

South Korea's Response to Human Rights Abuses in North Korea: An Analysis of Policy Options

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I S S U E S

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SUMMARY For decades, North Korea has been the site of brutal human rights violations, leaving the international community struggling to develop an effective response. This has been a particular policy dilemma in South Korea, where people are deeply sympathetic to those suffering, but are equally concerned about security and unification. In recent years, South Korea's policy response has been characterized by partisan divisions and bitter disputes. The debate has centered on efforts to pass a North Korean Human Rights Act, and the question of whether the South Korean National Human Rights Commission should address issues in the North. As the Park Geun Hye administration establishes policy, four principles should guide the process: avoid using North Korean human rights as a partisan political tool; concentrate on promoting multilateral initiatives; mainstream attention to North Korean rights issues within all relevant South Korean agencies; and ensure that the focus on North Korea does not distract from needed attention to domestic rights issues.

The moral imperative to act is strong, as is the political pressure from Park's conservative colleagues

South Koreans have long struggled with the question of how to approach the issue of North Korean human rights. On the one hand, there is a feeling that everything possible must be attempted to relieve the suffering of their ethnic brethren in the North. On the other hand, some are reluctant to jeopardize inter-Korean cooperation by criticizing the North or bringing up issues that its leaders do not wish to talk about. This has led to an inconsistent policy toward the North, and often vitriolic debate within South Korea. With a new president in office, this debate is being renewed. The Park Geun Hye administration will be unable to please all sides in this thankless policy area, and nobody can be sure that South Korean actions will actually have an effect on North Korea's human rights behavior. Nevertheless, the moral imperative to act is strong, as is the political pressure from Park's conservative colleagues and supporters. While old debates about the desirability of a North Korean Human Rights Act are likely to be rehashed yet again to little effect, there are nevertheless actions that Park Geun Hye can take to maximize the chances that South Korea can have a positive influence on the well-being of North Korean citizens, without engendering division and tension.

Human Rights in North Korea

For decades, North Korea has been the site of widespread and often brutal human rights violations. While it would be impossible to adequately review the North Korean rights record in this space, even a brief overview demonstrates the scope of the problem. In terms of civil rights, freedom of speech is heavily restricted, and political freedoms are nonexistent, with even mild criticism of the regime leading to imprisonment. Freedom of religion is also minimal, with Christians frequently being persecuted (an estimated 50,000 to 70,000 are currently held in prison camps).¹ Freedom of association is tightly curtailed, and there are no independent labor unions. The state also places severe limitations on freedom of movement within the country and prohibits unauthorized departures from the country. In addition, the North Korean judicial system is

not considered independent, and criminal punishments can be extremely harsh. Forced disappearances are common, and there have been many reports of torture, including torture of repatriated escapees. Executions are authorized for a variety of ill-defined crimes, and observers have reported the occurrence of numerous public executions in recent years.² Perhaps the signature evil of the North Korean regime is its system of six *kwan-li-so* prison camps, where an estimated 150,000 to 200,000 individuals are confined in extraordinarily brutal conditions without legal recourse.³ According to reports, at times multiple family members are imprisoned because of the actions of one person.

North Korea's abysmal human rights record is not confined to the sphere of civil and political rights. In the realm of economic and social rights as well, the population suffers severe deprivations. International attention in this respect is usually focused on the right to food. While conditions have improved since the great famine of the mid-to-late 1990s, periodic shortages still occur, with chronic malnutrition reported in many areas of the countryside. It is generally agreed that this dismal situation results largely from government mismanagement of the economy and from a military-first policy that directs an inordinate proportion of the country's resources to the armed forces. A secondary issue that often arises in this context is the human rights of the tens of thousands (or hundreds of thousands, according to some estimates) of North Koreans who have escaped their home country, many of whom live in desperate straits in Northeast China, where they are subject to the worst sorts of exploitation and the constant threat of repatriation.

In fact, North Korea today represents one of the last truly totalitarian societies, where virtually all types of rights are violated with regularity. According to former Special Rapporteur Vitit Muntarbhorn, the human rights violations in North Korea are "harrowing and horrific."⁴ The UN High Commissioner of Human Rights Navi Pillay recently echoed that conclusion, stating that "the deplorable human rights situation . . . has no parallel anywhere else in the world."⁵ It is worth noting, however, that while there

is no real debate about the fundamental gravity of North Korean human rights abuses, there is nevertheless considerable uncertainty about some of the details of those abuses, due to the closed nature of North Korean society.

International Responses

Besides South Korea, it is the United States, Japan, and certain European states that have proven to be the most interested parties regarding North Korean human rights violations. The United States and Japan have each passed a law termed the North Korean Human Rights Act, although the two acts differ considerably. The US law authorizes funding for human rights nongovernmental organizations (NGOs) involved with North Korea; promotes freedom of information, including radio broadcasts into the country; authorizes the appointment of a special envoy on North Korean human rights; and improves the legal framework for welcoming and resettling North Korean refugees.⁶ The Japanese act focuses on resolving the issue of North Korean abductions of Japanese civilians, and raising awareness of North Korean human rights abuses.⁷

In Europe, on the other hand, most countries have diplomatic relations with North Korea, and some have tried to bring up human rights matters in their bilateral dealings. At the union level, the European Union has provided considerable amounts of humanitarian aid to North Korea, while the European Parliament has held hearings on North Korean human rights abuses, and has been more outspoken in drawing attention to the violations faced by those living in North Korea and North Korean escapees in China.⁸

In addition, the United States, Japan, and major European countries have all proven willing to employ United Nations (UN) mechanisms to shed light on North Korean human rights abuses. Thus, in recent years, the UN General Assembly and the UN Human Rights Council have issued annual resolutions condemning North Korean human rights violations. In addition, the Human Rights Council authorized the appointment of a special rapporteur

for North Korean human rights in 2004. The special rapporteur's mandate was renewed in 2010 with the appointment of current officeholder Marzuki Darusman from Indonesia. In March 2013, the Human Rights Council went one step further by creating a Commission of Inquiry to examine North Korea's "systematic, widespread, and grave violations of human rights."⁹

When faced with criticism of their human rights record, the North Korean regime has generally reacted with outrage and denial. So far, the UN special rapporteur for North Korean human rights has not been allowed to enter the country. This does not mean, however, that the international human rights movement is entirely irrelevant to the North Korean leadership. In fact, the country has ratified four of the major UN human rights conventions and, in 2009, amended its constitution to include rights protections and participated in the Human Rights Council's Universal Periodic Review.¹⁰ Of course, it is questionable whether this engagement has any effect on the ground; notably, North Korea accepted none of the 167 recommendations that it received at the Universal Periodic Review.¹¹

The View from the South—A Society Divided

South Koreans are well aware of the human rights violations of the North Korean regime, and many feel strongly that the South Korean government must work toward improving life in the North. However, this has not led to a unified opinion among South Koreans as to what would be an appropriate response. In fact, South Koreans have tended toward strong disagreement on the issue, with divisions falling along ideological and partisan lines.

In general, South Korean progressives have argued that the government should avoid criticizing North Korea's human rights record or inserting human rights issues into inter-Korean negotiations. There are a number of philosophical arguments commonly cited for this. Some say that human rights criticism would constitute improper interference into North Korea's domestic affairs. Others say that the true human rights problem lies in US bellicosity and

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sanctions, which back the North Korean regime into a corner and push it to view authoritarianism as the only answer to its security dilemma. Two practical reasons are also commonly given by progressives as to why South Korea should not address North Korean human rights issues. First, progressives claim that it would do no good, as North Korea is not going to change its domestic policies based on South Korean actions. After all, the argument goes, years of attention from the UN, the United States, Japan, and Europe have not led to any meaningful improvements in actual conditions on the ground. Second, progressives argue that embarrassing the North with human rights criticism will only complicate and add tension to the inter-Korean relationship, while what North and South Korea need, instead, is to be drawing together toward gradual reconciliation and peaceful unification.

Progressives do, however, tend to favor the provision of humanitarian aid to the North, which they see as the best way to address North Korea's serious economic and social rights violations. Thus, during the progressive Roh Moo Hyun presidency, the South Korean government generally abstained from UN General Assembly and Human Rights Council resolutions condemning North Korea (with the sole exception being the 2006 General Assembly resolution, which South Korea supported).¹² Instead, South Korea gave significant quantities of humanitarian aid to the North during that time.

Most conservatives, in contrast, favor the government taking a more active role in criticizing North Korea's human rights record, and pressuring it to reform. In fact, they often see doing so as a constitutional imperative. Because the South Korean constitution states that the country encompasses the entire Korean peninsula, North Koreans are considered citizens of the Republic of Korea (South Korea), whose well-being should be important to the South Korean authorities. Conservatives tend to counter the progressives' ineffectiveness critique in three ways. First, they argue that history has shown that international forces can sometimes influence a country to improve its human rights practices, either through pressure, as was the case with South Africa, or through negotiations, as was the case with the

Helsinki Process in Eastern Europe. Second, they claim that some in the North Korean regime may refrain from human rights violations if they know that the outside world is recording (and condemning) those violations. Fear of prosecution in a post-Kim regime environment, whether by an international criminal tribunal or a post-unification Korean court, would drive that restraint. And, third, the conservatives often believe that by publicizing the regime's atrocities within North Korea itself, they can build up internal pressure for change.

Thus, during the conservative Lee Myung Bak administration, the South Korean government voted for (and in many cases cosponsored) UN resolutions criticizing North Korean human rights violations, raised awareness of North Korean violations through symposia and conferences, and provided support for human rights NGOs working in the field. Humanitarian aid, during this period, was conditional on progress in nuclear disarmament negotiations, and aid reached a 16-year low in 2012 amid continued political tensions on the peninsula.¹³

North Korean Human Rights Act

Since 2005, much of the public debate on South Korea's response to North Korean human rights violations has revolved around the attempted passage of a North Korean Human Rights Act. Although there has been some variation in the drafts produced by conservative legislators over the years, the basic framework has been consistent. First, the act would expand the institutional apparatus for dealing with North Korean human rights by creating a North Korean Human Rights Advisory Committee under the Ministry of Unification; a North Korean Human Rights Ambassador under the Ministry of Foreign Affairs and Trade; and a North Korean Human Rights Archive, with different drafts suggesting that the archive be established in either the National Human Rights Commission, the Ministry of Justice, or the North Korean Human Rights Foundation (which would be supervised by the Ministry of Unification). Second, the act would mandate that the government promote greater international awareness of North Korean human rights abuses. Third, the act would

Park positioned herself as something of a moderate on North Korean issues

provide for the development of a North Korean Human Rights Action Plan to guide future policies. Fourth, the act would promote effective humanitarian aid for the North, along with inter-Korean exchanges and cooperation. And, finally, the act would authorize support for civil society groups involved in promoting North Korean human rights.¹⁴

Progressives have regularly blocked passage of any of these human rights bills, objecting primarily to the creation of a North Korean Human Rights Archive and the provision of support to NGOs. In recent years, they have also proposed alternatives that focus on humanitarian aid. For example, the draft bill recently proposed by Kim Dong Chul would establish a humanitarian advisory committee rather than a human rights committee, and a humanitarian information center rather than a human rights archive.¹⁵ These competing bills have been the subject of partisan bickering—and little compromise—in recent legislative sessions, with the same pattern looking likely to be played out in 2013.

Role of the South Korean National Human Rights Commission

Another focal point in the debate over how to respond to North Korean human rights violations has centered on the appropriate role of the South Korean National Human Rights Commission. For several years following its establishment in 2001, the Commission concentrated its efforts on South Korean rights issues, although it did sponsor annual conferences on North Korean human rights. Starting in 2006, however, it began to voice support for stronger government engagement on North Korean rights issues, recommending that the South Korean government “develop solidarity and vitalize cooperation with the international community in order to gain concrete improvements regarding North Korean human rights.”¹⁶ The commission has continued to press the government to greater action, most significantly with its 2010 recommendation that the legislature pass the North Korean Human Rights Act.¹⁷

In 2011, the commission took the next step, from urging action to actually taking action itself, with its establishment of the North Korean Human Rights

Documentation Center and Archives. This center, which is modeled on West Germany’s former Salzgitter Center that documented East German abuses, records evidence of North Korean human rights violations pursuant to complaints made by both refugees and NGOs working in the field. The center’s work has been criticized on policy grounds in the press, however, and some question whether it has exceeded its legal mandate.¹⁸ There are also accusations that the National Human Rights Commission has neglected South Korean rights issues in its eagerness to address activities north of the border.

Policy Directions for the Park Administration

As Park Geun Hye establishes her administration, one of many important questions to contend with is how to address North Korean human rights. In her initial campaign statements, Park positioned herself as something of a moderate on North Korean issues. She has embraced what she calls “trustpolitik,” signifying that humanitarian assistance should be separated from politics, and has expressed a willingness to meet personally with Kim Jong Un.¹⁹ In fact, Park approved the shipment of a humanitarian aid package of tuberculosis medicine to North Korea from a South Korean NGO during her first month in office, despite relatively bellicose rhetoric from Pyongyang.²⁰ This is a positive sign for the potential future resumption of humanitarian aid on a larger scale. On the other hand, she has also reiterated her belief in the importance of efforts to improve North Korean human rights and has expressed support for passage of the North Korean Human Rights Act.²¹

Unfortunately, it is questionable whether she will be able to fully implement these plans. If North Korea engages in military provocations, there will be considerable pressure to curtail humanitarian aid or cooperative measures, and any chance of negotiating human rights issues in a bilateral forum will probably disappear. That said, there are certain principles that Park should bear in mind when addressing North Korean rights issues. First, she should divorce the issue as much as possible from domestic partisan politics. It benefits no one when the issue of human rights for North Koreans is used to denigrate political

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opponents, such as accusing progressives of insensitivity or heartlessness. This type of discourse, which conservatives have sometimes resorted to in the past, should be avoided.

Second, strong coordination and cooperation with multilateral efforts to address North Korean human rights should be encouraged. North Korea has shown in the past that it cares about the opinion of the international community, and there is currently increased attention to North Korean human rights at the United Nations due to the recent establishment of a UN Commission of Inquiry by the Human Rights Council. The South Korean government should facilitate the work of the new commission as much as possible. For example, it can propose reliable independent experts for the commission to meet with, provide relevant background information to the commission, and notify the commission of specific rights abuses in the North. Park can also use South Korea's considerable diplomatic strength to ensure the Commission of Inquiry reports receive a full hearing at the Human Rights Council, possibly through the convening of a special session.

Coordinating policy on human rights issues with major players in the region, particularly China, will also be worth a renewed effort by the Park administration. There are signs that Chinese leaders are becoming exasperated with North Korea's destabilizing behavior, while many in the general public are increasingly embarrassed by China's close ties to the brutal North Korean regime. Some official change in attitude was demonstrated when China abstained (for the first time) from the 2012 UN General Assembly resolution condemning North Korean human rights abuses.²² While Chinese leverage with the Pyongyang regime is sometimes overstated, Seoul must nevertheless be proactive in attempting to convince China to increase pressure on North Korea to improve its rights record.

Third, North Korean human rights issues should not be centered in a sole agency, but should be "mainstreamed" so that each relevant part of the South Korean governmental apparatus addresses the issue in its own mandate, in an unduplicated manner. For example, while the South Korean National Human Rights Commission may be well equipped

to accept human rights complaints regarding North Korea because of its independence and long experience hearing domestic complaints, the Ministry of Unification is better equipped to deal bilaterally with the North, and the Ministry of Foreign Affairs and Trade can coordinate international responses. Other agencies may also have an important role to play. For example, the Ministry of Justice should look into the possibility of prosecuting those responsible for grave atrocities, and the Ministry of Gender Equality and Family should be responsible for policy initiatives dealing with human trafficking. Coordination can come from the prime minister's office or an inter-agency committee. The debates of recent years regarding which agency should take the lead on North Korean human rights serve no good purpose.²³

Fourth, and perhaps most importantly, the South Korean government must bear in mind that its primary human rights objective must be to promote and protect the human rights of the South Korean people. There is no conceivable reason why attention to North Korean rights should be allowed to distract attention from South Korea's own problems. Although human rights violations in the South evidently cannot be compared to those in the North in terms of brutality or frequency, that does not mean there are no concerns. In its 2012 annual report, Amnesty International highlighted restrictions on freedom of expression and assembly, the lack of conscientious objector status for mandatory military service, and violations of migrants' rights.²⁴ Many observers feel that human rights violations became more common during Lee Myung Bak's term in government.²⁵

One measure that could both improve conditions in South Korea and avoid accusations of hypocrisy with respect to North Korea would be for Park to call for the repeal of South Korea's National Security Law. This law criminalizes organizing or joining an anti-state group, praising or encouraging an anti-state group, and communicating with an anti-state group (among other provisions).²⁶ It has often been used to quash what can only be described as legitimate dissent, and North Korea has long countered South Korean human rights pressure by claiming, with some degree of truth, that South Korea is itself guilty of abusing basic human rights.²⁷ The law remains

popular among conservatives, and repealing it would be controversial, but doing so would show that the government genuinely cares about human rights in both the North and the South, and would be seen as a sign of confidence rather than weakness.

While it is unlikely that these policy measures would have an immediate impact on conditions on the ground, they would address the real demand among the South Korean people for an official

response to the human rights nightmare in North Korea, and would help keep the regime's human rights violations in the public eye. At the same time, the new government could avoid getting bogged down in the political backlash that would accompany more divisive policies. Over time, one can only hope that sustained international attention will eventually lead North Korea to improve its treatment of its own citizens.

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