

BACKGROUND

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Leveraging U.S. Law to Advocate for Human Rights in Talks with North Korea

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Abstract

As the U.S. prepares for a second summit with North Korea, President Trump and negotiators should consider that U.S. policy has historically addressed both values and interests—empowered with a mix of legal authorities that obligate the U.S. to promote human rights. The U.S. must be more strategic in how it employs diplomacy and sanctions against North Korea. Diplomacy should be tied not only to concessions on its nuclear program, but to human rights improvements, as well—especially since this is the way the U.S. sanctions program is already constructed. The U.S. must communicate through word and deed that North Korea cannot and will not be viewed as a respectable actor in the international community if it continues to engage in human rights abuses that shock the conscience of humanity.

Officials in the Trump Administration often repeat the statement that the U.S. will lift no sanctions against North Korea until it denuclearizes.¹ While a worthy goal, this statement fails to acknowledge the complexity of U.S. policy toward North Korea, especially the fact that sanctions against North Korea are instituted for a myriad of reasons, many of which are unrelated to denuclearization.

U.S. sanctions against North Korea include North Korea's designation as a "primary money laundering concern" under Section 311 of the USA Patriot Act,² and the determination by the Trump Administration that North Korea is a state sponsor of terrorism.³ Equally salient are sanctions instituted on human rights grounds designed to address what the 2014 United Nations Commission of Inquiry (COI) report called "crimes against humanity." While the criterion for sanctions relief may be met under Section 311⁴ or the state spon-

KEY POINTS

- There is a clear link between human rights and national security issues in North Korea. Those linkages are reflected in current U.S. law.
- Current law obligates the U.S. government to press North Korea to make progress on denuclearization and human rights.
- The U.S. should make more active use of executive authorities, the North Korean Sanctions and Policy Enhancement Act, and the Countering America's Adversaries Through Sanctions Act, among other sanctions authorities, to hold North Korea accountable for human rights violations.
- The U.S. should craft diplomacy, especially going into the second summit with Kim Jong-un, that reflects policy priorities related to both national security and human rights in North Korea.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3388>

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sor of terrorism⁵ designation could be lifted if North Korea denuclearized, sanctions instituted for human rights violations still could not be lifted.

Sanctions instituted on human rights grounds are varied and increasing. The first sanctions against North Korea on human rights grounds were levied against Kim Jong-un, 10 senior North Korean officials, and five North Korean entities under Executive Orders (EOs) 13687 and 13722.⁶ The congressionally mandated North Korea Sanctions and Policy Enhancement Act (NKSPA) signed into law in 2016 addresses North Korea's poor track record on weapons proliferation and human rights.⁷ The law conditions sanctions relief and removal on North Korea addressing political prison camps, as well as other human rights concerns, including censorship, abductions, and issues regarding North and South Korean family reunifications.⁸ The 2017 Countering America's Adversaries Through Sanctions Act (CAATSA) enables the U.S. to restrict imports of any goods made by North Korean citizens because it is presumed that

the goods were made with forced labor and therefore prohibited under the Tariff Act of 1930.⁹

There are other forms of sanctions levied on human rights grounds against North Korea, and yet, human rights issues were largely left out of the conversation when President Donald Trump met with Kim Jong-un in Singapore in June 2018.¹⁰

Commitments made between the two countries at the Singapore Summit may, in part, form the basis for raising these issues at the second summit, expected to take place in Vietnam on February 27 and 28, 2019.¹¹ It is even more important for Secretary of State Mike Pompeo and Special Representative for North Korea Policy Steve Biegun to raise human rights issues in closed-door meetings with their North Korean counterparts.

In Singapore, the U.S. and North Korea agreed "to establish new U.S.–DPRK [Democratic People's Republic of Korea] relations in accordance with the desire of the peoples of the two countries for peace and prosperity."¹² A new, authentic relationship

1. Matthew Pennington, "Pompeo: No End to NKorea Sanctions Until 'Denuclearization,'" Associated Press, September 23, 2018, <https://apnews.com/0311ee6e4bad49f7a77374d00f45a297> (accessed December 27, 2018).
2. U.S. Department of the Treasury, Financial Crimes Enforcement Network, Advisory on North Korea's Use of the International Financial System, November 2, 2017, <https://www.fincen.gov/sites/default/files/advisory/2017-11-02/DPRK%20Advisory%20FINAL%20508%20C.pdf> (accessed December 27, 2018).
3. U.S. Department of State, "State Sponsors of Terrorism," <https://www.state.gov/j/ct/list/c14151.htm> (accessed February 8, 2019).
4. Financial Crimes Enforcement Network and U.S. Department of the Treasury, "Imposition of Special Measure Against North Korea as a Jurisdiction of Primary Money Laundering Concern," *Federal Register*, Vol. 81, No. 217 (November 9, 2016), p. 78715, <https://www.federalregister.gov/documents/2016/11/09/2016-27049/imposition-of-special-measure-against-north-korea-as-a-jurisdiction-of-primary-money-laundering> (accessed February 8, 2019), and Legal Information Institute, 31 U.S. Code § 5318A—Special measures for jurisdictions, financial institutions, international transactions or types of accounts of primary money laundering concern, <https://www.law.cornell.edu/uscode/text/31/5318A> (accessed February 8, 2019).
5. 50 U.S. Code § 2406, Foreign policy controls, <https://www.govinfo.gov/content/pkg/USCODE-2011-title50/html/USCODE-2011-title50-app-exportreg-sec2405.htm> (accessed February 8, 2019).
6. News release, "Treasury Sanctions North Korean Senior Officials and Entities Associated with Human Rights Abuses," U.S. Department of the Treasury, July 6, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0506.aspx> (accessed February 8, 2019).
7. H.R. 757—North Korea Sanctions and Policy Enhancement Act of 2016, U.S. Congress, February 16, 2016, <https://www.congress.gov/bill/114th-congress/house-bill/757/text/enr?q=%7B%22search%22%3A%5B%22%5C%22%22%5D%7D#toc-HE596D37307E544EA97771ECE6445202B> (accessed December 27, 2018).
8. *Ibid.*
9. U.S. Department of Homeland Security, "CAATSA Title III Section 321(b) FAQs," March 30, 2018, <https://www.dhs.gov/news/2018/03/30/caatsa-title-iii-section-321b-faqs> (accessed December 27, 2018).
10. Olivia Enos, "Don't Let Kim Jong-un Ignore Human Rights," *Forbes*, June 25, 2018, <https://www.forbes.com/sites/oliviaenos/2018/06/25/dont-let-kim-jong-un-ignore-human-rights/#6a97938e4c66> (accessed December 27, 2018).
11. Nicole Chavez, "President Trump Says Next Meeting with North Korean Leader Kim Jong Un Likely In Early 2019," CNN, December 3, 2018, <https://www.cnn.com/2018/12/02/politics/trump-kim-jong-un-meeting-summit/index.html> (accessed December 27, 2018).
12. The White House, "Joint Statement of President Donald J. Trump of the United States of America and Chairman Kim Jong Un of the Democratic People's Republic of Korea at the Singapore Summit," June 12, 2018, <https://www.whitehouse.gov/briefings-statements/joint-statement-president-donald-j-trump-united-states-america-chairman-kim-jong-un-democratic-peoples-republic-korea-singapore-summit/> (accessed February 11, 2019).

between the U.S. and North Korea necessitates significant improvements in human rights.

Beyond commitments made at the 2018 summit, however, is the reality that the U.S. is obligated to enforce its own laws. That means, necessarily, that the U.S. cannot commit to lifting all sanctions if North Korea only denuclearizes and does not address human rights issues. U.S. law requires Pyongyang to curtail its human rights violations *before* receiving certain sanctions relief. Furthermore, improvements in human rights can be used as a litmus test to determine North Korea's sincerity in its commitment to both peace and disarmament.

As the U.S. prepares for a second summit with Kim Jong-un, President Trump and negotiators should consider that U.S. foreign policy has historically addressed both values and interests—so much so that Congress and the executive branch have a mix of legal authorities that obligate the U.S. to promote human rights.

How Human Rights and Security Are Connected in U.S. Law

The U.S. has long viewed human rights as part of the discussion with North Korea, but it was not until the initial sanctioning of Kim Jong-un in 2016 that there was a concerted effort to integrate human rights into legally required actions against the regime. It is arguable, likely even, that the Obama Administration took such a bold step in response to the release of the damning COI report on human rights in North Korea released by the U.N. in 2014. It was almost certainly as a result of the passage of tough new congressional legislation, the NKSPEA, that required the Administration to issue sanctions on human rights grounds and instituted requirements to ensure compliance.

Before then, North Korea received the usual slaps on the wrist—condemned annually in the State Department's Human Rights report; listed on Tier 3 (the worst designation a country can receive for failure to comply with anti-trafficking standards) in the Trafficking in Persons report; and labeled a "country of particular concern" in the International Religious Freedom report.¹³ The latter two reports include limited punitive measures, including some modest sanctions requirements. Sanctions under the International Religious Freedom Act, however, are usually waived and subsumed under the Jackson–Vanik Amendment.¹⁴ This means that before EO 13687, North Korea received no unique sanctions for its egregious human rights violations.

It is important to note that the U.S. employs strategies beyond sanctions to garner compliance from the regime in Pyongyang on human rights. These include efforts to promote information access in North Korea as required by the North Korean Human Rights Act, passed initially by Congress in 2004, and reauthorized in 2008 and again in 2018;¹⁵ annual engagements at the U.N., including resolutions that have been passed every year since the release of the COI on human rights;¹⁶ and a U.N. Security Council meeting held every year since 2014 (except for 2018) to shed light on egregious human rights violations committed in North Korea.¹⁷

Key U.S. laws designed to address North Korea's human rights abuse include:

The North Korea Sanctions and Policy Enhancement Act of 2016. Congress's passage of the NKSPEA explains the creation and more active use of EO authorities to hold North Korea accountable for human rights violations. It is arguably the single-most powerful tool for getting the U.S. government to act in response to North Korea's human

13. U.S. Department of State Bureau of Human Rights Democracy and Labor, "Democratic People's Republic of Korea 2017 Human Rights Report," <https://www.state.gov/documents/organization/277333.pdf> (accessed December 27, 2018); U.S. Department of State Office to Monitor and Combat Trafficking in Persons, "2018 Trafficking in Persons Report: Democratic People's Republic of Korea," <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282684.htm> (accessed December 27, 2018); and news release, "Religious Freedom Designations," Secretary of State, Michael R. Pompeo, <https://www.state.gov/secretary/remarks/2018/12/288006.htm> (accessed December 27, 2018).
14. Olivia Enos, "North Korea Should Be Held Accountable for Persecuting Christians," Heritage Foundation *Issue Brief* No. 4379, April 10, 2015, <https://www.heritage.org/religious-liberty/report/north-korea-should-be-held-accountable-persecuting-christians>.
15. H.R. 2061–North Korean Human Rights Reauthorization Act of 2017, U.S. Congress, <https://www.congress.gov/bill/115th-congress/house-bill/2061/text> (accessed December 27, 2018).
16. United Nations General Assembly, 73rd Session, Third Committee, "Situation of Human Rights in the Democratic People's Republic of Korea," 2018, <https://undocs.org/A/C.3/73/L.40> (accessed December 27, 2018).
17. Param-Preet Singh, "Giving North Korea Abuses a Free Pass," Human Rights Watch, December 9, 2018, <https://www.hrw.org/news/2018/12/09/giving-north-korea-abuses-free-pass> (accessed December 27, 2018).

rights violations. The NKSPEA brilliantly marries both human rights and national security issues. It does not view progress on denuclearization as antithetical to progress on human rights. In fact, the NKSPEA is very clear. In order to receive sanctions relief under Section 401, the U.S. must certify that North Korea is “taking verified steps to improve living conditions in its political prison camps.”¹⁸ According to Section 402, in order for NKSPEA sanctions to be lifted, the President must certify that North Korea has “releas[ed] all political prisoners, including the citizens of North Korea detained in North Korea’s political prison camps.”¹⁹ NKSPEA designations are *mandatory*—not only for persons involved in facilitating the production of weapons of mass destruction—but also for any individual who “knowingly engages in, is responsible for, or facilitates serious human rights abuses by the Government of North Korea.”²⁰

Unlike previous congressional sanctions legislation on North Korea, the NKSPEA has mandatory reporting requirements that force the executive branch to issue sanctions and publish annual reports on both security and human rights. Specifically, the NKSPEA required an initial report from the executive branch to Congress 120 days after it was enacted outlining individuals to be sanctioned on human rights grounds, and subsequent reports every 180 days after that. NKSPEA sanctions are among some of the toughest sanctions against North Korea because of these mandatory reporting requirements.

Executive Order 13722. Issued by President Barack Obama on March 18, 2016, EO 13722 permits

the Treasury to freeze the assets and restrict travel of any North Korean individual or entity who “engaged in, facilitated, or [is] responsible for an abuse or violation of human rights by the Government of North Korea or the Workers Party of Korea or any person acting for or on behalf of either.”²¹ Additional sanctionable activity under EO 13722 includes the use of North Korean forced labor, facilitating censorship, and threatening cybersecurity, among other activities. EO 13722 was first used in conjunction with EO 13687 to target Kim Jong-un and other North Korean individuals and entities on human rights grounds in July 2016.²² On January 19, 2017, the Treasury used EO 13722 to designate the North Korean Ministry of Labor and State Planning authorities as a target of sanctions, noting that it also previously designated the Ministry of State Security under the same authority in July 2016.²³ In October 2017, Treasury sanctioned the Military Security Command for its role as the North Korean military’s secret police and targeted the External Construction Bureau and the Ch’olhyo’n Overseas Construction Company for their role in facilitating forced labor of North Koreans.²⁴ EO 13722 has also been used to designate individuals and entities on non-human rights grounds.²⁵

Executive Order 13687. EO 13687, issued on January 2, 2015, is a much broader sanctioning authority. It primarily targets individuals on the basis on their status as a member of the North Korean government, not on human rights grounds. Nonetheless, as outlined in the previous section on EO 13722, it is frequently used in conjunction with other human

18. H.R. 757–North Korean Sanctions and Policy Enhancement Act of 2016, <https://www.congress.gov/bill/114th-congress/house-bill/757/text/enr?q=%7B%22search%22%3A%5B%22%5C%22hr757%5C%22%22%5D%7D#toc-HE596D37307E544EA97771ECE6445202B> (accessed December 27, 2018).

19. *Ibid.*

20. *Ibid.*

21. The President of the United States of America, “Executive Order 13722–Blocking Property of the Government of North Korea and the Workers’ Party of Korea, and Prohibiting Certain Transactions with Respect to North Korea,” *Federal Register*, Vol. 81, No. 53 (March 18, 2016), p. 14943, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/nk_eo_20160316.pdf (accessed December 27, 2018).

22. News release, “Treasury Sanctions North Korean Senior Officials and Entities Associated with Human Rights Abuses,” U.S. Department of the Treasury, July 6, 2016, <https://www.treasury.gov/press-center/press-releases/Pages/jl0506.aspx> (accessed December 27, 2018).

23. News release, “Treasury Sanctions Additional North Korean Officials and Entities in Response to the North Korean Regime’s Serious Human Rights Abuses and Censorship Activities,” U.S. Department of the Treasury, January 11, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/jl0699.aspx> (accessed December 27, 2018).

24. News release, “Treasury Sanctions Additional North Korean Officials and Entities in Response to the Regime’s Serious Human Rights Abuses and Censorship Activities,” U.S. Department of the Treasury, October 26, 2017, <https://www.treasury.gov/press-center/press-releases/Pages/sm0191.aspx> (accessed December 27, 2018).

25. News release, “Treasury Sanctions Individual Who Helped North Korea Acquire Oil,” U.S. Department of the Treasury, November 19, 2018, <https://home.treasury.gov/news/press-releases/sm552> (accessed December 27, 2018).

rights-specific sanctions to address North Korea's human rights violations.

Section 1 of EO 13687 outlines that the Treasury may target individuals specifically because of their membership in the North Korean government or the Korean Workers Party.²⁶ Like, EO 13722, EO 13687 makes reference to “the provocative, destabilizing, and repressive actions and policies of the Government of North Korea, including its destructive, coercive cyber-related actions during November and December 2014...and commission of serious human rights abuses.”²⁷ The EO was released partially in response to North Korea's cyberattack on Sony in November 2014, hence the reference to cyber espionage.²⁸

EO 13687 is often used in conjunction with 13722. All of the previous designations outlined above under EO 13722 also include designations of individuals made under EO 13687. The most recent Treasury designations for human rights-related offenses on December 10, 2018, employed only EO 13687 and designated three additional North Korean individuals for human rights abuses, specifically the role they played in restricting access to outside information.²⁹ Unfortunately, because these sanctions authorities predate the NKSPEA, they are not mandatory sanctions and the Administration has the authority to drop them without violating human rights requirements outlined in the NKSPEA.

Countering America's Adversaries Through Sanctions Act Title III, Section 321(b). Enacted

in August 2017, CAATSA Title III Section 321(b) is a highly effective and targeted tool to address the scourge of North Korean forced labor. Unlike the previous authorities outlined above, CAATSA provisions fall under the primary authority of the Department of Homeland Security, specifically the U.S. Customs and Border Protection (CBP). Treasury also gets involved when countries or sectors violate current U.S. sanctions against North Korea.³⁰ The CBP has issued a series of guidelines to make businesses aware of their vulnerabilities to forced labor in their supply chains, including a list of countries and sectors that disproportionately employ North Korean forced laborers.³¹

CAATSA Section 321(b) “creates a rebuttable presumption that significant goods, wares, merchandise, and articles mined, produced, or manufactured wholly or in part by North Korean nationals or North Korean citizens anywhere in the world are forced-labor goods prohibited from importation under the Tariff Act of 1930.”³² Because the Tariff Act of 1930 prohibits the importation of all goods produced with forced labor,³³ and all goods made by North Koreans are assumed to be produced with forced labor, goods produced by North Koreans are generally prohibited from being imported into the U.S. market, with few exceptions.³⁴

The CBP detained 57 shipments of goods suspected of being produced with forced labor—a total of \$6.3 million in goods.³⁵ Of that total, the CBP interdicted

26. News release, “Executive Order—Imposing Additional Sanctions with Respect to North Korea,” The White House, January 2, 2015, <https://obamawhitehouse.archives.gov/the-press-office/2015/01/02/executive-order-imposing-additional-sanctions-respect-north-korea> (accessed December 27, 2018).

27. *Ibid.*

28. Lori Grisham, “Timeline: North Korea and the Sony Pictures Hack,” *USA Today*, December 18, 2014, <https://www.usatoday.com/story/news/nation-now/2014/12/18/sony-hack-timeline-interview-north-korea/20601645/> (accessed December 27, 2018).

29. News release, “Treasury Sanctions North Korean Officials and Entities in Response to the Regime's Serious Human Rights Abuses and Censorship,” U.S. Department of the Treasury, December 10, 2018, <https://home.treasury.gov/news/press-releases/sm568> (accessed December 27, 2018).

30. U.S. Departments of the Treasury, State, and Homeland Security, “North Korea Sanctions Enforcement Actions Advisory: Risks for Businesses with Supply Chain Links to North Korea,” July 23, 2018, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/dpr_supplychain_advisory_07232018.pdf (accessed December 27, 2018).

31. *Ibid.*

32. U.S. Department of Homeland Security, “CAATSA Title III Section 321(b) FAQs,” March 30, 2018, <https://www.dhs.gov/news/2018/03/30/caatsa-title-iii-section-321b-faqs> (accessed December 27, 2018).

33. Legal Information Institute, 19 U.S. Code Chapter 4—Tariff Act of 1930, <https://www.law.cornell.edu/uscode/text/19/chapter-4> (accessed February 8, 2019).

34. “Kaesong Is a Buffalo Jump for Amoral Politicians & Unlawyered Cretins,” Free Korea blog, July 26, 2018, <https://freetokorea.us/2018/07/26/kaesong-is-a-buffalo-jump-for-amoral-politicians-unlawyered-cretins/> (accessed February 8, 2019).

35. News release, “CBP Advances US Trade Enforcement, Facilitation,” U.S. Customs and Border Protection, February 28, 2018, <https://www.cbp.gov/newsroom/national-media-release/cbp-advances-us-trade-enforcement-facilitation> (accessed December 27, 2018).

“15 shipments of seafood processed in China by North Korean workers—products that were destined to [sic] U.S. supermarkets and restaurants. In November, for example, the CBP seized more than 10,000 cartons (valued at more than \$200,000) of frozen squid manufactured with North Korean labor.”³⁶ The CBP accepts tips from any person who believes that goods being imported to the U.S. were produced with forced labor.³⁷ This tool is broad-sweeping and, if used appropriately, has the potential to significantly ramp up the Trump Administration’s policy of maximum pressure and engagement toward North Korea.

The Global Magnitsky Human Rights Accountability Act. The Global Magnitsky Act, originally passed by Congress in 2016, was later modified through EO 13818 in 2017³⁸ to enable Treasury to sanction any individual or entity determined “to be responsible for or complicit in, or to have directly or indirectly engaged in, serious human rights abuse.”³⁹ The U.S. has not yet used Global Magnitsky authorities against anyone in North Korea, perhaps because Treasury has other tools it can use that more explicitly address human rights abuses committed by North Korean officials and entities. Nonetheless, The Global Magnitsky Act is a positive tool that can and should be used against North Korean officials should their offenses not fall under the other EO authorities.

Sanctions are primarily instituted to shift risk in an effort to modify the maligned behavior of the sanctioned individual or entity. This includes, among other priorities, enforcing applicable U.S. laws, imposing penalties on those that violate these U.S. laws, restricting access to illegal resources for weapons programs, constraining proliferation, and doing so with the purpose of altering behavior. The fact that the U.S. has sanctions authorities, not only to address North Korea’s weapons programs, but also to address its human rights record, sends an important mes-

sage: The U.S. believes that it can shift the behavior of human rights abusers.

Diplomacy has the potential to shift risk, as well. For example, diplomacy with North Korea is presently conditioned on North Korea’s willingness to make concessions—or appear to make concessions—on its various weapons programs, especially nuclear weapons.

The Singapore Summit was a missed opportunity for the Trump Administration to shift Kim Jong-un’s behavior. It was also a missed opportunity to test the dictator’s willingness to accept reform, or even formal co-existence with South Korea’s democracy. This opportunity should not be missed again.

The U.S. must be more strategic about the way that it employs diplomacy and sanctions against North Korea. Diplomacy should be tied not only to concessions on its nuclear program, but to human rights improvements, as well—especially since this is the way the U.S. law is already constructed. The U.S. must communicate through word and deed that North Korea cannot and will not be viewed as a respectable actor in the international community if it continues to engage in human rights abuses that shock the conscience of humanity.

Using Existing U.S. Law to Integrate Human Rights Issues into Talks with North Korea

Given that tools exist and laws mandate that North Korea take steps toward rectifying its human rights record, the U.S. should seek to integrate human rights into dialogue with North Korea.

Shortly before the Singapore Summit, the Trump Administration fell silent on human rights abuses in North Korea. The silence continues. This was a shame coming on the heels of significant action—including the release of the three Americans ahead

36. Kevin McAleenan, “TFTEA—Two Years and Counting,” U.S. Customs and Border Patrol, February 28, 2018, <https://www.cbp.gov/newsroom/blogs/tftea-two-years-and-counting> (accessed December 27, 2018).

37. U.S. Customs and Border Protection, “Forced Labor,” <https://www.cbp.gov/trade/programs-administration/forced-labor> (accessed December 27, 2018).

38. The White House, Executive Order 13818, “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,” *Federal Register*, Vol. 82, No. 246 (December 26, 2018), p. 60839, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/glomag_eo.pdf (accessed December 27, 2018), and International Corporate Accountability Roundtable and The Enough Project, “U.S. Sanctions Regimes & Human Rights Accountability Strategies,” June 2018, https://enoughproject.org/wp-content/uploads/2018/06/ToolsofTrade_Enough_ICAR_June2018.pdf (accessed December 27, 2018).

39. The White House, Executive Order 13818, “Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,” *Federal Register*, p. 60839.

of the summit⁴⁰—that should have emboldened U.S. negotiators to raise human rights concerns with North Korea.

With the second summit just weeks away, the Administration should:

- **Raise human rights considerations as a component of negotiations with North Korea.** The free and open Indo-Pacific strategy as laid out by the Trump Administration includes promotion of human rights, freedom, and values in its foreign policy toward Asia. Since North Korea is a top foreign policy priority, human rights should play a central role, not only in word, but in policy and practice. That means that human rights should play an integral role in the Vietnam Summit and closed-door meetings with North Korea. In a second summit, or in closed-door meetings, the U.S. should make human rights milestones a component of negotiations. If the U.S. is willing to call for complete, verifiable, irreversible dismantlement (CVID) of North Korea's nuclear program, for example, it should be willing to call for eventual CVID of prison camps.⁴¹
- **Make public some of the incremental steps the U.S. expects the Kim regime to take to ensure progress.** For instance, the Administration can request that the regime grant access to the prison camps to the International Committee of the Red Cross, the World Food Programme, or relevant U.N. agencies. Or the Administration can request that the regime release women, children, and the elderly from the camps.⁴² Like with the nuclear strategy, U.S. strategy to address North Korea's human rights abuses must be incremental. A first request should not be CVID of all
- prison camps, but something that puts in place the infrastructure and oversight for eventual dismantlement.⁴³
- **Press Kim Jong-un to uphold commitments made in Singapore.** Kim Jong-un has been dragging his feet on many aspects of what he agreed to in Singapore. No tangible progress has been made on the nuclear front—North Korea has taken primarily cosmetic steps to demonstrate sincerity. But the two countries did commit to a new era of relations between the U.S. and North Korea. This new era should be marked by authenticity and a willingness to address some of the thorniest issues—including human rights. The U.S. should seek more ways to raise concerns over human rights both publically and privately. North Korea has demonstrated that it responds when criticized publically on human rights—taking unprecedented actions after the release of the COI report and releasing the three American prisoners.⁴⁴ U.S. negotiators should be less timid and take bold action to raise some of the issues they typically shy away from, in order to bring North Korea into 21st-century diplomacy.
- **Make liberal use of human rights sanctions authorities.** As outlined above, Congress and the Administration currently possess the authority to hold the regime in Pyongyang accountable for its human rights violations. Yet, President Trump claimed that he decided not to sanction 300 North Korean individuals and entities over concerns that instituting such sanctions might derail ongoing negotiations.⁴⁵ But it is the U.S. government's responsibility to enforce its laws, and the likelihood that some percentage of those

40. Bill Chappell, "North Korea Releases 3 Americans as Pompeo's Visit Concludes," NPR, May 9, 2018, <https://www.npr.org/sections/thetwo-way/2018/05/09/609684331/north-korea-releases-3-americans-as-pompeos-visit-concludes> (accessed December 27, 2018).

41. Olivia Enos, "Why the U.S. Must Discuss North Korea's Prison Camps at the Trump-Kim Summit," Heritage Foundation *Backgrounders* No. 3322, June 1, 2018, <https://www.heritage.org/global-politics/report/why-the-us-must-discuss-north-korea-prison-camps-the-trump-kim-summit>.

42. *Ibid.*

43. *Ibid.*

44. Dan Aum and Michelle Cho, "The Narrow Path: Pursuing Human Rights and National Security Objectives in North Korea," National Bureau of Asian Research, July 17, 2018, <https://www.nbr.org/publication/the-narrow-path-pursuing-human-rights-and-national-security-objectives-in-north-korea/> (accessed December 27, 2018).

45. Andrew Buncombe, "Donald Trump Has Agreed to Lift Sanctions on North Korea, Claims Nation's State Media," *Independent*, June 13, 2018, <https://www.independent.co.uk/news/world/asia/donald-trump-north-korea-sanctions-lift-agreement-state-media-korean-korean-central-news-agency-a8396251.html> (accessed December 27, 2018).

300 or more individuals could be sanctioned on human rights grounds is high. More specifically, the U.S. government should target trading companies, such as Sinheung Trading, that supports one of the worst human rights violators in the North Korean government: the Ministry of State Security.⁴⁶ The Administration should institute a truly maximum-pressure strategy and move forward with those tools, not only sanctioning North Korean entities and individuals, but also making use of the secondary-sanctions authority that it possesses through the NKSPEA. Then, and only then, will U.S. sanctioning authorities hamstring bad actors in such a way that it creates space for the average North Korean to serve as a catalyst for change through dissent.

- **Make more liberal use of CAATSA as a component of the maximum-pressure strategy.** CAATSA is arguably a much tougher sanctioning authority than almost any Treasury tool. Given that anyone can report to the CBP if he or she believes that goods imported to the U.S. were produced with North Korean forced laborers, nongovernmental organizations and civil society institutions should develop better coordinated measures to track goods imported to the U.S. from North Korea and China, and report those findings to the CBP.
- **Refrain from issuing sanctions exemptions for North Korean officials.** Two key negotiators on the North Korean side, Kim Yong-chul and Kim Yo-Jong, traveled to the U.S. and South Korea, despite being designated as “Specially Designated Nationals” by the U.S. Treasury. Both were listed, in part, on human rights grounds. The U.S. should clarify whether sanctions waivers are being issued, frankly consider the message this sends to other bad actors in the North Korean regime, and refrain from issuing such exemptions in the future. This is the best way for the U.S. to hold a firm line on sanctions.

- **Appoint a Special Envoy for Human Rights in North Korea.** The Administration previously stated its intent to eliminate the position of Special Envoy for Human Rights in North Korea by folding the position into the role of the Under Secretary of State for Civilian Security, Democracy, and Human rights, a position previously held by Jay Lefkowitz and, most recently, Bob King. When the Administration initially decided to fold the position in the Special Representative role, the North Korean Human Rights Act—the landmark congressional legislation on human rights in North Korea—had not yet been reauthorized. The Special Envoy position was originally created by that legislation and its reauthorization in 2018 means that the Administration is legally bound to appoint someone to that position. The Administration should do so swiftly.

- **Request a U.N. Security Council session on human rights in North Korea, as has been held every year from 2014 to 2017.** In December 2018, the U.S. failed to garner enough votes to hold a U.N. Security Council meeting on the human rights situation there. Such a meeting has been held every year since the release of the COI report in 2014. To hold the meeting, nine members of the 15-member Security Council must vote in favor of the resolution. In addition to the usual suspects that oppose human rights resolutions, the Ivory Coast voted against the resolution, allegedly at China’s bidding.⁴⁷ While the U.S. indicated that this was a postponement, not a cancellation, of the critical U.N. meeting, it gave the appearance of letting North Korea off the hook in the midst of stalled denuclearization negotiations. The U.S. should press forward with such a meeting in 2019.

Congress should:

- **Press the Administration to raise human rights issues during summits and closed-door meetings.** Congress has an important role to play in holding the Administration accountable on efforts to promote human rights. Congress already

46. “Rape, Revenge, Sanctions & North Korea’s Hated Ministry of Love,” Free Korea blog, December 10, 2018, <https://freekorea.us/2018/12/10/extortion-rape-revenge-sanctions-north-koreas-hated-ministry-of-love/> (accessed February 8, 2019).

47. Singh, “Giving North Korea Abuses a Free Pass.”

took leadership in 2018 when it reauthorized the North Korean Human Rights Act, which requires the Administration to, for example, appoint a Special Envoy for Human Rights in North Korea,⁴⁸ improve the North Korean public's access to outside information, and promote democracy and freedom through U.S. programming.⁴⁹ Since Republicans have now lost control of the House, Congress is likely to be far more active in questioning the Administration. Concern for human rights in North Korea has historically been a bipartisan issue and should continue to be an area of focus for Members of both parties.

Conclusion

Policymakers in Washington should not be left scratching their heads about what to do regarding human rights in North Korea. Members of Congress and the Administration possess many tools with the potential to shift the risk and behavior of the North Korean government. They should make more strategic and liberal use of human-rights-related sanctions authorities in concert with diplomatic efforts to extract concessions from Kim Jong-un on human rights. It is, after all, in their interest to do so.

The nexus between human rights and national security concerns is clear.⁵⁰ Forced labor in prison camps is free labor for the regime—labor that is likely being used as a part of the missile and weapons program, and which is also likely being used as a guinea pig population to test chemical and biological weapons. Forced labor serves as a financial resource for the continued development of North Korea's rogue missile and nuclear program. Poignantly, a regime that terrorizes and abuses its own population is that much more likely to terrorize the populations of South Korea and the United States, not stopping short of using weapons of mass destruction. The U.S. must be clear-eyed about the linkages between human rights and national security, and craft diplomacy accordingly.

Based on current U.S. law, Pyongyang cannot be sanctions-free unless and until it makes forward progress on denuclearization and human rights. U.S. policymakers would do well to bear this in mind and shift negotiating strategy accordingly—especially as they head into a second summit with North Korea.

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48. 22 U.S. Code 7817, Special Envoy on North Korean Human Rights Issues, [http://uscode.house.gov/view.xhtml?req=\(title:22%20section:7817%20edition:prelim](http://uscode.house.gov/view.xhtml?req=(title:22%20section:7817%20edition:prelim) (accessed February 8, 2019), and Olivia Enos and Brett D. Schaefer, "State Department Reform Should Retain Emphasis on North Korean Human Rights," Heritage Foundation *Issue Brief* No. 4763, September 14, 2017, <https://www.heritage.org/global-politics/report/state-department-reform-should-retain-emphasis-north-korean-human-rights>.

49. H.R. 2061–North Korean Human Rights Act of 2017, U.S. Congress, <https://www.congress.gov/bill/115th-congress/house-bill/2061/text> (accessed December 27, 2018).

50. Enos, "Why the U.S. Must Discuss Prison Camps at the Trump–Kim Summit."