

NORTH KOREAN HUMAN RIGHTS ACT OF 2004

MAY 4, 2004.—Ordered to be printed

Mr. HYDE, from the Committee on International Relations,
submitted the following

R E P O R T

[To accompany H.R. 4011]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 4011) to promote human rights and freedom in the Democratic People's Republic of Korea, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “North Korean Human Rights Act of 2004”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings.
- Sec. 4. Purposes.
- Sec. 5. Definitions.

TITLE I—PROMOTING THE HUMAN RIGHTS OF NORTH KOREANS

- Sec. 101. Sense of congress regarding negotiations with North Korea.
- Sec. 102. Support for human rights and democracy programs.
- Sec. 103. Radio broadcasting to North Korea.
- Sec. 104. Actions to promote freedom of information.
- Sec. 105. United Nations Commission on Human Rights.

TITLE II—ASSISTING NORTH KOREANS IN NEED

- Sec. 201. Report on United States humanitarian assistance.
- Sec. 202. Assistance provided inside North Korea.
- Sec. 203. Assistance provided outside of North Korea.

TITLE III—PROTECTING NORTH KOREAN REFUGEES

- Sec. 301. United States policy toward refugees and defectors.
- Sec. 302. Eligibility for refugee or asylum consideration.
- Sec. 303. Refugee status.
- Sec. 304. Pursuit of first asylum policy.
- Sec. 305. United Nations High Commissioner for Refugees.
- Sec. 306. Humanitarian parole.
- Sec. 307. North Korean status adjustment.
- Sec. 308. Temporary protected status.
- Sec. 309. Right to accept employment.
- Sec. 310. Annual reports.

SEC. 3. FINDINGS.

Congress makes the following findings:

(1) According to the Department of State, the Government of North Korea is “a dictatorship under the absolute rule of Kim Jong Il” that continues to commit numerous, serious human rights abuses.

(2) The Government of North Korea attempts to control all information, artistic expression, academic works, and media activity inside North Korea and strictly curtails freedom of speech and access to foreign broadcasts.

(3) The Government of North Korea subjects all its citizens to systematic, intensive political and ideological indoctrination in support of the cult of personality glorifying Kim Jong Il and the late Kim Il Sung that approaches the level of a state religion.

(4) The Government of North Korea divides its population into categories, based on perceived loyalty to the leadership, which determines access to food, employment, higher education, place of residence, medical facilities, and other resources.

(5) According to the Department of State, “[t]he [North Korean] Penal Code is [d]raconian, stipulating capital punishment and confiscation of assets for a wide variety of ‘crimes against the revolution,’ including defection, attempted defection, slander of the policies of the Party or State, listening to foreign broadcasts, writing ‘reactionary’ letters, and possessing reactionary printed matter”.

(6) The Government of North Korea executes political prisoners, opponents of the regime, some repatriated defectors, some members of underground churches, and others, sometimes at public meetings attended by workers, students, and schoolchildren.

(7) The Government of North Korea holds an estimated 200,000 political prisoners in camps that its State Security Agency manages through the use of forced labor, beatings, torture, and executions, and in which many prisoners also die from disease, starvation, and exposure.

(8) According to eyewitness testimony provided to the United States Congress by North Korean camp survivors, camp inmates have been used as sources of slave labor for the production of export goods, as targets for martial arts practice, and as experimental victims in the testing of chemical and biological poisons.

(9) According to credible reports, including eyewitness testimony provided to the United States Congress, North Korean Government officials prohibit live births in prison camps, and forced abortion and the killing of newborn babies are standard prison practices.

(10) According to the Department of State, “[g]enuine religious freedom does not exist in North Korea” and, according to the United States Commission

on International Religious Freedom, “[t]he North Korean state severely represses public and private religious activities” with penalties that reportedly include arrest, imprisonment, torture, and sometimes execution.

(11) More than 2,000,000 North Koreans are estimated to have died of starvation since the early 1990s because of the failure of the centralized agricultural and public distribution systems operated by the Government of North Korea.

(12) According to a 2002 United Nations-European Union survey, nearly one out of every ten children in North Korea suffers from acute malnutrition and four out of every ten children in North Korea are chronically malnourished.

(13) Since 1995, the United States has provided more than 2,000,000 tons of humanitarian food assistance to the people of North Korea, primarily through the World Food Program.

(14) Although United States food assistance has undoubtedly saved many North Korean lives and there have been minor improvements in transparency relating to the distribution of such assistance in North Korea, the Government of North Korea continues to deny the World Food Program forms of access necessary to properly monitor the delivery of food aid, including the ability to conduct random site visits, the use of native Korean-speaking employees, and travel access throughout North Korea.

(15) The risk of starvation, the threat of persecution, and the lack of freedom and opportunity in North Korea have caused many thousands, perhaps even hundreds of thousands, of North Koreans to flee their homeland, primarily into China.

(16) North Korean women and girls, particularly those who have fled into China, are at risk of being kidnapped, trafficked, and sexually exploited inside China, where many are sold as brides or concubines, or forced to work as prostitutes.

(17) The Governments of China and North Korea have been conducting aggressive campaigns to locate North Koreans who are in China without permission and to forcibly return them to North Korea, where they routinely face torture and imprisonment, and sometimes execution.

(18) Despite China’s obligations as a party to the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees China routinely classifies North Koreans seeking asylum in China as mere “economic migrants” and returns them to North Korea without regard to the serious threat of persecution they face upon their return.

(19) The Government of China does not provide North Koreans whose asylum requests are rejected a right to have the rejection reviewed prior to deportation despite its obligations under the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

(20) North Koreans who seek asylum while in China are routinely imprisoned and tortured, and in some cases killed, after they are returned to North Korea.

(21) The Government of China has detained, convicted, and imprisoned foreign aid workers attempting to assist North Korean refugees, including the Reverend Choi Bong Il and Mr. Kim Hee Tae, in proceedings that did not comply with Chinese law or international standards.

(22) In January 2000, North Korean agents inside China allegedly abducted the Reverend Kim Dong-shik, a United States permanent resident and advocate for North Korean refugees, whose condition and whereabouts remain unknown.

(23) Between 1994 and 2003, South Korea has admitted approximately 3,800 North Korean refugees for domestic resettlement, a number small in comparison with the total number of North Korean escapees, but far greater than the number legally admitted by any other country.

(24) Although the principal responsibility for North Korean refugee resettlement naturally falls to the Government of South Korea, the United States should play a leadership role in focusing international attention on the plight of these refugees, formulating international solutions to that profound humanitarian dilemma, and making prudent arrangements to accept a credible number of refugees for domestic resettlement.

(25) In addition to infringing the rights of its own citizens, the Government of North Korea has been responsible in years past for the abduction of numerous citizens of South Korea and Japan, whose condition and whereabouts remain unknown.

SEC. 4. PURPOSES.

The purposes of this Act are—

- (1) to promote respect for and protection of fundamental human rights in North Korea;
- (2) to promote a more durable humanitarian solution to the plight of North Korean refugees;
- (3) to promote increased monitoring, access, and transparency in the provision of humanitarian assistance inside North Korea;
- (4) to promote the free flow of information into and out of North Korea; and
- (5) to promote progress toward the peaceful reunification of the Korean peninsula under a democratic system of government.

SEC. 5. DEFINITIONS.

In this Act:

- (1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—
 - (A) the Committee on International Relations of the House of Representatives; and
 - (B) the Committee on Foreign Relations of the Senate.
- (2) CHINA.—The term “China” means the People’s Republic of China.
- (3) HUMANITARIAN ASSISTANCE.—The term “humanitarian assistance” means assistance to meet humanitarian needs, including needs for food, medicine, medical supplies, clothing, and shelter.
- (4) NORTH KOREA.—The term “North Korea” means the Democratic People’s Republic of Korea.
- (5) NORTH KOREANS.—The term “North Koreans” means persons who are citizens or nationals of North Korea.
- (6) SOUTH KOREA.—The term “South Korea” means the Republic of Korea.

TITLE I—PROMOTING THE HUMAN RIGHTS OF NORTH KOREANS

SEC. 101. SENSE OF CONGRESS REGARDING NEGOTIATIONS WITH NORTH KOREA.

It is the sense of Congress that the human rights of North Koreans should remain a key element in future negotiations between the United States, North Korea, and other concerned parties in Northeast Asia.

SEC. 102. SUPPORT FOR HUMAN RIGHTS AND DEMOCRACY PROGRAMS.

(a) SUPPORT.—The President is authorized to provide grants to private, non-profit organizations to support programs that promote human rights, democracy, rule of law, and the development of a market economy in North Korea.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the President \$2,000,000 for each of the fiscal years 2005 through 2008 to carry out this section.

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

SEC. 103. RADIO BROADCASTING TO NORTH KOREA.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States should facilitate the unhindered dissemination of information in North Korea by increasing its support for radio broadcasting to North Korea, and that the Broadcasting Board of Governors should increase broadcasts to North Korea from current levels, with a goal of providing 12-hour-per-day broadcasting to North Korea, including broadcasts by Radio Free Asia and Voice of America.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Broadcasting Board of Governors shall submit to the appropriate congressional committees a report that—

- (1) describes the status of current United States broadcasting to North Korea; and
- (2) outlines a plan for increasing such broadcasts to 12 hours per day, including a detailed description of the technical and fiscal requirements necessary to implement the plan.

SEC. 104. ACTIONS TO PROMOTE FREEDOM OF INFORMATION.

(a) ACTIONS.—The President is authorized to take such actions as may be necessary to increase the availability of information inside North Korea by increasing the availability of sources of information not controlled by the Government of North Korea, including sources such as radios capable of receiving broadcasting from outside North Korea.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) **IN GENERAL.**—There are authorized to be appropriated to the President \$2,000,000 for each of the fiscal years 2005 through 2008 to carry out subsection (a).

(2) **AVAILABILITY.**—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

(c) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, and in each of the 3 years thereafter, the Secretary of State, after consultation with the heads of other appropriate Federal departments and agencies, shall submit to the appropriate congressional committees a report, in classified form, on actions taken pursuant to this section.

SEC. 105. UNITED NATIONS COMMISSION ON HUMAN RIGHTS.

It is the sense of Congress that the United Nations has a significant role to play in promoting and improving human rights in North Korea, that the adoption by the United Nations Commission on Human Rights of Resolution 2003/10 on the situation of human rights in North Korea was a positive step, and that the severe human rights violations within North Korea warrant—

(1) an additional country-specific resolution by the United Nations Commission on Human Rights that includes the language necessary to authorize the appointment of a Special Rapporteur of the United Nations Commission on Human Rights on the situation of human rights in North Korea; and

(2) country-specific attention and reporting by the United Nations Working Group on Arbitrary Detention, the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, the Special Rapporteur on the Right to Food, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, the Special Rapporteur on Freedom of Religion or Belief, and the Special Rapporteur on Violence Against Women.

TITLE II—ASSISTING NORTH KOREANS IN NEED

SEC. 201. REPORT ON UNITED STATES HUMANITARIAN ASSISTANCE.

(a) **REPORT.**—Not later than 180 days after the date of the enactment of this Act, and in each of the 2 years thereafter, the Administrator of the United States Agency for International Development, in conjunction with the Secretary of State, shall submit to the appropriate congressional committees a report that describes—

(1) all activities to provide humanitarian assistance inside North Korea, and to North Koreans outside of North Korea, that receive United States funding;

(2) any improvements in humanitarian transparency, monitoring, and access inside North Korea during the previous 1-year period, including progress toward meeting the conditions identified in paragraphs (1) through (4) of section 202(b); and

(3) specific efforts to secure improved humanitarian transparency, monitoring, and access inside North Korea made by the United States and United States grantees, including the World Food Program, during the previous 1-year period.

(b) **FORM.**—The information required by subsection (a)(1) may be provided in classified form if necessary.

SEC. 202. ASSISTANCE PROVIDED INSIDE NORTH KOREA.

(a) **HUMANITARIAN ASSISTANCE THROUGH NONGOVERNMENTAL AND INTERNATIONAL ORGANIZATIONS.**—

(1) **ASSISTANCE.**—The President is authorized to provide assistance, including in the form of grants, to the World Food Program and to United States nongovernmental organizations for the purpose of providing humanitarian assistance to North Koreans inside North Korea.

(2) **SENSE OF CONGRESS.**—It is the sense of Congress that significant increases above current levels of United States support for humanitarian assistance provided inside North Korea should be conditioned upon substantial improvements in transparency, monitoring, and access to vulnerable populations throughout North Korea, and that significant improvements in those areas therefore would be required to justify appropriation and obligation of the full amounts authorized to be appropriated by this subsection.

(3) **AUTHORIZATION OF APPROPRIATIONS.**—

(A) IN GENERAL.—There are authorized to be appropriated to the President not less than \$100,000,000 for each of the fiscal years 2005 through 2008 to carry out this subsection.

(B) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subparagraph (A) are authorized to remain available until expended.

(b) HUMANITARIAN ASSISTANCE TO THE GOVERNMENT OF NORTH KOREA.—No department, agency, or entity of the United States Government may provide humanitarian assistance to any department, agency, or entity of the Government of North Korea unless such United States Government department, agency, or entity certifies in writing to the appropriate congressional committees that the Government of North Korea has taken steps to ensure that—

(1) such assistance is delivered, distributed, and monitored according to internationally recognized humanitarian standards;

(2) such assistance is provided on a needs basis, and is not used as a political reward or tool of coercion;

(3) such assistance reaches the intended beneficiaries, who are informed of the source of the assistance; and

(4) humanitarian access to all vulnerable groups in North Korea is allowed, no matter where in the country they may be located.

(c) NONHUMANITARIAN ASSISTANCE TO THE GOVERNMENT OF NORTH KOREA.—No department, agency, or entity of the United States Government may provide non-humanitarian assistance to any department, agency, or entity of the Government of North Korea unless such United States Government department, agency, or entity certifies in writing to the appropriate congressional committees that the Government of North Korea has made substantial progress toward—

(1) respecting and protecting basic human rights, including freedom of religion, of the people of North Korea;

(2) providing for significant family reunification between North Koreans and their descendants and relatives in the United States;

(3) fully disclosing all information regarding citizens of Japan and the Republic of Korea abducted by the Government of North Korea;

(4) allowing such abductees, along with their families, complete and genuine freedom to leave North Korea and return to the abductees original home countries;

(5) significantly reforming its prison and labor camp system, and subjecting such reforms to independent international monitoring; and

(6) decriminalizing political expression and activity.

(d) WAIVER.—The President may waive the prohibition contained in subsection (b) or (c) if the President determines that it is in the national security interest of the United States to do so. Prior to exercising the waiver authority contained in the preceding sentence, the President shall transmit to the appropriate congressional committees a report that contains the determination of the President pursuant to the preceding sentence and a description of the assistance to be provided.

SEC. 203. ASSISTANCE PROVIDED OUTSIDE OF NORTH KOREA.

(a) ASSISTANCE.—The President is authorized to provide assistance to support organizations or persons that provide humanitarian assistance or legal assistance to North Koreans who are outside of North Korea without the permission of the Government of North Korea.

(b) TYPES OF ASSISTANCE.—Assistance provided under subsection (a) should be used to provide—

(1) humanitarian assistance to North Korean refugees, defectors, migrants, and orphans outside of North Korea, which may include support for refugee camps or temporary settlements;

(2) legal assistance to North Koreans who are seeking to apply for refugee status, asylum, parole, or other similar forms of protection and resettlement; and

(3) humanitarian assistance and legal assistance to North Korean women outside of North Korea who are victims of trafficking, as defined in section 103(14) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(14)), or are in danger of being trafficked.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—In addition to funds otherwise available for such purposes, there are authorized to be appropriated to the President \$20,000,000 for each of the fiscal years 2005 through 2008 to carry out this section.

(2) AVAILABILITY.—Amounts appropriated pursuant to subsection (a) are authorized to remain available until expended.

TITLE III—PROTECTING NORTH KOREAN REFUGEES

SEC. 301. UNITED STATES POLICY TOWARD REFUGEES AND DEFECTORS.

(a) **REPORT.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of State, in cooperation with the Secretary of Homeland Security, the Director of Central Intelligence, and the heads of other appropriate Federal departments and agencies, shall submit to the appropriate congressional committees a report in unclassified form that describes the situation of North Korean refugees and explains United States Government policy toward North Korean refugees and defectors.

(b) **CONTENTS.**—The report shall include—

(1) information on North Koreans currently outside of North Korea without permission (including refugees, defectors, and migrants), such as their estimated numbers and the countries and regions in which they are currently residing;

(2) an assessment of the circumstances facing North Korean refugees and migrants in hiding, particularly in China, and of the circumstances they face when forcibly returned to North Korea;

(3) an assessment of whether North Koreans in China have effective access to personnel of the United Nations High Commissioner for Refugees, and of whether the Government of China is fulfilling its obligations under the 1951 Convention Relating to the Status of Refugees, particularly Articles 31, 32, and 33 of such Convention;

(4) an assessment of whether North Koreans presently have effective access to United States refugee and asylum processing, and of United States policy toward North Koreans who may present themselves at United States embassies or consulates and request protection as refugees or asylum seekers and resettlement in the United States;

(5) the total number of North Koreans who have been admitted into the United States as refugees or asylees in each of the past five years; and

(6) an estimate of the number of North Koreans with family connections to United States citizens.

SEC. 302. ELIGIBILITY FOR REFUGEE OR ASYLUM CONSIDERATION.

(a) **PURPOSE.**—The purpose of this section is to ensure that North Koreans are not barred from eligibility for refugee status or asylum in the United States on account of any legal right to citizenship they may enjoy under the Constitution of the Republic of Korea. It is not intended in any way to prejudice whatever rights to citizenship North Koreans may enjoy under the Constitution of the Republic of Korea.

(b) **TREATMENT OF NATIONALS OF NORTH KOREA.**—For purposes of eligibility for refugee status under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or for asylum under section 208 of such Act (8 U.S.C. 1158), a national of the Democratic People's Republic of Korea shall not be considered a national of the Republic of Korea.

SEC. 303. REFUGEE STATUS.

The Secretary of State shall designate natives or citizens of North Korea who apply for refugee status under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), and who are former political prisoners, members of persecuted religious groups, forced-labor conscripts, victims of debilitating malnutrition, persons deprived of professional credentials or subjected to other disproportionately harsh or discriminatory treatment resulting from their perceived or actual political or religious beliefs or activities, or others who appear to have a credible claim of other persecution, as a Priority 2 group of special concern for purposes of refugee resettlement.

SEC. 304. PURSUIT OF FIRST ASYLUM POLICY.

It is the sense of Congress that the United States should pursue an international agreement to adopt an effective “first asylum” policy, modeled on the first asylum policy for Vietnamese refugees, that guarantees safe haven and assistance to North Korean refugees, until such time as conditions in North Korea allow for their return.

SEC. 305. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES.

(a) **ACTIONS IN CHINA.**—It is the sense of Congress that—

(1) the Government of China has obligated itself to provide the United Nations High Commissioner for Refugees (UNHCR) with unimpeded access to North Koreans inside its borders to enable the UNHCR to determine whether

they are refugees and whether they require assistance, pursuant to the 1951 United Nations Convention Relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, and Article III, paragraph 5 of the 1995 Agreement on the Upgrading of the UNHCR Mission in the People's Republic of China to UNHCR Branch Office in the People's Republic of China (referred to in this section as the "UNHCR Mission Agreement");

(2) the United States and other UNHCR donor governments should persistently and at the highest levels urge the Government of China to abide by its previous commitments to allow UNHCR unimpeded access to North Korean refugees inside China;

(3) the UNHCR, in order to effectively carry out its mandate to protect refugees, should liberally employ as professionals or Experts on Mission persons with significant experience in humanitarian assistance work among displaced North Koreans in China;

(4) the UNHCR, in order to effectively carry out its mandate to protect refugees, should liberally contract with appropriate nongovernmental organizations that have a proven record of providing humanitarian assistance to displaced North Koreans in China; and

(5) should the Government of China begin actively fulfilling its obligations toward North Korean refugees, all countries, including the United States, and relevant international organizations should increase levels of humanitarian assistance provided inside China to help defray costs associated with the North Korean refugee presence.

(b) **ARBITRATION PROCEEDINGS.**—It is further the sense of Congress that—

(1) if the Government of China continues to refuse to provide the UNHCR with access to North Koreans within its borders, the UNHCR should initiate arbitration proceedings pursuant to Article XVI of the UNHCR Mission Agreement and appoint an arbitrator for the UNHCR; and

(2) because access to refugees is essential to the UNHCR mandate and to the purpose of a UNHCR branch office, a failure to assert those arbitration rights in present circumstances would constitute a significant abdication by the UNHCR of one of its core responsibilities.

SEC. 306. HUMANITARIAN PAROLE.

(a) **PREREQUISITES FOR ELIGIBILITY.**—Because North Korean refugees do not enjoy regular, unimpeded, and effective access to the United States refugee program—

(1) for purposes of section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)), the parole of any alien who is a native or citizen of North Korea seeking to enter the United States, and who is a victim of North Korean Government malfeasance, shall be considered to be of significant public benefit; and

(2) for purposes of section 212(d)(5)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(B)), the parole of any alien who is a refugee and a native or citizen of North Korea seeking to enter the United States, and who is a victim of North Korean Government malfeasance, shall be considered to be for compelling reasons in the public interest with respect to that particular alien.

(b) **DEFINITION.**—For purposes of this subsection, a victim of North Korean Government malfeasance is a former political prisoner, a member of a persecuted religious group, a forced-labor conscript, a victim of debilitating malnutrition, a person deprived of professional credentials or subjected to other disproportionately harsh or discriminatory treatment resulting from his perceived or actual political or religious beliefs or activities, or a person who appears to have a credible claim of other persecution by the Government of North Korea.

(c) **DISCRETION.**—Nothing in this section shall be construed to prohibit the Secretary of Homeland Security from establishing conditions for parole under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or from denying parole to such aliens who are otherwise ineligible for parole.

(d) **LENGTH OF PAROLE.**—

(1) **IN GENERAL.**—Notwithstanding section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), if parole is granted to an alien who is a native or citizen of North Korea pursuant to subsection (a), the parole shall be effective until the final resolution of any application for adjustment of status made pursuant to section 204 of this Act.

(2) **DENIAL OF ADJUSTMENT OF STATUS.**—If an application for adjustment of status made pursuant to section 204 is denied, the Secretary of Homeland Security may, in the discretion of the Secretary, parole the alien described in para-

graph (1) pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)).

(3) EXTENSION OF PAROLE PERIOD.—If no application for adjustment of status is made pursuant to section 204 within 18 months after parole is granted to an alien described in paragraph (1), the Secretary of Homeland Security may, in the discretion of the Secretary, extend the parole period temporarily under conditions that the Secretary prescribes.

(4) NO GRANT OF PAROLE.—If parole is not granted to an alien described in paragraph (2), the alien shall be treated pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)) as if the purposes of the alien's parole have been served.

(5) TERMINATION OF PAROLE.—Notwithstanding any other provision of this section, the parole period of an alien described in paragraph (1) shall terminate when the Secretary of State determines that—

(A) the human rights record of North Korea, according to the Country Report on Human Rights Practices issued by the Department of State, Bureau of Democracy, Human Rights, and Labor, is satisfactory; and

(B) North Korea is no longer on the list of nations designated as State sponsors of terrorism by the Secretary of State.

(e) SUBSEQUENT REMOVAL PROCEEDINGS.—Nothing in this section shall be construed to prohibit the Secretary of Homeland Security from instituting removal proceedings against an alien paroled into the United States under this section for—

(1) conduct committed after the parole of the alien into the United States;

or

(2) conduct or a condition that was not disclosed to the Secretary prior to the parole of the alien into the United States.

SEC. 307. NORTH KOREAN STATUS ADJUSTMENT.

(a) STATUS ADJUSTMENT.—Notwithstanding section 245(c) of the Immigration and Nationality Act (8 U.S.C. 1255(c)), the status of any alien who is a native or citizen of North Korea, has been inspected and admitted or paroled into the United States subsequent to July 1, 2003, and has been physically present in the United States for at least 1 year, may be adjusted by the Secretary of Homeland Security, in the discretion of the Secretary and under such regulations as the Secretary may prescribe, to that of an alien lawfully admitted for permanent residence if—

(1) the alien makes an application for such adjustment within 18 months after parole is granted;

(2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(3) the Secretary of Homeland Security determines that the alien has complied with the requirements of subsection (b).

(b) REQUIRED COOPERATION WITH THE UNITED STATES GOVERNMENT.—The requirements of this subsection shall be satisfied if—

(1) the Secretary of Homeland Security determines that—

(A) the alien is in possession of critical reliable information concerning the activities of the Government of North Korea or its agents, representatives, or officials, and the alien has cooperated or is currently cooperating, fully and in good faith, with appropriate persons within the United States Government regarding such information; or

(B) the alien is not in possession of critical reliable information concerning the activities of the Government of North Korea or its agents, representatives, or officials; and

(2) the Secretary of Homeland Security determines that the alien—

(A) did not enter the United States in a then-current capacity as an agent, representative, or official of the Government of North Korea, or for any purpose contrary to the purposes of this Act or for any unlawful purpose;

(B) is not, since entering the United States or at the time during which the application for adjustment of status is filed or in process, an agent, representative, or official of the Government of North Korea, or during such period acting for any purpose contrary to the purposes of this Act or for any unlawful purpose; and

(C) in the judgment of the Secretary of Homeland Security, is not likely to become an agent, representative, or official of the Government of North Korea, or act for any purpose contrary to the purposes of this Act or for any unlawful purpose.

(c) EFFECT ON IMMIGRATION AND NATIONALITY ACT.—

(1) **DEFINITIONS.**—The definitions in subsections (a) and (b) of section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) shall apply to this section.

(2) **APPLICABILITY.**—Nothing in this section shall be construed to repeal or restrict the powers, duties, functions, or authority of the Secretary of Homeland Security in the administration and enforcement of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) or any other Federal law relating to immigration, nationality, or naturalization.

(d) **SUBSEQUENT REMOVAL PROCEEDINGS.**—Nothing in this section shall be construed to prohibit the Secretary of Homeland Security from instituting removal proceedings against an alien whose status was adjusted under subsection (a) for—

(1) conduct committed after such adjustment of status; or

(2) conduct or a condition that was not disclosed to the Secretary prior to such adjustment of status.

SEC. 308. TEMPORARY PROTECTED STATUS.

(a) **EXTRAORDINARY AND TEMPORARY CONDITIONS CONSIDERED TO EXIST.**—

(1) **IN GENERAL.**—For purposes of section 244(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1254a(b)(1)(C)), extraordinary and temporary conditions shall be considered to exist in North Korea that prevent aliens who are natives or citizens of North Korea from returning to North Korea in safety.

(2) **TERMINATION OF PROTECTED STATUS.**—The extraordinary and temporary conditions referred to in paragraph (1) shall be considered to exist until the Secretary of Homeland Security determines that—

(A) the human rights and trafficking records of North Korea, according to the Country Report on Human Rights Practices issued by the United States Department of State, Bureau of Democracy, Human Rights, and Labor, and the country report on trafficking issued by the Trafficking in Persons Office of the Department of State, are satisfactory; and

(B) North Korea is no longer on the list of nations designated as state sponsors of terrorism by the United States Department of State.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that the United States should use its diplomatic means to promote the institution of measures similar to humanitarian parole or the form of temporary protected status granted under subsection (a), in countries that neighbor North Korea.

SEC. 309. RIGHT TO ACCEPT EMPLOYMENT.

Section 208(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(2)) is amended—

(1) by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(2) by adding at the end the following: “In the case of an applicant who is a citizen or native of North Korea, the Secretary of Homeland Security shall issue regulations under which such applicant shall be entitled to employment authorization, and such applicant shall not be subject to the 180-day limitation described in the previous sentence.”.

SEC. 310. ANNUAL REPORTS.

(a) **IMMIGRATION INFORMATION.**—Not later than 1 year after the date of the enactment of this Act, and every 12 months thereafter for each of the following 5 years, the Secretary of State and the Secretary of Homeland Security shall submit a joint report to the appropriate congressional committees on the operation of this title during the previous year, which shall include—

(1) the number of aliens who are natives or citizens of North Korea and have been granted humanitarian parole under section 306, and the immigration status of such aliens before being granted humanitarian parole;

(2) the number of aliens who are natives or citizens of North Korea and have been granted an adjustment of status under section 307, and the immigration status of such aliens before being granted adjustment of status;

(3) the number of aliens who are natives or citizens of North Korea who were granted political asylum;

(4) the number of aliens who are natives or citizens of North Korea who were granted temporary protected status under section 308; and

(5) the number of aliens who are natives or citizens of North Korea who applied for refugee status and the number who were granted refugee status.

(b) **COUNTRIES OF PARTICULAR CONCERN.**—The President shall include in each annual report on proposed refugee admission pursuant to section 207(d) of the Immigration and Nationality Act (8 U.S.C. 1157(d)), information about specific measures taken to facilitate access to the United States refugee program for individuals who have fled countries of particular concern, as defined by the Secretary of Home-

land Security, for violations of religious freedom pursuant to section 402(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6442(b)). The report shall include, for each country of particular concern, a description of access of the nationals or former habitual residents of that country to a refugee determination on the basis of—

- (1) referrals by external agencies to a refugee adjudication;
- (2) groups deemed to be of special humanitarian concern to the United States for purposes of refugee resettlement; and
- (3) family links to the United States.

PURPOSE AND SUMMARY

Prompted by the acute suffering of the people of North Korea, H.R. 4011 seeks to promote human rights, refugee protection, and increased transparency in the provision of humanitarian assistance for the people of North Korea.

In terms of human rights, title I underscores the importance of human rights issues in future negotiations with North Korea, and authorizes funding for programs to promote human rights, democracy, rule of law, and a market economy inside North Korea. It also authorizes funding to increase the availability of information sources not controlled by the North Korean government. Finally, it urges additional North Korea-specific attention by appropriate United Nations (UN) human rights authorities.

On the humanitarian front, title II authorizes increased funding for humanitarian assistance to North Koreans outside of North Korea. It also attempts to secure greater transparency for humanitarian aid delivered inside North Korea by authorizing a significant increase in such aid, but connects increases to substantive improvements in monitoring and access. Finally, it conditions direct aid to the North Korean government on human rights and transparency benchmarks, but allows the President to waive those restrictions for national security purposes after reporting to Congress.

In terms of refugee protection, title III seeks to clarify United States policy toward North Korean refugees and to promote the protection of refugees among the vulnerable North Korean migrant population, particularly in China. It also attempts to formulate prudent solutions to the practical and legal barriers that presently keep North Koreans from having effective access to U.S. refugee and asylum programs. All of those solutions are completely discretionary. The bill does not mandate the admission of any number of North Koreans into the United States, raise the annual U.S. refugee cap, or in any way limit the authority of the Department of Homeland Security to regulate and condition the entry of North Koreans into the United States on a case-by-case basis.

BACKGROUND AND NEED FOR THE LEGISLATION

The people of North Korea have endured some of the great humanitarian traumas of our time. The terrible human rights situation inside North Korea, while previously suspected and suggested by accounts from isolated defectors, remained largely hidden from the outside world until the past several years. As greater numbers of North Koreans began escaping from that country in the aftermath of the famine during the late 1990s, the situation has come into sharper focus. The resulting picture is significantly more severe than was previously known.

H.R. 4011 is motivated by a genuine desire for improvements in human rights, refugee protection, and humanitarian transparency. It is not a pretext for a hidden strategy to provoke regime collapse or to seek collateral advantage in ongoing strategic negotiations. While the legislation highlights numerous egregious abuses, the Committee remains willing to recognize progress in the future, and hopes for such an opportunity. Indeed, credible and substantial improvements in the human rights practices and openness of the Government of North Korea would help to build substantial goodwill with the United States.

The bill was prompted and informed by hearings of the Subcommittee on Asia and the Pacific during the 107th and 108th Congresses, and by fact-finding trips along the China-North Korea border and inside South Korea, where interviews of numerous refugees, defectors, officials, and aid workers took place.

HUMAN RIGHTS

North Korea is ruled by a brutal, totalitarian dynasty. The government is a dictatorship under the absolute rule of Kim Jong Il, who assumed leadership of the State after the death of his father, Kim Il Sung, in 1994. The regime rigidly controls most aspects of life, and classifies the entire population into categories based on perceived loyalty to the leadership, which determine access to food, employment, higher education, place of residence, and other resources.

Both Kim Il Sung and Kim Jong Il are the focus of an intense, official cult of personality that functions in many respects as a state religion. Genuine religious freedom does not exist in North Korea, and the government severely represses public and private religious activities with penalties including arrest, imprisonment, torture, and sometimes execution. The government strictly curtails freedoms of speech, press, assembly, and association. Numerous “crimes against the revolution,” are punishable by death, including attempted defection, slander of Party policy, and listening to foreign broadcasts.

The regime attempts to control the dissemination of all information, and to deny its populace access to broadcasts and publications from outside the country. Official media—the only media allowed in North Korea—extensively glorify the wisdom and rule of Kim Jong Il, feed paranoia about the threat of attack by the United States, and misrepresent the conditions and standards of living that exist in the outside world, particularly in South Korea. In general, North Koreans are subject to pervasive, lifelong indoctrination, and lack an independent frame of reference from which to judge either the claims of the regime or the genuine disposition of the outside world (and particularly the United States) toward the North Korean people. Sections 103 and 104 of H.R. 4011 are intended to support creative attempts to pierce that veil of misinformation.

As its most extensive mechanism of punishment, the North Korean government maintains a system of prison camps that house an estimated 200,000 political prisoners and family members in inhumane conditions. Inmates are subject to forced labor, beatings, torture, and execution, and many also die from disease, starvation, and exposure. According to multiple sources (including eyewitness

testimony provided to the Committee by a camp survivor), inmates have been used as experimental victims in the testing of chemical poisons. In addition, because officials prohibit live births to prisoners, forced abortion and the killing of newborn babies are standard prison practices. Specific information about conditions inside the camps has become publicly available in the West only in the past few years, as camp survivors have escaped and reported their experiences. The publication of the detailed report, "The Hidden Gulag," by the U.S. Committee for Human Rights in North Korea in October 2003 contributed greatly to public awareness of the camp system and its many abuses.

In addition to infringing the rights of the North Korean people, the Government of North Korea has been responsible in years past for the abduction of numerous South Korean and Japanese citizens, whose conditions and whereabouts remain unknown. In addition to affecting the abductees, those disappearances are the cause of deep anguish among family members and friends from whom they are separated.

In light of these severe violations, and motivated by a belief that respect for fundamental human rights is essential to the development and progress of North Korean society, H.R. 4011 asserts that the human rights of North Koreans should remain a key element in future negotiations between the United States and North Korea.

HUMANITARIAN CONDITIONS

The disastrous agricultural and economic policies of the North Korean regime—coupled with natural droughts and floods—have led to widespread malnutrition and famine during the past decade. Since the collapse of the centralized agricultural and distribution systems, an estimated 2,000,000 North Koreans have died of starvation and related diseases, most during the famine of the late 1990s. A United Nations-European Union nutritional survey in 2002 assessed that around 40 percent of North Korean children are chronically malnourished.

Since 1995, the United States has provided more than 2,000,000 metric tons of food assistance to the people of North Korea, primarily through the World Food Program (WFP). That assistance has saved countless North Korean lives.

The Committee agrees with the proposition that decisions to provide humanitarian assistance to the North Korean people should be made on humanitarian grounds, separate from political and strategic considerations. At the same time, however, there must be means to ensure that humanitarian assistance is used for humanitarian purposes, and is not diverted to military or political use. Concerns about an inability to adequately monitor food assistance and a lack of access to all vulnerable populations inside North Korea led some humanitarian non-governmental organizations (NGOs) to end their assistance programs inside North Korea in the late 1990s. Although the WFP has secured minor improvements in transparency and access since then, the North Korean government continues to deny the WFP the latitude necessary to properly monitor and deliver food aid (including permission to conduct random site visits, to use native Korean-speaking employees, and to have access to the entire country). Because U.S. resources for humanitarian assistance are finite, and there are acute, competing needs

elsewhere in the world, a purely humanitarian calculus requires improvements in transparency, monitoring, and access in order to justify such high levels of assistance in the years ahead.

Section 202(a) of the bill attempts to induce such improvements in transparency, monitoring, and access by authorizing a significant increase in U.S. humanitarian assistance to be provided inside North Korea over current levels, but urges that any such increase be conditioned upon substantial progress in those areas. However, for such a strategy to be successful, clarity will be critical. Executive Branch personnel responsible for raising these issues with North Korean officials should make clear (preferably in writing, in Korean): (1) the humanitarian basis for U.S. food assistance to the North Korean people; (2) the reasons why humanitarian considerations require improved transparency, monitoring, and access, including a description of other humanitarian needs competing for U.S. resources; (3) the positive consequences of credible, substantial improvements; and (4) possible negative effects on the level of humanitarian assistance if aid programs inside North Korea are unable to meet minimum humanitarian standards.

The funding authorized in Section 202(a) is not limited to U.S. contributions to the World Food Program, but also allows for U.S. funding of humanitarian assistance provided through NGOs. Some smaller scale, private organizations appear to have had more success than WFP in securing permission to monitor the assistance they provide inside North Korea. If their activities fit with the programmatic objectives of U.S. humanitarian assistance to the North Korean people, they may merit consideration for U.S. funding in the future.

THE REFUGEE SITUATION

In addition to the repression they face in their country of origin, North Koreans outside of North Korea are also acutely vulnerable and exploited. H.R. 4011 attempts to catalyze increased protection for genuine North Korean refugees, at the same time that it avoids politicizing the refugee issue or using refugees as pawns in some larger, strategic calculus.

Since the breakdown of internal controls during the famine of the late 1990s, the number of North Koreans leaving North Korea has increased. Most have crossed the northern border into China, primarily along the porous, eastern portion which is defined by the meandering Tumen River. Estimates of the number of North Koreans inside China range from tens of thousands to 300,000. Many, and probably most, border-crossers enter China temporarily to obtain food or earn money before returning to North Korea. A significant number of North Koreans are seeking to leave North Korea indefinitely, hoping to remain in China or to make their way to third countries, primarily South Korea. Some of those have suffered severe political or religious repression. Statistics regarding these issues are inevitably anecdotal and imprecise because the Government of China refuses to allow the UN High Commissioner for Refugees (UNHCR) access to North Koreans inside China to evaluate and identify genuine refugees among the migrant population. H.R. 4011 does not presume that all North Koreans inside China are refugees, but attempts to promote those escapees' access to officials competent to make such determinations.

Except for those North Koreans who find their way into foreign diplomatic compounds, China routinely and forcibly returns to North Korea whatever border-crossers it catches, uniformly characterizing them as “illegal economic migrants.” In the past few years, China reportedly has cracked down on North Korean migrants and stepped up the pace of its deportations, both as part of its periodic “Strike Hard” anti-crime campaigns and in response to some high-profile embassy escapes in 2002. The Committee also notes with concern the report, presented in testimony at a recent hearing, that a North Korean escapee who was attempting to flee across the Chinese border into Mongolia was shot in the back and killed by a Chinese border guard on April 2, 2004.

When considering these issues, it is necessary to distinguish China’s right to secure its borders from its obligation not to repatriate people who face a well-founded fear of persecution (an obligation that both the United States and China share as parties to the 1951 UN Convention on the Status of Refugees and its 1967 Protocol). China’s forced repatriation of North Koreans and its refusal to allow UNHCR access to North Korean migrants are particularly egregious because China is not merely a party to the Refugee Convention; it is also a member of UNHCR’s Executive Committee (EXCOM).

The Committee would like to highlight that, with regard to China, H.R. 4011 is not solely critical, it is also aspirational. As underscored in sections 203 and 305(a)(4), the United States and the international community stand ready to provide more assistance to help defray the costs associated with the North Korean refugee presence when China begins fulfilling its obligations as a party to the 1951 UN Refugee Convention. We genuinely hope for that opportunity.

North Koreans captured by China and returned into the hands of North Korean authorities face a broad range of maltreatment. In less severe cases, many returnees who had crossed into China looking for food (and whose cases do not raise other concerns for North Korean authorities) are subjected to detention (that may include shackling, beatings, or other torture) for a period of days, weeks, or months before they are released. Some of those people turn up again inside China.

Being returned to North Korea is far more dangerous for others. Active-duty military and Party members who have fled into China are likely to be executed upon their return. North Koreans who are attempting to escape to third countries (other than China) are either executed or sent to a political prison camp. Religious believers, repeat border-crossers, and refugees who have had contact with South Korean or Christian organizations while they were in China also face severe treatment, which may include torture, execution, or internment in a political prisoner camp. Pregnant returnees are routinely forced to submit to abortion, or their children are killed at birth, because authorities fear that the progeny of non-Korean fathers will pollute the purity of the Korean people (*minjok*).

Because of their illegal status and their lack of access to international refugee protection, North Korean women and girls are particularly vulnerable to exploitation inside China. Large numbers are trafficked into prostitution or sold as “brides” to Chinese hus-

bands. Many are physically abused. Some who escape from those coercive relationships are captured and re-sold multiple times.

The principal responsibility for North Korean refugee resettlement naturally falls to the Government of South Korea, and South Korea will likely remain the destination of choice for most escaping North Koreans. In addition to sharing a language, ethnicity, and history (and in many cases family ties) with their countrymen in the South, North Koreans who make it to the Republic of Korea receive a package of publicly funded benefits that includes a significant, one-time Settlement Fund payment (currently around \$30,000 U.S. for a single defector). Approximately 1,200 North Koreans per year entered South Korea in each of 2002 and 2003. The pace so far this year is roughly similar.

At the same time, the United States should play a leadership role in focusing international attention on the plight of these refugees and formulating international solutions to their profound humanitarian dilemma. Along those lines, the United States should consider accepting an unspecified but credible number of North Korean refugees for domestic resettlement in the United States. As a nation of immigrants, the United States has maintained a generous, humanitarian solicitude toward displaced and persecuted people, as reflected by its longstanding refugee and asylum programs. In addition, the United States is home to a substantial and successful Korean-American community of over one million—the largest Korean population outside of Korea—many of whom have family ties to North Korea. Finally, such a forward-leaning approach is important, not merely for the integrity of U.S. refugee policy, but also to demonstrate our good faith in humanitarian burden-sharing. At present, North Korea is externalizing the human costs of its failures into China. To the extent that the United States hopes to credibly encourage China to be more hospitable toward North Korean refugees, we should be prepared to do likewise.

However, the present, perverse reality is that some of the world's most vulnerable refugees, who are fleeing perhaps the world's most repressive regime, do not have effective access to U.S. refugee and asylum processing. This is primarily due to the fact that UNHCR is not allowed to operate freely inside China. Thus, North Koreans inside China do not have the ability to seek a UNHCR status determination—the usual prerequisite to being considered by the U.S. refugee program. However, even in the few cases where North Koreans have made it into U.S. diplomatic facilities and requested direct processing by U.S. officials for relocation to the United States, those requests were denied. According to witness testimony at a recent hearing, some North Koreans who escaped into U.S. diplomatic compounds have claimed that they were pressured and misled into abandoning their requests for processing for resettlement in the United States, in favor of resettlement in South Korea. If true, those precedents should not be repeated.

At the same time that the status quo is unacceptable, the Committee recognizes that assessing members of the North Korean migrant population presents unique challenges. North Korea's antagonistic disposition toward the United States raises genuine security concerns. Even average North Koreans who are not government agents have been subjected to extensive indoctrination hostile to the United States. Unlike refugees from the former Communist

bloc of Eastern Europe, the North Korean people do not yet broadly share the idea of America as a beacon of freedom. Furthermore, the United States possesses limited information regarding facts and circumstances inside North Korea. U.S. assessments of defector claims would probably benefit from and possibly require a significant level of coordination with South Korean intelligence services. For all of these reasons, H.R. 4011 does not in any way detract from the Department of Homeland Security's obligation and authority to assess North Koreans seeking entry to the United States on a case-by-case basis. Indeed, such requirements may present natural limits to the number and pace of North Korean refugee admissions into the United States. But those challenges should be regarded as just that: challenges to be addressed, rather than reasons for inaction.

HEARINGS

In addition to multiple hearings dealing with North Korean issues more generally, the Committee's Subcommittee on Asia and the Pacific held 1 day of hearings on H.R. 4011 on April 28, 2004. Testimony was received from four expert witnesses representing four organizations, as well as from four North Korean defectors and refugees. In addition, during the 107th Congress, the Subcommittee held 1 day of hearings focused specifically on North Korean humanitarian, human rights, and refugee issues, on May 2, 2002. At that hearing, testimony was received from five private sector witnesses, and three North Korean defectors and refugees.

COMMITTEE CONSIDERATION

On March 31, 2004, the Committee met in open session and ordered favorably reported the bill H.R. 4011 with an amendment by unanimous consent, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 4011, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 13, 2004.

Hon. HENRY J. HYDE, *Chairman,*
Committee on International Relations,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4011, the North Korean Human Rights Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Joseph C. Whitehill, who can be reached at 226-2840.

Sincerely,

DOUGLAS HOLTZ-EAKIN

Enclosure

cc: Honorable Tom Lantos,
Ranking Member.

H.R. 4011—North Korean Human Rights Act of 2004.

SUMMARY

H.R. 4011 would express Congressional concern about the human rights of North Koreans and authorize funding for assistance to North Koreans and to organizations promoting human rights in that region. The bill would authorize the appropriation of \$124 million each year over the 2005–2008 period to:

- Provide humanitarian assistance to North Koreans inside North Korea;
- Provide grants to private, nonprofit organizations to promote human rights, democracy, rule of law, and the development of a market economy in North Korea;
- Increase the availability of information inside North Korea; and
- Provide humanitarian or legal assistance to North Koreans who have fled North Korea.

CBO estimates that implementing the bill would cost \$69 million in 2005 and \$464 million over the 2005–2009 period, assuming the appropriation of the authorized amounts.

The bill also would provide certain immigration protections and benefits to North Koreans who have been persecuted by the North Korean regime. H.R. 4011 would affect the Bureau of Citizenship and Immigration Services (CIS) fees and direct spending, and direct spending for federal benefits to refugees, however, CBO estimates those amounts would be insignificant.

H.R. 4011 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no significant costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 4011 is shown in the following table. The estimate assumes that the bill will be enacted

late in 2004 and that the authorized amounts will be provided in annual appropriation acts. The costs of this legislation fall within budget function 150 (international affairs).

By Fiscal Year, in Millions of Dollars

	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION ¹						
Spending Under Current Law for Assistance to the North						
Korean People						
Budget Authority ²	36	0	0	0	0	0
Estimated Outlays	35	16	6	2	1	0
Proposed Changes						
Authorization Level	0	124	124	124	124	0
Estimated Outlays	0	69	104	116	121	54
Spending Under H.R. 4011 for Assistance to the North Korean						
People						
Authorization Level ²	36	124	124	124	124	0
Estimated Outlays	35	85	110	118	122	54

¹ H.R. 4011 also could increase the cost and the amount of fees collected by the Bureau of Citizenship and Immigration Services (CIS), but CBO estimates the net impact on CIS direct spending would be negligible. CBO also estimates H.R. 4011 could increase direct spending for federal benefits to refugees but the spending increase would not be significant.

² The 2004 level is the amount appropriated for that year.

BASIS OF ESTIMATE

H.R. 4011 bill would authorize the appropriation of funds in each year over the 2005–2008 period to provide humanitarian assistance to the people of North Korea and would provide certain immigration protections and benefits to North Koreans who have been persecuted by the North Korean regime; thus, the bill would affect both spending subject to appropriation and direct spending.

Spending Subject to Appropriation

The United States provides no assistance to the government of North Korea; however, in 2004, the United States is providing about \$35 million in food-aid to the people of North Korea through the United Nations World Food Program. According to the State Department, the government also provides a small amount of assistance (about \$1 million) to nongovernmental organizations for human rights activities and to assist North Koreans outside North Korea.

The bill would authorize the appropriation for each year over the 2005–2008 period of the following amounts: \$100 million for humanitarian assistance provided in North Korea, \$20 million for humanitarian or legal assistance to North Koreans who are outside of North Korea without the permission of the government of North Korea, \$2 million for grants to nongovernmental organizations to promote human rights, democracy, rule of law, and the development of a market economy in North Korea; and \$2 million to promote access to information inside North Korea. The bill does not specify which federal program would receive these funds. For this estimate, CBO assumes that assistance to North Koreans inside North Korea would be provided as food-aid, that assistance to North Koreans outside North Korea would be provided as migration and refugee assistance, and that the other assistance would be provided through grants to the National Endowment for Democracy

or other agencies. We used historical spending rates for those programs to estimate outlays.

Direct Spending

Title III of H.R. 4011 would streamline the process for North Koreans who have been persecuted by the North Korean regime to apply for refugee status in the United States. The bill also would permit some of these persons, after living in the United States for at least one year, to apply for permanent U.S. residence. In addition, H.R. 4011 would allow North Koreans already present in the United States to apply for temporary protected status, which would permit them to remain and work here.

The CIS does not charge fees to adjudicate refugee applications, so enacting H.R. 4011 could increase the agency's net costs to carry out these activities. However, CBO estimates that the bill would not significantly affect CIS spending on refugee programs because of the small number of North Koreans likely to be affected.

In addition, enacting H.R. 4011 could increase the amount of fees collected by CIS to grant permanent residence, temporary protected status, and work permits. The agency would spend the fees (without appropriation action), mostly in the year in which they were collected, so enacting the bill would result in a negligible net impact on CIS spending for these activities.

Finally, some of the new refugees could become eligible for certain federal benefits such as Food Stamps and Medicaid, but CBO estimates the numbers of new entrants would be small and that any increase in direct spending for benefit programs would not be significant.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 4011 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no significant costs on state, local, or tribal governments.

PERFORMANCE GOALS AND OBJECTIVES

H.R. 4011 will promote: increased protection for the human rights of the people of North Korea; increased protection for North Korean refugees; and greater transparency and access for the delivery of humanitarian aid to the people of North Korea.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 18 of the Constitution.

SECTION-BY-SECTION ANALYSIS

The preamble of the bill contains: detailed findings that describe humanitarian and human rights conditions inside North Korea, and the plight of North Korean refugees; declarations of purpose; and definitions of terms used in the act.

TITLE I—PROMOTING THE HUMAN RIGHTS OF NORTH KOREANS

Sec. 101. Sense of Congress Regarding Negotiations with North Korea—Expresses the sense of Congress that negotiations with North Korea and other parties in Northeast Asia should include the human rights of North Koreans as a key element.

Sec. 102. Support for Human Rights and Democracy Programs—Authorizes \$2 million for each of the fiscal years 2005–2008 to support programs by private, nonprofit organizations to promote human rights, democracy, rule of law, and a market economy in North Korea.

Sec. 103. Broadcasting into North Korea—Expresses the sense of Congress that the U.S. should increase radio broadcasts into North Korea by Radio Free Asia and Voice of America, and requires a report detailing the technical and fiscal requirements needed to increase those broadcasts to 12 hours per day.

Sec. 104. Actions to Promote Freedom of Information—Authorizes \$2 million for each of the fiscal years 2005–2008 to increase the availability of non-government-controlled sources of information (such as radios capable of receiving outside broadcasts) to North Koreans, and requires a classified report to Congress on such activities.

Sec. 105. United Nations Commission on Human Rights—Notes the role of the Commission in promoting improved human rights in North Korea, and urges additional North Korea-specific attention by the Commission, its working groups, and rapporteurs.

TITLE II—ASSISTING NORTH KOREANS IN NEED

Sec. 201. Report on United States Humanitarian Assistance—Requires the State Department and USAID to report annually (for the next 3 years) on (1) U.S. humanitarian assistance to North Koreans, (2) any improvements in humanitarian transparency and monitoring inside North Korea, and (3) specific efforts by the U.S. and U.S. grantees to secure better monitoring and access.

Sec. 202. Assistance Provided Inside North Korea—This section:

(a) Authorizes an increased amount (not less than \$100 million per year) for humanitarian assistance provided inside North Korea through NGOs and the World Food Program, but expresses the policy that any such increases should be conditioned upon substantial improvements in transparency, monitoring, and access.

(b) Prohibits U.S. humanitarian assistance directly to the North Korean government until North Korea takes steps to ensure that such aid is distributed, provided, and monitored throughout the entire country according to internationally recognized humanitarian standards;

(c) Prohibits U.S. nonhumanitarian assistance directly to the North Korean government until it has made substantial progress toward respecting basic human rights, providing for family reunification, resolving abductee cases, reforming its prison camp system, and decriminalizing political expression; and

(d) Allows the President to waive the prohibitions in (b) and (c) for national security reasons, after reporting to Congress the scope and purpose of such waiver.

Sec. 203. Assistance Provided Outside North Korea—Authorizes \$20 million for each of the fiscal years 2005–2008 for humanitarian

and legal assistance to North Korean refugees, orphans, and trafficking victims.

TITLE III—PROTECTING NORTH KOREAN REFUGEES

Sec. 301. U.S. Policy Toward Refugees and Defectors—Requires a one-time report from Executive Branch agencies describing the North Korean refugee situation and explaining U.S. policy toward North Korean refugees and defectors. The information and estimates required by subsection 301(b)(1) are intended to be general aggregates, not specific, identifying information that would put particular refugees at risk of discovery and apprehension.

Sec. 302. Eligibility for Refugee or Asylum Consideration—Clarifies that North Koreans are eligible to apply for U.S. refugee and asylum consideration (as anyone else is), and are not preemptively disqualified by any prospective claim to citizenship they may have under the South Korean constitution. This does not change U.S. law but makes it clearer, explicitly endorsing the approach of U.S. Immigration Courts in proceedings involving North Koreans, in which their asylum claims were adjudicated with reference to the actual circumstances they face inside North Korea. It is meant to put to rest the erroneous opinion (proposed by some State Department personnel) that, because North Koreans may be able to claim citizenship if and when they relocate to South Korea, they must be regarded as South Koreans for U.S. refugee and asylum purposes, irrespective of whether they are able or willing to relocate to South Korea.

Sec. 303. Refugee Status—Designates North Koreans who have been persecuted by the North Korean regime as a “Priority 2” group of special humanitarian concern to the U.S., which allows them to apply for U.S. refugee consideration without need of a UNHCR referral. In usual practice, in order to be considered by the U.S. refugee program, a person is referred by UNHCR, which accords that person “Priority 1” status. However, North Koreans in China do not have access to UNHCR. Priority 2 status is given to identified groups of special humanitarian concern to the U.S., and currently applies to: Cubans persecuted by the Cuban government; Jews and Evangelicals in the Former Soviet Union; former reeducation camp detainees in Vietnam; certain Iranian religious minorities; and others. Priority 2 designation does not confer the right to resettle in the U.S. as a refugee, but merely allows one to apply to the U.S. for refugee consideration. This bill does not raise the cap on U.S. refugee admissions (currently around 70,000).

Sec. 304. Pursuit of First Asylum Policy—Expresses the sense of Congress that the U.S. should pursue an international agreement to adopt an effective “first asylum” policy to guarantee safe haven to North Korean refugees until conditions in North Korea allow for their return. (“Countries of first asylum” are states that usually border the refugees’ country of origin, to which they flee in the first instance.)

Sec. 305. United Nations High Commission for Refugees—Notes China’s obligations to provide UNHCR with access to North Koreans in China, urges UNHCR donor countries to press China for such access, urges the UNHCR to use professionals and NGOs with proven expertise in aiding North Koreans in China, and urges the

UNHCR to assert its right to arbitration with China in an effort to secure access to North Koreans in China.

Sec. 306. Humanitarian Parole—Parole is an approved entry into the U.S. without a visa, which the Secretary of Homeland Security can authorize on a case-by-case basis for urgent humanitarian reasons or significant public benefit. However, because of a systemic preference for processing refugees through the refugee program, parole is not available to refugees unless there is a compelling reason in the public interest. Because most North Korean refugees do not have effective access to the U.S. refugee program, this section affirms such a compelling reason in the public interest with regard to persecuted North Koreans, thus facilitating the Secretary's ability to approve parole for North Korean refugees on a case-by-case basis. The bill does not mandate the parole of any North Korean into the U.S., and does not in any way limit the authority of the Secretary of Homeland Security to condition and regulate the entry of North Korean parolees.

Sec. 307. North Korean Status Adjustment—Allows North Koreans admitted or paroled into the United States to apply to adjust their legal status to "immigrant" (a.k.a. permanent resident) status after remaining in the U.S. for 1 year, as refugees are allowed to do. This is available only to those who: (1) apply for status adjustment within 18 months of entry; (2) are eligible to receive an immigrant visa; and (3) have cooperated with the U.S. Government.

Sec. 308. Temporary Protected Status—Declares that until North Korea's record on human rights, trafficking, and terrorism improves, conditions exist that prevent the safe return of North Koreans to that country, thus making North Koreans who are already present in the U.S. eligible for temporary protected status (TPS), which allows them to stay and work in the U.S. until conditions change. Other TPS countries include Burundi, El Salvador, Honduras, Liberia, Nicaragua, and others. This section also expresses the sense of Congress that the U.S. should encourage countries that neighbor North Korea to adopt similar humanitarian measures.

Sec. 309. Right to Accept Employment—Allows North Korean asylum applicants in the U.S. to accept employment so they are able to support themselves and not burden others.

Sec. 310. Annual Reports—Requires annual reports (for the next 5 years) that include (a) the numbers of North Koreans admitted pursuant to the provisions of this title, and (b) information on measures taken to facilitate access to the U.S. refugee program by persons fleeing countries of particular concern for violations of religious freedom.

NEW ADVISORY COMMITTEES

H.R. 4011 does not establish or authorize any new advisory committees.

CONGRESSIONAL ACCOUNTABILITY ACT

H.R. 4011 does not apply to the legislative branch.

FEDERAL MANDATES

H.R. 4011 provides no Federal mandates.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**SECTION 208 OF THE IMMIGRATION AND NATIONALITY
ACT**

ASYLUM

SEC. 208. (a) * * *

* * * * *

(d) ASYLUM PROCEDURE.—

(1) * * *

(2) EMPLOYMENT.—An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the [Attorney General] *Secretary of Homeland Security*. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum. *In the case of an applicant who is a citizen or native of North Korea, the Secretary of Homeland Security shall issue regulations under which such applicant shall be entitled to employment authorization, and such applicant shall not be subject to the 180-day limitation described in the previous sentence.*

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