

**Communications to the Prosecutor of
the International Criminal Court**

**With regard to the crimes against humanity committed by the officials of the
Democratic People's Republic of Korea (DPRK)**

24 January 2018

**Respectfully submitted by
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FACTS

A. Abduction of Japanese Citizens

1. In September 2002, the then Japanese Prime Minister Junichiro Koizumi visited Pyongyang to negotiate with DPRK authorities the return of Japanese nationals suspected of having been abducted to the DPRK. The then DPRK's Supreme Leader Kim Jong Il admitted to Prime Minister Koizumi that DPRK agents had abducted 13 Japanese nationals (seven women and six men). The admission came after years of speculation in Japan that many Japanese nationals had been forcefully kidnapped by the DPRK. In his admission, as reported by Prime Minister Koizumi, Kim Jong Il acknowledged that "these were the work of persons affiliated with North Korea in the past. He offered his apologies, expressing his regret." The Joint Pyongyang Declaration issued by Kim Jong Il and Prime Minister Koizumi on behalf of their states indicates that "With respect to the outstanding issues of concern related to the lives and security of Japanese nationals, the DPRK side confirmed that it would take appropriate measures so that these regrettable incidents, that took place under the abnormal bilateral relationship, would never happen in the future." Prior to this admission to Prime Minister Koizumi, the DPRK had denied all allegations of connections with disappeared persons believed to have been abducted or forcibly disappeared by the regime. (See "Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea", A/HRC/25/CRP.1, 7 February 2014, para. 924.)

2. However, the admission, by Kim Jong Il, of the abduction of 13 Japanese nationals is clearly not the full truth. The Government of Japan has satisfied itself beyond reasonable doubt that 17 Japanese nationals (nine women and eight men) have been abducted, five of whom have returned to Japan.¹ The International Coalition to Stop Crimes Against Humanity in North Korea (ICNK) Japan team, a consortium of Japanese groups working on issues relating to the disappearance of Japanese nationals (and human rights in the DPRK), submitted to the Commission that the number of Japanese nationals abducted by the DPRK is at least 40, and probably over 100. (See "Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea", A/HRC/25/CRP.1, 7 February 2014, para. 931.) The Government of Japan has repeatedly demanded that the DPRK should guarantee the safety of all abductees, not

¹ In addition, the Japanese National Police Agency recognizes two Korean residents have been abducted from Japan to the DPRK.

only those who have already been officially acknowledged as abductees by the Government of Japan, and allow all of the abductees to immediately return to Japan.

3. In fact, the Japanese police continue to investigate approximately 900 cases of missing persons that have not been ruled out as being abductions of Japanese nationals to the DPRK. (See the website of the Japanese National Police Agency, *available at* <https://www.npa.go.jp/bureau/security/abduct/list.html>). In addition, the Investigation Commission on Missing Japanese Probably Kidnapped to North Korea (COMJAN) finds that the number of those who may possibly have been abducted from Japan to DPRK is up to 470. Many of the 470 people are covered by the above-mentioned police investigation.

4. The Japan Federation of Bar Associations (JFBA) accepted the applications for human rights remedy as to the abductions by the DPRK and found that all of the 24 people concerning the applications were suspected to have been abducted by the DPRK. The JFBA also recommended that the Japanese government should take necessary measures to resolve the abduction issue.

5. For quite a long time, the large majority of the abductees had not been suspected to be abducted by the DPRK. This is due to the fact that most of the abductees had no relationship with the DPRK and did not participate in any anti-DPRK activity. The possibility of the abductions emerged only after tens of years have passed from the abductions. Therefore, in many of the cases, there is little or no evidence despite the investigations by the Japanese police. However, lack of evidence does not mean that there were no abductions. In such circumstances, the only viable way to identify the victims of the abductions by the DPRK is to list the missing people who cannot be ruled out as being the abductees by the DPRK and narrow down the list by the similarities of their circumstances and their relationship with the DPRK. Such an inductive approach inevitably accompanies the cases where those listed as possible abductees are found in Japan. This, however, does not negate the existence of the abduction cases by the DPRK.

6. In May 2014, the DPRK agreed to conduct investigation on “all the Japanese nationals” at the bilateral discussion between Japan and the DPRK at Stockholm. However, more than three years have passed without any progress and the DPRK shows no sign of returning any abductee. Worries of the left-behind family of the abductees increased in 2017 when Otto Warmbier, an American student detained by the DPRK authorities in

January 2016, was released by the DPRK while in coma on 13 June 2017 and died six days later.

B. Abductions of People from other countries than Japan

7. During the Korean War, DPRK forces took thousands of people from their homes or places near their homes in the South of Korea to the North. The kidnapping and relocation to the North of non-military persons residing south of the 38th parallel during the Korean War from 25 June 1950 to the signing of the Armistice on 27 July 1953, constitute abductions of civilians. The number of ROK civilians captured and forcedly removed to the North during the Korean War is not precisely known. However, estimates range between 80,000 and 100,000. (See “Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea”, A/HRC/25/CRP.1, 7 February 2014, paras. 848-49.) Abductions and enforced disappearances of persons from the Republic of Korea have continued long after the signing of the Korean War armistice. Approximately 3,835 ROK citizens have been arrested or abducted by the DPRK since the end of the Korean War, of which 3,319 people were returned to the ROK within one and a half years, and nine have subsequently escaped and returned the ROK. Five hundred and sixteen ROK citizens are believed to remain disappeared by the DPRK. (See “Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea”, A/HRC/25/CRP.1, 7 February 2014, para. 884.)

8. In addition, the DPRK committed enforced disappearances of four Lebanese women, one Thai woman, two Chinese women, four Malaysian women, one Singaporean woman, one Romanian woman and possibly three French women, three Italian women and two Dutch women. (See “Report of the detailed findings of the commission of inquiry on human rights in the Democratic People’s Republic of Korea”, A/HRC/25/CRP.1, 7 February 2014, paras. 965-75.) Moreover, there is a strong suspicion that an American man named David Sneddon, who disappeared in Yunnan Province in China in 2004, was actually abducted by the DPRK.

9. These abductions of non-DPRK citizens around the world shows that the abductions are not a bilateral issue between Japan and the DPRK but a multinational issue that is a concern for the international community as a whole.

C. Organization of abductions from Japan and other countries to the DPRK

10. Within the government of the DPRK, various intelligence agencies— each of which had a number of agents provocateurs – were collectively called “Third Office Building.” Such agencies included the Department of Foreign Information Investigation, the Department of Foreign Communications, the Department of Reunification Front, and the Department of Strategies. While different roles were allocated to each Department, it is probable that the abductions of non-DPRK citizens have been done by each Department. It is possible that the Reconnaissance Agency within the DPRK armed forces and the Department of the State Security also did such abductions.

According to Sin Pyongil, who worked as agent provocateur within the section of intelligence activities against South Korea within Workers’ Party of Korea and then later defected to South Korea, wrote as follows in his book “Kim Jong Il and the Intelligence Activities against South Korea” (published in December 1996 in Korean language by North Korea Research Institute):

“The DPRK abducted South Korean fishermen and actively used them as spies to do intelligence activities. More than 20 abducted fishermen have been found to be spies between the second half of 1973 and 1979. During that period, the DPRK randomly abducted South Korean fishermen and their boats while they were fishing in the Sea of Japan and the Yellow Sea. The DPRK selected the abducted fishermen based on their living conditions, ideology, classes and family connections with the DPRK. Those selected were separated from others. The DPRK turned them into spies and used them by educating them and providing money to them.” (Page 223 of the book.)

More than 500 South Koreans are recognized by the South Korean government as the abductees. (Those who were abducted during the Korean War are not counted here.) The majority of them are fishermen.

In November 1987, when two Korean agents exploded a Korean Air aircraft on its way from the Middle East to South Korea, the surviving agent, Kim Hyon Hui, had a falsified passport of Japan and was acting as a Japanese. It was Yaeko Taguchi, one of the abductees from Japan who taught her the Japanese language and customs. In the above-mentioned book of Sin Pyongil, the adaption to a foreign country is described as follows:

“Kim Jong Il insisted that the training method of an agent has to be changed. In short, what he meant was that the education was to be done so that an agent learns the political ideology (of the targeted country) and practical skills needed there. Especially an agent

has to be taught the skills, customs in daily lives and languages so that the agent can adapt himself or herself to a capitalist society such as South Korea. Kim Jong Il stressed: ‘We must change the education system so that the agent is integrated into the local and enemy society.’” (Page 186 of the book.)

11. After the end of the Second World War, hundreds of thousands of Korean residents remained in Japan, not a small percentage of whom have been sympathisers of the DPRK. While some former South Korean fishermen converted into spies were likely to have contributed to the abduction of the Japanese nationals, some of the said sympathisers, either voluntarily or involuntarily, co-operated and collaborated with various Departments of the DPRK authorities in carrying out the abduction of the Japanese nationals. The abduction of the Japanese nationals became all the more important to the DPRK as the DPRK prioritise the adaptation of spies to a targeted foreign country such as Japan.

12. The DPRK has systematically abducted foreign citizens including the Japanese nationals as described above. The decision-making authority in the DPRK is concentrated in the hands of Kim Il Sung and Kim Jong Il. Without the involvement the chain of command from Kim Il Sung and then Kim Jong Il to those who conducted the abductions on the ground via the intelligence agencies, the abductions of foreign citizens including the Japanese national were impossible.

D. Continued nature of the abductions – Participation of Kim Jong Un

13. Article 17, Paragraph 1 of the Declaration on the Protection of All Persons from Enforced Disappearance states: Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified (A/RES/47/133). In addition, Article 8, Paragraph 1(b) of the International Convention for the Protection of All Persons from Enforced Disappearance states that a State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature. Therefore, the abductions continue until the abductees regain their freedom or the information on their fate or whereabouts are given by the perpetrators. Thus, the abductions of the Japanese nationals still continue to this day. Kim

Jong Un, the leader of the DPRK, is well aware of the abductions of the Japanese nationals by the previous DPRK authorities but refuses to allow them to regain their freedom and to give third parties including the families of the abductees any information on the fate or whereabouts of the abductees. Therefore, Kim Jong Un also participated in the enforced disappearance.

E. Circumstances of Some Abductees

14. Here, the circumstances of enforced disappearance of some abductees are presented. For the list of the known abductees, please refer to Annex below.

15. COMJAN assisted the families of the possible abductees in Japan in filing human rights relief petition to the Japan Federation of Bar Associations (JFBA). Such a petition was filed twice so far. The JFBA found that all of those who were referred to in the petitions are probably abducted by the DPRK, and asked the Japanese government to take appropriate measures. Of course, this does not mean that those who are not referred to in the petitions were unlikely to be abducted by the DPRK.

16. First Petition to the JFBA

On 29 January 2004, the family members of 16 possible abductees filed the petition to the JFBA. On 29 March 2005, the JFBA submitted the demand to the Prime Minister, the Minister of Foreign Affairs and the Commissioner General of National Police Agency of Japan that they should judge that those 16 people are the victims of abductions by the DPRK authorities. Here is a summary of the 16 abductees, in the chronological order:

(1) Shin'ichi Mizushima

Born on 24 April 1949. He disappeared on 9 February 1968 after he left home. He was a high school student at that time. As he was to graduate from high school in the following month and had already found an employment after graduation, there is no reason for him to disappear. The circumstances surrounding his disappearance are very much similar to those of Hiroshi Saito and Yutaka Imai as described below. Quite a few high school students and young people disappeared around 1968.

(2) Hiroshi Saito

Born on 17 September 1950. He disappeared on the night of 1 December 1968 while he was on his way from home to the house of his friend. He was already securing employment after graduation from high school and there is no reason for him to disappear.

According to Kim Guksok, a DPRK defector, he learned the Japanese language from a person who is considered to be Hiroshi Saito while the defector was studying at Madonghee Military University for two years from July 1990. There are other sources of information indicating that Hiroshi Saito was seen in the DPRK and that he is alive there.

(3) Yutaka Imai

Born on 20 December 1950. He disappeared on the night of 2 March 1969 after he left home to purchase a button of his school uniform to wear at the graduation ceremony on the following day. He was to start working for a railway company in Tokyo after graduation and to give a speech as the representative of the graduates at the graduation ceremony.

(4) Masayuki Ohyashiki

Born on 5 December 1952. He disappeared on 28 July 1969 while camping at the beach in Numazu, Shizuoka. He was a high school student at that time. Kwon Hyok, a DPRK defector testified that he witnessed Masayuki Ohyashiki in the DPRK.

(5) Kumiko Kato

Born on 1 January 1948. She disappeared in Kitakyushu, Fukuoka, on 8 August 1970 on her way to her workplace. She was an employee. An Myongjin, a former DPRK agent, witnessed a person who is considered to be Kumiko Kato many times between 1988 and 1990 at Kim Jong Il Political and Military University, an agent education institution located in the suburb of Pyongyang.

(6) Kiyomi Ko and (7) Tsuyoshi Ko

Kiyomi Ko was born on 10 April 1967 and Tsuyoshi Ko was born on 29 June 1970. They were abducted before attaining the age for school education. Their mother is Hideko Watanabe. She got married to Ko Daegi, a Korean, without knowing that he was a DPRK agent. Ko Daegi is their father. As Ko Daegi suddenly disappeared after he was told to come back to the DPRK, Hideko Watanabe, together with her two children, looked for Ko Daegi and visited his workplace, which was a shell corporation of the DPRK agency. There, other DPRK agents confined them as they were afraid that their activities as DPRK agents may be revealed. Kiyomi Ko and Tsuyoshi Ko are considered to have been abducted to the DPRK around June 1973 from the coast of Obama, Fukui. Some consider that their mother have been killed. However, her whereabouts are unknown to this day. The National Police Agency of Japan officially announced on 12 April 2007 that they were abducted by the DPRK. (They are not included in the list of 17 abductees officially

recognized by the Japanese government because they have the Korean nationality due to the fact that their father is a Korean whereas only those with the Japanese nationality are officially recognized as abductees by the Japanese government. For the purpose of the communications here, they are treated as the Japanese nationals as their mother is Japanese.

(8) Noriko Furukawa

Born on 1 January 1955. She disappeared on 7 July 1973 after she left home in Ichihara, Chiba. She was an employee. An Myongjin witnessed her in May 1990 at 915 Hospital (a hospital for agents in the suburb of Pyongyang).

(9) Takashi Osawa

Born on 21 August 1946. He disappeared on his way home in Sado Island, Niigata on 24 February 1974. COMJAN found by its own researches that he was targeted and abducted as he was an engineer on irrigation, drainage & rural engineering and that he was probably abducted by the DPRK from the coast near Shukunegi, the place close to the southeast end of the island.

(10) Tomiko Kunihiro

Born on 9 February 1952. She disappeared on 2 August 1976 in Ube, Yamaguchi after she left home. She was a nurse. There is a witness testimony that she was seen in the DPRK.

(11) Akira Araki

Born on 16 October 1947. He disappeared on 21 May 1977 after he left home in Kawaguchi, Saitama. He was in casual clothes at the time of disappearance. He was a banker.

(12) Kyoko Matsumoto

Born on 7 September 1948. She disappeared on 21 October 1977 on her way back home. She was an employee for a garment company. The Japanese government recognized her as an abductee by the DPRK on 20 November 2006.

(13) Tatsumitsu Kaneda

Born on 12 December 1952. He disappeared around 1979 in or around Tokyo. He was working for a Chinese restaurant, the same restaurant where Minoru Tanaka, an abductee who was recognized by the Japanese government, worked. The head of this restaurant is a member of the DPRK secret agency "Nakdong-gang." Mr. Tanaka was lured to Vienna,

Austria by deception and then abducted to the DPRK. Tatsumitsu Kaneda disappeared in the following year.

(14) Miho Yamamoto

Born on 3 March 1964. She disappeared on 4 June 1984 in Kofu, Yamanashi after she left home. Later, her bag was found at the coast in Kashiwazaki, Niigata. She was preparing for an entrance examination of universities. Kwon Hyok testified that Miho Yamamoto was seen in the DPRK.

(15) Miwa Akita

Born on 25 January 1964. She disappeared on 4 December 1985 in Kobe, Hyogo after she left her university. She was a university student. Her bag and shoes were found at the coast in Hyogo Prefecture on the following day of disappearance just as in the case of Miho Yamamoto. Many young women disappeared throughout Japan around 1985. Abductions for the purpose of marriage to abducted men are suspected.

(16) Etsuko Sasaki

Born on 6 December 1963. She disappeared on 22 April 1991 after she left home in Urawa, Saitama. Kwon Hyok testified her presence in the DPRK.

17. Second Petition to the JFBA

On 23 March 2012, the family members of 8 possible abductees filed the petition to the JFBA. On 3 September 2013, the JFBA submitted the demand to the Prime Minister, the Minister of Foreign Affairs and the Commissioner General of National Police Agency of Japan that they should make the best efforts for fact-finding such as asking the DPRK authorities for providing the information for the Japanese government as the 8 people were quite possibly abducted by the DPRK, as well as for demanding the return of the 8 people as a theme of inter-governmental negotiations and realizing the family reunification for all the 8 people should their whereabouts be confirmed. Here is a summary of the 8 abductees, in the chronological order:

(1) Kaoru Kimura

Born on 27 August 1938. She disappeared on 27 February 1960 after she left the school dormitory. She was a nurse school student at that time. There is a witness testimony on her presence in the DPRK by a Thai woman who went to the DPRK in 1982 and then came back to Thailand. In addition, Mr. Kenji Fujimoto, a chef formerly working for Kim

Jong Il witnessed her in mid-December 1982 at a restaurant in Pyongyang where he was working as a chef. There are other pieces of uncorroborated information on her presence in the DPRK.

(2) Teruko Kase

Born on 4 May 1944. She was a homemaker. She disappeared in April 1962 after she left a beauty salon. A defector from the DPRK residing in South Korea provided a photo of a woman for the Japanese media in September 2004. The specialist who did the analysis of the photo said, "It is appropriate to judge that the woman in the photo is anthropologically and anatomically the same person as Teruko Kase."

(3) Nobuo Hidaka

Born on 27 November 1944. He was working for a printing company. Around September 1967, he disappeared on his way from Tokyo to Osaka after one of his colleagues saw him off. In August 2006, a journalist informed COMJAN that he was with a DPRK defector in South Korean hospital who told him that the defector saw someone who resembled Nobuo Hidaka in Pyongyang. The information from the defector highly corroborated the existing information on Nobuo Hidaka.

(4) Hajime Sonoda and (5) Toshiko Sonoda

Hajime Sonoda was born on 25 February 1918 and Toshiko Sonoda was born on 7 September 1929. They got married in 1948 and were working as employees for the poultry company. They disappeared on 30 December 1971 on their way by car from home to Miyazaki Airport. Their car is not found. There are pieces of information by DPRK defectors that Toshiko was seen in the DPRK.

(6) Takako Ikushima

Born on 14 June 1941. She was an employee in a city hall. She disappeared on 1 November 1972 after she left her home in Tokyo. O Gilnam, a South Korean professor saw and spoke to a person who appeared to be Takako Ikushima in Pyongyang in 1986. O Gilnam was lured from West Germany to the DPRK with his family and then later defected from the DPRK. O Gilnam also witnessed a person who appeared to be Toru Ishioka, an abductee recognized by the Japanese government, in Pyongyang.

(7) Yoshihiko Hagimoto

Born on 15 January 1940. He was an employee of a steel company. He disappeared on the night of 4 April 1975, when he headed to his company by bike. Kim Donghyok, a

DPRK defector who fled to South Korea, witnessed in 1976 a person who appeared to be Yoshihiko Hagimoto.

(8) Susumu Fujita

Born on 16 June 1956. He disappeared on 7 February 1976 after he left home. He was a university student at the time of disappearance. In June 2004, the person who provided a photo of a woman considered to be Teruko Kase also provided two photos of a man. The specialist who did the analysis of the photos said, "It is appropriate to judge that the man in the photos is most likely the same person as Susumu Fujita from the viewpoint of legal anthropology. Around the same time, the Japanese police did the similar appraisal and reached the same conclusion.

18. The abductees officially recognized by the Government of Japan

(1) Yutaka Kume

Born on 17 February 1925. He was a guardman. He was abducted on 19 September 1977 on the coast of Ushitsu in Ishikawa Prefecture.

(2) Kyoko Matsumoto

Born on 7 September 1948. She was a factory worker. She was abducted on 21 October 1977 on her way to knitting class near her home in Yonago city, Tottori Prefecture.

(3) Megumi Yokota

Born on 5 October 1964. She was a junior high school student. She was abducted on 15 November 1977 on her way home from school in Niigata City, Niigata Prefecture.

(4) Minoru Tanaka

Born on 28 July 1949. He was a staff of a Chinese restaurant. He was abducted around June 1978, after departing from Japan for Europe.

(5) Yaeko Taguchi

Born on 10 August 1955. She was a staff of a restaurant. She was abducted around June 1978, from Toshima-ku, Tokyo.

(6) Yasushi Chimura (7) Fukie Hamamoto

Mr. Chimura was born on 4 June 1955 and Ms. Hamamoto was born on 8 June 1955. Mr. Chimura was working for a company and Ms. Hanamoto was working for a shop. They

were abducted on 7 July 1978 in Obama City, Fukui Prefecture. They returned to Japan on 15 October 2002.

(8) Kaoru Hasuike(9)Yukiko Okudo

Mr. Hasuike was born on 29 September 1957 and Ms. Okudo was born on 15 April 1956. Mr. Hasuike was a university student and Ms. Okudo was working for a company. They were abducted on 31 July 1978 in Kashiwazaki City, Niigata Prefecture. They returned to Japan on 15 October 2002.

(10) Shuichi Ichikawa (11)Rumiko Masumoto

Mr. Ichikawa was born on 20 October 1954 and Ms. Masumoto was born on 1 November 1953. Mr. Ichikawa was working for a company. Ms. Masumoto was also working for a company. They were abducted on 12 August 1978 on the coast of Fukiage, Kagoshima Prefecture.

(12) Miyoshi Soga(13)Hitomi Soga

Ms. Miyoshi Soga was born on 28 December 1931. Ms. Hitomi Soga was born on 17 May 1959. Ms. Miyoshi Soga was a homemaker and Ms. Hitomi Soga was a nursery school student. They were abducted on 12 August 1978 in Mano Town, Niigata Prefecture. Ms. Hitomi Soga returned to Japan on 15 October 2002.

(14) Toru Ishioka(15)Kaoru Matsuki

Mr. Ishioka was born on 29 June 1957 and Mr. Matsuki was born on 13 June 1953. Mr. Ishioka graduated from a university and travelling. Mr. Matsuki was studying abroad. They were abducted around May 1980 in Europe.

(16) Tadaaki Hara

He was born on 2 August 1937. He was a staff of a Chinese restaurant. He was abducted in 1980 on the coast of Aoshima beach, Miyazaki Prefecture.

(17) Keiko Arimoto

Born on 12 January 1960. She was studying abroad and abducted around July 1983 in Europe.

Discussion

A. Crimes against humanity (Enforced Disappearance)

19. Abductions as described above constitute the crime against humanity of enforced disappearance.

20. For the purposes of the Rome Statute, for the crime against humanity of enforced disappearance to be recognized, the enforced disappearance must be committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack (Article 7, Paragraph 1 of the Rome Statute). “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack (Article 7, Paragraph 2(a) of the Rome Statute).

21. Here, the abduction of the Japanese nationals to the DPRK probably targeted over 100 people. They were civilians. The abduction dates back to as early as 1948, the year of the establishment of the DPRK. The policy of abducting Japanese nationals was adopted and organized by Kim Il Sung and Kim Jong Il. The DPRK agents who received orders from Kim Il Sung and Kim Jong Il obtained the support from Korean residents in Japan – some of whose families resided in the DPRK and were used as hostages by the DPRK - in abducting the Japanese nationals. Therefore, the migration is qualified as a widespread attack directed against any civilian population.

22. “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time (Article 7, Paragraph 2(i) of the Rome Statute). More precisely, the Elements of the Crimes describes the elements as follows:

(1) The perpetrator:

(a) Arrested, detained, or abducted one or more persons; or

(b) Refused to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.

(2) (a) Such arrest, detention or abduction was followed or accompanied by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or

- (b) Such refusal was preceded or accompanied by that deprivation of freedom.
- (3) The perpetrator was aware that:
 - (a) Such arrest, detention or abduction would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons; or
 - (b) Such refusal was preceded or accompanied by that deprivation of freedom.
- (4) Such arrest, detention or abduction was carried out by, or with the authorization, support or acquiescence of, a State or a political organization.
- (5) Such refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons was carried out by, or with the authorization or support of, such State or political organization.
- (6) The perpetrator intended to remove such person or persons from the protection of the law for a prolonged period of time.
- (7) The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
- (8) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population

23. Here, Kim Il Sung, Kim Jong Il ordered the abductions of the Japanese nationals. The DPRK agents who received orders from Kim Il Sung and Kim Jong Il obtained the support from Korean residents in Japan – some of whose families resided in the DPRK and were used as hostages by the DPRK - in abducting the Japanese nationals. Probably over 100 Japanese nationals have been abducted. Therefore, element (1) is satisfied. Following the abductions of probably over 100 Japanese nationals, the abductees were no longer allowed to have any contact with the family members that were left in Japan. Kim Jong Il as well as the current leadership of the DPRK, including Kim Jong Un, refuses to acknowledge the abductions other than those of 13 Japanese nationals acknowledged in 2002 by Kim Jong Il. Therefore, the abduction was followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons (element (2)(a)). Given how the abductions and the refusal to acknowledge the abductions have been done, the perpetrators were clearly aware that the abductions would be followed in the ordinary course of events by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person or persons (element (3)). In addition, as discussed in

paragraphs 10-13, the abductions as well as the subsequent refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of the abductees were carried out by, or with the authorization, support or acquiescence of the leadership of the DPRK (elements (4) and (5)). Also, given that the abductees were no longer allowed to have any contact with the family members that were left in Japan and that the current leadership of the DPRK, including Kim Jong Un, refuses to acknowledge the abductions other than those of 13 Japanese nationals to this day, the perpetrators clearly intended to remove such person or persons from the protection of the law for a prolonged period of time (element (6)). Element (7) is satisfied as discussed in paragraphs 20-21. Element (8) is also satisfied given the structure of the DPRK leadership as well as that of *Chongryon*.

24. Therefore, all the elements for the crime against humanity of enforced disappearance are satisfied. The abduction of probably over 100 Japanese nationals constitutes a crime against humanity.

25. Current leadership in the DPRK, including Kim Jong Un, is aware that not a small percentage of the abductees are still alive and that their freedom is severely restricted. Nevertheless, the leadership in the DPRK refuses to disclose their fate and whereabouts. The Declaration on the Protection of All Persons from Enforced Disappearance (A/RES/47/133), the resolution adopted by the United Nations General Assembly on 18 December 1992, states in its Article 17, Paragraph 1 that Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified. The International Convention for the Protection of All Persons from Enforced Disappearance states in its Article 8, Paragraph 1(b) that the crime of enforced disappearance has continuous nature. Therefore, the crime against humanity still continues to this day. Therefore, the leadership in the DPRK, including Kim Jong Un, by not allowing freedom of abductees, and not disclosing their fate and whereabouts, either committed the crime against humanity or at least aided and abetted in the commission of the crime against humanity.

B. Jurisdiction

26. Here, the act of abduction took place in Japan, a Member State of the Rome Statute. Therefore, territorial jurisdiction is satisfied.

27. Japan joined the International Criminal Court on 1 July 2007. While the prominent members of the DPRK and *Chongryon* abducted Japanese nationals to the DPRK mostly prior to 1 July 2007, their fate is largely unknown to this day. Article 17, Paragraph 1 of the Declaration on the Protection of All Persons from Enforced Disappearance states: Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified (A/RES/47/133). Therefore, the crime of enforced disappearance is viewed as continuing after 1 July 2007. As a result, the acts of the current leadership of the DPRK, including those of Kim Jong Un, should fall under the temporary jurisdiction of the International Criminal Court.

28. Footnote 24 related to enforced disappearance in the Elements of Crimes states that the crime of enforced disappearance falls under the jurisdiction of the International Criminal Court only if the attack referred to in elements 7 and 8 occurs after the entry into force of the Statute, which is 1 July 2007 for Japan. The attack here means a widespread or systematic attack directed against a civilian population. Given the continuing nature of the enforced disappearance, the term “attack” includes the act of refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those who were arrested, detained or abducted. Such act continues even after 1 July 2007. Therefore, this footnote shall not constitute a bar to the exploration of the possibility of prosecution.

29. If, hypothetically, footnote 24 related to enforced disappearance in the Elements of Crimes is interpreted such that the luring act must take place on or after 1 July 2007, the Elements of Crime may be amended by the Assembly of State Parties. Therefore, this footnote shall not constitute a bar to the exploration of the possibility of prosecution.