INTRODUCTION

1. Gresham lecture titles have to be fixed over a year in advance of presenting the lecture. For any subject that has a contemporary element this creates risk and uncertainty for the lecturer.
2. In choosing Burma and North Korea for this lecture I was able to guess that events of the past year would be relevant.
3. There is not very much law in this lecture - and that is the point.
4. Law should be universal in reach within whatever global or local universe it operates.
5. International legal institutions, however, do not come down with equal force for every international criminal outrage against humanity because there are political reasons to justify treating them differently. Should the citizen care? Maybe s/he would say:
   a. ‘There are simply too many tragedies happening around the world and I - the fortunate human - was not born simply to spend my entire life worrying about them; I have to be able to let them unfold in whatever way they will and I can justify doing nothing but getting on with my own life’; or
   b. ‘We have governments to decide on intervention in the affairs of other countries and must trust their judgement’; or
   c. ‘We have established NGO’s who represent my concerns and I can make my contribution by giving support or money to the NGO’s of my choice’; or
   d. ‘The world of humans should be able to see itself as a family – for essentially religious or entirely practical reasons - and the suffering through crime of any member of the family is something that I should not permit without doing what I can to lessen the suffering’

6. Does the citizen owe more than just to vote for his MPs or fund an NGO?

BURMA - INTRODUCION

7. We know of Aung San Suu Kyi and possibly recall something of the massacre of the Buddhist monks and their Saffron Revolution in 2007 but maybe little more - apart from having heard it is a great new holiday destination. Is there more?
8. In fact, Burma has been the scene of appalling human rights violations, state-sponsored many would say, for decades. Since at least the 1990s there has been forced labour, the recruitment of tens of thousands of child soldiers, widespread sexual violence, extrajudicial killings and torture; more than a million people have been forcibly displaced; over 3,000 villages with ethnic nationality hostile to the government have been burned to the ground, comparable in number to the number of villages estimated to have been destroyed or damaged in Darfur. The ruling Burma military junta, and its leader General Than Shwe, avoided justice and accountability for decades and look set to continue to do so.
9. [For much of the detail that follows see The Harvard Law School’s International Human Rights Clinic that produced an authoritative report in May 2009 following - and to be followed by - long term research into Burma]

BURMA – THE RELEVANT HISTORY

10. Until the nineteenth century Burma was a collection of territories ruled by different ethnic groups. The Burman people, the largest ethnic group, inhabit the central areas of the modern state, with other major ethnic nationality and minority groups - including the Arakanese, Chin, Kachin, Karen, Karenni, Mon, and Shan - occupying border areas often having different languages, cultures, and political identities.
11. Between 1824, and 1885 the British colonised the country by military force, first annexing it to British India but making it a separate crown colony in 1937.
12. During World War II, Japan took control of Burma. The Japanese-trained Burma Independence Army, led by General Aung San, father of Aung San Suu Kyi, initially allied with the Japanese but as the war went on many Burmese leaders focused on establishing an independent state.
13. They created the Anti-Fascist People’s Freedom League (AFPFL), and began to resist the Japanese, now with the help of the British. The British and the AFPFL under General Aung San liberated Burma from Japan in 1945.
14. After the war, Burmese nationalists demanded independence from Britain. In early 1947 Aung San and many - not all - of Burma’s ethnic nationality groups forged the Panglong Agreement that included a “principle of equality” between Burmans and ethnic nationalities and laid the groundwork for a federal union with political autonomy for ethnic nationality areas.
15. On July 19, 1947, General Aung San and several other key leaders of Burma’s independence movement were assassinated. Despite the loss of many of its most respected and unifying figures a new constitution came into effect on September 2, 1947, and full independence was realised on 4 January 1948 with a parliamentary democracy.

16. **States were considered autonomous, and certain ethnic nationalities had the constitutional right to secede from the union after ten years.** However, the trust that some ethnic nationality groups had placed in General Aung San, the architect of the Panglong Agreement, eroded under his successors.

17. During the 1950s, military leaders began criticizing parliamentary rule and the constraints it placed on their powers. The Cold War that had the Communist Party of Burma (CPB) opposing the Government of Burma exacerbated the situation.

18. Despite having immense wealth in natural resources - timber, gems, agricultural lands - and in a well-educated ruling class, ethnic nationalities fearing a loss of autonomy under the new government began to look for other political solutions. For example, Shan leaders debated whether to seek the right to gain independence granted to them in the constitution; others formed their own armies, which either collaborated with the CPB or pursued separate struggles for ethnic autonomy.

19. By 1960, numerous groups were in armed conflict with the Burmese Army, the ‘Tatmadaw’. In 1962, General Ne Win staged a coup that began the era of military rule, which, in many ways continues to this day.

**MILITARY RULE 1962 to 2009**

20. Ne Win dominated the country’s politics as a dictator until the late 1980s. He created the “Burmese Way to Socialism,” a program that formed a single-party system controlled by his Burmese Socialist Program Party (BSPP). Ne Win isolated the country by remaining neutral during the Cold War and by leaving the non-aligned movement in 1979.

21. Ne Win’s regime’s Four Cuts policy, aimed at cutting off supplies of food, money, intelligence, and recruits from armed ethnic nationalities groups. This led to thousands of civilian deaths and the destruction of food, crops, and numerous villages.

22. Ne Win’s regime suppressed political opposition in urban areas, including student-led uprisings in 1974, when a new constitution officially transferred power to a People’s Assembly while in reality Ne Win retained firm control.

23. Regionally-based ethnic nationality groups continued to struggle against the Tatmadaw and Ne Win’s rule. A coalition of nine such groups - including the Karen National Union (KNU), the Kachin Independence Organisation (KIO), and the New Mon State Party (NMSP) - formed the National Democratic Front (NDF) that grappled with issues of territory, federalism, and the right of secession and, together with the CPB and others groups, fought the Tatmadaw.

24. Under military rule Burma’s resources were not developed, and the country’s economy stagnated and regressed so that, by way of example, the three million tons of rice Burma exported each year in 1955 had fallen to nearly zero by 1988.

**THE 1988 POPULAR UPRISING AND DEMOCRATIC ELECTIONS OF 1990**

25. By 1987, years of economic mismanagement had caused severe currency devaluation and Burma’s economy had collapsed, wiping out many peoples’ savings.

26. In response to the economic situation and the suppression of civil and political rights large student-led demonstrations took place in August 1988, calling for democracy. Hundreds of thousands marched in the streets. The regime responded violently, with the army killing thousands of civilians including women and children. At least 3,000 people were killed in August 1988 alone.

27. The military leadership reorganised itself and took power as the State Law and Order Restoration Council (SLORC) under General Saw Maung. The Council declared martial law and arrested demonstrators.

28. In the aftermath of the 1988 uprising and failed elections, many Burmese students fled to Burma’s jungles, some joining the armed struggle against the Tatmadaw.

29. Despite the 1988 crackdown, calls for democracy continued, and in May 1990, the regime held multi-party elections. Although many opposition leaders had been placed under house arrest or imprisoned at the time, the military suffered a massive defeat in the elections. Aung San Suu Kyi, the daughter of General Aung San, had emerged as the leader of the National League for Democracy (NLD), the major opposition party which won over 80% of the parliamentary seats in the 1990 elections. The ruling SLORC refused to transfer power, created a military-led National Convention to draft a new constitution and increasingly suppressed pro-democracy advocates, including elected members of parliament.

30. Daw Aung San Suu Kyi, for example, was to be under house arrest for much of the next two decades with the military regime arresting many politically active individuals during its rule.

**MILITARY RULE SINCE 1988**

31. Gen Saw Maung stood down or was deposed in 1992 and General Than Shwe then led the junta. With the end of the Cold War and the awarding of the Nobel Prize to Daw Aung San Suu Kyi in 1991, the regime’s record began to receive more scrutiny internationally.
32. In 1991, the UN General Assembly passed its first resolution on Burma, 10 and in 1992, the UN Commission on Human Rights similarly expressed concerns about the “seriousness of the human rights situation”, including over restrictions placed on political leaders and the exodus of Muslim refugees to Bangladesh. 11 In 1993, the first Special Rapporteur on the situation of human rights in Burma / Myanmar reported on investigations made with regards to the country. The report documented, among other violations, “detentions without minimum guarantees for persons under custody, torture, cruel, inhuman or degrading treatment, disappearances and [observed that] arbitrary executions have been carried out by the Myanmar authorities.”

33. Subsequent yearly reports have continued to detail such violations. Armed conflict continued throughout the 1990s as the Burmese army mounted attacks to gain control of border regions. 12 The military regime’s offensives weakened the ethnic movements and many groups signed ceasefire agreements with the military regime during the early and mid-1990s.

34. During the 1990s, numerous military campaigns against ethnic nationality groups led to a litany of human rights violations. By the late 1990s, more than 100,000 refugees were in camps in Thailand, in addition to the many internally displaced persons within Burma itself. Forced labour was also occurring in epidemic proportions during the 1990s.

35. In 1997, the regime changed its name to State Peace and Development Council (SPDC), and Burma was admitted into the Association of Southeast Asian Nationals (ASEAN), but human rights abuses continued.

36. The International Labour Organization (ILO), a UN agency, formed a Commission of Inquiry in 1997 that found in its 1998 report that there was a prolific use of forced labour in the country:

‘There is abundant evidence before the Commission showing the pervasive use of forced labour imposed on the civilian population throughout Myanmar by the authorities and the military for portering, the construction, maintenance and servicing of military camps, other work in support of the military, work on agriculture, logging and other production projects undertaken by the authorities or the military, sometimes for the profit of private individuals, the construction and maintenance of roads, railways and bridges, other infrastructure work and a range of other tasks, none of which comes under any of the exceptions listed in Article 2(2) of the Convention.’ 13

37. The Commission of Inquiry stated that its findings

“reveal[ed] a saga of untold misery and suffering, oppression and exploitation of large sections of the population inhabiting Myanmar by the Government, military and other public officers.”

Yet, the use of forced labor continued to be “widespread”, especially by the army 14, and the ILO noted that the systematic nature of the use of forced labour may constitute a crime against humanity. 15 In 2009, the ILO stated that the “overall forced labour situation remains serious in the country,” despite ongoing efforts to pressure the regime to end the practice.

38. By the late 1990s, the SPDC had largely consolidated control over the country; however, political freedoms did not follow. The SPDC continuously placed restrictions on Daw Aung San Suu Kyi and other politicians. Hundreds of political prisoners have been held for years. The military persecuted students, closed universities for much of the 1990s and targeted political parties. In May 2003, during a time when Daw Aung San Suu Kyi had been released from house arrest and was attempting to organize NLD activities by traveling outside Rangoon, regime supporters attacked her supporters, resulting in injuries and deaths. The event has become known as the Depayin Massacre.

39. The military regime targeted Buddhist monks in the 2007 Saffron Revolution (a reference to the color of the monks’ robes). Throughout September 2007, demonstrations grew under the leadership of Buddhist monks and spread across the country. The regime responded with arbitrary detention, a curfew and the banning of public gatherings. The UN Special Rapporteur reported fatalities and numerous arrests. The UN Security Council responded by issuing its first ever Presidential Statement on Burma that deplored the violence used against protestors, urged the release of all political prisoners, and called for the military regime to “create the necessary conditions for a genuine dialogue . . . with all concerned parties and ethnic groups.”

40. The military regime ignored the UN Security Council, as it had other calls from the UN to protect civil and political freedoms. In May 2008, one week after Cyclone Nargis hit Burma and left an estimated 134,000 dead, the SPDC held a referendum on a new constitution, which would institutionalise its power after elections.

41. In 2009 the Harvard Report identified grave crimes committed by the regime until that year.

THE CRIMES

42. It would be easy enough to give descriptions, or possibly to show pictures, of some of the crimes committed in the period already spoken of - but better to do what the Harvard Report did and to rely on authorised documents of the UN itself in order to explain what had happened.

43. The Special Rapporteur for Burma / Myanmar listed Human Rights violations in every year between 1993 and 2008 of forced displacement (every year) sexual violence (every year except 2001), extrajudicial killing (every year except 2001), torture (every year except 2001), Arbitrary detention (every year).


45. General Assembly resolutions listed these violations - all of them - for every one of the same years
except for 2007 and 2008 (where one or two categories were not identified)

46. In consequence Human Rights Abuses Committed by Burma’s Military Regime, and as already Documented by the United Nations and Prohibited by the International Criminal Court’s Rome Statute included

Human rights listed Under Article 7 of the Rome Statute as “Crimes Against Humanity” including

- Murder
- Enslavement
- Deportation or forcible transfer of population
- Torture
- Imprisonment or other severe deprivation of physical liberty
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined, or other
  - Enforced disappearance of persons
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Human rights abuses listed Under Article 8 of the Rome Statute, Section 2 (c) and (e), “War Crimes”

- Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected;
- Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

BURMA CONCLUSIONS BY A COMMISSION

47. The Commissioners of the 2009 Report endorsed the Report’s Conclusions that

a. Burma has lived under autocratic and repressive military rule for more than four decades.

b. The situation in Burma constituted one of the world’s worst human rights situations. The UN General Assembly and Human Rights Commission (now Human Rights Council) had passed repeated resolutions condemning Burma’s military regime for human rights abuses every year since 1990 and 1992, respectively.

c. Modern Burmese history had been marked by decades of military rule, widespread human rights violations, and armed conflict.

d. Since 1962, the Burmese military had repressed political opposition—whether in the country’s urban areas where political parties are most active or rural areas where ethnic nationality groups predominate.

e. Human rights abuses by the military regime in both conflict and non-conflict zones had been commonplace, with attacks primarily aimed at students, political opponents, and ethnic nationalities.

f. The rights abuses ranged from the suppression of civil and political rights, such as freedom of expression and assembly, to arbitrary detentions and problems associated with the lack of an independent judiciary.

g. Violent abuses, such as extrajudicial killings, torture, and disappearances, along with epidemic levels of forced labor and discriminatory practices against women and ethnic nationalities had also been historically widespread.

h. The UN had consistently acknowledged wide-ranging human rights violations since the early 1990s, highlighting the long-term pattern of abuses that have characterized Burma’s history.

48. Yet, for too many years, the Commissioners observed, the world had done little to address these human rights abuses. Meanwhile, the ruling military junta, including its leader General Than Shwe, had avoided justice and accountability. The scale and severity of the violations required sustained effort—for the abuses continued. The Commissioners explained that, each of them having dealt directly with severe human rights abuses in the international system, and having seen the painful consequences of inaction:

‘We have seen how severe human rights acts are not simply condemnable acts, but require concerted efforts to achieve some semblance of accountability and justice.

……The report’s findings are both disturbing and compelling, especially in light of the [Harvard] Clinic’s exclusive reliance on official UN documents for its research.

……We have been struck by the finding that for Years the United Nations (UN) has been on notice of severe, indeed widespread and systematic abuses that appear to rise to the level of state policy. Over and over again, UN resolutions and Special Rapporteurs have spoken out about the abuses that have been reported to them. The UN Security Council, however, has not moved the process forward as it should and has in
similar situations such as those in the former Yugoslavia and Darfur. In those cases, once aware of the severity of the problem, the UN Security Council established a Commission of Inquiry to investigate the gravity of the violations further.

...With Burma, there has been no such action despite being similarly aware (as demonstrated in UN documents) of the widespread and systematic nature of the violations. Based on this report’s findings and recommendations, we call on the UN Security Council urgently to establish a Commission of Inquiry to investigate and report on crimes against humanity and war crimes in Burma. The world cannot wait while the military regime continues its atrocities against the people of Burma. The day may come for a referral of the situation in Burma to the International Criminal Court or the establishment of a special tribunal to deal with Burma. Member States of the United Nations should be prepared to support such action. The people of Burma deserve no less.

49. What happened then? Was a Commission of Inquiry established? Certainly not. CoIs may require further action and what happens can be unpredictable. Inaction can be safer for the politicians if less satisfactory - or not satisfactory at all – for the victims.

50. What did the lawyers and the law do to safeguard the interests of all those victims? There was, in fact, little they could do if the UN did not act.

51. But let there be no doubt there have been thousands and thousands of victims of crimes, some dead many still alive.

WHAT HAPPENED NEXT

52. The Burma Campaign UK, a focused expert NGO, has reported month by month on events in Burma. A review of those reports shows what happens when the interest of victims may become inconvenient. Extracts from some of their monthly reports showed how over time:

a. Thousands of refugees fled to China
b. Thousands of people were internally displaced
c. Burma military burned homes and caused people to flee
d. UN General Assembly condemned human rights abuses against civilians.
e. 442 MPs from 29 countries called on the UN Security Council to Create a Commission of Inquiry to investigate war crimes and crimes against humanity in Burma, as well as to impose a global arms embargo on Burma's military regime
f. The British government announced that it would support the United Nations Security Council referring Burma to the International Criminal Court (March 2010). Almost 200 MPs backed the campaign.
g. The UN Special Rapporteur on Human Rights in Burma, Tomás Ojea Quintana recommended that the UN consider establishing a Commission of Inquiry into war crimes and crimes against humanity in Burma stating that the ‘gross and systematic’ nature of the abuses and the lack of action to stop them indicated; ‘a state policy that involves authorities in the executive, military and judiciary at all levels.’
h. Australia became the first country to publicly announce its support for a UN Commission of Inquiry into human rights abuses in Burma earlier in the month.
i. More countries publicly backed a UN Commission of Inquiry into war crimes and crimes against humanity in Burma - Canada, France, Hungary, Ireland, Lithuania, Netherlands and New Zealand bringing the global total to twelve.
j. Aung San Suu Kyi was released on 13 November 2010. There were still more than 2,200 political prisoners who remained in detention.
k. Burma’s dictatorship rejected 16 separate proposals made at the United Nations Human Rights Council calling on the dictatorship to respect international law and investigate breaches of international law (February 2011).
l. Burma’s regime broke ceasefires in Kachin State; over 16,000 refugees fled.
m. Villagers suspected of supporting the Kachin Independence tortured severely by the army. Two community leaders had their ears cut off. Another four men were put in sacks, beaten and then drowned in the Shweli River.

n. Burmese Army attacks continued in Kachin, Shan, and Karen States, resulting in gang-rape and slave labour.
o. In Shan State, over 30,000 villagers had fled Burmese Army attacks One dead villager was found with his leg and hand cut off.
p. President Thein Sein denied there were any political prisoners, saying “we punished them because they violated the law.”
q. Police and border forces (Nasaka) rounded up hundreds of young Rohingya men. At least twenty Rohingya women had been raped by Burmese soldiers. Bangladesh closed its border and refused to allow in hundreds of Rohingya fleeing the violence. Boatloads of men, women and children were forced back out to sea by Bangladesh border guards.

Other reliable regional sources confirm that:
r. The ethno-religious violence between Muslim and Buddhist, first in Rakhine State in 2012 spread across Burma with about 140,000 mostly Rohingya Muslims being displaced in Rakhine. Anti-Muslim sentiment, was actively spread by monks.
s. Army used air strikes against Kachin in Dec 2012 (first time since mid-1990s). Things much calmer in Karen state, and tentative resettlement programmes underway
t. Mass arrests, with Rohingya people kept in detention camps without trial, without food or medical
services. An estimated 100,000 internally displaced people are in various locations. u. Valerie Amos, United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator (ERC), visited Kachin State during her trip to Burma from 3 – 7 December 2012 and observed that “The UN has not been allowed access to provide badly needed assistance to some 39,000 people in areas outside the Government’s control since July 2012. Rohingya IDP camps in Arakan State are “among the worst” in world.

53. While these, and many other, grave crimes were being committed what else was happening?

54. There were quite far-reaching economic reforms with changes to Foreign Investment laws to attract western business all leading to an influx of foreign money and aid. There was a tentative distancing of relations with China (seen most clearly in cancellation of Myitsone Dam in 2011) and gradual steps towards allowing freedom of media and speech.

55. A partially elected parliament (25% of seats to pre-appointed military men) was established and ASSK took up position as head of Law committee.

56. Western countries changed their approach from maintaining sanctions with UN condemnation to courting the government and dispatching business delegations. UN recently asked if Burma would send troops as peacekeepers.

57. Western governments engage with the government, probably largely for economic reasons and to dilute China's regional standing, and from fear that any mention of ICC would affect these budding relations. Perhaps a silent agreement was made that if the government pushed ahead with the transition then US would pull back from ICC threats.

58. ASSK, who never agreed with ICC referral, is clearly deciding on much about western action on Burma – the chances of anything of this magnitude being done without her approval is slim.

59. ASSK has increasingly taken the position of collaboration with the government / military, rather than opposition - she's appeared at the last two Armed Forces Day, effectively offering support for the military. Her language is about moving on and working together. If she were to pursue justice for victims (and against military) then her bid for presidency in 2015 might be blocked. She's already trying to overcome the foreign spouse law that bars her from taking the top office and were she to be seen to be actively trying to lobby for legal action then her chances in 2015 would be nil.

60. It seems the majority of Burmese are hostile towards Rohingya Muslim and a huge number of her support base would feel betrayed were she to speak out in defence of the Rohingya she really does stand to lose considerable votes (all of Rakhine state, and beyond) if she criticised the actions of Rakhine mobs and the security forces.

61. The international community stopped calling for a CoI or a referral to the ICC.

62. In the eyes of BCUK the UK government in its outpourings supportive of the present regime can not be relied on to tell the full truth so keen is it to support he government and to forget whatever it was that led them at one stage to support he idea of a CoI or referral to the ICC.

63. What other legal remedies are there? Some devoted lawyers working pro bono make applications to the United Nations Working Group on Arbitrary Detention where they plead – always successfully, I believe - that their clients have suffered breaches of the UN Declaration of Human Rights namely breach of basic rights - right to freedom of thought, freedom of association, freedom of conscience, right not to be discriminated etc.

64. In Parliament Baroness Kinnock, Fiona Bruce MP, Lord Alton and others have done all they can to keep Burma high on the agendas of those interested in human rights violations. But once ASSK was released from house detention and once the governments of the world chose to treat the generals’ new regime as worthy of attention and some respect it is hard for the NGOs and the individuals to do much. For them there is a sense of palpable disenchantment or almost disillusion.

65. As a result of the new enthusiasm for Burma as a place to make money and as a tourist centre it begins to look as though all those arguments in favour of having a Commission of Inquiry or referring the regime leaders to the ICC will come to nothing.

66. This is more unfortunate and more important than politicians might think. Putting past violations on one side is leaving the victims without a champion, without even the prospect, however, remote, of seeing accountability. They will have their history written by the enemy or by no one at all.

67. We will never know how much better or worse things would have been had the international community had the nerve to keep the human rights and legal interests of victims at the top of its agenda, by having a formal inquiry and a referral to the ICC.

NORTH KOREA INTRODUCTION

68. North Korea is, by our standards, very strange and hard to understand. Yet citizens of North Korea (Democratic republic of North Korea - DPRK) suffer violations of human rights almost impossible to comprehend.

69. The DPRK is now a single-party state dominated by a family dynasty which controls the party, the state and the military. Rigid ideological tenets loosely based on socialist Marxist-Leninist theory and an extensive security apparatus sustain this regime. 46 How did it come about?

70. The Korean Peninsula, inhabited since Neolithic times, has had centuries of epic battles among various indigenous kingdoms and against outside forces from modern-day China, Japan and Mongolia. 17

71. Over the course of pre-modern history, Korea established a class-based system known as yangban where a small aristocratic elite ruled over peasants and lower classes. Theoretically meritocratic in practice, it
is a hereditary institution that passed on elite status through the generations of families, with self-perpetuating privileges.

72. The yangban class system is supported by Confucianism, essentially an ethical and philosophical system that regards adherence to strict hierarchies as important to social harmony and personal fulfillment and that focuses on five key relationships (sovereign and subject, husband and wife, parent and child, elder brother and younger brother, and friend and friend) of which the most important is the parent and child relationship. Respect for elders and social hierarchy based on age remains a key features of Korean culture both in the North and South today.

JAPANESE COLONIAL OCCUPATION (1910 TO 1945)

73. Centuries of invasions by, and relationships with, the Chinese, Japanese, Mongols, Manchus, led, in 1876, to Korea signing an unfavourable treaty with Japan. The Sino-Japanese War (1894-95) resulted in Japan formally declaring Korea to be independent. The Russo-Japanese War (1904-05) led to the USA recognizing Korea as a protectorate of Japan. In 1910, Japan formally declared Korea to be a colony, ending its monarchy and requiring the allegiance of the Korean people to the Emperor of Japan.

74. Koreans were prohibited from speaking the Korean language and made to adopt Japanese names. Japan instigated major industrialization on the Korean peninsula as part of its armament efforts. Steel mills, factories and hydroelectric plants were built, mainly in the North. Much of the Korean population was uprooted from its agrarian base. Koreans, including women and children, were sent to labour in factories in the northern part of the peninsula and in Manchuria and to mines and other enterprises in Japan. Many of the labourers worked under terrible conditions, and a large number of men and women were conscripted as forced labour. 

75. By 1945, it is estimated that Koreans made up a large percentage of the entire labour force in Japan.

76. It is estimated that by 1945, 20 per cent of all Koreans had been displaced from their places of origin, with 11 per cent displaced outside Korea. At the end of World War II, there were approximately 2.4 million Koreans in Japan, 2 million in China and about 200,000 in the Soviet Union.

77. As the end of World War II approached The United States of America suggested a multi-lateral trusteeship for Korea. In 1945, the United States decided on the 38th parallel to divide the Korean peninsula into two zones of control, one under an American sphere of influence and the other under a Soviet one. The United States sent 25,000 troops to South Korea in fulfillment of these arrangements. They were often met with resentment and resistance. In August 1945, the Soviet Union sent its 25th Army to North Korea where it set up the Soviet Civil Administration.

78. The Japanese departure from the Korean peninsula was abrupt. Self-governance groups, or people’s committees, appeared – to be suppressed by The United States but developed by the Soviet Union into core institutions of governance. When the Soviets arrived in Pyongyang with “Soviet Koreans” it was with troops that included the 33 year-old Korean guerrilla hero Kim Il-sung, a military officer with the rank of captain in the Soviet Army.

79. When the Soviet Union decided against retaining Cho Man-sik as the local leader, Kim Il-sung was selected as an alternate candidate. On 14 October 1945 he was introduced by Soviet General Lebedev as a “national hero” and an “outstanding guerrilla leader”. In December 1945 the Soviet Union, the United States and United Kingdom agreed to a joint trusteeship of Korea for five years. Nationalists in Seoul staged rallies against the decision. Cho Man-sik, likewise, refused to sign the declaration of support of trusteeship in January 1946. He was subsequently imprisoned and died in October 1950.

80. By 1946, Kim Il-sung was made head of the Provisional People’s Committee of North Korea.

81. Kim Il-sung placed his supporters, the young guerrillas who had fought with him against Japan in Manchuria - the Guerrilla Faction - into positions of power and purged those who posed a threat to his assumption of authority.

82. Although Kim Il-sung was by most accounts an accomplished guerrilla fighter, he quickly began to bolster his standing through enhancement of his personal record and engendering a cult of personality that has come to characterize the governance of the DPRK and the state’s approach towards freedom of information, opinion and expression. Former Chairman of the Standing Committee of the Supreme People's Assembly Hwang Jang-yop explained that exaggerated propaganda was necessary in order to elevate a Russian army captain to the status of legendary North Korean hero.

83. By the time the DPRK was established in September 1948, Kim Il-sung was firmly in position as the head of the Cabinet of Ministers (or Premier). Soviet forces withdrew in large numbers from the DPRK and the DPRK instituted compulsory military service, bringing the total number of troops to between 150,000 and 200,000. This large military force was equipped with Soviet weapons and was further bolstered by the return of 45,000 war-hardened Korean soldiers from China following the end of the civil war there.

84. Between 1945 and 1948, the 38th parallel turned into a heavily guarded border, while both sides of the divided peninsula contemplated the use of military force to achieve reunification. Tensions and military provocations increased after the respective departures of Soviet and United States forces in 1948. On 25 June 1950, Kim Il-sung, after finally securing support from both Joseph Stalin and Mao Zedong, initiated
the Korean War by sending up to 90,000 Korean People's Army troops over the 38th parallel in a multi-
pronged attack that surprised both the ROK authorities and their United States advisors. Kim Il-sung was
staking his claim to the leadership of the entire peninsula based on the perceived illegitimacy of the ROK
leadership and expectations of insurgency in the South. Initially, the Korean People’s Army easily
overwhelmed the forces of the ROK, which numbered fewer than 100,000 men. The capital Seoul fell in three
days.

85. United States President Harry S. Truman interpreted the attack by the DPRK on the ROK as the first
major test of the Cold War. He quickly ordered the deployment of United States troops while seeking
erdorsement of his actions from the United Nations Security Council. On 27 June 1950, President Truman
ordered United States air and naval forces to support the ROK. Security Council Resolution 83, adopted on
the same day, determined that “the armed attack upon the Republic of Korea by forces from North Korea
constitutes a breach of the peace”. On 7 July 1950, the Security Council further recommended that all
members providing military forces and other assistance do so under the unified command of the United
States and authorized “the unified command at its discretion to use the United Nations flag in the course of
operations against North Korean forces concurrently with the flags of the various 15 nations participating.”

In August 1950, the Soviet Union returned to the Security Council and vetoed all further resolutions
concerning the Korean War. The debate on Korea then shifted to the United Nations General Assembly. 88
The ensuing months yielded a string of successes for the forces of the DPRK and by the end of August
1950, the DPRK's military controlled 90 per cent of the Korean peninsula. However, General Douglas
MacArthur turned the tide. With the support of the United Nations now behind them, the ROK forces
marched northward and recaptured Seoul. General MacArthur pushed UN-backed forces up to the Chinese
border despite warnings from the Chinese. By November 1950, the ROK supported by the United Nations
Command controlled 90 per cent of the peninsula. The People’s Republic of China then sent hundreds of
thousands of troops to bolster the Korean People's Army. They succeeded in pushing United Nations and
ROK forces back beyond the 38th parallel. The DPRK in its subsequent accounts of the war has minimized
the decisive role played by the Chinese “volunteers”. Nevertheless, Chinese forces carried the main
military burden for the rest of the war. 30 The counter-offensive by United Nations forces reduced the gains
made by the Korean People’s Army and caused massive destruction in the North. Thereafter, two years of
bitter stalemate ensued. During this time, more bombs were dropped on the DPRK than had been
deployed in the entire Pacific theatre during World War II. 31 The devastation caused to all
parts of the Korean peninsula was enormous. 32

87. The Korean War ended on 27 July 1953 with an Armistice Agreement. Over 2 million Koreans had been
killed. Around 600,000 Chinese and over 36,000 United States combatants died. 33 Other nationalities’
fatalities include over 1,000 from the United Kingdom. Grave breaches of international humanitarian law
were reportedly committed on both sides. 34 It has also been referred to as the Forgotten War in the
United States. 35 The conflict, however, is far from forgotten in the DPRK where war sacrifices were used to
bolster the narrative of Kim Il-sung’s “forging of the nation”.

88. There has not been a comprehensive peace treaty. On both sides of the border, there remains fear of
invasion and infiltration. In the DPRK, this fear has been instrumental in maintaining a state of emergency
invoked to justify harsh governmental rule and its accompanying human rights violations. Perceived political
dissidents have been branded as spies in the service of foreign powers.

89. The United States maintains a military presence in the ROK of about 28,500 people.
90. Throughout the 1960s and 1970s there were odd terrorist attacks on South Korea and attempts to
assassinate its President and the bombing of a plane contributed to the increasing international isolation of
the DPRK.
91. The wounds inflicted by the Korean War were deep and are still felt.

DYNASTY

92. Confucian principles, enmeshed in Korean culture, were instrumentalised by Kim Il-sung in the effort to
consolidate his authority and that of the Workers’ Party of Korea under his control. The relationship between
sovereign and subject that is enunciated as a mutually binding one under traditional Confucian precepts has
been stretched to one of absolute obedience to the leader as articulated in the suryong, or Supreme Leader,
system established by Kim Il-sung and carried on under Kim Jong-il and Kim Jong-un. The Suryong system
positioned Kim Il-sung (and his heir apparent) as unchallenged rulers due to their proclaimed wisdom and
benevolence under which the general population would live in a prosperous and righteous society. In this
way, the suryong system has facilitated the unchecked violation of human rights in the DPRK.

93. In 1949, Kim II-sung secured his designation as Suryong, Supreme Leader. In order to eliminate any
opposition to his rule, he established a system of governance built on an elaborate guiding ideology, a single
mass party led by a single person, a centrally-planned economy, a monopoly on the means of
communication, and a system of security that employed violence and a political police. The security system
employed an informant network of 400,000 people, an estimated 5 per cent of the population at one time. 37

94. After the Korean War, Kim Il-sung turned his focus to further consolidating his power through a series
of purges targeting rival factions and on 30 May 1957, the Standing Committee of the Central Committee of
the Workers’ Party of Korea adopted the resolution “On the Transformation of the Struggle with Counter-
Revolutionary Elements into an All-people All-Party movement” (May 30th Resolution) to evaluate the political background of every adult in the DPRK. These developments were to become a turning point for the DPRK. Earlier purges had differed in that they had targeted specific groups of people, such as landlords, Christians and high-ranking Party members who were potential rivals to Kim Il-sung. This purge, lasting until 1960, resulted in thousands of executions, often in public. In order to sustain the large-scale purges of the late 1950s, a system of secret political prison camps was set up, which was later expanded. The May 30th Resolution effectively launched the Songbun system. Songbun translates literally as “ingredient” but effectively means background. It is a system through which the state categorizes citizens of the DPRK into classes based on their perceived political allegiance to the regime, ascertained by reference to family background and particular actions taken by family members. Based on this assessment, citizens fall into three broad classes: core, wavering and hostile. Decisions about residency, occupation, access to food, health care, education and other services are contingent on songbun. While the official songbun structure was quite elaborate and changed over time, its main feature has been the unchallengeable nature of the designation which is inherited mainly through the paternal line.

In 1957, the DPRK instituted the Public Distribution System to provide food and to ration other goods. As the DPRK was highly urbanized, an estimated 60 to 70 per cent of the population relied on the state for these food distributions. The Public Distribution System suppressed private production and monopolized distribution of food and household necessities. The entire economic framework of the country, and in particular the Public Distribution System, became an important means of social, economic and political control.

In the 1960s, after Kim Il-sung had eliminated his potential rivals who were largely affiliated with the Chinese and Soviet factions, he actively distanced himself from the Soviet Union and China. As Kim Il-sung also reduced contact with the Soviet Union and East European socialist states, economic assistance from these countries, which had been substantial, likewise began to dwindle. At the same time, he expanded his cult of personality and set out a policy of self-reliance and extreme nationalism known as Juche.

According to Juche ideology, citizens should develop the potential of the nation through its own resources and human creativity as guided by the Supreme Leader. Wherever the leader conveys his wisdom through instructions, it was the duty of the people to learn from him. The DPRK imposed rigorous and constant study sessions of Kim Il-sung’s works, particularly those dealing with Juche, on all citizens young and old.

Juche, however, did not prove to be an appropriate basis for an effective economy. For a brief period in the 1970s, the DPRK attempted to borrow funds from the international community. However, the state had no plans on how to re-pay these debts or how to invest these resources into the development of the country. The DPRK went into default on billions of dollars and was unable to borrow further. The choices that the leadership made over the years led to serious food shortages long before the famine of the 1990s. Recurring patterns of shortages are reported as early as 1945-46, 1954-55 and 1970-73. Survival of the political system and its leadership rather than systemic economic development or concern about feeding its population appears to have been the priority of the DPRK leadership.

Kim Jong-il spent 20 years preparing for his succession and was eventually able to side-line his uncle and win the confidence of his father particularly through his efforts to expand the cult of personality of Kim Il-sung. It was really in 1972 that the intensity of the cult of personality of Kim Il-sung surpassed those of Mao Zedong or Joseph Stalin. DPRK citizens began to wear badges with his picture in addition to hanging his portrait on their walls. Around this time, Kim Jong-il introduced Kimilsungism, a concept linked to Juche. Kim Il-sung’s cult of personality became an important instrument of Kim Jong-il’s consolidation of his own succession, as his father was the main source of his legitimacy to rule the nation.

Once the Central Committee elected Kim Jong-il to membership of the Politburo and endorsed his selection as Kim Il-sung’s heir in 1974, he deepened the ideological basis of the Suryong system. Kim Jong-il announced the “Ten Principles in Establishing Party’s Monolithic Ideological System” which called for “unconditional obedience” and “all our loyalty” to Kim Il-sung. Moreover, article 10.1 of the Ten Principles declares that “(t)he entire party and society will adhere strictly to the one-ideology system, and establish the one and only leadership of the Central Party so as to complete in shining glory revolutionary achievements of the Great Leader.” The “Central Party” was understood to mean Kim Jong-il. Kim Il-sung died in 1994 at the age of 82.

Following a three-year mourning period, Kim Jong-il was formally elected leader by the Supreme People’s Assembly in 1998. The constitution was again revised in 1998, and Kim Il-sung was designated Eternal President. The revised constitution elevated the National Defence Commission to be the highest organ of the state, and thus its chairman, Kim Jong-il, to the highest position in the government.

The seasonal arrival of extreme rains in July and August 1995 compounded by soil erosion and river silting led to flooding that destroyed the harvest and contributed to the already established period of starvation that came to be called the great famine and referred to as the “Arduous March” by the DPRK. Between 1996 and 1999, it is estimated that between 450,000 and 2 million people starved to death.

One of the unintended consequences of the human-made famine was the widespread emergence of informal markets. It is estimated that informal economic activities reached 78 per cent of total income for North Korean households a decade after the famine. As the Public Distribution System was no longer able to provide even minimal amounts of food, the authorities were unable to exercise the level of control they had once been able to. The breakdown of social control led to fissures in the blockade on information from outside the country. At the same time, control on the freedom of movement was loosened as large numbers
of people attempted to escape from the DPRK and others sought to obtain supplies from China to trade. As many more North Koreans travelled back and forth to China, they were seeing for themselves the relative prosperity of China and received information about the ROK which was vastly different from the official propaganda of the government. The leadership made numerous efforts to rein in the markets and constrain the freedom of movement. These measures met with various levels of resistance.

106. On 19 December 2011, the government announced that Kim Jong-il had died two days earlier. Dynastic succession promptly moved to the third generation of Kim Il-sung’s family. It appears that this transition occurred without any formal democratic process or effective engagement with the people of the DPRK.

107. Kim Jong-un is believed to have been born on 8 January 1983 or 1984. He was thus under 30 years of age at the time he succeeded to the highest political, executive and military power in the DPRK as the Supreme Leader. He has been endeavouring to consolidate his authority. In the weeks after Kim Jong-il’s death in 2011, Kim Jong-un was given the title of “Supreme Commander” of the major military organizations. Official statements from various state organs referred to him as the nation’s “sole national leader”.

108. In the same month, Kim Jong-un consolidated his power by taking on the posts of the First Secretary of the Workers’ Party of Korea and the Chairman of the Central Military’s Commission, as well as First Chairman of the National Defence Commission. 49 He filled with his own appointees the top jobs at the Ministry of People’s Armed Forces, the General Political Bureau and General Staff of the Korean People’s Army. He further consolidated his hold over the military in July 2012 by retiring the head of the army, promoting a previously little known general in his place, and assuming for the first time the rank of marshal.

109. Credible international sources who have remarked on increased signs of prosperity in Pyongyang in the past couple of years. They cite the increased use of mobile phones in the DPRK (albeit without international access), believed to number up to 2 million subscribers, 50 as well as the prevalence of new vehicles on the formerly quiet streets. They marvel at the opening of new restaurants which appear to be well-frequented. Some observers have been noting what could be modernizing trends in the DPRK from Kim Jong-un appearing publicly with his wife in contrast to his father and grandfather.

110. The sudden execution of Jang Song-thaek, Kim Jong-un’s uncle, in December 2013, appears to be part of Kim Jong-un’s consolidation process. Jang Song-thaek had been considered the “control tower” 51, due to his role as a guide to the new leader, and was widely considered to be second-in-command within the DPRK power structure. He was the husband of the sister of Kim Jong-il and daughter of Kim Il-sung. Her condition was uncertain at the time this report was finished.

111. As with Burma various bodies, NGOs and individuals were concerned to do what they could. As with Burma there was pressure for a UN Commission of Inquiry, perhaps with little expectation that one would be forthcoming. To surprise the Human Rights Council instituted such a Commission and by good fortune under the chairmanship of Justice Kirby of Australia who was not afraid to use – and knew how to use – publicity in various ways. He was fortunate in the choice of his co-Commissioner Sonja Biserko from Serbia who has been telling truth to those who do not want to hear it for decades and in the third member the knowledgeable Special Rapporteur on North Korea. They had evidence hearings in Seoul, London, Tokyo and Washington and – perhaps contrary to some UN hopes – they had them in public to the maximum extent possible. Their Report – on line in February formally presented in March and then further publicized in The Hague and London (here in Barnard’s Inn Hall as it happens and already on line to be seen). Before I turn to the Commission’s recommendations what for what crimes, if any, did they find evidence? A small selection of a very long list

112. The Commission of Inquiry found that:

GENERAL

113. The main perpetrators are officials of the State Security Department, the Ministry of People’s Security, the Korean People’s Army, the Office of the Public Prosecutor, the judiciary and the Workers’ Party of Korea, who are acting under the effective control of the central organs of the Workers’ Party of Korea, the National Defence Commission and the Supreme Leader of the Democratic People’s Republic of Korea.

114. The current human rights situation in the Democratic People’s Republic of Korea has been shaped by the historical experiences of the Korean people. Confucian social structures and the experience of the Japanese colonial occupation have to some degree informed the political structures and attitudes prevailing in the country today. The division imposed on the Korean peninsula, the massive destruction caused by the Korean War and the impact of the Cold War have engendered an isolationist mindset and an aversion to outside powers that are used to justify internal repression. The particular nature and the overall scale of human rights violations in the State can be more easily understood through an appreciation of the nature of its political system, which is based on a single party led by a single Supreme Leader, an elaborate guiding ideology and a centrally planned economy.

Violations of the freedoms of thought, expression and religion

115. An almost complete denial of the right to freedom of thought, conscience and religion, as well as of the rights to freedom of opinion, expression, information and association.

116. All-encompassing indoctrination …effectively to the exclusion of any thought independent of official ideology and State propaganda.

117. Propaganda is further used by the Democratic People’s Republic of Korea to incite nationalistic hatred
towards official enemies of the State, including Japan, the United States of America and the Republic of Korea, and their nationals.

118. The State is able to monitor its citizens and to dictate their daily activities. State surveillance permeates the private lives of all citizens to ensure that virtually no expression critical of the political system or of its leadership goes undetected. Citizens are rewarded for reporting on fellow citizens suspected of committing such “crimes”.

119. Telephone calls are monitored and mostly confined to domestic connections for citizens. Citizens are punished for watching and listening to foreign broadcasts, including foreign films and soap operas.

120. The State considers the spread of Christianity a particularly serious threat, since it challenges ideologically the official personality cult and provides a platform for social and political organization and interaction outside the realm of the State.

Discrimination

121. Discrimination is rooted in the songbun system, which classifies people on the basis of State-assigned social class and birth, and also includes consideration of political opinions and religion. Songbun intersects with gender-based discrimination, which is equally pervasive. Discrimination is also practised on the basis of disability, although there are signs that the State may have begun to address this particular issue.

Violations of the freedom of movement and residence

122. In the Democratic People’s Republic of Korea, the State imposes on citizens where they must live and work, violating their freedom of choice.
123. Citizens are not even allowed to leave their province temporarily or to travel within the country without official authorization. This policy is driven by the desire to maintain disparate living conditions, to limit the flow of information and to maximize State control, at the expense of social and familial ties.
124. The State imposes a virtually absolute ban on ordinary citizens travelling abroad, thereby violating their human right to leave the country. Despite the enforcement of this ban through strict border controls, nationals still take the risk of fleeing, mainly to China. When they are apprehended or forcibly repatriated, officials from the Democratic People’s Republic of Korea systematically subject them to persecution, torture, prolonged arbitrary detention and, in some cases, sexual violence, including during invasive body searches. Repatriated women who are pregnant are regularly subjected to forced abortions, and babies born to repatriated women are often killed. These practices are driven by racist attitudes towards interracial children of Koreans, and the intent to punish further women who have left the country and their assumed contact with Chinese men. Persons found to have been in contact with officials or nationals from the Republic of Korea or with Christian churches may be forcibly “disappeared” into political prison camps, imprisoned in ordinary prisons or even summarily executed.
125. The Democratic People’s Republic of Korea has repeatedly breached its obligations to respect the rights of its nationals who have special ties to, or claims in relation to, another country, in this case the Republic of Korea, to return there or otherwise to enjoy a facility to meet long separated families. The severe impediments put in place by the Democratic People’s Republic of Korea to prevent contact and communication with family members in the Republic of Korea are a breach of the State’s obligations under international human rights law.

Violations of the right to food and related aspects of the right to life

126. The State has used food as a means of control over the population. It has prioritized those whom the authorities believe to be crucial in maintaining the regime over those deemed expendable.
127. Confiscation and dispossession of food from those in need, and the provision of food to other groups, follows this logic. The State has practised discrimination with regard to access to and distribution of food based on the songbun system. In addition, it privileges certain parts of the country, such as Pyongyang, over others.
128. The State has evaded structural reforms to the economy and agriculture for fear of losing its control over the population.
129. During the period of famine, ideological indoctrination was used in order to maintain the regime, at the cost of seriously aggravating hunger and starvation. The concealment of information prevented the population from finding alternatives to the collapsing public distribution system. It also delayed international assistance that, provided earlier, could have saved many lives. Despite the State’s inability to provide its people with adequate food, it maintained laws and controls effectively criminalizing people’s use of key coping mechanisms, particularly moving within or outside the country in search of food and trading or working in informal markets.
130. Even during the worst period of mass starvation, the State impeded the delivery of food aid by imposing conditions that were not based on humanitarian considerations. International humanitarian agencies were subject to restrictions contravening humanitarian principles. Aid organizations were prevented from properly assessing humanitarian needs and monitoring the distribution of aid. The State denied humanitarian access to some of the most affected regions and groups, including homeless children.
131. The State has consistently failed in its obligation to use the maximum of its available resources to feed those who are hungry. Military spending – predominantly on hardware and the development of weapons systems and the nuclear programme – has always been prioritized, even during periods of mass starvation. Nevertheless, the State still failed to feed the ordinary soldiers of its disproportionately large army. Large amounts of State resources, including parallel funds directly controlled by the Supreme Leader, have been
spent on luxury goods and the advancement of his personality cult instead of providing food to the starving general population.

132. The State has also used deliberate starvation as a means of control and punishment in detention facilities. This has resulted in the deaths of many political and ordinary prisoners.

133. The commission found evidence of systematic, widespread and grave violations of the right to food in the Democratic People’s Republic of Korea. While acknowledging the impact of factors beyond State control over the food situation, the commission finds that decisions, actions and omissions by the State and its leadership caused the death of at least hundreds of thousands of people and inflicted permanent physical and psychological injuries on those who survived.

134. While conditions have changed since the 1990s, hunger and malnutrition continue to be widespread. Deaths from starvation continue to be reported. The commission is concerned that structural issues, including laws and policies that violate the right to adequate food and freedom from hunger, remain in place, which could lead to the recurrence of mass starvation.

**Arbitrary detention, torture, executions and prison camps**

135. The police and security forces of the Democratic People’s Republic of Korea systematically employ violence and punishments that amount to gross human rights violations in order to create a climate of fear that pre-empts any challenge to the current system of government and to the ideology underpinning it. The institutions and officials involved are not held accountable. Impunity reigns.

136. Gross human rights violations in the Democratic People’s Republic of Korea involving detention, executions and disappearances are characterized by a high degree of centralized coordination between different parts of the extensive security apparatus. Making the suspect disappear is a deliberate feature of the system that serves to instil fear in the population.

137. The use of torture is an established feature of the interrogation process in the Democratic People’s Republic of Korea, especially in cases involving political crimes. Starvation and other inhumane conditions of detention are deliberately imposed on suspects to increase the pressure on them to confess and to incriminate other persons.

138. Persons who are found to have engaged in major political crimes are “disappeared”, without trial or judicial order, to political prison camps (kwanliso). There, they are incarcerated and held incommunicado. Their families are not even informed of their fate if they die. In the past, it was common that the authorities sent entire families to political prison camps for political crimes committed by close relatives (including forebears, to the third generation) on the basis of the principle of guilt by association. Such cases still occur, but appear to be less frequent now than in past decades.

139. In the political prison camps of the Democratic People’s Republic of Korea, the inmate population has been gradually eliminated through deliberate starvation, forced labour, executions, torture, rape and the denial of reproductive rights enforced through punishment, forced abortion and infanticide. The commission estimates that hundreds of thousands of political prisoners have perished in these camps over the past five decades. The unspeakable atrocities that are being committed against inmates of the kwanliso political prison camps resemble the horrors of camps that totalitarian States established during the twentieth century.

140. While the number of political prison camps and inmates has decreased owing to deaths and some releases, it is estimated that between 80,000 and 120,000 political prisoners are currently detained in four large political prison camps.

141. As a matter of State policy, the authorities carry out executions, with or without trial, publicly or secretly, in response to political and other crimes that are often not among the most serious crimes. The policy of regularly carrying out public executions serves to instil fear in the general population. Public executions were most common in the 1990s. However, they continue to be carried out today. In late 2013, there appeared to be a spike in the number of politically motivated public executions.

142. There were also extensive findings about abductions and enforced disappearances from other countries.

143. The Commission has made many recommendations for North Korea and for China. For the International community, among a number of proposals to assist the development of North Korea it says:

> **With regard to the international community and the United Nations, the commission makes the following recommendations:**

> (a) The Security Council should refer the situation in the Democratic People’s Republic of Korea to the International Criminal Court for action in accordance with that court’s jurisdiction. The Security Council should also adopt targeted sanctions against those who appear to be most responsible for crimes against humanity. In the light of the dire social and economic situation of the general population, the commission does not support sanctions imposed by the Security Council or introduced bilaterally that are targeted against the population or the economy as a whole;

144. Two passages from books: ‘Escape From Camp 14 - Blaine Hardin’ Building Bridges - David Alton and Rob Chidley

145. What conclusion can we draw from all this.

146. The Burma government leaders may be seen to have been clever and the outside world somewhat naïve. Those in country or who cross from Thailand with medical supplies or education services for those denied these things by the Burma government all despair at the reality behind the reforms that they suspect are skin deep at best. Perhaps, as one commentator suggested to me, the government leaders see that half
of the world is run by dictators who are tolerated by the other democratic half and all they desire is to move
from Pariah dictatorship to ordinary dictatorship, dressed as something else.

147. What is difficult for the active Diaspora and for activists is to go AGAIN to governments where in
recent years the officials eyes were warm with regard when a CoI or a justice mechanism were proposed but
now glaze over if such things are mentioned looking patronizingly at those whose efforts they once
encouraged.

148. Whatever the motivation of governments the victims remain victims. Their suffering has not
diminished and many new victims are being created every day. Their story – their entitlement to have their
story known – is less important than the right of businessmen to trade with Burma at considerable profit or
the right of holidaymakers to enjoy new locations in a country where the best must be made of its recent
progress if the planes are to continue flying them in. The international community has no interest in
recording their suffering only in burying the memory of it.

149. We will never know what would have happened if the outside had stood firm with Burma, given no
encouragement without pressing for a justice mechanism to deal with the past. Had the approach been
tougher would the Generals have retreated to more violence or would they given real, not phony, ground?

150. In contrast the citizens of North Korea, who have made only very limited recent gains, may be better
poised ultimately to be able to record the end of their suffering. For two reasons. The regime has not (yet)
seen how to play the west and win and may not do so until it is too late for them. The outside world has
stood firm in its resolve thus far and the Col Report may bring the UN to action. The present regime will fall
even if we cannot predict how or when. When it does, if its then leaders have not shown the guile of the
Burmesse leaders they might have a one way ticket to a court in The Hague or elsewhere as a parting gift
from the people they have so abused.

151. And will the politicians recognise that they now live in an age where the support of activists and failed
state Diaspora is not just an add-on but an increasingly significant part of the overall fuel tank of the engines
of change.

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FOOTNOTES

1. [IN LINE, EVEN WITHOUT A MOTIVATING MORAL CODE, WITH “AS MAN ADVANCES IN CIVILIZATION, AND SMALL TRIBES ARE UNITED
INTO LARGER COMMUNITIES, THE SIMPLEST REASON WOULD TELL EACH INDIVIDUAL THAT HE OUGHT TO EXTEND HIS SOCIAL INSTINCTS
AND SYMPATHIES TO ALL MEMBERS OF THE SAME NATION, THOUGH PERSONALLY UNKNOWN TO HIM. THIS POINT BEING ONCE
REACHED, THERE IS ONLY AN ARTIFICIAL BARRIER TO PREVENT HIS SYMPATHIES EXTENDING TO THE MEN OF ALL NATIONS AND RACES.”
CHARLES DARWIN – RHE DESCENT OF MAN 1]

2. [See U.S. State Department, Humanitarian Information Unit,
“Using Village Destruction Information Responsibly, November 15, 2007,” available at
http://hiu.state.gov/index.cfm?fuseaction=public.display&id=c3462f1a-318a-445b-8f9f-78fc57de-8a1e 2]

3. [Crimes in Burma http://hrp.law.harvard.edu/publications-category/reports-briefing-papers; Professor GN was one of the Commissioners
who endorsed the Report 3]

4. [Burma’s military regime changed the name of the country to “Myanmar” in July1989. See Andrew Selth, Burma’s Armed Forces,
Power Without Glory (2002). Burma’s democracy movement continues to use the term ”Burma”. See Christina Fink, Living Silence:
Burma Under Military Rule 5 (2001). Countries throughout the world generally use one or the other. The European Union, for example,

http://news.bbc.co.uk/2/hi/asia-pacific/country_profiles/1300082.stm 5]

6]


8. [Aung San Suu Kyi Biography, Nobel Peace Prize Foundation, at

9. [See, e.g.,The Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar, Report on the

information indicating a grave human rights situation in Myanmar”). 10]


15. [ib. at ¶ 24 (“The pattern established over time, including by the Commission of Inquiry, suggests a systematic course of conduct in the nature of a crime against humanity, since such acts have been committed multiple times, by military authorities or under military control, against the civilian population of Myanmar. The continuing lack of adequate compliance by Myanmar with certain of the recommendations of the Commission of Inquiry, together with the prosecution of individuals for lodging allegedly false complaints of forced labour, may point to a state policy to commit, and permit the commission of, such acts.” 15]

16. [Much that follows is derived from the Report of he Commission of Inquiry into DPRK established by the UN Human Rights Council under he chairmanship of Justice Kirby. The analysis of history in the Report was said by Justice Kirby to have been written by a member of the Commissioners’ Secretariat, Christine Chung. Available at http://www.ohchr.org/EN/HRBodies/HRC/Col...ommissionofInquiryDPRK.asp 16]

17. [There were people living on the Korean Peninsula around 700,000 years ago. The earliest known Korean pottery dates to around 8000 BC. The city and state of Gojoseon was founded in 2333 BC. Archaeological and contemporary written records indicate it developed from a federation of walled cities into a centralized kingdom sometime between the 4th and 7th centuries BC. The original capital may have been somewhere near what is now the border with China - http://en.wikibooks.org/wiki/Wikijunior:Ancient_Civilizations/Korean 17]


19. [In July 2013, the Seoul High Court ruled in favour of four Korean men who were taken into forced labour, ordering Nippon Steel & Sumitomo Metal to pay them a total of 400 million won. The Busan High Court, on 30 July 2013, ordered Mitsubishi Heavy Industries to pay the same amount in compensation to five Koreans. In October 2013, the Gwangju District Court ordered Mitsubishi Heavy Industries Ltd. to pay four Korean women, who were forcibly conscripted as labours, 150 million won (about US$141,510). “South Korean court orders MHI to pay Korean women for forced labour”, Kyodo News, 1 November 2013. Appeals against these judgements were pending when the Col report was finalized. 19]


21. [Bruce Cummings, The Origins of the Korean War, p. 25. 21]


23. [After the war, half of the Koreans in China chose to stay, and about 600,000 Koreans remained in Japan. Charles Armstrong, The Koreas, pp. 108-111. 23]

24. [Hwang Jang-yop was the highest level defector to the ROK. See Hwang Jang-yop Hoegorok (Hwang Jang-yop’s memoirs) (Published in Korean by Zeitgeist, 2006, translated by Daily NK). SUB0064.24]


26. [The DPRK has always claimed that the Korean War was initiated by an attack by ROK forces. However, archival material from the Soviet Union confirms the stated sequence of events. For example, see “Top Secret Report on the Military Situation in South Korea from Shytakov to Comrade Zakharov”, 26 June 1950, History and Public Policy Program Digital Archive, Collection of Soviet military documents obtained in 1994 by the British Broadcasting Corporation for a BBC TimeWatch documentary titled “Korea, Russia’s Secret War” (January 1996). Available from http://digitalarchive.wilsoncentre.org/document/110686. 26]

27. [Security Council Resolution 84. Those States contributing forces included: Australia, Belgium, Canada, Colombia, Ethiopia, France, Greece, Luxembourg, the Netherlands, New Zealand, the Philippines, South Africa, Thailand, Turkey and the United Kingdom. Five States contributed medical support: Denmark, India, Italy, Norway and Sweden. 27]

28. [On 3 November 1950, the General Assembly adopted the “Uniting for Peace” Resolution (377 A) that affirmed that the General
Assembly may recommend collective action including the use of force, despite the UN Charter which gives power to the Security Council on all matters relating to international peace and security. On 1 February 1950, the General Assembly adopted Resolution 498, finding that the People’s Republic of China was “engaging in hostilities against United Nations forces” in the DPRK and called on “all States and authorities to continue to lend every assistance to the United Nations action in Korea”. 28]

29. [The People’s Republic of China also characterized participation by Chinese soldiers in the Korean War as action by “volunteers” in keeping with its depiction of the conflict on the peninsula as an internal armed conflict. 29]  

30. [Andrei Lankov, From Stalin to Kim Il Sung, pp. 61-62. 30]  

31. [Hwang Jang-yop notes in his memoirs, “In the November of 1953, I came back to Pyongyang from life in Moscow. Pyongyang was not what it had been before I left. There was literally not a single decent house on the ground; only huts filled the city.” From Hwang Jang-yop Hoegorok (Hwang Jang-yop’s memoirs) (Published in Korean by Zeitgeist, 2006, translated by Daily NK), 21. 31]  

32. [A report issued by the Ministry of External and Inter-German Trade of the German Democratic Republic indicated that the steel, non-ferrous metal, cement and fertilizer industries of the DPRK were entirely destroyed and that the overall capacity of state businesses had been reduced to 15-20 per cent. The report is cited in Liana Kang-Schmitz, “Nordkoreas Umgang mit Abhängigkeit und Sicherheitssrisiko”, PhD dissertation, The University of Trier, 2010, pp. 59-60. Also available from http://ubt.opus.hbz-nrw.de/volltexte/2011/636/pdf/Nordkorea_DDR.pdf. 32]  

33. [Casualty figures still vary significantly by source. These figures come from the United States Department of Defense in 2000 and the Encyclopaedia Britannica. 33]  

34. [Bruce Cummings, The Korean War: A History (New York, Modern Library, 2010), pp. 172, 187 and 190. 34]  

35. [Samuel Lyman Atwood Marshall was a chief United States Army combat historian during World War II and the Korean War. David Halberstam, The Coldest Winter, pp. 1-2. 35]  

36. [The Suryong (supreme leader) system embeds all powers of the state, party and military under one singular leader. 36]  


39. [This classification appears to have been revised at various points, and later the three broad categories became the core, basic and “complex”, which includes both the waverer and hostile classes. 39]  

40. [From World War II until 1984, it is estimated that the DPRK received $4.75 billion in aid from the Soviet Union (roughly 50 per cent), China (20 per cent) and the Soviet-aligned countries of Eastern Europe (30 per cent). Victor Cha, The Impossible State: North Korea, Past and Future (New York, Ecco, 2012), p. 28. For a detailed overview of assistance received between 1953 and 1960 from not only the Soviet Union and China but also East Germany, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, Mongolia and North Vietnam, as well as the breakdown of Soviet aid by product such as rolling metal, tires and sugar, see Stephen Kotkin and Charles Armstrong, “A Socialist Regional World Order in North East Asia After World War II”, in Korea at the Center, Charles K. Armstrong and others, eds, p. 121. 40]  

41. [According to the Embassy of the German Democratic Republic in 1961: “The cult of personality surrounding Comrade Kim Il Sung has been growing steadily for some time. Everything the Party and the Korean people earn is attributed to Comrade Kim Il Sung. There is no room, no classroom, no public building in which a photo of Kim Il Sung cannot be found. The Museum of the War of National Liberation is designed entirely around the role of Kim Il Sung. There are no less than 12 figures of Kim Il Sung in the rooms of the museum, each larger than the next. The history of the Soviet Union in the liberation war and the formation of the Communist Party of Korea are not correctly portrayed. The decisive role of the Soviet Union in the liberation war is completely downplayed. Its role is addressed on only a single panel. This is also expressed in the materials as well as in films and depictions. Thus, a legend of Kim Il Sung has been created that does not correspond to the actual facts if one considers what Comrade Kim Il Sung has actually done. Party propaganda is not oriented toward studying the works of Marx/ism-Leninism, but rather is solely and completely oriented toward the “wise teachings of our glorious leader, Comrade Kim Il Sung. Many rules of Party life, such as the link to the masses, are portrayed as if they were discovered by Kim Il Sung rather than by Marx, Engels, and Lenin. There are almost no articles or events in which Comrade Kim Il Sung is not mentioned. It is also a fact that all of those who are not in agreement with such an approach are characterized as sectarians, and recently as revisionists.” “Report, Embassy of the GDR in the DPRK to the Foreign Policy and International Department of the Socialist Unity Party, GDR” 14 March 1961, History and Public Policy Program Digital Archive, SAPMO-BA, Dy 30, IV 2/20/137. Translated by Grace Leonard. Available from http://digitalarchive.wilsoncentre.org/document/112303. 41]  

42. [Kim Jong-il explained: “Under the guidance of the great leader Comrade Kim Il Sung, our Party and our people have firmly maintained the Juche character and properly sustained the national character in the revolution and construction and thus advanced the Juche revolutionary cause victoriously. The respected leader Comrade Kim Il Sung was a great thinker, theoretician and a great statesman who advanced the idea of preserving the Juche character and national character for the first time in history, translated it brilliantly into reality and gave successful leadership to the revolution and construction. Keeping and embodying the juche character and national character is the principled requirement of the revolution and construction elucidated by the juche idea created by the great leader Comrade Kim Il Sung. The Juche idea, the man-centred outlook on the world, is a noble idea of loving the people as well as an idea of true love for the country and nation; it is a great revolutionary idea of our times which illuminates the road of advancing the cause of world independence forcefully. The Juche idea clarified that the country and nation are the basic unit for shaping the destiny of the masses and that the

43. [Haggard and Noland, Famine in North Korea, Chapter 1. 43]

44. [“We call the leader’s revolutionary thought Kimilsungism because the idea and theory advanced by him are original. The definition that Kimilsungism is a system based on the idea, theory and method of Juche means that Kimilsungism is consistent with the Juche idea in content and that it forms a system based on the idea, theory and method in composition. Both in content and in composition, Kimilsungism is an original idea that cannot be explained within the framework of Marxism-Leninism. The Juche idea which constitutes the quintessence of Kimilsungism, is an idea newly discovered in the history of human thought”: Kim Jong-il, “On Correctly Understanding the Originality of Kimilsungism: Talk to Theoretical Propagandists of the Party”, 2 October 1976 (Pyongyang, Foreign Languages Publishing House, 1984). 44]

45. [Ambassador Franz Everhardt of the GDR Embassy in Pyongyang commented, “The economic situation in the DPRK is indeed extremely difficult and complicated. The main reasons for this are the cult of personality [surrounding Kim Il-sung] and the subjectivism deriving from it.” Report from the GDR Embassy in the DPRK, “Note concerning a Conversation in Moscow on 12 May, 1976, with the Head of the Far East Department, Comrade Kapitsa, and the Head of the Southeast Asia Department, Comrade Sudarikov.” 27 May 1976, History and Public Policy Program Digital Archive, Political Archive of the Federal Foreign Office, Berlin (PolA AA), MfAA, C 6857. Translated for NKIDP by Bernd Schaefer. Available from http://digitalarchive.wilsoncentre.org/document/114290. 45]

46. [The Ten Principles, comprised of a total of 10 articles and 65 clauses, describes how to establish the one-ideology system: 1) We must give our all in the struggle to unify the entire society with the revolutionary ideology of the Great Leader Kim Il Sung. 2) We must honour the Great Leader comrade Kim Il Sung with all our loyalty. 3) We must make absolute the authority of the Great Leader comrade Kim Il Sung. 4) We must make the Great Leader comrade Kim Il Sung’s revolutionary ideology our faith and make his instructions our creed. 5) We must adhere strictly to the principle of unconditional obedience in carrying out the Great Leader comrade Kim Il Sung’s instructions. 6) We must strengthen the entire party’s ideology and willpower and revolutionary unity, centreing on the Great Leader comrade Kim Il Sung. 7) We must learn from the Great Leader comrade Kim Il Sung and adopt the communist look, revolutionary work methods and people-oriented work style. 8) We must value the political life we were given by the Great Leader comrade Kim Il Sung, and loyalty repay his great political trust and thoughtfulness with heightened political awareness and skill. 9) We must establish strong organizational regulations so that the entire party, nation and military move as one under the one and only leadership of the Great Leader comrade Kim Il Sung. 10) We must pass down the great achievement of the revolution by the Great Leader comrade Kim Il Sung from generation to generation, inheriting and completing it to the end. Translation from Joanna Hosniak, “Prisoners of Their Own Country”, Citizens’ Alliance for North Korean Human Rights, 2004 (Original Korean source from Korea Research Institute for Military Affairs). The Ten Principles were amended in 2013 to include references to Kim Jong-il. 46]

47. [Article 100 of the DPRK Constitution states: The Chairman of the National Defense Commission of the Democratic People’s Republic of Korea is the supreme leader of the Democratic People’s Republic of Korea. 47]

48. [Andrei Lankov, The Real North Korea, pp. 82-90. 48]

49. [In a tradition set by his father, Kim Jong-il retains his former titles of Secretary-General of the Workers’ Party of Korea and Chairman of the National Defence Commission after his death. 49]

50. [According to 38 North, US-Korea Institute at SAIS, Johns Hopkins University, the 3G service, Koryolink, launched in December 2008 by CHEO Technology JV Company, a joint venture between the Egyptian telecommunications firm Orascom and the government-owned Korea Post and Telecommunications Corporation, reached one million subscribers by February 2012. That rate was then doubled in 15 months, reaching an ostensible two million subscribers in May 2013. As 2011, Koryolink’s network had 453 base stations covering Pyongyang, 14 main cities and 86 smaller cities. See Kim Yon-ho, “A Closer Look at the ‘Explosion of Cell Phone Subscribers’ in North Korea”, 26 November 2013. 50]

51. [Ken E. Gause, “North Korean Leadership Dynamics and Decision-making under Kim Jong-un: A First Year Assessment”, CNA Strategic Studies, September 2013. 51]