

## **The North Korean Human Rights Act of 2004**

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### **Introduction**

After abandoning the Agreed Framework, the Bush administration adopted multilateral mechanisms to negotiate nuclear issues of North Korea. In parallel with these developments, the Congress of the United States demonstrated its interest in issues of democracy and human rights in North Korea by deliberating and passing a bill on the subject. The bill was signed into a law by President Bush as the North Korean Human Rights Act of 2004 in October 2004.

In response to the adoption of this law, North Korea criticized the United States through its state controlled media. Korean Central News Agency reported that the United States, by adopting the act, discarded dialogue and negotiation as a means to resolve the nuclear issue and legally incorporated destruction of the North Korean system as its policy.<sup>1</sup>

The US government should have known that highlighting the issues of human rights and democracy in North Korea in the midst of nuclear talks may complicate the process of negotiation: Washington certainly could have expected that North Korea, usually unwilling to discuss its internal affairs, might use this Act as an excuse to slowdown the negotiation. Therefore, it is perplexing why the President signed it into law when doing so brought the risk of derailing the nuclear negotiation. The purpose of this paper is to evaluate the meaning of this Act in the administration.

### **Background**

North Korea has long been a focus of Congressional concern because of the lack of democracy and denial of human rights. Despite its secrecy, it has been rumored since the 1970's that brutal violations of human rights are taking place in North Korean prison camps. However, the Congress did not or could not take any actions since there was not sufficiently strong evidence to prove such information.

There was a change of conditions in 1995 when the flood hit North Korea and the famine followed. It opened the border of North Korea to an unprecedented degree of movement of people: humanitarian aid workers were admitted into North Korea

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<sup>1</sup> "U.S. Propaganda against DPRK Flayed," Korean Central News Agency, 18 October, 2004.

and entered the country in a large number. Some of them witnessed probable prison camps during their stay in North Korea even though their operations were strictly controlled by North Korean officials attending to them. Their eyewitness account of what they saw corroborated the stories told by the North Koreans who escaped into China in search of food and/or asylum. They reported deplorable humanitarian conditions in the country as well as brutal acts taking place in prison camps.

The information provided by North Koreans who escaped from the country were compiled into reports and disseminated by Non-governmental organizations (NGOs). Information in such reports contributed to raising Congressional attention and resulted in hearings focused on the human rights issues of North Korea.<sup>2</sup> Former prisoners gave testimony about conditions in prison camps.<sup>3</sup> As a move to promote human rights and democracy in North Korea, the process of legislation was launched in November 2003 with the introduction of a bill, the North Korean Freedom Act of 2003. Though the bill never became law, a new bill, which focused more effectively on human rights<sup>4</sup>, the North Korean Human Rights Act of 2004, was proposed and passed.

#### **The North Korean Human Rights Act of 2004**

The 2004 North Korean Human Rights Act criticizes North Korea for lack of democracy and deplorable human rights conditions. It presses the administration to include the issue of human rights as a key element in any future negotiations between the US and North Korea. A practical aspect is that the Act authorizes the President \$24 million per year for FY 2005-2008. Among the funds, \$2 million is authorized to support NGOs engaged in promotion of human rights and democracy in North Korea. Another \$2 million is pooled for programs to promote freedom of information in North Korea. The largest portion of \$20 million is made available for humanitarian assistance for North Korean people who are outside of the country without the permission of North Korea.

The Act requires the President to appoint a special envoy within the Department of State to coordinate and promote efforts to improve human rights

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<sup>2</sup> A Korea specialist, interviewed on 19 February 2008, mentioned two publications that disclosed brutal nature of prison camps: a book issued in 2001, *The Aquariums of Pyongyang*, and a report issued in 2003 by U.S. Committee for Human Rights in North Korea, *The Hidden Gulag*. He views they had much impact to prompt the Congressional action, including hearings, to address the issue. Both publications include the first hand accounts of systematic abuse of human rights practiced in prison camps described by former prisoners and/or former guards.

<sup>3</sup> The Subcommittee on International Relations, House of Representatives held a hearing on May 2, 2002 which was dedicated to humanitarian and human rights concerns in North Korea.

<sup>4</sup> Karin J. Lee, "*The North Korean Human Rights Act and other Congressional Agendas*," Nautilus Institute, October 7, 2004.

conditions in North Korea. The envoy is expected to engage with North Korea on human rights issues. He is also expected to support international efforts and to work with NGOs on the issue.

The Act focuses on North Korean people who are outside of the country without the permission of North Korea as a vulnerable population, and asserts necessity to provide protection. As one of the means of protection, the Act calls for the administration to grant refugee status to North Koreans and resettle them in the US. It also calls for the administration to work toward the United Nations High Commissioner for Refugees (UNHCR) and relevant nations temporarily hosting them to recognize and protect them as refugees. In particular, the Act expresses strong concern about the practice of China to capture such North Koreans as economic migrants and to repatriate them to North Korea.

Furthermore, the act mandates the administration to submit several reports. By requiring such reports, the Act presses the administration to take actions pursuant to the Act.

### **The response by the Bush administration**

When President Bush signed the North Korean Human Rights Act of 2004 into a law, he issued an announcement describing the Act as a useful new tool to address the deplorable human-rights situation in North Korea.<sup>5</sup> Indeed, at a superficial level, the Bush administration seemed to put in the efforts in fulfilling the requirements mandated by this law. The president appointed a special envoy in August 2005. The administration also has been submitting required reports since March 2005.<sup>6</sup> But the tardy pace of response on the part of the administration suggested that, in reality, the Bush administration was not putting serious effort in the cause of the Act.

For example, it took the administration ten months before appointing Jay Lefkowitz as the special envoy. The qualification of Lefkowitz for the role of special

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<sup>5</sup> President's Statement on North Korean Human Right Act, October 21, 2004.

<sup>6</sup> Pursuant to Section 103 of the Act, Broadcasting Board of Governors (BBG) submitted *Report on Radio Broadcasting to North Korea* on March 8, 2005. Pursuant to Section 107, US Department of State submitted *Reports on Activities of the Special Envoy on Human Rights in North Korea* in July 2006 and in May 2007. Pursuant to Section 201, the Administrator of the United States Agency for International Development (USAID) submitted *Reports on US Humanitarian Assistance to North Koreans* on April 15, 2005 and on April 15, 2006. Pursuant to Section 202, the USAID submitted *Report on US Assistance Provided inside North Korea* on April 15, 2005. Pursuant to Section 301, Department of State submitted *Report on the Status of North Korean Asylum Seekers and the US Government Policy Towards Them* on March 11, 2005. Pursuant to Section 305, US Department of State, US Department of Homeland Security and US Department of Health and Human Services included required statistic data on resettlement of North Koreans in Reports on Proposed Refugee Admissions for Fiscal Year 2006, 2007, and 2008.

envoy and his authority as such were also questionable. While Lefkowitz has previously served as a member of the US delegation to the United Nations Human Rights Commission and the US delegation to the International Conference on Anti-Semitism sponsored by the Organization for Security and Cooperation (OSCE), he is not necessarily regarded as an expert on the issues of human rights and democracy in North Korea.<sup>7</sup> The level of commitment by Lefkowitz to the job of the special envoy is also doubtful: while Lefkowitz has an office in the State Department, he remains a part-time employee, continuing his practice as a professional lawyer in New York. Furthermore, the Bush administration has appointed Christian Whiton as the Deputy Special Envoy, and he became a *de facto* special envoy in place of Lefkowitz (Whiton appeared before the public more frequent than Lefkowitz himself in 2007).

Lefkowitz's status within the US government also came into serious question in 2008, when the administration downplayed the significance of his words as the special envoy. In January 2008, Lefkowitz suggested that North Korea was not serious in implementing its obligation in the nuclear deal, proposing that the United States consider a new approach in his speech in Washington, DC.<sup>8</sup> Immediately after the speech, the administration explicitly noted that Lefkowitz did not represent the current North Korea policy position of the US government. For example, when asked about Lefkowitz's speech by the press, the Secretary of State Condoleezza Rice replied that being a special envoy on human rights, Mr. Lefkowitz "doesn't know what's going on in the six-party talks and he certainly has no say in what American policy will be in the six-party talks."<sup>9</sup>

In the Report on Activities of the Special Envoy on Human Rights in North Korea issued in 2007, the administration claims that it made progress in two programs of high priority. The first is an enhancement of the existing radio broadcasting program to North Korea, and the second is resettlement of North Koreans to the United States. However, even these programs are questioned for their real impact on alleviating the deplorable human rights situation in North Korea.

Let us look at the case of the radio broadcasting program, for example. A new initiative included a pilot program to train North Korean defectors and South Korean activists in journalistic and broadcasting skills. The program was launched based on the assessment that the people in North Korea perceive voices of North Korean

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<sup>7</sup> Interview with a Korea specialist on February 20, 2008.

<sup>8</sup> Speech by Lefkowitz at American Enterprise Institute for Public Policy Research, *The North Korean Problem: Toward a Diplomatic Solution in 2008?*, January 17, 2008.

<sup>9</sup> US Department of State, Secretary Rice's Remarks, *Briefing En route Berlin, Germany*, January 22, 2008.

defectors and South Korean democracy activists as more persuasive than the messages from the US government.<sup>10</sup> Radio Free Asia, one of the US radio program to North Korea, started transmission in medium wave in addition to short wave program. Transmission in medium wave is expected to be a highly effective supplement to current shortwave broadcasting.<sup>11</sup>

Despite such efforts, it is reported that North Korea put a barrier against listening to such programs by law and by action.<sup>12</sup> In addition to fixing dials of radio in the country to the medium wave frequency which disseminate state propaganda, North Korean authorities perform operations to disturb other radio transmission waves. While a survey of defectors suggests a certain number of North Koreans are indeed listening to unauthorized programs even under such constraints, the sampled population of the survey is too limited to evaluate how effective these measures really have been.

Another initiative launched by the Bush administration was the resettlement program for North Koreans. The initial group of six North Koreans arrived in the United States for resettlement in May 2006 as advocated in the act.<sup>13</sup> Since then, the United States admitted 37 North Koreans for resettlement as of December 31, 2007.<sup>14</sup> In other words, a vast majority of suffering North Koreans do not enjoy the benefit of this resettlement program of the United States. For comparison, an estimated 150,000-200,000 persons are believed to be held in detention camps, and an estimated 30,000-50,000 North Koreans stay in China seeking asylum.<sup>15</sup>

In addition, the Bush administration may not have been enthusiastic in advancing the program.<sup>16</sup> On numerous occasions, the administration emphasized challenges to be cleared before realizing resettlement of North Koreans in the United States,<sup>17</sup> but it took no special measures to overcome the difficulties.<sup>18</sup> One of the

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<sup>10</sup> US Department of State, *Reports on Activities of the Special Envoy on Human Rights in North Korea*, May 2007.

<sup>11</sup> US Department of State, *Reports on Activities of the Special Envoy on Human Rights in North Korea*, May 2007.

<sup>12</sup> BBG, *Report on Radio Broadcasting to North Korea*, March 8, 2005. US Department of State, *Country Reports on Human Rights Practices*, March 11, 2008.

<sup>13</sup> US Department of State, *Reports on Activities of the Special Envoy on Human Rights in North Korea*, July 2006.

<sup>14</sup> CRS Report for Congress, *North Korean Refugees in China and Human Rights Issues*, January 18, 2008.

<sup>15</sup> US Department of State, Remarks of Special Envoy for the Six- Party Talks, Joseph R. DeTrani before the House Committee on International Relations, Subcommittee on Asia and the Pacific and Subcommittee on Africa, Global Human Rights and International Operations, *The North Korean Human Rights Act: Issues and Implementation*, April 28, 2005.

<sup>16</sup> A Korea specialist interviewed on December 7, 2007, present his view that the Bush Administration had not done anything substantial toward North Korea.

<sup>17</sup> US Department of State, Remarks of Special Envoy for the Six- Party Talks, Joseph R. DeTrani

challenges relates to working out a mechanism with relevant governments so that North Koreans may apply for asylum in the United States.<sup>19</sup> Most North Koreans who seek to leave the country on a permanent basis choose South Korea as their destination. Generally, they cross the border into China and spend some period there in hiding. Then, they move to other countries in Asia as the route to transit to South Korea.<sup>20</sup> Governments of such countries usually seek to avoid arousing attention on their role as transits, which implies they would not welcome a conspicuous US program on their territories to admit North Koreans.<sup>21</sup> Therefore, the administration pointed out, it took time and effort to develop a mechanism with such transit governments so that North Koreans could apply for asylum in the United States.<sup>22</sup> Even though the necessity and difficulty of coordination with such governments in Asia may be real, the administration did not take any special steps to overcome the challenge in an accelerated manner. The task was performed by existing officials in US diplomatic establishments, and additional staffs had not been assigned specifically to promote such efforts.<sup>23</sup>

Another challenge relates to security concerns in admitting North Korean refugees in the United States. The administration noted that since the United States does not have information about individual North Koreans, it is necessary to establish cooperative measures with South Korea to acquire information to satisfy US

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and Remarks of Assistant Secretary for Population, Refugees and Migration, Arthur E. Dewey before the House Committee on International Relations, Subcommittee on Asia and the Pacific and Subcommittee on Africa, Global Human Rights and International Operations, *The North Korean Human Rights Act: Issues and Implementation*, April 28, 2005. US Department of State, Remarks of Assistant Secretary of Bureau of Population, Refugees, and Migration, Ellen Sauerbrey, before the House International Affairs Committee, Subcommittee on Africa, Global Human Rights, and International Operations, US Refugee Program, May 10, 2006.

<sup>18</sup> Interview with a Korea specialist on February 20, 2008.

<sup>19</sup> US Department of State, Remarks of Special Envoy for the Six- Party Talks, Joseph R. DeTrani and Remarks of Assistant Secretary for Population, Refugees and Migration, Arthur E. Dewey before the House Committee on International Relations, Subcommittee on Asia and the Pacific and Subcommittee on Africa, Global Human Rights and International Operations, *The North Korean Human Rights Act: Issues and Implementation*, April 28, 2005.

<sup>20</sup> International Crisis Group, *Perilous Journeys: The Plight of North Koreans in China and Beyond*, October 26, 2006. CRS Report for Congress, *North Korean Refugees in China and Human Rights Issues*, September 26, 2007.

<sup>21</sup> US Department of State, Remarks of Special Envoy for the Six- Party Talks, Joseph R. DeTrani and Remarks of Assistant Secretary for Population, Refugees and Migration, Arthur E. Dewey before the House Committee on International Relations, Subcommittee on Asia and the Pacific and Subcommittee on Africa, Global Human Rights and International Operations, *The North Korean Human Rights Act: Issues and Implementation*, April 28, 2005.

<sup>22</sup> US Department of State, Remarks of Special Envoy for the Six- Party Talks, Joseph R. DeTrani before the House Committee on International Relations, Subcommittee on Asia and the Pacific and Subcommittee on Africa, Global Human Rights and International Operations, *The North Korean Human Rights Act: Issues and Implementation*, April 28, 2005.

<sup>23</sup> Interview with a Korea specialist on February 20, 2008.

immigration screening requirements. While the administration is aware of the necessity of extra efforts to obtain information for screening procedure, it has not loosened the screening requirements as exceptions for North Koreans.<sup>24</sup> As a matter of fact, the administration may have no room to loosen the screening requirement in admitting North Koreans. An administration official emphasized the need to confirm their identity, particularly pointing out that North Korea is a state that sponsors terrorism. The official expressed determination not to erroneously admit a wrong person, and stated that the Departments of State and Homeland Security were trying to figure out a workable way that does not threaten US security on this matter.<sup>25</sup> It was announced that the administration would process North Koreans in the same way it process all other refugees.<sup>26</sup>

The administration's lack of interest in the Act appears in funding measures, too. In February 2006, a letter was co-authored and sent to the Secretary of State by ten lawmakers consisting of both Republicans and Democrats. They expressed their deep concern for the lack of progress in funding and implementing the key provisions of the Act. They pointed out that the Bush administration has not requested any funds authorized under the Act for fiscal year 2007.<sup>27</sup>

Only after the issuance of this letter that carried an explicit sense of frustration of concerned lawmakers, the administration requested \$2 million dollars authorized under the Act for FY 2008 for the first time.<sup>28</sup> The administration explained that activities advocated by the Act such as humanitarian assistance to North Koreans outside the country had already been funded from existing accounts. Since NGOs engaged in such program are small and cannot expand the scale of activities, no additional funds were requested. However, the administration did not cancel funds from existing accounts and submit a request of funds authorized by the Act, even though such a measure would have served to demonstrate the administration's commitment for the cause of the Act.

Indeed, a former official in the Bush administration is quite frank in

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<sup>24</sup> Interview with a Korea specialist on February 20, 2008.

<sup>25</sup> US Department of State, Remarks of Assistant Secretary for Population, Refugees and Migration, Arthur E. Dewey before the House Committee on International Relations, Subcommittee on Asia and the Pacific and Subcommittee on Africa, Global Human Rights and International Operations, *The North Korean Human Rights Act: Issues and Implementation*, April 28, 2005.

<sup>26</sup> US Department of State, Frequently Asked Questions about the Refugee Aspects of the North Korean Human Rights Act, March 3, 2006.

<sup>27</sup> In the same letter, the lawmakers also pointed out that the administration has not offered refugee status to any North Koreans in the 16 months since the unanimous passage of the legislation.

<sup>28</sup> US Department of State, *Reports on Activities of the Special Envoy on Human Rights in North Korea*, July 2006.

acknowledging that the Bush administration has taken no substantial actions on the issue of human rights and democracy in North Korea, neither before or after the enactment of this law. While the administration repeats its position that issues of democracy and human rights need to be addressed in a substantial manner before the US government normalizes relations with North Korea, it has not launched a robust engagement with the country on the issue.<sup>29</sup>

### **Constraints**

Essentially, the administration does not attach high priority to the issues of democracy and human rights in North Korea. After reviewing the policy towards North Korea, the administration announced its intention to undertake serious discussions with the country on a broad agenda.<sup>30</sup> Specifically, the administration referred to the alarming issues of nuclear, missile and conventional military posture of North Korea as the subject of such discussions. In contrast, the issues of democracy and human rights were not mentioned in particular. A former government official acknowledges that the administration did not give priority to these issues.<sup>31</sup> He explained that even if the human cost and suffering is huge, the problems due to North Korea's violation of human rights are local. In comparison, if the nuclear material is handed to terrorist groups by North Korea, the risk is global and uncontrollable. Therefore, even though concern for the human rights abuse by North Korea was genuine and the administration officials voiced criticism, the administration did not press hard on the issue.

In addition, the Bush administration's choice of a multilateral approach in dealing with North Korea's nuclear program makes any unilateral action on the part of the United States impossible. As a member of the Six-Party talks, the administration must coordinate its North Korea policy with other participating countries. The parties agreed that the primary goal of the Six-Party talk is the denuclearization of the Korean Peninsula. This will keep the United States, even if it wants to, from taking aggressive measures in accordance with the North Korean Human Rights Act of 2004.

### ***Conclusion—What is the North Korean Human Rights Act of 2004, anyway?***

Thus, the administration was indifferent to the Act as a tool to promote democracy and improve human rights in North Korea. However, the administration

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<sup>29</sup> Interview on February 21, 2008.

<sup>30</sup> White House, *Statement by the President*, June 13, 2001.

<sup>31</sup> Interview on February 26, 2008.

accepted the Act instead of rejecting it as useless. It seems that the choice was made out of concern for domestic politics. According to a Korea specialist, the administration would not reject bills approved by the Congress because a rejection would amount to tension with the Congress.<sup>32</sup> He pointed out that this administration, in particular, had no choice but to accept the bill because it was weak due to its mismanagement of post-war Iraq. The administration wanted to avoid conflict with the Congress when it needed Congressional support to rebuild its Iraq policy. Another Korea specialist agreed that the administration was not prepared to confront the Congress on the Act, even though it did not welcome the Act.<sup>33</sup> He believes that the administration had opportunities to review the bill and communicate its view to key lawmakers while the Act was in legislative process. Therefore, when the Congress passed the bill, with modifications which responded to the administration's concerns, the President signed it into law in order to keep the relationship with the Congress manageable.

Though the specialist did not elaborate on specific provisions that were modified reflecting the view of the administration, one of the noticeable modifications includes the removal of the binding nature from the final version of the Act. The initial bill, titled as the North Korean Freedom Act of 2003, included strongly binding language. It produced the impression that the bill would tightly bind the hands of the administration and would practically deny chances of making any deals with North Korea. A provision remains in the final Act which urges the administration to link the issues of human rights as a key element to any future negotiations between the US and North Korea. However, since this is an expression of the wish of the Congress, the administration has the option not to include the human rights issues during nuclear negotiations with North Korea and other relevant countries. In short, the removal of any binding nature signified for the administration that the Act became compatible with its policy toward North Korea, which primarily focused on nuclear issues.

In its actions, the administration appears to have kept the human rights issues separated from nuclear negotiations so that there is no negative impact on the latter. As some observers note, for example, it appears that the administration officials drew attention to North Korean human rights violations when the nuclear talks have stalled, but references to the issue reduced once it decided to pursue nuclear negotiation in February 2007,<sup>34</sup> when the multilateral talk reached agreement on initial steps to

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<sup>32</sup> Interview on December 7, 2007.

<sup>33</sup> Interview on February 19, 2008.

<sup>34</sup> CRS Report for Congress, *North Korean Refugees in China and Human Rights Issues*, September 26, 2007.

advance denuclearization. A former government official also presented his view that the administration decided to concentrate on nuclear negotiations and to eliminate any disruptive elements including the human rights issue by February 2007.<sup>35</sup>

Thus, for the administration attempting to resolve the North Korean nuclear issue, considered a more pressing foreign policy matter than human rights violations, the Act signified an unwelcome tool imposed by the Congress, but unavoidable in order to keep the relationship with the Congress manageable.

In April 2008, the House passed a bill to amend the current Act. The new bill, the North Korean Human Rights Reauthorization Act of 2008, would authorize funds through FY 2009-2012 to help North Koreans. It also urges the administration to give the rank of ambassador to the Special Envoy and make it a full-time job, but substantial changes are not included. So it is anticipated that the Act will remain in the toolbox in the revised form when the next administration comes in. But it is not likely that the new administration takes a more aggressive North Korean policy on the human rights and democracy fronts unless it feels confident that North Korean nuclear threat is reduced to a manageable level and if the shifting of policy focus to human rights would not mean a reemergence of nuclear problems. Advocators of human rights may expect an administration controlled by the Democrats to give more emphasis to the issue because of the general view that the Democrats are more interested in promoting human rights and democracy as a component of foreign policy. However, in the case of the Clinton administration, human rights concerns were mostly separated from nuclear negotiation with North Korea,<sup>36</sup> and a Democratic administration does not necessarily imply more attention to the cause of the Act. So as long as the US recognizes North Korea's nuclear as a serious threat, the Act will remain as a tool which keeps reminding the administration of different issues concerning North Korea.

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<sup>35</sup> Interview on February 21, 2008.

<sup>36</sup> CRS Report for Congress, *North Korean Refugees in China and Human Rights Issues*, September 26, 2007.