



PRE-TRIAL CHAMBER I

Before: **Judge Kwangil Chu, Presiding**
Judge Silvia Rose Cartwright

**SITUATION IN THE
DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA
IN THE CASE OF PROSECUTOR V. KIM JONG-UN**

Public

Transcript of Oral Decision (final decision to be released)

26 November 2024

Source: **Pre-Trial Chamber I**

The Office of the Prosecutor
Mr. Jared Genser
Mr. Brian Tronic
Mr. Lee Young-Hyeon
Mr. Kim Hyun-Ki

Counsel for Kim Jong-Un
Mr. James Connell
Ms. Mashal Aamir

Good afternoon, ladies and gentlemen. Thank you for your patience as we deliberated. We're now prepared to present the oral ruling of the Pre-Trial Chamber of the International Moot Tribunal in the matter of *The Prosecutor v. Kim Jong-Un*. This is a summary of our findings which we will later finalize in writing and which will include our full reasoning.

This case is about alleged crimes against humanity in the Democratic People's Republic of Korea, or DPRK, under the Rome Statute.

Before we begin, I want to underscore the gravity of these alleged crimes and the profound significance of these proceedings. The charges against the person charged are of the utmost seriousness, representing the most grave offenses under international law.

We also want to take a moment to acknowledge the victims of these alleged crimes. The testimonies and evidence presented paint a truly harrowing picture of human suffering and systematic abuse. Their voices have been heard and their experiences form the very foundation of our deliberations.

Procedural Matters

We're here today to deliver the Chamber's decision, following the hearing held in this courtroom on November 25th and 26th, and in accordance with the Rome Statute and the Tribunal's Rules of Procedure and Evidence.

Under Article 61(5) of the Rome Statute, the Prosecutor must support each charge with “sufficient evidence to establish substantial grounds to believe that the person committed the crime charged” and may “rely on documentary or summary evidence and need not call the witnesses expected to testify at trial.”

The purpose of this hearing was not to find the truth in relation to the guilt or innocence of the accused Kim Jong-Un, but to confirm the charges on which the Prosecutor intends to seek trial.

In short, the confirmation of charges hearing exists to separate those cases and charges which should go to trial from those which should not – it serves to ensure the efficiency of judicial proceedings and to protect the rights of persons by ensuring that cases and charges go to trial only when justified by sufficient evidence.

We have carefully considered all evidence and arguments presented by the prosecution and the defense counsel. After thorough deliberation, the Chamber has reached the following findings of fact and conclusions of law:

Findings of Fact

Based upon witness testimonies and documentary and summary evidence presented by the Prosecutor, the Chamber finds as follows:

1) The accused, Kim Jong-Un, is Supreme Leader, Commander-in-Chief of the Korean People's Army, General Secretary of the Workers' Party of Korea, and President of the State Affairs Commission. The Prosecution has established that Kim Jong-Un is the leader of a

Government of which he has complete legal and de facto control across both the military and civilian arms of government.

2) The political prison camps in the DPRK, known as *kwan-li-so*, exist and remain in operation today, detaining an estimated 120,000 prisoners. Their existence and the scale and breadth of their operations is confirmed by investigations undertaken by independent experts, including the UN Commission of Inquiry, UN Special Rapporteur on DPRK Human Rights, and UN High Commissioner on Human Rights, who have reviewed satellite imagery and witness testimonies, among other evidence. In addition, over the last 20 years, there have been dozens of resolutions adopted by the UN General Assembly, UN Human Rights Council, and former UN Commission on Human Rights, which have all acknowledged the existence of the political prisoner camps. While these resolutions alone are of no specific evidentiary value because they are political statements, they do serve to reinforce the very widely acknowledged credibility of the aforementioned independent UN investigations.^a

3) Individuals are detained in the political prisoner camps on the principle of guilt by association or *yeon-jwa-je*, consistent with Kim Il-Sung's admonition that three generations of the inmate should be annihilated for many reasons, including North Korea's socio-political classification system, or *songbun*, officially categorizing individuals as political prisoners; as a result of *todae*, which is one's family background, e.g., persons whose parents or grandparents were connected with the Japanese occupation during World War II or the South Korean Army during the Korean War; or other actions perceived as undermining the Supreme Leader's authority, including verbal treason, also known as *mal bandong*, espionage, engaging in religious activities, and attempts to flee to South Korea. Upon the government making a secret determination that a person should be detained in the political prisoner camps, they are disappeared by the State, along with members of their family, and held *incommunicado* and outside of any legal process.

4) The treatment of detainees in the political prisoner camps is very harsh. Camps are surrounded by high-perimeter fences electrified with deadly voltage, with pit traps and minefields also placed around the fence. Public and secret executions are carried out without legal process for reasons such as attempts to escape, violation of rules, or disobedience of orders – lesser offenses result in confinement, beatings, and mutilation. Detainees, including children, are assigned to demanding labor in mines and farms, often without rest, and are subjected to beatings, extended hours, and food ration cuts if they don't meet daily work quotas. Brutal and inhumane conditions, including malnutrition and starvation due to below subsistence-level food rations and almost no medical care. The system is designed to ensure large numbers of deaths in detention from starvation and disease. Women subjected to forced abortion and additional punishments, including execution and torture; rape perpetrated by guards and prisoners in privileged positions is common. In short, the political prison camps are death camps, designed and operated by the DPRK to ensure the slow but inevitable deaths of their detainees.

5) The political prison camps are run by the Prisons Bureau of the Ministry of State Security (Guk-ga-An-jeon Bo-wi-bu), whose Minister reports to Kim Jong-Un through the State

Affairs Commission, the supreme political authority in the DPRK, through the Korean Workers' Party, and directly.

In its opening and closing statements, the Defense argued that none of the six witnesses presented by the Prosecution actually provided direct evidence of the crimes against humanity being committed by Kim Jong-Un in the political prison camps from when he became Supreme Leader in 2011. The Chamber agrees with this conclusion but emphasizes that under the Rome Statute, the Prosecution had no obligation to call all witnesses expected to testify at trial and may rely on credible documentary and summary evidence alone. The Chamber's findings of fact in relation to Kim Jong-Un's responsibility are grounded in that evidence [and not in the testimonies of the witnesses].

Conclusions of Law

The Chamber finds that the Prosecutor has, provided sufficient evidence to establish substantial grounds to believe that the accused Kim Jong-Un has committing the following crimes against humanity charged – murder, extermination, enslavement, imprisonment, torture, rape and other sexual violence, persecution on political, religious, and gender grounds, and enforced disappearance. The Chamber finds as follows with respect to each of these sets of crimes:

- 1) **Murder** – The intentional killings of individual inmates in the prison camps, through summary executions, beatings, infanticide, deliberate starvation, and other illegal means, all amount to murder. This establishes the crime of murder under Article 7(1)(a) of the Rome Statute.
- 2) **Extermination** – The intentional infliction of conditions of life calculated to exterminate a population, include *inter alia*, the deprivation of access to food and medicine and other conditions (e.g., forced labor).. This establishes the crime of extermination under Article 7(1)(b) of the Rome Statute.
- 3) **Enslavement** – The experience of the prisoners in the political prison camps bear all of the characteristics of enslavement as inmates, often from a very young age, are subjected to a lifetime of arduous and perilous forced labor, and rarely have the prospect of release. This establishes the crime of enslavement under Article 7(1)(c) of the Rome Statute.
- 4) **Imprisonment** – Some 120,000 people are currently detained in the political prison camps without have ever been charged, tried, convicted, or sentenced before a court of law for any crimes. This establishes the crime of imprisonment under Article 7(1)(e) of the Rome Statute.
- 5) **Torture** – Physical torture is an established feature of the political prison camps. This establishes the crime of torture under Article 7(1)(f) of the Rome Statute.
- 6) **Rape and Other Sexual Violence** – Female inmates are raped using physical force and, in other cases, women are pressed into “consensual” sexual relations to avoid harsh labor assignments, or to receive food; forced abortions are also regularly committed in the political prison camps. This establishes the crime of rape and other sexual violence under Article 7(1)(g)(1) and 7(1)(g)(6) of the Rome Statute.
- 7) **Persecution on Political, Religious, and Gender Grounds** – Such discrimination is widely reported and this establishes the crime of enslavement under Article 7(1)(h) of the Rome Statute.
- 8) **Enforced Disappearance** - Prisoners detained in the political prison camps are typically

disappeared by the State. This establishes the crime of enforced disappearance under Article 7(1)(i) of the Rome Statute.

In addition, the Chamber finds that Kim Jong-Un has command responsibility for these crimes against humanity committed in the political prison camps, under Article 28(b) of the Rome Statute, because the Minister of State Security reports to him, he has effective command and control over the Minister and Ministry, which runs the camps, he has failed to properly exercise control over the Minister and Ministry, he knew or should have known these crimes are being committed, and he failed to take necessary and reasonable measures to prevent or repress commission of the crimes.

To establish that crimes against humanity have been committed in this case, not only must evidence of the specific crimes be established, but they must be widespread, systematic, directed against a civilian population, and Kim Jong-Un must have knowledge of these attacks.

The operations of the political prison camps is widespread and systematic because they, detain an estimated 120,000 people and were established to achieve a central political objective, namely the elimination of three generations of enemies – the camps continue to serve this purpose, while also being used to purge from society anyone else who poses a threat to the political system and its leadership. The forced labor derived from prisoners in the camps' mines, farms, and factories assists in the realization of key economic objectives. The inhumane acts perpetrated occur on a large scale and follow a regular pattern giving rise to the inference they are part of an overall State policy.

In addition, the DPRK has devoted considerable resources to establishing and expanding its sprawling system of political prison camps. The Ministry of State Security, the country's elite security agency: (1) is responsible for guarding inmates and administering the camps; (2) an entire bureau is assigned to this task; (3) it is staffed by thousands of agents and guards; and (4) roads and railroad connections have been built so that production taking place in the camps can be fully integrated into the economy – It is impossible to believe that such a large-scale and complex institutional system could be operated without being based on a State policy approved at the highest level, given the strongly centralized nature of the State in the DPRK.

In terms of establishing that Kim Jong-Un has knowledge of the political prison camps, there have been independent investigations conducted and reported upon by the UN Commission of Inquiry, UN Special Rapporteur on DPRK Human Rights, and UN High Commissioner for Human Rights. Indeed, all these entities also reached out directly to the DPRK Government requesting access to the country and providing Kim Jong-Un and his Government the opportunity to review and respond to the alleged crimes that have been committed.

For these reasons, the Chamber hereby confirms that the Kim Jong-Un is criminally responsible within the meaning of Article 28(b) of the Rome Statute for all the charges, and commits him to a Trial Chamber for trial on the charges as confirmed pursuant to article 61(7)(a) of the Statute.

This concludes the summary of the Chamber's decision. This summary is an authoritative account of the Chamber's reasoning. The written decision will be made available to the participants and the public as soon as it's finalized.

I'll now give the floor to Judge Cartwright for any additions or clarifications she wishes to make.

Conclusion

The Chamber's findings in this case are undeniably grave. They reveal a systematic and widespread pattern of abuse by the DPRK regime against its own people. Kim Jong-Un, as the Supreme Leader of the DPRK, bears ultimate responsibility for these crimes. His actions, or lack thereof, have enabled and perpetuated a long-standing system of oppression and brutality.

The Chamber's decision today is a step towards accountability. It's a recognition of the suffering of the victims and a call for justice to be served. Thank you.

Done in both English and Korean.

FINAL WRITTEN VERSION TO BE SUBSEQUENTLY RELEASED

