

Testimony of Jared Genser

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Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea

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Distinguished Commissioners, it is a pleasure to be with you here today – I greatly appreciated the invitation to appear before you as someone who has worked to advance the applicability of international law to the situation in the DRPK for more than seven years now and who previously served as pro bono counsel to the Coalition to Stop Crimes Against Humanity in North Korea, which advocated for the creation of this Commission of Inquiry.

The human-rights situation in North Korea is inextricably bound up with the question of Responsibility to Protect Doctrine, which is arguably the most significant development in the defense and promotion of international human rights law since the 1948 Universal Declaration of Human Rights. Indeed, this Doctrine authorizes international action to “protect a state’s population from genocide, war crimes, crimes against humanity and ethnic cleansing” where that state is either unable or unwilling to protect its own citizens – or worse – is the author of such mass atrocity crimes as in the case of North Korea. In particular, this is a landmark normative principle that is focused on saving lives. Indeed, where a State perpetrates such grave crimes as in the case of North Korea – and continues to do so with impunity – the very fabric of the international legal system for the protection of human rights is at grave risk.

In 2005 at the UN World Summit, the UN General Assembly adopted the responsibility to protect. In further description of its meaning, the Secretary General described RtoP as being comprised of three pillars:

First, the notion of sovereignty as responsibility – the State’s own responsibility for protecting populations from genocide, war crimes, crimes against humanity and ethnic cleansing – and their incitement;

Second, the international community’s responsibility to encourage and assist States in fulfilling this responsibility; and

And third, the international community’s responsibility to use appropriate diplomatic, humanitarian and other means to protect populations from these crimes where a state manifestly fails to protect its own populations.

Now, there are those who have argued to me over the years that given the political sensitivities around the DPRK and concerns about the responsibility to protect more broadly, that it would be best to avoid applying the doctrine to the situation in North Korea. It is my heartfelt view that if RtoP can’t be applied to North Korea, then what value does the doctrine hold to highlight and end the commission of mass atrocity crimes around the world.

Beyond, this, while the DPRK has ratified a broad range of international human-rights treaties – including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; and the Convention on the Elimination of All Forms of Discrimination Against Women – it is in standing violation of all of them.

Simply put, not only has the North Korean government failed to meet its own responsibility to protect its own citizens from mass atrocities, it has indeed perpetrated – and continues to perpetrate – crimes against humanity against its own people – and this on a mass scale.

Accordingly, the international community has the responsibility under international law to protect the North Korean people from such widespread and systematic crimes against humanity perpetrated by their own government. The evidence is as clear as it is compelling that the North Korean regime – under Kim Il-sung, his son Kim-Jong Il, and his son Kim Jong-Un – has institutionalized – as a matter of government policy – the crimes of – among others – murder, torture, rape, persecution based on political and other prohibited grounds, and the arbitrary and enforced detention and disappearance of civilians based on alleged subversive thoughts or actions without any semblance of due process of law.

Indeed, in the use of these legal terms we run the risk of almost sanitizing or banalizing the true horror of the reality in North Korea. We cannot forget that behind each and all of these acts there are victims – people who have a name and a face – and who suffer daily at the hands of the regime. I know all of you have been moved, even to tears, hearing the stories of these brave and courageous individuals who have come forward to shed light on the abuses in North Korea, and it is my hope that one day all such stories can and will be told so that history and humanity may bear witness.

Given what we know about human rights in North Korea, the question is: How should the international community respond? First, it is imperative that we acknowledge where the international community has been derelict – our failure to protect thus far. Frankly, it is shameful that we continue to let the situation in North Korea continue – and that we, and here I speak of the international community, often let the nuclear question – albeit important – overshadow the decision-making process on the pressing human rights concerns that must be addressed.

In that regard, I wanted to cite to my friend and mentor Irwin Cotler, a former Minister of Justice & Attorney General of Canada, who describes RtoP as being organized around five principles: namely, the Responsibility to Remember – the bearing of witness; the Responsibility to Prevent these atrocities to begin with; the Responsibility to Protect against such mass atrocities; the Responsibility to Prosecute by bringing perpetrators to justice; and the Responsibility to Rebuild.

Tragically, we are well past the point of preventing crimes against humanity in North Korea, which remain ongoing, widespread, and systematic. As I mentioned, we know that crimes against humanity in North Korea are institutionalized as a matter of government policy – the

intent being to control, subdue, and massively repress the population. Given limited time, I would refer the Commission to *Failure to Protect*, the report that I prepared for former Czech Republic President Vaclav Havel, Nobel Peace Prize Laureate Elie Wiesel, and Former Norwegian Prime Minister Kjell Magne Bondevik, which details in some 140 pages and 1,000 footnotes the applicability of the responsibility to protect and crimes against humanity framework to the situation in the DPRK.

But in summary, the crimes against humanity perpetrated by the regime include:

- The government's food policy – which has intentionally deprived millions of its citizens adequate nourishment while rewarding social classes favoured by the regime – and has thereby starved well over a million people to death;
- The operation of *Kwan-li-so* which are used by the regime to achieve the enforced disappearance, imprisonment, enslavement, torture, and persecution based on political and religious grounds of North Koreans deemed undesirable by the elite.

The work the Commission has done through its public hearings held here and around the world have been extraordinarily important and illuminating, not merely for your efforts to gather and analyze evidence, but in raising awareness about the horrors of modern life in North Korea. That said, I still believe as I did when you began your important work is that the overwhelming weight of the evidence will lead the Commission to conclude that the DPRK has committed and is committing crimes against humanity directed at its own people.

Thus, in my remaining time, I'd like to turn to what recommendations you may consider and make in light of what you have learned through your investigation. But rather than making specific recommendations, which in my view wouldn't be appropriate as I'm not in the position to review the full range of evidence that the Commission is examining, I'd like to articulate three important principles about how you might frame your recommendations in relation to their breadth, depth, and sustainability.

First, in relation to the breadth of your recommendations, it is my view that it is crucial to emphasize the observations of both Vitit Muntharbhorn and Marzuki Darusman, the former and of course current Special Rapporteur, that enormity of the challenge requires engaging the totality of the UN system to address the situation in North Korea. Thus, I hope that your recommendations will particularly emphasize the critical role of the UN Security Council, which in my view must begin by placing the DPRK human-rights situation on its permanent agenda, but also the important role for greater involvement by specialized UN agencies such as the World Food Programme, UNICEF, World Health Organization, and others. That said, it is also crucial to emphasize that the role of individual countries to act on their own, not merely in concert with the United Nations, is equally essential. As an illustration, the failure of UN agencies to secure the budgets they require from country pledges to support operations in North Korea is unsustainable. And, of course, you will also need to speak to what the DPRK itself must do to change course immediately.

Second, in relation to the depth of your recommendations, you have been given a very wide terms of reference by the Human Rights Council. As a result, there are many topical areas

that need to be covered. But given limited space in your report, however, I would urge the Commission to synthesize, summarize, and analyze the evidence you have gathered and related violations of law in a highly-condensed format and spend as much time as possible in your report making specific and actionable recommendations across the terms of your mandate. In my experience, Commissions of Inquiry tend to do the opposite – feeling compelling to spend enormous time on what they learned and what it means. It isn't that such work isn't important – but rather that what I have heard over and over from governments around the world how little they felt could be done to address the situation in the DPRK. While there are obviously highly sensitive and more challenging recommendations that could be made, such as for the Security Council to refer the situation to the International Criminal Court, there are a huge range of other less confrontational and less controversial recommendations that also must be made and which could engage with the DPRK to help their own people.

Lastly, there is the question of the sustainability of your recommendations in fostering ongoing efforts. In my view, it is crucial that your report provide a road map for action and engagement by the international community that makes clear that the Commission's report is not an end, but rather a beginning, of a much higher level of engagement by the international community. In short, it must be understood by the DPRK that the only way to ameliorate international concern is exclusively by engaging fully with the international community in a broad range of ways that begins by acknowledging and not denying the issues and ultimately results in a substantial change in how the DPRK deals with its own people.

It is my hope and expectation that the Commission's report next March will spur the necessary action required to move North Korean human rights to the forefront of the international agenda. The time for RtoP has more than come with respect to North Korea, and we must not miss the opportunity of your Commission's work in spurring serious, sustainable, and effective action to end the suffering of the North Korea people.