



**THE USE OF DOMESTIC AND
INTERNATIONAL LAW
AGAINST NORTH KOREAN SUBVERSION
AND HUMAN RIGHTS VIOLATIONS**

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Cases of Criminal Court?

Oskar Gröning, War Criminal, in German Court

Won Jeong-Wha, North Korean Spy

Kim Jong-un

Shin Dong-hyuk, Witness

Pictures have been removed from this slide.

CONTENTS

- ❖ Recent Political Party Disbanding
- ❖ North Korean Spy case
- ❖ Crimes against Humanity & the ICC

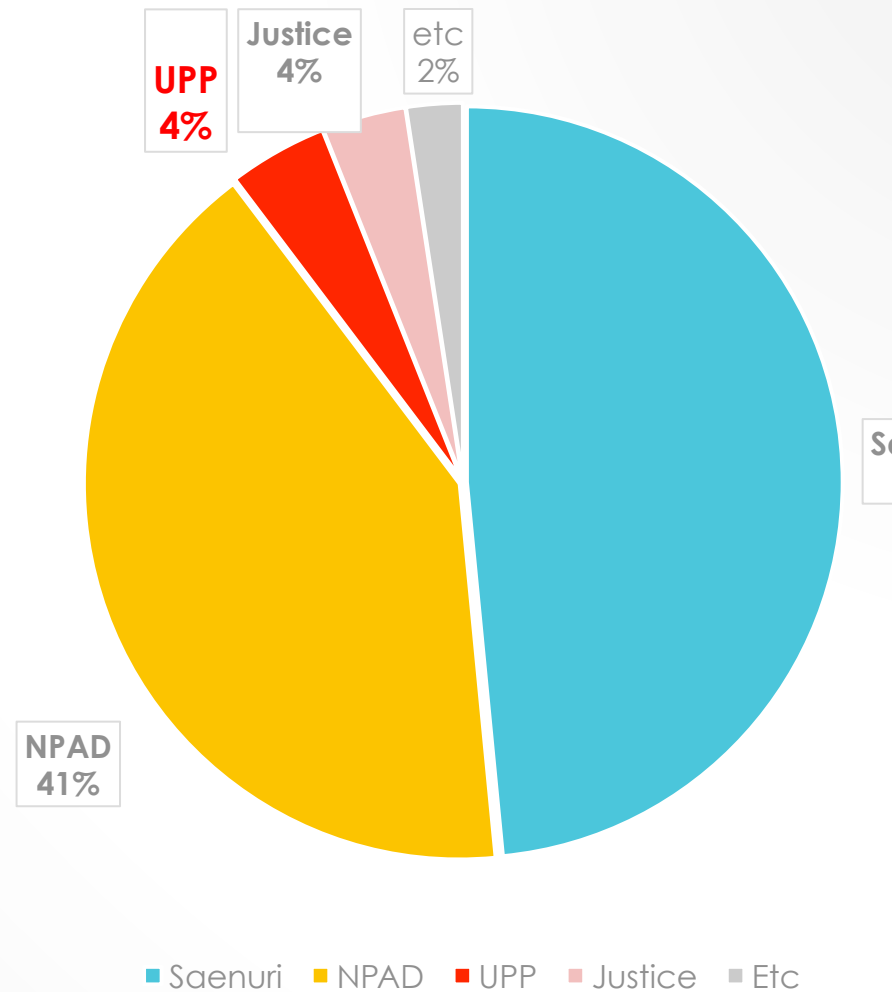
Unified Progressive Party (UPP)

membership : 100,000

supporters : 1 million

share of vote : 4.3%

- nationwide local election in 2014
- population of South Korea : 51,330,000
- voters : 41,290,000
- turnout : 56.8%



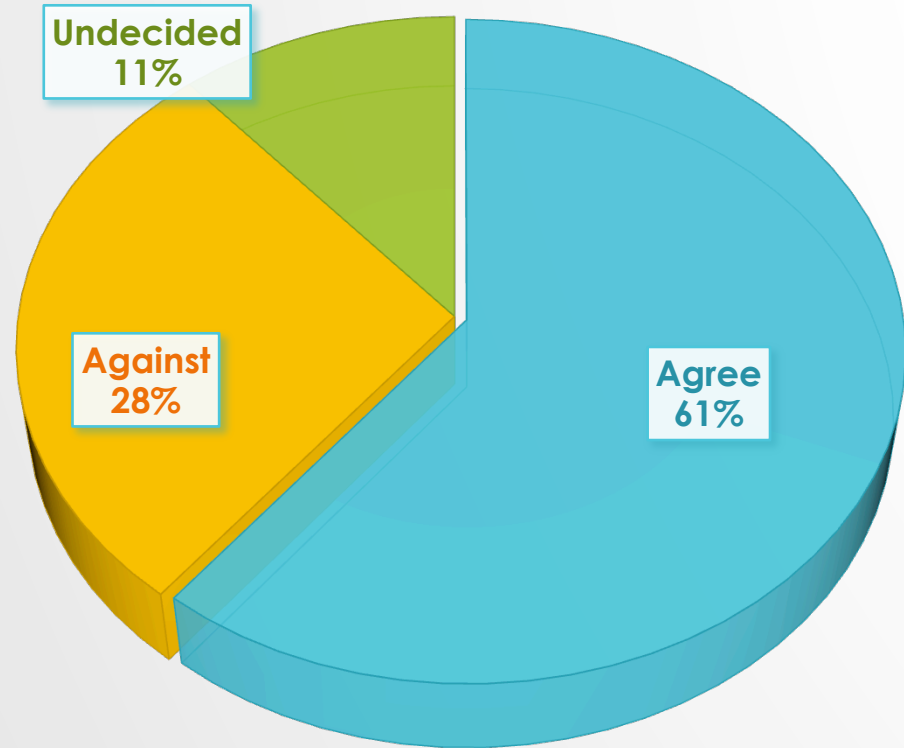
SOURCE : NATIONAL ELECTION COMMISSION

<http://nec.go.kr/portal/bbs/list/B0000215.do?viewType=P&menuNo=200186>

RECENT POLITICAL PARTY DISBANDING

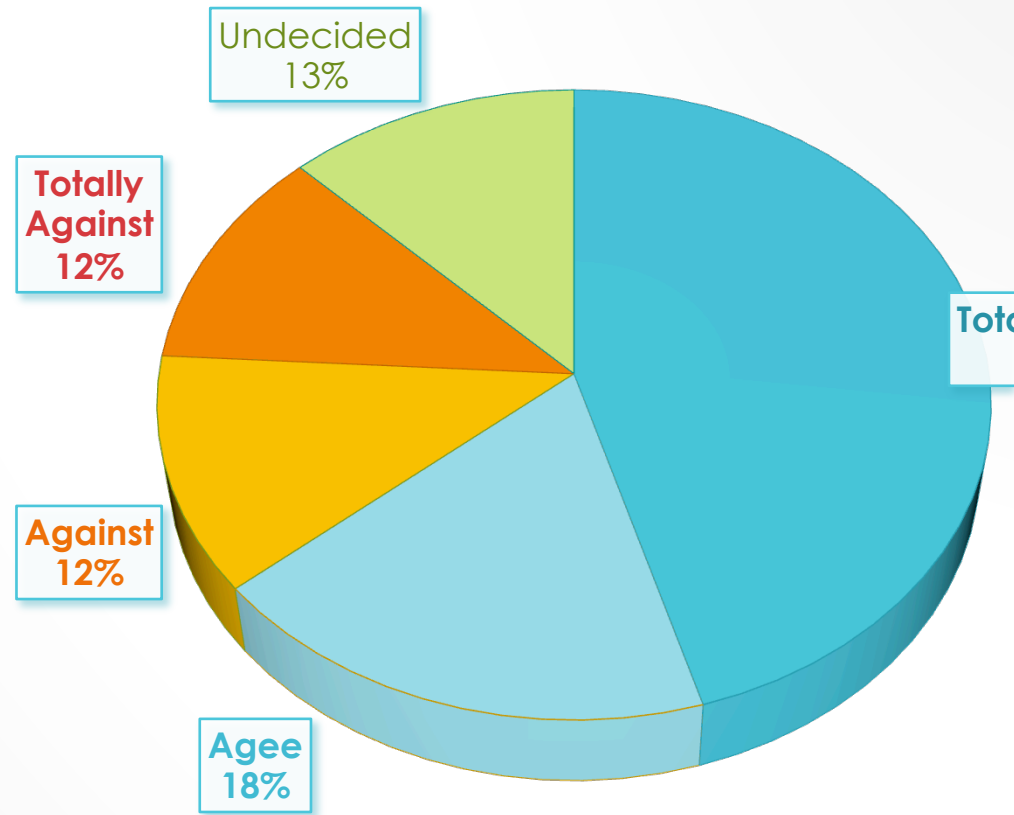
- Unified Progressive Party (UPP)
 - Lee Seok-ki & 130 supporters : secret meetings
 - **inciting an armed rebellion** (May 2013)
 - criminal case - 9 years in prison (Jan. 2015)
- Constitutional Court Case
 - disband the party - **8 : 1** (Dec. 2014)
 - objective & activities violate 'basic democratic order'

* Polls



1. MBN & REALMETER (MEDIA, DEC 2014)

(<http://www.realmeter.net> , 2014.12.20)



2. JOONGANG (PRESS, DEC 2014)

(http://article.joins.com/news/article/article.asp?total_id=16753067&ctg=)

RECENT POLITICAL PARTY DISBANDING

- Response from the people
 - welcoming vs. condemning
 - polls : 6 to 3
- Key points of the ruling
 - responsibility of individuals → that of the party itself
 - special situation of South Korea : enemy

RECENT POLITICAL PARTY DISBANDING

▪ Implications

- protect democracy vs. retreat democracy
- overwhelming consensus : 8 to 1
- general public came to recognize the truth
 - their ulterior intentions

NORTH KOREAN SPY CASE

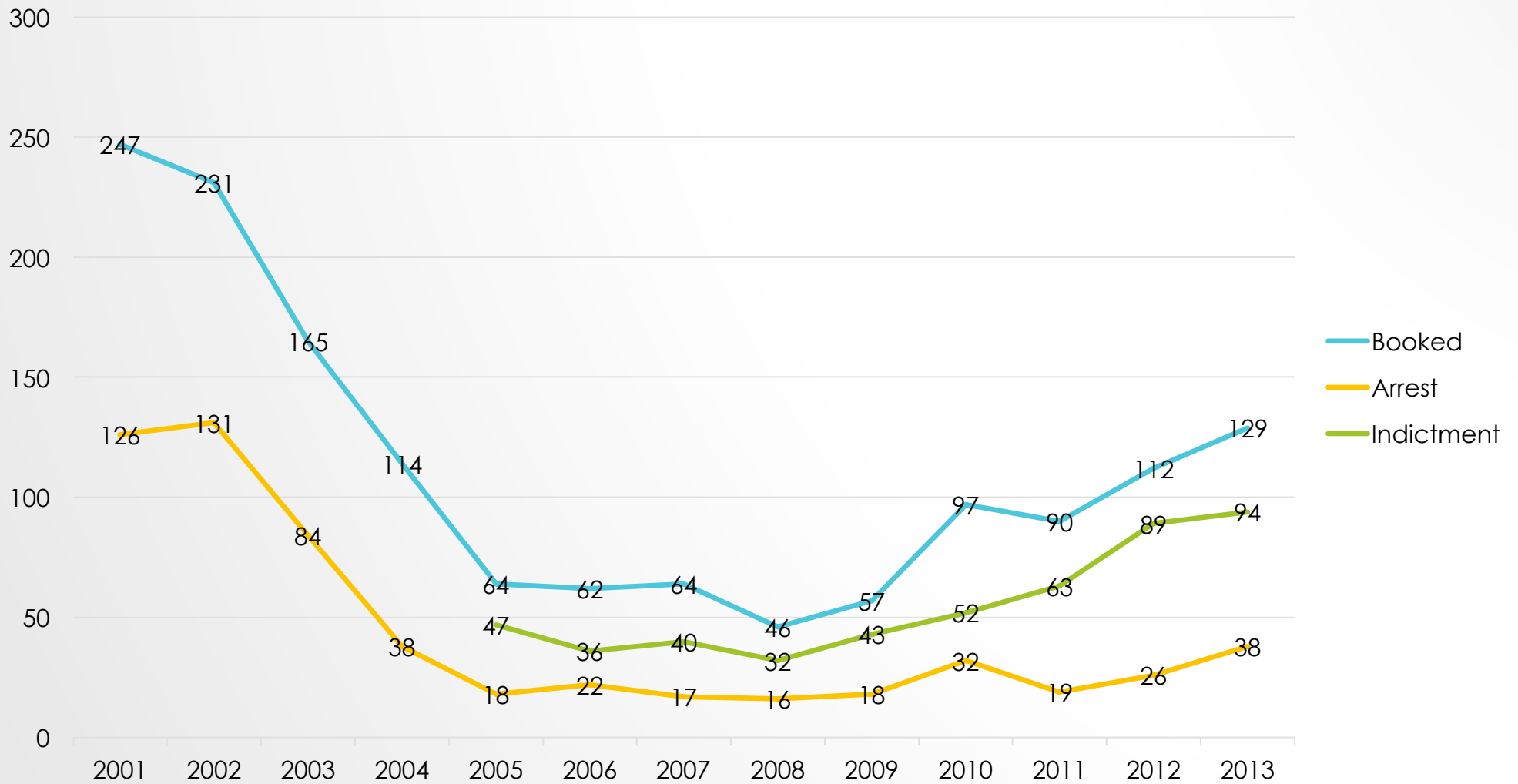
- Won Jeong-hwa
 - disguised defector (2008)
 - kidnap defectors
 - gather information : military, of defectors
 - lectures at 57 military camps
 - romantic relations
 - concern of being killed : 4 locks

NORTH KOREAN SPY CASE

▪ Results

- Won Jeong-wha : confess - 5 years in prison
- Kim Dong-soon : deny - **not guilty**
 - stepfather - collaborating with Ms. Won
 - circumstantial evidence - not enough
 - still living in South Korea

* National Security Law violation



(http://www.index.go.kr/potal/main/EachDtlPageDetail.do?idx_cd=1745)

SOURCE : STATISTICS KOR


NORTH KOREAN SPY CASE

- Trends of National Security Law Cases
 - number of cases – decrease
 - strict interpretation by the Courts
 - trace their whole lives back in North Korea
- ⇒ **Difficult to investigate, indict** a spy & get conviction

NORTH KOREAN SPY CASE

- Statements by North Korean
 - sometimes **changed, exaggerated**, inconsistent
 - raise doubt about the whole statement
 - several reasons
 - ✓ memory is unclear or distorted
 - ✓ not have strong standards about 'facts'
 - ✓ shocking story – spotlight
- Court not accept the reliability of Ms. Won's statement
 - looked partially exaggerated

CRIMES AGAINST HUMANITY & THE ICC

- UN Commission of Inquiry(COI) report (Feb. 2014)
 - North Korean leaders are responsible
 - widespread, systematic, gross violations
 - torture, public executions, extrajudicial and arbitrary detention, political prison camps 
 - International Criminal Court (ICC) should handle
- UN General Assembly & Security Council actions(Dec. 2014)

UN COI REPORT – HUMAN RIGHTS IN NORTH KOREA (371 PAGES)

Mandate and methodology of the commission of inquiry		14
Historical and political context to human rights violations in the DPRK		26
Findings of the commission 275 (pages)	Violations of the freedoms of thought, expression and religion	29
	Discrimination on the basis of State-assigned social class, gender and disability	25
	Violations of the freedom of movement and residence	45
	Violations of the right to food and related aspects of the right to life	64
	Arbitrary detention, torture, executions, enforced disappearance and political prison camps	62
	Enforced disappearance of persons from other countries, including through abduction	49
Crimes against humanity 32	Definition of crimes against humanity	3
	Crimes against humanity in political prison camps	7
	Crimes against humanity in the ordinary prison system	3
	Crimes against humanity targeting religious believers and others considered to introduce subversive influences	2
	Crimes against humanity targeting persons who try to flee the country	4
	Starvation	5
	Crimes against humanity targeting persons from other countries, in particular through international abductions	5
	A case of political genocide?	1
Principal findings of the commission	1	
Ensuring accountability, in particular for crimes against humanity	Institutional accountability	7
	Individual criminal accountability	4
	Responsibility of the international community	2
Conclusions and recommendations		6

Report of the detailed findings of the commission of inquiry on human rights in the Democratic People's Republic of Korea (UN Human Rights Council, 2014. 2. 7)

* International Criminal Court (ICC)

- international tribunal in the Hague, Netherlands
- since 2002 - the Rome Statute - member states 123
- jurisdiction - genocide, crimes against humanity, war crimes, aggression
- 18 judges & prosecutors

(http://www.icc-cpi.int/EN_Menus/icc/Pages/default.aspx)



Judges conducting a hearing © ICC-CPI / Associated Press)

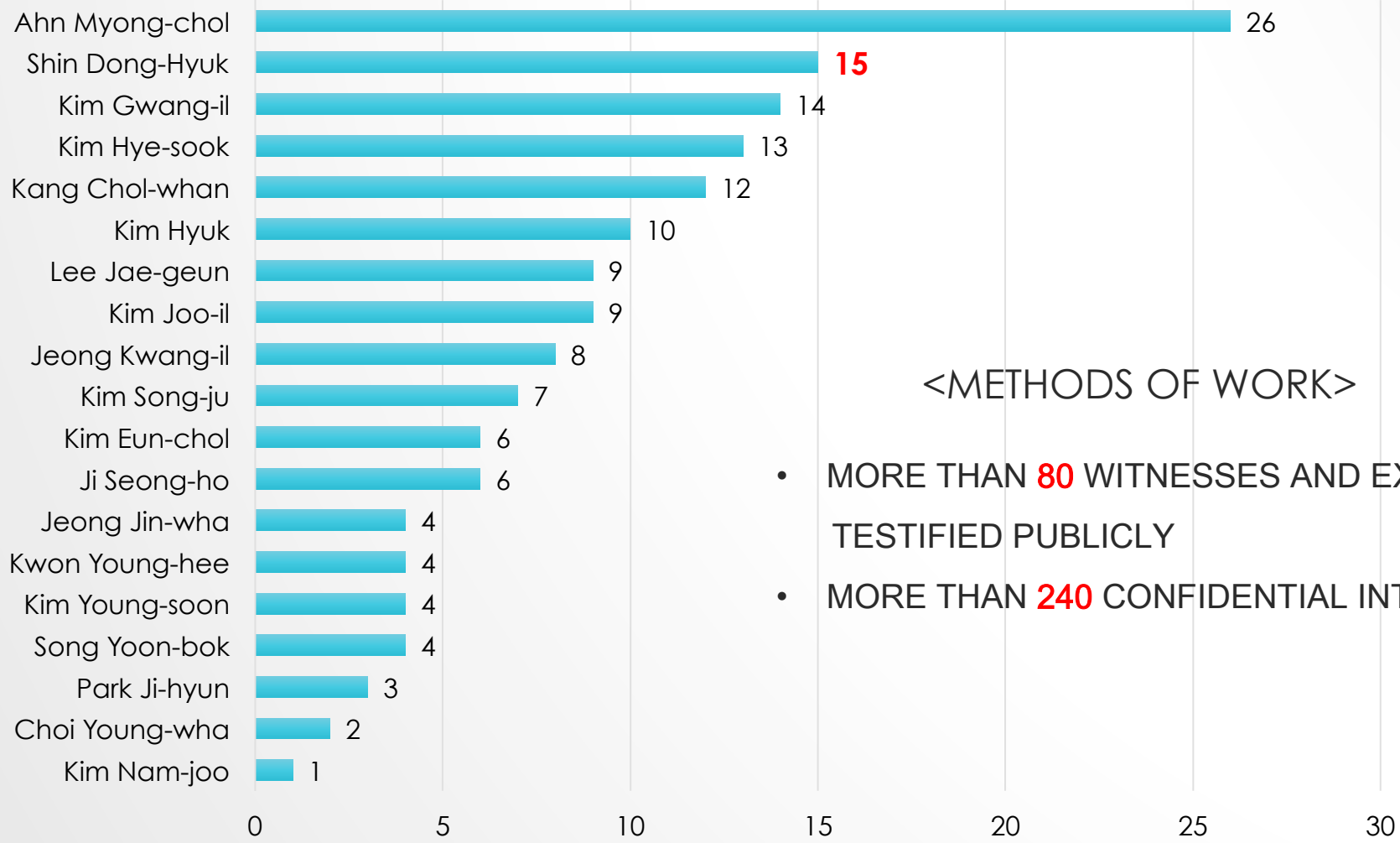
CRIMES AGAINST HUMANITY & THE ICC

- Shin Dong-hyuk
 - key witness of the report
 - the report quoted him 15 times

[paragraph 760 – about prison camp]

*When he was 14 years old, Mr Shin Dong-hyuk was interrogated **under torture for six months in the punishment block of Political Prison Camp No. 14** to establish whether he knew about escape plans discussed between his mother and brother. Among other methods, **he was strung over a lit fire until his back was burned**. On another occasion, Mr Shin accidentally dropped a sewing machine at the factory he was forced to work at. **The middle finger of his right hand was cut off as punishment:***

NUMBER OF EYEWITNESS TESTIMONIES - DEFECTORS



<METHODS OF WORK>

- MORE THAN **80** WITNESSES AND EXPERTS TESTIFIED PUBLICLY
- MORE THAN **240** CONFIDENTIAL INTERVIEWS

■ quotation

CRIMES AGAINST HUMANITY & THE ICC


- Mr. Shin's change of story
 - some timeline & locations (Jan. 2015)
 - *born in "Camp 14"*
 - *put in "Camp 18" (less brutal) at 6 years old*
 - report is still valid – ample testimony
 - But, **lethal** to criminal cases – credibility of testimony

CRIMES AGAINST HUMANITY & THE ICC

- Kenyan President “Kenyatta” Case
 - indicted in 2009 – President in 2013
 - **dropped** in Dec. 2014
 - threatening, intimidating, disappearing witnesses
 - limit of the court’s power
- Same concern about witnesses in the UN report

“The most significant challenge faced by the Commission resulted from a fear of reprisals. The majority of potential witnesses were afraid to speak out even on a confidential basis because they feared for the safety of their families and assumed that their conduct was still being clandestinely monitored by the DPRK authorities.” (paragraph 58)

CRIMES AGAINST HUMANITY & THE ICC

- Possibility of indicting Kim Jong-un
 - refer → investigate → indict → convict : **difficult**
 - trigger mechanisms for referral 
 - ✓ **not a state party & not accept the jurisdiction**
 - ✓ UN Security Council – veto power
 - rule of non-retroactive jurisdiction : 2002
 - Kim became a ruler in 2011
 - prove : **directly order or connive after 2012**

Trigger Mechanisms of the ICC

	Type of Referral	Example(Case)	Jurisdiction
1	States parties can refer	<ul style="list-style-type: none"> • Uganda • Congo • Central African Republic • Mali 	<ul style="list-style-type: none"> • by a national of a member state or, • on the territory of a member state
2	Prosecutor can initiate (Under the authorization of the Pre-trial Chamber)	<ul style="list-style-type: none"> • Kenya • Cote d'Ivoire 	<ul style="list-style-type: none"> • Not party state : make an ad hoc declaration accepting the jurisdiction of the Court
3	The UN Security Council can refer	<ul style="list-style-type: none"> • Sudan(Darfur) • Libya 	No limit – any state

CRIMES AGAINST HUMANITY & THE ICC

- Changing a little?
 - North Korea refuses to cooperate
 - burden to refute many other defector's testimonies
 - signals of change?
 - welfare for old people
 - defector's family - living peacefully
 - **result of pressure** by the international community

CONCLUSION

- Keep gathering evidence
- More evidence and facts
 - enhance the situation of human rights in North Korea
 - freedom and democracy in North Korea
- National Security Law case in South Korea
 - human rights violation issue in North Korea
 - international issue
- Extra organization to collect evidence
- “National security” & “freedom and humanity”



THANK YOU!