

NORTH KOREA'S TRANSFORMATION: A LEGAL PERSPECTIVE

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INTRODUCTION

The Democratic People's Republic of Korea (DPRK, or North Korea) has undergone significant change since the collapse of the old Soviet Union and the Socialist Bloc in Eastern Europe at the end of the 1980s. North Korea's cherished system of a centrally planned economy and public distribution system has been driven to the verge of collapse. It is therefore necessary to look at how North Korea has responded to these difficult situations from a legal perspective. Although the gap between the law in print and the law in action would be tremendous in a society such as North Korea, where the rule of law is not honored at all as totalitarian dictatorship permeates the entire realm of residents' lives, both public and private, laws are not promulgated unless the state desperately feels the need for them. However, since the law is the most explicit and strongest expression of official will of the state, a legal approach and analysis will facilitate a better understanding and outlook of the current changes underway in the North.

1992 CONSTITUTIONAL CHANGE

The primary purpose of the 1992 revision was to ensure the smooth transition of power to Kim Jong Il. It consolidated the power of the heir-apparent by upgrading the legal status of the National Defense Commission (NDC), which the younger Kim was in charge of, to that of the highest leading organ of the state, with general jurisdiction over national defense.

The 1992 revision also provided constitutional grounds for opening the country up for foreign investment by creating two provisions. Article 37 stated, "The State shall encourage institutions, enterprises or associations of the DPRK to establish and operate equity and contractual joint venture enterprises with corporations or individuals of foreign countries." Article 16 was also created to protect foreign investors, stating, "The DPRK shall guarantee the legal rights and interests of foreigners in its region." Although the DPRK enacted its Equity Joint Venture Act (hapyeong-beop) in 1984 using the earlier Chinese joint venture law as a model, it was not until 1992 that the constitutional grounds for such an act were explicitly provided.

As the collapse of old socialist brethren countries continued from the end of the 1980s, North Korea had to find alternative sources of aid and commerce to replace the economic support these countries had provided. Foreign investment seemed to be the only way to invite capital inflows that could invigorate its economy, or at least stave off its collapse. A plethora of new laws followed, with the goal of enticing foreign investment, but these legal attempts were of little avail without an improvement in the investment environment

rife with extremely poor infrastructure, bureaucratic rigidity, and a lack of any practical means of dispute resolution due to political reasons as well as the lack of the rule of law.

1998 CONSTITUTIONAL CHANGE

Another constitutional change was made in 1998. The constitutional framework for the distribution of state authority was rearranged to accommodate the regime of Kim Jong Il after the death of President Kim Il Sung. The 1998 Constitution repealed the office of the presidency and the Central People's Committee and passed their authority to the Supreme People's Assembly (SPA) and its Presidium (Standing Committee). Since the constitutional change, implementation and management of state policy now belongs to the Cabinet. However, it goes without saying that Kim Jong Il entertains supreme power of the state as the Chairman of the NDC and the Chief Secretary of the Workers' Party. As North Korea's 'Military-first Politics' signifies, his main responsibility is the military, while the economy is the responsibility of the SPA Presidium and Cabinet. That is, the failure of economy is legally their responsibility, but not his. Although the military industry is a great burden on the state economy as a major cause of distortion of the economic structure, the leadership continues to prioritize this sector over others.

As the centrally planned economy and public distribution system has barely been functioning, the vast majority of ordinary citizens have had to survive on their own. The operation rate of manufacturing factories declined by as much as 75 percent in 1996. Individuals and organizations, including enterprises, sought more leeway and discretion for their activities in order to take best advantage of their environment and opportunities and avoid starvation, while the government wanted to encourage and facilitate the increase of production.

In order to overcome economic hardships following the breakdown of the socialist economy and public distribution system, the North Korean government had but to acquiesce and allow market functions to make up for state shortfalls in meeting the needs of the general population. In fact, the market has already proven indispensable for the subsistence of ordinary people. In addition, a shortage of supply from the planned economy has inevitably allowed, by default, more autonomy to enterprises, collective farms, or other organizations. Another principal goal of 1998 revision was to cope with this chronic economic predicament by providing constitutional grounds for new directions and activities.

ADOPTION OF MARKET ECONOMIC CONCEPTS

Article 33 created a new section of the North's economy, stating, "The State shall introduce a cost accounting system in economic management according to the demand of the Daean work system, and utilize such economic levers as prime costs, prices and profits."

The constitutional introduction of concepts such as prime cost, price, and profit reflects the future direction of the North's economy toward a positive attitude regarding the role

of the market. Although the Constitution does not accept market economics per se, North Korea wants to utilize markets by incorporating some aspects of a market economy within its existing socialist system in order to vitalize its dampened economy. It is an expression of, and compromise with, reality, in consideration of the malfunction of its socialist economic system and the improbability of economic recovery through the existing system in the near future.

COMMERCIAL ACTIVITY LEGITIMIZED

Under the socialist economy, the scope of private ownership is very limited to consumable goods and household effects. Therefore, private property consists of socialist distribution of the results of labor and additional benefits of the state and society. The products of individual sideline activities, including those from the kitchen gardens of cooperative farmers, also fall under the category of private property. With the 1998 constitutional revision, a new source of private property was recognized: Income from other legal economic activities. Commercial transactions fall under the guise of “other legal economic activities,” and unless specifically prohibited, commercial activity for profit is now legally allowed on constitutional grounds. Insertion of this section foresaw the increase of commercial activities.

CHANGE IN OWNERSHIP FOR THE MEANS OF PRODUCTION

Under the North’s previous constitutions, the means of production were owned only by the state and cooperative organizations. Article 20 of the 1998 revision included ‘social’ organizations as eligible subjects for ownership of the means of production. A social organization can be established as a legal entity by the recognition of the relevant authority. The vocation association, the journalists’ association, and the Red Cross are but some examples of social organizations that became legally recognized by the North Korean government. As a result, these social organizations’ scope of economic activities would be expanded.

Assets critical to the government or national interests still can be owned only by the state. Designated in the 1992 Constitution were natural resources, transportation organs, communication organs, major factories, enterprises, ports, and banks. Article 21 of the 1998 revision replaced ‘transportation organs’ with ‘railways [and] aviation transportation organs’. This can be interpreted to mean that social or cooperative organizations can own transportation means other than railways and aviation facilities, which are still monopolized by the state.

In a similar vein, the scope of ownership by cooperative organizations was also amended. Article 22 of the 1992 Constitution provided that “Cooperative organizations can possess such property as land, draught animals, farm implements, fishing boats, and buildings as well as medium-small factories and enterprises.” The same article in the 1998 Constitution replaced ‘farm implements’ and ‘fishing boats’ with ‘agricultural machinery’ and ‘ships’, while removing ‘draught animals’ and ‘buildings’ from the list. This means that social or cooperative organizations can own not only fishing boats, but

also cargo or passenger ships. Furthermore, an individual can own draught animals, buildings, and farm implements other than agricultural machinery.

The Civil Code was revised in 1999 to accommodate this constitutional change. North Korea first publicly promulgated the Civil Code in 1990. Although it had a similar code on the books prior to 1990, it was not open to the public as a law. It was revised in 1993 and 1999. As a citizen could partake in more transactions and own more property, the civil law dealing with private matters would need to play a more significant role than previously.

AUTHORITY FOR FOREIGN TRADE DIVERSIFIED

The authority for foreign trade was monopolized by the state under Article 36 of the 1992 Constitution. However, the same article in the 1998 Constitution allows social and cooperative organizations to engage in foreign trade. This change was implemented in order to facilitate the expansion of overseas trade. The diversified authority to conduct foreign trade has been proven to be very effective in vitalizing foreign trade. Many social entities have engaged in foreign trade in order to gain access to foreign currencies. The Trade Act (muyeok-beop) was also enacted in 1998 to facilitate and increase foreign trade.

FOUNDATIONS FOR ESTABLISHMENT OF SPECIAL ECONOMIC ZONES

The constitutional grounds for establishing special economic zones were added in Article 37 of the 1998 revision. Although Article 37 of the 1992 revision was newly created to provide a constitutional basis to invite foreign investment, no special economic zone was prescribed in the document. As matter of fact, despite the absence of constitutional grounds, North Korea had already created a Free Economic and Trade Zone at Rajin-Sonbong, in the northeastern coastal area, in the early 1990s. It was an effort to invite foreign capital and technology following the model the Chinese had so successfully employed. In this regard, this new addition of constitutional grounds for special economic zones was belated.

If the lack of constitutional grounds for a special economic zone was not an obstacle for establishing the Rajin-Sonbong special zone, why does Article 37 now carry such explicit constitutional grounds for a special economic zone? This revision seemed to signify a more positive attitude in Pyongyang regarding special economic zones. It is an expression of strong will by Pyongyang for further economic opening in order to attract foreign investors. Indeed, North Korea created three special zones in 2002; the Sinuiju Special Administrative Region, adjacent to the Chinese border at the northwest tip of the Korean peninsula, Mount Kumgang Tourist Resort Zone, and the Kaesong Industrial Complex, on the border shared with South Korea. Pyongyang seems to have a preference for special zones that are separated and isolated from ordinary administrative districts.

FREEDOM TO TRAVEL GRANTED

Travel has been very strictly restricted in the North. However, the unprecedented shortage of food in the mid-1990s forced residents to move around the country simply to find food for survival. Otherwise, they would have had to wait idly as starvation set in due to the state's failure to provide centrally controlled rations. Under these dire circumstances with no food distribution, it was not easy for the authorities to maintain their tight control over travel within the country. Therefore, the authorities assumed an acquiescent attitude toward unauthorized travel. As a reflection of this new phenomenon, the 1998 constitutional revision included the addition of Article 75, which provided the freedom of travel. Of course, this inclusion of the freedom in the Constitution does not mean that citizens in the North actually enjoy the freedom to move around the country. They still need several certificates of permission for multiple checks to travel. However, the authorities have to control citizens' travel in consideration of the food shortage situation, and often recognize illegal travel by default.

MARKETS LEGITIMIZED

Although markets have long existed under the socialist economy, along with central planning and the public distribution system, their role was very limited and complementary when the planned economy was functioning correctly. However, as the North's economic difficulties continued with no prospects for recovery, and the socialist economy was on the verge of a collapse that would imminently lead to large-scale starvation, the market became indispensable for the very survival of ordinary people. North Korean authorities could not but recognize the important role of the markets under these dire conditions.

Indeed, farmers' markets were transformed into general markets in 2003 by the implementation of an official government ordinance. While the former had not been established on legal grounds, despite having been tolerated by the authorities, the latter were created based on legal grounds, and thus considered legitimate. In addition, the scope of items allowed for trade in the farmers' markets was also very limited. On the other hand, most consumer products, including grain and electronics, are available in the general markets, unless they are strategic materials or materials needed to supply production facilities.

The establishment of a legal basis for general markets by North Korean authorities has rectified the unstable status of previous farmers' markets. On the other hand, such legalization allowed authorities to restrict commercial trade to the market and thereby control it more effectively. Black-market transactions were reduced. At the same time, the state could claim the legal authority to collect rents and taxes from traders conducting business in the general market. These traders and these markets became a new source of state income.

With the 1998 constitutional revision, the scope of private ownership was extended and an individual could engage in commercial activity. Individuals or organizations could legally sell consumer goods and agricultural produce from their garden plots or patches of land distributed by the state. Cottage industries were rapidly expanded. People began

to make many consumer products at home or at their factories for sale in the markets. A variety of self-employed businesses such as restaurants and photo studios have cropped up. Furthermore, some individuals went so far as to hire laborers under the name of cooperatives with the permission of the authorities.

Although the authorities are well aware of the role of markets in mitigating the economic difficulties of North Korean residents, they are so concerned about the negative impact of marketization and its potential to undermine political stability. Therefore, authorities were driven by circumstance to legitimize markets, but have not done so on their own initiative, and do not welcome all of the effects such a move may bring about.

PROTECTION OF COMMERCIAL ACTIVITY AND PRIVATE PROPERTY

As commercial activity was legitimized and an individual could accumulate one's own personal wealth, illegal commercial activity was to be penalized and personal property was to be protected. The new criminal code introduced in 2004 was a departure from previous codes, reflecting these changes in economic practices and incorporating many new provisions to cope with these aspects of marketization.

Many new types of crime related to these newly allowed economic activities also began to surface, requiring a drastic increase of new articles in the criminal law code. This expansion of criminal law in order to protect market activities was an expression of the strong will of the state to punish illegal commercial activity while encouraging legitimate actions. One thing that deserves notice in this new revision is the adoption of the principle of *nulla poena* for the first time in North Korea. This means that what is not prescribed as a crime will not be punished, at least, on paper. The adoption of this principle was also one of the government's efforts to respond to international pressure against the abuse of human rights in the North, as well.

Under extraordinary pressure due to the difficulties caused by the North's economic situation, residents were forced to do whatever they could to provide for their subsistence. The collapse of the public distribution system resulted in widespread criminal activity and deviance from regulations defining social activities, as people from all social standings and walks of life fought for survival. New forms of deviance which had not previously existed in the North and were previously unimaginable were now prevalent throughout the country. One of the measures employed to tackle this matter was to clearly prescribe what is allowed and what is not. The new criminal code is one of the most important works drafted by North Korean authorities in order to deter people from committing illegal activities by criminalizing specific modes of illegal activity. In addition, the Administrative Penalty Law (*haengjeong cheobeol-beop*) was enacted to deal with minor offenses and misdemeanors. Private ownership, as well as public, or state, ownership, is better protected due to the enactment of laws, as now, infringement on private property has been criminalized and authorities have the means to inflict penalties and compensation when damage has occurred.

INDIVIDUAL RESPONSIBILITY STRENGTHENED

As citizens have been left without state provisions for subsistence since the state did not have the material resources to supply the people through its central rationing system, the vast majority of individuals and organizations had to support themselves. Legitimizing commercial and market activity and expanding the scope of private ownership were a part of this effort. One of the most important laws reflecting this transformation is the Damage Compensation Law (sonhae bosang-beop), which is the North Korean version of a general torts law. This law holds an individual or any legal entity liable for its tort when damage is inflicted. Monetary compensation is the rule, while restoration is allowed when possible.

Under the socialist system, where the state is responsible for the provision of a citizen's livelihood, tort law was of little use. Even in the case of death, one's family would not suffer economically since the state provided sustenance rations. However, with the collapse of the public distribution system, the North Korean authorities could no longer maintain their socialist system. Since an individual now has to rely on his or her own devices, the loss of the employment, for example, directly inflicts a financial burden on the individual or family. Therefore, damage to property or person should be compensated for by the responsible party. Therefore, the new damage compensation law acts as a new mechanism for the protection of private property, and strengthens individual responsibility for negligent acts that inflict damage on others.

INCREASE IN ILLEGAL ACTIVITIES

The official system could not keep up with changes in society. Laws as well as directives or orders from higher authorities failed to redress deviances or prevent illegal activities. Organizational control was relaxed, as well. In its place, new criminal laws enacted in 2004 defined new types of crimes concerning anti-socialist morality as well as anti-socialist economic activities. Inclusion of these new types of crimes indicates that these illegal activities were flourishing in the North. Although it is not anomie or chaos, most of these illegal acts have been dismissed by authorities as long as they do not amount to a challenge or resistance to political stability or Kim Jong Il's leadership.

In reality, the revised law on criminal activity falls far short of reflecting the reality of the situation. Selling goods with higher prices than that of purchase is illegal. Brokerage or money-lending for interest is illegal, as well. The authorities still formally believe that seeking profit without labor is against the socialist ideology which the North professes. Although these kinds of actions are the very basic activities that allow for the functioning of markets, they are restricted or banned in North Korea.

Therefore, black-marketeering and smuggling is very popular. Private loan businesses, foreign currency trade, unlicensed self-employed businesses, and even underground factories are ubiquitous. Even the trade or sale of housing occurs freely, as long as the proper local authorities are bribed, despite the fact that houses are not subjects of private ownership, in principle.

Illegal transactions or activities do not remain within the realm of the individual. The economy of shortage forces employees of state enterprises within the planned economy to engage in illegal activities, as well. Theft and embezzlement are widespread throughout most state enterprises and cooperatives. Furthermore, the state enterprise itself engages in illegal activities such as smuggling in order to provide for its employees.

Illegal activities in North Korean society are so pervasive in all walks of life and every field of society, regardless of rank and location, that people do not take them seriously. They do not feel guilty about committing unlawful acts, and they go so far as to justify their illegal behavior by attributing it to the state's nonobservance of its obligation to distribute necessities such as food. This displays the conflicting values and distortion of new policies authorities are faced with in the North in the wake of the transition of its economic and social system.

INCREASE IN DISPUTES

Increased transactions inevitably result in increased disputes. In North Korea, where transactions between individuals were extremely limited in the strictly controlled totalitarian society, private disputes were very rare. When private disputes did arise, they could be resolved within organizations to which the individuals concerned belonged. Individual deviance was effectively restrained through rigorous organizational life and ideological indoctrination. Individual interest was protected incidentally in the course of maintenance of public order. It was very unusual to need to resort to legal means for the protection of individual interests or social order. Therefore, dispute resolution processes for private interests were very undeveloped.

Relaxation of law and order, along with the laxity of organizational control due to economic difficulties, changed individual attitudes toward government authorities and organizations in which these individuals were members. Individuals became more independent from the state and its organizations, since both the state and more directly engaged organizations lost important means of control over individuals in society due to the lack of resources and the inability to provide basic necessities to the people.

Under these circumstances, individual victims had no appropriate method to seek compensation for damage through an official dispute resolution process. This has led to an environment in which self-remedy has become the rule, rather than the exception. Although new criminal law punishes those who have used force in asserting their rights, there is no effective means of dispute resolution outside of taking advantage of officials willing to look the other way in exchange for favors, or hiring thugs to more directly resolve disagreements. Citizens can buy justice through bribes, and law enforcement officials are especially helpful in these endeavors when their palms are greased. This is much more economical as well as effective than bringing a case to the relevant official agency, which is generally incapable of resolving problems and instead further exploits the situation.

ENHANCED ROLE OF LAW AND THE JUDICIAL SYSTEM

Law will gain importance as state control over the people of North Korea through other means such as indoctrination, directives, and organizational life is no longer as effective. As the state loses direct control over the people due to its inability to provide basic necessities through public distribution, it has to rely more on the law.

For example, the most prominent role of the court in North Korea, where other types of lawsuit are very unusual, was to handle divorce settlements, since divorce through simple agreement of the two parties was not allowed. Ordinary citizens went so far as to perceive settlement of divorce to be the most important role of the court. Criminal cases were also unusual. Political crime is handled through a non-judicial process, while many deviances are resolved through unofficial processes within more local organizations. The role of the court in resolving disputes was negligible, aside from divorce. Since the role of law enforcement agencies is to protect the state and secure the socialist system, the most important qualification for them is not legal expertise, but rather, loyalty and devotion to the North Korean ideology and system.

On the other hand, the Lawyer's Act of 1993 prescribes the required qualifications of a lawyer. Those who are eligible to work as lawyers are those who are certified legal professionals, those who have working experience of no less than 5 years in legal affairs, or those who have a professional license in a certain area and have passed the bar examination after a short-term course in legal education. This qualification for working as a lawyer signifies that the state wants to equip the judicial system with legal professionals. Although there is no explicit professional qualification for a judge or prosecutor, we may assume that legal professionals have been elected or recruited in practice. This trend is likely to be reinforced as these social changes continue to unfold.

New provisions were also introduced to reinforce the judicial system. For example, interference with a law enforcement official's performance of duties is now a punishable offence ; Threatening a witness or exacting revenge has been criminalized ; Non-execution of judgment will now be punished. Although the introduction of these provisions was an expression of the government's effort to bring in a more effective judicial system, it would not be an easy task under the vague status of transformation. The state is very cautious and reluctant to undertake bold or fundamental changes due to concerns about political instability. Therefore, it takes time for various coherent mechanisms to fully support a market system.

AGGRAVATION OF ILLEGAL ACTIVITY AND CORRUPTION

Even after the socialist economic system of central planning and public distribution teetered on the brink of collapse, the leadership has made clear its intention to maintain the old system wherever possible. Adoption of a primitive stage of market economics was not sought by official initiative, but was recognized *fait accompli*. Until a new system replaces the current one with a full panoply of more sophisticated means, illegal activity and corruption will continue. In particular, the law cannot function unless the government can provide basic necessities to the people. As long as the absolute quantity of supply is

far short of demand, legal bans or punishment will continue to fail. If new laws are provided without an improvement of material supply, illegal trade and corruption will simply develop into more sophisticated transactions, staying one step ahead of the law.

CONCLUSION

North Korea is in transition from the legal perspective, too. There has been significant change in the law, including the Constitution, in order to cope with a new environment. Since the law is one of the most important means to govern social relations, North Korea also has taken advantage of law to cope with new social relations which have been emerging rapidly since the 1990s. In order to overcome the impoverished economic conditions and accompanying uncontrollable volume of deviance and illegal activities, the state has responded with legitimization, criminalization and punishment. Individual responsibility for torts has also been reinforced.

While the existing system is not functioning and a new system has yet to be institutionalized, there must be confusion and a lack of laws. However, it is not likely that a new system will be established in the foreseeable future, considering the nature of the North Korean regime. In particular, the status of law in North Korea is quite different from that of a democratic society. The authority and effectiveness of the law is much lower than that of the directives of the party, as well as words or teachings of its dear leaders Kim Il Sung and Kim Jong Il. In this regard, North Korea is a society which is ruled mainly by moral instruction and organizational edicts rather than law, similar to the feudal society of the Middle Ages in the West or Confucian society in the East.

As the socialist system does not function and the existing norms governing the people through socialist morality and dictatorial indoctrination no longer suffice for social control, the law will gain more efficacy and importance. The most remarkable virtue of the law is its stability and objectivity. Although the rule of law is not honored in North Korea, the law will be utilized now more than ever as it moves toward a market-driven economy and transactional relations among individuals continue to increase. In particular, as those in the North gain increasing exposure to foreigners and the international community, the law will entertain more positive role and merit in the coming in North Korea.