



# Promoting the Well-Being of North Korea's Residents and Refugees through US-ROK Cooperation

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## **Pacific Forum**

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# TABLE OF CONTENTS

|  |           |
|--|-----------|
| <b>EXECUTIVE SUMMARY .....</b>   | <b>IV</b> |
| <b>I. INTRODUCTION .....</b>   | <b>1</b>  |
| <b>II. CURRENT SITUATION CONCERNING NORTH KOREA’S<br/>RESIDENTS AND REFUGEES.....</b>                                | <b>2</b>  |
| <b>III. US POLICY TOWARD NORTH KOREAN HUMAN RIGHTS – THE<br/>NORTH KOREAN HUMAN RIGHTS ACT OF 2004.....</b>          | <b>4</b>  |
| <b>IV. SOUTH KOREAN POLICY TOWARD NORTH KOREAN HUMAN<br/>RIGHTS – THE NORTH KOREA HUMAN RIGHTS ACT OF 2016 .....</b> | <b>8</b>  |
| <b>V. STRONG BILATERAL COOPERATION ON NORTH KOREAN HUMAN<br/>RIGHTS.....</b>   | <b>14</b> |
| <b>VI. CONCLUSION .....</b>  | <b>22</b> |
| <b>VII. APPENDICES .....</b>   | <b>22</b> |
| <b>ABOUT THE AUTHOR .....</b>  | <b>27</b> |

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## EXECUTIVE SUMMARY

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Under extreme poverty and political repression, many North Koreans endure systematic, widespread and gross human rights violations, along with a protracted, entrenched humanitarian crisis. Many are malnourished and lack clean water, proper sanitation and basic health care. Young children, pregnant women, people with disabilities and the elderly have become the most vulnerable to such privations. These deplorable conditions are exacerbated by continued denial of human rights, including torture and other inhumane treatment, political imprisonment, public executions and suppression of speech, information, religion and movement. A former United Nations high commissioner for human rights described North Korea's human rights situation as "incomparable . . . anywhere in the world, past or present." And Thomas Buergenthal, a former International Criminal Court judge and survivor of Auschwitz, described the conditions in North Korean prison camps as "terrible, or even worse, than Nazi camps."

The few North Koreans who manage to escape face additional horrors. Initially, escapees risk being shot and killed by North Korean soldiers as they approach the border. If they manage to cross the border safely, their status as illegal economic migrants, rather than political refugees, presents enormous danger. Women and children are subjected to work in invisible and highly dangerous industries, leaving them particularly vulnerable to sexual and labor exploitation. Approximately 80% of female defectors, studies have shown, have been sold through human trafficking into commercial sex exploitation, enslaved marriage and exploitative labor. All live under the constant fear of being repatriated to North Korea, where they face severe punishment and/or execution.

Both the United States and South Korea possess the legislative foundations to address such atrocities. Yet the administrations of Presidents Donald Trump and Moon Jae-in have chosen to ignore them, apparently out of concern that any such discussion would ruffle North Korean feathers at a time of attempted rapprochement. The rationale is that North Korea has become a threat to international peace and security by developing nuclear weapons and ballistic missiles.

This paper argues that those security concerns should not be considered in isolation. It proposes that the United States and South Korea adopt cooperative and coherent measures to pressure North Korea to improve its human rights record. The Helsinki Accords of 1975 provide the formula for this process. While bringing human rights to the negotiating table may anger the Pyongyang regime in the short term, in the long term it would be beneficial to all involved, particularly in the event of reunification. At the same time, the allies should offer humanitarian assistance to North Korea through internationally monitored and transparent channels. Specifically, South Korea should proceed with the delivery of \$8 million in humanitarian aid to the World Food Programme and UN International Children's Emergency Fund (UNICEF) that Moon pledged in May 2019. The United States should also free up its promised international aid and do more to help North Korean refugees.

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## INTRODUCTION

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Under extreme poverty and political repression, many North Korean residents have been subject to “systematic, widespread, and gross human rights violations,” along with a protracted, entrenched humanitarian crisis.<sup>1</sup> The deplorable living conditions in North Korea have been exacerbated by continued denial of human rights – political oppression, torture and other inhumane treatment. They also lack sufficient food and have limited access to basic health care. In 2014, the United Nations (UN)’s Commission of Inquiry (COI) categorized the human rights violations against the North Korean people into nine specific areas: 1) malnutrition; 2) prison camps; 3) torture and other inhumane treatment; 4) arbitrary detention; 5) discrimination; 6) a lack of freedom of expression; 7) restrictions on abortion; 8) restrictions on movement; and 9) forced disappearances, including the abduction of foreigners. The report characterized North Korea as a totalitarian state pursuant to human rights policies at the highest level of the government.

Women and children are subjected to work in invisible and highly dangerous industries, leaving them particularly vulnerable to sexual exploitation and forced labor. Approximately 80% of female defectors have been sold into commercial sex exploitation, enslaved marriage, and exploitative labor.<sup>2</sup> North Korean refugees who attempt to escape from such conditions face a perilous journey through China. Initially escapees risk being shot and killed by North Korean soldiers as they cross the border area.<sup>3</sup> Even if they manage to cross the border safely into China, their status as illegal economic migrants presents enormous danger throughout the 3,000 mile cross-country journey. They evade the Special Chinese Task Force specifically appointed to locate, detain, and repatriate North Korean refugees to their home country where they are tortured, imprisoned, or publicly executed for fleeing the regime based on the “Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas” established between China and North Korea in 1986.<sup>4</sup>

Under the Trump and Moon administrations, these issues surrounding North Korean residents and refugees have been neglected in a combined five summits in 2018 and 2019.<sup>5</sup> As the UN COI leader Michael Kirby strongly emphasized, “human rights and peace and security are not divorced,”<sup>6</sup> thus the absence of human rights discussions in current policies by both the US

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<sup>1</sup> Commission of Inquiry (COI) on Human Rights in the Democratic People’s Republic of Korea, *Report of the COI on Human Rights in the Democratic People’s Republic of Korea – A/HRC/25/63*.

<sup>2</sup> Mark P. Lagon, “A Struggle for Survival: Trafficking of North Korean Women,” Remarks at the Woodrow Wilson International Center for Scholars, March 3, 2008, <https://2001-2009.state.gov/g/tip/rls/rm/2008/101674.htm>.

<sup>3</sup> In this paper, the terms “defectors,” “refugees,” and “escapees” refer to the people who flee North Korea for economic and political oppression, and are considered interchangeable for convenience.

<sup>4</sup> Democratic People’s Republic of Korea Ministry of State Security and People’s Republic of China Ministry of Public Security, *Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas, 1986, Article 4*.

<sup>5</sup> These issues were avoided in the Trump-Kim summits in Singapore and Hanoi, as well as in the three inter-Korean summits.

<sup>6</sup> Michael Kirby, “Crimes against Humanity Demand Accountability,” *The Washington Times*, March 30, 2016, <https://www.washingtontimes.com/news/2016/mar/30/north-korea-nuclear-threat-crimes-against-humanity/>.

and South Korea has hindered progress toward true peace and prosperity on the Korean Peninsula. Since 1953, the US and South Korea military alliance – "the relationship forged in blood" – has promoted security and peace against North Korea's security threats.<sup>7</sup> Now these allied countries need to go beyond merely focusing on security elements, which always rely on an *anti-* to legitimize their mandate. Rather, they should begin to shed light on *pro-* values – human rights, democracy, and the rule of law – with more systematic and coordinated measures to demonstrate the alliance's commitment to true peace and prosperity for North Korean residents and refugees. It is critical to explore the possibility of strategic cooperation between the US and South Korea predicated on comparing perspectives toward North Korean human rights issues based on the countries' pertinent legislation.

First, this research paper explores the current situation of North Korea's residents and refugees. It goes on to examine the US NKHRA of 2004 by discussing its background, specific provisions, and current challenges in the Trump administration. Subsequently, it analyzes how South Korea's NKHRA of 2016 was passed after 11 years of controversy and debate, and how it set the legal foundation with its specific provisions following several challenges. Lastly, it will scrutinize the similarities and differences between the two and provide four policy recommendations for bilateral strategic cooperation to improve the lives of North Korean residents and refugees. Through this analysis, the paper will provide a vision for how the US and South Korea can pursue more cooperative and coordinated policies on human rights issues toward North Korea with a parallel expansion on security issues.

## **Current situation concerning North Korean residents and refugees**

### *North Korean residents' human rights and humanitarian crisis*

As numerous human rights reports, including the 2014 UN COI report, address North Korea's human rights situation, North Korean residents suffer from its regime's systematic, widespread and gross human rights abuses such as public executions, collective punishment, political prison camps, and suppression of freedom of religion, information, movement, and speech. Navi Pillay, the former UN high commissioner for human rights, described North Korea's current human rights situation as an "incomparable situation anywhere in the world, past or present."<sup>8</sup> Thomas Buergenthal, a former ICC judge and survivor of Auschwitz, described the conditions in the North Korean prison camps as "terrible, or even worse, than Nazi camps" with the 2017 findings of the International Bar Association (IBA) War Crimes Committee.<sup>9</sup>

Moreover, North Koreans currently suffer more than ever from a protracted, entrenched humanitarian crisis, which is mostly forgotten or overlooked by the international community,

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<sup>7</sup> Stueck, William, and Boram Yi. "An Alliance Forged in Blood': The American Occupation of Korea, the Korean War, and the US–South Korean Alliance." *Journal of Strategic Studies* 33, no. 2 (April 26, 2010): 177–209.

<https://www.tandfonline.com/doi/pdf/10.1080/01402391003590200?needAccess=true>.

<sup>8</sup> Joseph Hincks, "Worse Than Nazi Camps.' New Report Details Gruesome Crimes Against Humanity at North Korean Prisons," *Time*, December 12, 2017, <https://time.com/5060144/north-korea-political-prisons/>.

<sup>9</sup> International Bar Association, *North Korea: Inquiry finds Kim Jong-un should be investigated and prosecuted for crimes against humanity*, Dec. 12, 2017, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=8ae0f29d-4283-4151-a573-a66b2c1ab480>.

involving food security and nutrition. According to the World Food Programme (WFP), the food-assistance branch of the United Nations and the world's largest humanitarian organization promoting food security, an estimated 18 million people (approximately 72% of the population) continue to suffer from food insecurity and undernutrition.<sup>10</sup> These contributing factors to DPRK's humanitarian crisis have been exacerbated by frequent natural disasters (see Appendix A). Notably, the spring of 2019 saw the worst drought in 37 years, which pushed 10 million people to a condition where they were “in urgent need of food assistance.”<sup>11</sup> In this vein, the report produced by WFP and its Food and Agriculture Organization (FAO) in April 2019 addressed humanitarian assistance for North Korea, whose crop output in 2018 hit the lowest level since 2008.

Most North Koreans also suffer critical health problems caused by limited access to basic health care and sanitation. Children under the age of five, pregnant women, people with disabilities, and the elderly have become the most vulnerable to such lack of basic services. For children under five, the two primary causes of death are diarrhea and pneumonia, mainly caused by the lack of safe drinking water, poor sanitation and bad hygiene.<sup>12</sup> Mortality due to post-partum hemorrhage is rampant among women who give birth at home.<sup>13</sup> This public health crisis, compounded by a shortage of clean water and sanitation facilities, necessitates a coherent and consistent humanitarian response and aid from South Korea, the United States, and international organizations.

#### *North Korean refugees' human rights and humanitarian crisis*

Since Kim Jong Un took power in North Korea in December 2011, North Korean refugees have faced unbearable conditions. Tightened border control between North Korea and China, along with China's 2017 crackdown on North Koreans trying to escape through China, has made North Korean defectors more vulnerable to human rights violations—abduction, trafficking and sexual abuse.<sup>14</sup> Even without referring to international law for refugees, these policies violate international laws prohibiting crimes against humanity, particularly the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention against Transnational Organized Crime.<sup>15</sup>

Humanitarian groups working in China report that women and children have been exposed to cruel and inhumane treatment such as sexual exploitation and forced labor. Most of them crossed the border in search of “opportunities” to earn money to send back to families in North Korea. However, in several cases, these “opportunities” for women involved selling sexual

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<sup>10</sup> World Food Programme, *2017 DPR Korea Needs and Priorities*, March 2017, <https://dprkorea.un.org/en/10159-dpr-korea-needs-and-priorities-overview-2017>.

<sup>11</sup> BBC News, “North Korea Suffers Worst Drought in Decades,” May 16, 2019, <https://www.bbc.com/news/world-asia-48290957>.

<sup>12</sup> World Food Programme, *2017 DPR Korea Needs and Priorities*, March 2017, <https://dprkorea.un.org/en/10159-dpr-korea-needs-and-priorities-overview-2017>.

<sup>13</sup> *Ibid.*

<sup>14</sup> Phil Robertson, “North Korean Refugees Trapped by China's Expanding Dragnet,” *Human Rights Watch*, Sept. 18, 2017, <https://www.hrw.org/news/2017/09/18/north-korean-refugees-trapped-chinas-expanding-dragnet>.

<sup>15</sup> U.S. Department of State, *Trafficking in Persons Report June 2009*, 119, <https://2009-2017.state.gov/documents/organization/192594.pdf>.

services, not merely through prostitution, but often through the agency of a third party who shelters, abducts, or in some other way controls the women, taking advantage of their undocumented status. Under this dire situation, women are not only beaten or imprisoned, but they also suffer from prejudice and the stigma associated with selling their bodies. However, they cannot express their grievances because revealing their identity would lead to repatriation. Furthermore, the young people known in Hangul as *kekot-jebi* (child vagrants, orphans, and unaccompanied minors) are the most vulnerable to being rounded up when periodic repatriation crackdowns in China occur. They are beset by fears of forced repatriation, imprisonment, torture, and possible execution, and are routinely hearing of and witnessing the public execution of prisoners.<sup>16</sup>

The North Korean regime has associated the defector problem with the survival of its regime. Although North Korea signed the International Covenant on Civil and Political Rights (ICCPR) in 1981, it considers defectors as antisocialists and criminals who have illegally fled the country. Thus, the strengthened control and punishment measures, and the crackdowns in China have made their journey for freedom as refugees more grueling and increasingly deplorable.

### **US policies toward North Korean human rights – The North Korean Human Rights Act of 2004**

The United States became the first country to lay out a domestic legal foundation to promote human rights and freedom in North Korea. To analyze US policies on North Korea's human rights issues, it is essential to explore its 2004 NKHRA.

#### *Background—uncontroversial and unanimous approval*

The 2004 NKHRA was first enacted during the George W. Bush administration after being passed unanimously by both the US Senate and the House of Representatives.<sup>17</sup> Compared to the 11 years that it took the South Korean National Assembly to pass its 2016 NKHRA, the three weeks it took for the US to sign the 2004 NKHRA into law reveals the contrasting bipartisan approach of US lawmakers to advance North Korea's human rights issues. This Act further demonstrates the US's strong will to utilize its foreign policy to promote democratic values and protect human rights.<sup>18</sup>

In early 2000, several books and reports on human rights issues in North Korea were compiled and disseminated by non-governmental organizations (NGOs). They drew close congressional attention and prompted legislative action. One book, *The Aquariums of Pyongyang*, published in 2001, conveyed a first-hand account of the imprisonment of Kang Chol Hwan in the *Yodok* concentration camp. A 2003 report, *The Hidden Gulag*, published by the Committee for Human Rights in North Korea, also served as a useful first-hand account. These narratives as well as

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<sup>16</sup> U.S. Department of State, *Country Report on Human Rights Practices 2004: Democratic People's Republic of Korea*, <http://www.state.gov/g/drl/rls/hrrpt/2004/41646.htm>.

<sup>17</sup> The U.S. Government Printing Office, *An Act to Promote Human Rights and Freedom in the Democratic People's Republic of Korea, and for other purposes*.

<sup>18</sup> U.S. Department of State, *Bureau of Democracy, Human Rights, and Labor*, <https://www.state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/bureau-of-democracy-human-rights-and-labor/>.



other testimony and hearings prompted a bill titled “The North Korean Freedom Act of 2003.” The bill was introduced by then-Sen. Sam Brownback (R-Kansas) on Nov. 20, 2003, but it was not enacted due to the lack of support, particularly from the leadership of the Senate Foreign Relations Committee. This legislative effort became politicized and was seen by some members of Congress as a veiled call for regime change; moreover, it provided for humanitarian aid that was considered counterproductive.<sup>19</sup> Thus, the Freedom Act, which tried to address all elements of US relations with North Korea – from human rights, democracy, development in North Korea to overall security on the Korean Peninsula and its ripple effects worldwide – was revised by then-Rep. Jim Leach (R-Iowa) to become less political and more humanitarian in the form of the North Korean Human Rights Act (NKHRA) of 2004.<sup>20</sup>

#### *Provisions of the NKHRA of 2004*

In response to the ongoing systematic human rights crisis in North Korea, the NKHRA of 2004 included three significant elements: 1) promoting the human rights of North Koreans; 2) assisting North Koreans in need; and 3) protecting North Korean refugees. This Act calls for concerted efforts from different executive and legislative institutions including Congress, the Department of State, the Department of Homeland Security, and the United States Agency for International Development (USAID) to tackle the human rights and humanitarian issues in North Korea.

#### *– Title I of NKHRA of 2004: Promoting the Human Rights of North Koreans<sup>21</sup>*

The articles under Title I of NKHRA, in general, place a strong emphasis on the role of diplomacy to advance the North Korean human rights situation. In particular, Section 101 provides a clear guideline to the US Congress for possible future negotiations with North Korea by stating that the human rights of North Koreans should remain the US’s primary concern regarding North Korea. This section also addresses the potential opportunity for the human rights dialogue with North Korea. This dialogue can be modeled on the 1975 Helsinki process, as the Helsinki Accords serve as a unique international instrument that correlates human rights and security and initiated discussion of human rights and fundamental freedoms between the Soviet and Western blocs in the 1970s. More importantly, the NKHRA’s Section 107 requires the president to appoint a special envoy for human rights in North Korea within the US State Department to better and more effectively cooperate with international, governmental, and non-governmental organizations on this issue. In addition to these diplomatic efforts, Section 102 sets the legal foundation for annual grants of up to \$2 million for private and other non-governmental organizations (NGOs) to promote human rights, diplomacy, the rule of law, and the development of a market economy in North Korea, as well as increase the inflow of information through broadcasts and radios.<sup>22</sup>

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<sup>19</sup> Karin Lee and Adam Miles, “North Korea on Capitol Hill,” *Asian Perspective* 28, no. 4, Special Issue on Transforming U.S.-Korean Relations (2004): 185-207, <https://www.jstor.org/stable/42704483>.

<sup>20</sup> 108<sup>th</sup> U.S. Congress (2003-2004), *H.R. 3573, 108th Congress: North Korean Freedom Act of 2003*.

<sup>21</sup> See Appendix B.

<sup>22</sup> 108<sup>th</sup> U.S. Congress (2003-2004), *H.R.4011 - North Korean Human Rights Act of 2004*.

– *Title II of NKHRA of 2004: Assisting North Koreans in Need*<sup>23</sup>

Under Title II, US humanitarian assistance is defined as benefitting North Koreans in need who are living both inside and outside of North Korea. Specifically, the Act authorizes up to \$20 million annually for North Korean refugees.<sup>24</sup> In terms of the implementation, transparent monitoring channels are strongly highlighted, as the terms “transparency” and “monitoring” are mentioned 10 times from Section 201 to Section 203. This is primarily to prevent any humanitarian assistance from being misused or diverted to military and political purposes and to ensure that assistance is distributed to those most in need. The Act also encourages other countries to follow internationally recognized humanitarian standards, rather than pursue direct aid to the North Korean government.

– *Title III of NKHRA of 2004: Protecting North Korean Refugees*<sup>25</sup>

Title III takes an extra measure to protect North Korean refugees, serving as a legislative bedrock for US policy in mainly two aspects: 1) protecting North Koreans passing through China and 2) accepting North Korean refugees to the United States. Section 304 highlights the need for unhampered access to North Koreans inside China in order to provide them with refugee status and assistance. It illustrates US determination to serve as a bastion of universal values and common human rights by pressuring China through cooperation with other donor countries and international organizations.<sup>26</sup> Further, Section 305 requests relevant actions to assist North Korean refugees with settling in the US and integrating better within their host societies through the US refugee program.

*Current challenges under the Trump administration*

On July 10, 2018, the NKHRA was reauthorized and signed into law by President Donald Trump. This legislation was the third approval after previous authorizations in 2008 and 2012, and it will remain in effect until 2022. This 2017 version of the NKHRA demonstrates resolve to ensure that US policy toward North Korea promotes respect for the human rights of the North Korean people. Compared to the two previous reauthorizations of 2008 and 2012, the Reauthorization Act of 2017 took an unusual path before passing into law. The previous two reauthorizations were approved by Congress and signed by the president several months before the legislation expired.<sup>27</sup> However, the Reauthorization Act of 2017 took six extra months after the NKHRA had expired. Nonetheless, the final version amended by the Senate was approved in the House of Representatives with unanimous support with a vote of 415 to 0 in 2018.

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<sup>23</sup> See Appendix C.

<sup>24</sup> Balbina Hwang, “Spotlight on the North Korean Human Rights Act: Correcting Misperceptions,” *The Heritage Foundation*, Feb. 10, 2005, <https://www.heritage.org/asia/report/spotlight-the-north-korean-human-rights-act-correctingmisperceptions>.

<sup>25</sup> See Appendix D.

<sup>26</sup> 108<sup>th</sup> U.S. Congress (2003-2004), *H.R.4011 - North Korean Human Rights Act of 2004*.

<sup>27</sup> Robert R. King, “Congress Affirms Concern for North Korea Human Rights: Extends Human Rights Act,” *Center for Strategic and International Studies*, July 12, 2018, <https://www.csis.org/analysis/congress-affirms-concern-north-korea-human-rights-extends-human-rights-act>.

The Trump administration's general limitations on refugee admissions have been unfavorable to North Koreans. The Reauthorization Act of 2017, Section 2 "Findings," indicates that only 212 refugees from North Korea were resettled in the US between the enactment of NKHRA of 2004 and July 2018.<sup>28</sup> More specifically, since the first nine North Korean refugees legally entered the US in 2006, entries were in the double digits each year until 2016, one year before Trump took office. In 2017, only one North Korean defector arrived in the US and five were admitted in 2018.<sup>29</sup> Given the US Refugee Admissions Program remains the largest in the world, this number is marginal. It is worth noting that in 2017, the US admitted 22,491 refugees from all countries. However, this figure was the lowest number since the refugee resettlement program was created in 1980.<sup>30</sup> According to *The New York Times*, the more protracted wait and complicated process impeded North Korean refugees from applying for resettlement in the US over the past few years.

The Trump administration's humanitarian foreign aid policy also has raised concerns. The administration has proposed a 23% cut in foreign aid in its 2020 budget,<sup>31</sup> and the Office of Management and Budget also instructed the State Department and the USAID in July to freeze unspent money in their budgets. This would seriously undercut humanitarian assistance to North Korea. According to remarks at the Center of Strategic and International Studies (CSIS) by USAID Administrator Mark Green, no discussions and official notification regarding the assistance to North Korea took place in 2018.<sup>32</sup>

Moreover, the position of special envoy on North Korea human rights, created by the US NKHRA of 2004, has been vacant since January 2017. This is not unique or exclusive to North Korea. A significant number of senior positions remain unfilled at the State Department under the Trump administration. But the vacancy is a strategic and diplomatic loss in relations with North Korea, and arguably with the international community at large. As the special envoy can play an essential role in suggesting a coherent and integrated policy encompassing all parts of government – the White House, the National Security Council, the State Department, and USAID – on this issue, appointing a competent and experienced individual to this seat should be prioritized to maximize US diplomacy and liberal values in this human rights issue.

### **South Korea's policies towards North Korean human rights – The North Korea Human Rights Act (NKHRA) of 2016**

To analyze South Korea's policies toward the human rights and humanitarian issues faced by the North Korean people, I will explore its NKHRA of 2016, which serves as a cornerstone

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<sup>28</sup> 115th U.S. Congress (2017-2018), *H.R.2061 - North Korean Human Rights Reauthorization Act of 2017*.

<sup>29</sup> Miriam Jordan, "U.S. Admission of North Korean Defectors Has Slowed to a Trickle," *The New York Times*, Oct. 25, 2018, <https://www.nytimes.com/2018/10/25/us/north-korea-refugees-defectors-usa-utah.html>.

<sup>30</sup> *Ibid.*,

<sup>31</sup> Eran Bendavid, "Foreign Aid for Public Health Bolsters America's 'Soft Power,'" *Stanford Medicine News Center*, May 16, 2019, <https://med.stanford.edu/news/all-news/2019/05/foreign-aid-for-public-health-bolsters-americas-soft-power.html>.

<sup>32</sup> U.S. Agency for International Development, *U.S. Agency for International Development Administrator Mark Green's Remarks*, Aug. 20, 2018, <https://www.usaid.gov/news-information/press-releases/aug-20-2018-usaid-administrator-mark-green-deliver-remarks-world-humanitarian-day-event>.

for South Korea's policies on the North Korean human rights and humanitarian crisis. I will analyze the background of the NKHRA of 2016, its specific provisions, and some implementation challenges.

*Background—A partisan, not a bipartisan issue*  
– *The 17<sup>th</sup> and 18<sup>th</sup> Korean national assemblies (2005 to 2012)*

It took 11 years for the NKHRA to pass the Korean National Assembly. The North Korean human rights bill was first introduced in 2005 in the 17th Korean National Assembly.<sup>33</sup> The bill was in line with the international community's motions, including the United Nations Human Rights Council's first resolution of 2003 concerning the violations of human rights in North Korea and the US NKHRA of 2004 under President George W. Bush. The initial proposal for the bill included the appointment of an ambassador for human rights in North Korea as well as the establishment of the Human Rights Advisory Committee, the Human Rights Archive, and governmental support to NGOs for North Korean human rights. However, faced with opposition from the ruling progressive *Uri* Party, the bill was discarded due to the expiration of the 17<sup>th</sup> National Assembly session. Reasons cited for the opposition from the *Uri* Party include: 1) ignorance of the special inter-Korean relations, 2) the effectiveness of the bill, 3) domestic affairs pressing through, and 4) interest groups lobbying against inter-Korean talks. This same pattern happened in the 18<sup>th</sup> National Assembly from 2008 to 2012, when three bills addressing an improvement of North Korea's human rights situation and the establishment of a North Korea Human Rights Foundation failed to pass. This also was due to the delay and pushback from the main opposition party, the Democratic Party of Korea of 2008. The efforts to pass this bill were popularly dubbed "the bill just to support the leaflet."<sup>34</sup>

– *The 19<sup>th</sup> Korean National Assembly (2012 to 2016)*

Discussion of North Korea human rights abuses became more vibrant in the 19<sup>th</sup> National Assembly from 2012 to 2016, as Kim Jong Un's brutal and inhumane rule brought his hermit regime into sharp international focus. The execution of Jang Song Taek, vice chairman of the National Defense Commission and the uncle of Kim, in 2013 astonished South Koreans and drew international attention to human rights violations in North Korea. The UN Human Rights Council ruled that North Korea's execution of Jang and public executions in 2013 were unacceptable violations of international law.<sup>35</sup> Reports from international organizations and NGOs have condemned the "systematic, widespread, and gross human rights violations" of

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<sup>33</sup> Daily NK, "South Korea's North Korean Human Rights Bill," Aug. 12, 2006, <https://www.dailynk.com/english/south-koreas-north-korean-human-ri/>.

<sup>34</sup> Soyeon Park, "Bukhan Inkwon Bub, 2005 Nyun Balouibuteo Choigun Hapouiankkaji..." (The North Korean Human Rights Act, from the 2005 introduction to the recent passage), *MoneyToday*, Jan. 29, 2016, <https://m.news.naver.com/read.nhn?mode=LSD&mid=sec&sid1=100&oid=008&aid=0003621670>.

<sup>35</sup> Michael Kirby, "UN Commission of Inquiry on Human Rights Violations in the Democratic People's Republic of Korea – Ten Lessons," *Brookings Institution*, April 17, 2014, <https://www.brookings.edu/wp-content/uploads/2014/04/Michael-Kirby-Ten-Lessons.pdf>.

North Korea, including the 2014 UN COI report<sup>36</sup>, Human Rights Watch World reports<sup>37</sup>, and Amnesty International's report on North Korean prison camps.<sup>38</sup> South Korea's conservative and progressive parties presented separate bills under different names addressing North Korea's human rights situation in 2014, proving how much of a hot-button and pressing bipartisan issue this is in South Korea.<sup>39</sup>

These two bills have three main differences that illustrate the approaches and priorities within South Korea's domestic political factions: 1) the purpose of the bills, 2) perspectives on relations with North Korea, and 3) the role of South Korea's government.

The purpose of these two bills look similar, but they point to different directions for the improvement of North Korea's human rights. The bill proposed by the conservative *Saenuri* Party focuses more on the broad yet fundamental aim "to ensure their rights to life and to improve human rights." Conversely, the purpose of the liberal New Politics Alliance for Democracy's bill specifies the means by which the rights of North Korean residents are promoted – "establishment of humanitarian assistance projects and inter-Korean dialogue regarding human rights."

These similar, yet fundamentally different purposes stem from distinct perspectives toward the North Korean regime and inter-Korean relations. The conservative politicians focus on the legitimacy of the South Korean government, drawing from the South Korean Constitution Article 3. It indicates that the territory of the Republic of Korea consists of the Korean Peninsula and its adjacent islands.<sup>40</sup> With the 1948 refusal of Soviet forces, Kim Il Sung, the first leader of North Korea, denied UN supervisors entry into the northern part of the Korean Peninsula for the presidential elections. In this vein, the South Korean government has claimed to be the only legitimate government of all of Korea, recognized by the international community, since its establishment in 1948. This also provides the historical foundation to South Korean conservative politicians' efforts to gain international cooperation on the North Korea's human rights issue.

In contrast, the progressive parties in South Korea consider North Korea more as a special counterpart that can be trusted for reconciliation dialogues within the halls of global diplomacy. This is attributed to the 2000 North-South Joint Declaration adopted between the North Korean Leader Kim Jong Il and the South Korean President Kim Dae-jung, whose leadership is a model for progressive politicians in South Korea. This declaration explicitly claimed that the question of reunification can be resolved independently and through the joint efforts of the

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<sup>36</sup> United Nations, General Assembly, *Report of the commission of inquiry on human rights in the Democratic People's Republic of Korea*, A/HRC/25/63 (Feb. 7, 2014), available from <https://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/ReportoftheCommissionofInquiryDPRK.aspx>.

<sup>37</sup> Roth, Kenneth. "World Report 2019: Rights Trends in North Korea." Human Rights Watch, Jan. 17, 2019. <https://www.hrw.org/world-report/2019/country-chapters/north-korea>.

<sup>38</sup> Amnesty International, *North Korea Prison Camps Very Much in Working Order*, Nov. 22, 2016, <https://www.amnesty.org/en/latest/news/2016/11/north-korea-prison-camps-very-much-in-working-order/>.

<sup>39</sup> See Appendix E.

<sup>40</sup> Republic of Korea Ministry of Justice, *The Constitution of the Republic of Korea*, <http://www.law.go.kr/lsEfInfoP.do?lsiSeq=61603#>.

Korean people, who are “the masters of the country,” which shows a recognition of a North Korean leader and its regime as South Korea’s responsible partners in achieving reunification.<sup>41</sup> Following the 2007 Roh-Kim summit, South Korea abstained from the UN General Assembly resolution on North Korea’s human rights in 2007, out of the fear that it could strain inter-Korean relations.<sup>42</sup> This incident sparked a political firestorm in 2016, when former Foreign Minister Song Min-soon mentioned in his memoir that former opposition to the current leader, Moon Jae-in, who served as chief of staff to then-President Roh Moo-hyun, decided to ask for North Korea’s opinion ahead of the vote.<sup>43</sup> Thus, it is evident that the South Korean domestic political climate is not immune to friction, even regarding the question of “who they are and what it means to South Korea,” before getting to the question of “what North Korea wants.”

Lastly, the two bills reflect different perspectives on the South Korean government’s function. According to the North Korea Human Rights Bill proposed by the *Saenuri* Party, the importance of the various government ministries’ roles was of highest priority as seen by highlighting the intended responsibilities for the ministries of foreign affairs and justice in regard to North Korea. Calling for an ambassador-at-large for North Korean human rights in the foreign ministry clearly demonstrated that this can no longer be a bilateral issue between the two Koreas, but rather that North Korea is guilty of crimes against humanity, which require multilateral cooperation to safeguard international peace and security. It also indicated the salient role of the Ministry of Justice in gathering information through the North Korea Human Rights Archive, as benchmarked by the Central Registry of State Judicial Administrations (*Zentrale Erfassungsstelle der Landesjustizverwaltungen, ZEST* in German) in Salzgitter, West Germany. This body verified human rights violations committed by the East German government, including homicide at the inner German border, political persecution, torture, and maltreatment until German unification. However, the North Korean human rights promotion bill proposed by the progressive party was mainly focused on the function of the Ministry of Unification for humanitarian aid and people exchanges instead of potential crimes against humanity. Therefore, the bill suggested that even the North Korea Human Rights Archive should be affiliated with the Ministry of Unification, not with the Ministry of Justice, which implies a greater focus on inter-Korean relations.

#### *Provisions of the NKHRA of 2016*

On March 3, 2016, the South Korean National Assembly passed the NKHRA in a landslide vote (220-0, with 24 abstentions).<sup>44</sup> Even though passage of the bill took more than a decade, the NKHRA enactment should not be an end, but rather a new springboard within South Korea’s domestic politics. This Act should serve as a powerful, meaningful source to demonstrate South Korea’s willingness to alleviate the suffering of the North Korean people,

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<sup>41</sup> United States Institute of Peace, *South-North Joint Declaration*, June 15, 2000, [https://www.usip.org/sites/default/files/file/resources/collections/peace\\_agreements/n\\_skorea06152000.pdf](https://www.usip.org/sites/default/files/file/resources/collections/peace_agreements/n_skorea06152000.pdf).

<sup>42</sup> Yonhap News Agency, “Controversy Erupts over S. Korea's Abstention from U.N. Vote in 2007,” Oct. 14, 2016, <https://en.yna.co.kr/view/AEN2016101401000320>.

<sup>43</sup> *Ibid.*,

<sup>44</sup> Kent Boydston, “The ROK North Korea Human Rights Act,” *Peterson Institute for International Economics*, March 14, 2016, <https://www.piie.com/blogs/north-korea-witness-transformation/rok-north-korea-human-rights-act>.

regardless of South Korea’s domestic politics. The Act has strong implications as it combines elements from competing bills proposed by the left and right political factions.

Table 1. The NKHRA of 2016 Notable Provisions and their Original Sources from 2014

|    | <b>The North Korean Human Rights Act (NKHRA) of 2016</b>   | <b>Original Sources</b>                        |
|----|--|--|
| 1. | Establishes a <b>Human Rights Foundation</b> tasked with researching North Korean human rights promotion strategy, documenting human rights abuses, and providing assistance to groups conducting these tasks.   | Conservative                                   |
| 2. | Creates an <b>archive of North Korean human rights abuses</b> . The collected records are transferred to the Ministry of Justice, which could allow for eventual prosecution under a unified Korea.  | Compromised, Reflected from both bills of 2014 |
| 3. | Calls upon the South Korean government to cooperate with international institutions and to make efforts to increase global interest in North Korean human rights issues. It also establishes an <b>ambassador-level envoy for international cooperation on North Korean human rights</b> . | Conservative                                   |
| 4. | Requires the government to <b>promote an inter-Korean human rights dialogue</b> , including discussing issues related to POWs, kidnapped South Koreans living in North Korea, and separated families.  | Progressive                                    |
| 5. | Requires that <b>humanitarian assistance</b> be provided in accordance with <b>internationally accepted transparency standards</b> .   | Conservative                                   |
| 6. | Creates additional bureaucratic responsibilities, primarily for the Ministry of Unification, <b>to report on and submit strategies for human rights promotion</b> .  | Both   |

Source: ROK Ministry of Government Legislation, *North Korean Human Rights Act*.

The provisions include the establishment of: 1) a North Korea Human Rights Archive, 2) a North Korea Human Rights Consultative Council, 3) a Human Rights Foundation, and 4) an ambassador-at-large for North Korean human rights.

According to Chapter 13 of the NKHRA, a North Korean Human Rights Archive must be established at the Ministry of Unification to record the status of North Korea’s human rights situation, and all materials recorded by the Archive must be transferred to the Ministry of Justice every three months.<sup>45</sup> This chapter was a result of a compromise by including the Ministry of Unification in collecting and recording the data (a progressive stance) and giving the Ministry of Justice the responsibility for preserving and managing all the data (a conservative stance.) As the Central Registry of State Judicial Administrations (ZEST) played an essential role in compensating people who had been persecuted under the East German government and punishing those who committed crimes against humanity in East Germany by providing the legal documents and files on approximately 40,000 proceedings for the local law enforcement

<sup>45</sup> Ibid.,

agencies in the new states of Germany in 1990, the function of the Ministry of Justice to protect and manage data should not be overlooked in preparing for future Korean reunification and should necessitate closer cooperation with the Ministry of Unification.<sup>46</sup>

The NKHRA underscores the establishment of a North Korean Human Rights Consultative Council, as detailed in Chapter 5 and 6. Under the Act, the Council's function is focused on providing advice and information to the Ministry of Unification for pursuing its short-term action plan and developing a long-term (three year) "master-plan," called the North Korea Human Rights Promotion Basic Plan, to promote a human rights dialogue and provide humanitarian assistance.<sup>47</sup> The Act also takes into account the political balance in terms of the composition of the members by mentioning that, out of 10 members in the Consultative Council, the President's party members should not exceed half.

In addition, the NKHRA calls for an establishment of a Human Rights Foundation to conduct research and create policy related to North Korean human rights promotion in Chapters 10-12. The Foundation can serve as a significant instrument to provide institutional support for civil society groups to perform roles and activities that are relevant to the Foundation's purpose – development of policy proposals on North Korea's human rights situation, the inter-Korean human rights dialogue, humanitarian assistance and so forth.

Lastly, the appointment of an ambassador-at-large for human rights in North Korea to the Ministry of Foreign Affairs has strong ramifications for international cooperation regarding North Korean human rights promotion as seen in Chapter 9.<sup>48</sup> This section was particularly pursued by conservative South Korean lawmakers, underscoring the need for collaboration with multilateral organizations, foreign governments, and international NGOs to promote people-to-people exchanges and information inflows.

#### *Current challenges under the Moon administration*

The Moon administration's policies toward North Korea drastically contrast with previous administrations. As South Korea and North Korea strived to move forward with a "mood for peace" through three inter-Korean summits in 2018, a dialogue regarding human rights has been ignored. In particular, the NKHRA of 2016 has not been fully implemented. In an interview on July 8, 2019, Dr. Yoon Yeo-sang, the first chief director of the Database Center for North Korea Human Rights, explicitly stated that any discussion regarding North Korea's human rights is forbidden at a government level. More importantly, while the North Korean Human Rights Archive in the ministries of unification and justice has been operational, it has not been proactively and publicly promoted to South Korean citizens.<sup>49</sup> The North Korean Human Rights Consultative Council ended its first term at the beginning of this year; but the new Council has not been formed yet, which requires a presidential executive order.

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<sup>46</sup> Eberhard Vogt, "Deutschland: Die Mär von der "Siegerjustiz"" (in German), *FOCUS Online*, Oct. 7, 1996.

<sup>47</sup> ROK Ministry of Government Legislation, *North Korean Human Rights Act*, Retrieved July 14, 2019.

<sup>48</sup> *Ibid.*,

<sup>49</sup> During the interview with Dr. Yoon Yeosang from the Database Center for North Korean Human Rights, July 8, 2019.



The North Korea Human Rights Foundation is not yet completely functional. Due to protracted friction between the ruling and the opposition parties surrounding the selection of board members, its establishment has been delayed.<sup>50</sup> On June 14, 2018, due to the high rental fee and the two-year long disagreement on the composition of board members, the Ministry of Unification decided to end funding for an office for the foundation, considering it a waste of taxpayer money. Although the government promised to re-establish funding when the board members are decided, the question remains whether the political will in the current administrative and legislative branches could lead to actual operations of the foundation.

The weak commitment of the current government to North Korea's human rights is also reflected in the still-empty ambassadorship. As this role would enable South Korea to work closely with other human rights activists and experts, the empty position could be detrimental to concerted efforts with the US, Japan, the EU, and international institutions.<sup>51</sup>

Such challenges to the implementation of the 2016 NKHRA demonstrate how volatile and inconsistent South Korea has been in adopting and implementing policies related to North Korea. This is attributed to the over-emphasis on individual political leaders rather than the political parties' policies in the South Korean political arena. Over the past 20 years, the names of South Korea's main conservative and progressive parties have changed 12 times through merging and splitting from one another based on influential political figures (three times for the right and nine times for the left).<sup>52</sup> Such frequent changes serve as an impediment to consistent policies and implementation. Ultimately, this volatility allows more room for the North Korean regime to take advantage of this South Korean democratic system's weakness. Therefore, the Moon government should project its strong willpower to set a bipartisan and humanitarian approach toward North Korean human rights issues by continually and fully implementing the NKHRA of 2016. It will ultimately provide sound ideological legitimacy and leverage in the current domestic political factions among politicians, bureaucrats, and citizens. This is crucial and pressing given the diplomatic isolation and the domestic setback with North Korea's resumption of short-range ballistic missiles or other projectile launches in July and August 2019.<sup>53</sup>

### **Strong bilateral cooperation on North Korean human rights**

The NKHRA of 2004 in the US and the NKHRA of 2016 in South Korea became significant pillars of both Washington's and Seoul's policies toward North Korea. Both acts hold

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<sup>50</sup> Yong-yung An, "Kyulkuk Moon Dahnun Bukhan Inkwonjaedan Samusil" (The Office for the North Korean Human Rights Foundation Closed), *Chosun Ilbo*, June 15, 2018, [http://news.chosun.com/site/data/html\\_dir/2018/06/14/2018061404016.html](http://news.chosun.com/site/data/html_dir/2018/06/14/2018061404016.html).

<sup>51</sup> Jeongmin Kim, "As North and South Korea cosy up, human rights groups struggle for cash," *Reuters*, June 28, 2018, <https://www.reuters.com/article/us-northkorea-southkorea-rights/as-north-and-south-korea-cosy-up-human-rights-groups-struggle-for-cash-idUSKBN1JN0ON>.

<sup>52</sup> Jae Heon Choi, "Daehanminkuk Jeongdang Irum Byeoncheonsa" (The history of the Changes in the South Korean Political Parties' Names," *Tistory*, last modified Oct. 10, 2017, <https://caleb1783.tistory.com/1091>.

<sup>53</sup> Sang-Hun Choe, "North Korea Launches 2 Missiles, Its 7th Weapons Test in a Month," *The New York Times*, Aug. 23, 2019, <https://www.nytimes.com/2019/08/23/world/asia/north-korea-missile-tests-japan-south-korea.html>.

significant legal and political implications as an unanimously approved bill by Republicans and Democrats in the US and as a long-developed agreement between conservative and progressive lawmakers in South Korea. Although implementation remains sensitive to both countries' domestic political climates, they offer a glimpse of what a strong bilateral strategic cooperation framework between the United States and South Korea on North Korean human rights issues could look like. Thus, it's essential to perform in-depth analyses of the acts' similarities and differences in order to pursue consistent and coherent policies toward North Korea.

*Similarities of two North Korean Human Rights Acts*

The two North Korean Human Rights Acts have shared three main features: 1) human rights dialogue, 2) humanitarian aid with transparency, and 3) appointment of an envoy. First, both Acts shed light on the importance of “human rights dialogue.” Article 7 of the South Korea’s NKHRA of 2016 requires the South Korean government to promote an inter-Korean human rights dialogue on the “important items” for advancing North Korea’s human rights.<sup>54</sup> These points would depend on different priorities from both parties, but it includes not only discussing issues related to POWs, kidnapped South Koreans living in North Korea, and separated families, but also addressing the North Koreans’ fundamental rights to freedom and to live as mentioned in the purpose section of its Article 1. Similarly, the United States’ Act requires exploring the possibility of a regional human rights dialogue with North Korea that is modeled on the Helsinki process in Section 106. It goes on to require the engagement of all countries in the region sharing a common commitment for respecting human rights and fundamental freedoms. Even though many questions regarding the format, content, and effectiveness of a human rights dialogue remain unanswered and unclear, this similar emphasis on dialogue for the improvement of human rights – not merely for the security agenda – should not be underestimated in both the Moon and Trump administrations.

Table 2. Similarities of the South Korea’s and the U.S.’s North Korean Human Rights Acts

|                     | <b>South Korean North Korean Human Rights Act of 2016</b>  | <b>US North Korean Human Rights Act of 2004</b>  |
|---------------------|--|--|
| <b>Similarities</b> | <b>1) Importance of Human Rights Dialogue</b>  |  |
|                     | (Article 7) the promotion of Inter-Korean human rights dialogue  | (Section 1. (4)) the possibility of a regional human rights dialogue with North Korea  |
|                     | <b>2) Humanitarian Aid with Transparency</b>   |  |
|                     | (Article 8) humanitarian assistance provided according to internationally accepted transparency standards. | (Sec. 201 and 202) humanitarian assistance inside North Korea conditioned upon substantial improvements in transparency, monitoring, and access to vulnerable populations throughout North Korea |

<sup>54</sup> Korea Legislation Research Institute, *Bukhaninkwonbub* (North Korean Human Rights Act), [http://www.law.go.kr/%EB%B2%95%EB%A0%B9/%EB%B6%81%ED%95%9C%EC%9D%B8%EA%B6%8C%EB%B2%95/\(14070,20160303\)](http://www.law.go.kr/%EB%B2%95%EB%A0%B9/%EB%B6%81%ED%95%9C%EC%9D%B8%EA%B6%8C%EB%B2%95/(14070,20160303)).

|  |   |   |
|--|---|---|
|  | <b>3) Appointment of Envoy</b>  |   |
|  | (Article 9) ambassador-level envoy for international cooperation on North Korean human rights.  | (Sec. 107) Special Envoy for human rights in North Korea.   |
|  | <b>4) Reporting System</b>  |   |
|  | (Article 6 and 15) the Ministry of Unification to report on and submit strategies for protecting and promoting human rights in North Korea, including inter-Korean dialogue and humanitarian assistance | (Sec. 201) United States Agency for International Development (USAID) and the Secretary of State to report annually on U.S. humanitarian assistance to North Koreans, improvements in humanitarian transparency and monitoring inside North Korea |

Additionally, both Acts acknowledge the need for humanitarian assistance through transparent channels. The South Korean Act makes clear that humanitarian aid should be provided according to the internationally accepted transparency standards in article 8. In a similar and more detailed way, the US NKHRA allocates the entire Section 2 to humanitarian assistance and makes it conditional upon substantial improvements in transparency, monitoring, and access to vulnerable populations. Section 202 further encourages other countries to do so through monitored and transparent channels. Such common understanding and conditions serve as a strong guideline for humanitarian assistance towards North Korea.

The most meaningful feature in both Acts is the appointment of competent and specialized diplomats for the North Korean human rights issues. The South Korean NKHRA established an ambassador for the North Korea human rights position in article 9. Based on this, Jung-Hoon Lee was appointed as the South Korean government’s inaugural ambassador-at-large in 2016.<sup>55</sup> Eleven years earlier, the US first created a special envoy for North Korean human rights issues at the Department of State. The special envoy is mainly tasked with supporting international efforts to promote human rights and political freedoms in North Korea, including coordination and dialogue with the UN, EU, other countries in Northeast Asia, alongside North Korea.<sup>56</sup> From November 2009 to January 2017, Robert R. King served as special envoy for North Korea human rights, nominated by President Barack Obama, to press for progress on human rights and to lead US humanitarian work for North Korea.

*Differences between the two North Korean Human Rights Acts*

In addition to the different lengths of time that both countries passed their NKHRAs – 11 years for South Korea and three weeks for the US – there are differences in terms of the volume, contents, and focus, stemming from the different domestic political situations, perspectives toward North Korea and political interests. For example, the US’s NKHRA begins

<sup>55</sup> Republic of Korea Ministry of Foreign Affairs, “Mr. Lee Jung-Hoon Receives a Letter of Appointment as Ambassador-at-large on North Korean Human Rights,” Oct. 12, 2016, [http://www.mofa.go.kr/eng/brd/m\\_5676/view.do?seq=317523&srchFr=&srchTo=&srchWord=ROK&srchTp=&multi\\_itm\\_seq=0&itm\\_seq\\_1=0&itm\\_seq\\_2=0&company\\_cd=&company\\_nm=&page=117&titleNm=](http://www.mofa.go.kr/eng/brd/m_5676/view.do?seq=317523&srchFr=&srchTo=&srchWord=ROK&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=117&titleNm=).

<sup>56</sup> 108<sup>th</sup> U.S. Congress (2003-2004), *H.R.4011 - North Korean Human Rights Act of 2004*.

by spotlighting the specific “twenty-five findings” regarding the human rights violations committed by the North Korean regime, even before mentioning the purpose of such an act in Section 4. It identifies North Korea’s government as a “dictatorship under the absolute rule of Kim Jong Il (the former leader of North Korea during that time)” that continues to commit numerous, serious human rights abuses. It drastically contrasts with the South Korean NKHRA, which does not mention any of these findings. This is attributed to the South Korea’s polarized political climate on any issue related to North Korean human rights. Thus, in South Korea it is nearly impossible to categorize the North Korean regime as a perpetrator of human rights violations and indignities in the NKHRA of 2016 as the US act does.

The North Korean people that the Acts refer to are not the same. According to Article 3 of the South Korean NKHRA, the Act applies only to North Korean people residing in the northern part of the Korean Peninsula. The US Act considers North Koreans residing both inside and outside of North Korea, including refugees and defectors, for humanitarian assistance in Title II. This discrepancy demonstrates how much more hesitant South Korean lawmakers, in an effort to avoid agitating the North Korean regime and encouraging an increased outflow of North Koreans, have been in defining who they consider North Korean.

Table 3. Differences between South Korea’s and the US’s North Korean Human Rights Acts

|                    | <b>Characteristics</b>                 | <b>South Korean North Korean Human Rights Act of 2016</b>  | <b>US North Korean Human Rights Act of 2004</b>  |
|--------------------|--|--|--|
| <b>Differences</b> | 1) Scope of North Korean people        | (Article 3)<br>North Koreans in North Korea  | (Title 2)<br>North Koreans both in and outside of North Korea including refugees and defectors   |
|                    | 2) Tasks (Activities)                  | (Article 10) Establishing a Human Rights Foundation tasked with researching North Korean human rights promotion strategy, documenting human rights abuses, and providing assistance to groups conducting these tasks | (Sec. 102) Providing grants to private, nonprofit organizations to promote human rights, democracy, the rule of law, and the development of a market economy in North Korea, and increase the availability of information inside North Korea |
|                    | 3) Role of International Organizations | Not mentioned  | (Section 101. (3)) the UN’s role in promoting and improving human rights in North Korea; (Sec. 304) UNHCR’s role and rights of access in China   |
|                    | 4) Archive                             | (Article 13)   | Not mentioned  |

|  |  |  |  |
|--|--|--|--|
|  |  | Archive of North Korean human rights abuses, whose collected records are transferred to the Ministry of Justice. |  |
|--|--|--|--|

The different tasks that the laws promote and provide grants for can be found by presenting the different perspectives toward this issue. The US Act presents more proactive gestures to improve the human rights situation in North Korea. It addresses the requirement to promote American national values—human rights, democracy, and the rule of law, and the development of a market economy—for activities such as increasing the flow of information inside North Korea. South Korea took a more reserved approach in terms of identifying specific tasks. Article 10 of the South Korean NKHRA establishes a Human Rights Foundation that is primarily responsible for researching North Korean Human Rights dialogue and humanitarian assistance, and for providing policy recommendations to the government. The Act itself does not specify the activities and tasks that need to be promoted other than researching, documenting, and proposing North Korean human rights improvement. Moreover, the South Korean version does not mention South Korean national values enshrined in the Constitution – liberal democracy, human rights, and market economy. It also does not provide any guideline of the detailed amount of money allocated for the activities, whereas the US version authorizes \$24 million per year.<sup>57</sup> These differences reflect a discrepancy in effectively putting these laws into practice.

Lastly, the US Act emphasizes in Section 1 and Section 3 the salient role of international organizations – the UN Commission on Human Rights (UNCHR) and High Commissioner for Refugees (UNHCR) – in promoting and improving human rights in North Korea, which the South Korean version does not include. Particularly, the US version leverages its own soft power to pressure China by requesting it abide by its previous commitments to allow UNHCR unimpeded access to displaced North Korean refugees inside China.<sup>58</sup> Likewise, the South Korean version has an exceptional point that the US act does not include: the North Korean Human Rights Archive, which holds an important implication for transitional justice if reunification occurs.

*Steps toward strong bilateral cooperation  
– Policy Recommendations*

As alliance partners, South Korea and the US have the potential to do more to improve North Korea’s human rights situation, not merely in terms of security issues. Bilateral cooperation can ensure cohesive, coherent, and concerted policies. This will also leave less room for the North Korean regime to take advantage of miscommunication between the US and South Korea. By implementing the following points, the allies can send consistent messages and maximize similarities between the two NKHRAs:

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<sup>57</sup> Kent Boydston, “The ROK North Korea Human Rights Act,” *Peterson Institute for International Economics*, March 14, 2016, <https://www.piie.com/blogs/north-korea-witness-transformation/rok-north-korea-human-rights-act>.

<sup>58</sup> 108<sup>th</sup> U.S. Congress (2003-2004), *H.R.4011 - North Korean Human Rights Act of 2004*.

*First, South Korea and the United States should appoint their special representatives on North Korea human rights and establish a hotline between them. Currently both positions have been vacant since 2017. These prolonged vacancies could have a detrimental impact on the lives of North Koreans by sending the signal that the issue carries a low priority.*

- Both Seoul and Washington should appoint their ambassador-at-large for North Korea human rights and the special envoy on North Korea human rights as soon as possible. Doing so will project a strong will to consider human rights as an integral element in reconciling the broader Peninsula issues.
- Both the Moon and Trump administrations should establish a direct communication link to coordinate in a more effective and coherent way. This hotline network will hold both administrations accountable to appoint competent and experienced representatives regardless of the domestic political climates for the framework.
- Seoul and Washington should work closely together to raise the North Korean human rights agenda in December 2019 in the UN Security Council after three consecutive years of discussions and momentum on the issues ended last year.
- Seoul and Washington should cooperate with international organizations such as UNHCR and other non-state actors, including the Red Cross, to gain unimpeded access and provide humanitarian assistance to North Korean refugees in China. They should insist on the reclassification of North Korean refugees from illegal economic migrants to political refugees in China, in accordance with that government's international obligations to the 1951 UN refugee convention and the 1967 protocol,<sup>59</sup> and on the provision of citizenship for offspring of North Korean women residing in China.

*Second, South Korea and the US should discuss possible agendas and strategies for a human rights dialogue with North Korea. This short-term strategy is based upon both NKHRA's emphasis on the inter-Korean "human rights dialogue" and the regional "human rights dialogue" with North Korea.*

- Seoul should form a task force consisting of the National Assembly members and government officials experienced in human rights to identify "important items" to discuss with North Korea based on Article 7. The Moon government should recall and acknowledge that the concept of a "human rights dialogue" with North Korea originates from its former progressive party, the New Politics Alliance for Democracy, in 2014.
- Washington should include human rights as part of the agenda for future summits with Pyongyang. Advancement on the security dialogue should be accompanied by a parallel discussion on human rights. The US should put human rights back on the negotiating table and use it to ensure better lives for the North Korean people.

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<sup>59</sup> Joshua Kurlantzick and Jana Mason, "The North Korean Refugee: The Chinese Dimension," *U.S. Committee for Human Rights in North Korea*, 2006.

- Seoul and Washington should discuss the substance for the human rights dialogues. This process is a prerequisite to improving conditions of the North Korean people both inside and outside of North Korea by establishing a structured platform for diplomacy; the possible agenda could start with the separated families and POW/MIA remains.

*Third, South Korea and the US should closely communicate to create a regional peace process similar to that which resulted in the Helsinki Accords.* During the South Korea-Finland summit in June 2019, President Moon stated that “the Helsinki Process initiated by Finland helped end the Cold War and facilitated reconciliation between the Eastern and Western blocs. It is a source of inspiration for the peace process on the Korean Peninsula.”<sup>60</sup> The US NKHRA acknowledges the positive impact of the Helsinki Final Act in bringing peace and prosperity in Europe, which can be viewed as a regional model for dialogue with North Korea. With these common acknowledgments and interests based upon the Helsinki Process, the United States and South Korea should closely cooperate to suggest a regional framework encompassing security, economic, and human rights and humanitarian aid, modeled after Helsinki Final Act and Organizations for Security and Cooperation in Europe (OSCE).

- Seoul and Washington should pursue creation of a long-term and gradual regional mechanism to encompass: 1) the current security agenda including the nuclear and missile proliferation issues, the US-ROK military exercises, etc., 2) economic issues such as the infrastructure projects and trade and scientific cooperation, and 3) the human rights agenda including reunification of families and cultural exchanges, humanitarian assistance, and eventually fundamental rights. As it took approximately 15 years to reap the benefits of developing democracy and improving human rights in Eastern Europe following the 1975 Helsinki Final Act, this carefully designed, realistic, and gradual mechanism would serve as a confidence-building measure for North Korea to cooperate with the regional and international community.
- Seoul and Washington should utilize the current conventions that North Korea already joined as a party for the peace process mechanism’s third basket. As Table 4 shows, North Korea has signed four international treaties: the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Convention on the Rights of the Child (CRC).

Table 4. Six Major Multilateral Treaties on Human Rights

|             | <b>ICCPR</b> | <b>ICESCR</b> | <b>ICERD</b> | <b>CEDAW</b> | <b>CAT</b> | <b>CRC</b> |
|-------------|--------------|---------------|--------------|--------------|------------|------------|
| North Korea | O            | O             | X            | O            | X          | O          |
| South Korea | O            | O             | O            | O            | O          | O          |

<sup>60</sup> Republic of Korea Ministry of Foreign Affairs, “Results of Korea-Finland Summit,” June 11, 2019, [http://www.mofa.go.kr/eng/brd/m\\_5674/view.do?seq=319879](http://www.mofa.go.kr/eng/brd/m_5674/view.do?seq=319879).

|               |   |              |   |              |   |              |
|---------------|---|--------------|---|--------------|---|--------------|
| United States | O | Not ratified | O | Not ratified | O | Not ratified |
|---------------|---|--------------|---|--------------|---|--------------|

ICCPR: International Covenant on Civil and Political Rights  
 ICESCR: International Covenant on Economic, Social and Cultural Rights  
 ICERD: International Convention on the Elimination of All Forms of Racial Discrimination  
 CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women  
 CAT: United Nations Convention against Torture  
 CRC: Convention on the Rights of the Child

These four conventions should serve as a springboard to address economic, social and cultural rights, including forced labor and women’s and children’s rights. In the longer term, this mechanism can encourage North Korea to join the other two conventions, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the UN Convention against Torture (CAT), for reciprocal measures on other security and economic baskets. In the meantime, the US Congress should ratify ICESCR, CEDAW and CRC to strengthen its soft power in this regional peace process with North Korea.

*Fourth, Seoul and Washington should continue to provide humanitarian assistance to North Korea through transparent channels.* Facing severe food shortages, diseases, and malnutrition caused by the worst drought and famine in North Korean history,<sup>61</sup> humanitarian assistance should be provided based on non-political principles. In May 2019, the South Korean government said that it would donate \$4.5 million to the UN World Food Programme (WFP), \$3.5 million to the UN Children’s Fund (UNICEF), and give directly to North Korea 50,000 tons of rice.<sup>62</sup> Similarly, the US State Department decided to ease some of its most stringent restrictions on humanitarian assistance to North Korea, loosening its block on humanitarian supplies destined for North Korea in the beginning of 2019.<sup>63</sup>

South Korea should make sure that food aid to North Korea is delivered in an internationally verifiable and transparent manner. It should present a specific timeline for the delivery of \$8 million in aid to WFP and UNICEF to assist North Korea’s malnourished children and pregnant women as soon as possible regardless of the North Korea’s continuing ballistic missile tests and sanctions crackdown.

- South Korea and the US should seek more humanitarian assistance through multilateral organizations by requesting exemptions – not sanctions relief – from the UN’s 1718 Sanctions Committee (UNSC). In this regard, South Korea and the US should use people-to-people exchanges with North Korea to improve health-care infrastructure. The UNSC has quietly permitted humanitarian exemptions to

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<sup>61</sup> Sang-Hun Choe, “North Korea Urgently Needs Food Aid After Worst Harvest in Decade, U.N. Says,” *The New York Times*, May 3, 2019, <https://www.nytimes.com/2019/05/03/world/asia/north-korea-food.html?module=inline>.

<sup>62</sup> Josh Smith, “Malnutrition, Disease Rising in North Korea: Aid Organization”, *Reuters*, July 18, 2019, <https://www.reuters.com/article/us-northkorea-aid/malnutrition-disease-rising-in-north-korea-aid-organization-idUSKCN1UD0P4>.

<sup>63</sup> Colum Lynch, , “U.S. to Ease Limits on Humanitarian Aid to North Korea,” *Foreign Policy*, Jan. 11, 2019, <https://foreignpolicy.com/2019/01/11/us-to-ease-limits-on-humanitarian-aid-to-north-korea/>.



the World Vision and an Italian company called Agrotec SpA, contracted by the European Commission, to send “machinery and equipment for the purpose of improving food security in the DPRK” in July 2019. South Korea and the US should be the first UN member states to provide humanitarian assistance to improve public health in North Korea.

## **Conclusion**

The deplorable living conditions of North Korea’s residents and refugees have become more than a humanitarian issue and are major regional and international security concerns. As the human rights situation in North Korea is intrinsically intertwined with security affairs through its denuclearization process, it requires more coherent, sophisticated and coordinated measures from the US and South Korea. These two allies should not miss the opportunity to promote their relationship as a values-oriented alliance. Close cooperation and dialogue are needed to understand each other’s perspectives towards North Korea and narrow the gaps in policy. Bilateral strategic cooperation has value in domestic politics as well as internationally.

The proposed recommendations for bilateral US-South Korea cooperation based on their respective North Korea human rights acts will be vital to tackle the systematic violations of human rights and crimes against humanity in North Korea. In the short term, discussing human rights may agitate North Korean leaders; in the longer term, it could potentially be more effective in fully resolving North Korean security issues, economically benefiting North Korea, and ensuring the peaceful and stable transition to Korean reunification.

The bilateral framework won’t be perfect and will require scrupulous and robust planning and implementation since these two countries have different national histories and interests in North Korea. Nonetheless, since the first step in understanding each other is recognizing that there are common goals but different interests, it is worthwhile to carefully examine where US and South Korea’s policies currently stand, their domestic situations, and the prospects for bilateral cooperation in this region. In short, developing an effective model for bilateral cooperation for North Koreans will be a complex process. But just as it took years for Eastern European countries to build trust with the Western bloc, develop democracy, and ultimately achieve peace following the 1975 Helsinki process, it will take some time for North Korea to follow the path to true peace and prosperity. Now is the time to use the US-South Korea relationship for that purpose.

## 7. Appendices

### Appendix A: Timeline of disasters (2017)

| Year | Disaster                         | Provinces                                  | Casualty  |
|------|----------------------------------|--|---|
| 2011 | Heavy rains, flooding            | South Hamgyong                             | Killed 68 people and affected around 30,000 people  |
| 2012 | Heavy rains, flooding            | North and South Pyongan                    | Killed 231 people, affected more than 240,000 people, left 212,000 people homeless  |
| 2013 | Heavy rains, flooding            | North and South Pyongan                    | Killed 189 people, affected 800,00 people and displaced <b>49,000 people</b>  |
| 2014 | Dry spell over 18 months         |  | Drought affected agricultural production and access to water, 18 million public distribution system dependents at risk of food insecurity, malnutrition and illness |
| 2015 | Heavy rains and Typhoon Goni     | South Hwanghae<br>North and South Hamgyong | Affected 22,000 people and displaced 15,000 people  |
| 2016 | Heavy rain from Typhoon Lionrock | North Hamgyong                             | Killed 138 people, affected 600,000 people, and displaced 68,000 people   |

Source: World Food Programme 2017, *DPR Korea Needs and Priorities*, March 2017.

### Appendix B: The NKHRA of 2004 Notable Provisions (Title I)

| The North Korean Human Rights Act (NKHRA) of 2004  | Implications   |
|--|--|
| Title I: Promoting the Human Rights of North Koreans   |  |
| <ul style="list-style-type: none"> <li>• Sec. 101: Human Rights of North Koreans should remain a key concern in future negotiations</li> <li>• Sec. 105: United Nations (UN) Commission of Human Rights               <ul style="list-style-type: none"> <li>○ UN has a significant role in promoting and improving human rights in North Korea</li> </ul> </li> <li>• Sec. 106: Establishment of regional framework               <ul style="list-style-type: none"> <li>○ United States should explore the possibility of a regional human rights dialogue with North Korea that is modeled on the Helsinki process.</li> </ul> </li> <li>• Sec. 107: Special envoy for human rights in North Korea               <ul style="list-style-type: none"> <li>○ Directs president to appoint within the Department of State a special envoy.</li> </ul> </li> </ul> | Importance of diplomacy and multilateral cooperation |

|  |                  |
|--|------------------|
| <ul style="list-style-type: none"> <li>• Sec. 102: <ul style="list-style-type: none"> <li>○ Authorizes president to: (1) provide grants to private, nonprofit organizations to promote human rights, democracy, the rule of law, and the development of a market economy in North Korea, including educational and cultural exchanges;</li> <li>○ (2) Increase availability of information inside North Korea by increasing the availability of information sources not controlled by the Government of North Korea. Authorizes FY 2005 through 2008 appropriations</li> </ul> </li> </ul> | Financial Grants |
|--|------------------|

Source: 108th U.S. Congress (2003-2004), *H.R.4011 - North Korean Human Rights Act of 2004*.

**Appendix C: The NKHRA of 2004 Notable Provisions (Title II)**

| The North Korean Human Rights Act (NKHRA) of 2004  | Implications  |
|--|---|
| Title II: Assisting North Koreans in Need  |   |
| <ul style="list-style-type: none"> <li>• Sec. 201: <ul style="list-style-type: none"> <li>○ Directs administrator of United States Agency for International Development (USAID) and the secretary of state to report annually (for the next three years) on: (1) US humanitarian assistance to North Koreans; (2) improvements in humanitarian transparency and monitoring inside North Korea; and (3) specific efforts by the United States and US grantees to secure better monitoring and access.</li> </ul> </li> <li>• Sec. 202: <ul style="list-style-type: none"> <li>○ Expresses sense of Congress that: (1) significant increases above current US support levels for humanitarian assistance inside North Korea should be conditioned upon substantial improvements in transparency, monitoring, and access to vulnerable populations throughout North Korea; [...] and (3) United States should encourage other countries that provide food and other humanitarian assistance to North Korea to do so through monitored, transparent channels, rather than direct, bilateral transfers to the North Korean government.</li> </ul> </li> </ul> | <p>Humanitarian assistance in North Korea</p> <p>Importance of transparent and monitored channels</p> |
| <ul style="list-style-type: none"> <li>• Sec. 203: <ul style="list-style-type: none"> <li>○ Authorizes president to provide assistance to organizations or persons that provide humanitarian assistance or legal assistance to North Koreans who are outside of North Korea without the permission of North Korean government. Assistance should be used to provide: (1) humanitarian assistance to North Korean refugees, defectors, migrants, and orphans outside of North Korea, which may include support for refugee camps or temporary settlements; and (2) humanitarian assistance to North Korean women outside of North Korea who are victims of trafficking, or are in danger of being trafficked. Authorizes FY 2005-2008 appropriations.</li> </ul> </li> </ul>  | Humanitarian assistance outside North Korea (Refugees, women, orphans)                                |

Source: 108th U.S. Congress (2003-2004), *H.R.4011 - North Korean Human Rights Act of 2004*.

**Appendix D:** The NKHRA of 2004 Notable Provisions (Title III)

| The North Korean Human Rights Act (NKHRA) of 2004   | Implications   |
|---|--|
| Title III: Protecting North Korean Refugees   |  |
| <ul style="list-style-type: none"> <li>• Sec. 304:               <ul style="list-style-type: none"> <li>○ Expresses the sense of Congress that: (1) the government of China has obligated itself to provide the United Nations High Commissioner for Refugees (UNHCR) with unimpeded access to North Koreans inside its borders to enable UNHCR to determine whether they are refugees and whether they require assistance. UNHCR donor countries should press China for such access; and (2) should China refuse such access, UNHCR should assert its right of access through arbitration with China.</li> </ul> </li> </ul> | Ensuring UNHCR's activities in China                 |
| <ul style="list-style-type: none"> <li>• Sec. 305:               <ul style="list-style-type: none"> <li>○ Directs the secretary of state and the secretary of homeland security to report annually (for the next six years) on: (1) numbers of North Koreans admitted as refugees or political asylees; and (2) measures taken to facilitate access to the US refugee program by persons fleeing countries of particular concern for violations of religious freedom.</li> </ul> </li> </ul>  | Accepting North Korean refugees in the United States |

Source: 108th U.S. Congress (2003-2004), *H.R.4011 - North Korean Human Rights Act of 2004*

**Appendix E:**  
**Comparison of North Korea Human Rights Bills between the Two Main Parties in 2014**

|                  | <b>Saenuri Party<br/>(Conservative party)</b>                                      | <b>New Politics Alliance for<br/>Democracy<br/>(Progressive party)</b>  |
|------------------|--|---|
| Name of the Bill | North Korea's Human Rights Bill  | North Korea's Human Rights Promotion Bill   |
| Purpose          | Ensure right to life and improve human rights situation of North Korean residents. | Establish humanitarian assistance projects and inter-Korean dialogue regarding human rights to protect and promote rights of North Korean residents |

|  |  |  |
|--|--|--|
| <p>North Korea's human rights</p>  | <ul style="list-style-type: none"> <li>• State confirms that all North Korean residents have dignity and value as human beings and the right to pursue happiness. State must work to protect and promote human rights of North Korean residents in all aspects, including political, economic, societal, and cultural areas.</li> <li>• State must comply with internationally recognized humanitarian standards to provide, distribute, and supervise humanitarian aid to North Korean authorities and organs.</li> </ul>   | <ul style="list-style-type: none"> <li>• Indicates North Korean human rights promotion is state's responsibility.</li> <li>• State should have a South-North Human Rights Dialogue to recover rights of freedom of North Korean residents, North Korean refugees staying in a third country, North Korean political prisoners, abductees, and Korean War POWs detained in North Korea.</li> </ul>  |
| <p>Establishment and Operations of the Government-affiliated Organizations</p> | <ul style="list-style-type: none"> <li>• North Korean Human Rights Advisory Committee affiliated with the Ministry of Unification</li> <li>• Minister of Unification to establish North Korean Human Rights Basic Plans and report to National Assembly.</li> <li>• Ministry of Foreign Affairs to establish ambassador-at-large for North Korean Human Rights position.</li> <li>• Ministry of Justice to establish North Korea Human Rights Archive</li> <li>• North Korea Human Rights Foundation established to conduct research on North Korea human rights, develop relevant policies, and provide humanitarian aid activities.</li> </ul> | <ul style="list-style-type: none"> <li>• Establish committee for requested inter-Korean Human Rights Dialogue and council for humanitarian assistance.</li> <li>• Minister of Unification to report North Korean human rights situation, results for the request of the inter-Korean Human Rights Dialogue, and the plan for humanitarian aid and exchanges to the National Assembly every year before the regular meeting.</li> <li>• North Korea Human Rights Archive established at Ministry of Unification, responsible for gathering the information pertaining to the improvement of North Korean residents' human rights, and research, preservation, publishing and so forth.</li> </ul> |

Source: Yonhap News Agency, "Yeo Ya Bukhan Inkwon Beoban Bigyo" (Comparison of the North Korea Human Rights Bills presented by the Ruling and the Opposition Parties), Nov. 24, 2014, <https://www.yna.co.kr/view/AKR20141123039900001>.

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