



THE NORTH KOREA HUMAN RIGHTS ACT: SOUTH KOREA AND THE EXTRATERRITORIAL PROMOTION OF HUMAN RIGHTS

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ABSTRACT: North Korea has one of the worst human rights records in the world. The basic rights and freedoms of the North Korean nationals have been severely restricted by the Kim Dynasty in the past decades in order to preserve the political *status quo* and to continue the national military programs. In response to the gross and systematic violations of human rights in its Northern neighbor, the Republic of Korea adopted the North Korean Human Rights Act (in Korean: 북한인권법) on 3 March 2016. This internal legislation aims to establish measures, institutions and policies to enhance the human rights records in North Korea. The purpose of the present paper is to analyze the legality and the legal foundation of the North Korean Human Rights Act according to International Law. Its main purpose is to identify if International Law entitles South Korea to promote human rights in North Korea and if that legislation constitutes a wrongful intervention in North Korea's internal affairs. After the identification and analysis of human rights treaties and international judicial decisions, it is clear that the protection of human rights is not a matter restricted to the domestic jurisdiction of the State. Every single State has a legal interest in the protection of the fundamental rights of any human being. Accordingly, International Law allows the Republic of Korea to adopt and implement the North Korean Human Rights Act. Also, any measure to improve the human rights in North Korea taken under the auspices of this law are not illegal interventions in the latter's domestic affairs.

Keywords: North Korean Human Rights Act; Republic of Korea; North Korea; human rights; principle of non-intervention in the internal affairs of States; *erga omnes* obligations; International Human Rights Law.

RESUMO: A Coreia do Norte possui um dos piores registros de direitos humanos do mundo. Os direitos e liberdades fundamentais dos nacionais norte-coreanos têm sido severamente restringidos pela Dinastia Kim nas últimas décadas, a fim de preservar o *status quo* político e financiar os programas militares nacionais. Em resposta às violações graves e sistemáticas dos direitos humanos em seu vizinho do Norte, a República da Coreia adotou, no dia 3 de março de 2016, a Lei de Direitos Humanos da Coreia do Norte. Esta lei visa estabelecer medidas, instituições e políticas para melhorar a proteção dos direitos humanos na Coreia do Norte. O objetivo do presente artigo é analisar a legalidade e o fundamento legal da Lei de Direitos Humanos da Coreia do Norte à luz do Direito Internacional. Nesse sentido, visa identificar se o Direito Internacional garante à Coreia do Sul a prerrogativa de promover os direitos humanos na Coreia do Norte e se aquela lei constitui uma intervenção ilícita nos assuntos internos norte-coreanos. Após a identificação e análise de tratados e decisões judiciais internacionais, ficou claro que a proteção dos direitos humanos não é uma questão restrita à jurisdição interna dos Estados. Na verdade, todos os Estados têm um interesse jurídico na proteção dos direitos fundamentais de qualquer ser humano. Assim, o Direito Internacional permite que a República da Coreia promulgue e implemente a Lei de Direitos Humanos da Coreia do Norte. Além disso, qualquer medida para melhorar os direitos humanos na Coreia do Norte, adotada sob os auspícios desta lei, não pode ser considerada uma intervenção ilegal nos assuntos internos deste país.

Palavras-chave: Lei de Direitos Humanos da Coreia do Norte; República da Coreia; Coreia do Norte; direitos humanos; Princípio da não intervenção nos assuntos internos dos Estados; obrigações *erga omnes*; Direito Internacional dos Direitos Humanos.

INTRODUCTION

The North Korean Human Rights Act (in Korean: 북한인권법) is a national law passed by the Republic of Korea's National Assembly on 3 March 2016. Its official designation is Law No. 14070 and it is in force since 4 September 2016. In general terms, its main purpose is to establish guidelines for measures and policies by the Republic of Korea in order to enhance the human rights records in its Northern neighbor, the Democratic People's Republic of Korea. To achieve this end, the Act determines the creation of official organs, providing of funds and the development of research and recording of human rights breaches in North Korea.

The adoption of the North Korean Human Rights Act is not an isolated act, because other States had adopted laws of their own concerning the human rights in North Korea. On October 18, 2004, the United States of America promulgated the

North Korean Human Rights Act, which is intended to promote human rights of North Koreans inside and outside of North Korea¹. In 2006, Japan adopted its own North Korean Human Rights Act, whose main focus is the abduction of Japanese nationals by North Korea².

The South Korea's North Korean Human Rights Act gives rise to extraordinary implications regarding International Law, especially International Human Rights Law. It deals with the relevant issue of extraterritorial implementation of human rights and the legal consequences of violations of obligations with *erga omnes* character. These intricate legal problems can be formulated in the following questions: is the North Korean Human Rights Act an unlawful interference in North Korea's domestic jurisdiction? Does the *erga omnes* nature of human rights allow one State to promote and implement these rights abroad? The present paper aims to answer these questions in light of the international case-law and State practice.

1 HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

Under the rule of the Kim Dynasty, North Korea remains one the countries with the worst human rights records in the world. All basic rights and freedoms have been severely restricted by the North Korean supreme leaders. The *2014 Report of the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea* concluded "[...] that crimes against humanity have been committed in the Democratic People's Republic of Korea, pursuant to policies established at the highest level of the State".³ The same report affirms that these crimes entail extermination, murder, enslavement, torture, imprisonment, rape, forced abortions and other sexual violence, persecution on political, religious, racial and gender grounds, the forcible transfer of

¹ The US North Korean Human Rights Act can be found here: <https://www.hrnk.org/uploads/pdfs/NKHRA_2004.pdf>. Access on: 17 September 2016.

² The Japan's North Korean Human Rights Act can be found here: <https://www.hrnk.org/uploads/pdfs/Japan_NKHRA_2005.pdf>. Access on: 17 September 2016.

³ *Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea*, UN Human Rights Committee, UNDoc.A/HRC/25/63, 7 February 2014, para.75. Available at: <http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/63>. Access on: 16 September 2016.

populations, the enforced disappearance of persons and the inhumane act of intentionally causing prolonged starvation⁴. The Commission of Inquiry also found “[...] that crimes against humanity are ongoing in the Democratic People’s Republic of Korea because the policies, institutions and patterns of impunity that lie at their heart remain in place”⁵.

The figures on human rights violations in North Korea are astonishing. According to the International Federation for Human Rights, only between 2010 and 2012, 105 people were executed in the country: 60 persons in 2010, 30 in 2011 and 15 in 2012⁶. These killings are part of a pattern of multiple executions of officials who are considered a threat to Kim Jong-un's regime⁷. Moreover, since 1950, over 200,000 people, including children, were abducted from other countries by the Government of North Korea and become victims of enforced disappearance⁸. Lastly, it is estimated that the Democratic People’s Republic of Korea holds 80,000 to 120,000 political prisoners in five prison camps located in remote areas of the country. These people are subject to arbitrary detention and systematic acts of torture and ill-treatment.

Although some progressive changes have been introduced in North Korea, the latter still has extensive patterns of discrimination. There, discrimination is an official way of leaving due to the State-sponsored *songbun* system, which classifies people on the basis of State-assigned social class, birth, gender, political opinions and religious beliefs. This social framework gives rise to a rigidly stratified society under the severe State control, meaning that the official authorities can dictate most aspects of people’s lives: where individuals will live; what sort of accommodation they will have; what jobs they will be assigned to; whether they will attend school or university; how much food they will receive; and even whom they will be allowed to marry⁹.

Accordingly, the North Korean social structure is characterized by a socio-economical and physical segregation, under which people considered politically loyal to the leadership can live and work in favorable locations, whereas families of persons

⁴ *Ibid.*, para.76.

⁵ *Ibid.*

⁶ International Federation for Human Rights. "The Death Penalty in North Korea: in the machinery of a totalitarian State", Paris, 2012, p.22.

⁷ *Ibid.*

⁸ *Report of the Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea*, UN Human Rights Committee, UNDoc.A/HRC/25/63, 7 February 2014, para.64. Available at: <http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/63>. Access on: 16 September 2016.

⁹ *Ibid.*, para.33.

who are considered politically suspect are relegated to marginalized areas¹⁰. According to the UN Commission of Inquiry: "Citizens are not even allowed to leave their province temporarily or to travel within the country without official authorization. This policy is driven by the desire to maintain disparate living conditions, to limit the flow of information and to maximize State control, at the expense of social and familial ties".¹¹

Another very serious issue in North Korea is the widespread starvation and malnutrition of its population, which entails violations of the human rights to food, to freedom from hunger and to life. The Government has consistently not fulfilled its obligation to apply the maximum of its available resources to provide for those who are hungry. Spending on the improvement of weapons systems and the nuclear programme has always been a priority for funds, even during periods of mass starvation. Moreover, large amounts of State resources have been spent on luxury goods and the advancement of the Supreme Leader's image instead of providing food to the starving general population¹².

Although the inability of the State to provide food is a matter of concern, an even more serious question is the use of provisions as a means of control over the population. Regarding food distribution, the Government has prioritized those whom the authorities believe to be crucial in maintaining the regime over those deemed to be dangerous to it. Using the *songbun* system, the North Korean authorities have been able to confiscate provisions from those in need in order to provide for more devoted groups¹³. Thus, the State's monopolization of the production and distribution of food allows the authorities to enforce political loyalty over the starving population.

Accordingly, systematic, widespread and gross violations of internationally recognized human rights have been and are being committed in North Korea. These violations impact almost every single aspect of the local population's life, depriving the people of their right to freedom of thought, expression, religion and movement, the right

¹⁰ *Ibid.*, para.39.

¹¹ *Ibid.*, para.40.

¹² *Ibid.*, para.51.

¹³ *Ibid.*, paras.46-47.

to food and related aspects of the right to life and the freedom from arbitrary detention, torture and extrajudicial executions.

2 THE NORTH KOREA HUMAN RIGHTS ACT: A BRIEF ASSESSMENT

The North Korea Human Rights Act aims to protect and promote the human rights of North Korean citizens as promulgated in the UN Declaration of Human Rights and the International Covenant on Civil and Political Rights¹⁴. In addition to improve the human rights of North Koreans, the law allows South Korea to investigate and record the North's human rights abuses and eventually hold officials responsible for their acts. The main aspects of the North Korea Human Rights Act follow:

1) Creation of the North Korea Human Rights Consultative Council (북한인권증진자문위원회): This Council will be established at the Ministry of Unification with the purpose to provide guidance on policies relating to North Korea human rights promotion¹⁵. The Council shall have ten members recommended by the South Korean National Assembly¹⁶. The President of the Council shall be selected among its members¹⁷. Lastly, other aspects of the Council, including the necessary qualification of its members and its operation, will be set by Presidential executive order.¹⁸

2) Establishment of the North Korea Human Rights Promotion Basic Plan and Implementation Plan (북한인권증진기본계획및집행계획): The Minister of Unification, in consultation with the North Korea Human Rights Consultative Council, will establish a North Korea Human Rights Promotion Basic Plan every three years¹⁹. The plan must present a report on the state of the human rights situation in North Korea and provide guidelines for protecting and promoting North Korean human rights through Inter-Korean dialogue and humanitarian aid²⁰. Moreover, the Minister of

¹⁴ Republic of Korea. "North Korean Human Rights Act", 3 March 2016, Chapter 1. Available at: <<https://piie.com/blogs/north-korea-witness-transformation/rok-north-korea-human-rights-act>>. Access on: 20 September 2016.

¹⁵ *Ibid.*, Chapter 5, para.1.

¹⁶ *Ibid.*, Chapter 5, para.2.

¹⁷ *Ibid.*

¹⁸ *Ibid.*, Chapter 5, para.3.

¹⁹ *Ibid.*, Chapter 6, para.1.

²⁰ *Ibid.*

Unification shall every year establish a North Korea Human Rights Promotion Implementation Plan in consultation with the Consultative Council, with the purpose to implement the guidelines framed in the Promotion Basic Plan²¹.

3) Improvement of inter-Korean dialogue on human rights and humanitarian assistance: Under that law, South Korea must promote dialogue on human rights with its Northern neighbor²². It also shall provide humanitarian assistance to North Korean authorities and organs, taking into account that the activities must be carried out in a transparent manner and shall give priority to those people with special needs, such as pregnant women and children²³.

4) International cooperation regarding North Korea human rights promotion: South Korea must cooperate with international organizations, international groups and foreign governments in order to strengthen North Korean human rights promotion²⁴. Furthermore, South Korea must work to strengthen the interest of the International Community on North Korean human rights promotion²⁵. In order to achieve this purpose, the South Korean Ministry of Foreign Affairs may appoint an Ambassador for International Cooperation on North Korean Human Rights²⁶.

5) Establishment of the North Korea Human Rights Foundation (북한인권재단설): This is the main organ created by the North Korea Human Rights Act and its central objective is to conduct inquiries and develop policies related to North Korea human rights promotion. The Minister of Unification advises and directs the Foundation and it shall be funded by the government and outside contributions. In addition to the duties eventually assigned by the Minister of Unification, the Foundation will: (i) research and report on the state of North Korea's human rights situation; (ii) develop alternative policy proposals for the South Korean government on inter-Korean human rights dialogue and humanitarian assistance to North Korea; (iii) provide support for civil society organizations engaged in North Korea human rights promotion and

²¹ *Ibid.*, Chapter 6, para.2.

²² *Ibid.*, Chapter 7.

²³ *Ibid.*, Chapter 8, para.1.

²⁴ *Ibid.*, Chapter 9, para.1.

²⁵ *Ibid.*

²⁶ *Ibid.*, Chapter 9, para.2.

humanitarian assistance; and (iv) research and report on the North Korean internal humanitarian needs.

6) Creation of the North Korea Human Rights Archive (북한인권기록센터):

The Archive shall be established at the Ministry of Unification in order to research and report on the status of North Korea's human rights situation, with special attention to prisoners of war, Koreans kidnapped and taken to North Korea, and separated families. The materials collected and recorded by the Archive shall every three months be submitted to the South Korean Ministry of Justice, which shall be the organ responsible for preserving and managing the materials. The gathered information and documents could allow eventual prosecutions of North Korean human rights violators under a future unified Korea.

7) The National Assembly Report (국회보고): The South Korean National Assembly will evaluate the implementation of the North Korea Human Rights Act. Thus, the Minister of Unification must submit a report on North Korea human rights promotion every year to the National Assembly, describing the state of North Korean human rights and the results and progress of the plans related to North Korea human rights promotion. The National Assembly may, as it deems necessary, offer advice for improving the implementation of the North Korea Human Rights Act.

Although the North Korea Human Rights Act represents a relevant step towards the promotion of human rights in North Korea, Kent Boydston indicates some flaws of this law. According to him, the statute only deals with reporting data and establishing policies, leaving very pertinent aspects aside. It does even mention democracy promotion, information penetration, supporting the development of a North Korean market economy, or aiding refugees living outside of North Korea²⁷.

3 THE NORTH KOREA HUMAN RIGHTS ACT UNDER INTERNATIONAL LAW

²⁷ BOYDSTON, Kent. "The ROK North Korea Human Rights Act", Peterson Institute for International Economics, 14 March 2016. Available at: <<https://piie.com/blogs/north-korea-witness-transformation/rok-north-korea-human-rights-act>>. Access on: 12 April 2016.

The evaluation of the North Korea Human Rights Act under International Law will focus in two particular questions: (i) does International Law entitle South Korea to promote human rights in North Korea?; and (ii) is the North Korea Human Rights Act a wrongful intervention in North Korea's internal affairs?

3.1 Does International Law entitle South Korea to promote human rights in North Korea?

The International Law of our days is profoundly different from the one of the beginning of the last century. In the last decades, International Law has been transformed from a retrograde legal order exclusively focused on the States' sovereignty into a new *corpus juris* of liberation of the human beings.²⁸ This transformation of the international legal system is a direct consequence of the broad and intense development of the International Human Rights Law in the past and present centuries, demonstrating the existence of a process of Humanization of International Law.²⁹ This phenomenon led to the deconstruction of positivist legal models, changing the emphasis of the Law from State interests to the international collaboration aimed to implement and enhance the welfare of all mankind. Accordingly, the current International Law is no longer State-centered, but has the individual needs of each human being as its core.³⁰

The legal foundation of the International Law relies in certain core and precious values of the human civilization,³¹ condensing the reasons of the humankind³² and a general feeling of human need³³. Minimal and fundamental considerations of humanity

²⁸ *Case of Haitian and Haitian-origin Dominican Persons in the Dominican Republic*, Provisional Measures requested by the Inter-American Commission on Human Rights, 18 August, 2000, Concurring Opinion of Judge A. A. Cançado Trindade, footnote 19.

²⁹ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, ICJ Rep.1996, Dissenting Opinion of Judge Weeramantry, p.490; *Juridical Condition and Rights of the Undocumented Migrants*, IACtHR, Advisory Opinion OC-18/03 of 17 September 2003. Ser.A No.18, Concurring Opinion of Judge Cançado Trindade, para.25.

³⁰ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, ICJ Rep.1996, Dissenting Opinion of Judge Shahabuddeen, p.490.

³¹ *Juridical Condition and Rights of the Undocumented Migrants*, IACtHR, Advisory Opinion OC-18/03 of 17 September 2003. Ser.A No.18, Concurring Opinion of Judge Cançado Trindade, para.26.

³² CANÇADO TRINDADE, Antônio Augusto. *A Humanização do Direito Internacional*, Belo Horizonte: Del Rey, 2006, p.391.

³³ SALMÓN, Elizabeth. *Introducción al Derecho Internacional Humanitario*, Lima: ICRC, 2004, p.43.

echo throughout the international legal system as a whole,³⁴ guiding States to act limited by what is humanely allowed and shielding people from acts able to annihilating themselves.³⁵ Hence, these considerations of humanity provide the minimum humaneness and decency necessary to carry on the respect for the human person in the international and domestic affairs.³⁶ The notion of humanity involves elements of charity, mutual assistance and essentially the idea of solidarity between humans, which transcends all religions and cultural borders.³⁷

The principle of humanity compels the States to act under a minimal of care, aiming to achieve the respect for the dignity of every human being and the fight against suffering and death³⁸. As a corollary of this principle, there are several humanitarian rules prohibiting acts that dehumanize the individual, including the prohibition of means and methods of warfare that cause superfluous injury or unnecessary suffering³⁹ and the obligation to treat civilians with humanity.⁴⁰ These core obligations can be seen as the crystallization of the principle of humanity, because in circumstances of human distress, considerations of humanity are not just morally advisable, but legally compelling and the law must be sufficiently flexible to accommodate them.⁴¹

³⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, ICJ Rep.1986, paras.215 - 218; *Corfu Channel (United Kingdom v. Albania)*, ICJ Rep.1949, p.22; *Prosecutor v. Dusko Tadic*, Decision on the Defence Motion on Jurisdiction, Trial Chamber, Case No. IT-94-1-T, 10 August 1995, para.119.

³⁵ SALMÓN, Elizabeth. *Introducción al Derecho Internacional Humanitario*, Lima: ICRC, 2004, p.43.

³⁶ PUSTOGAROV, Vladimir. "The Martens Clause in International Law", *Journal of the History of International Law*, Vol.1, No.125, 1999, 125-135, p.133.

³⁷ ICRC, 25th *International Conference of the Red Cross*, ICRC, Geneva, 1986, 1-20, p.2.

³⁸ *Ibid.*

³⁹ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (First Additional Protocol)*, 8 June 1977, art.35(2); *Rome Statute of the International Criminal Court*, UNDoc.A/CONF.183/9, 17 July 1998, art.8(2)(b)(xx); *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, Ottawa, 18 September 1997, 11th perambulatory clause; HENCKAERTS, Jean-Marie & DOSWALD-BECK, Louise. *Customary International Humanitarian Law*, 1st ed., vol.1, Cambridge: Cambridge University Press, 2005, Rule 70.

⁴⁰ *Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)*, Geneva, 12 August 1949, arts. 3 and 12(1); *Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention)*, Geneva, 12 August 1949, arts.3 and 12(1); *Convention relative to the Treatment of Prisoners of War (Third Geneva Convention)*, Geneva, 12 August 1949, arts.3 and 13; *Convention relative to the Treatment of Civilian Persons in Time of War (Fourth Geneva Convention)*, Geneva, 12 August 1949, arts. 3, 5 and 27(1); *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (First Additional Protocol)*, 8 June 1977, art.75(1); *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Second Additional Protocol)*, 8 June 1977 art.4(1).

⁴¹ *N. v. United Kingdom*, Application no. 26565/05, ECtHR, Judgment of 27 May 2008, Joint Dissenting Opinion of Judges Tulkens, Bonello and Spielmann, p.29.

These basic considerations of humanity go beyond just prohibiting the performance of inhuman and degrading conducts. Actually, they include the basic right of each individual to have access to the law without any kind of discrimination.⁴² The idea of human dignity requires the fundamental right of the individual to be part of a legal system that assures his/her human rights,⁴³ since the "[...] recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."⁴⁴ Besides, the principle of humanity also encompasses the provision of minimum conditions of security and health, including freedom from starvation,⁴⁵ freedom from ignorance,⁴⁶ right to health⁴⁷ and the right to work.⁴⁸ By not providing basic conditions for populations to emancipate themselves from basic needs, the human cleverness cannot be minimally achieved. The passive omission in face of basic deprivations is almost as shocking as acts dehumanizing the individual.

⁴² *International Covenant on Civil and Political Rights*, 999 UNTS 171, 16 Dec.1966, arts.2(1), 3, 14(1) and 26; *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, 16 Dec.1966, arts.2(2) and 3; *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 312 ETS 5, 4 November 1950, art.14; *American Convention on Human Rights*, "Pact of San Jose", OAS Treaty Series No. 36, San Jose, 22 November 1969, art. 1 and 24; *African Charter on Human and Peoples' Rights (Banjul Charter)*, OAUDoc.CAB/LEG/67/3 rev.5, 27 June 1981, arts.2, 3 and 19.

⁴³ *Juridical Condition and Rights of the Undocumented Migrants*, IACtHR, Advisory Opinion OC-18/03 of 17 September 2003. Ser.A No.18, paras.79-110.

⁴⁴ *Universal Declaration of Human Rights*, UNGA Res.217(III), UN Doc.A/810, 1948, 1st perambulatory clause.

⁴⁵ *Universal Declaration of Human Rights*, UNGA Res.217(III), UN Doc.A/810, 1948, art.25; *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, 16 Dec.1966, art.11; *Charter of the Organization of American States*, Ninth International Conference of American States, Bogota, 30 April 1948, art.34(j).

⁴⁶ *Universal Declaration of Human Rights*, UNGA Res.217(III), UN Doc.A/810, 1948, art.26; *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, 16 Dec.1966, art.13; *African Charter on Human and Peoples' Rights (Banjul Charter)*, OAUDoc.CAB/LEG/67/3 rev.5, 27 June 1981, art.17(1); *Charter of the Organization of American States*, Ninth International Conference of American States, Bogota, 30 April 1948, art.49.

⁴⁷ *Universal Declaration of Human Rights*, UNGA Res.217(III), UN Doc.A/810, 1948, art.25; *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, 16 Dec.1966, art.12; *African Charter on Human and Peoples' Rights (Banjul Charter)*, OAUDoc.CAB/LEG/67/3 rev.5, 27 June 1981, art.16; *Charter of the Organization of American States*, Ninth International Conference of American States, Bogota, 30 April 1948, art.34(l); *European Social Charter*, 35 ETS, 18 October 1961, art. 11.

⁴⁸ *Universal Declaration of Human Rights*, UNGA Res.217(III), UN Doc.A/810, 1948, art.23; *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, 16 Dec.1966, arts.6-8; *African Charter on Human and Peoples' Rights (Banjul Charter)*, OAUDoc.CAB/LEG/67/3 rev.5, 27 June 1981, art.15; *Charter of the Organization of American States*, Ninth International Conference of American States, Bogota, 30 April 1948, art.45(b).

Lastly, the principle of humanity must be recognized as a clear evidence of the *raison de l'Humanité* imposing limits to the *raison d'État*,⁴⁹ since States were created and exist for the welfare of human beings, and not the other way around.⁵⁰ Thus, "[t]he safeguard and prevalence of the principle of respect of the dignity of the human person are identified with the end itself of Law, of the legal order both national and international."⁵¹ By virtue of this elementary principle, every human being must have his rights respected just because he belongs to the humankind, notwithstanding gender, nationality, race, religion, statute of citizenship, or any other circumstance.⁵²

In light of this new framework, it was possible to establish some common concerns and interests of the whole international community, in which every single State has a legal interest in their protection. Thus, certain international norms were not established to enhance individual interests of the States, but to protect the interests of the whole mankind. For instance, rules addressing the environment⁵³, the common spaces of mankind⁵⁴, human rights⁵⁵ and cultural heritage⁵⁶ are examples.

The existence of international norms adopted to protect and enhance the interests of the whole mankind was upheld by the ICJ in its *Advisory Opinion concerning the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*:

⁴⁹ *Case of Barrios Altos v. Peru*, Judgment (Merits), 14 March 2001, Concurring Opinion of Judge A. A. Cançado Trindade, para.25.

⁵⁰ CANÇADO TRINDADE, Antônio Augusto. "La *recta ratio* dans les fondements du *Jus Gentium* comme Droit International de l'Humanité", *Revista da Faculdade de Direito da UFMG*, Belo Horizonte, n. 58, jan./jun. 2011, 91-122, p.105-106; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Advisory Opinion*, ICJ Rep.2010, p. 403, Separate Opinion of Judge Cançado Trindade, para.176.

⁵¹ *Juridical Condition and Rights of the Undocumented Migrants*, IACtHR, Advisory Opinion OC-18/03 of 17 September 2003. Ser.A No.18, Concurring Opinion of Judge Cançado Trindade, para.56.

⁵² *Ibid.*

⁵³ *Convention on Biological Diversity*, Rio de Janeiro, 5 July 1992, Preamble; *United Nations Framework Convention on Climate Change*, New York, 9 May 1992, Preamble; *Paris Agreement*, New York, 22 April 2016, Preamble.

⁵⁴ *Antarctic Treaty*, Washington, 1 December 1959, Preamble; *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*, 19 December 1966, Preamble.

⁵⁵ *International Covenant on Civil and Political Rights*, 999 UNTS 171, 16 Dec.1966, Preamble; *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York, 10 December 1984, Preamble; *Convention on the Prevention and Punishment of the Crime of Genocide*, Paris, 11 December 1948, Preamble.

⁵⁶ *UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage*, Paris, 16 November 1972, Preamble; *UNESCO Convention on the Protection of the Underwater Cultural Heritage*, Paris, 2 November 2001, Preamble; *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage*, Paris, 17 October 2003, Preamble.

The Convention [on the Prevention and Punishment of the Crime of Genocide] was manifestly adopted for a purely humanitarian and civilizing purpose. It is indeed difficult to imagine a convention that might have this dual character to a greater degree, since its object on the one hand is to safeguard the very existence of certain human groups and on the other to confirm and endorse the most elementary principles of morality. In such a convention the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the *raison d'être* of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.⁵⁷

Later on, in the *Barcelona Traction* case, the ICJ once again addressed the norms dealing with the common interests of mankind:

In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination.⁵⁸

In two subsequent decisions, the ICJ took relevant steps towards the establishment of mechanisms to ensure the implementation of these international *erga omnes* norms. The first noteworthy decision is the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, in which the ICJ decided that all States are bound to refrain from recognizing as legal a violation of *erga omnes* norms or giving aid to the perpetration or perpetuation of these particular violations. Furthermore, States have to take internationally lawful measures in order to discontinue ongoing breaches of *erga omnes* obligations abroad.⁵⁹

Other important ICJ's judgment was delivered in the case *Questions Relating to the Obligation to Prosecute or Extradite*. The ICJ concluded that the UN Convention

⁵⁷ *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion*, ICJ Rep.1951, p.23.

⁵⁸ *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, ICJ Rep.1970, paras.33-34.

⁵⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, ICJ Rep.2004, para.159.

against Torture ensures a common interest, i.e., the obligation to prevent acts of torture and, if they occur, the obligation to ensure that their perpetrators face justice. According to the Court, this "[...] common interest implies that the obligations in question are owed by any State party to all the other States parties to the Convention. All the States parties 'have a legal interest' in the protection of the rights involved. These obligations may be defined as 'obligations *erga omnes partes*' in the sense that each State party has an interest in compliance with them in any given case"⁶⁰. Therefore,

[t]he common interest in compliance with the relevant obligations under the Convention against Torture implies the entitlement of each State party to the Convention to make a claim concerning the cessation of an alleged breach by another State party. If a special interest were required for that purpose, in many cases no State would be in the position to make such a claim. It follows that any State party to the Convention may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations *erga omnes partes* [...].⁶¹

Referring specifically to North Korea, the *2014 Report of the UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea* concluded that the international community has a responsibility "[...] to protect the people of the Democratic People's Republic of Korea and victims abroad from crimes against humanity, in view of the manifest failure of the Democratic People's Republic of Korea to protect its own population from such crimes"⁶². It also stated the following:

It is more than ever essential at the present juncture that the international community redouble its efforts to effect meaningful changes in the Democratic People's Republic of Korea by addressing the deeply worrying human rights situation in the country, in particular with regard to the issue of international abductions, enforced disappearances and related matters. The international community owes it to all the victims and their relatives who have endured enough suffering, and to the people of both Koreas in their hopes for a peaceful future⁶³.

Accordingly, the protection of human rights entails *erga omnes* obligations, which are owed to the whole international community. Every single State is entitled to take peaceful and lawful measures to discontinue gross and systematic violations of human rights abroad. Hence, International Law entitles South Korea to adopt measures

⁶⁰ *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, ICJ Rep.2012, para.68.

⁶¹ *Ibid.*, para.69.

⁶² *Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea*, UN Human Rights Committee, UNDoc.A/HRC/28/71, 18 March 2015, para.89. Available at: <http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/28/71>. Access on: 4 March 2016.

⁶³ *Ibid.*, para.87.

to address the human rights violations occurring in North Korea, including the approval of the North Korea Human Rights Act.

3.2 Is the *North Korea Human Rights Act* a wrongful intervention in North Korea's internal affairs?

The North Korea Human Rights Act is not a treaty in which North Korea expressed its consent to be bound or had the chance to directly and significantly participate in the drafting process. The North Korea Human Rights Act is a domestic law unilaterally approved by South Korea following its own legislative procedure. Despite that, this piece of law deals extensively with the protection of human rights in North Korea and provides mechanisms to improve human rights standards in this country. Taking this into account, is the North Korea Human Rights Act illegal under the non-intervention principle? In other words, does this statute constitute an illegal interference by South Korea in North Korea's domestic affairs?

The answer to those questions is no. In fact, International Law - through the non-intervention principle - protects the domestic jurisdiction of States from undue interferences by international organizations and other States. This principle was upheld by the UN General Assembly in its well know *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*, adopted on 21 December 1965. This document states the following:

No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are condemned⁶⁴.

No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the

⁶⁴ *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*, UNGA Resolution no. 2131 (XX), UNDoc.A/RES/20/2131, 21 December 1965, para.1.

violent overthrow of the regime of another State, or interfere in civil strife in another State⁶⁵.

Later, the General Assembly adopted another relevant document: the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, which once again recognized the relevance of the non-intervention principle. The provisions previously quoted were repeated in this Declaration, only with minor phraseology distinctions⁶⁶.

In an historical perspective, the expression "domestic jurisdiction" (or "internal jurisdiction") was introduced in the international legal framework for the first time with the creation of the League of Nations. While dealing with the settlement of international disputes through the involvement of the Council of the League, the Covenant of the League of Nations rules that "[i]f the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement".⁶⁷ Hence, matters confined to the domestic jurisdiction of the interested States were to remain immune from any interference by the League of Nations. This particular provision was added to the Covenant at the insistence of the North American President Woodrow Wilson, due to internal pressures in the United States related to the fear of external interferences in issues considered strategic at the time, such as immigration, working conditions and customs.⁶⁸

At the San Francisco Conference, which convened to adopt the United Nations Charter, there was intense debate about the States' domestic jurisdiction. In order to prevent excessive interferences from the United Nations, the Article 2(7) was introduced in the Charter. It states that

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement

⁶⁵ *Ibid.*, para.2.

⁶⁶ *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, UNGA Resolution no. 2625 (XXV), UNDoc.A/RES/25/2625, 24 October 1970.

⁶⁷ *Covenant of the League of Nations*, Paris, 28 June 1919, art.15(8).

⁶⁸ CANÇADO TRINDADE, Antônio Augusto. *Direito das Organizações Internacionais*, 3rd ed., Belo Horizonte: Del Rey, 2003, p.123.

under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII⁶⁹.

Article 2(7)'s main purpose is to regulate the relationship between the UN and its members, demonstrating that their sovereignty cannot be completely ignored by the Organization. However, the very wording of Article 2(7) establishes that this provision cannot be interpreted as to weaken the authority of the Security Council as the protector and maintainer of the international peace and security.

In order to determine if the North Korea Human Rights Act breaches the non-intervention principle, two aspects must be evaluated: (i) which matters are confined to the domestic jurisdiction of the States; and (ii) what can be considered an unlawful interference.

Regarding the first point, one must know that the domestic jurisdiction comprehends the matters within the reserved domain (*domaine réservé*) of the States, i.e., all the activities and competences which are not governed by International Law and, thus, may be discretionarily decided by the States, without any interference by other States or international organizations⁷⁰. In its notorious *Case concerning the Military and Paramilitary Activities in and against Nicaragua*, the International Court of Justice mentioned that the determination of the political, economic, social and cultural systems of a State as well as the formulation of its foreign policy are examples of exclusive internal matters⁷¹.

However, as the International Law develops over time, matters that were restricted to the internal jurisdiction of the States may become subject to international regulation, resulting in their voluntary removal from the States' reserved domain⁷². This is only possible because States have the autonomy to accept an international limitation

⁶⁹ *Charter of the United Nations*, San Francisco, 26 June 1945, art.2(7).

⁷⁰ SALMON, Jean. *Dictionnaire de Droit International Public*, Bruxelles: AUF, 2001, p.356.

⁷¹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, ICJ Rep.1986, p.107-108.

⁷² *Nationality Decrees Issued in Tunis and Morocco, Advisory Opinion*, PCIJ, Ser.B, 7 February 1923, p.23-24.

in their own sovereign right to freely decide on the matters within their domestic jurisdiction.⁷³

This is precisely the case of human rights. Although historically the protection of human rights was under the exclusive domestic jurisdiction of the States, the development of International Law altered this paradigm. The increasing number of human rights related treaties and the evolution of customary laws on the same matter significantly restricted the domestic jurisdiction, resulting in the removal of the promotion of human rights of the States' reserved domain⁷⁴. Similarly, the consolidation of the *jus cogens* norms also corroborates that human rights are no longer a matter of domestic jurisdiction⁷⁵. Most of the unquestionable existing peremptory norms are human rights related, such as genocide⁷⁶ and torture⁷⁷. In the *Anto Furundzija case*, the International Criminal Tribunal for the Former Yugoslavia clarified that the *jus cogens* norms "[...] [enjoy] a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules. The most conspicuous consequence of this higher rank is that [these norms] cannot be derogated from by States through international treaties or local or special customs or even general customary rules not endowed with the same normative force."⁷⁸

In its Session of Santiago de Compostela (1989), the Institute of International Law adopted a resolution named *The Protection of Human Rights and the Principle of Non-intervention in Internal Affairs of States*. This document affirms that "[a] State

⁷³ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, ICJ Rep.1986, p.130-131.

⁷⁴ ROSENNE, Shabtai. *The Perplexities of Modern International Law*, General Course on Public International Law, The Hague: Martinus Nijhoff Publishers, 2002, p.258.

⁷⁵ PELLET, Alain; DINH, N. Quoc; DAILLIER, Patrick. *Direito Internacional Público*, Lisbon: Fundação Calouste Gulbenkian, 2003, p.454.

⁷⁶ *Prosecutor v. Goran Jelusic*, Judgment, ICTY, Trial Chamber, Case No. IT-95-10-T, 14 December 1999, para.60; *Prosecutor v. Krstic*, Judgment, ICTY, Trial Chamber, Case No. IT-98-33-T, 2 August 2001, para.541; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, *Jurisdiction and Admissibility*, ICJ Rep.2006, para.64.

⁷⁷ *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)*, ICJ Rep 2012, para.99; *Al Adsani v. United-Kingdom*, Application no. 35763/97, ECtHR, Judgment of 21 November 2001, paras.60-65; *Case of Tibi v. Ecuador*, IACtHR, Judgment of 7 September 2004, para.143; *Case of Maritza Urrutia v. Guatemala*, IACtHR, Judgment of 27 November 2003, para.92; *Case of Bayarri v. Argentina*, IACtHR, Judgment of 30 October 2008, para.81; *Case of Bueno Alves v. Argentina*, IACtHR, Judgment of 11 May 2007, para.76; *Case of Baldeón-García v. Peru*, IACtHR, Judgment of 6 April 2006, para.117; *Case of the Miguel Castro Castro Prison v. Peru*, IACtHR, Judgment of 25 November 2006, para.199; *Case of Lysias Fleury et al. v. Haiti*, IACtHR, Judgment of 23 November 2011, para.70; *Case of the Gómez Paquiyaury Brothers v. Peru*, IACtHR, Judgment of 8 July 2004, para.112.

⁷⁸ *Prosecutor v. Furundzija*, Judgment, Trial Chamber, Case No. IT-95-17/I-T, 10 December 1998, para.153.

acting in breach of its obligations in the sphere of human rights cannot evade its international responsibility by claiming that such matters are essentially within its domestic jurisdiction"⁷⁹.

Accordingly, the protection of the human rights of the North Korean population cannot be considered a matter confined to North Korea's exclusive jurisdiction.

The second relevant aspect in order to establish the legal scope of the non-intervention principle - the definition of wrongful interference - was addressed by the ICJ in the *Case concerning the Military and Paramilitary Activities in and against Nicaragua*. This tribunal ruled that "[a] prohibited intervention must [...] be one bearing on matters in which each State is permitted, by the principle of State sovereignty to decide freely."⁸⁰ It also clarified that

[i]ntervention is wrongful when it uses methods of coercion in regard to such choices, which must remain free ones. The element of coercion, which defines, and indeed forms the very essence of, prohibited intervention, is particularly obvious in the case of an intervention which uses force, either in the direct form of military action, or in the indirect form of support for subversive or terrorist armed activities within another State.⁸¹

Accordingly, ICJ relied on coercion as the decisive element of a wrongful intervention. A State must act as to impose its own will on other States in matters and competences that they were entitled to freely decide. The coerced State's freedom of choice is restricted or eliminated by the coercing State.

However, measures aimed at improving human rights records abroad cannot be considered illegal coercion. Today, it is generally accepted that human rights violations in a foreign country can be publicly criticized in official statements. Moreover, States are free to frame their foreign policies in such a way that the human rights situation in the target States is improved. Even measures implying serious economic hardship for

⁷⁹ "The Protection of Human Rights and the Principle of Non-intervention in Internal Affairs of States", Institute of International Law, Rapporteur: Mr Giuseppe Sperduti, 1989, art.2(1).

⁸⁰ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*, ICJ Rep.1986, p.108

⁸¹ *Ibid.*, p.108

the victim States are not deemed to fall within the definition of illegal intervention⁸². The previously mentioned resolution of the Institute of International Law also corroborates this conclusion, since it determines the following:

Without prejudice to the functions and powers which the Charter attributes to the organs of the United Nations in case of violation of the obligations assumed by the members of the Organizations, States, acting individually or collectively, are entitled to take diplomatic, economic and other measures towards any other State which has violated the obligation [to respect human rights], provided such measures are permitted under international law and do not involve the use of armed force in violation of the Charter of the United Nations. These measures cannot be considered an unlawful intervention in the internal affairs of that State.⁸³ [Emphasis added]

Accordingly, unilateral measures to improve human rights abroad, such as the North Korea Human Rights Act, do not constitute wrongful coercion. They do not harm or impair the free will of the States to decide on matters under their margin of exclusive evaluation. Although they can in fact impose elements of pressure, they are not internationally unlawful acts precisely because this pressure is aimed at protecting human rights. Despite that, States must take these protective measures in full respect for the principles of necessity, proportionality and prohibition of the use of force.

CONCLUSION

It is irrefutable that the International Law of nowadays is not the same as that one identifiable in the past half century. International norms have gone and continue to go through a process of intense and profound humanization, that obliterates the old statecentric paradigm and also the traditional foundations of the international legal system. In this new legal *status quo*, the International Law ultimately becomes the instrument for achieving of the needs of the mankind. The *ultima ratio* of the legal order as a whole is the unconditional protection of every human being.

The minimal considerations of humanity that echo throughout the normative system produce practical consequences in the interpretation and application of existing rules, including the sovereignty of the States. As said by Christian Tomuschat, "[t]here

⁸² TOMUSCHAT, Christian. "International Law: Ensuring the Survival of Mankind on the Eve of a New Century", General Course on Public International Law, Hague Academy Collected Courses, Volume 281, 1999, p.238.

⁸³ "The Protection of Human Rights and the Principle of Non-intervention in Internal Affairs of States", Institute of International Law, Rapporteur: Mr Giuseppe Sperduti, 1989, art.2(2)

is no sacred core of sovereignty left that could claim to be untouchable"⁸⁴. Although the State sovereignty was not abolished, it had several restrictions in order to allow international lawful measures to discontinue serious human rights violations. A State that is not willing or unable to prevent gross violations against the fundamental rights of its population cannot use its sovereignty as an excuse to perpetuate these wrongful acts. The international community has the right to take peaceful, necessary and proportional measures to address these violations.

Accordingly the adoption and implementation of the North Korea Human Rights Act by South Korea is not unlawful under International Law. Actually, it is a measure fully in accordance the current international legal paradigm.

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⁸⁴ TOMUSCHAT, Christian. "International Law: Ensuring the Survival of Mankind on the Eve of a New Century", General Course on Public International Law, Hague Academy Collected Courses, Volume 281, 1999, p.238.

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ANNEX I

North Korea Human Rights Act⁸⁵

Law No. 14070, adopted on 3 March 2016 and in force since 4 September 2016.

Chapter 1 (Purpose)

The purpose of this law is to protect and promote the human rights of North Korean citizens as promulgated in the UN Declaration of Human Rights and International Covenant on Civil and Political Rights, which protect the right of freedom and existence. Through pursuit of these ideals this law seeks to promote and protect the human rights of North Koreans.

Chapter 2 (Basic principle and national responsibility)

1. The State confirms that North Korean citizens have dignity and value as human beings and the right to pursue happiness. The State must work to protect and promote the human rights of North Korean citizens (hereinafter referred to as “North Korea human rights promotion”).
2. The State must also work to promote the establishment of peace on the Korean Peninsula and the development of inter-Korean relations alongside North Korea human rights promotion efforts.
3. In order to carry out North Korea human rights promotion efforts necessary finances must be provided in a regular and consistent manner.

Chapter 3 (Definition)

References to “North Korean citizens” in this law refer to persons who reside to the north of the military demarcation line. This includes people whose basis of family life, including maintaining a spouse, and work life, and so forth is located in this region.

Chapter 4 (Relationship with other laws)

⁸⁵ Translation by Kent Boydston available here: <<https://piie.com/blogs/north-korea-witness-transformation/rok-north-korea-human-rights-act>>.

This law is established outside of North Korea human rights promotion efforts promulgated in measures in laws on inter-Korean exchange cooperation, the Inter-Korean Cooperation Fund Law, and the Law pertaining to Inter-Korean Relations Development.

Chapter 5 (North Korea Human Rights Consultative Council)

1. In order to provide consultative activities on policy pertaining to North Korea human rights promotion a North Korea Human Rights Promotion Consultative Council (hereinafter referred to as “Council”) shall be established at the Ministry of Unification.
2. Including the Council chairperson, the Council shall be comprised of ten members recommended by the National Assembly. The chairperson shall be selected among the ten members. The Minister of Unification shall recommend members for the Council. Those from bargaining parties currently or previous affiliated with the President’s party may only be appointed at a one out of every two member’s basis.
3. Necessary issues pertaining to the formation of Council members and Council operations and so forth are set by Presidential executive order.

Chapter 6 (North Korea Human Rights Promotion Basic Plan and Implementation Plan)

1. The Minister of Unification shall work with the relevant head of the central administrative office and consult with the Council to devise a North Korea Human Rights Promotion Basic Plan (hereinafter referred to as “Basic Plan”) every three years. The plan shall cover the following issues.
 1. a. A report on the state of the human rights situation of North Korean citizens.
 2. Provide guidelines for protecting and promoting North Korean human rights through Inter-Korean human rights dialogue and humanitarian support, and so forth.

3. Outside of this, matters pertaining to the protection and promotion of the human rights of North Korean citizens shall be addressed by Presidential executive order.
2. The Minister of Unification according to the Basic Plan must every year submit a North Korea human rights promotion implementation plan (hereto referred to as “Implementation Plan”) in consultation with the Council.
3. The Unification Minister shall report to the National Assembly in a timely manner at the time that the Basic Plan and Implementation Plan are submitted.

Chapter 7 (Promoting inter-Korean human rights dialogue)

1. The government must promote inter-Korean dialogue pertaining to the principle issues of North Korea Human Rights promotion.
2. In the necessary case if appointing a representative for inter-Korean human rights dialogue, Chapter 15 of the Law Pertaining to the Development of Inter-Korean Relations shall be applied.
3. Outside of this, the necessary activities pertaining to the promotion of inter-Korean human rights dialogue shall be established by Presidential executive order.

Chapter 8 (Humanitarian assistance)

1. For North Korea human rights promotion, the State must work to comply with the following measures in the case of providing humanitarian assistance to North Korean authorities or organs.
 1. Activities must be carried out in a transparent manner according to internationally recognized humanitarian standards.
 2. Pregnant women, infants, and so forth, and vulnerable classes must be given priority.
2. The State must also obey the standards set forth in Chapter 8.1 regarding humanitarian assistance provided through civil society groups.

Chapter 9 (International cooperation regarding North Korea human rights promotion)

1. The State must work to collaborate with international organs, international groups, foreign governments, and so forth to promote people-to-people

exchanges, exchanges of information, and so forth in order to strengthen North Korean human rights promotion. The State must work to strengthen interest in international society regarding North Korean human rights promotion.

2. To carry out the duties listed in Chapter 9.1, an ambassador who works directly with North Korea human rights issues in foreign affairs (hereinafter referred to as “Ambassador for International Cooperation on North Korean Human Rights”) may be established at the Ministry of Foreign Affairs.
3. Issues regarding the appointment and qualifications for the Ambassador for International Cooperation on North Korean Human Rights shall be dealt with by the Presidential executive order.

Chapter 10 (Establishment of the North Korea Human Rights Foundation)

1. A North Korea Human Rights Foundation (hereinafter referred to as the “Foundation”) shall be established by the government to conduct research and develop policy related to North Korea human rights promotion. It shall report on the state of North Korea’s human rights situation, inter-Korean human rights dialogue, humanitarian assistance, and so forth.
2. The Foundation shall be incorporated and registered at the location of the main office where it is established.
3. The Foundation will conduct the following activities, which may be carried out through separate bodies.
 1. Activities with goals pertaining to the following related to inter-Korean human rights dialogue and North Korea human rights promotion
 1. Research and report on the state of North Korea’s human rights situation
 2. Develop alternative policy proposals for the government on inter-Korean human rights dialogue, and so forth.
 3. Outside of this, the Council deliberates and the Minister of Unification assigns duties.
 4. Provide support for civil society groups carrying out the above activities listed in Chapter 10.3.1.1-3.

2. Activities with goals pertaining to the following related to humanitarian assistance and North Korea human rights promotion
 1. Research and report on the internal humanitarian needs within North Korea.
 2. Develop alternative policy proposals for the government on North Korea humanitarian assistance.
 3. Outside of this, the Council deliberates and the Minister of Unification assigns duties.
 4. Provide support for civil society groups carrying out the above activities listed in Chapter 10.3.2.1-3.
4. Outside of this, any necessary issues pertaining to the establishment of the Foundation shall be addressed through Presidential executive order.

Chapter 11 (Operation of the Foundation)

1. The Foundation shall be operated through finances from the following:
 1. Government contributions
 2. Outside contributions
2. Contributions voluntarily received by the Foundation notwithstanding the Law pertaining to the Collection of Contribution provisions under Chapter 5.2, in accordance with the purposes of use, must be approved and recorded by the Minister of Unification.
3. The Minister of Unification advises and directs the Foundation.
4. The Minister of Unification can for the purposes of carrying out the goals of the Foundation when needed request that government officials from relevant government agencies be assigned to the Foundation.
5. In regards to the Foundation, any stipulations regarding the incorporation shall follow the Civil Code except when specifically stipulated in this law.
6. Outside of this, any necessary tasks pertaining to the Foundation's management, leadership, and direction, the process for submitting financial donations, and so forth shall be established by Presidential executive order.

Chapter 12 (Formation of the board members of the Foundation)

1. Including the chairperson there shall be a total of twelve board members. Members shall be comprised of two people recommended by the Ministry of Unification as well as through recommendations from the National Assembly. Members are appointed by the Minister of Unification. Members currently or previously affiliated with the President's party or bargaining parties currently or previously affiliated with the President's party may only be appointed at the basis of one out of every two members.
2. Besides the chairperson and full-time board members established through the rules of association all other board members shall serve in a non-full-time status.
3. The chairperson is selected from among the board members and serves along with other members for a period of three years. Reappointment for the chairperson and other board members is allowed one time through ex-officio board membership.
4. Outside of this, any necessary issues pertaining to the appointment of the Foundation's board, and so forth shall be established by Presidential executive order.

Chapter 13 (North Korea Human Rights Archive)

1. In order to promote North Korean human rights and record the status of North Korea's human rights situation a North Korea Human Rights Archive ("hereto referred to as "Archive") shall be established at the Ministry of Unification.
2. The Archive shall carry out the follow activities and be responsible for collecting materials related to information gathering, research, records preservation, publishing, and so forth.
 1. Tasks pertaining to research and reports on North Korea's human rights status.
 2. Tasks pertaining to prisoners of war, Koreans kidnapped and taken to North Korea, and separated families.
 3. Outside of this, for tasks in which the Council and Minister of Unification deem necessary.

3. Each of the activities mentioned in Chapter 13.2 may be consigned to an outside party. In this case finances from the budget can be used to support this.
4. There will be one director of the Archive who shall be selected from the senior civil service or be a civilian expert with significant academic and professional expertise in North Korea human rights. The position shall be appointed by the Minister of Unification.
5. The materials collected and recorded by the Archive shall every three months be transferred to the Ministry of Justice where for the Ministry of Justice shall be the organ responsible for preserving and managing the materials.
6. Outside of this, any necessary issues pertaining the Archive's formation or management and so forth shall be established by Presidential executive order.

Chapter 14 (Cooperation with Relevant Organs)

1. The Minister of Unification shall be responsible for tasks pertaining to North Korea human rights promotion, submission of materials, and statements of opinion regarding relevant activities of administrative bodies, public bodies, and related persons. Outside of this, if it is necessary to carry out tasks related to policy implementation, the Ministry of Unification may request cooperation.
2. Requests received by relevant persons and directors of administrative and public bodies in accordance with Chapter 14.1 must be approved provided there are no special circumstances.
3. If relevant central administrative body or local government offices adopt or intend to adopt measures or ordinances relevant to this law they must notify the Minister of Unification ahead of time.

Chapter 15 (National Assembly Report)

1. Besides the Basic Plan and Implementation Plan the Minister of Unification must submit a report on North Korea human rights promotion every year before the regular meeting of the National Assembly that includes the following.
 1. The state of North Korean human rights.
 2. The results of North Korea human rights promotion and status of reforms.

3. The status of plans to repatriate prisoners of war back to South Korea and Koreans kidnapped and living in North Korea, as well as efforts on holding reunions for separated families.
 4. Results, evaluations, and accounting information from the national government and local government and public bodies as they pertain to responsibilities outlined in Chapter 15.1.1-3.
 5. Outside of this, anything needed for North Korea human rights promotion as recognized by the Minister of Unification.
2. The National Assembly may, as it deems necessary, offer advice for reform and oversight as it pertains to government reports on activities listed in Chapter 15.1

Chapter 16 (Penalties for Civil Servants)

Appointees to the Foundation receiving appointment as stipulated in Chapter 10 will be viewed as public servants as it pertains to the performance of their duties, and applicable laws in Chapters 127, and 129-132 of the Criminal Code will apply.

Chapter 17 (Penalties)

Those providing false testimony or obtaining funds unethically in association with the activities of this law shall receive a minimum three years' confinement or pay a 30,000,000 Won fine.

Supplementary Provisions

1. (Date the law goes into effect)

This law goes into effect after a period of six months has passed after the law is passed.

2. (Preparation for the establishment of the North Korean Human Rights Foundation)
 1. The Minister of Unification must within thirty days from the day the law goes into effect form an establishment council of seven people tasked with carrying out business pertaining to establishing the Foundation.

2. The establishment council will decide on rules of association for the Foundation for which the approval of the Minister of Unification must be received. After receiving approval, without delay the Foundation's incorporation must be registered through joint signing between the establishment council and Minister of Unification.
3. After the establishment council has registered the incorporation of the Foundation, without delay it must transfer duties to the chairperson of the Foundation. After the transfer of duties has been completed the Council is relinquished of duties and dissolved.
4. The State is responsible for providing necessary finances for the establishment of the Foundation.

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