

Getting North Korean Human Rights Right, Now and for the Future

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Abstract

While the Universal Declaration of Human Rights recognizes the agency, dignity and rights of the individual, North Korea's collectivist notion of freedoms are conditioned to preserve and perpetuate the Kim regime, resulting in the denial of human rights for North Koreans. Pyongyang's defensive outbursts and angry rhetoric in defense of its distorted definition of sovereignty has deeply affected South Korea's policy approach over the issue of North Korean human rights. Sensitive to Pyongyang's feelings, South Korea's progressive camp prefers to engage with North Korea in the wishful hopes that relations will gradually improve. The conservative camp at times uses the Kim regime's sensitivity to dial up pressure on issues such as denuclearization. Progressives are willing to concede aid and benefits up front to get to inter-Korean engagement while conservatives make these concessions conditional. Neither approach has alleviated the brutal denial of human rights in North Korea. This paper explores South Korea's "wicked problem" of partisan treatment of North Korean human rights through careful examination of present and past administrations and concludes with recommendations for a middle ground safe enough so that neither progressives nor conservatives feel they have strayed too far outside of the partisan boundaries of their respective camps.

Keywords: North Korean human rights, Universal Declaration of Human Rights, North Korean Human Rights Act, Commission of Inquiry, Sunshine Policy, Trustpolitik

Our socialist system substantially guarantees the entire working people freedom and rights of socio-political activities including the freedom of speech, the press, assembly, and demonstration ...and provides them with all conditions for their free political activities in political parties and public organisations.¹

— Pyongyang KCNA, November 5, 1977

Spokesman of capitalism loudly clamor about the freedom of speech, press, assembly, demonstration, and association. However, any freedom, unless it is guaranteed by practical conditions, will become valueless.²

– Pyongyang Domestic Service, July 9, 1990

Citizens are guaranteed freedom of speech, the press, assembly, demonstration, and association. The State shall guarantee the conditions for the free activities of democratic political parties and social organizations.³

– Art. 67, DPRK Constitution, as revised by the Supreme People's Assembly in 2019

Introduction

It should be clear through the consistency of the language presented in the epigraphs above that the North Korean state provides all the freedoms a human could expect—with one interesting catch. The “freedoms” of speech, the press, assembly, demonstration, and association that the North Korean state claims to guarantee are all based on “conditions.” According to the Socialist Constitution of the DPRK, the State provides the working people “with every condition for obtaining food, clothing and housing” and “with all conditions for study” meant to “strengthen social education.” The State also provides “all conditions for women to play their full roles in society” and, as stated among the epigraphs above, guarantees “the conditions for the free activities of democratic political parties and social organizations.”⁴ What, exactly, are these “conditions?”

Article 63 of the DPRK’s constitution shines light on what these conditions are based on: “In the Democratic People’s Republic of Korea the rights and duties of citizens are based on the collectivist principle: ‘One for all and all for one.’”⁵ The “all” in Article 63, in the “collectivist” sense, is the group, whose collective interests trump that of the individual. Who, then, is the “one?” Article 11 points us to that answer: “The Democratic People’s Republic of Korea shall conduct all activities under the leadership of the Workers’ Party of Korea.”⁶ According to the bylaws of the Korean Worker’s Party (KWP), “The KWP sets establishing the Party’s sole leadership system as its primary goal and makes the Party a

vanguard for the leader.”⁷ Thus, it stands to reason that as North Korea’s “supreme leader,” or *Suryong*, Kim Jong-un is the “one.”

Kim wields absolute power as Chairman of both the State Affairs Commission and the KWP—North Korea’s lone political faction. With this power, he approves state policies and then controls implementation of said policies through the Party apparatus. Thus, Kim Jong Un, through the Party, sets the conditions for North Korea’s collectivist “freedoms.” This conditional, collectivist application of “freedom” runs completely counter to the principle of “universal human rights” as proclaimed in the Universal Declaration of Human Rights (UDHR).⁸ While the UDHR recognizes the agency, dignity and rights of the individual, North Korea’s collectivist notion of freedoms are conditioned to preserve and perpetuate the regime and the Party elites.⁹ This has resulted in an unparalleled system of control over the lives of the North Korean people. North Koreans must adhere to the “Ten Principles for the Establishment of a Monolithic Leadership System,” which justifies the ruling ideology centered on the *Suryong* and carries more prominence than either the constitution or Party charter. North Koreans must participate in weekly public *saenghwal chonghwa*, or self-criticism sessions, that emphasize strict obedience to the collectivist “ten principles.” Those who fail to faithfully uphold the ideology of the *Suryong* and comply with Party demands are treated as political criminals and punished.¹⁰ To the outside world, this system of control is patently draconian. Unapologetic for its ruthless system, North Korea has reacted apoplectically to criticism over its collectivist, conditional, regime-serving system of human rights denial.

Article 4 of the DPRK’s constitution helps explain North Korea’s extreme sensitivity to human rights criticism: “The sovereignty of the Democratic People’s Republic of Korea resides in the workers, peasants, soldiers, intellectuals and all other working people. The working people exercise State power through their representative organs—the Supreme People’s Assembly and local People’s Assemblies at all levels.” North Korea views the *Suryong*’s power, which reaches down and across all levels, all the way to the individual, as residing in a system synonymous with its own sovereignty. Therefore, to criticize North Korea’s treatment of its people is akin to attacking its own rigged interpretation of sovereignty, and by extension, carries with it the perceived sinister political aim of toppling the Kim regime.¹¹ North Korea has thus reacted angrily and defensively when confronted by other states or international organizations on its abysmal human rights record. On November 21, 2021,

North Korea's Foreign Ministry rejected a draft resolution approved by the Third Committee of the UN General Assembly criticizing its human rights violations, stating, "We will never tolerate any attempts that violate the sovereignty of our state, and we will continue to resolutely counter to the end the ever-worsening moves of the hostile forces against us."¹²

The DPRK's defensive outbursts and angry rhetoric have deeply affected South Korea's approach over how to deal with the issue of North Korean human rights. To avoid angering North Korea over this issue while pursuing hopes of inter-Korean engagement alive, the Moon Jae-in administration, like previous progressive ROK administrations, has shelved the topic of "North Korean human rights" since its inception in 2017.¹³ This paper will explore the phenomena that have driven these policy decisions by examining how South Korean administrations have viewed and handled the issue of North Korean human rights. With this understanding, and in view of upcoming ROK elections in 2022, the paper will produce recommendations for a future, standard and predictable trajectory for North Korean human rights policy.

South Korea's Road to Democratic Reform

It took South Korea nearly 40 years, through six republics and five presidents, to arrive at a level of democratization and human rights recognition that the people of the ROK found minimally acceptable. Today, South Korea sets a high standard. But the road to get to this point was long, winding, and painful. The ROK's First Republic came to an end on April 27, 1960, after spontaneous, mostly student-led demonstrations occurred throughout South Korea. The students were demonstrating the results of a blatantly fraudulent election engineered to keep President Syngman Rhee in power. Rhee tried to suppress the movement, which culminated in Seoul on April 19 with clashes that resulted in 115 killed and over 1,000 wounded throughout the city. The U.S. severely rebuked the 84-year-old ROK president in a sharply worded statement signaling the U.S would no longer support status quo politics in South Korea. On April 27, the National Assembly passed a motion demanding Rhee resign immediately, to which he accepted that afternoon, stepping down as the ROK president.¹⁴

When Chang Myon was elected Prime Minister of the Second Republic, the ROK Constitution had been amended to replace the presidential system with a parliamentary form of government meant to eradicate the autocratic loopholes that Rhee had abused during his

presidency. The resultant sudden and unprecedented freedoms this created for the suppressed populace had the unintended effect of inviting chaos and disorder, which led to the 1961 coup by Major General Park Chung-hee, who quickly launched autocratic reforms intended to re-establish order.¹⁵ President Park succeeded his own Third Republic with the declaration of the *Yushin* [Restoration] Constitution on October 17, 1972, which had a limiting effect on the legal force of the existing ROK Constitution. The *Yushin* Constitution gave Park dictatorial powers, allowing him to declare martial law throughout the country, dissolve the National Assembly, suspend political activities, and to nominate up to a third of the National Assemblymen. Park's Fourth Republic began when the *Yushin* Constitution was enacted on November 21 that year.¹⁶ Although South Korea's posted remarkable industrial and economic development during his tenure, it came with a societal cost. With no apparent limit to his term, the highly authoritarian Park government ended abruptly in 1979. On October 27, 1979, at a private dinner party, Park was assassinated by his own KCIA chief. Following the assassination, General Chun Doo-hwan led a two-stage coup in December 1979 and May 17, 1980, when the ROK Army violently crushed a popular uprising in the city of Gwangju.¹⁷ South Korea stayed on a path of economic development, but at a cost to the freedoms yearned by its citizens.

By 1987, South Korea was preparing to host the 1988 Summer Olympics. The ROK's export-focused economy was on its way to posting a second straight year of twelve percent growth, contacts with Eastern European countries were increasing, and relations with China and the Soviet Union were expanding. However, there was lingering restlessness within the domestic political sphere. President Chun's Democratic Justice Party (DJP) had been deadlocked in debate over negotiations with the opposition over constitutional reforms. The major issue pitted the DJP's preference for the ROK to establish itself as a parliamentary form of government while the opposition wanted a presidential system with direct popular vote. When negotiations stalled, student demonstrations picked up. Protests intensified when South Koreans learned in mid-January 1987 that a Seoul National University student had been tortured to death by police. On April 13, 1987, Chun announced that he was suspending further debate to focus on other matters and to prepare for the Summer Olympics. Street violence picked up and reached its peak on June 10, when Chun announced that he was formally nominating Roh Tae-woo to be his successor in

accordance with the ROK constitution that, at the time, allowed for indirect presidential election.¹⁸

Door to Democracy Opens in the ROK

The issue of North Korean human rights would not emerge as a political or social concern for South Koreans until the late 1980s. Prior to that point, South Korean citizens had been preoccupied with their own human rights, which had been overlooked during decades of authoritarian rule.¹⁹ By June 1987, however, the ROK government had embarked on a tentative path of political reform. Chun Doo-hwan's Fifth Republic, tainted by accusations of human rights violations that included repressing free speech, torture and imprisonment of opponents, and the 1980 Gwangju massacre, was nearing its end and giving way to the demands of South Koreans. A large cross-section of the population had joined massive and increasingly violent antigovernment street protests. In a calculated move, Roh Tae-woo, surprisingly announced acceptance of opposition party demands, and on June 29, offered an eight-point proposal that called for reform measures, including direct presidential elections. Chun subsequently endorsed the plan. This led to an amended ROK constitution, approved by national referendum in October, which included provisions that strengthened individual human rights and empowered the National Assembly to hold public hearings on important national issues.²⁰ Democratic elections were scheduled for December. As the elections drew near, North Korea readied a terrorist plot intended to cause fear and disruption in the South.

On November 29, 1987, Korean Air Flight 858 from Baghdad to Seoul exploded in midair, causing remnants of the aircraft to plummet into the Andaman Sea off Burma, and killing all 115 passengers aboard. In a live broadcast in South Korea on January 15, 1988, 26-year-old North Korean spy Kim Hyon-hui confessed to the bombing. Kim had undergone seven years of espionage training before receiving personal orders from Kim Jong Il to plant time bombs inside a South Korean passenger aircraft.²¹ North Korea's terrorist act had come less than a month before South Korea's historic 1987 democratic election. Kim would later claim that the mission to blow up the plane was indented to disrupt the 1988 Seoul Olympic Games.²² Despite North Korea's attempts at causing fear and disruption, on December 16, 1987, "South Koreans went to the polls for the first time in 16 years to directly elect a new president."²³

The ROK Awakening to North Korean Human Rights

In conjunction with ROK democratic reforms, awareness of North Korean human rights violations increased. In 1988, an Asia Watch report “unearthed substantial evidence of a pattern of gross human rights violations” and recommended North Korea “become the subject of scrutiny under intergovernmental procedures addressing consistent patterns of gross violations of human rights.²⁴ By the early 1990s, awareness of the dismal human rights situation occurring inside North Korea continued to heighten at a time when two other major issues of international concern were materializing. First, the international community was becoming gravely concerned over North Korea’s nuclear program. Department of State talking points prepared for Under Secretary of State Reginald Bartholomew’s June 1991 trip to China noted deep concerns over “North Korea’s refusal to fulfill its safeguards obligations under the NPT five years after NPT accession or to even acknowledge any of its indigenous nuclear program.”²⁵ Second, food shortages were worsening in what would gradually become a full-blown famine. Early accounts reported “people scrounging on the hillsides for edible plants to alleviate hunger.”²⁶ As conditions led to mass starvation, the number of North Korean defectors to South Korea increased. Through these increasing number of defectors, South Korea and the international community obtained more detailed accounts of the gulag-like prison camp system and other state-led forms of repression and torture inside North Korea.²⁷

After an Amnesty International delegation visited North Korea in 1991 to meet with officials and scholars, the organization followed up in 1992, submitting a memorandum to DPRK authorities and later publishing a summary that outlined concerns over human rights in the country.²⁸ In December 1994, the ROK government launched the “Center for Human Rights in North Korea” at its government-funded think tank, the Research Institute for National Unification (RINU), known today as the Korea Institute for National Unification (KINU). Charged with surveying and collecting data to research and analyze North Korean human rights issues, the center produced its first White Paper on Human Rights in North Korea in 1996. Through systematic data collection and management of North Korea human rights information, a new edition of the White Paper has been published annually since then.²⁹

Kim Young-sam – “Engagement” versus “Human Rights”

During the first half of the 1990s, the world’s attention was on North Korea’s nuclear program. The first nuclear crisis began on March 12, 1993, when North Korea announced it was pulling out of the Nuclear Nonproliferation Treaty (NPT). Both U.S. President Bill Clinton and South Korean President Kim Young-sam had been in office less than two months at the time of Pyongyang’s announcement.³⁰ After more than a year of negotiations and escalating tensions, then Assistant Secretary of State for Political-Military Affairs Robert Gallucci and his North Korean counterpart, Kang Sok-ju, were able to reach an agreement—the Agreed Framework, signed in October 1994.³¹ There was nothing in the agreement that referenced North Korean human rights, although the Clinton administration would later offer humanitarian assistance in the form of food aid.

President Kim was highly critical of Washington’s “lack of knowledge” and “over-eagerness to compromise” to arrive at a deal with North Korea. The ROK President said North Korea was “on the verge of an economic and political crisis that could sweep it from power,” and “expressed bitterness over the Administration’s failure to raise the issue of human rights with Pyongyang.” President Kim stated, “Despite the fact that the United States is making an issue of human rights in Haiti and Cuba and China, it is not in North Korea, where the situation is worse. I can’t really understand the logic.”³² Years later, Kim would look back with hardened views on North Korean human rights abuses. Hinting at the need for regime change in a 2004 interview, Kim said, “There is no freedom or democracy there. Until this system changes, there is no hope. As long as Kim Jong Il is there, I don’t think the human rights situation will improve. To Koreans on the other side, we care about your freedom. We can’t say when exactly, but I am quite confident that North Korea will collapse.”³³

Politics of Food Aid

By the mid-1990s, as famine gripped North Korea, the issue of ‘food aid’ became an object of politicization that would lead to the formation of two groups—one faction largely made up of progressives favoring “engagement” with the other composed mostly of conservatives focused on human rights. The food aid issue first surfaced in June 1995 during secret inter-Korean talks in China. After five days of meetings in Beijing, North Korea agreed to accept 150,000 tons of rice worth \$270 million from South Korea, marking the first time the DPRK had ever officially accepted

emergency food aid from the ROK. North Korea had previously requested aid from Japan in May, but the Japanese government would not commit until the North accepted the South Korean aid. Seoul viewed the North's acceptance of aid as a "precedent" that would usher "an era of reconciliation and cooperation" between the two Koreas.³⁴ Despite South Korea's gesture of good will, tensions between the two Koreas remained constant.

Cracks and fissures appeared almost immediately. After making good on the 150,000-ton shipment, South Korea promptly halted the rice deliveries and requested Japan cease its shipments. North Korea had refused to release five surviving crew from the South Korean trawler *Woosung* seized in May 1995, and in October, the ROK foiled two separate infiltration attempts by heavily armed North Korean agents. Although North Korea returned the *Woosung*, its surviving crew and remains of sailors killed by the North Koreans, South Korea ruled out additional rice deliveries until North Korea changed "its attitude toward" Seoul. The return of the crew was "...just one prerequisite for additional aid." Additional deliveries would only be made "if North Korea agrees to broader Government-to-Government dialogue."³⁵ In August that year, North Korea turned to the UN and made its initial appeal for food, medicine and help to rebuild after floods occurred, causing \$15 billion in damages.³⁶

The UN World Food Program (WFP) began food shipments to North Korea in November with a delivery of 5,140 tons of rice which represented the first-ever UN food aid sent to North Korea.³⁷ The UN WFP followed this up with an appeal to Western Countries to pledge \$8.8 million in food aid funds to prevent a halt to the shipments.³⁸ By May 1997, the WFP was appealing for 200,000 tons of food for North Korea worth \$95 million, of which \$38.6 million had been raised at that point, with the U.S. pledging \$25 million and South Korea \$6 million. While the U.S. and the ROK were willing to offer limited humanitarian assistance, neither country was willing to offer large-scale food aid until North Korea joined four-party peace talks that U.S. Deputy Assistant Secretary of State Charles Kartman was trying to arrange at the time.³⁹

Emergence of Humanitarian-focused NGOs

Through Kim Young-sam's tenure as president, inter-Korean relations remained ideologically, politically, and militarily confrontational. Pyongyang's continued truculent defiance caused the ROK government to

remain indifferent to humanitarian aid for North Korea. However, the domestic political mood in South Korea was changing. The Kim Young-sam administration, a civilian government voted in democratically after a string of military authoritarians, had established a less stifling political structure that was more sensitive to social movements. This created a favorable environment within which nongovernmental organizations (NGO) could operate. As a result, after North Korea appealed to the UN for food aid, new NGOs sprung up in South Korea. Religious groups and the newly existing NGOs in South Korea expanded their operations to focus on North Korean humanitarian assistance. By 1997, the total number of humanitarian NGOs had shot up by nearly 25 percent from 1995, from 91 to 112. With a focus on sending aid to North Korea, humanitarian-focused NGOs proliferated and became significant actors capable of influencing South Korean domestic politics. NGOs specifically focused on North Korean civil and political rights, i.e., “human rights,” had yet to appear in significant form.⁴⁰

Kim Dae-jung – Engaging the *Suryong*

The work and momentum of the humanitarian-focused NGOs aligned with the “engagement philosophy” that Kim Dae-jung would implement with North Korea during his tenure as president. Early in his administration, Kim Dae-Jung adopted measures that gave humanitarian NGOs the ability to engage directly with North Korea on all aspects of humanitarian program implementation, including distribution and monitoring.⁴¹ Kim Dae-jung held an empathetic, contextualist view of North Korea that paid respect to the uniqueness of the *Suryong* system. He considered any acts of interfering in North Korean domestic issues as being tantamount to violating the Agreement on Reconciliation, Non-Aggression, and Exchanges and Cooperation between South and North Korea that had come into effect in February 1992. He viewed the regime’s repressive behavior not as the result of its ideology, but as a response to the pressures of international isolation and containment. Kim believed that if pressure was reduced through the lifting of sanctions and diplomatic normalization, North Korea could eventually change and become a respectable actor among the international community.⁴²

Based on his contextualist views, Kim Dae-jung pursued the “Sunshine Policy” of engagement with North Korea. The policy sought to cause voluntary, gradual changes in North Korea through cooperation and exchanges with the goal of eventually achieving reunification. The policy

surmised that increases in exchanges and cooperation would naturally lead to reform and ultimately, to peaceful reunification. On North Korean human rights, the policy placed emphasis on human “needs” rather than human “rights.” Part of the rationale for this policy stemmed from the fact that North Korea was recovering from a famine at the time and focusing on human “needs” was more pragmatic than attacking the *Suryong* over human rights. Civil and political “human rights” were relevant, but not as critical as the basic right to survive and eat food. Thus, Kim’s policy emphasized humanitarian assistance, inter-Korean cultural exchange, and government-to-government contact. The policy wishfully assumed that by improving inter-Korean relations through these means and resolving humanitarian concerns, human rights could also improve.⁴³

Lopsided Arrangement

During Kim Dae-jung’s tenure, South Korea would provide North Korea with significant humanitarian assistance, which included massive amounts of food, fertilizer, and medicines.⁴⁴ The focus on achieving government-to-government contacts with North Korea eventually led to the historic meeting between Kim Dae-jung and Kim Jong-il from June 13-15, 2000. Kim Dae-jung traveled to Pyongyang where the two leaders met and agreed to an open-ended commitment for reducing tensions and working toward peace. The summit resulted in Kim Dae-jung receiving a Nobel Peace Prize, but he would become discredited later in what became known as the “cash-for-summit” scandal when it was revealed that ROK government officials transferred \$100 million in government funds to North Korea prior to the summit “to facilitate peace on the Korean Peninsula” with an additional \$400 million to be sent by the Hyundai business group.⁴⁵

Despite Kim Dae-jung’s generous material and cash overtures toward North Korea, tensions never subsided during the period. North Korea conducted numerous naval incursions, habitually deploying vessels across the Northern Limit Line (NLL) into the South’s waters and creating tensions that resulted in two serious skirmishes. In 1999, the South Korean navy responded to North Korean vessels crossing the NLL, sinking a ship, and killing as many as 80 North Koreans. In 2002, North Korean vessels crossed the NLL again and opened fire, sinking a South Korean frigate, and killing six South Korean sailors.⁴⁶ Toward the end of Kim Dae-jung’s presidency, provocations aimed at the South continued and the second North Korean nuclear crisis was beginning to take shape. Evidence had

been mounting since the late 1990s that North Korea had supplied missiles to Pakistan in exchange for uranium enrichment technology.⁴⁷

The exchanges of missiles for uranium enrichment technology suggested that North Korea had been operating in violation of the Agreed Framework and the NPT. Concerned over the possibility of a new stream of proliferation development, the Bush administration sent Assistant Secretary of State James Kelly to Pyongyang in October 2002 to confront North Korea.⁴⁸ When Kelly raised the question, the North Koreans argued that it was their right to develop nuclear weapons and used language that seemed to openly admit the existence of a highly enriched uranium program. The Bush administration responded by cutting off heavy fuel oil shipments being supplied in accordance with the 1994 Agreed Framework. In turn, North Korea expelled on-site IAEA inspectors and restarted a frozen nuclear reactor, effectively nullifying terms under the Agreed Framework.⁴⁹ In January, a month before Roh Moo-hyun took office as ROK President, North Korea pulled out of the Nuclear Nonproliferation treaty. Finally, in March, shortly after the U.S. invasion of Iraq, North Korea stated it had produced nuclear weapons and announced a policy of “nuclear deterrence.”⁵⁰ The “Sunshine Policy” reaped very little for South Korea.

Shift to North Korean Human Rights

By the late 1990s, some of the largest international donors had become disillusioned with efforts to provide aid to North Korea. Food was getting into the country, but it was not being equitably distributed. Beginning its work in 1995, *Médecins Sans Frontières* (MSF, or Doctors without Borders) was attempting to maintain an elaborate operation throughout three provinces inside North Korea that included close to 1,100 health centers that supplied medicine and training and 60 feeding centers set up to save malnourished children. However, convinced that the aid was not reaching the neediest as intended, MSF decided to withdraw its operation in September 1998.⁵¹ Up until the June 2000 “cash-for-summit,” what had been an increasing trend in international support began to slide downward, with a sharp reduction occurring after 2001.⁵²

From this point, South Korea stepped in and filled the gap as a major aid donor to North Korea. The ROK government, through what were largely bilateral contributions, lacked both a monitoring mechanism to track the aid once delivered to North Korea and procedures to coordinate with other aid agencies. Thus, South Korea’s policy of bilateral aid ended

up weakening the international donor community's efforts to optimize transparent and equitable distribution of aid throughout North Korea. As a result, the policy was met with heavy criticism internationally and the ROK's motives were questioned as it appeared North Korean human rights were being grossly overlooked.⁵³

Outside of South Korea, enthusiasm over continued food donations for North Korea had waned. North Korea appeared to have worked its way out of famine conditions, and by the early 2000s, its food production had slowly climbed back up to the basic level required to feed its own people. As the food crisis abated and the urgency to supply North Korea with food dropped off, attention shifted toward human rights.⁵⁴ In the U.S., a bipartisan bill sponsored by Senators Sam Brownback and Evan Bayh was proposed entitled the "North Korean Freedom Act of 2003." The comprehensive bill, which appeared to imply the acceptability of regime change, did not pass, but it set the template for revised laws that would follow soon after.⁵⁵

The European Union initiated the first North Korean human rights resolution in the UN. Adopted by the Human Rights Council in April 2003, the resolution called for, *inter alia*, NGO access into North Korea to ensure transparency of food distribution.⁵⁶ The resolution was adopted by a vote of 28 to 10, with 14 countries, including South Korea, abstaining. Seoul was concerned that the timing of the resolutions would adversely impact talks among U.S., Chinese, and North Korean officials that were set for the following week. Specifically, Seoul's Foreign Ministry was sensitive that North Korea would find the resolution to be "part of a broader Western strategy to undermine the regime," and thus, the timing was not right "to humiliate North Korea on their human rights record."⁵⁷

The Human Rights Council adopted a follow up resolution in April 2004 that built upon the 2003 resolution by appointing a Special Rapporteur to establish direct contact with the DPRK, including through visits to North Korea, for the purpose of investigating and reporting to the UN General Assembly on the human rights situation and compliance with international conventions.⁵⁸ After U.S. House and Senate revisions to the 2003 North Korean Freedom Act, on October 18, 2004, President George W. Bush signed into law the North Korean Human Rights Act of 2004. The law contained numerous provisions intended to promote North Korean human rights, aid North Koreans in need, and protect North Korean refugees.⁵⁹

Passage of the U.S. North Korean Human Rights Act exposed a widening divide in South Korea between conservatives and progressives regarding North Korean human rights.⁶⁰ In South Korea, representatives of the conservative Grand National Party introduced the North Korean Human Rights Act to the ROK National Assembly twice in 2005. The South Korean bill, which was like the U.S. Act, was blocked by the liberal Uri Party and did not make it out of the Assembly.⁶¹

Roh Moo-hyun – Continuation of the “Sunshine Policy”

Roh Moo-hyun continued the same policy of engagement toward North Korea. His plan, which he referred to as the “Peace and Prosperity Policy,” emphasized engagement, aid, and the easing of tensions through dialogue and negotiations.⁶² In other words, it was a continuation of the “sunshine policy.” During Roh Moo-hyun’s tenure as President, South Korea’s humanitarian aid to North Korea continued to increase. South Korea became North Korea’s second largest trade partner, and the volume of inter-Korean trade increased to over \$1 billion by 2005. The Roh administration also cooperated on major projects that benefited Pyongyang, such as developing the Mount Kumgang Tourism Zone and building the Kaesong Industrial Complex.⁶³

Despite Seoul’s continued generosity and willingness to engage, North Korea resumed work on its nuclear weapons program, launching seven ballistic missiles in July 2006. After being pelted by sharp public criticism for appearing weak, Roh responded by postponing consideration a 500,000-ton shipment of rice requested by North Korea. However, he continued his administration’s commitment to the “sunshine policy” of engagement and remained deeply opposed to supporting a push by the U.S. and Japan to impose sanctions on North Korea.⁶⁴ Disregarding Roh’s overtures, North Korea followed its missile launches with its first nuclear test on October 9, 2006. This time, under insurmountable domestic public pressure, rather than voting absent, the Roh government, in a political and diplomatic about-face, voted in favor of the annual UN General Assembly resolution on North Korean human rights.⁶⁵

Despite the nuclear and ballistic bumps in the road, Roh, like his predecessor, followed through on his commitment of engagement with North Korea and traveled to Pyongyang, where he met with Kim Jong-il over a three-day period in October 2007. The meeting produced an open-ended eight-point “agreement” that centered on the aspirational pursuit of exchanges and cooperation with economic development, a desire to

terminate military hostilities, and a sharing of “the wish to terminate the existing armistice regime.”⁶⁶

Lee Myung-bak – Eclipse of the Sunshine Policy

The election of the Grand National Party’s Lee Myung-bak in 2007 marked the end of the 10-year progressive period of “sunshine” in South Korean politics. Lee, a former Hyundai Engineering and Construction CEO who had spent five years as Seoul’s mayor, won a landslide victory over Chung Dong-young, a former Minister of Unification in the previous Roh government. North Korea was a major campaign issue and most South Koreans had become utterly disenchanted with the lavish economic aid being provided to North Korea under the “sunshine policy” while North Korea continued to merge and advance its nuclear and ballistic missile programs.⁶⁷ On North Korean human rights, Lee openly criticized Pyongyang and took to supporting UN resolutions on North Korea.

Lee Myung-bak’s 2008-2013 tenure as president ushered in a mainstream view that human rights should be based on the fundamental concepts of universality, which include basic rights to life, civil liberty, and religious freedom. During this period, the government ramped up support for domestic psychological campaigns conducted by NGOs targeting North Korea using radio broadcasts and balloons filled with propaganda materials.⁶⁸ The Lee government also used symposiums and conferences as venues to raise awareness of North Korean human rights violations and actively supported the efforts of NGOs working in the human rights field. During this period, the Lee government was willing to provide humanitarian aid, but it was contingent on North Korean progress toward denuclearization, and by 2012, aid to the DPRK had reached a 16-year low.⁶⁹

Unsurprisingly, tensions on the Peninsula increased as North Korea lashed out at what it perceived as an attack on its “sovereignty.” In March 2010, North Korea torpedoed the South Korean naval vessel, the *Cheonan*, sinking the ship and killing 46 ROK sailors, and then in November, shelled South Korea’s Yeonpyeong Island, killing four and injuring 19 South Koreans. Pyongyang also upped the nuclear ante that month, when North Korean officials revealed to Siegfried Hecker, a visiting scientist from Stanford University, that it had completed an operational uranium enrichment facility.⁷⁰

On April 13, 2012, shortly after the so-called U.S.-DPRK “leap day” agreement was made, North Korea launched a “satellite” using a ballistic

missile as the launch vehicle, a violation of UNSC Resolution 1718. This prompted U.S. suspension of its side of the leap day agreement, which included food aid, and immediate condemnation by the UN Security Council.⁷¹ That April, North Korea declared itself a “nuclear weapons state” and after conducting another nuclear test in February 2013, North Korea’s Supreme People’s assembly established the “Nuclear Weapons State Law,” justifying its nuclear weapons as a deterrent against the United States.⁷²

Park Guen-hye – Full Human Rights Agenda

After campaigning on a balanced approach with North Korea based on trust through renewed dialogue and a strong ROK defense capable of responding to provocations, Park Geun-hye was elected president on December 19, 2012. Park’s policy offered North Korea a trust-building opportunity in the hopes of getting inter-Korean relations back on track. As part of *Trustpolitik*, the South Korean government increased funding for humanitarian work being conducted in North Korea by UN agencies and NGOs, including the provision of technical support for joint environmental and archaeological projects.⁷³ On the issue of human rights, Park worked to increase global awareness of North Korean violations by supporting the 2014 UN report on North Korean human rights which comprehensively detailed the systematic oppression and crimes against humanity being perpetrated by the Kim regime.⁷⁴

In 2014, Park became the first South Korean president to discuss the issue of human rights before the UN General Assembly. During her September 25 keynote address, with the North Korean ambassador to the UN seated in the front row, she underscored the UN Human Rights Council’s endorsement of the recommendations made by the Commission of Inquiry in its landmark report detailing human rights abuses in the DPRK. She then called on North Korea and the international community to take the necessary measures for implementing the report’s recommendations, which included calls to close political prison camps, prosecute those responsible for crimes against humanity, and for China to cease forced repatriation of North Korean refugees.⁷⁵

Domestically, Park’s major human rights legislative achievement was the passage of the 2016 North Korean Human Rights Act. After 11 years of political wrangling over the South Korean human rights bill between conservatives and progressives, the North Korean Human Rights Act (NKHRA) was finally passed on March 2, 2016. Originally introduced in

2005, the approved 2016 law calls for the South Korean government to lead efforts investigating North Korean human rights violations and directs the government to establish a North Korean human rights archive under the Ministry of Unification that can be used to track and document abuses. The law also places prioritization for receiving humanitarian aid on children and pregnant women and mandates monitoring the delivery of support to ensure transparency in compliance with international standards.⁷⁶ Finally, the law mandates appointment of a North Korea Human Rights Ambassador with the “expertise necessary to improve human rights in North Korea and the diplomatic capability necessary to secure international cooperation.”⁷⁷

As global awareness of North Korea’s human rights violations increased, the DPRK continued to advance its nuclear program, stoking tensions with missile launches and weapons tests. After North Korea conducted its fourth nuclear test in January 2016, President Park ordered the shutdown of the Kaesong Industrial Complex, where roughly 54,000 North Koreans had worked in over 120 South Korean-owned factories. Notwithstanding the domestic and international advancements made for the cause of North Korean human rights, the administration of Park Geun-hye came to abrupt end when she was impeached over corruption accusations in December 2016. Her removal from office on March 10, 2017, triggered the need for a snap election to be held within 60 days.⁷⁸ Progressive politician Moon Jae-in, whom Park had edged out in the 2012 election, had emerged as the front-runner for the election slated to be held on May 9, 2017.

Moon Jae-in and the Return to Engagement

Moon Jae-in, the son of North Korean refugees who fled communist rule during the Korean War aboard a U.S. Navy ship, was arrested in 1975 for leading a rally against the *Yushin* Constitution (Fourth Republic) of authoritarian President Park Chung-hee, father of Park Geun-hye.⁷⁹ After working as a civil rights attorney, Moon later served in various key roles under the Roh Moo-hyun administration from 2003-08. When Roh died in 2009, Moon became the guardian of Roh’s political legacy by leading the Roh Moo-hyun Foundation.⁸⁰ In 2012, after Moon won a National Assembly seat in Busan, he catapulted straight to the presidential election as the progressive candidate, before narrowly losing to conservative candidate Park Geun-hye.⁸¹

Trump-Moon ‘Pressure-Engagement’ Era Begins

Aligned with the “Sunshine” policies adopted by the previous progressive administrations of Kim Dae-jung and Roh Moo-hyun, Moon emerged as the front-runner candidate after President Park was impeached in December 2016. During the 2017 ROK Presidential campaign, Moon was seen as the most sympathetic toward North Korea among the top four presidential hopefuls. He stressed the need for dialogue with Pyongyang and favored the reopening the Kaesong joint industrial complex.⁸² Moon soundly won the election on May 9, 2017. Within a few short months, former reality TV star and businessman Donald Trump and former civil rights lawyer Moon Jae-in would assume office as their country’s respective new presidents. Donald Trump vowed to put “America First” while Moon Jae-in promised that if elected he would say “no” to America when necessary. President Trump and President Moon would meet in late June 2017, marking the true beginning of the “Trump-Moon” era in U.S.-ROK relations.

Throughout 2016, North Korea launched 24 missiles and conducted two nuclear tests in a demonstration that showcased a credible convergence of its nuclear and ballistic capabilities. In November, President-elect Donald Trump received a dire warning from the outgoing Obama administration that North Korea was a “grave, near-term threat to America” due to its rapidly accelerating nuclear and missile programs.⁸³ By April 2017, the Trump administration completed a broad policy review aimed at thwarting North Korea’s nuclear and missile programs. The review was accelerated for completion to occur before a summit scheduled between President Trump and Xi Jinping.⁸⁴ A set of proposals came out of the review collectively termed, “maximum pressure and engagement,” all focused on the denuclearization of North Korea through pressure—sanctions and other diplomatic means with the help of China—and engagement with North Korea, “if and when it changes its behavior.”⁸⁵

Maximum Pressure...then Engagement

On June 28, 2017, President Moon departed for Washington to meet with U.S. President Trump for a two-day summit on the first overseas visit since his inauguration. Despite concerns over the prospects for a successful meeting between the ROK progressive and the U.S. Republican, the exchange produced productive clarification on several key U.S.-ROK alliance issues. Most notably, there was agreement over increasing pressure on North Korea. While Moon agreed with President Trump’s

emphasis on “pressure,” he noted the need to look for opportunities for dialogue.⁸⁶ In November 2017, during President Trump’s 12-day trip to Asia, he visited South Korea, where he reaffirmed the commitment to “maximum pressure” against North Korea with President Moon. He also spoke in front of South Korea’s National Assembly, calling for nations to unite in alienating the North Korean regime.⁸⁷

As part of the pressure campaign, the President Trump included open and unambiguous condemnation of North Korea’s human rights record, as evidenced by the remarks he made to the UN General Assembly in September 2017, as well as the verbal and visual language used in the 2018 State of the Union. The 2018 address carries forward the haunting imagery of Otto Warmbier’s parents seated in the chamber and the emotional moment when North Korean escapee Ji Seong-ho triumphantly raised his wooden crutches.⁸⁸

Throughout 2017, the Trump administration used diplomatic, military, and financial levers to apply pressure on North Korea, and after roughly one year of “maximum pressure,” tensions eased, clearing the way for “engagement.” The thaw in tensions, which had been escalating through the first 12 months of the Trump administration, came in February during the 2018 Winter Olympics held in South Korea. Kim Jong Un dispatched his sister, Kim Yo-jong, as a state messenger to meet with South Korean president Moon Jae-in and to represent North Korea at the games, where Korean athletes from the South and North marched together under a “unified” Korean flag. Moon Jae-in used the neutral venue of the games and his contact with Kim Yo-jong to restart inter-Korean dialogue that would lead to an April 2018 Moon-Kim meeting in Panmunjom and pave the way for a summit to occur between President Trump and Kim.⁸⁹

Summit Montage

The April 27 Moon-Kim summit resulted in a joint declaration. Like statements from previous inter-Korean meetings, the declaration contains open-ended pledges by the two Koreas to advance relations by committing to comprehensive engagement and cooperation.⁹⁰ Less than two months later in June, Kim met President Trump in Singapore, where the two leaders signed an indistinct, open-ended agreement to work towards peace, denuclearization, and the recovery of POW/MIA remains.⁹¹ Previously, on April 21, 2018, in carefully worded language meant for both external and internal audiences, Kim Jong-un had declared there was no further need to test nuclear warheads and long range ballistic missiles.⁹²

Immediately following the Singapore Summit, President Trump announced the cancelation of “provocative” U.S.-South Korean combined exercises. President Moon and Kim Jong-un met for their third summit in Pyongyang on September 18–20—their second summit was a two-hour impromptu meeting in Panmunjom in May. The three-day September summit resulted in the Pyongyang Joint Declaration of 2018, in which the two sides agreed to further reduce military tensions, continue advancing exchanges and cooperation, strengthen humanitarian cooperation over the separation of families, to actively promote exchanges, and make progress toward denuclearization of the “Korean Peninsula.” Kim Jong-un also agreed to visit Seoul at an “early date.”⁹³

President Trump and Kim Jong-un met again in Hanoi on February 27-28, 2019, to follow up on discussions from Singapore, but the summit ended earlier than expected. Kim offered to shut down plutonium production facilities inside the Yongbyon nuclear complex, which today represents just a portion of North Korea’s nuclear program. In return, Kim wanted, at a minimum, relief from the past five UN Security Council sanctions, the toughest imposed on North Korea. The Trump team declined, and the summit ended early.⁹⁴

The following month, at the conclusion of the G20 summit in Osaka on June 30, President Trump and South Korean President Moon Jae-in made an impromptu visit to Panmunjom where they met Kim Jong Un on the North-South border of the demilitarized zone (DMZ). At the border meeting, Kim invited President Trump to step into North Korea, making Trump the first U.S. president to ever enter North Korea.⁹⁵ Following the historic DMZ meeting, working level meetings between the two sides were expected to begin, but none immediately materialized. When the first formal working level meeting between the sides was held in Stockholm on October 5, talks broke down after only eight hours of discussion. North Korea’s nuclear envoy attributed the breakdown to the U.S. position, stating, “the US would not give up their old viewpoint and attitude.”⁹⁶

The Abandonment of a Human Rights Agenda

After excoriating North Korea on its human rights track record in the first year of his presidency, former U.S. President Trump ignored the issue entirely once nuclear summits began with Kim Jong-un, and as of this writing, the Biden Administration has not made notable progress on the issue. Although U.S. North Korea Human Rights Act was reauthorized in June 2018, the appointment of an ambassador-level special envoy for

North Korean human rights, a required provision in the act, has yet to occur, despite overwhelming bipartisan congressional support for the Act's reauthorization.⁹⁷ The Moon administration has also shelved North Korean human rights as it continues to seek inter-Korean engagement.

To a large extent, the Moon administration has chosen to forgo implementation of the NKHRA passed in 2016. On March 10, 2021, in a report to the UN Human Rights Council, UN Special Rapporteur on North Korea human rights Tomas Ojea Quintana, called on South Korea to enforce its neglected law and address the North's rights violations.⁹⁸ Budget cuts by the ROK government to North Korean human rights programs are indicative of the Moon administration's priorities. In December 2017, the government shut off funding for the Association of North Korean Defectors after nearly 20 years of supporting the organization, putting an end to most of its programs, forcing layoffs and a move to a smaller office. Soon after the Trump-Kim Singapore summit on June 12, 2018, the ROK government announced its intention not to fund an office for the new North Korean Human Rights Foundation which was established in accordance with the 2016 NKHRA⁹⁹ Also in 2018, the Ministry of Foreign Affairs budget for activities that promotes the protection of human rights in North Korea, including hosting consultations with other governments, was cut from 49 million won to 15 million won in 2021.¹⁰⁰

One of the key features of the 2016 NKHRA is the requirement to post an ambassador-at-large on North Korean human rights. The Moon administration has left this position unfilled since the end of inaugural Ambassador Lee Jung-hoon's term in September 2017. The North Korean Human Rights Foundation, the organization that conducts inquiries and develops policies on promoting North Korean human rights, is another requirement pursuant to the NKHRA that the Moon government has yet to establish.¹⁰¹ In addition to defunding programs and ignoring the structural application of the NKHRA, the Moon administration has taken active efforts to squelch human rights-related activities.

On December 28, 2020, the ROK National Assembly voted to amend an inter-Korean relations law to bar leaflet balloons from being flown into North Korea and to restrict loudspeaker propaganda broadcasts. The ban, which took effect in March 2021, stipulates violators can be jailed for up to three years or be fined up to 30 million won (\$27,400).¹⁰² The law was amended after a pressure campaign by North Korea over the leaflets, which culminated in the June 2020 demolition of the inter-Korean liaison

office. The Ministry of Unification supported the ban on leaflets and launched investigations into 25 civic groups, among which 13 were being operated by North Korean defectors who had settled in South Korea.¹⁰³

Prospects Moving Forward

After talks broke down between the U.S. and North Korea in 2019, Kim Jong-un resumed intermittent ballistic missile tests, broke off communications with Moon Jae-in, and through his sister, Kim Yo-jong, lobbed threats and insults at South Korea. Despite this, Moon Jae-in continues with repeated attempts to engage North Korea. In his final speech to the UN General Assembly as ROK president on September 21, 2021, Moon Jae-in proposed that a formal declaration to end the Korea War be drawn up among the two Koreas, the U.S., and possibly China.¹⁰⁴

As of this writing, polite diplomatic language is currently being deployed by both South Korean and U.S. officials to describe cooperation and progress toward Moon's end-of-war proposal, but the reality that an actual declaration will be drawn up while Moon is in office is becoming less likely by the day. Moon's tenure is quickly coming to an end and soon the presidential elections will become the primary focus for South Koreans. Additionally, if Moon is looking for U.S. and China's support for laying the groundwork for an end-of-war declaration, there are likely too many obstacles to allow this to occur, especially considering the possibility of a U.S. boycott of the Beijing Winter Olympics. Nonetheless, Moon will be too invested in inter-Korean engagement to backtrack at this stage, and thus, North Korean Human Rights will remain shelved, at least until the next election.

Conclusion

This paper explored phenomena that have driven South Korean policy decisions regarding North Korean human rights. Through careful examination of the present and past ROK presidential administrations' views and treatment of North Korean human rights, this paper rooted out the "wicked problem" that has subsequently birthed other problems. The wicked problem, to be presented shortly, is not insurmountable, but will require a good deal of untangling to get North Korean human rights right. After problem identification, this paper's concluding paragraphs will offer recommendations for a future, standard and predictable trajectory for North Korean human rights policy.

Wicked Problem – Politicization of North Korean Human Rights

The issue of North Korean human rights is, tragically, a politically partisan issue in South Korea. Two primary camps with distinct philosophical approaches, supported by partisan NGOs have gradually formed over the years. The origin of this formation can clearly be traced back to the 1990s as the offspring of the two major challenges requiring solutions during the period: denuclearization and famine. One camp, the progressives, comes bearing gifts in the form of food and other aid, believing inter-Korean engagement is the key to eventually unlocking the door to emancipating the North Korean people. The other camp, the conservatives, demands accountability up front, believing in the universality of human rights and favors international cooperation to address the issue.

Conservatives are labeled “regime change” adherents or the “naming and shaming” camp. Progressive are viewed as “appeasers” of the Kim regime who look past the issue of human rights in North Korea.¹⁰⁵ Progressive politicians in South Korea would argue that while they are every bit as compassionate and sensitive to the problem of North Korean human rights as conservatives, they simply have a different approach to address the matter. Conservatives would argue that they are rightfully following the right to liberty and life as prescribed in the Universal Declaration of Human Rights and other international conventions. Both sides are earnest and are likely equally sincere in their convictions. However, both camps, unfortunately, have been caught in the trap of allowing the Kim regime to define the rules by which North Korean human rights can be addressed. The Kim’s have successfully split South Korea’s political camps over an issue that should otherwise be bipartisan.

North Korea’s constitution, the KWP charter, and the Kim regime’s rhetoric are very clear: the North has its own unique way of setting the conditions for the human rights of its people and any outside concerns, criticism, or demands to reform its human rights approach are viewed as an attack on its sovereignty. Sensitive to this distorted view of sovereignty, the progressive camp prefers to engage with North Korea in the wishful hopes that relations will gradually improve until the Kim regime feels comfortable enough to make reforms. The conservative camp understands the Kim regime’s sensitivity to human rights criticism and fears over its sovereignty and knows that it can dial up pressure on issues such as denuclearization by attacking North Korea on this front. Food and sanctions relief hang in the balance. Progressives are willing to concede

these bennies up front to get to inter-Korean engagement. Conservatives make these conditional. Neither approach, by itself, has alleviated the brutal denial of human rights in North Korea.

The progressive approach vis-à-vis North Korea puts South Korea in a tributary role. Like a Joseon-era tribute mission to the Ming emperor, the progressive approach puts North Korea in the Peninsular suzerain role and relegates South Korea to playing the vassal. No amount of food, medicine, or beef will convince Kim Jong Un to loosen things up on the human rights front...or denuclearize for that matter. In the meantime, the progressive approach runs the risk of being disingenuous. While the Kim regime is showered with tribute and respect, nothing comes back to South Korea in return. To create the proper atmosphere to engage members of the Kim family elite, South Korea's own laws are ignored, and the rights of South Koreans are trampled in the process. The most unfortunate irony involves the poor treatment of North Korea escapees who have come to the South seeking freedom.

The conservative approach hardens North Korea's resolve and gives the Kim regime cover to continue advancing its weapons programs, conducting provocations and turning more tightly the screws of repression and human rights denial of its people. When the Kim regime is confronted directly over its human rights abuses, North Korea reacts predictably, first denying the existence of human rights violations (denying the existence of political prison camps, for example) and blaming external forces for using human rights to attack North Korea. This gives cover to North Korea—Pyongyang uses the perceived “attacks” on North Korea to justify continued advancement of its nuclear program and lash out provocatively while it continues to crack down on its people.

The Solution – Depoliticizing North Korean Human Rights

To remedy the divide over North Korean human rights in South Korean politics, an obvious middle ground must be sought. The middle ground must be safe enough that neither progressives nor conservatives feel that they have strayed too far outside of the partisan boundaries of their respective political camps—difficult, but achievable. The following recommendations are meant for present and future consideration.

First, discontinue the practice of allowing North Korea to frame concern for human rights as an attack on its own sovereignty. Allowing North Korea to make this claim lies at the heart of the lines of political division created in South Korea over the human rights issue. It gives life

to the antagonistic labels of “appeasers” for progressives, and “regime change adherents” for conservatives. The Kim regime’s collectivist, conditional prescription for human rights is invalid and deserves neither tribute nor respect for its potential vulnerabilities. Trying to conditionally coerce or harass the regime to reform is futile and not worth the effort. Trying to engage while avoiding offending the regime in the hopes of making North Korea come to its senses has not resulted in resolving the issue of human rights denial in the North. Conservatives and progressives alike should jointly declare North Korea’s own definition of sovereignty as invalid as it is completely counter to the principle of “universal human rights” as proclaimed in the Universal Declaration of Human Rights.

Second, for the progressives, the connection between “engagement” and “human rights” should be removed. History has repeatedly shown that years of engagement efforts may, at best, result in numerous concessions to get to a summit photo op and an agreement that re-commits to past agreements, but in the end, no improvement to human rights. Continued engagement efforts should continue to be pursued, but only those focused in engageable areas, such as cultural, sports, and economic exchanges. Progressives must keep in mind that North Korea does not see as much value in engaging South Korea as ROK progressives see in engaging North Korea. The Kim regime has repeatedly placed a higher value on getting to direct negotiations with the U.S. since it holds the key to recognition of North Korea as a nuclear state and for providing sanctions relief. North Korea has traditionally entertained engagement with South Korea up to a certain point, but ultimately, has little interest in following the progressive plan of full engagement.

For the conservatives, human rights should not be used as a cudgel. It is easy to draw a straight line that connects a future vision of improved North Korean human rights with the Kim regime no longer in charge, but the focus should not be on collapsing the regime, it should be on improving human rights.

Third, as a representative democratic republic, South Korea’s concerns with North Korean human rights involve the people of North Korea, not with the well-fed authoritarian regime living in Pyongyang. Thus, rather than dealing directly with the Kim regime, which has no vested interest in making human rights reforms, South Korea should appeal directly to the North Korean people. The scope of this paper is too limited to go into the numerous methods of implementation for this, but some general considerations can be made. First, the anti-leaflet law should

be significantly amended or repealed in full. In its place, guidelines for acceptable forms of information could be developed to regulate and screen for unnecessarily inflammatory material from being sent to North Korea. Broadcast messaging could be tailored in a similar way. The idea is to avoid unnecessarily inflammatory, regime-threatening, or lewd, cartoon-like attacks, which only serve to harden North Korea's resolve and even offend some of its people. Instead, factual and helpful information and food packages that meet the North Korean people's humanitarian needs and civil rights would be the focus.

Last, resurrect and fully enable the 2016 NKHRA, with special emphasis on Article 8, Humanitarian Aid, keeping intact the stipulations that aid distribution be effectively monitored to ensure it gets to the intended recipients. Existing market infrastructure and logistical lines of communications in North Korea could be utilized to broaden and monitor effective aid distribution. International efforts should be the preferred means to do this. South Korean NGOs, well-intended though they may be, run the risk of falling into one of the other partisan camps. This is not to suggest South Korean NGOs do not play a significant role; rather, to the extent possible efforts by South Korean NGOs could be orchestrated within an international context. Also, as part of resurrecting the 2016 NKHRA, the posting of an ambassador-at-large on North Korean human rights and re-funding of programmatic activities that support the act should commence.

North Korea's collectivist, conditional prescription for human rights is invalid. Concern for human rights cannot be allowed to be construed as an attack on North Korea's sovereignty. By discontinuing the practice of allowing North Korea to frame human rights as such, and by removing faulty the connections of "engagement-human rights" and "regime collapse-human rights," South Korea can find more of a middle ground approach. A more grounded approach, free from the shackles of partisan politics will help the ROK to find ways to appeal directly to the North Korean people while resurrecting and implementing the full power of the 2016 NKHRA.

Appendix: Korean to English Translation

English	Korean
Conditions	조건
Collectivist	집단주의
Suryong	수령
Establishment of a Monolithic Leadership System	당의 유일적 영도체계 확립의 10 대 원칙
Self-criticism session	생활 총화
Restoration, revitalization	유신
Joseon-era tribute mission	조공 사절

Notes:

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³ “DPRK Constitution (2019),” The National Committee on North Korea, April 11, 2019, https://www.ncnk.org/resources/publications/dprk-constitution-2019.pdf/file_view, accessed November 25, 2021.

⁴ “DPRK Constitution (2019),” Articles 25, 48, 67 and 77.

⁵ Ibid.

⁶ Ibid.

⁷ “Bylaws of the Korean Workers’ Party [조선로동당 규약], May 9, 2016, unofficial English translation, https://www.ncnk.org/resources/publications/kwp-rules-2016-original-korean-lang.pdf/file_view, accessed November 25, 2021.

⁸ For text and history of the declaration, see, “Universal Declaration of Human Rights,” United Nations, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, accessed November 25, 2021.

⁹ For similar arguments, see, Won Woong Lee, “North Korea’s Perception of and Response to International Pressure on Human Rights: A Critical Evaluation,” in “East Asian Human Rights Regime and North Korean Human Rights,” October 14, 2009, p. 288, and ROK Ministry of Unification, *Understanding North Korea: 2017* (Seoul: Institute for Unification Education), October 2017, p. 318.

¹⁰ ROK Ministry of Unification, *Understanding North Korea: 2017*, pp. 62, 87, 279, 288, 290, 294, 298, 303; Note that the “Ten Principles for the Establishment of a Monolithic Leadership System” had previously been the “Ten Principles for the Establishment of a Monolithic Ideological System.” The change, made in June 2013, was apparently intended to enhance Kim Jong-un’s power. (p.87); 통일부 (Ministry of Unification),

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- ¹⁵ Ralph N. Clough, *Embattled Korea: The Rivalry for International Support* (Boulder, CO: Westview Press, 1987), pp. 32-33.
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