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THE PENINSULA

The North Korean Human Rights Act Expired in 2022 – No Signs that Congress is Moving to Reauthorize the Law

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The United States North Korea Human Rights Act was originally adopted by Congress and signed by President George W. Bush on October 18, 2004. The legislation called for appointment of a Special Envoy for North Korea Human Rights and gave directives for US government agencies to encourage human rights in the North. The legislation authorized funds to aid North Korean refugees, specified that North Koreans are eligible to enter the United States as refugees, and approved funding for enhanced information programs, including radio broadcasts directed toward North Korea.

Almost all US laws are enacted for a specific period of time to prevent the piling up of laws that are “on the books,” but which deal with problems that no longer exist or have changed in scope. The North Korean Human Rights Act of 2004 expired in 2008, and in October 2008 President Bush signed [new legislation](#) extending the act for another four years. Minor revisions were made in the new law, including elevating the position of Special Envoy for North Korean Human Rights to full ambassadorial rank. The legislation was again extended in 2012 for a five-year period ending in 2017. Congress noted that resettlement of North Koreans in the United States had risen, but the legislation called for a more robust program for the admission of North Koreans.

In 2017, legislation was introduced to extend the act for an additional four years. This was during the Trump administration, and efforts to restructure the State Department and eliminate the North Korea Human Rights envoy were underway by then Secretary of State Rex Tillerson. Despite the Secretary's efforts, the North Korean Human Rights Act was reauthorized by Congress in 2018 for the period through 2022. President Trump signed the bill into law in 2018, although he never appointed a Special Envoy for North Korean Human Rights as required in the law, and he did little to follow the other provisions of the law.

During the early part of the Biden presidency, efforts were made in both the House and the Senate during 2021-2022 to again reauthorize the Act. The Senate version of the legislation was adopted in 2022 by the Senate at the very end of the session, but the legislation was not brought to a vote in the House of Representatives. President Joe Biden did not appoint a new North Korea human rights envoy during the first two years of his tenure (January 2021-January 2023), but he nominated Julie Turner to that position on January 23, 2023, and she was confirmed by the US Senate on July 27, 2023 after an unseemly delay of several months. It took the State Department an unusual additional two months before she was finally sworn in on October 13, 2023.

The Special Envoy is in Place, but the North Korea Human Rights Act Is Not

The North Korea Human Rights Act was enacted and in force for most of the period spanning January 2017 (when the previous envoy resigned at the end of the Obama administration) to October 2023, when Julie Turner was finally sworn in as Special Envoy. During this six-and-a-half-year period, there was no Special Envoy for North Korean Human Rights Issues—four years under Trump and two and a half years under Biden. By October 2023, when Ambassador Turner was sworn-in, the North Korean Human Rights Act had expired, and most provisions of the legislation were no longer legally in force at the end of the fiscal year ending September 2022.

From January 2017 to September 2022, we had legislation requiring the appointment of the Special Envoy, but no envoy was even nominated by the president. In October 2023, we had a Special Envoy for North Korean Human Rights Issues but the North Korea Human Rights Act, which required the appointment, had expired a year earlier and had not been reauthorized.

Although the North Korea Human Rights Act was no longer in force when Ambassador Turner was nominated, confirmed, and sworn-in, the president of the United States from the earliest days of the Republic has appointed ambassadors and other officials involved in the conduct of US foreign policy with the advice and consent of the Senate. Congressional authorization for the establishment of the position is not required, but advice and consent of the Senate is required for the president to give someone the rank of Ambassador. (See *The Constitution Annotated*, for a discussion of Article II, Section 2, Clause 2 on the appointment of Ambassadors, Ministers, and Consuls).

Some question whether the North Korea Human Rights Act is even necessary. The president can appoint ambassadors without specific legislation. Human rights issues are an integral part of US foreign policy, and the United States has actively advocated for human rights throughout the world. There are times, however, when there is value in focusing on human rights violations of a specific country rather than including it within the generic concern about human rights.

North Korea's human rights abuses against its own citizens as well as citizens of other countries are among the most egregious human rights violations in the world. North Korean agents have abducted Japanese and South Korean citizens, they caused the death of US citizens while in North Korean custody, and agents have murdered North Koreans in other countries, such as the killing of Kim Jong-un's brother at the airport in Kuala Lumpur, Malaysia. Indeed, as recently as last month in Geneva, the United Nations Human Rights Council discussed the horrific human rights abuses and the mistreatment of North Korean citizens by their own government.

North Korea does not have just a bad human rights record, it is one of the worst countries in the world with regards to human rights. Freedom House, the respected independent human rights organization, ranks countries with "global freedom scores," which compare countries on human rights. North Korea gets a score of 3 out 100, which is a tie for 4th from the lowest in the world, placing it two points above South Sudan and Syria with a rating of 1, and one point above Turkmenistan which earned a rating of 2. North Korea and Turkmenistan both have a rating of 3. The United States and South Korea both have a rating of 83. New Zealand and Sweden are at the top, each with a rating of 99. North Korea is not just a despotic country, it ranks among the least free and least democratic countries in the entire world.

Access to objective information on human rights in North Korea is one of the most important elements of North Korea human rights legislation. The North Korea Human Rights Act gives special emphasis and authorities to international information programs so they give appropriate attention and resources to the unique problems of North Korea.

North Korean government programs reflect the leadership's fear of information reaching the North Korean people from South Korea, the United States, and other countries. In December 2020, the North Korean government adopted the "DPRK Law on Rejecting Reactionary Ideology and Culture." The legislation prohibits North Koreans from circulating news and information from South Korea, the United States, or Japan. North Korean violators of these restrictions are to be severely punished, including in some cases even death.

North Korea has unique problems because of the division of North and South following World War II. Both countries are members of the United Nations, and a few countries have embassies in both Pyongyang and Seoul. At the same time, however, the fact that South Korea recognizes North Koreans as citizens when they reach South Korea makes it important to recognize that North Koreans may wish to seek refuge in the United States or other countries—and they should have that choice. That makes it important to have North Korea-specific legislation in the United States, and that clearly was one important factor in the original North Korea Human Rights Act. Those provisions must be reauthorized periodically.

The North Korean Human Rights Act reaffirms US policy on North Korea information programs, refugee programs, and humanitarian aid. Without reauthorization these programs will expire or will not reflect changing conditions. US diplomats need to know that the Congress has an eye on North Korea, and that is not just on security issues.

Congressional Dysfunction and the Failure to Reauthorize the North Korea Human Rights Act

Legislation on North Korea human rights has been one of the *least* controversial issues before the US Congress. The North Korea Human Rights Act of 2004 was adopted in 2004 with the House approving by voice vote and the Senate approving by unanimous consent. The same pattern was true for House and Senate approval extending the legislation in 2008, 2012, and 2018. Never was an objection raised during the debate, and the legislation was approved by voice vote in the House and by unanimous consent in the Senate.

The failure of Congress to extend the North Korea Human Rights Act by 2022 did not reflect any fundamental change in the broad consensus that North Korean human rights abuses should be addressed. Rather that failure was another unfortunate manifestation of Congressional dysfunction and polarization that was heightened after the defeat of Donald Trump in the 2020 election and the January 6, 2021 insurrection at the US Capitol.

With the beginning of the new Congress in January 2023, legislation has been introduced in both the House and the Senate to reauthorize the North Korea Human Rights Act. In March 2023, Senator Marco Rubio (R-Florida) with Senator Tim Kaine (D-Virginia) introduced Senate legislation to extend the North Korea Human Rights Act of 2004 through the year 2028. In the House of Representatives, Congresswoman Young Kim (R-California) with Congressman Ami Bera (D-California), both members of the House Foreign Affairs Committee, introduced similar legislation in the House in April 2023.

But as the dysfunction in the House has reached new levels, this will be difficult. Margins are very narrow in both houses. In the Senate, Democrats and independents who caucus with the Democrats control with 51 to 49. The House of Representatives is also narrowly divided with Republicans holding 218 seats and Democrats holding 213, with four seats currently vacant.

Republicans have had particular difficulty with this very narrow margin. When Congress opened in January 2023, Representatives took almost a full week and 16 historic votes before the slim Republican majority was finally able to eke out a 215 to 212 vote to elect Congressman Kevin McCarthy as Speaker of the House. Nine months later in October 2023 a handful of House Republicans forced a vote and unseated Speaker McCarthy—the first time ever that the House of Representatives removed its Speaker mid-term. The fractious Republican majority took three weeks for several rounds of inter-caucus votes and four votes of the entire House of Representatives to elect Mike Johnson of Louisiana as the new Speaker on October 25, 2023. And a Republican congresswoman has just introduced a resolution to remove Johnson. It is possible that another political fracas to elect a new Speaker could break out at any moment. The inability of Congress to function is truly historic.

The price of Congressional dysfunction is that the legislature is not legislating. Needed bills are not being adopted and one of those is the reauthorization of the North Korea Human Rights Act. In a report on Congress in 2023, ABC News called it “one of the least functional congresses ever.” During 2023 only 34 bills were passed. One of the casualties of Congressional disfunction has been legislation empowering the US government to do more to address the human rights violations taking place on a daily basis in North Korea.

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