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THE NORTH KOREA HUMAN RIGHTS ACT: SOUTH KOREAN AND INTERNATIONAL EFFORTS AND THE NECESSITY FOR THE LAW

Shinbum Han†

INTRODUCTION

The severity of human rights infringement in North Korea is known throughout the world. The Freedom House classifies North Korea as a country that is “not free,” and gives out the lowest grades on extent of freedom, civil liberties, and political rights.¹ Amnesty International accuses North Korea of being “in a category of its own when it comes to human rights violations.”² Human Rights Watch observes that the totalitarian rule continued since Kim Jong-un gained power after his father’s death in December 2011.³ There have been numerous cases of brutal authoritarianism in history. Repression in North Korea is appalling, however, particularly in this age when civilization as a whole made great strides in protection of human dignity.

The purpose of this paper is to highlight the importance of the North Korean Human Rights Act (NKHRA)⁴ in South Korea. The U.S. and Japan enacted laws addressing the issue in the 2000s, and international pressure

† I would like to thank Eunkyo Hong and Seung Yun Kim and for their research assistance on recent economic and social development in North Korea. I also wish to thank Jin-gyeong Lim for her graphical work.

1. Freedom in the World: North Korea, Freedom House, <https://freedomhouse.org/report/freedom-world/2014/north-korea#.VYinq1JYMrg> (last visited Mar. 4, 2016).

2. North Korea, Amnesty Int’l UK, <http://www.amnesty.org.uk/issues/North-Korea> (last visited Mar. 4, 2016).

3. Human Rights Watch, World Report 2014: North Korea 1.

4. The North Korea Human Rights Act, or NKHRA, means the bills submitted to the National Assembly in South Korea, as well as the law which was finally enacted in March 2016, unless it specifically indicates law in other countries on North Korean human rights. See Ha-young Choi, S. Korean Assembly expects N. Korean human rights bill soon, NK NEWS (Sept. 10, 2015), <https://www.nknews.org/2015/09/s-korean-assembly-expects-n-korean-human-rights-bill-soon/>. The bills have different names. The bill by Representative Hwang Jin-ha in June 2005, for example, was titled Bukhan-jumin-ui indojeok jiwon mit in’gwon-jeungjin-e gwan-han beop-ryul-an (Bill on Humanitarian Assistance and Improvement of Human Rights of North Korean Residents). The bills are collectively referred to as the North Korean Human Rights Act, or NKHRA in this Article. The term does not include bills by the left-wing parties, which provide for humanitarian assistance without reference to such institutions as human rights foundation and archive.

on North Korea is rising. South Korean legislators have been seeking to ratify a similar law in their country since Representative Hwang Jin-ha⁵ first introduced NKHRA at a National Assembly committee⁶ in June 2005. It took the law more than a decade to come to a vote at the plenary session.

Possibility had appeared to be remote for NKHRA's ratification by the end of the 19th Assembly, until DPRK's fourth nuclear test on January 6, 2016, and satellite launch on February 7, 2016, in violation of United Nations Security Council resolutions turned the international opinion against the country. Reaction was swift, as the Security Council passed Resolution 2270, sanction measures against Pyongyang.⁷ South Korea and United States launched one of the largest joint military drills in March, as Pyongyang continued to threaten a nuclear war. Seoul on its own imposed new sanctions with asset freeze and the nullification of the project, which allowed Russian cargo to be transported to South and other countries through North Korean port of Najin. Under such circumstances, lawmakers in Seoul faced an urgent need to enact the law, and finally approved it on March 2,⁸ right before the Assembly election in April 2016.

Opponents of NKHRA question whether the law would have any immediate or practical effect. The law won't turn North Korea into a utopia overnight, but condemnation of the human rights situation by outsiders does trouble Pyongyang. Furthermore, North Koreans are finally waking up to events that occur outside their country, and they are realizing that the state is not an entity to be followed absolutely. There are signs that citizens of

5. The terms in Korean language in this Article are written based on the Romani- zation system of *Kuklip-kuk'eo-won* (National Institute of Korean Language), except for terms such as Park Geun-hye and Kim Il-sung, which are widely cited in international media. Names of South and North Korean politicians, officials, and legislators are writ- ten with the family name first.

6. The name of the committee responsible for foreign relations and national unifi- cation changed over the years. *Tong'il-oegyo-tongsang-wiwonhoe* (Unification, Foreign Affairs, Commerce Committee) was changed to *Oegyo-tongsang-tong'il-wiwonhoe* (Foreign Affairs, Commerce, Unification Committee) in August 2008. *See also Parlia- mentary bodies dealing with international trade: Foreign Affairs and Unification Com- mittee*, INTER-PARLIAMENTARY UNION, [http://www.ipu.org/english/parline/reports/ instance/2_305.htm](http://www.ipu.org/english/parline/reports/instance/2_305.htm) (last visited Mar. 4, 2016). The name again was changed to *Oegyo- tong'il-wiwonhoe* (Foreign Affairs and Unification Committee, (FAUC)) in 2013. *See generally* Foreign Affairs & Unification Committee, <http://uft.na.go.kr/site> (last visited Mar. 4, 2016). The committee will be referred to as FAUC in this Article, irrespective of its actual name.

7. The resolution, the strongest ever, provided, among other things, for cargo in- spection, embargo, and expulsion of North Korea diplomats involved in violation of the sanctions.

8. The law will go into effect on September 4, 2016.

Democratic People's Republic of Korea (DPRK) are yearning for a change, and a day may come when they finally choose their leaders in a democratically held election.

I. HUMAN RIGHTS VIOLATIONS IN NORTH KOREA

The North Korean state practices one of the most egregious forms of human rights violations. The criminal justice system operates at the whim of the Workers' Party of Korea (WPK), and public execution, beatings, and other types of exploitation routinely occur. The government does not tolerate freedom of press, assembly, religion, or ideology. Elections are a sham, and only journalism sponsored by the government is allowed. Between 80,000 and 120,000 inmates⁹ are confined in four *gwanliso*.¹⁰ The government seeks out underground church, and those caught practicing Christianity come under heavy punishment. Tens of thousands of small and large statues of Kim Il-sung and Kim Jong-il are scattered throughout the country, to which residents pay respect.

Under the *songbun*¹¹ system, the population is classified into specific classes along a social hierarchy, based on perceived allegiance to the regime. Those whose ancestors joined the anti-Japanese movement with Kim Il-sung have the highest social status. A resident or a descendant of a resident who had a bourgeois background faces discrimination in food, job, and other opportunities. Pyongyang is a privileged place, and only those who are the best looking and possess proven loyalty can live in the city.¹²

In addition to political persecutions, the standard of living inside DPRK is one of the lowest in the world. The communist economic system which ignored market mechanism and did not reward individual incentives was grossly inefficient.¹³ The theory of self-reliance (*juche*) notwithstanding, the Kim Il-sung government relied excessively on donations from its communist allies, particularly the USSR, ever since the foundation of the country after World War II. While Vietnam, China and other socialist countries embarked on economic restructuring in the 1980s and the 1990s, DPRK refused to open its doors and further isolated itself. Default on foreign debt instruments by the mid-1980s made it impossible for Pyongyang

9. Hum. Rts. Council, Rep. of the comm'n of inquiry on hum. rts. in the Democratic People's Republic of Korea, U.N. Doc. A/HRC/25/63 (2014).

10. Literally, a management center, a euphemism for a prison camp.

11. Status.

12. *Rep. of the comm'n of inquiry, supra* note 9 ¶¶ 39, 41.

13. North Korea Human Rights Act of 2004, Pub. L. No. 108-333, § 3(4); *see generally* STEPHAN HAGGARD & MARCUS NOLAND, *FAMINE IN NORTH KOREA: MARKETS, AID, AND REFORM* (2007).

to raise funds in the international financial market.¹⁴ The quantity of foreign donations plummeted with the collapse of the USSR, and North Korean economy nosedived.

The 1990s was an agonizing time for North Koreans as the breakdown of the public distribution system forced them to endure *gonan-ui haeng'gun*.¹⁵ Ministry of Unification¹⁶ estimates that approximately 330,000 people died of hunger between 1996 and 2000,¹⁷ and many of those who survived had difficult times, too.¹⁸ Floods in 1995 and 1996 and a drought in 1997 only worsened the plight.¹⁹

Arable land is limited in North Korea, particularly in the north with the rugged, mountainous terrain. However, famine could have been eased or even prevented through irrigation, forestation, and upgrading of hydro-power facilities, and if Pyongyang did not wait until 1995 to actively appeal for international relief.²⁰ Meanwhile, Kim Jong-il and those with power did not refrain from their extravagant lifestyles, regardless of the large-scale pain and misery.²¹

II. WHITHER NORTH KOREA?

Even DPRK is not impervious to changes, however. In December 1991, Pyongyang launched a special economic zone in Rajin-Sonbong or Rason, nearby the Chinese and Russian border, to draw investment from the two countries. The manufacturing complex in Kaesong, a city 50 kilometers north of Seoul, was one of the biggest collaborative projects between the

14. See HAGGARD & NOLAND, *supra* note 13, at 27-31; *North Korea is Told of Loan Default*, N.Y. TIMES (Aug. 23, 1987), <http://www.nytimes.com/1987/08/23/world/north-korea-is-told-of-loan-default.html>.

15. Translated by the author as Arduous March. The term originally meant the bitter struggle of Kim Il-sung and his peers in Manchuria from 1938 to 1939, in their guerilla movement against Japanese colonialists. Pyongyang used the term in the 1990s, as it urged residents to maintain their loyalty to the state despite searing poverty.

16. *Tong'il-bu*.

17. *Bukhan jisik sajeon* (Fact on North Korea), MINISTRY OF UNIFICATION, <http://nkinfo.unikorea.go.kr/nkp/term/viewNkKnwldgDicary.do?pageIndex=2&koreanChrctr=&dicaryId=4> (last visited Mar. 9, 2016).

18. *From mirror images to portraits of contradiction*, KOREA JOONGANG DAILY (Aug. 15, 2015), <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=3007921>.

19. BRUCE CUMINGS, *NORTH KOREA: ANOTHER COUNTRY* 179-81 (2004).

20. *Rep. of the comm'n of inquiry*, *supra* note 9, ¶¶ 48-49, 51, 53. See generally HAGGARD & NOLAND, *supra* note 13.

21. See, e.g., *Rep. of the comm'n of inquiry*, *supra* note 9.

two Koreas.²² Orascom, an Egyptian company, began a mobile service partnership with the North Korean government in December 2011, and is enjoying a monopolistic position to meet communication demand of more than 2 million cell phone users.²³

It is a well-known fact that North Koreans are now participating in their own version of capitalism at more than 300 *jangmadang*, or markets throughout the country.²⁴ Pyongyang sought to restructure its economy through the measures of July 1, 2002, which allowed surplus production over the quota assigned by the state. The government backtracked, however, when it felt the threat of burgeoning private initiatives. In November 2009, the North Korean government ordered the currency reform, whereby old money was to be exchanged with new currency at the rate of 100 to 1. The policy was supplemented by a ban on use of foreign exchange and a crackdown on markets.

This misguided attempt by the government to reassert itself failed, however, as it caused hyperinflation and hoarding of Chinese yuan and U.S. dollar.²⁵ In February 2010, the government allowed circulation of foreign currency and opening of large markets again. Pyongyang henceforth implemented policies such as the June 28 measures in 2012 and the May 30

22. Construction started in June 2003, and was completed in October 2007. At the end of December 2010, 121 enterprises maintained manufacturing facilities there, and employed more than 46,000 North Korean workers. The industrial zone's turbulent history reflected the relationship between the two countries. The operation was suspended or disrupted, with withdrawal of some or all of the South Korean workers from the zone, after the sinking of *Cheonan* warship in March 2010, the bombing of *Yeonpyeong* island in November 2010, and in April 2013 when Pyongyang's military threat reached new heights. The operation was eventually restored after each incident, until it was completely shut down after North's launch of a rocket in February 2016.

23. See Martyn Williams, *Orascom has \$422 million in cash in North Korea*, N. KOREA TECH (Dec. 16, 2013), <https://www.northkoreatech.org/2013/12/16/orascom-has-422-million-in-cash-in-north-korea>; *Over 2 Million N. Koreans Have Mobile Phones*, CHOSUN ILBO (ENG. ED.) (Aug. 5, 2013), <http://english.choson.com/svc/news/printContent.html>.

24. *Jangmadang* initially began as a small market where farmers sold extraneous agricultural commodities and other goods. In the 1990s, however, people came to rely on market to supplement the lower income they earned from state enterprises. Pyongyang officially recognized *jonghap sijang* (general market) after the measures of July 1, 2002. Today, food, shoes, clothes, electrical devices, and other sundry goods from China, Japan, and South Korea are freely traded at the market. Sellers and purchasers move far more efficiently than they ever did at state-owned enterprises.

25. Foreign currency is exchanged as de factor currency at markets, as residents do not trust in the value of North Korean *won*. See James Pearson, *North Korea's Black Market Becoming the New Normal*, REUTERS (Oct. 29, 2015), <http://www.reuters.com/article/us-northkorea-change-insight-idUSKCN0SN00320151029>.

measures in 2014, which permitted enterprises to keep a share of what they produced after paying off the state.²⁶ As will be explained below, DPRK now is a scene of “a quiet revolution” where businesses are run by entrepreneurs with profit motives.²⁷

In North Korea, the political structure inherited from the Kim Il-sung era is essentially intact. Kim Jong-un is the supreme commander, and the WPK is the only political party with power. Unlike in other Stalinist countries, DPRK generated a dynasty with power transfer occurring within the Kim family. The country as a whole is faring badly, and discontent is simmering underground, but Kim is audaciously wielding his power. The propaganda machine pumping out the personality cult of Great Leader and Dear Leader is still in high gear. People may whisper in private their frustration with the government, but a revolt, small or large, would be ruthlessly put down.

With its relatively well-educated labor force, location in the hub of East Asia, plentiful underground resources, a track record of industrial development,²⁸ and the populace already learning the ropes of capitalism, North Korea has a potential to lift itself out of underdevelopment. Political liberalization would empower it to reduce the poverty rate, upgrade outdated infrastructure, become better integrated with the global economy, and join other emerging nations in achieving fast economic growth.

III. RIGHTS AND FREEDOMS LEGALLY GUARANTEED IN NORTH KOREA

Protection of human rights may be a culturally relative value,²⁹ but DPRK is a signatory to many international human rights treaties. Pyongyang joined the UN on September 17, 1991, together with South Korea, and is therefore a party to the UN Charter, which encourages respect for fundamental rights. North Korea also complied with international protocols such

26. The DPRK state allowed an independent accounting system (*dongnip chaesanje*) beginning in the 1960s, which gave entities some control over their own operations. Such policies were limited, however, as the country remained essentially centrally planned at least until the 1980s. See *Bukhan jisik sajeon*, *supra* note 17.

27. See Stephen Evans, *A Quiet Revolution in North Korea*, BBC NEWS (Jan. 14, 2015), <http://www.bbc.com/news/business-30812237>.

28. Until the early 1990s, the North Korean government periodically announced multi-year development plans to increase production of coal, automobiles, machines, steel, and other commodities. As was the case in USSR and other communist countries, Pyongyang successfully industrialized the country in the 1960s.

29. See, e.g., AMARTYA SEN, *HUMAN RIGHTS AND ASIAN VALUES* (1997).

as submitting reports to UN committees under the International Covenant on Civil and Political Rights (ICCPR) and other treaties.³⁰

TABLE 1. INTERNATIONAL HUMAN RIGHTS TREATIES SIGNED BY NORTH KOREA¹

Treaty	Joined in	Entered into force in
International Covenant on Economic, Social, and Cultural Rights	September 1981	December 1981
ICCPR	September 1981	December 1981
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity	November 1984	February 1985
Convention on the Prevention and Punishment Of the Crime of Genocide	January 1989	May 1989
Convention on the Rights of the Child	September 1990	October 1990
Convention on Elimination of Discrimination against Women	February 2001	March 2001

¹CHAN-GYU KIM AND GYU-CHANG LEE, *BUKHAN GUKJEBEOP YEONKU* (Study on International Laws in North Korea) (2009).

The DPRK government itself officially espouses the value of human rights. As a matter of fact, North Korea was founded on the principle of welfare and egalitarianism under proletariat ideals. Article 65 of the socialist constitution proclaims that citizens shall enjoy equal rights in all fields of national social life.³¹ Kim Il-sung was said to have *wimin-icheon* as his motto, which decrees that a head of a state should uphold his subjects as heaven. Kim's mission apparently was to build a strong nation which would take it upon itself to look after people's well-being.

30. See Bo-hyuk Suh, Controversies over North Korean Human Rights in South Korea Society, 31 *ASIAN PERSP.* 23, 25 (2007).

31. DONG HAN KIM, *MIGUK-UI BUKHAN-IN'GWON-BEOP-GWA BUKHAN-UI IN'GWON-GWANRYEON-BEOPJE-UI BIGYO-BUNSEOK* (Comparative Analysis of North Korea Human Rights Act in the U.S. and the Human Rights-Related Laws in North Korea) (2005).

TABLE 2. BASIC RIGHTS OF CITIZENS UNDER THE SOCIALIST CONSTITUTION OF NORTH KOREA

Article 66	Rights to vote, to be elected
Article 67	Freedom of assembly and press
Article 68	Freedom of faith
Article 69	Right to a legal action
Article 72	Right to free medical care
Article 73	Right to education
Article 74	Freedom of science, literature, and art
Article 75	Freedom of residence and travel
Article 77	Women's equality

IV. INTERNATIONAL COMMITMENTS

A. *United Nations*

Repatriation of North Korean refugees, malnutrition, political imprisonment, and other plights have been a recurrent question at the UN. The first resolution at the UN against human rights violations in North Korea was at the Sub-commission on Human Rights in August 1997.³² Since 2006, the UN General Assembly adopted resolutions on North Korean human rights at every session.³³ In March 2013, the UN organized the Commission of Inquiry (COI) to probe into DPRK's human rights record. COI spent several months conducting public hearings with more than 80 North Korean refugees and other witnesses in Seoul, Tokyo, London, and Washington. In February 2014, the commission published one of the most comprehensive reports on North Korean human rights. The report describes some of the inhumanity perpetrated by the DPRK government, and advised that the Security Council refer the situation to the International Criminal Court (ICC), or an ad hoc tribunal at the UN.³⁴

32. DEUG KEE AHN, KUKJE-SAHOE-WA BUKHAN-IN'GWON: HYEONHWANG, JAENGJEOM, GWAJE (International Community and North Korean Human Rights: Current Status, Controversies, and Tasks) (2011).

33. In July 2004, the Commission on Human Rights appointed Vitit Muntarbhorn, a human rights scholar, as a rapporteur on human rights in North Korea. Muntarbhorn's request to be allowed entry into the country and have meetings with DPRK officials was repeatedly denied, however.

34. Michael Kirby, a former Australian judge who chaired the COI, compared the violence committed by Pyongyang to that by the Nazi Germany and Pol Pot's Cambodia. Peter Walker, *North Korea Human Rights Abuses Resemble Those of the Nazis, Says UN Inquiry*, THE GUARDIAN (Feb. 18, 2014), <http://www.theguardian.com/world/2014/feb/17/north-korea-human-rights-abuses-united-nations/>.

TABLE 3. RESOLUTIONS AT UN DENOUNCING HUMAN RIGHTS VIOLATIONS IN NORTH KOREA²

General Assembly
60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th
Commission on Human Rights
59th, 60th, 61st
Human Rights Council
7th, 10th, 13th, 16th, 19th, 22nd, 25th, 28th

²See U.N. North Korea Human Rights Issues Discussion Database, MINISTRY OF FOREIGN AFFAIRS, http://www.mofa.go.kr/trade/humanrights/diplomacy/northkorea/index.jsp?menu=M_30_70_70&tabmenu=T_2 (last visited Mar. 4, 2016).

In November 2014, the Third Committee of the General Assembly adopted a resolution which also recommended referring the situation to an ICC trial. A trial at the ICC would be momentous in that it would be closely covered by media from around the world. The indictment and the conviction would be extremely embarrassing to those found guilty, even if they cannot physically be arrested and imprisoned, and the news would reach ears of North Koreans, too.³⁵

B. *United States*

1. NKHRA in the United States

The George W. Bush administration challenged Pyongyang, a member of the axis of evil, on all controversies including human rights, and the legislations reflected such presidential position. In October 2002, Senator Sam Brownback presented the North Korean Refugee Relief Act (NK-RRA), which allowed those fleeing North Korea to seek asylum protection in the U.S. Brownback introduced it again on June 25, 2003, the anniversary of the start of the Korean War in 1950, and the bill passed both chambers a month later.

In November of the same year, Brownback and Evan Bayh felt a need for a law with a broader coverage, and came up with the North Korean Freedom Act (NKFA). Representative Jim Leach initiated a bill with the

35. South Koreans ordinarily refer to people living in DPRK as “North Korean residents” (*bukhan jumin*), as opposed to “North Korean nationals” or “North Korean citizens.” Under Article 3 of the South Korean constitution, the territory of the Republic of Korea consists of the Korean peninsula and its adjacent islands. DAEHANMINKUK HEONBEOB [CONSTITUTION] art. 3 (S. Kor.). The term “North Korean residents” implies that North Korea is part of South Korea as opposed to another country.

same name in the House. In March 2004, Leach introduced the North Korean Human Rights Act, a modified version of the NKRRA, and the bill passed the Senate and the House in September and October 2004, respectively, with bipartisan support.³⁶

TABLE 4. LEGISLATIVE HISTORY OF THE NORTH KOREA HUMAN RIGHTS ACT IN THE UNITED STATES³

November 2003	Senators Brownback and Bayh proposed the North Korean Freedom Act.
November 2003	Representative Jim Leach introduced the North Korean Freedom Act.
March 2004	16 congresspersons led by Leach unveiled the North Korea Human Rights Act, which modified the bill which Leach himself had initiated
March 2004	The bill passed the International Relations Committee in the House by unanimous vote.
July 2004	The House passed the bill by voice vote.
September 2004	The Senate modified the House bill, and ratified it by unanimous vote.
October 2004	The House passed the modified Senate bill, again with unanimous vote.
October 2004	President Bush signed the bill.
October 2008	President Bush signed the North Korean Human Rights Reauthorization Act.
August 2012	President Obama signed the North Korean Human Rights Reauthorization Act, extending its effectiveness until 2017.

³Prepared by Dong Han Kim.

The U.S. NKHRA contains findings on the human rights situation in North Korea.³⁷ Its programs relate to support for democracy programs,³⁸ radio transmission to North Korea,³⁹ appointment of an envoy on human rights,⁴⁰ monitoring assistance to North Korea,⁴¹ and protection of North Korean refugees.⁴²

On the international front, the law advocates a regional human rights dialogue,⁴³ requests the Chinese government to give UN workers “unim-

36. The role of North Korea Freedom Coalition among other religious human rights groups was substantial in gathering support for the law.

37. North Korea Human Rights Act of 2004, H.R. 4011, 108th Cong. § 3 (2004).

38. *Id.* § 102.

39. *Id.* § 103.

40. *Id.* § 107.

41. *Id.* § 202.

42. *Id.* §§ 301-03.

43. *Id.* § 106.

peded access” to North Koreans in China,⁴⁴ and makes recommendations for the UN Higher Commissioner for Refugees.⁴⁵ Government budget is allocated for human rights programs⁴⁶ and promotion of freedom of information.⁴⁷ The law further directs the Secretary of State and the Secretary of Homeland Security to submit annual reports to congressional committees.⁴⁸ The law was reauthorized in 2008 and in 2012 to extend duration of the measures set forth in the 2004 Act.

2. Other Laws in the United States

In addition to the law on North Korean human rights, Congress passed a number of other legislations on international human rights. We will survey those laws below, to put NKHRA in the U.S. and South Korea in perspective.⁴⁹

a. *Cuban Democracy Act*

Popularly known as Torricelli Act, the Cuban Democracy Act of 1992 mandates economic sanctions on the Cuban government. Among such disciplinary measures are sanctions against countries aiding Cuba,⁵⁰ prohibitions on entry into a port in the U.S. by a ship with Cuban interest,⁵¹ and limitations on remittances to Cuba.⁵² The law also allowed Washington to support individuals and organizations working for peaceful democratic change in Cuba.⁵³ The law does not prohibit the donation of food, medicines, and other medical supplies to the country.⁵⁴

44. *Id.* § 304(a)(1).

45. *Id.* §§ 304(a)(2)(5).

46. *Id.* § 102.

47. *Id.* § 104.

48. *Id.* § 305.

49. YONG-CHEON KIM, MIKUK-UI 2004-NYEON BUKHAN-IN'GWON-BEOP JEJEONG UIMI-WA HANBANDO PYEONGHWA BANG'AN MOSAEK: JIPKWON 2-KI BUSI HAENGJEONGBU-UI DAEBUK-JEONGCHAEK JEONMANG-EUL JUNGSIM-EURO (A search for plan about the peace of the Korean peninsula and the meaning of establishing a North Korean Human Rights Act of 2004).

50. Cuban Democracy Act of 1992, Pub. L. No. 102-484, § 6003(b), 106 Stat. 2575 (1992) (codified at 22 U.S.C.S. ch. 69, § 6003(b) (1993)).

51. *Id.* § 6005(b).

52. *Id.* § 6005(c).

53. *Id.* § 6004(g).

54. *Id.* §§ 6004(b), (c), (e), (f).

b. *Cuban Liberty and Democratic Solidarity Act*

After the Cuban government shot down two aircrafts operated by Brothers to the Rescue, an organization assisting Cuban refugees, in 1996, Washington countered with the Cuban Liberty Democratic Solidarity Act, also known as the Helms-Burton Act. Helms-Burton's provisions concerned (1) expanding international sanctions against the Fidel Castro regime,⁵⁵ (2) catalyzing the transition to democracy in Cuba,⁵⁶ (3) protecting rights of U.S. nationals, whose property was confiscated by the Cuban government,⁵⁷ and (4) expelling from the U.S. an alien who confiscated or trafficked property of U.S. nationals.⁵⁸ The law allows filing of an action in the U.S. for wrongful deprivation of property.⁵⁹ It further declares that the sanctions cannot be lifted until a democratically elected government is installed in Cuba.⁶⁰

The law's aggressiveness provoked protests from other countries. The EU considered referring the U.S. to a panel at the World Trade Organization over the extra-territorial application of the law. In its disapproval of the law, the U.K. government sent Baroness Symons, Under Secretary of State, to Cuba in October 1998, and urged its European partners to act against the law.⁶¹ The General Assembly adopted resolutions every year since the early 1990s requesting the U.S. end its blockade against Cuba, and requesting the adoption of resolutions continued after the enactment of Helms-Burton.⁶²

c. *Iran Democracy Act (IDA)*

IDA, legislated in 2003, is a brief law with just four sections. It sponsors democratic initiatives in Iran such as Radio Farda programming, and distributes grants to organizations putting together media materials for rule of law in Iran.⁶³

55. Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, Pub. L. No. 104-114, tit. 1, 110 Stat. 785 (1996) (codified at 22 U.S.C.S. tit. 1 ((1996) [hereinafter Helms-Burton Act].

56. *Id.* tit. 2.

57. *Id.* tit. 3.

58. *Id.* tit. 4.

59. *Id.* § 302(a)(4).

60. *Id.* §§ 201(14), 204(c).

61. MICK HILLYARD & VAUGHNE MILLER, CUBA AND THE HELMS-BURTON ACT 29 (1998).

62. *See generally id.*

63. Iran Democracy Act of 2003, S. 1082, 108th Cong. § 4 (2003).

d. *Iraq Liberation Act (ILA)*

ILA, ratified in 1998, directs the president to select a democratic opposition group against Saddam Hussein.⁶⁴ It further provides for a war crimes tribunal⁶⁵ and supports a transition to democracy in the country.⁶⁶ Explicitly authorized are military spending and a subsidy of up to \$97 million to fund insurgent groups.⁶⁷

TABLE 5. CONTENTS OF NKHRA IN THE UNITED STATES, HELMS-BURTON, IDA AND ILA⁴

Regime change
<ul style="list-style-type: none"> • NKHRA: Reunification of the Korean peninsula under democracy⁵ • Helms-Burton: Driving out the Fidel Castro government • IDA: Achieving transparent and complete democracy⁶ • ILA: Overthrowing the Saddam Hussein regime⁷
Subversive operation
<ul style="list-style-type: none"> • NKHRA: Grants to organizations promoting “democracy, rule of law, and the development of a market economy” in North Korea⁸ • Helms-Burton: Support for democratic groups in Cuba⁹ • ILA: Military appropriation of up to \$97,000,000¹⁰
Economic sanction
<ul style="list-style-type: none"> • Helms-Burton: Blockade against Cuba, limitation on foreign companies doing business with Cuba
Anti-regime media
<ul style="list-style-type: none"> • NKHRA: Goal of broadcasting 12 hours a day to North Korea¹¹ <ul style="list-style-type: none"> • Helms-Burton: Television Marti¹² • IDA: Radio Farda¹³ • ILA: Grant to organizations for radio and television broadcasting¹⁴

⁴Prepared by Dong Han Kim.

⁵North Korea Human Rights Act of 2004, H.R. 4011, 108th Cong. § 4(5) (2004).

⁶Iran Democracy Act of 2003, S. 1082, 108th Cong. § 3(1) (2003).

⁷Iraq Liberation Act of 1998, H.R. 4655, 105th Cong. § 3 (1998).

⁸North Korea Human Rights Act of 2004, H.R. 4011, 108th Cong. § 102(a) (2004).

⁹Helms Burton Act § 109.

¹⁰Iraq Liberation Act of 1998, H.R. 4655, 105th Cong. § 4(a)(2)(B) (1998).

¹¹North Korea Human Rights Act of 2004, H.R. 4011, 108th Cong. § 103(a) (2004).

¹²Helms Burton Act § 107.

¹³Iran Democracy Act of 2003, S. 1082, 108th Cong. § 4 (2003).

¹⁴Iraq Liberation Act of 1998, H.R. 4655, 105th Cong. § 4(a)(1) (1998).

The enactment of these laws predictably intensified anti-American sentiments in target countries. Washington has been in conflict with these countries long before these laws were promulgated. The legislations paral-

64. Iraq Liberation Act of 1998, H.R. 4655, 105th Cong. § 5 (1998).

65. *Id.* § 6.

66. *Id.* §§ 4, 7.

67. *Id.* § 4.

leaded existing U.S. policies toward those states, and must be understood in the context of such political dynamics.⁶⁸

C. Japan

The official title of the North Korean Human Rights Act in Japan is the Act to Address Abduction and Other Issues Relating to Human Rights Infringement by the North Korean Government.⁶⁹ The legislation with eight clauses is of narrower scope when compared to U.S. law. The law addresses repatriation of abductees, an issue which had long frustrated Japan's relationship with DPRK.⁷⁰ It prescribes protection of North Korean refugees, and cooperation with domestic and international entities,⁷¹ establishes the Korean human rights week,⁷² and instructs the government to submit to the National Diet⁷³ an annual report on state efforts to resolve the abduction issue.⁷⁴

There have also been other endeavors by the Japanese government. In March 2014, Japan and the EU jointly submitted to the UN Human Rights Council a draft resolution proposing referral of the situation in North Korea to the ICC.⁷⁵ Tokyo also enforced sanctions on North Korea such as an embargo and travel ban, which went through a cycle of tightening and softening based on the relationship between the two countries.⁷⁶

68. Bert Hoffmann, *The Helms-Burton Law and Its Consequences for Cuba, the United States and Europe* (1998), <http://lasa.international.pitt.edu/lasa98/hoffmann.pdf>; KIM, *supra* note 52.

69. *Racchi-mondai sono-hoka kita-chousen-toukyoku-niyoru jinken-sin'gai-mondai-heno taisho-ni kansuru houritsu*. The law passed the House of Representatives and the House of Councillors in June 2006. A revised law passed both chambers in June 2007.

70. Tokyo maintains that North Korean government seized hundreds of Japanese civilians in the 1970s and 1980s, to use them in training North Korean spies in Japanese language and culture. Pyongyang and Tokyo disagree over whether the DPRK government freed all those who had been kidnapped.

71. Outline of North Korea Human Rights Act art. 6, N. KOREA HUM. RTS. RES. CTR., https://www.hrnk.org/uploads/pdfs/Japan_NKHRA_2005.pdf (last visited Mar. 6, 2016).

72. *Id.* art. 4.

73. *Kokkai*.

74. Outline of North Korea Human Rights Act art. 6, *supra* note 85.

75. Hum. Rts. Council, Human rights situations that require the Council's attention, U.N. Doc. A/HRC/25/L.17 (March 26, 2014). The draft resolution was subsequently approved at the General Assembly in December 2014.

76. For example, after Pyongyang announced creation of a committee to investigate the kidnappings in July 2014, the Japanese government eased restriction on travel and money transfer. Reiji Yoshida, *Economic sanctions against North Korea partially*

D. European Union

The EU, one of the donors to DPRK, also tried to engage North Korea in human rights. As mentioned above, the EU sponsored resolutions in the General Assembly and the Human Rights Council, and adopted autonomous resolutions. EU also held “political dialogues” with DPRK throughout the 2000s. The release of the COI report prompted Pyongyang to act as it dispatched Kang Seok-ju, WPK secretary, to Brussels in September 2014. It also invited Stavros Lambrinidis, the human rights representative of the EU, to the country.

Have such transnational processes generated tangible results? International treaties depend largely on voluntary compliance, and resolutions do not have a legally binding force. Even an ICC decision convicting Kim Jong-un would not be enforceable, unless Kim voluntarily subjects himself to the authority of the ICC. The effect of economic and other sanctions is questionable⁷⁷, as Pyongyang continues to ignore international outcries against the country.⁷⁸ Short of throwing out the North Korean regime with military power, there does not appear to be much the international community can do about DPRK’s human rights. What difference would NKHRA make, now that it became a law in South Korea?

V. LEGISLATIVE HISTORY AND POLITICAL BICKERING

Hannara Party and its successor, Saenuri Party, proposed bills at every Assembly since the 17th National Assembly. Representative Hwang Jin-ha was the main sponsor of the legislations at the 17th, 18th, and 19th Assembly, and Yun Sang-hyeon, at the 18th and 19th Assembly. Jo Myeong-

lifted, JAPAN TIMES (Jul. 4, 2014), <http://www.japantimes.co.jp/news/2014/07/04/national/politics-diplomacy/sanctions-loosened-against-north-korea/#.VdvF133cDFk>.

77. For example, Executive Order 13551, which was signed after sinking of *Cheonan* navy ship in March 2010, broadened restrictions under Executive Order 13466 of June 2008 on money laundering, arms trade, and other “illicit and deceptive activities in international markets.” Exec. Order No. 13,551, 75 C.F.R. § 169 (2010). Refer to the Treasury website for a list of sanctions against the country. Resource Center: North Korea Sanctions, U.S. DEP’T OF THE TREASURY, <http://www.treasury.gov/resource-center/sanctions/Programs/pages/nkorea.aspx> (last visited Mar. 6, 2016).

78. In April 2016, Ri Su Yong, North Korea’s foreign minister, said his country would halt its nuclear tests only if South Korea stops military exercise with the U.S. Security Council Resolution 2270 gained approval by China and Russia, North Korea’s traditional allies, but it is uncertain how strictly the two countries will enforce the sanctions. More importantly, the sanctions won’t serve their purpose if they cause hardships to ordinary individuals in North Korea, the very subjects which the sanctions are designed to help.

cheol, a North Korean refugee himself, offered a bill in the 19th Assembly. After the submission, however, the bills gathered dust on the shelf of the legislature, except when they became a subject of sporadic deliberation.⁷⁹ NKHRA somewhat gained impetus with the publication of the COI report, but it was Pyongyang's missile testing in early 2016, which catalyzed the bill's passage in March 2016.

In South Korea, liberals are traditionally pro-North, while conservatives take a hard line. A bill taking Pyongyang on human rights therefore is bound to be a lot more contentious than a bill on inter-Korean cooperation or a law publishing a unified dictionary, for instance. Resistance had been fierce, as when Democratic Party⁸⁰ put NKHRA on the list of bills it vowed to obstruct during the interim Assembly session in December 2008.

TABLE 6. LEAD SPONSORS OF NKHRA¹⁵

17th Assembly (June 5, 2004 - May 29, 2008)	
June 2005	Hwang Jin-ha (Hannara)
August 2005	Kim Mun-su (Hannara)
18th Assembly (May 30, 2008 ~ May 29, 2012)	
July 2008	Hwang Wu-yeo (Hannara)
July 2008	Hwang Jin-ha (Hannara)
November 2008	Hong Il-pyo (Hannara)
December 2008	Yun Sang-hyeon (Hannara)
19th Assembly (May 30, 2012 ~ May 29, 2016)	
June 2012	Yun Sang-hyeon (Saenuri)
June 2012	Hwang Jin-ha (Saenuri)
August 2012	Lee In-je (AUP)
September 2012	Jo Myeong-cheol (Saenuri)
March 2013	Sim Yun-jo (Saenuri)
November 2014	Kim Yeong-wu (Saenuri)

¹⁵YOUNG-SUN CHUNG, *BUKHAN-IN'GWON-BEOP⁷⁹-E DAEHAN IN'GWONJIEOK GOCHAL* (Study on the North Korean Human Rights Act from the Human Rights Perspective); JONG-SU KIM, *DAEBUK-JEONGCHAEK SUHAENG-E ISS'EO KUKHOE-YEOKHAL JEGO-BANG'AN YEONKU* (Reconsideration of the National Assembly's Role in the Implementation of Policy towards North Korea).

79. The bills lapsed when the term of the respective Assembly came to an end.

80. *Minju-dang*.

TABLE 7. LEAD SPONSORS OF THE BILLS PROPOSED BY THE LIBERAL PARTIES

18th Assembly	
September 2008, September 2009	Song Min-sun (Democratic Party)
September 2009	Kang Ki-gap (Democratic Labor Party)
June 2011	Kim Dong-cheol (Democratic Party)
19th Assembly	
November 2012	Jeong Cheong-rae (Democratic United Party) ¹⁶
July 2013	Yun Hu-deok (Democratic Party)
September 2013	In Jae-keun (Democratic Party)
November 2013 April 2014	Sim Jae-kwon (Democratic Party) ¹⁷ Sim Jae-kwon (NPAD)

¹⁶The bill concerned providing humanitarian assistance to infants in North Korea.

¹⁷The bill was on helping pregnant women and children in the country.

TABLE 8. THE CONSERVATIVE PARTIES THAT PROPOSED NKHRA

Hannara Party ¹⁸
Hannara Party, established in November 1997 by the merger of two parties, was the major right-wing party. It was a minority in the 17th Assembly when it won 121 seats in the 2004 election. It became the majority party in the 18th Assembly, after it picked up 153 seats. ¹⁹
Saenuri Party ²⁰
Hannara Party changed the name to Saenuri Party in February 2012. It won the majority in the April 2012 election, with 152 seats.
Advancement and Unification Party ²¹
Right-leaning AUP, established in February 2008 as Liberty Forward Party, ²² acquired 18 seats in the 2008 election. The party changed its name to AUP in May 2012, after it only captured 5 seats in the election a month earlier. The party was eventually absorbed into Saenuri in November 2012.

¹⁸*Hannara-dang*.

¹⁹The National Assembly members consist of (1) those elected in their district and (2) those who did not run in a district, but are nominated by a party (*birye daepyo*) for nation-wide representation. A voter casts two votes, (1) one for a district candidate and (2) the other for a party which he favors for national representation. National representation seats are distributed in proportion to the number of votes the party won therefor. The National Assembly determines the number of the total legislative seats. The election in 2008 produced 299 representatives, 245 elected in the districts and 54 nation-wide, whereas the April 2012 election yielded 300 representatives, 246 elected in the districts, 54 nation-wide. Under Article 109 of *Kukhoe-beop* (National Assembly Act), the proceedings generally are to be voted on in the presence of a majority of all incumbent National Assembly members, and by a vote of a majority of the members present. The number of incumbents often falls below the number at the beginning of the Assembly, due to removal of members on disciplinary grounds such as violation of election law.

²⁰*Saenuri-dang*.

²¹*Seonjin-tong'il-dang*.

²²*Jayu-seonjin-dang*.

TABLE 9. THE LIBERAL PARTIES THAT OFFERED
HUMANITARIAN BILLS

Uri Party ²³
Uri Party, established in November 2003 with members from an array of parties, became the majority party in the 17th Assembly after it won 152 seats. Most members of the party joined the United Democratic Party ²⁴ in February 2008.
Democratic Party
There have been several political parties in South Korea, with the title of Democratic Party. The party which used the name in the 18th Assembly was founded in February 2008 with union of two parties, under the name of United Democratic Party. The party secured 81 seats in the election in April 2008, and changed its name to Democratic Party in July of the same year. The party was dissolved in December 2011 when it joined with the Citizens Unity Party ²⁵ and others to form Democratic United Party. ²⁶ Democratic United Party won 127 seats in the 19th National Assembly election. The old name was recycled when the party changed itself to Democratic Party in May 2013.
New Politics Alliance for Democracy (NPAD) ²⁷
NPAD was founded in March 2014, as Democratic Party united with the political force of An Cheol-su, an IT entrepreneur-turned-politician. NPAD was renamed The Minjoo Party of Korea ²⁸ in December 2015, after An and his followers left NPAD.
Democratic Labor Party ²⁹
Democratic Labor Party was an ultra-left party founded in January 2000. It won 5 seats in the 2008 election, and was integrated into the United Progressive Party ³⁰ in December 2011.

²³*Yeollin-uri-dang.*

²⁴*Tonghap-minju-dang.*

²⁵*Simin-tonghap-dang.*

²⁶*Minju-tonghap-dang.*

²⁷*Saejeongchi-minju-yeonhap.*

²⁸*Deobuleo minjoo-dang.*

²⁹*Minju-nodong-dang.*

³⁰*Tonghap-jinbo-dang.*

A. 17th National Assembly

Presidency changed hands from liberal Roh Moo-hyun to conservative Lee Myung-bak in February 2008 during the 17th National Assembly. In the wake of the enactment of NKHRA in the U.S. and Japan and the nuclear experiment by Pyongyang in October 2006, voices were raised at the National Assembly to promulgate a similar law in South Korea. Representative Hwang Jin-ha, a former military officer, first introduced NKHRA in June 2005, broadly patterned on NKHRA in the U.S. Hwang's bill was followed by a legislation by Representative Kim Mun-su two months later. Kim's bill was scheduled for discussion at the committee a year after submission in September 2006, but Hwang's bill was never even scheduled. The strong stance of Uri Party, which was the majority party at the time, against the bills prevented them from making their way out of FAUC.

B. 18th National Assembly

In the 18th session, conservative Hannara Party acquired the majority of seats in the National Assembly, and a legislative environment was created more conducive to the passage of NKHRA. Four congresspersons from Hannara served as chief sponsors of NKHRA. The bills by the legislators were adjusted and combined into one representative act, which was approved at FAUC in February 2010.⁸¹ The bill was subsequently sent to Legislation and Judiciary Committee (LJC),⁸² but could not sail over political gridlock.

The liberal parties, while acknowledging the severity of human rights violations in North Korea, produced their own humanitarian laws. The bills by Representative Song Min-sun were focused on amending the existing law on supporting North Korean escapees, while the legislation by Kang Ki-gap centered on sending rice to the North. These proposed laws, however, omitted institutions such as the committee and foundation to hold Pyongyang accountable.

C. 19th National Assembly

In November 2014, the FAUC assigned the bills from Saenuri and NPAD respectively, to its subcommittee responsible for reviewing bills. Kim Yeong-wu was the primary sponsor of the bill which consolidated a number of bills put forth by his Saenuri colleagues. Sim Jae-kwon, a NPAD lawmaker, originated the bill from his party. The Sim Jae-kwon bill was viewed as embracing the centrist position within the party. It went so far as to label promotion of North Korean human rights as Seoul's responsibility, require the South Korean government to carry out a human rights dialogue, and create an advisory board on human rights dialogue, a council on aid, and a human rights information center. The bill, however, did not feature human rights foundation, policy, or data center, and does not ask for transparency from Pyongyang on its distribution of donated goods.

The Assembly eventually passed NKHRA on March 2, 2016, with 212 in favor, 24 in abstention of 236 in presence. On February 10, the last day of the Lunar New Year holiday, the Assembly issued, by 243 in favor and 5 in abstention, a resolution denouncing the DPRK's rocket launch on February 7. The bill received approval of both FAUC and LJC on February 26,

81. The bill received 14 votes from members of Hannara and 2 votes from Liberty Forward Party. Democratic Party members had exited the room in protest before voting commenced.

82. *Beopje-sabeop-wiwonhoe*.

after Saenuri and The Minjoo leaderships struck a deal.⁸³ The passed law accommodated most of the provisions of the bills previously introduced at the Assembly, after only a minor dispute on phrasing of a provision. Such an accelerated pace is extraordinary, given the sluggish progress it had been making since the mid-2000s. The political climate was such that parties, left- and right-wing, had no choice but to rage at DPRK's reckless rocket launch earlier in the year.

D. *Partisan Politics*

The challenges NKHRA faced at the Assembly should be understood in the context of its legislative politics. North Korea provides an ideological and political battleground between liberals and conservatives in South Korea. Labor activists, socialists, and others on the far left of the political spectrum do not opt for any inquiry into human rights situation in DPRK. Conversely, North Korean defector associations are among the most active proponents of NKHRA. Such disputes were replicated at the National Assembly, and the stalemate has been very difficult to break through. NKHRA was able to reach LJC in the 18th Assembly. LJC assesses legal technicalities of a proposed act, after policy impacts are discussed at a primary-level committee. NKHRA should therefore have been forwarded to the plenary session in due course after the bill's constitutionality and other matters are reviewed, but such submission did not happen in the 18th Assembly.⁸⁴

Rightist coalitions host seminars, workshops, and rallies to insist on ratification. According to conservatives, it is ironic for leftist liberals, who claim to champion human rights, to attack NKHRA. Some of the lawmakers who disagreed with NKHRA had been persecuted for protesting against military rule in South Korea in the 1980s. Now they fought against the law that seeks to banish the tyranny in the north. Right wingers further stressed that the humanitarian bills prepared by NPAD represent yet another effort to aid Pyongyang unconditionally without first trying to have it answer for its misconduct.

83. The interim session itself, during which NKHRA was enacted, was marked by more than 190 hours of filibustering by The Minjoo, as the party protested at Terror Prevention Act (*tereo bangji-beop*), which the party argued would be used by government intelligence to infringe on civil liberty. NKHRA itself was classified as one of the "non-controversial" bills, as the parties generally consented to its passage.

84. *Namhan-ui bukhan-in'gwon-beop nonran* (Controversies surrounding the North Korean Human Rights Act in South Korea), RADIO FREE ASIA (Jul. 5, 2011), http://www.rfa.org/korean/weekly_program/ad81ae08c99d-d480c5b4c90db2c8b2e4/askquestion-07052011170100.html.

NPAD's position, on the other hand, was that any solution to the human rights problems in North Korea must be predicated on accepting DPRK's sovereignty. Lee Hae-chan, as a Democratic United Party legislator in June 2012, contended that NKHRA constitutes "diplomatic discourtesy" toward the North. Pak Ji-won, as he was stepping down from one of the key positions at the Democratic Party in May 2011, professed his pride in having thwarted NKHRA at the Assembly. NPAD further said that NKHRA constitutes a veiled attempt by the right-wing government to channel more funding to organizations with similar ideological leanings, and would not make much contribution to human rights in North Korea.

In January 2015, Yu Ki-jun, a Saenuri lawmaker and a chairman of FAUC, offered that for NKHRA to move forward, a top-level body between the parties needed to be formed. Such body will help sidestep political differences, and enable the legislation, he argued. The disparities between the two sides have not diminished, however, and a deliberative session at FAUC over NKHRA generally went no further than confirming again the unyielding grounds of the two sides.⁸⁵

The legislative procedures such as submission *ex officio* by the Assembly chairman or through "fast track" have been suggested, but were not well received. In 2011, Hannara Party entertained the option of sending the bill to the plenary session *ex officio* by the power of the National Assembly chairman.⁸⁶ The fast-track provision of Article 85-2 of the National Assembly Act also specifies a mechanism for bringing a bill automatically to the plenary session.⁸⁷ In January 2015, however, Yu Ki-jun argued against designation of NKHRA for expeditious processing. At the time, FAUC had 14 Saenuri Party members and 9 NPAD members. Saenuri could therefore have set NKHRA up for expeditious processing, if all its members at the committee voted in favor. Even if NKHRA secured such designation and

85. In 2011, Democratic Party contemplated the possibility of combining contents of bills from both Hannara and Democratic Party. Hannara did not accept it, however, on the ground that such integration will interfere with core substance of its bills.

86. *Kim Mu-seong, buk-in'gwon-beop jeil keorowoe, jikkwon sangjeong gomin* (Kim Mu-seong said NKHRA deeply troubled him, and he was mulling submission *ex officio*), *DAILY NK*, <http://www.dailynk.com/korean/read.php?cataId=nk02600&num=90281> (last visited Apr. 14, 2016).

87. If a committee other than LJC fails to finish the examination of an agenda designated for expeditious disposition within 180 days from the date of such designation, the agenda is automatically referred to LJC. Similarly, if LJC does not complete examination within 90 days of the designation, it automatically goes to the plenary session. To gain such designation, an agenda needs affirmative votes of 3/5 of all incumbent National Assembly members or at least 3/5 of all incumbent National Assembly members of the competent committee.

arrived at LJC after 180 days at FAUC, however, there was no guarantee that the bill would again be reserved for accelerated processing, as the membership at LJC was more evenly divided between the left- and right-wing parties in the 19th Assembly.⁸⁸

Yu claimed that there was not enough time to fast-track the bill before the National Assembly election in April 2016. The majority party was concerned that such legal maneuvers would induce the counterparty to respond in kind, and jeopardize bargaining between them regarding other more politically crucial items. NKHRA therefore became a victim of partisan politics, and a genuine discourse on human rights was hard to come by.

Likewise, the regulatory framework is already in place in South Korea, touching upon much of the important DPRK-related agenda. Civic alliances working with North Korean refugees and on human rights are already receiving state subsidies. The Ministry of Unification is coordinating efforts with respect to the transmission of information to North Koreans, international collaboration, exchange, education, and so on. The ministry and other domestic and international organizations are drawing together data on human rights violations. Any flaws in those activities can be remedied under the existing legal structure, and for practical purpose, the ratification and enforcement of NKHRA are not necessary for those endeavors to continue.

At the same time, the provisions of NKHRA which were not found in existing laws, such as those creating the human rights foundation and committee, were not perceived as having any pragmatic effect. Equally important, NKHRA fell in legislative priority for both the ruling party and the opposition, even though their rhetoric indicated otherwise. Assembly members did not wish to expend their limited political capital on NKHRA, whose effect was deemed to be largely symbolic. They are motivated to first tackle bills which directly deal with domestic matters. NKHRA therefore struggled to receive attention from otherwise busy politicians.

VI. PROVISIONS

A. *What NKHRA Does Not Involve*

NKHRA is a domestic law with a transnational aspect. It is not an international treaty entered into by Seoul and Pyongyang, and it does not have a binding force on North Korea. Although the law has profound implications for inter-Korean relations, extensive discussion thereof or a fact-

88. As of August 2015, LJC was composed of 8 Saenuri and 7 NPAD lawmakers and one leftist Justice Party (*Jeongui-dang*) member.

finding provision which explicitly disparages Pyongyang is absent. Extra-territorial application is not an issue, since it does not refer the situation to a domestic or international judicial body, impose an economic or military ban, or make demands of Pyongyang. It does not outline a scheme for a political or regime change, and no government budget is set aside for a dissident group in DPRK.⁸⁹ In that regard, NKHRA is less intrusive than some of the multilateral resolutions or international human rights laws in the U.S.

B. *What it Enumerates*

NKHRA enacted on March 2, 2016 integrates most of the common contents in the previously proposed bills.⁹⁰ Laws made by the National Assembly only offer general policy direction. Actual implementation is also contingent on subordinate decrees, as well as on supervision by the Unification Ministry and other bureaus. We nonetheless should evaluate NKHRA's major subject matters for their regulatory and political implication.

1. Basic Plan for North Korean Human Rights, the Human Rights Rapporteur, the Advisory Board, and the Foundation

NKHRA provides for the advisory board,⁹¹ the foundation,⁹² and the rapporteur.⁹³ It specifies the composition of the advisory board⁹⁴ and responsibilities,⁹⁵ operation⁹⁶ and governance⁹⁷ of the foundation. It also directs Unification Ministry to formulate a basic and an enforcement plan.⁹⁸ These institutions will be charged with identifying ways to bring about ad-

89. Anti-regime organizations do not exist in North Korea in any event.

90. SEUNG SHIN LEE, *BUKHAN-IN'GWON GWANRYEON-BEOP'AN JUYO-NAEYONG-GWA JAENGJEOM* (North Korean Human Rights Bill: The Main Content and Rising Controversies).

91. *Bukhan-in'gwon-beop* (North Korea Human Rights Act) art. 5 (2016), <http://likms.assembly.go.kr/nfilegate/servlet/FileGate?AECC6A6E-563F-06A2-B38B-332B35C3ECF4,'1'>.

92. *Id.* art. 10.

93. *Id.* art. 9(2). The bills lead-sponsored by Yun Sang-hyeon, Hwang Jin-ha, Lee In-je, and Jo Myeong-cheol in the 19th Assembly all had the advisory board, the basic plan, and the foundation.

94. *Id.* art. 5(2).

95. *Id.* art. 10(3).

96. *Id.* art. 11.

97. *Id.* art. 12.

98. *Id.* art. 6(2).

vancement in human rights, probe actual conditions, conduct research, offer education, and assist organizations.

2. Human Rights Database

Earlier bills differed on whether North Korean human rights archive should be kept at Ministry of Justice,⁹⁹ National Human Rights Commission,¹⁰⁰ or a North Korean human rights foundation. The enacted law places it at Unification Ministry.¹⁰¹ Nobody likes to have his wrongdoings memorialized in writing and disclosed to a third party. It is even more terrifying if the information so gathered can subsequently be used against them. The Unification Ministry and domestic and international non-governmental organizations are currently collecting the information, and the data bank under NKHRA will reinforce such measures.

In general, testimony of the refugees and other informers cannot be validated by an examination of actual situation, as international inspectors are not permitted to enter the country, and the movement of aid workers is heavily controlled. The testimonies may be erroneous or may even have been falsified because of inaccurate memory, or bias of those who chose to run away from North Korea under adverse circumstances.¹⁰² For now, however, secondary information is pretty much the extent of evidence we have.

The human rights archive, which was kept in Salzgitter in northern Germany,¹⁰³ has been cited as a model. The documentation center opened in October 1961, in reaction to construction of Berlin Wall by East Germany two months earlier, with the mission of assembling evidence of human rights violations by German Democratic Republic government. Information was compiled on mistreatment of prisoners, disappearance of individuals, and other incidents of oppression by the East German state. Approximately 42,000 cases of human rights infringement had been documented when the record was handed over to criminal justice authorities after the unification, and the center was shut down in 1992.¹⁰⁴ The rationale was that Federal

99. *Beopmu-bu*.

100. *Gukga-in'gwon-wiwonhoe*.

101. *Bukhan-in'gwon-beop*, art. 13(1), *supra* note 121.

102. Those who temporarily stay abroad as diplomats, laborers, and so forth and will eventually go back would not be forthcoming with unsavory occurrences inside their own country.

103. *Zentrale Erfassungsstelle der Landesjustizverwaltungen* (Central Archives of the Federal Justice Department).

104. *Bukhan-in'gwon-girok-bojonso* "bukhan-in'gwon-baekseo" *balgan* (The North Korean Human Rights Archive Publishes "North Korean Human Rights White Paper"), RADIO FREE ASIA (Oct. 8, 2013), http://www.rfa.org/korean/weekly_program/hr_rights_first/fe-mj-10082013164250.html.

Republic of Germany was responsible for prosecution of criminality in East Germany too.¹⁰⁵

To hold the Nuremberg trials after World War II, the Allies combed through a mountain of Nazi documents. For a legal action against North Korean defendants, judges and prosecutors would also need to scrutinize state records. The data center maintained by the South Korean government will supply valuable supplementary evidence for this “transitional justice.”¹⁰⁶

3. Humanitarian Relief

A provision on transparency of foreign aid is also included.¹⁰⁷ Aid should be given—but not unconditionally. The bill dictates that aid be supplied, distributed, and monitored under international standards. It should first be dispensed to pregnant women, children, and other residents who need it most, and should not be apportioned for military or other non-humanitarian purpose.

VII. WHAT NKHRA CAN DO

A. *Pressure on Pyongyang*

One of the purposes of NKHRA is to alert Pyongyang that its acts of iniquity won't go unpunished. The North Korean state does not remain aloof when it is reproached by foreign observers. In fact, its reaction has often been with outrage and hasty denial. North Korea lashed out at the North Korea Human Rights Act in the U.S. It called the enactment of the law an act of provocation and a product of U.S. hostilities against DPRK.¹⁰⁸ Pyongyang repeatedly denounced Seoul's attempt to legislate NKHRA, on the grounds that such a law would only create conflict among Korean people.

105. Elizabeth A. Lippitt, *The Salzgitter Archives: West Germany's Answer to East Germany's Human Rights Violations*, 15 DENV. J. INT'L L. & POL'Y 147, 156-60 (1986).

106. See PAOLO CAMMAROTA ET AL., LEGAL STRATEGIES FOR PROTECTING HUMAN RIGHTS IN NORTH KOREA (2007) (The legal memorandum by the U.S.-based law firm Skadden, Arps, Slate, Meagher & Flom explores legal approaches. The paper discusses referral to the ICC and to the UN Security Council, collaboration with the UN Human Rights Council, an action under an international treaty entered into by North Korea, and a lawsuit under the Alien Tort Claims Act in the U.S.).

107. *Bukhan-in'gwon-beop*, art. 8, *supra* note 121.

108. See KIM, *supra* note 52.

“Diplomatic counter-offensive” intensified after the COI report came out.¹⁰⁹ Pyongyang answered the report with its own treatise, as well as a 109-page report in September 2014 defending its human rights programs.¹¹⁰ In October 2014, North Korean officials met with Marzuki Darusman, an Indonesian lawyer who was a member of the COI, for a possible invitation of human rights officials to their country.¹¹¹ In September 2014, Pyongyang sent, for the first time in 15 years, a minister-level official to the UN General Assembly.¹¹² In November 2014, a week after the UN General Assembly adopted the UN resolution against Pyongyang, the North Korean representative office at the UN conveyed to Secretary General Ban Ki-moon its objection to the resolution.¹¹³

DPRK’s response shows that it does pay attention to how it is perceived by the global community. Pyongyang is also highly sensitive to Seoul’s inter-Korean policy. Aid from South was drastically reduced after the Yeongpyeong bombing in November 2010. A desperate North Korean government, however, needs all the grains, medications, and cements it can obtain from other countries. Demand from other countries on human rights therefore would be highly disconcerting.

B. *Changes Within DPRK*

Reflection on North Korean human rights must be accompanied through an analysis of changes afoot within the country. Perhaps in spite of all its adversities, the North Korean state as it now stands will endure for the foreseeable future. Kim Jong-un’s DPRK will chug along for decades before his successor takes over. News leaked out, however, hinting that North Korea is a different place now. North Korea is at a critical juncture,

109. David Hawk, *North Korea Responds to the UN Commission of Inquiry*, 38 NORTH (Oct. 16, 2014), <http://38north.org/2014/10/dhawk101614>.

110. Adam Taylor, *North Korea wrote a 53,558-word report on its human rights record. The conclusion? It’s pretty good*, WASH. POST (Sept. 17, 2014), <http://www.washingtonpost.com/blogs/worldviews/wp/2014/09/17/north-korea-wrote-a-53558-word-report-on-its-human-rights-record-the-conclusion-its-pretty-good>.

111. See Kwanwoo Jun, *North Korea May Be Planning Human Rights Hoax*, WALL ST J. (Oct. 28, 2014), <http://blogs.wsj.com/korearealtime/2014/10/28/north-korea-may-be-planning-human-rights-hoax>.

112. See Jung-chul Lee & Inwook Kim, *Making Sense of North Korea*, FOREIGN AFFAIRS (Jan. 21, 2015), <https://www.foreignaffairs.com/articles/east-asia/2015-01-21/making-sense-north-korea>.

113. Bukhan “*In’gwon gyeoluian suyong mothanda*,” *Ban chongjang-e seohan* (North Korea sent a letter to Secretary General Ban that it can’t accept the human rights resolution), YEONHAP NEWS, <http://www.yonhapnews.co.kr/bulletin/2014/12/03/0200000000AKR20141203005500072.HTML> (last visited Mar. 8, 2016).

as the authoritarian rule is hitting the limit of its power. The European communist bloc melted seemingly instantly. The same phenomenon can take place in DPRK.

The North Korean state did not fall during the famine, largely due to a blockage of information from the outside world. Now people are coming to grasp that they have been deceived. Below is an overview of upheavals in the country, which will have a direct impact on the future of the country and its human rights situation.

1. Gradual Erosion of State Control

The winds of change blowing in North Korea are making the dictatorship face a cold reality. The country has come a long way from when Kim Il-sung, Kim Jong-un's grandfather, was in power. During the Cold War, North Korea had a great number of those who were dedicated to national autonomy and the *juche* creed.¹¹⁴ Moreover, North Korea was surrounded by other impoverished countries under autocracy. Unlike Eastern European countries located a short distance from Western Europe, DPRK is stuck in a corner of East Asia. The border between South and North is one of the most fortified in the world, and the border with the People's Republic of China, another socialist country, could be controlled. Moreover, it was easier to brainwash citizens when the internet and other modern technology were not available.¹¹⁵

Communism has since faded as viable ideology. To Pyongyang's detriment, South Korea, which was supposedly worse off than North in the 1960s, has since managed phenomenal economic growth. The state monitoring system, which forcefully watched over whether anyone makes any blasphemous remarks on Kim Il-sung, weakened through the famine.

Kim Jong-un is not as compelling a leader as his predecessors. Kim Il-sung built his power base touting his struggle for Korean independence against Japanese colonists. Kim Jong-il had been a *de facto* leader, and had been in the public eye at least since the 1970s, before he officially assumed power in 1994. Kim Jong-un, on the other hand, is a young leader and a relatively new face, with few achievements to show for it. There was an expectation for change when Kim Jong-un, who allegedly received his education in Switzerland, first came to power in December 2011. It subsided,

114. See JOHN EVERARD, YEONGKUK OEGYOGWAN PYONGYANG-ESEO BONAEN 900-IL, (A U.K. diplomat spending 900 days in Pyongyang); SEONG-HA JU, BUKHAN BARO BOKI (Taking a Right Look at North Korea); SEOUL-ESEO SSEU'NEUN PYONGYANG IYAKI (Tale of Pyongyang Written in Seoul).

115. See also ANDREI LANKOV, THE REAL NORTH KOREA: LIFE AND POLITICS IN THE FAILED STALINIST UTOPIA (2014).

however, when he proved to be the same type of a closed, repressive ruler as his father and grandfather.

The execution of Jang Seong-taek, Kim Jong-un's uncle,¹¹⁶ hit the headlines in December 2013. To solidify his power in the chaotic days of the 1940s and 1950s, Kim Il-sung purged some of his socialist comrades and rivals such as Pak Heon-yeong. The method served Kim well, as it cleared the way for him to evolve as a glorified character under the *juche* philosophy. His grandson, Kim Jong-un, draws from the same approach, as he gets rid of his much older competitors by the dozen.¹¹⁷ Whether such a Machiavellian style of governance will continue to work in the twenty-first century remains to be seen.

2. Economic Changes

Donju, a class of nouveau riche who acquired wealth from commercial activities, is springing up not just in the capital, but in almost all major cities in DPRK. Traditionally, the richest people in North Korea were those at the top of WPK and the military, who enjoyed spoils from state businesses. Recently, however, the new capitalist class is emerging as a new force. *Donju* act as corporate executives in transportation, real estate, trading and other sectors, and manage investment, business development, and human resources. In a country with crumbled financial institutions, *donju* feed much needed capital, and local economies would freeze without their economic resources. To protect their status, *donju* give bribes and lend money to financially strapped government enterprises. Stable collusion between the government and the new bourgeois can add to Kim's power. Alternatively, any discontent seething from those who tasted the fruit of capitalism can have a destructive result.¹¹⁸

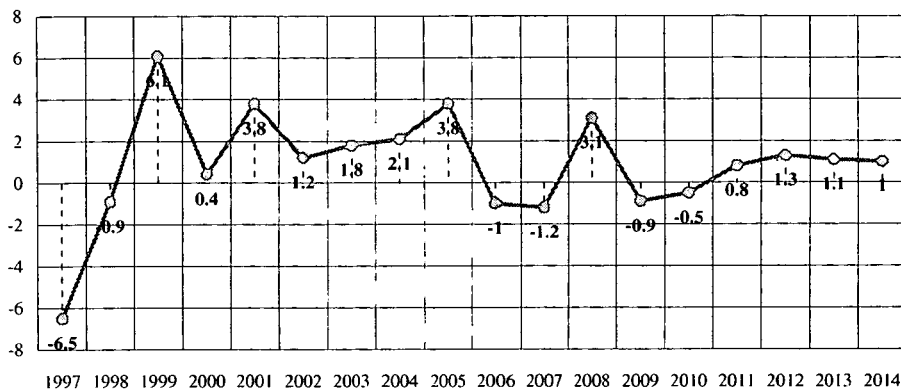
116. Jang was one of the protectors who guided Kim Jong-un to power, after Kim Jong-il fell ill in the 2000s and became virtually unable to attend to national administration.

117. According to *Gukga-jeongbo-won* (National Intelligence Service), the number of high officials who were executed was 3 in 2012, more than 30 in 2013, and 31 in 2014. See Hankook Ilbo, *Kim Jong-un-ui gongpo-tongchi-neun leadership bulan bangjeung, buk ganbu 70-yeomyeong sukcheong* (Kim Jong-un's Rule of Terror Gives Circumstantial Evidence of His Uncertain Leadership, more than 70 high officials were purged), HANKOOKI.COM, <http://daily.hankooki.com/lpage/politics/201505/dh20150513121805137590.htm> (last visited Mar. 8, 2016).

118. See generally Kim Hwan Yong, *Private Lenders Emerge as North Korea's New Middle Class*, VOICE OF AM. (June 10, 2015), <http://www.voanews.com/content/private-lenders-emerge-as-north-korea-new-middle-class/2816737.html>; Ju-Min Pak and James Pearson, *Pyongyang Bling – The Rise of North Korea's Consumer Comrades*, REUTERS (June 4, 2015), <http://uk.reuters.com/article/2015/06/04/uk-northkorea->

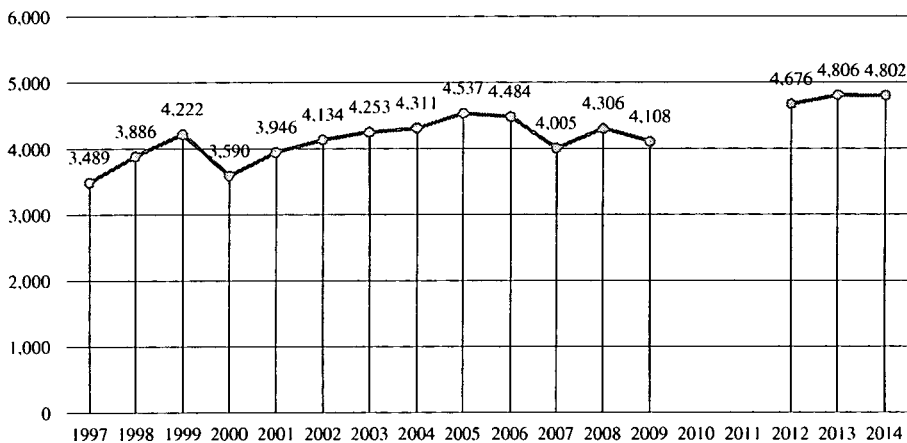
ECONOMIC GROWTH RATE

(Unit: %)



CROP PRODUCTION

(Unit: 1,000 metric tons)



North Koreans no longer starve to death by the hundreds of thousands as they did in the 1990s. The North Korean economy contracted from 1990 to 1998, but modestly expanded from 1999 to 2005. Food production also rose from 3.5 million tons in 1998 to 4.8 million tons in 2014, and is now at a level where the country can sustain itself with foreign food aid.¹¹⁹ However, DPRK by no means is an affluent country. Everything from petroleum

change-consumption-idUKKBN00J2UY20150604; *Bukhan-eun jikeum donjudeul-ui jeonseong-sidae* (Donju are having a prime time in North Korea), RADIO FREE ASIA, http://www.rfa.org/korean/weekly_program/bd81d55c-c774ac8c-bb38c81cc9c0c694/fe-cp-06232015105110.html (last visited Mar. 8, 2016).

119. *Bukhan tong'gye* (North Korean Statistics), STATISTIC KOREA, http://kosis.kr/bukhan/statisticsList/statisticsList_01List.jsp#SubCont (last visited Mar. 14, 2016).

to drinking water to automobiles is in short supply, and a large number of residents are still undernourished.¹²⁰

As North Koreans suffered through starvation in the 1990s, corruption became rampant as a survival mechanism. Now giving and receiving bribes are a routine method of operation. Money can open doors to such “reactionary” activities as watching South Korean TV or travelling inside the country without state authorization. The central government would not risk breaking the entrenched link of illegality, particularly since it does not have enough money to pay state employees.¹²¹

Unlike Kim Il-sung and Kim Jong-il, Kim Jong-un himself experienced capitalism when he attended school in Europe, and may not be against it as much. Furthermore, in the absence of much government support, closing markets down and depriving residents of the last means of livelihood would trigger nationwide rebellion. People have little time to mull over the meaning of democracy when they struggle for daily existence. When their life gets a bit better, however, they can look around themselves, and that’s when autocracy should be most worried.

3. Hallyu

What would be most destabilizing to the regime is the “Korean wave” of entertainment sweeping through North Korea. South Korean TV shows, which gained popularity in Asia and other parts of the world beginning in 1990s, finally landed in DPRK. North Koreans most commonly sample South Korean media through compact discs and USB drives smuggled from China. To earn foreign exchange, Pyongyang is sending tens of thousands of workers to China and the Middle East, who may get further exposure to South Korean culture. Seoul accent and style appear to be trendy among some young people.

Perhaps the phenomenon of K-pop may have been exaggerated. It is hard to accurately gauge the extent and effect of K-pop on North Korean residents. Even if they have unprecedented access, they may only get a distorted or inaccurate image of the outside world therefrom.¹²² The fact nonetheless is that Pyongyang is no longer retaining absolute control over what the population is seeing and hearing.

120. *See generally Rep. of the comm'n of inquiry, supra* note 9.

121. EVERARD, *supra* note 144.

122. Hankook Ilbo, *Bukhan-e buneun “Hallyu yeolpung,” cheje jeohang bureuji aneuldeut* (The hot wind of hallyu blowing in North Korea won’t induce anti-regime resistance), HANKOOKI.COM, <http://economy.hankooki.com/lpage/politics/201502/e2015021316012193140.htm> (last visited Mar. 9, 2016).

4. Ground Shift

It was easy to stay loyal to the government and its dogma when the state provided a social safety net for everyone. Those comfortable days are a distant memory now, however. Those who grew up in the 1990s and 2000s were basically left on their own without generous state subsidies, and are not very familiar with communism in its raw form. What's more, the state continuously solicits money and goods such as a shovel and a pig, from residents to replenish its revenue.¹²³ Communist DPRK is officially a country without taxation,¹²⁴ but commoners are directed to cough off a large portion of their hard-earned money. On the other hand, education, medical care, electricity and other basic services, which are to be granted free of charge under the constitution, are sorely lacking.¹²⁵

Faith in the government wore away drastically, and unqualified loyalty is hard to find now. Grass-roots swelling is far more formidable than diplomatic pressure from other countries. All the rounds of six-party negotiations and minute intellectual exercise on the ways to enforce international law become ancillary, if North Koreans bring criminals to justice themselves.

The elite in DPRK are evidently aware of what happened to despots like Nicolae Ceausescu and Muammar Gaddafi, and cannot help but dread an uprising and revenge by the downtrodden. Domestic rebel forces often provide the impetus toppling autocracy. No such groups are tolerated in North Korea now, and any defiance against the dictatorship thus far has been viciously crushed. Still, no one knows how much longer the populace will put up with their non-functioning state.

C. *Fundamental Rights*

One of the criticisms against NKHRA is that pressing Pyongyang with human rights would unnecessarily antagonize it.¹²⁶ The argument is that it is time to work on mitigating the relationship between the two Koreas, not on impairing it. What is clear, however, is that North Korea's hostility toward

123. The pretext for such extraction varies from building a power plant and housing, to financing national defense and facilitating recovery efforts of a flooded village.

124. Pyongyang officially eliminated tax in 1974, and celebrates April 1 as the day of tax abolition. Even thereafter, however, the central bank levied some sort of duties on enterprises, imports from China, land use, and so on.

125. Elevators at high-rise apartments in Pyongyang frequently stop for power shortage. Patients pay for treatment at an underequipped clinic, and students need to provide money or goods to attend school.

126. KWANG-DEUK PARK, *BUKHAN-IN'GWON-BEOP-UI HYEONSIL-GWA GAESEON-BANGHYANG* (Reality of the North Korean Human Rights Act and Directions for Improvement).

South persisted regardless of whether Seoul is confrontational, or more accommodating of North. Military provocation continued during the liberal Kim Dae-jung administration, such as the North Korean attacks on the South Korean navy along the western coast in June 1999 and June 2002. Nuclear development proceeded throughout the Roh Moo-hyun government.¹²⁷ Military attacks such as shelling of Yeonpyeong island in November 2010 erupted after years of North receiving help from South.

Pyongyang does not have much leverage in its dealings with other stakeholders. DPRK's official policy is to soon complete a war unifying the Korean peninsula. It fully knows, however, that an all-out war against much wealthier adversaries would wipe it out.¹²⁸ Moreover, human rights are not something that should be hidden and discarded so as not "to irritate a bully on the block." Normalization of inter-Korean relationships cannot materialize without human rights improvement in DPRK. A state which willingly starves its population cannot be expected to have sincere exchanges with other countries. Constantly trying to placate the rogue regime to prevent it from doing something foolish won't provide a solution.

127. Pyongyang withdrew from the Non-Proliferation Treaty in January 2003, and held nuclear experiments in October 2006 and May 2009. See *Bukhan haek-wiki* (North Korean Nuclear Crisis), MINISTRY OF UNIFICATION, <http://nkinfo.unikorea.go.kr/nkp/term/viewKnwldgDicary.do?pageIndex=11&dicaryId=91&searchCnd=0&searchWrd=> (last visited Mar. 9, 2016).

128. In quantitative terms, North Korean military is superior to that in South Korea. The number of soldiers in North is more than 700,000, compared to 495,000 in South. See *World's Largest Armies*, GLOBALSECURITY.ORG, <http://www.globalsecurity.org/military/world/armies.htm> (last visited Mar. 10, 2016). North also has more tanks, field guns, warships, and so on. See also *North Korea Army Tanks, Vehicles and Artillery (Since 1950)*, MILITARY FACTORY (Dec. 14, 2015), <http://www.militaryfactory.com/armor/north-korean-army.asp>. Weaponry in North, however, is generally antiquated, some dating from the Soviet era, and fuel and supplies to keep battles going are in severe shortage. See *id.* Furthermore, intercession by the U.S. will make a war not winnable for Pyongyang. See generally *Bukhan byeongryeok, namhan-ui "2-bae" . . . choecheomdan muki apsewo kong'gyeok haedo* [North Korean Fighting Force is Twice That of South Korea, Even if South Korea Strikes with State-of-the-Art Equipment, It Won't Win], JTBC NEWS (Feb. 14, 2013), http://news.jtbc.joins.com/article/article.aspx?news_id=NB10241374. Of course, a suicidal war to destroy South Korea as well as itself cannot be ruled out. See also *South Korea 2014 Defense White Paper Highlights DPRK Nuclear Threats*, CTR. FOR STRATEGIC & INT'L STUDIES (Jan. 6, 2015), <http://csis.org/publication/south-korea-2014-defense-white-paper-highlights-dprk-nuclear-threats>.

D. *National Assembly*

Below, we will explore the South Korean president's human rights and general policy toward DPRK since the 1990s. This paper will subsequently delve into the responsibility of NKHRA and the National Assembly in this policy arena.¹²⁹

Seoul, as Washington's friend in its ideological crusade, was staunchly anti-communist during the Cold War. Communist DPRK was a foe to be conquered. The South Korean government was not in a position to object to a breach of human rights in the north in the 1970s and 1980s, however, since South itself was under military rule. Things changed in the 1990s when the USSR fell and Seoul began to build diplomatic relations with former socialist countries.

The relationship between South and North Korea since the 1990s had ups and downs. President Kim Dae-jung and Rho Moo-hyun, who highly desired historical summit meetings in Pyongyang with Kim Jong-il in June 2000 and October 2007 respectively, were relatively lenient toward North. Under Kim Dae-jung's Sunshine, or Engagement Policy, South's aid to DPRK greatly increased, which should have been of great help during the food crisis. South Korean tourist visit to Mount Kumgang commenced in November 1998, and a discussion began on creating an industrial region in Kaesong.¹³⁰ North Korean human rights, however, was not a favorite topic of President Kim, who won the Nobel Peace Prize in 2000 for his humanitarian works in South Korea and other countries in East Asia.

The Roh administration adhered to appeasement toward Pyongyang. President Roh, who previously made a name for himself as a human rights lawyer, was reluctant to bring up human rights, even as the administration communicated with North extensively over a host of other questions. In fact, the South Korean government under President Roh did not attend, or abstained from voting on North Korean human rights resolution at the UN General Assembly, Commission on Human Rights, and Human Rights Council. The administration voted in favor only in 2006 at the General Assembly after international outrage over DPRK's nuclear testing.

129. EUNG-JIN YEON, HANKOOK-UI DAEBUK-JEONRYAK-E DAEHAN YEONKU [Study on South Korea's North Korean Strategy].

130. HYUN SOO JUNG, KIM DAE-JUNG JEONGBU DAEBUK-JEONGCHAEK-ESEOUI YADANG-UI SEONTAEK: HAENGTAE-WA YEOKHAL [Kim Dae-jung Government and the Choice of the Grand National Party on North Korean Policy].

TABLE 10. VOTING BY THE SOUTH KOREAN GOVERNMENT ON THE UN RESOLUTIONS FROM 2003 TO 2010³¹

Human Rights Commission			Human Rights Council
2003 (59th) did not attend	2004 (60th) abstained	2005 (61st) abstained	2008 (7th) in favor

General Assembly			
2005 (60th) abstained	2006 (61st) in favor	2007 (62nd) abstained	2008 (63rd) in favor
2009 (64th) in favor	2010 (65th) in favor		

³¹ See *Voting by the South Korean Government*, MINISTRY OF UNIFICATION, <http://nkinfo.unikorea.go.kr/nkp/term/viewKnwldgDicary.do?pageIndex=10&dicaryId=93&searchCnd=0&searchWrd=> (last visited Mar. 11, 2016).

Pyongyang wishes to procure as much aid as possible from its neighbors, without having to listen to their incessant rebuke. Lee Myung-bak's election to presidency in December 2007 therefore was most unwelcome news. The Lee administration audaciously announced the "denuclearization, reform and 3,000 plan," whereby Seoul would help North Koreans attain a per capita GDP of \$3,000 if Pyongyang would give up its nuclear program and open up the country. As for human rights, President Lee reiterated on various occasions a need to bring about progress in North Korean human rights, including when he met President Bush in Seoul in August 2008. South Korea now began to vote in favor of resolutions at the General Assembly and the Human Rights Council.

Strict policies against North continued in the Park Geun-hye administration. At the keynote address at the 69th General Assembly in September 2014, President Park urged Pyongyang to take necessary measures to implement recommendations by COI.¹³¹ Upon opening of the UN Higher Commission field office in Seoul in June 2015, Park pointed to the important role the office would play. Park also underscored the importance of NK-HRA, both as president and when she was running for president.

In the political system in South Korea, presidency has been the branch of the government primarily driving inter-Korean policy. The policy closely followed the ideological inclination of the chief executive, and a new president meant a new rule. The role of the National Assembly, on the other hand, has been narrower.¹³² The Assembly ratifies legislations on inter-Ko-

131. During the speech, DPRK delegates sat in front seats facing President Park.

132. JONG-SU KIM, DAEBUK-JEONGCHAEK-SUHAENG-E ISS'EO KUKHEO-YEOKHAL JEGO-BANG'AN YEONKU [Reconsideration of the Role of the National Assembly Regarding Administration of North Korean Policy].

rean matters to be enforced by the administrative branch. Non-legislative acts include resolutions requiring dialogues between the two countries, or denouncing military assault and missile launch.¹³³ Lawmakers also have the power to hold hearings and review foreign policy of the administration, and approve an agreement¹³⁴ with the North Korean government on such matters as investment,¹³⁵ avoidance of double taxation,¹³⁶ and railways operation.¹³⁷

Beyond such measures, there is not much policy making by the National Assembly toward North Korea. Once the Assembly adopts law on unification education,¹³⁸ support of defectors settling in South Korea,¹³⁹ operation of Kaesong complex,¹⁴⁰ and so on, responsibility of daily management falls on the Unification Ministry and other administrative agencies, non-profit organizations such as Red Cross, even private corporations in Kaesong, which employed North Korean workers. Major accords such as the joint declaration by South and North on July 4, 1972, and the agreement on December 13, 1991, after the two Koreas simultaneously became mem-

133. The Assembly, for instance, released a resolution in June 2010 condemning the attack on *Cheonan* warship.

134. These agreements are initially signed by administrative officials, but need authorization by the Assembly to take effect. BO-HYUK SUH, NAMBUK-GWANGYE-ESEO GUKHOE-UI YEOKHAL [The Role of the National Assembly in Inter-Korean Relationship].

135. NAMBUK-SAI-UI TUJA-BOJANG-E GWANHAN HAPUISEO [Inter-Korean Agreement on Investment Guarantee]. The four major agreements on investment guarantee, avoidance of double taxation, resolution of commercial disputes, and settlement of clearance were signed in December 2000 after the ministerial conference in August 2000, and went into effect in August 2003. *Id.*

136. *See Agreement on Investment Protection between the South and North*, MINISTRY OF UNIFICATION, <http://eng.unikorea.go.kr/content.do?cmsid=1889&mode=view&page=6&cid=32108> (last visited Mar. 12, 2016).

137. *See Agreement Made at the 2nd Meeting of Working-level Consultations on the Connection of South-North Railways and Roads*, MINISTRY OF UNIFICATION, <http://eng.unikorea.go.kr/content.do?cmsid=1889&mode=view&page=5&cid=32123>.

138. *See UNIFICATION EDUCATION SUPPORT ACT*, http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=24681&type=part&key=1 (last visited Mar. 12, 2016). This act first went into effect in August 1999. *Id.* This and other laws have undergone several amendments since they were first enacted.

139. *See NORTH KOREAN REFUGEES & SETTLEMENT SUPPORT ACT*, http://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=20154&type=part&key=1 (last visited Mar. 12, 2016). This act took effect in July 1997. *Id.*

140. *See Kaesong Industrial Zone Support Act*, RELIABLE MINISTRY OF GOV'T LEGIS., <http://www.law.go.kr/eng/engLsSc.do?menuId=1&query=Kaesong+Industrial+Zone+Support+Act+&x=0&y=0#AJAX> (last visited Mar. 12, 2016). This act went into effect in August 2007. *Id.*

bers of the UN were issued unilaterally without consent from the National Assembly. Unlike in the administrative branch, which revolves around the President, power is more dispersed in the legislative chamber. There is no one towering leader who can assert its overarching policy on North Korea.

In that regard, NKHRA provides a forum for the Assembly to unite its commitment to human rights protection. Under Article 15, the Unification Minister is required to report to the National Assembly the human rights situation, the outcome of efforts to promote human rights, and other relevant information. Under such a framework, the law would enable the law-making body to check and monitor the executive branch, and carve out a proper place in this important national question.

CONCLUSION

The objectives of NKHRA are threefold: (1) to affirm South Korea would not tolerate human rights violations in North Korea, (2) to warn wrongdoers of consequences of their violence, and (3) to prepare for transitional justice after the totalitarian rule disintegrates. In ancient times before the notion of human equality was fully manifested, a king could do as he pleased. Human rights are a topic of urgent priority in the twenty-first century, however, and the global media is on alert to detect incidents of human rights violations around the world.

International human rights stand at a cross-section between moral intervention and national autonomy. A self-governing nation should be free from meddling by foreign states and international organizations. Human rights are a shared value, however, and there are transnational norms to conform to. If domestic institutions do not have a means of penalizing crimes against humanity, the global community does. Under the theory of universal jurisdiction, there is no haven for those committing atrocities.¹⁴¹

Whether a government has a right to intrude into internal affairs of another country is always a thorny question. Seoul is not entitled to intervene on how Pyongyang should behave. It should, however, be noted that South Korean aid to North did not halt even during the latter's military assaults and nuclear experiment. Pyongyang has not expressed gratefulness

141. The best-known application of the universal jurisdiction theory was for the trial of Augusto Pinochet, who was a dictator of Chile in the 1970s and 1980s. In October 1998, Magistrate Baltasar Garzon issued an arrest warrant for Pinochet, who was staying in the United Kingdom. Magistrate Garzon relied on the Spanish law, which extends criminal prosecution to acts by a non-Spanish citizen outside of Spain. See generally Naomi Roht-Arriaza, *The Pinochet Precedent and Universal Jurisdiction*, 35 NEW ENG. L. REV. 311 (2001).

for the economic support it received, and never promised to eschew future aggression.

The South Korean government does not generally ponder on how to protect human rights in other countries, and the National Assembly had never legislated law to that effect. North Korea is different, however. The two Koreas share language, history, and civilization. Seoul is the very party which should start the human rights exchange, and human rights should be one of the first issues to be resolved before and after national unification.

NKHRA is not aimed at invading North Korea or ousting the Kim Jong-un regime. Nor should it be deployed as a tool of partisan politics. The ultimate goal should be to help deter further cruelty in the north. It should be endorsed with broad consent from all sides, procedurally and substantively, and should not be steamrolled through the Assembly by the majority party.

Human rights are breached in South Korea, too, but in South, means are available for citizens to file their claim against the government. Public protest is impossible, north of the Demarcation Line. Even if NKHRA does not have much physical impact and human rights are a politically charged matter, even if the Kim Jong-un dictatorship will not dissolve anytime soon, South Koreans should not just keep quiet and condone acts of violence. Insanity has been tolerated too long, and speaking out against it is the least that could be done.