

Necessity and Considerations for the North Korean Human Rights Act

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No one can object to the fact that the situation of North Korean human rights is dire and in need of improvement. As a means to better such conditions, the South Korean version of the “North Korean Human Rights Act” has been established, but it is also drawing mixed reactions. Thus, the following explores the necessity of the Act and the considerations that must be made throughout the process.

The Basis and Necessity for the Enactment of the “North Korean Human Rights Act”

The basis, or preceding thought, behind the establishment of the Act can be found in international law, South Korean law, and legislations in the United States and Japan.

First, the establishment of the Act is legitimate from the perspective of human rights as a universal value in society. Although International law acknowledges cultural relativity and such characteristics, it places a larger emphasis on the universality of human rights. Drafted at the World Conference on Human Rights in 1993, the “Vienna Declaration and Programme of Actions” enforces the universality of human rights by asserting that “The Universal nature of these rights and freedom is beyond question.” It also claims that “... the promotion and protection of all human rights is a legitimate concern of the international community.” Furthermore, Clause 5 of the declaration states that “... While the significance of national and regional particularities and various historical, cultural and religious background must be borne in mind, it is

the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.” In this manner, the declaration has placed significant weight on the universality of human rights while also acknowledging the importance of cultural relativity.

Second, Clause 7 of Article 2 in the United Nations Charter states “no intervention on domestic issues.” There are, however, specific methods of intervention in accordance with the aforementioned clause, which include increasing awareness of dire human rights violations, drafting resolutions demanding that governments act to improve the human rights conditions, enacting economic sanctions, or utilizing technological means. Therefore, speaking out against North Korea and demanding reforms do not conflict with the current international law. In other words, criticizing and demanding an improvement of human rights in North Korea do not violate the Clause regarding intervention in domestic issues.

Third, the North Koreans share the same ethnic background with their South Korean counterparts. And according to Article 3 of the South Korean Constitution, North Koreans are regarded as South Korean. Consequently, the South Korean government is responsible for the safety of North Koreans, as they are legally recognized as South Korean citizens.

Fourth, the United States and Japan have enacted and are implementing their versions of the North Korean Human Rights Act. The United States’ Act was drafted in 2004, and in 2008, it extended until 2012. On May 15 of this year, the draft to further extend the Act until 2017 was passed in the House of Representatives, and it is currently awaiting the Senates’ decision. The Japanese version of the Act, which was implemented on June 23, 2006, is a “law that is concerned with the kidnappings and other human rights violations perpetrated by the North Korean government.”

Although most agree with the universality of human rights and need to improve the human rights conditions in North Korea, someone suggest “the law on the development of inter-Korean relations,” as a means of alleviating the North Korean human rights abuses. However due to two main reasons, it is necessary to enact the Act.

First, it is important to coordinate the movement and assistance of the international community in order to improve human rights in North Korea. Advocacy for change in North Korea has gained a significant following due to the universal value of human rights. Thus, South Korea—a country that is directly interested in the affairs of its Northern counterpart – should utilize its connections for international cooperation as a means to produce favorable results.

Second, the law regarding inter-Korean relations is only stipulated in abstract terms, as it “makes an effort to better human rights in North Korea” and “assist North Korea if necessary.” Thus, it is important to engage in a more constitutional approach for this endeavor to be successful.

Considerations in Implementing the “North Korean Human Rights Act”

The issue regarding North Korea is a problem for not only both Korean nations, but also for the

international community. While North Korea remains a hostile entity, it is also an entity that must be peacefully unified with the South, as designated in the South Korean Constitution. Ultimately, inter-Korean unification policies should be implemented with long-term goals of success. Accordingly, several provisions in the “North Korean Human Rights Act” must be reviewed in a comprehensive manner.

First, economic, social and cultural rights as well as civil and political rights have to be reflected with a balance in the context of human rights. Human rights can be largely divided into civil and political rights, which are the first generation of human rights, and the economic, cultural, and social rights, which are the second generation of human rights. The civil and political rights consists of the right to life and the right to personal freedom and safety, while economic, social and cultural rights include the right to food and the right to health. In order to improve the right to civil and political rights among North Koreans, we must continuously raise awareness of the issue to North Korean authorities about public executions and political prison camps, which are all human rights violations. We must also invoke a bottom-up change by opening the country so that outside information is accessible to ordinary North Korean citizens. An influx of outside information will change their perspective and the knowledge of the international standards on human rights will rapidly proliferate. Eventually, this will lead to a regime change in North Korea or lead to democracy.

Improvement in the North Koreans’ economic, social and cultural rights, as in the right to food and the right to health, requires policies that will improve the living standards of ordinary North Korean. In terms of the civil and political rights, we must pursue a political approach concerning both North Korean authorities and citizens. Similarly along the lines of economic, social and cultural rights, when we implement policies regarding the improvement of the North Koreans’ living standards, we must strike a balance in the kinds of problems we want to raise and the kinds of suggestions we want to make.

Although the civil and political rights and economic, social and cultural rights share different characteristics, they are mutually interdependent. The former does not precede social rights and conversely, the latter does not precede the right to freedom. They are both similar to two wheels of a cart. In order for the cart to function efficiently, both wheels must be of the same size and exert the same amount of force. If one wheel is larger or exerts more energy, then the cart will lose balance and topple. In other words, the civil and political rights and economic, social and cultural rights must be equally developed in order to successfully improve human rights in North Korea.

Second, the development of inter-Korean relations should be thoroughly deliberated, particularly in regards to the universal value of human rights. In this aspect, it is necessary that humanitarian aid and development cooperation is not separated from human rights for the reason being that they are interdependent. These two concepts are part of the so-called third generation of human rights. While the first generation is civil and political rights and the second is economic, social and cultural rights, the third generation of human rights is understood to include the right to peace, environmental rights, right to self-determination and the right to development, and it is gradually expanding in scope.

Enhancing the North Korean people's affinity to South Korea can play an important role in the process of promoting unification as well as encouraging the right to self-determination in the context of human rights. The right to self-determination means that the people can choose their own political fate. However, we must win the hearts of the North Koreans before they turn to the Chinese. Furthermore, social integration between the South and North Korean residents will provoke serious problems after unification. Thus, acquiring the North Korean people's favor through humanitarian aid can contribute to the prevention of a larger social conflict. This is significant in that it will bolster not only the process of unification, but also the formation of ethnic communities in the post-unification society.

Third, unification should be perceived as a long-term goal in regards to human rights policy in North Korea. This is attributed to the fact that Article 4 of the South Korean Constitution mandates the pursuit of unification; however, unification requires development cooperation with North Korea. First, the North Korean people's economic, social and cultural rights should be augmented; in other words, there is a need to improve the standards of living, but the North Koreans should be eventually held accountable for their living conditions. According to a Korean proverb, one can no longer continue to receive fish, and instead, the individual must learn different methods of catching fish. In order for North Korea to develop into a self-reliant nation, it must cooperate with South Korea and the international community. Within the notion of human rights, we must help the North Koreans exercise their right to development. Second, we must reduce the cost of unification, which is expected to be significantly high, especially during the process of reconstructing North Korea. However, development cooperation is expected to reduce the cost of unification. Given these elements, it is important to consider the different methods of applying international development cooperation laws on our development cooperation in North Korea.

Fourth, policies aimed at improving human rights conditions in North Korea should be consistent with the stipulations of the South Korean Constitution. According to Article 4 of the Constitution, "the Republic of Korea shall seek unification based on the principles of freedom and democracy and will formulate and proceed with the policy of peaceful unification." In other words, the methods of promoting unification policies are based on the two presented ideas: "free democratic order" and "peace." We should not only focus on the principles of democracy, but also highlight the importance of peace. In terms of the preservation of freedom and the principles of democracy as mandated in the South Korean Constitution, we must demand that changes are made to improve the North Korean people's civil and political rights; however, we should also avoid unnecessarily provoking North Korea and pursue peaceful means.

In conclusion, we must consider the difficulties in implementing the North Korean Human Rights Act from all variables including political and judicial aspects as well as factors deriving from inter-Korean and international relations. In addition, we must pursue a combination of policies in North Korea that target the general public in order to establish liberty and social rights based on the universal value of human rights and unique inter-Korean relations. Nevertheless, all these elements should be considered and reflected while deliberating an effective North Korean Human Rights Act. While meeting the established legal justification, the Act will also mandate the substantial improvement of human rights in

North Korea, but in order to prompt change in North Korea and eventually transition towards unification, there is a need for balance. Through negotiations and concessions, the opposing parties are expected to enact a compromised North Korean Human Rights Act.