soviet Archives.

Since 1994, 79 former South Korean POWs have escaped from North Korea. The testimonies from these men contradict North Korean claims. According to their testimony, North Koreans coerced South Korean POWs to serve in their armed forces as well as to perform dangerous and hard labor during and after the war. Many of the POWs were organized into Construction Brigades, nominally under the Ministry of Internal Affairs, where they were forced to work in coal mines and other mines.

They were held incommunicado and prevented from contacting their families in South Korea. The North Koreans never gave the POWs an opportunity to return home. [OH, YOON and HUR 2008].

On June 25, 1956, almost three years after the Armistice was signed, the North Korean Cabinet issued "Order 143." Order 143 officially demobilized the Construction Brigades. The POWs were also issued North Korean citizenship and allowed to marry and start families. However, their work was largely restricted to the same hard labor occupations in the same mines they had worked in before. Many suffered physical injuries over the decades of hard labor [OH, YOON and HUR 2008, p. 95-102].

These testimonies are corroborated by declassified Soviet-era documents. Although the Soviet Union was not officially a combatant, it closely supported North Korean and Chinese forces with weapons and material, advisors and even sent pilots to secretly fly in combat. Soviet General Secretary Stalin was deeply involved in the planning and execution of the war, to the extent that North Korean leader Kim Il Sung had to obtain permission from Stalin before launching the war. [O'NEILL 2000]. Therefore, the Soviet documents show the strategic planning and operations of Soviet, Chinese and North Korean leaders. The memos between Soviet diplomats show that North Korean leaders never intended to allow the POWs to return home. North Korean leaders intentionally kept South Korean POWs from escaping or making contact with international officials monitoring the exchange of prisoners after the war. [VOLOKHOVA 2000, pp. 86, 89-90].

The escaped POWs have also testified that they were restricted in their work, residence and travel throughout their lives in North Korea. Furthermore, North Korea's State Security Department and Department of Public Safety kept them under strict surveillance which continues to this day, even though the POWs are now in their 70's and 80's. The discrimination and surveillance also continues against their children.

The testimonies indicate that the North Korean authorities purposely and methodically maintained control over the POWs. It is also presumable that given such surveillance and control, North Korean authorities also have records of the whereabouts of South Korean POWs and their families that they have withheld.

VI. Evidence against defendants to be presented to the ICC

Evidence against the defendants will include direct evidence in testimonies from POWs who have escaped from North Korea, and documentary evidence from declassified Soviet-era Archives.

Direct Evidence against defendants from POW Testimonies

The testimonies from escaped POWs to be used as evidence of War Crimes and Crimes Against Humanity include the following:

- 1) The denial of any contact with their families in South Korea regarding their whereabouts
- 2) Testimonies that POWs were denied an opportunity to return to South Korea, or to seek asylum in a third country as other POWs held by Communist forces.
- 3) Testimonies that POWs were denied opportunities to contact the Red Cross, neutral nations officials monitoring the exchange of POWs at the Armistice or any outside party. Some POWs have testified they did not even hear of the Armistice until many months after it was signed.
- 4) Testimonies regarding threats and violence against POWs (including executions) who demanded to be repatriated to South Korea.
- 5) Testimonies from POWs that they were kept under surveillance and restricted in their choice of work and residence after the war, especially testimonies that they were placed under stricter surveillance and restrictions than other North Korean citizens.
- 6) Testimonies of discrimination in education, jobs, and military service against the children of POWs solely based on their parental lineage.

The testimonies from escaped POWs provide evidence regarding whether they had freely choose to join the North Korean forces and to stay in North Korea. All of the escaped POWs have testified they were never given such an opportunity during the fighting and after the cease-fire. The fact that the North Korean leadership denied the South Korean

POWs opportunities to contact the Red Cross or neutral nations officials shows that the POWs were held against their will.

Testimonies of threats and violence against POWs who demanded to be repatriated to South Korea are evidence that the South Korean POWs were kept in North Korea against their will. Some of the former POWs report that they had seen or had heard of their comrades being executed for demanding repatriation.

The denial of contacts with families in South Korea also shows that the POWs were held against their will. Beginning in 1972, there have been numerous unofficial and official contacts between North and South Korea including a number of divided families that were allowed to see each other. Although almost all the POWs were kept under close surveillance, and that they were likely to have had family in South Korea, North Korean authorities never allowed any contact between the POWs and their families in South Korea in a meaningful scale. If the POWs had voluntarily stayed in North Korea, there would be no reason to deny such contact. The denial of contacts indicates that North Korea has something to hide about these POWs.

Documentary Evidence against the accused from Soviet-era Archives

The Soviet-era archives provide documentary evidence that North Korean leaders purposely denied the South Korean POWs repatriation. The documentary evidence shows that North Korean leaders were aware that they were violating the terms of the Armistice.

Soviet Ambassador S.P. Suzdalev's memo written in May of 1953 expresses concern that North Koreans are detaining POWs that should be repatriated. This memo shows that Communist leaders were aware that the POWs were employed in "various kinds of hard work in North Korea" and that North Koreans were "ignoring their desire to return to their families." [VOLOKHOVA 2000, p. 86].

Fedorenko's memo dated December 3 1953 provides even clearer evidence of Communist intentions. Both Kim Il Sung and Mao Zedong recognized they were detaining large numbers of POWs that are "eligible for return." in violation of the Armistice. Kim Il Sung also reports he has taken measures to hide this violation by preventing the POWs from escaping or contacting neutral nations officials. [VOLOKHOVA 2000, pp. 89-90].

The testimonies and the documentary evidence show a pattern of War Crimes, followed by cover up that extends for over a generation. The POWs were exploited for their labor unlawfully during the war. They continued to be exploited after the war and this exploitation and unlawful detention had to be hidden. The exploitation and cover up has continued to include their children.

VII. Criminal Conduct of North Korean Officials

The following is an analysis of how the conduct of North Korean military and civilian officials fall under the Elements of Crimes for the Rome Statute Article 7 and 8 violations. [DÖRMANN 2002].

1. Common Elements to Article 8 crimes.

The conduct of North Korean military and civilian officials meet the elements the common elements to Article 8 violations.

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2. Such persons were protected under . . . the Geneva Conventions.

South Korean soldiers were combatants taken prisoner under Article 4 of the Geneva Conventions III.

3. The perpetrator was . . . aware of the . . . protected status.

Both the North Koreans and the Chinese forces had pledged to abide by the Geneva Conventions. In the negotiations, North Korean and Chinese negotiators showed a sophisticated awareness of the text and context of Geneva Conventions. It is not likely that Communists innocently thought South Korean POWs were not protected by Geneva Conventions III, Article 4. [HERMES 1992, Ch. 7].

Especially, the fact that 8,321 South Korean POWs were repatriated and 325 South Korean POWs were allowed to verify their wish to stay with their Communist captors to neutral nations representatives shows that Communist forces were aware of the POW status of South Korean soldiers and their rights within the POW repatriation process.

Soviet Ambassador Suzdalev's memo written in May of 1953 shows that Communist leaders were aware of all South Korean POWs' status. [See VOLOKHOVA 2000, p. 86]

Fedorenko, a Soviet Foreign Ministry official reports that Kim Il Sung is aware that large numbers of South Korean POWs who are detained after the Armistice are eligible for return. Kim reports to Mao that he will hide such POWs and prevent their escape. [See VOLOKHOVA 2000, pp. 89-90].

4. The conduct took place in the context of . . . an international armed conflict.

The Korean War involved international forces fighting on both the North and South Korean sides. Therefore, the conflict was an international armed conflict.

5. The perpetrator was aware of . . . the existence of an armed conflict.

The South Korean POWs were managed by both military and the Ministry of Internal Affairs who were aware of the existence of the armed conflict since they were participating in combat and support roles themselves.

2. Article 8 (2)(a)(vii) Unlawful confinement of POWs

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

1. The perpetrator confined or continued to confine one or more persons to a certain location . . .

The prisoners were initially confined to their camps or Construction Brigades. After 1956, the POWs were officially discharged from their Construction Brigades but still confined by restrictions in their residence and prevented from leaving North Korea.

A confinement is unlawful when it violates Geneva Conventions Articles regarding the treatment of prisoners. North Korean officials have violated the following articles of the Geneva Conventions III, regarding the treatment of POWs. [GENEVA CONVENTIONS 1949].

Art. 69, 70, 71 concern rights of POWs to be able to contact the outside world. POWs are to be allowed contact with their families and the outside world. North Korean officials violated these articles by holding South Korean POWs incommunicado.

Art. 122 concern duties of a detaining power to report the POWs they capture. Communists leaders intentionally kept thousands of POWs off the rosters and claimed they were released at the front when in fact they were in their control: either incorporated into their armed forces (this would be a separate Article 8 War Crime but as of 2002, the POWs would be too old to be considered to be in North Korea's armed forces), or working in the Ministry of Internal Affairs Construction Brigades.

Art. 118 concerns repatriation. POWs must be repatriated without delay at the end of hostilities. The Korean War Armistice specified that any POW who wished not be repatriated verify their wish with neutral nations representatives of the Neutral Nations Repatriation Commission (NNRC) administering the exchange of POWs.

North Korean officials violated Article 118 when they excluded thousands of POWs from the process altogether. These POWs were not even included in the POW rosters and not given an opportunity to return home or contact the NNRC.