

The Narrow Path

Pursuing Human Rights and National Security Objectives in North Korea

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Amid the flash and fanfare of the Singapore Summit last month between leaders Donald Trump and Kim Jong-un, some observers rued a missed opportunity: the final joint document made no mention of human rights. This came as no surprise. Although President Trump had asserted in his State of the Union address that “no regime has oppressed its own citizens more totally or brutally than the cruel dictatorship in North Korea,” in the weeks leading up to the summit the Trump administration had gradually toned down its rhetoric on human rights issues.

Rights advocates have long argued, however, that a deal on denuclearization that does not address the Kim regime’s underlying disregard for human rights would lack credibility. Others disagree: the United States, they say, should focus exclusively on the most important issue of denuclearization and not get bogged down by trying to resolve all issues all at once.

But whether or not these two issues merit commingling, it seems that human rights has, in fact, already been part of the Trump administration’s efforts to denuclearize North Korea. For instance, in the lead-up to the Singapore Summit, the White House secured the release of three American citizens detained on spurious charges and convicted in a

show trial in North Korea, which helped pave the way for discussions about denuclearization. Prior to their release, the White House had signaled that it would perceive this act “as a sign of good will” from Kim.¹ After North Korea released the prisoners, a senior U.S. official commented that their freedom had been a condition for the summit.² A few hours after President Trump met the freed hostages at Joint Base Andrews, he announced on Twitter the date and location for his meeting with Kim.

Further, at the summit President Trump made a “last minute” request for the return of the remains of American soldiers who fought in the Korean War.³ Under international laws and norms, families have a right to recover the remains of their deceased from war or other tragedies.⁴ Although North Korea may be using the POW/MIA issue as a

¹ John Bacon, “White House Walks Back Giuliani Claim That 3 Americans Held by N. Korea Will Be Free Today,” *USA Today*, May 3, 2018, <https://www.usatoday.com/story/news/world/2018/05/03/giuliani-says-3-americans-held-north-korea-freed-today/576335002>.

² Choe Sang-Hun, “North Korea Frees American Prisoners, Lifting Hurdles to Nuclear Talks,” *New York Times*, May 9, 2018, <https://www.nytimes.com/2018/05/09/world/asia/north-korea-americans-detainees-released.html>.

³ “Read the Full Transcript of Trump’s North Korea Summit Press Conference,” *Vox*, June 12, 2018, <https://www.vox.com/world/2018/6/12/17452624/trump-kim-summit-transcript-press-conference-full-text>.

⁴ See, for example, First Geneva Convention, art. 17; Third Geneva Convention, art. 120; and Fourth Geneva Convention, art. 130.

bargaining chip, as recent developments suggest, President Trump's decision to raise it at the summit affirmed at the highest levels with Kim the link between North Korea's human rights policies and U.S. national security.

Human rights is a moral, normative, and legal issue. Yet human rights also includes a national security dimension. While the international community, including the United States, should continue to publicize North Korea's record, the Trump administration and its negotiators have to be realistic about what can be achieved, especially with regard to issues that the Kim regime views as posing an existential threat to its rule. Raising human rights concerns naturally linked to North Korea's nuclear program or U.S. national security interests—without presenting a direct threat to regime survival—keeps human rights on the agenda as negotiations on denuclearization move forward. Once on the record, human rights can be wielded as both short-term leverage for denuclearization and a long-term action item for discussion.

Dealing on Human Rights

To varying degrees, prior administrations acceded their position on human rights to North Korea by pursuing denuclearization and human rights objectives on separate tracks and then never resolving the intractable problem of denuclearization. History has shown, however, that when the United States and the international community jointly increase their efforts on human rights and security objectives, North Korea demonstrates a willingness to deal on both. Despite repeatedly rejecting criticism about its human rights record as U.S. propaganda, Pyongyang recognizes that it can reap gains by agreeing to some, even if not all, demands. The release of American prisoners and ongoing negotiations on the POW/MIA issue are only recent examples.

Consider the impact of a 2014 report by the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, which documented extensive violations of human rights, ultimately concluding that the Kim regime had committed crimes against humanity. The commission then persuaded the UN General Assembly to

pass a resolution calling for Kim Jong-un to be referred to the International Criminal Court (ICC) and recommending that the issue of human rights be placed alongside security issues on the agenda of the UN Security Council. In response to the rising crescendo of international criticism, we saw a series of firsts from North Korea:

- For the first time in thirteen years, North Korea suspended its long-held policy of rejecting UN representatives and opened the door for the UN special rapporteur on the rights of persons with disabilities to make an observation visit in May 2017. The UN under-secretary-general for political affairs later visited North Korea in December 2017.
- For the first time ever, North Korea accepted some recommendations from the Universal Periodic Review, the United Nations' human rights review process, though implementation remains unconfirmed.
- For the first time ever, North Korea invited the UN special rapporteur on human rights in North Korea to visit the country—on the condition that the UN General Assembly drop its resolution calling for Kim's referral to the ICC. North Korea rescinded the invitation when the ICC referral went forth.
- In March 2018, Tomás Ojea Quintana, the current UN special rapporteur on human rights in North Korea, noted that he had received reports that the regime was instructing detention officers not to use excessive force and was firing officers who abused their powers.⁵ That report corroborated informal anecdotes of similar developments following the UN commission's report.

These are small steps for most nations; they are giant leaps for North Korea. And while these gains do not signal widespread policy changes, they show that when faced with serious resolve from the international community, the Kim regime is willing to take small steps toward compliance.

⁵ UN Human Rights Council, "Human Rights Council Holds Interactive Dialogue with the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea," March 12, 2018, <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22792&LangID=E>.

Where to Next?

If President Trump intends for human rights to be “discussed more in the future,” as he stated during the press conference following the Singapore Summit,⁶ there are several actions he could take to advance both human rights and national security objectives.

On the diplomatic front, the Trump administration could highlight the issue of North Korea’s export of forced labor. It is well documented that the government sends citizens abroad to work in conditions akin to slavery to earn money for the regime. It is not uncommon for these laborers to work twelve to sixteen hours, and sometimes up to twenty hours, a day and sleep in rooms crammed with six to eight people. In exchange, they receive only 10%–20% of their promised pay, or sometimes none at all, while the remainder flows to the North Korean government.⁷

The wages earned by overseas workers are an important source of foreign revenue that likely helps fund North Korea’s nuclear and missile programs. Consider the significance of the total sum: although the exact numbers are unknown due to the secrecy of North Korea’s activities, a 2015 UN report estimates that more than 50,000 North Koreans are working overseas, earning Pyongyang between \$1.2 billion and \$2.3 billion a year.⁸ Compare these figures to the estimates by a South Korean government analysis of North Korea’s nuclear program that spending stands between \$1.1 billion and \$3.2 billion overall.⁹

It is hard to envision curbing North Korea’s nuclear program without curbing the flow of illicit money into government coffers. At the very least, reducing revenue from compulsory overseas labor would leave Kim with a more

difficult choice: use capital to maintain his political power base (e.g., by paying bribes and buying luxury goods to keep the elites loyal) or to develop the nuclear and ballistic missile programs. Although the Trump administration has already sought to limit these cash flows through sanctions, it could raise the issue of overseas labor at a higher level. By negotiating with North Korea to improve labor conditions for its workers or eliminate the labor program altogether, President Trump could reduce a key source of funding for nuclear weapons while simultaneously addressing a central human rights violation.

In addition, the Trump administration could take several unilateral actions to pursue both human rights and national security interests:

Rescue North Korean refugees. The North Korean government prevents its citizens from leaving without authorization. Many escape anyway, usually to China and sometimes then to a third-party country for transport to a safe haven. If these refugees are caught and forcibly repatriated, the Kim regime subjects them to a range of human rights violations, including torture, prolonged arbitrary detention, and sometimes even execution. Despite these documented practices, many North Koreans are forcibly repatriated by the pass-through countries where they hide, such as China and Laos, which view them as illegal economic migrants rather than political refugees. But given the circumstances waiting back home, any North Korean who has left without authorization has a reasonable basis to believe that he or she would face persecution upon return, thereby qualifying the individual as a *refugee sur place* under international law. Such a refugee is entitled to international protection.¹⁰

But protecting and moving refugees also has a national security dimension. North Koreans who leave their country possess unique experience and knowledge and are a critical source of intelligence. Refugee testimony is especially valuable in cases of high-level government officials like Thae Yong-ho and Hwang Jang-yop, who have successfully defected and know the inner workings of the regime and its

⁶ “Press Conference by President Trump,” White House, June 12, 2018, <https://www.whitehouse.gov/briefings-statements/press-conference-president-trump>.

⁷ Choe Sang-Hun, “North Korea Exports Forced Laborers for Profit, Rights Groups Say,” *New York Times*, February 19, 2015, <https://www.nytimes.com/2015/02/20/world/asia/north-koreans-toil-in-slavelike-conditions-abroad-rights-groups-say.html>.

⁸ Jon Gambrell, “Thousands of North Korean Laborers in U.S.-Allied Gulf Nations,” Associated Press, July 28, 2017, <https://www.apnews.com/67a55cc6c21e41218770b98a9d5bdd89/Thousands-of-North-Korean-laborers-in-US-allied-Gulf-nations>; and Edith M. Lederer, “UN Investigator: North Koreans Doing Forced Labor Abroad,” Associated Press, October 29, 2015, <https://www.apnews.com/bf932a1906df432da1ce2d00d4e70bd8>.

⁹ James Pearson and Ju-min Park, “North Korea Overcomes Poverty, Sanctions with Cut-Price Nukes,” Reuters, January 11, 2016, <https://www.reuters.com/article/us-northkorea-nuclear-money-idUSKCN0UP1G820160111>.

¹⁰ See UN High Commissioner for Refugees, “Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees,” 1979, para. 94.

palace economy. Around 30,000 refugees have successfully escaped North Korea to South Korea; hundreds more have found homes in the United States and the United Kingdom. But the number of North Koreans escaping has drastically declined since Kim Jong-un took power.¹¹

The North Korean Human Rights Act is the primary legislative vehicle that protects North Korean defectors as refugees. The most recent legislation reauthorizing the act in 2012 expired last year. The new authorization bill recently passed both the House and Senate and now awaits the president's signature. Along with signing this legislation, President Trump could send a clear message to countries bordering North Korea that refugees should be allowed safe passage to a third-party country in line with international law. Additional funds could be allocated to support organizations helping North Koreans escape.

Support the flow of independent information into North Korea. The North Korean government seeks a monopoly on all information inside the country, contrary to the rights to freedom of thought, conscience, and access to independent information.¹² North Koreans are not allowed to watch television or listen to radio that broadcasts anything outside the regularly tuned channels. Telephones are monitored and limited to domestic communication. These rules are enforced by constant state surveillance.

Yet more outside information has come into the country as the market for it and media technology advances. A number of civil-society organizations funded by governments and private foundations, as well as individuals, are involved in delivering DVDs, USB thumb drives, and packages loaded with foreign content to North Korea. A number of refugees have testified that they left the country in search of economic and political freedom after learning about the outside world. These refugees often maintain

contacts inside North Korea, and some groups like *Daily NK*, a South Korean newspaper, reportedly maintain a network of informants within the country. These channels of communication increase awareness of what happens inside North Korea, counter nationalistic narratives that are antagonistic toward the United States, and may prompt more refugees to leave, further building up the intelligence cache.

Support North Korea's informal markets. The official way to earn a living in North Korea is designated through the *songbun* system, which assigns a social class to every citizen primarily on the basis of the individual's and his or her family's political loyalty to the Kim regime. Everything from educational and employment opportunities to housing, food, and marital prospects are guided by the *songbun* rating. Much of this changed when the public distribution system (PDS), which was used to dispense food as a means to enforce political loyalty, collapsed in the 1990s. The failure of the PDS and ensuing famine contributed to the widespread emergence of informal markets.

These informal markets represent a catch-22 for the government. While weakening the regime's control over its people, they provide alternative sources of food and other goods that the regime knows it cannot shut down. The regime has previously tried to replace these markets through minor economic measures—such as increasing individual farming plots, currency reform, or even forcible shutdowns—but these were unsuccessful. Though high levels of starvation and malnourishment persist, access to food has reportedly improved overall thanks to the informal market system.

Under international law, individuals have the right to pursue work without discrimination.¹³ They also have the right to equal access to public service,¹⁴ to freely dispose

¹¹ Sofia Lotto Persio, "North Korean Defector Numbers Fall to Lowest Level since Kim Jong-un Took Power," *Newsweek*, <http://www.newsweek.com/north-korean-defector-numbers-fall-lowest-level-kim-jong-un-took-power-772109>.

¹² See the Universal Declaration of Human Rights (UDHR), art. 18 (right to freedom of thought and conscience) and art. 19 (right to freedom of expression, including right to seek and receive information and ideas of all kinds). See also the International Covenant on Civil and Political Rights (ICCPR), art. 18 (right to freedom of thought and conscience) and art. 19 (right to freedom of expression, including right to seek and receive information and ideas of all kinds), to which North Korea is a party.

¹³ UDHR, art. 23 (right to work, to free choice of employment, and to just and favorable conditions of work; right to equal pay for equal work without discrimination). See also International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 6 (right to work) and art. 7 (right to enjoy just and favorable conditions of work, right to fair wages and equal remuneration for work of equal value without distinction of any kind, right to equal opportunity to be promoted in employment at appropriate levels), to which North Korea is a party.

¹⁴ UDHR, art. 21; and ICCPR, art. 25.

of their resources,¹⁵ and to seek cultural pursuits¹⁶—all rights a state-dominated economy violates. As more goods flow into the informal markets, North Koreans are able to make individual purchasing decisions and achieve a level of self-sustenance. Such activity strengthens the domestic market economy and its connectivity to the global economy, making North Korea more stable and less susceptible to catastrophic disasters. Reducing the risk of such disasters, which could trigger both refugee and nuclear crises, advances a form of preventative national security.

Work with South Korea and Japan. Any successful denuclearization of North Korea will require close coordination with U.S. allies to align policies, whether on lifting pressure or re-engaging in trade. Making the path easier for allies to engage with North Korea is important for both the United States' bilateral relationship with North Korea and its long-standing trilateral partnership with South Korea and Japan.

President Moon Jae-in is already moving forward with negotiations on a range of issues with North Korea, from reunions of divided families to the resumption of joint economic projects. On the other hand, the administration has backpedaled on some human rights issues: it reportedly sidelined prominent North Korean defectors from appearing at public events, stopped a civil-society organization from launching balloons filled with translations of the Bible into North Korea, closed down the physical office of a human rights foundation, and has not appointed a new North Korean human rights ambassador for over eight months.¹⁷

It is important that the United States and South Korea coordinate closely on military, economic, human rights, and humanitarian issues. The fear that North Korea will cancel discussions because the issue of human rights is raised belies evidence to the contrary. A prime issue on which South Korea and the United States could demonstrate close cooperation and coordination is family reunions. There are 100,000 Korean Americans in the United

States with possible family ties in North Korea who are seeking reunions.¹⁸

With respect to the U.S.-Japan alliance, Prime Minister Shinzo Abe has repeated his desire to hold a summit with North Korea on the abductee issue. In the 1970s, North Korean agents seized a number of Japanese citizens to train spies and teach them about how the outside world works. President Trump followed up on his promise to Abe to raise this issue with Kim during the summit in Singapore, though there was no mention of the issue in the joint document.¹⁹ The Trump administration could continue to make the abductee issue an integral part of its engagement with North Korea, both in public statements and at a future leaders' meeting. The United States might even offer to serve as an arbitrator to help achieve a resolution, as it has done in the past in other contexts.

Conclusion

The release of a handful of American citizens held as prisoners in North Korea and ongoing negotiations for the return of the remains of American soldiers are unquestionably positive developments. But North Korea's worst human rights abuses are often linked to regime survival: the existence of gulags that reportedly confine up to 120,000 political prisoners, guilt-by-association policies that can imprison up to three generations for the crimes of one family member, and arbitrary executions and torture used to control the population, among other abuses. Neither denuclearization nor the shutting down of prison camps will happen overnight. But this should not discourage the United States from taking smaller steps, however incremental, toward these ends.

Pyongyang may insist that raising human rights is a nonstarter, but such refusal is the Kim regime's game; it need not be ours. By recognizing that human rights and national security are linked—especially when it comes to

¹⁵ ICESCR, art. 1.

¹⁶ UDHR, art. 27; and ICESCR, art. 15.

¹⁷ See, for example, Yun-hwan Chae and Andrew Jeong, "Criticism of North Korean Repression Is Discouraged, Activists Complain," *Wall Street Journal*, June 25, 2018.

¹⁸ Jeane Noh, "Korean Americans Urge Trump to Allow Reunions with Relatives in North Korea," UPI, February 27, 2017, <https://www.upi.com/Korean-Americans-urge-Trump-to-allow-reunions-with-relatives-in-North-Korea/9061488227413>.

¹⁹ "Trump Raises N. Korea's Past Abductions of Japanese in Summit with Kim," *Mainichi*, June 12, 2018, <https://mainichi.jp/english/articles/20180612/p2a/00m/0na/024000c>.

how North Korea funds its nuclear program—the United States creates leverage, while pursuing an approach that is consistent with American values and identity. ◆

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The views expressed are the authors' own.

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