

**THE OSLO CENTER FOR PEACE AND HUMAN RIGHTS – INDIVIDUAL
SUBMISSION TO THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN
RIGHTS (OHCHR)**

**UNIVERSAL PERIODIC REVIEW:
DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA, SESSION 6 - 2009**

I. Introduction

1. The Oslo Center for Peace and Human Rights (“the Oslo Center”) individually submits this report to assist the Human Rights Council (“HRC”) in the Universal Periodic Review (“UPR”) of North Korea’s human rights policies and practices. The Oslo Center is an independent not-for-profit foundation whose work is structured around three main programs: dialogue for peace, promoting democracy and human rights. The Oslo Center was founded in 2006 by its current President, former Prime Minister of Norway Kjell Magne Bondevik.

2. In 2006, the Honorable Kjell Magne Bondevik, Honorable Václav Havel, and Nobel Peace Prize Laureate Elie Wiesel commissioned the global law firm DLA Piper LLP (US) and the Committee for Human Rights in North Korea to prepare an account of the humanitarian and human rights situation in North Korea.¹ The resulting report issued on October 30, 2006, *Failure to Protect: A Call for the UN Security Council to Act in North Korea*, concluded that the Government of the Democratic People’s Republic of North Korea had failed in its “responsibility to protect” its own citizens from the most severe violations of international law and urged a robust international response through the UN Security Council. The evidence and analysis contained in the report was highly disturbing: North Korea allowed as many as one million people, and possibly many more, to die during its famine in the 1990s. Furthermore, North Korea imprisoned as many as 200,000 people without due process of law on arbitrary reasons in political prison camps. And it has engaged in abductions of numerous foreign nationals.

3. Two years later, little had changed. Although there had been some progress in the six-party talks on the nuclear issue, discussions about the human-rights and humanitarian challenges within North Korea remained an issue of secondary concern. As a result, Messrs. Bondevik, Havel, and Wiesel commissioned a second report, *Failure to Protect: The Ongoing Challenge of North Korea*, to highlight the importance of this discussion and to propose an additional set of recommendations to enhance the prospects of achieving some meaningful incremental progress.

4. Together, *Failure to Protect: A Call for the UN Security Council to Act in North Korea* and *Failure to Protect: The Ongoing Challenge of North Korea* (“the *Failure to Protect* reports”) detail the severity of the human rights situation in North Korea and a summary of the reports’ findings is contained in Section II below. The reports also contain extensive recommendations designed to further engagement on human rights between North Korea and the international community, as well as recommendations directed specifically to the UN Security Council, the UN General Assembly, the parties to the Six-Party Talks, and the Government of

¹ For additional information on The Oslo Center, see <http://www.oslocenter.no/index.php>. For further information about reports cited herein, please contact Jared Genser at jared.genser@dlapiper.com or +1 (202) 799-4325.

South Korea. The recommendations to the UN Security Council and General Assembly are included in Section IV below.

II. North Korea has Failed to Uphold its International Obligations to Respect Basic Human Rights

a. North Korea's Food Policy Violates its Population's Right to Adequate Food

5. The Government of North Korea has demonstrated repeatedly that recognition of and respect for its population's right to adequate food is a low priority. As the UN Special Rapporteur on the Right to Food noted in October 2006, "12 per cent of the population in the Democratic People's Republic of Korea suffered from severe hunger." One quarter of the North Korean population is chronically malnourished and the average seven-year-old boy in North Korea weighs 20 pounds less and is 8 inches shorter than his South Korean counterpart. Even before the floods of 2006 and 2007 devastated the country's rice bowl, North Korea lacked 20 percent of the minimum amount of food necessary to feed its 23 million hungry people.²

6. The *Failure to Protect* reports found that the hunger and suffering of the North Korean people during the famine that devastated North Korea from 1995-1998 remains widespread today because of the government's unwillingness to address the following fundamental causes of the country's chronic food insecurity:

- Fifty years of failed governmental policies, an insistence on the ideology of *juche*³, and a disproportionate use of resources for the military, has resulted in repeated food shortages and a fragile, inefficient agricultural system that has left the North Korean people vulnerable to famine.
- Those same failed policies have made North Korea overly dependent on outside aid for both the tools required for agriculture – fertilizers and fuels – and for food itself.
- When outside aid collapses, North Korea fails to react with appropriate economic changes, additional commercial food imports, and timely requests for emergency assistance.
- When North Korea finally requests aid, (i) it prevents that aid from reaching significant areas of the country, including the most vulnerable; (ii) it hinders efforts to ensure that aid reaches those who need it most; (iii) it diverts significant aid to the military, party loyalists, and other privileged persons; and (iv) it uses aid to *reduce* commercial imports of food and divert revenue to other priorities, such as weapons programs.
- The North Korean government has instituted a number of steps at various times that increase the level of food insecurity, rather than reduce it, such as banning private markets and thereby reducing the opportunity for citizens to acquire food outside the Public Distribution System.⁴

² See FAILURE TO PROTECT: THE ONGOING CHALLENGE OF NORTH KOREA, DLA Piper LLP (US) (Washington, 2008), 3.

³ An ideological tenet invoking a "spirit of self reliance" around which Kim Il-Sung organized North Korean life.

⁴ See FAILURE TO PROTECT: A CALL FOR THE UN SECURITY COUNCIL TO ACT IN NORTH KOREA, DLA Piper US LLP and U.S. Committee for Human Rights in North Korea (Washington, 2006), 29-30.

7. Due to the factors above, the food crisis continues and North Korea likely stands on the brink of another famine. Nevertheless, the government refuses to reform its policies to bring food security to its people. Instead, it continues to rely on significant outside food aid, allowing the government to continue devoting disproportionate resources to the military and its nuclear and missile programs. However, the government repeatedly puts international food aid at risk, both by the restrictions it places on that aid and by actions that threaten to cut off that aid, such as the launch of missiles and the refusal to participate at various times in the Six-Party Talks. Without explanation, it recently announced it would not accept any further food aid from the United States and that a number of non-governmental organizations delivering this aid would be asked to leave the country.

b. North Korea Violates the Human Rights of Political Dissenters

8. Political dissent in North Korea is not tolerated. Real and alleged political offenses are investigated and punished by the State Security Department – an autonomous agency entrusted with carrying out counterintelligence and internal security functions through secret police. Its mandate includes locating and punishing those accused of slandering the political leadership and those engaged in other antigovernment and dissident activities.

9. Those accused of political offenses are neither arrested nor informed of the offense they are accused of committing by the State Security Department. Instead, the accused is abducted, placed in an interrogation facility, and sometimes tortured until he or she “confesses” to the crime. Once deemed guilty of a political crime, the criminal is punished in one of two ways – he or she is either executed, generally in a public place, or incarcerated for life in a political prison camp, called *kwan-li-so*.⁵

10. An estimated 200,000 people are now imprisoned in North Korea’s various prison camps. It is believed that more than 400,000 prisoners have died in these camps over 25 years. The starvation of prisoners is commonplace and, in some camps, forced labor conditions result in the death of 20 to 25 percent of the labor force each year. Torture is used as a systematic means of interrogation and public executions within the prisons occur routinely. Evidence of forced abortions and infanticide within the prisons also exists.⁶

c. North Korea Engages in the Systematic Abduction of Foreign Nationals

11. The North Korean government has a long history of abducting foreign nationals, bringing them to North Korea, and keeping them there against their will. This pattern of activity constitutes a unique and disturbing set of human rights violations. It is reported that between 1955 and 1987, North Korea abducted roughly 3,790 South Koreans, of which 480 have never returned to their native South Korea.

12. Moreover, although the Japanese government now recognizes the case of 17 abductees, some estimate that as many as 80 Japanese have been abducted to North Korea. The Japanese government says that 12 of the 17 abductees are still unaccounted for, while five have

⁵ *Id* at 30.

⁶ *Id* at 32-42.

been repatriated. Of the 12 still unaccounted for, North Korea says they have either died since their abduction or denies that they were kidnapped in the first place.⁷

III. North Korea's Human Rights Record Implicates the Responsibility to Protect Doctrine

13. The Security Council has declared that it has the responsibility to take action on a case-by-case basis should national authorities in a country fail to protect its own citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity.

14. The responsibility to protect doctrine entails four key elements: 1) primary responsibility for protecting a state's population from these most egregious of human rights abuses resides with that country's government; 2) the international community has a duty to help states in meeting this responsibility; 3) when a state manifestly fails in its obligation to protect its own citizens, it is the international community's responsibility to help protect that population; and 4) if multilateral action through the UN and other entities fails, it is the Security Council's responsibility to intervene.

15. The *Failure to Protect* reports invoke the responsibility to protect doctrine to assert that the government of North Korea's policy of systematically starving portions of its population and its operation of a gulag system inhumanely detaining over 200,000 prisoners constitutes the North Korean government's failure to protect its own citizens from crimes against humanity. Therefore, it is the Security Council's responsibility to take action to protect the people of North Korea.⁸

16. The *Failure to Protect* reports were both favorably cited in prior reports by UN Special Rapporteur on Human Rights in the DPRK Vitit Muntarbhorn. In addition, when introducing the 2008 General Assembly resolution on the DPRK to the Third Committee, the French Representative, on behalf of the European Union stated that the "widespread, systematic and grave violations of human rights in the country, reflect[ed] the Government of the DPRK's absence of willingness to uphold its responsibility to protect its populations."

IV. Conclusion and Recommendations

17. North Korea egregiously violates the human rights of its citizens and ignores its commitments under international law. We respectfully request the HRC consider supporting the recommendations set forth below, which were included in the two *Failure to Protect* reports.

Recommendations to the UN Security Council:

18. The UN Security Council should adopt a non-punitive resolution on the situation in North Korea in accordance with its authority under Chapter VI of the UN Charter and past Security Council precedents.

⁷ *Id* at 42-48.

⁸ *Id* at 83-93.

The resolution should:

- Outline the major reasons for the Security Council intervention, focusing on the North Korean government's failure to protect its own people and the threat to international peace and security caused by the major issues described in this report;
- Urge the North Korean government to ensure the immediate, safe, and unhindered access to all parts of the country for the United Nations and international humanitarian organizations to provide humanitarian assistance to the most vulnerable groups of the population;
- Call on the North Korean government to release all political prisoners detained in violation of their rights under the International Covenant on Civil and Political Rights, to which North Korea is a state party;
- Insist the North Korean government allow the UN Special Rapporteur on Human Rights in North Korea to visit the country; and
- Request the Secretary-General to remain vigorously engaged in the situation in North Korea and that he report back to the Security Council on a regular basis.

19. Should North Korea fail to comply with a Chapter VI resolution, the Security Council should consider adopting a binding resolution under Chapter VII.

Recommendations to the UN General Assembly:

20. At the UN General Assembly, the sponsors of the resolution on the situation of human rights in North Korea should:

- a. Include in the preamble to a 2009 resolution on the human rights situation in North Korea a reference to the key documents that endorse the "responsibility to protect" doctrine and the obligation of all states to protect their citizens from human rights atrocities, including crimes against humanity (e.g., paragraphs 138 and 139 of the 2005 World Summit Outcome Document and paragraph 4 of Security Council Resolution 1674); and
- b. Include in the operative paragraphs of the resolution, a recommendation to the Secretary-General to appoint a group of experts to report to the General Assembly about whether North Korea has committed violations of international human rights law and, if so, whether these violations constitute a failure to protect its citizens from crimes against humanity.