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Spotlight on the North Korean Human Rights Act: Correcting Misperceptions

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In October, both houses of Congress unanimously passed and President George W. Bush signed the North Korean Human Rights Act of 2004.¹ This act promotes improving human rights in North Korea as an integral part of broader U.S. policy on the Korean peninsula, and it also calls for protecting North Korean defectors as refugees.

Surprisingly, the most vocal criticism has come not from North Korea, but from South Korea. Some members of South Korea's ruling Uri Party were indignant, claiming that the new law would increase tensions on the Korean peninsula and damage relations between South Korea and North Korea. Such sentiments, regrettably prevalent in South Korea, indicate how much some people have misunderstood the act and its purpose.

The act is intended to make it easier for the United States to assist North Korean refugees, and it links any future aid to Pyongyang to progress in addressing human rights concerns. The act contains no hidden agenda for overt regime change or overthrow of the Kim Jong Il government. Its sole focus is on alleviating the plight of North Koreans through limited action by the U.S. government.

The United States is currently involved in high-stakes negotiations with North Korea and the four other major parties in Northeast Asia (China, Japan, South Korea, and Russia) to end North Korea's nuclear weapons programs. While the U.S. priority should be to resolve the nuclear issue diplomatically as quickly as possible, the United States should not

Talking Points

The North Korean Human Rights Act serves not only American interests, but also those of the region by:

- Increasing funding for humanitarian assistance to North Korean refugees outside North Korea, thereby reducing regional instability and human security concerns.
- Authorizing increased support for NGOs providing humanitarian aid inside North Korea, contingent upon significant improvements in transparency and monitoring.
- Establishing a regional framework for dialogue to promote human rights and fundamental freedoms. Such a framework could be built upon the six-party format created to resolve the North Korean nuclear issue.
- Creating a special envoy for human rights in North Korea to increase coordination and promotion of human rights goals among U.S. agencies, the UNHCR, and relevant countries.
- Conditioning future aid to the North Korean government on human rights and transparency benchmarks.

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lose sight of the broader, long-term issues that remain obstacles to securing stability and ultimate peace on the Korean peninsula—especially improving basic human conditions for millions of suffering North Koreans.

Because it seeks to accomplish precisely this goal, the North Korean Human Rights Act incorporates core American principles into U.S. policy toward the Korean peninsula and furthers U.S. interests in Northeast Asia. Yet, for the act to have a positive influence in the region, both the Administration and Congress should work to correct misperceptions about the act and its purpose and to garner cooperation and support to achieve its goals.

The Human Rights Problem in North Korea

The problem of human rights, or rather human “wrongs,” in North Korea has been a decades-long tragedy that has gained notoriety only in recent years. Numerous defectors, some of whom have testified before Congress, have conveyed the stark reality that North Koreans continue to endure some of the most horrific conditions ever perpetuated by a political regime.

Specifically, North Koreans live within a closed, totalitarian society that permits no dissent and strictly curtails freedoms of speech, press, religion, and assembly.² Even the basic human right to food is wielded as a political tool by the North Korean government. In the early 1990s, the failing economic system led to famines in which more than an estimated 2 million people died of starvation. The regime also maintains a brutal system of prison camps that house an estimated 200,000 political inmates, who are subject to slave labor,

torture, and execution.³ Human Rights Watch ranks North Korea as the world’s most repressive regime in its *World Report 2005*.⁴

Tens of thousands have made the harrowing escape from North Korea, primarily to China, but their fate there is often more uncertain. China currently refuses to allow the United Nations High Commissioner for Refugees (UNHCR) to identify, monitor, and care for genuine North Korean refugees. Rather, Beijing continues to label North Korean refugees as illegal economic migrants, and its official policy is to repatriate them forcibly to North Korea. This is done despite the most recent UNHCR report, which challenges China’s refusal to grant refugee status to North Koreans even though they flee their homeland for two reasons: to find food and out of fear of political reprisals. Both reasons fall within the definition of “refugee” under international law.⁵ Upon repatriation to North Korea from China, the refugees and their entire families face imprisonment, torture, and execution. Those “lucky” enough to escape forced repatriation from China are forced to live in hiding, subject to exploitation and abuse.

The North Korean Human Rights Act of 2004

In response to the ongoing human rights crises in North Korea, this bipartisan legislation seeks to (1) promote international cooperation on North Korean human rights, (2) increase transparency in the provision of humanitarian assistance to the North Korean people, and (3) protect North Korean refugees.

With regard to human rights, the act specifically calls for the executive branch to include North

1. Public Law 108-333.
2. For details, see U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, “Korea, Democratic People’s Republic of,” in *Country Reports on Human Rights Practices, 2003*, February 25, 2004, at www.state.gov/g/drl/rls/hrrpt/2003/27775.htm (February 1, 2005), and U.S. Commission on International Religious Freedom, *Annual Report of the United States Commission on International Religious Freedom*, May 2004, at www.uscirf.gov/reports/12May04/2004annualRpt.pdf (February 1, 2005).
3. See Lee Keum-Soon, Choi Euichul, Suh Jae Jean, Lim Soon-Hee, Lee Woo-Young, and Kim Soo-Am, *White Paper on Human Rights in North Korea* (Seoul: Korea Institute for National Unification, 2004), pp. 217–270.
4. Human Rights Watch, *World Report 2005*, at www.hrw.org/wr2k5/wr2005.pdf (February 1, 2005).
5. See Reuters, “UN Rights Envoy Urges Reform in North Korea,” January 27, 2005.

Korean human rights as a principal issue when the U.S. government negotiates with Pyongyang and with other northeastern Asian countries. It authorizes up to \$2 million annually for non-governmental organizations (NGOs) that promote human rights, democracy, rule of law, a market economy, and freedom of information through the expansion of broadcasts and distribution of radios to North Korea.

For humanitarian assistance, the act authorizes up to \$20 million annually for North Korean refugees. While it endorses continuation of U.S. humanitarian aid (primarily food) to North Korea, it also seeks greater transparency in these deliveries. The act also makes any direct assistance to the North Korean government conditional on human rights and transparency benchmarks, such as evidence that aid is delivered to those that need it and not diverted by the government. Yet the act also allows the President to waive these restrictions for national security purposes.

To further the protection of refugees, the bill calls for a formal clarification of U.S. policy and affirms the eligibility of North Koreans to seek protection as refugees under current U.S. law. The act urges the UNHCR to use all available means to gain access to North Koreans in China. It also urges Chinese authorities to act in accordance with international community standards and to fulfill China's obligations as a signatory to the 1951 U.N. Refugee Convention and the related 1966 protocol.⁶

To garner regional support, the act calls for the establishment of a regional framework for discussing and promoting human rights in North Korea. This is an attempt to replicate the successes of the Commission for Security and Cooperation in Europe and the Helsinki Process in improving human rights in the Soviet Union and Eastern Europe in the late 1980s.

Finally, the act calls for the President to appoint a special envoy on human rights in North Korea within the Department of State. The special envoy will work to coordinate international efforts—governmental and non-governmental—to promote human rights in North Korea. The envoy will also focus on supporting UNHCR human rights resolutions.

What the Act Is Not

Although it is difficult to imagine why anyone would criticize the goal of easing the human rights problem in North Korea, some critics, particularly those overseas, may be disconcerted by the perception of alleged hidden agendas or political motives. Yet, as the report from the House Committee on International Relations clearly states, the act is not a political tool. Rather:

[It] is motivated by a genuine desire for improvements in human rights, refugee protection, and humanitarian transparency. It is not a pretext for a hidden strategy to provoke regime collapse or to seek collateral advantage in ongoing strategic negotiations [with North Korea].⁷

The act furthers the broad range of U.S. interests vis-à-vis North Korea, including easing security concerns, by not tying the President's hands in ongoing negotiations over North Korea's nuclear programs. For example, the act specifically authorizes the President to approve bilateral non-humanitarian aid, which may be a crucial element in any future agreement on North Korea's nuclear programs.

The act also does not open the immigration "floodgate" to the United States. It recognizes that the principal responsibility for North Korean refugee resettlement naturally falls to South Korea. The

6. The 1951 U.N. Refugee Convention establishes a shared definition of "refugee" and the scope of protection attached to refugee status. It recognizes the principle that persons escaping persecution cannot be penalized for having entered illegally into the country in which they seek asylum. See United Nations, "Convention Relating to the Status of Refugees," July 28, 1951, at www.unhcr.ch/html/menu3/b/o_c_ref.htm (February 1, 2005), and United Nations, "Protocol Relating to the Status of Refugees," December 16, 1966, at www.unhcr.ch/html/menu3/b/o_p_ref.htm (February 1, 2005).

7. Press release, "Statement of Rep. James A. Leach Floor: Consideration of H.R. 4011, The North Korean Human Rights Act of 2004," Office of U.S. Representative James A. Leach (R-IA), July 21, 2004, at www.house.gov/leach/leachfloorstatement.doc (February 1, 2005).

legislation instead promotes prudent U.S. efforts to accept a credible number of North Korean refugees into the United States on a case-by-case basis. It does not mandate admitting certain numbers of North Koreans to the United States, nor does it raise the annual U.S. refugee cap. It also does not interfere with or limit the authority of U.S. immigration and homeland security agencies to condition and regulate the entry of North Koreans into the United States.

South Korea and North Korean Human Rights

While the plight of North Korean citizens has gained increased scrutiny in the United States and elsewhere, South Korea—both its government and society—have remained relatively silent on this issue. During the UNHCR meeting in Geneva in March 2004, the South Korean government even abstained from voting on a U.N. resolution calling for improvement in human rights in North Korea.

The South Korean government's position is that any open discussion with North Korea about its human rights abuses will anger that regime and thus damage the tentative improvement in inter-Korean relations that has been forged in recent years under former South Korean President Kim Dae Jung's policy of engagement, or "sunshine policy." Moreover, Seoul fears that efforts to pressure Pyongyang on its human rights record now will damage any potential progress in the ongoing six-party process to end North Korea's nuclear programs. South Korea also has trepidations about increasing pressure on China at a time when Beijing's cooperation is considered crucial to the nuclear talks.

Thus, South Korea has chosen to take human rights off the table as an issue for negotiation in its bilateral relations with North Korea and instead has quietly pursued assistance programs. By law, the government is required to provide living assistance to North Korean refugees after they settle in South Korea. Approximately 6,000 refugees are

currently living in South Korea, and in July 2004, South Korea accepted 468 North Korean refugees via Vietnam, the largest single entry to date.

However, the government announced in December 2004 that it would tighten screening of defectors seeking asylum at South Korea's foreign missions, particularly in China. The Unification Minister even seemed to apologize for accepting such a large number of refugees, saying that the government does not want to create an impression that it is trying to undermine the stability and leadership of North Korea.⁸

Ultimately, South Korea must be responsible for taking leadership on easing the plight of its brethren in North Korea. After all, it is the South Korean people that must reckon with future unification, however that may be achieved. Yet this reality should not prohibit the United States either from taking a strong principled stance against human rights violations or from incorporating such principles into its dealings with North Korea. The United States has always supported the progress of democracy, civil liberties, and the vibrant growth of the market economy in South Korea. It should do the same in the North.

The North Korean Nuclear Issue

The single most pressing issue that the United States currently faces in North Korea is North Korea's illicit nuclear weapons programs, and Washington should not lose sight of the goal of finding a diplomatic solution to this problem.⁹ While some may argue that any inclusion of human rights in the agenda unnecessarily detracts from the task at hand, the reality is that, in order for Washington to continue to pursue its principled stance vis-à-vis Pyongyang, it must be willing to include the provision of basic human rights in the negotiation process.

The Kim Jong Il regime objects to international inspectors inspecting its nuclear programs for the same reasons that there is little transparency in

8. "North Korean Defectors Face Enhanced Screening," *Korea Times*, December 24, 2004.

9. For further information, see Balbina Y. Hwang, "Resolving the North Korean Nuclear Issue," Heritage Foundation Executive Memorandum No. 875, May 8, 2003, at www.heritage.org/Research/AsiaandthePacific/em875.cfm.

food and other humanitarian assistance to North Korea: Transparency would reveal to the world the true extent of the regime's abuses. Without pressure from the international community, the North Korean regime will never alter its actions, whether proliferating weapons or abusing its citizens. Thus, the United States must insist that North Korea meet certain basic human needs, especially as Washington prepares to consider a number of options including economic assistance, but only if North Korea first halts its nuclear programs.

Furthering U.S. and Regional Interests

With enactment of the North Korean Human Rights Act, the United States has taken an important step in emphasizing human rights as a key element of North Korea policy. The greatest impediment to the act's effectiveness is the negative response to its passage, particularly in South Korea and China. However, in Japan, both the ruling and opposition parties in the parliament are considering enacting a similar legislation, aimed at improving human rights in North Korea.¹⁰

Therefore, the United States government should work to correct misperceptions about the act and its purpose—especially in South Korea—by taking the following actions:

- President Bush should invite South Korean President Roh Moo Hyun to a summit meeting as soon as possible. During this meeting, President Bush should reassure the South Korean leader about the act and its purpose.
- Administration officials responsible for Northeast Asia policy should discuss the act and its objectives in their regular dialogues with their counterparts in Asia.
- Members of Congress should use the existing Korea Caucus to initiate bilateral dialogue with their counterparts in the South Korean National Assembly on the issue of North Korean human rights. The caucus should also organize meetings that bring South Korean officials together with NGOs working on North Korean human rights issues to discuss

activities that are not counterproductive to South Korean interests. Organizations such as the Korea–U.S. Exchange Council could be instrumental in developing such programs and exchanges.

- The U.S. embassy in Seoul should task a representative in South Korea with engaging in public diplomacy activities that promote the intent of the North Korean Human Rights Act and dispelling myths and misperceptions, particularly in the South Korean media and on the Internet.
- The President should appoint a special envoy on human rights in North Korea as quickly as possible, and the nominee should be someone with a background in human rights and a strong background in Korean politics, both North and South. Sensitivity to South Korean constraints and interests is critical to achieving real progress under the act.
- The special envoy for North Korean human rights should work closely with the UNHCR and the Chinese government to insist on reclassification of North Korean refugees in China in accordance with that government's international obligations.

Conclusion

Alleviating the plight of North Korean refugees and working to improve human rights in North Korea should be a goal that is universally accepted by Americans and Koreans alike. At the least, it should not be a source of tension between two allies, particularly during the critical process of resolving the North Korean nuclear issue. Close cooperation and coordination between the United States and South Korea have never been more important to finding a permanent solution to peace and stability on the peninsula.

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10. Kyodo News, "Human Rights Bill Aimed at North Korea May Be Needed," January 17, 2005.