

A Statement for the Record from Ji Seong-ho, National Assembly Member

April 15, 2021

Respectfully, Christopher H. Smith and James P. McGovern, co-chairmen of Tom Lantos Human Rights Commission and members of the Commission,

Thank you very much for holding the hearing.

It's an honor to give me an opportunity to submit a Statement for the Record.

My name is Ji Seong-ho. As a National Assembly member as well as a victim of human rights violations by the North Korean regime, I believe I can see how the Act on the Prohibition of Scattering Leaflets into North Korea is unreasonable and problematic better than anyone. Moreover, I still feel sad and regret to witness the prohibition bill passed for political reasons helplessly on the floor of the National Assembly, without any opportunities to properly discuss and examine the bill.

In this vein, I truly hope this Statement for the Record will be useful, even on a small scale, to bring about constructive and just outcomes and thus practical improvements in the human rights of the North Korean people.

The Act on the Prohibition of Scattering Leaflets into North Korea is problematic primarily in two aspects.

First, the act is problematic from the perspective of internal political affairs.

The Moon Jae-in administration, which was inaugurated in 2017, has prioritized dialogue with North Korea, simply counting on the good intentions of the North, and strategically chosen not to focus on improving the human rights of the North Korean people under its political goal of a "Peace-building Process on the Korean Peninsula."

This is the why an "ambassador for North Korean Human Rights Issues" has not been designated yet, and no efforts have made to build a "North Korean Human Rights Foundation" over more than four years, since the North Korean Human Rights Act was enacted in 2016 to prescribe to do so after years of parliamentary wrangling between the governing and opposition parties.

Under these circumstances, in June 2020, North Korea's Kim Yo-jong—the Deputy Director of the Publicity and Information Department of the Central Committee of the Workers' Party of Korea—harshly criticized the South Korean government for failing to stop civic organizations from scattering leaflets into North Korea by floating giant balloons and demanded that the government establish a "law to stop such activities." In just a couple of hours, the South Korean government officially accepted Kim's demand by saying, "We will prohibit the delivery of leaflets by floating balloons and take one step further by making the prohibition into a law as an immediate measure." That is how the *Development of Inter-Korean Relations Act* (also known as the Act on the Prohibition of Scattering Leaflets into North Korea) was created.

Considering the act's content, background and timing were precisely intertwined with the demands from the North, there is a reasonable suspicion that our government rushed into

proposing the bill, absurdly responsive to the criticism and demands from the North.

Just a few days later, the North deliberately demolished the inter-Korean liaison office that was constructed by the South Korean government in Gaeseong, on the pretext of leaflets sent toward North Korea, and blocked communication channels between the South and North. For the six months after the event, the opposition conservative party, informally and formally, opposed and exercised their veto regarding the bill, even staging a filibuster in the National Assembly. However, the governing Democratic Party of Korea unilaterally voted to pass the bill to enact the Act on the Prohibition of Scattering Leaflets into North Korea in December 2020.

Probably influenced by the South Korean government's submissive attitude, North Korea boldly exhibited provocative actions in diverse spheres with the upper hand in inter-Korean relations. In this way, the Moon administration, which is pro-North Korea, has lost the control over bilateral relations to the North Korean regime.

Indeed, North Korea fired gunshots brutally and unconditionally at a government employee of the Ministry of Oceans and Fisheries of the Republic of Korea, who was unarmed and drifting in the West Sea to reach the North Korean coast, to his death and burnt his body. More recently, the regime provoked us by launching missiles into the West Sea.

What I cannot understand as a citizen as well as a National Assembly member of the Republic of Korea is that our government has turned a blind eye to or even tried to understand in any form the North's provocative actions without holding the North responsible for their actions when the government has to put the life and safety of the people before anything and stand strong against external pressures and oppression on the people at all times.

The prohibition act proves our government's abysmal "lack of human rights sensitivity" by submitting to the North but holding its citizens and civic organizations legally and systematically accountable for scattering leaflets. This is also the case with the tragic gunshots involving the death of a government employee floating adrift in the nation's waters. Even after the tragedy, the South Korean government opted not to lead an international investigation into North Korea and, worse, declined to co-sponsor the UN resolution on North Korean human rights for three years in a row.

Next, the prohibition act is unconstitutional in the Republic of Korea.

After the governing party took advantage of its "majority" party status in the National Assembly to pass the bill forcibly without a consensus from opposition parties, the prohibition act is faced with the critical dilemma of "whether it abides by the *Constitution of the Republic of Korea* or not," as well as whether it has "democratic legitimacy" in its political backdrop.

First, the act violates the essential basic rights, including "freedom of expression," that are guaranteed by the *Constitution*.

Since the National Human Rights Commission of Korea ruled in 2015 that freedom of expression may not be restricted due to North Korean threats,¹ the previous administration had

¹ A statement of the Whole House Committee, *National Human Rights Commission of Korea's stance on the restriction on scattering leaflets into North Korea*, January 26, 2015.)

maintained such a position.

However, the incumbent government insists that freedom of expression may be restricted based on legal grounds when its exercise poses an “obvious and existing threat” to national security, the maintenance of law and order or for public welfare—citing the safety issues of residents and unnecessary tension in border areas as examples.

This is a principle that freedom of expression may be restricted only when there is an “obvious and existing threat” that will certainly lead to harmful consequences. In other words, freedom of expression must not be restricted due to a “vague future risk” or a “remote bad tendency.”

As a basic inalienable right guaranteed in the *Constitution of the Republic of Korea*², freedom of expression is an essential and core right needed to realize national sovereignty and develop a democratic society. It is the duty of our government to do everything it can to protect freedom of expression, but the government has instead destroyed it.

Scattering leaflets into North Korea is not only a means of expressing and conveying our citizens’ opinions and attempting to communicate with their Northern compatriots but also contributes to satisfying the “right to know” of the North Korean people, who are also citizens of the Republic of Korea under the *Constitution*. Therefore, the scattering adheres sufficiently to constitutional values.

Under international law, both South and North Korea are obliged to respect and exercise freedom of expression as members of *the International Covenant on Civil and Political Rights*.³ Yet the Korean Peninsula ended up giving up and violating the international covenant while North Korea frequently makes threats such as military threats and provocations toward the South under the pretext of the leaflet propaganda and the South subsequently banned the scattering of leaflets into the North Korea out of excessive fear.

Second, the prohibition act is obviously a “more restrictive alternative” that violates the “principle of proportionality” guaranteed by the *Constitution*.⁴

Even if the prohibition act intends—as alleged by the government and the governing party—to “protect the safety of the residents in border areas,” other existing provisions in South Korean law can impose restrictions and penalties.

As the Supreme Court of Korea ruled in 2016 in accordance with domestic laws including the *Act on The Performance of Duties by Police Officers, Inter-Korean Exchange and Cooperation Act, Public Waters Management and Reclamation Act, and Aviation Safety Act*, a new law that restricts freedom of speech is the “more restrictive alternative” in legislation.

Lastly, the prohibition act poses a consistency issue within our legal system.

2 Article 21-(1) of the *Constitution of the Republic of Korea*: “All citizens shall enjoy freedom of speech and the press, and freedom of assembly and association.”

3 Article 19-2 of the *International Covenant on Civil and Political Rights*: Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.

4 Article 37-(2) of the *Constitution of the Republic of Korea*: The freedoms and rights of citizens may be restricted by Act only when necessary for national security, the maintenance of law and order or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated.

The Ministry of Unification, which is the relevant ministry to the prohibition act, said it enacted the act to build a “domestic legal foundation to implement the key agreements stipulated in the *South-North Joint Communiqué of July 4, Inter-Korean Basic Agreement* and *Panmunjom Declaration, etc.*”

However, the prohibition act is “based on various agreements between the South and North” and, as a result, the constitutional provisions that “guarantee basic human rights” ironically were subordinated to such inter-Korean agreements, which are technically under the *Constitution*, the highest element in the legislative hierarchy.

In the end, the prohibition act came to be a clumsy, incomplete and evil law due to the South Korean government’s immoderate pro-North Korean sentiment and absurd legislative efforts.

Worse, the government did not carefully look at any logical contradictions while rushing into legislation over a short time frame.

The government stipulated in the act that the scattering of leaflets into North Korea hinders the advancement of inter-Korean relations, but, over the past decades, we have had five inter-Korean summits and signed five key agreements⁵ and engaged in diverse exchanges and collaboration, including family reunions, more than 20 times while leaflets were distributed into North Korea from time to time. Therefore, such indiscriminate, unilateral provisions are extremely biased and arbitrary.

Also, the “approval process” by the Minister of Unification as stipulated in the prohibition act is no different from “pre-censorship” or “pre-control.” It should be rather considered a manipulative violation of basic rights in the form of legislation and hinders the fundamental development of inter-Korean relations by banning the distribution of leaflets.

Moreover, the abolishment of pre-censorship against freedom of expression is one of the fruits of the fights for human rights and democratization in the history of the Republic of Korea. Mentioning the process in the prohibition act is unconstitutional and only proves that the government itself refuses to accept constitutional values and the development of liberal democracy.

Ladies and gentlemen,

Unlike South Korea, the North failed to protect its people from poverty and death over the decades since the Korean War in the face of regime instability under a brutal dictatorship and ill-functioning socialist system.

The human rights situation in North Korea has been eclipsed by flash propaganda for its political system, but the world is aware of the severity of the problem. As a North Korean defector, I vividly witnessed North Korea’s oppression of human rights and in individual freedom.

⁵ The *South-North Joint Communiqué of July 4, Inter-Korean Basic Agreement, North–South Joint Declaration of June 15, Declaration on the Advancement of South-North Korean Relations of October 4, and Panmunjom Declaration on Peace, Prosperity and Reunification of the Korean Peninsula of April 27, etc.*

Civic organizations scatter leaflets into North Korea as a minimal measure because they are desperate “not to remain silent” toward human rights abuses in North Korea.

They are trying to bring about internal changes in North Korean society in an effort to improve human rights, including the right to know and freedom of religion, by letting innocent North Korean people—the victims of human rights violations—know the true face of their regime.

Their desperate efforts are unfortunately “coerced into silence” on the state of human rights abuses in North Korea in the face of the Act on the Prohibition of Scattering Leaflets into North Korea.

Universal human rights are rights that the North Korean people deserve. I believe universal human rights will be a small, powerful driving force to transform the closed North Korean society into a freer society, as a seed planted for societal reform.

I truly hope you will find the injustice in the prohibition act and produce just outcomes, based on inexorable truths and principles on inherent and other basic human rights as well as freedom.

Thank you.