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# The Implications of the North Korean Human Rights Act and Future Challenges

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In March 2016, the National Assembly of the Republic of Korea passed the North Korean Human Rights Act (hereinafter, the Act). Eleven years have passed since the bill was first proposed during the 17th National Assembly in 2005. At this moment in time, this paper intends to address the background, main contents, and implications of the Act and challenges in implementing the Act.

### Background of the Act

The debate on the Act in South Korea has been in line with the international community's publicizing of the North Korean human rights issue. The UN Sub-Commission on the Promotion and Protection of Human Rights first shed light on the issue at the UN level in 1997. The first resolution expressing deep concern at the human rights situation in North Korea was adopted several years later in April 2003 by the UN Commission on Human Rights (predecessor of UN Human Rights Council [UNHRC]). Afterward,

the fact that the U.S. Congress enacted the U.S. version of the Act in October 2004 to establish international cooperation framework on improving human rights conditions in North Korea triggered discussions for a North Korean Human Rights Act in South Korea. Initiated by then-Representative Kim Moon-soo of the Grand National Party sponsoring the North Korean human rights bill on August 11, 2005 during the 17th National Assembly, three more bills during the 17th National Assembly and five bills during the 18th National Assembly related to the human rights in North Korea were introduced. Nevertheless, these were automatically abandoned by the members' failure to agree before the end of the National Assembly's terms. This failure stemmed from the difference in perceptions on the North Korean human rights issue, the disbelief in the Act's effectiveness, and the concerns over the exacerbation of inter-Korean relations. Enmeshed in debates, the Act had been continually dumped over a prolonged period. While 11 bills concerning North Korean human rights were introduced during the 19th National Assembly, the passage seemed unlikely due to the wide contrast of views between the ruling party and the opposition. However, with the international community piling up pressure against North Korea for its human rights records — such as the publication of the UN Commission of Inquiry (COI) Report on North Korea in February 2014 and the UN General Assembly (UNGA) resolutions strongly condemning the violations of human rights in North Korea in both 2014 and 2015 —, a national consensus has been established. The Foreign Affairs and Unification Committee of the National Assembly reviewed the compilation of eleven bills in February 2016 and brought forth an alternative after the ruling party and the opposition coordinated their views. The National Assembly approved this alternative bill on March 2, 2016, five days after the Legislation and Judiciary Committee examined the bill.

## Main Contents of the Act<sup>1)</sup>

As prescribed in the first article, the Act is to contribute to the protection and improvement of human rights of North Korean people by pursuing civil, political, social, economic, and cultural rights enshrined in international human rights treaties. Pursuant to Article 2 that defines the basic principles and the responsibility of the state, the state is mandated to make efforts to develop inter-Korean relations and establish peace on the Korean Peninsula in the midst of protecting and improving North Koreans' human rights. The Act lays out various institutions and instruments for the protection and promotion of North Korean people's human rights. The Ministry of Unification shall establish and operate an advisory committee on improving human rights conditions in North Korea to provide advice and suggestion on policies concerning North Korean human rights (Article 5). The Unification Minister shall formulate basic plans to improve human rights situation in the North every three years through consultation with the heads of relevant central administrative agencies (Article 6). Moreover, the pursuit of inter-Korean human rights dialogue has been stipulated as an obligation (Article 7). In relation to the humanitarian assistance, the Act states transparency in compliance with the international standards in aid delivery and aid priority to the most vulnerable (Article 8). Emphasizing international cooperation for improving human rights in North Korea, the Act permits the Ministry of Foreign Affairs to appoint an ambassador for North Korean human rights (Article 9). In addition, the establishment of a foundation for human rights in North Korea has been included in the Act. Articles 10 to 12 specify the scope, management, and the composition of the foundation. Finally, Article 13 indicates that the Ministry of Unification shall establish a center for investigation and documentation on human rights in North Korea to collect and archive human rights conditions of North Korean people and that these archives shall be transferred to the Ministry of Justice every three months.

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1) This is an unofficial translation.

## Implications of the Legislation

This part explores the political implications of legislating the Act. The elongated debate has concluded with the approval of the Act that had been dragging on for 11 years. Still, this long period of discussion did not elapse in vain. The eleven years of in-depth consideration have enabled the South Korean public to reach a unified stance and agreement on the abysmal human rights conditions in the North and South Korea's responsibility for this beyond the political spectrum. The agreement on the Act between the ruling party and the opposition in spite of the political contention and distrust denotes that both sides have reached a common conclusion that the issue of North Korean human rights can no longer be bound by partisan politics or considered as a subsidiary of Seoul's North Korea policy. Both the opposition — which views that the Act will jeopardize relations and cooperation with North Korea — and the ruling party — which posits that the Act will pressure North Korea to sit at the negotiation table — have missed the point that the human rights in North Korea is not a leverage for Seoul's North Korea policy, but rather a crucial issue per se. The issue of human rights in North Korea should not be manipulated as one of policy means against North Korea. Our interests and efforts to solve this issue are not because this is a "North Korea" issue. North Korean people are same human beings like all of us and it is our responsibility to ensure they are entitled to the basic rights as human beings.

As for policy implications, the Act prescribes that the state holds the responsibility to protect and promote human rights of North Korean people. This has laid legal grounds to promote a systematic and consistent policy on North Korean human rights. By the enactment, Seoul now has the opportunity to deal with the North Korean human rights issue independent of its North Korea policy which oscillates whenever the administration changes. By the consistent and transparent operation of the foundation for human rights in North Korea and the center for investigation and documentation on human rights in North Korea, ceaseless efforts for the

resolution of North Korean human rights issue may contribute to the continuity and stability in South Korea's policy on North Korea.

Finally, the Act has implications with regard to international politics. The international community has already instated various institutional instruments such as treaties, resolutions, and legislations concerning human rights abuses in North Korea. Discussions to solve the North Korean human rights issue have actively taken place in the international community — the U.S. and Japan each have their version of the Act already in effect; the UNHRC and UNGA have annually adopted resolutions on the situation of human rights in the Democratic People's Republic of Korea; and the UN Security Council has placed the issue on its agenda. Although it appears belated for the stakeholder in the inter-Korean issue, South Korea, to pass this Act at this time, it has significance in the fact Seoul has now joined in international cooperation on human rights issue.

### **Future Challenges**

While the first step was taken albeit challenging, numerous difficulties lie ahead in the follow-up procedures of the Act. Regarding the North Korean human rights issue, diverse views have existed and different actors have been active in various ways. Hence, it is difficult to expect that existing controversies vanished by the Act being passed. In particular, conflicts may rather amplify in the initial stages. Successful implementation of the Act calls for serious rumination and reflections from all actors that engage in the North Korean human rights issue. The discussions should focus on what is the most effective measure to achieve the Act's purpose, "to protect and improve human rights of the North Korean people."

Especially, as the South Korean government's will is most important, it should actively strive for the protection and promotion of human rights of North Korean people with

the promulgation of the Act. Specifically, Seoul should ensure that the Act takes effect smoothly by restructuring organizations, employing relevant experts, allocating appropriate budget, etc. For the manifold institutions and instruments prescribed by the Act to operate effectively, it requires the establishment of a cooperation system among relevant government ministries such as Ministry of Unification, Ministry of Justice, Ministry of Foreign Affairs, and National Intelligence Service. It is also necessary to seek measures to incorporate the expertise and experience of the private sector, which has played a vital role in improving human rights practices in North Korea for a long time. With the institutional groundwork for the improvement of North Korean human rights established, it is a crucial task to qualitatively develop projects that support the relevant NGOs. It is high time to formulate systematic policy to enhance the capabilities of these NGOs. Furthermore, this legislation should be considered as an opportunity to raise domestic awareness of the issue. To attract public attention on the North Korean human rights issue, it should be highlighted that improving human rights conditions in North Korea contributes to not only social integration after unification, but also laying of a foundation for unification. Lastly, this ought to be the moment to strengthen the cooperation with the international community. Active use of the UN Human Rights Office (Seoul) as a channel to inform the international community of the human rights situation of the North Korean people probed by different studies is necessary. Additionally, the South Korean government should appoint an ambassador for North Korean human rights, who will serve an active role in adopting resolutions at the UNHRC and UNGA as well as cooperating with other international organizations such as World Health Organization, World Food Programme, Food and Agriculture Organization of the UN, etc. The ambassador may also assume the role of establishing a cooperation mechanism with the countries that host North Korean overseas workers concerning their human rights which have alarmed the international community recently. ©KINU 2016

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