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Countering Malign Foreign Influence Operations: The Need for a Korean version of the Foreign Agent Registration Act (FARA)

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Malicious influence activities, where foreign actors manipulate information behind the scenes and covertly recruit politically or socially influential figures to sway elections, policy decisions, or public opinion in other states, pose a serious threat to national security. Countering this threat is crucial to safeguarding democratic political systems and ensuring national security. To address agents representing foreign powers, many states are increasingly adopting or strengthening legislation similar to the United States' Foreign Agents Registration Act (FARA), the United Kingdom's Foreign Influence Registration Scheme (FIRS) under the National Security Act, Australia's Foreign Influence Transparency Scheme Act (FITS), and the European Union's Transparency Register.

Conversely, the South Korean legal system remains outdated, primarily focusing on protecting national and military secrets through Article 98 ("Spy") of the Criminal Act and the National Security Act. The current legal framework lacks laws to regulate or penalize malicious influence activities by foreign powers. A partial amendment to the Criminal Act, aimed at revising the "spy" provision, and a new bill concerning the registration of foreign agents have been proposed to the 22nd National Assembly and are currently under review.

Countering Malign Foreign Influence

Limitations of Espionage Laws

South Korea's existing espionage laws are narrowly focused on "enemy states," making them insufficient for addressing modern security challenges and cyber threats. Acts that serve foreign interests are difficult to identify and penalize.

The need for legislation to address foreign intervention crimes

Activities by experts representing or supporting foreign nations can be suspected of malign influence. Countries like the United States and Australia regulate covert foreign interference to safeguard their sovereignty and values. South Korea should develop similar legislation to address these threats effectively.

Analysis of the Current Legislative Proposals in South Korea

Prompted by the 2023 Chinese secret police scandal, Former lawmaker Choi Jae-hyung of the People Power Party (PPP) introduced a bill similar to FARA in June 2023, but it was shelved with the expiration of the 21st National Assembly's term. Since the Sue Mi Terry indictment, Choi Soo-jin of the PPP reintroduced the same bill in the 22nd session of the National Assembly. Separately, a bill to amend South Korea's Criminal Act was introduced in July 2024 by Democratic Party lawmaker Park Sun-won. In the proposed bill, Park puts forth revising the law to redefine espionage activities to include acts sponsored by any foreign country.

The proposed bills from the 21st and 22nd Assemblies exempt individuals engaged in religious, academic, or scientific activities from registration. However, concerns arise over malign foreign influence, particularly in academia. Moreover, Article 6, exempting citizens of key allied nations engaged in activities aligned with South Korea's security and defense interests from registration as foreign agents, is redundant and discriminatory to other South Korea's allies because it primarily targets U.S. citizens. Therefore, Article 6 should be removed to align the law's purpose with broader anti-interference measures.

Conclusion

In light of national security, the scope of spying should not be confined solely to activities involving enemy states or anti-state organizations. Agents representing the interests of South Korea are required to register in foreign countries to carry out their activities. In contrast, individuals representing foreign interests within South Korea are not subject to such registration requirements, as no comparable legislation exists. This imbalance creates a structural vulnerability, allowing foreign agents to operate freely while concealing their true intentions and affiliations. Therefore, drawing on a review of various overseas legislative frameworks and practices, it is imperative to enact a Korean version of the FARA. In addition, a comprehensive overhaul of intelligence-related legislation is necessary to ensure coherence and adaptability in responding to the evolving security environment.

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