

House Foreign Affairs Committee
Tom Lantos Human Rights Commission
Hearing on

**Civil and Political Rights in the Republic of Korea:
Implications for Human Rights on the Peninsula**

April 15, 2021 at 10:00 a.m. EDT

O'Neill House Office Building

**Statement of Jessica J. Lee
Senior Research Fellow in East Asia Program
Quincy Institute for Responsible Statecraft**

Chairman McGovern, Chairman Smith, and other distinguished members of the Tom Lantos Human Rights Commission, thank you for the opportunity to speak about civil and political rights in the Republic of Korea (ROK, or South Korea), and their implications for human rights on the Korean Peninsula.

Three years ago, I visited South Korea at the invitation of the nonpartisan International Republican Institute to train North Korean defectors on concepts such as democracy and civil society, drawing on my experience as a former congressional staff member. I have also worked with the George W. Bush Institute to help start scholarships for North Korean defectors living in the United States.

As a former Asia advisor to Chairman Howard Berman of the House Committee on Foreign Affairs for three years and Senior Legislative Assistant for a member of Congress on the House Ways and Means Committee for three years, I have seen firsthand the vital role of this Commission in shining light on international human rights as enshrined in the Universal Declaration of Human Rights. Named after the only Holocaust survivor who served in the U.S. Congress, Tom Lantos, the bipartisan Commission offers a platform for public education and debates on issues relating to human rights globally.

At a time of extraordinary changes in the United States and in East Asia, a discussion on Korean human rights rooted in America's vital interests on the Korean Peninsula seems warranted. A nuanced, balanced debate on this topic would greatly advance understanding of the leaflet ban among American policymakers and the public, as well as remind everyone involved about the urgent need for lasting peace on the peninsula.

I currently work at a transpartisan think tank in Washington called the Quincy Institute for Responsible Statecraft. Our goal is to promote ideas that move U.S. foreign policy away from endless wars and toward vigorous diplomacy in the pursuit of international peace.

The Quincy Institute is named after former Secretary of State John Quincy Adams, who famously warned in 1821 that America should not “go not abroad in search of monsters to destroy.” Doing so would risk losing America’s democratic soul. Our essence. Two hundred years later, John Quincy Adams’ warning seems prescient.

John Quincy Adams was not an isolationist, and neither is the Quincy Institute. We oppose wars of choice that put the lives of our troops needlessly at risk. We favor a military establishment that is sized and organized to protect the country’s vital interests.

We believe that the United States must adhere to a principle of restraint, using force sparingly and only as a last resort. Energetic and creative diplomacy must become the measure of American statecraft, rather than the number of airstrikes or bases abroad.

The Quincy Institute does not accept funding from foreign governments. We also do not accept funds from defense companies that may have a financial interest in armed conflict. This affords Quincy Institute with independence that is vital for challenging conventional wisdom on U.S. foreign policy and our role in the world. By taking moneyed interest off the table, we can better assess the strength of the arguments that guide U.S. foreign policy, rather than say what we believe our funders want to hear or inflate threats in order to inflate our work’s value.

On the question of civil liberties in the Koreas, a fact-based discussion about the Development of Inter-Korean Relations Act, rooted in U.S. interests on the Korean Peninsula, is in order.

U.S. priorities on the Korean Peninsula

The long-term goal of U.S. grand strategy should be to facilitate the creation of a peaceful global order consisting of fully sovereign, law-abiding states capable of providing for their own security. This includes a South Korea policy that eventually grows into a peer-to-peer relationship, rather than an unbalanced and perpetually dependent relationship between a protector and a protectorate.

In a recent Quincy Institute report that I co-wrote with Dr. Michael Swaine and Dr. Rachel Esplin Odell, we argued that the United States must gradually support the emergence of a strong and stable Korean Peninsula free from foreign military forces, rather than seek control and dependence

indefinitely.¹ Such a scenario assumes credible prior assurances from the United States, Japan, and China that a unified Korea would enjoy close economic, political, and security relations with all three countries.

A peaceful unification process negotiated between the South and North Korean governments in consultation with the United States, Japan, China, and Russia would be the best path toward such a future, as opposed to change brought on by sudden provocation by a nuclear-armed North Korea or implosion of the Kim regime. The latter would likely lead to a prolonged period of instability on the peninsula and possibly a Sino-U.S. confrontation. All of this suggests the need for extensive consultations among the powers concerned regarding future contingencies and the path toward a stable Korean Peninsula, whether divided or not.

For too long, the American foreign policy establishment has ignored these long-term political questions about the future of the Korean Peninsula. As a result, some are blindsided when domestic political developments in South Korea do not match our expectations. This may be why the news of today's hearing created such confusion and anxiety among both sides of the Pacific. American observers who claim that South Korea's democracy is under threat point to the leaflet ban as the latest example of backsliding. In turn, South Korean leaders appear to be taken aback by the overly harsh tone of American observers about their law and have gone to extraordinary lengths to explain the democratic process that led to the creation of the law.²

The fact is that the existing framework of the U.S.-ROK relationship is outdated and does not reflect the United States' long-term strategic interest in having a strong, democratic ally in South Korea that is not overly manipulated by external pressure or control. The current relationship also gives South Koreans who receive funding from the U.S. government for their work disproportionate influence over more indigenous, Korean-led efforts. The coverage of the leaflet ban issue is a case in point.

On January 29, 2021, 421 South Korean civil society groups signed a joint statement in support of the law banning the distribution of leaflets to North Korea.³ But this statement and other Korean voices at the civil society level have been left out in most U.S. coverage of the leaflet issue. So too

¹ Michael D. Swaine, Jessica J. Lee, and Rachel Esplin Odell, "Toward an Inclusive & Balanced Regional Order: A New U.S. Strategy in East," *Quincy Institute for Responsible Statecraft*, January 11, 2021, <https://quincyinst.org/2021/01/11/toward-an-inclusive-balanced-regional-order-a-new-u-s-strategy-in-east-asia/>.

² For examples of South Korean government officials' explanation about the law, see Park Jeong, "How Residents on the DMZ See South Korea's Anti-Leaflet Bill," *The National Interest*, February 17, 2021, <https://nationalinterest.org/blog/korea-watch/how-residents-dmz-see-south-korea%E2%80%99s-anti-leaflet-bill-178361> and Rep. Song Young-gil, "What is more important: Sending anti-North Korea leaflets or providing food and medical supplies for hungry children?" *The Korea Herald*, December 13, 2020, <http://www.koreaherald.com/view.php?ud=20201213000162&np=1&mp=1>.

³ *Joint Statement of South Korean Civil Society on the Prohibition of the Dissemination of Anti-Pyeongyang Leaflets Threatening the Right to Live in Peace*, signed by Lee ChangBok et al, and sent to the Tom Lantos Human Rights Commission on January 29, 2021.

is the fact that the very reason the law was enacted in the first place was in response to the concerns of Korean residents in the border area.

South Korean Legislature's Actions on Leaflets

In December 2020, the South Korean National Assembly amended the “Development of Inter-Korean Relations Act” to “prohibit actions that cause danger to people’s lives and safety through loudspeaker broadcasting, visual materials posting, and leaflet dissemination in the areas along the Military Demarcation Line.”⁴ In doing so, Seoul has emphasized three aspects of the bill that are germane to today’s hearing.

First, it has noted the long history of banning leaflet drops. Preventing “mutual slander” has been expressed in inter-Korean agreements of 1972, 1992, and 2018. However, some civil society organizations have continued to send leaflets and other materials across the border, despite requests from the South Korean government to desist. Given the fact that the Korean War never formally ended, and the nonexistent nature of official communication between the two Koreas, the risk of conflict flaring into war is real, particularly for the one million residents who live near the demilitarized zone.⁵

Secondly, the South Korean government has pointed to legal precedents in justifying the ban. In 2016, the South Korean Supreme Court ruled that leaflet dissemination could create an “imminent and grave danger” to the people in the border, and that such action should be stopped for the benefit of public welfare. It has also pointed to international measures as examples of limiting propaganda in ideological conflicts. For example, during the Cold War, balloons were flown to Eastern communist bloc nations such as Czechoslovakia. In 1960, the International Civil Aviation Organization passed a resolution noting that the balloons were unsafe and should not be used.

Third, Seoul has argued that leaflets are counterproductive to inter-Korean reconciliation and long-term peace for the Korean people. According to the Ministry of Unification, more diverse means of engagement, such as expanding inter-Korean dialogue and cooperation, and encouraging North Korea’s contact with the global community, will more effectively improve basic rights of North Koreans than sending bibles, USB drives, or other things across the border.

There are pros and cons to all of these arguments by the South Korean government. Some of the criticisms that have been levied against the law seem more constructive than others. For example,

⁴ *On the amended provisions of ‘the Development of Inter-Korean Relations Act’ for disseminating leaflets*, Ministry of Unification, Republic of Korea, December 2020.

⁵ For an example of South-North clash over leaflets, see “Koreas Exchange Fire After Activists Launch Balloons Over Border,” *New York Times*, October 10, 2014, <https://www.nytimes.com/2014/10/11/world/asia/koreas-exchange-fire-after-activists-launch-balloons-over-border.html>.

some have criticized the measure as being overly broad to include activities taken place in third countries, such as China. In response, the Ministry of Unification issued a guideline in March 2021 to clarify that the ban does not apply to leaflets flown from a third country or via international waters.⁶ In December 2020, a group of human rights groups in South Korea filed a complaint over the ban and requested a temporary suspension of the law, which was rejected by the Constitutional Court.

U.S. Response and Recommendations

In recent months, certain American officials have publicly voiced their concerns with the leaflet ban. In some respects, this is unsurprising given the longstanding involvement among American lawmakers in support of North Korean human rights. At the same time, publicly naming and shaming the South Korean law, and by extension, South Korea's commitment to civil liberties, seems unusually harsh and polarizing. Predictably, it has been used by some actors in South Korea to criticize their government for being too eager to improve relations with North Korea – something that both progressive and conservative presidents have long sought to do.⁷

Perhaps U.S. concerns about the bill could have been addressed more directly if Washington had taken the time to speak to those who live on the South-North border or read the National Assembly's public debates on the matter. Both would have required time and staff resources beyond what this Commission likely can allocate. But without such due diligence, U.S. efforts – however well-meaning – risk lacking sufficient local context to appropriately and constructively weigh in.

Be that as it may, today's hearing offers an opportunity to expand the public debate beyond the leaflet issue to America's interest in the Korean Peninsula.

Replacing the armistice with a peace agreement and empowering South Korea to lead on inter-Korean reconciliation (as part of an overall strategy aimed at reducing military tensions and severely reducing, if not ending, North Korea's nuclear weapons program) are concrete ways that American policymakers can help advance human rights and civil liberties for all Korean people.

In recent years, some Members of Congress have also highlighted the unacceptably high cost of a military conflict with North Korea as a way to shine light on the importance of diplomacy with

⁶ *Reference Material on the Development of Inter-Korean Relations Act*, Ministry of Unification, Republic of Korea, April 2021.

⁷ Conservative governments have at times discouraged launching of leaflets during tense moments in inter-Korea relations. For example, the Park Geun-hye administration reportedly invoked the National Security law in 2015 to stop a group from sending balloons across the border. For details, see "Balloon launches halted amid inter-Korean dialogue: Religious group," *NK News*, August 25, 2015, <https://www.nknews.org/2015/08/balloon-launches-halted-amid-inter-korean-dialogue-religious-group/>.

North Korea. For example, two months after President Trump repeated his threat to “totally destroy North Korea,”⁸ Representatives Ted Lieu of the House Committee on Foreign Affairs and Ruben Gallego of the House Armed Services Committee asked then-Secretary of Defense Jim Mattis how the United States would stop North Korea’s nuclear weapons program. His answer? The only way to locate and secure all of North Korea’s nuclear weapons sites “with complete certainty” would be through a ground invasion.⁹

A week later, fourteen U.S. senators and representatives who are veterans issued a bipartisan statement calling for “every diplomatic and economic option” before military options are considered. They cited the Congressional Research Service’s estimate that as many as 25 million people on either side of the 38th parallel, including 100,000 American lives, would be at risk if conflict were to break out.¹⁰

In January 2018, Senator Tim Kaine published an op-ed on CNN calling for a more pragmatic approach toward North Korea. According to Senator Kaine, President Trump needed to “engage in dialogue without precondition and see whether an offer of a peace deal might provide North Korea with a degree of comfort that would reduce its motive to keep pouring resources into militarization, instead of meeting the needs of its people.”¹¹ In other words, the complexity of the North Korea challenge demanded exploring all diplomatic options, such as ending the Korean War and enabling the two Koreas to co-exist without the constant threat of war.

Such a position aligns with the American public’s desires. The Eurasia Group Foundation’s September 2020 poll showed that majorities of both Trump and Biden supporters believe the United States should negotiate directly with adversaries to avoid military confrontation, even if they are human rights abusers.¹²

Conclusion

This year marks the 71st anniversary of the start of the Korean War, a conflict that epitomizes “endless war.” While most Americans may think that the Korean War is a distant affair, the conflict

⁸ “Remarks by President Trump to the 72nd Session of the United Nations General Assembly,” *White House*, September 19, 2017.

⁹ *Letter from Rear Adm. Michael J. Dumont to Rep. Ted Lieu*, October 27, 2017, <https://lieu.house.gov/sites/lieu.house.gov/files/Response%20to%20TWL-RG%20Letter%20on%20NK.pdf>.

¹⁰ “Press release: Rep. Lieu leads 16 veteran member statement on dangers of group invasion in North Korea,” *Office of Congressman Ted Lieu*, November 4, 2017.

¹¹ For other examples of congressional activities on North Korea, see Jessica Lee, “Dem, GOP lawmakers push Blinken to pursue North Korea diplomacy,” *Responsible Statecraft*, March 11, 2021, <https://responsiblestatecraft.org/2021/03/11/dem-gop-lawmakers-push-blinken-to-pursue-north-korea-diplomacy/>.

¹² Mark Hannah and Caroline Gray, “Diplomacy & Restraint: The Worldview of American Voters,” *The Eurasia Group Foundation*, September 2020, <https://egfound.org/2020/11/vox-populi/#fullreport>.

continues to have a profound impact on the lives of those Americans and Koreans who fought in it.

The Korean War's legacy is especially pronounced in the historically aware and democratized South Korea. The unresolved status of what was essentially a civil war between people of the same ethnic origin has maneuvered North and South into positions of permanent hostility. Many South Koreans fear North Korea might resume hostilities, whether by launching artillery barrages,¹³ infiltrating the South via secret tunnels,¹⁴ or mounting psychological warfare operations.¹⁵ South Koreans also fear expressing sentiments that might appear to be “pro-North Korea,” which could have dire implications for their reputations.¹⁶

Decades after the armistice agreement temporarily ended the war, South Korea remains dependent on other countries to bring about peace. The ROK is not a party to the armistice agreement, complicating any South Korea-led peace efforts. Such efforts have been endorsed by both liberal and conservative governments alike. For example, in September 2005 the liberal Roh Moo-hyun administration agreed to a set of commitments made in the Six-Party Talks regarding denuclearization and the aspirations for a peace treaty to formally end the Korean War. The subsequent conservative government led by President Lee Myung-bak backed a policy called “Mutual Benefits and Common Prosperity” that emphasized cooperation and co-existence between the two Koreas.¹⁷

Unfortunately, no matter which political party is in control, South Korea is constrained in its ability to foster inter-Korean cooperation and mutual understanding to reduce tension on the peninsula. In the meantime, the absence of peace has allowed the most hardline elements of the North Korean regime to continue to foster a siege mentality that is hostile to the South and neighboring countries.

In conclusion, any U.S. involvement on the leaflet issue should be grounded in advancing our interest in a stable Korean Peninsula, rather than politicized to further a particular narrative about South Korea's commitment to democracy and freedom of expression.

¹³ “North Korean artillery hits South Korean island,” *BBC*, November 23, 2010.

¹⁴ Sebastien Roblin, “North Korea Has a Secret Weapon: Tunnels, Lots of Tunnels,” *The National Interest*, February 27, 2020.

¹⁵ Choe Sang-Hun, “At South Korean museum, 'paper bombs' of the Cold War,” *New York Times*, May 1, 2008.

¹⁶ Whereas it was relatively easy to distinguish enemies in battles fought in Europe during World War II through appearance, language, and customs, it was far more challenging to differentiate between North Koreans and South Koreans who fought against one another in the Korean War. South Korean men and women who were suspected of harboring support for North Korean guerillas or perceived to be left-leaning were killed. Whole cities and towns were burned if they were considered to house North Korean spies during the war.

¹⁷ “The Lee Myung-bak Government's North Korea Policy,” *Korea Institute for National Unification*, May 2009, <http://repo.kinu.or.kr/bitstream/2015.oak/1372/1/0001396359.pdf>.