

The Constitution of North Korea: Its Changes and Implications

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Introduction

More often than not, the constitution of a state acts as a prism that affords one an understanding of the state as a whole. This is possible since a state's constitution is a manifestation of the state itself, providing the fundamental principles as the supreme law for state management. For the most part, this is also true of socialist countries, despite the different implications that law in socialist societies governed by proletarian dictatorship serves than that of the law in plural democratic societies governed by the rule of law. A constitution derived under socialist governance still reflects, to some extent, the reality of the state and thus is still one of best ways to understand its government's management of society and its responses to changes in its internal and external environments.

The Democratic People's Republic of Korea (DPRK or North Korea) is no exception. Though a departure from mainstream socialist states, a glimpse of North Korea's constitution can still provide the observer with an understanding of how North Korea has undergone and responded to social changes and vicissitudes. Hence, this paper sets out to do a few things. First, this study succinctly examines the nature and status of law in North Korea. Second, it reviews the country's constitutional history in sequence, and then, provides a more in depth look into the characteristics of the current constitution. Conclusions are then drawn from this examination. The goal of this

paper, however, is not to describe the principles or contents of North Korean constitutions *per se*, but rather looks at how North Korea has responded to change from a constitutional perspective. However, our discussion will be mostly limited to the texts of the constitutions since there is no case known to outsiders that would afford us an understanding of its real operation in daily life. At the same time, constitutional processes including its amendment process does not deserve our attention either, as all constitutional processes in North Korea are, by design, endorsed without opposition and manipulated by the country's top leadership(1)--an undisputable reality of the totalitarianism housed within the country's borders.

The Role of Law in North Korea

Like many aspects of North Korea, the uniqueness of its law is derived from its political reality, one distinguished by the one-man dictatorship that has lasted for generations. North Korean leader Kim Il Sung consolidated and solidified his absolute power via Stalinist-style purges and eliminations of all those who opposed and all that which threatened his leadership. Confrontation with South Korea also contributed to sustaining and strengthening tensions for the sake of his domestic rule. Overall, much of his success in maintaining totalitarian dictatorship can be attributed to the buildup of pervasive intelligence mechanisms, strong military forces, indoctrination of the people with a cult of personality, and near inclusive isolation of the populace from the outside world.

Facilitating this totalitarian dictatorship has been the primacy of the Korea Workers' Party (KWP). Its supremacy over official government organizations and unlimited authority has allowed this one-man reign to thrive. Party control is reinforced by interlocking membership between party elites and chief governmental and military figures. Its grip over the populace is pervasive and reaches into the daily lives of residents through indoctrination and surveillance. Thus, the KWP has stood as one pillar of the leader's power as he reigns over the state in the uppermost position of the party, its General Secretary. In this regard, it is not unusual that the constitution itself

provides that “The DPRK shall conduct all activities under the leadership of the Workers’ Party.”(2) This indicates that the party directives, which know no limits, stand above the law.

The second pillar of his power is the *juche* ideology, the backbone of party guidance and state philosophy. *Juche* (or self-reliance) was formulated to justify Kim Il Sung’s dictatorship and succession of power to his son, Kim Jong Il, emphasizing peculiar aspects of the North Korean environment. Advocated as a creative application of Marxist-Leninist principles, the ideology also serves as a tool that justifies the leader’s demand for the populace’s unquestionable loyalty. It developed into a cult of personality surrounding Kim Il Sung and Kim Jong Il, officially supplanting all other philosophical and religious beliefs in the state. Consequently, as stipulated in the constitution, *juche* ideology is the ultimate paradigm that guides state activities.(3)

In the Weberian sense,(4) North Korea can be characterized as a charismatic society where the supreme, “godlike” leader’s words and directives are the principal governing norms that supersede all else, including the law. His word is considered the quintessential source of enlightenment capable of dispensing justice. Law, on the other hand, plays but a marginal role in the administration of justice and instead acts as a secondary instrument to enforce and realize the leader’s directives, leaving its efficacy as a thing of ridicule. Naturally, then, law in North Korea is mobilized for political purposes; inherent justice or inviolable divine elements--i.e., the “spirit of the law”--for all intents and purposes, is sorely lacking.

Thus, the constitution exists essentially as a political manifesto with a bulk of programmatic provisions rather than as a document written to ensure justice for the people. The discrepancy between the written laws and law in action is so pervasive that the issue of legal ground is entirely irrelevant on many occasions. Constitutional ground is not necessarily required to invoke state action since the state holds its legitimacy *ipso facto* with no procedure to challenge it.

The First Constitution of 1948

The first constitution of the DPRK was inaugurated in 1948, modeled after the 1936 “Stalinist” Constitution of the (former) Soviet Union (USSR). Despite constitutional revisions of a drastic nature both in 1972 and 1998,(5) since its 1948 original, the basic principles and characteristics of North Korea’s constitution largely have been preserved up to the present day. Therefore, much of the structure that exists today owes its origins to the 1948 Constitution.

Drafted in April 1948, the Constitution of the Democratic People’s Republic of Korea was adopted at the First Supreme People’s Assembly (SPA) in September of that same year.(6) It consisted of ten chapters and 104 articles,(7) and held provisions on basic principles, rights and duties of citizens, central and local legislative and executive organs, courts, budgets, national defense, amendment procedures, and the state emblem, capital and so on. During its twenty-four-year lifespan, it was amended only a handful of times on very minor matters (and therefore, not worth elaboration here) all within the first fourteen years of its existence.(8)

Most significantly, the 1948 Constitution elevated the SPA as the highest organ of state authority, essentially succeeding the two interim bodies that previously functioned in such a capacity (the North Korean Provisional People’s Committee of February 1946, which was dissolved a year later in February 1947 in order to create the People’s Assembly of North Korea). The SPA became the legislative body of the nation, modeled after the USSR’s Supreme Soviet. According to the constitution, the SPA was to exercise exclusive legislative power and consist of representatives elected by the people (although this last point is somewhat misleading as SPA representatives *are* selected by universal, equal, direct, and secret vote as per the constitution,(9) *yet* candidates are carefully screened and approved by the party). Centralization of power onto it was made a constitutional principle, and thus the SPA was invested with vast legislative powers: the authority to enact basic domestic and foreign policies; create a Presidium to operate on its behalf when the Assembly was not in session; approve the

laws and statutes adopted by the Presidium; revise and amend the constitution; deliberate and approve the national budget; elect and recall a prime minister of the Cabinet and its members; appoint major officials such as the chief justice of the Supreme Court and procurator-general of the Central Procurator's Office(10); dispatch foreign service personnel; and so forth. All the constitutional organs were vested with their authority from the SPA. Division of labor among other government organs was, however, done for the purpose of governing the state; never was such a division intended to create a system of "checks-and-balances" on state authority via a separation or diffusion of powers--as is the case in most liberal democracies.

Notwithstanding, in all reality it was the Presidium of the SPA, comprised of a much smaller group of individuals (ranging from fifteen to twenty of the top party personnel, the same men who essentially dominate the KWP), which initiated action on almost all policymaking. Thus, in reality, the SPA's supremacy was a mere superficiality. As a government body, the SPA was--and still is--purely a quasi-independent agency, a façade erected to give the appearance of democratic representation, a puppet whose strings are pulled to legitimize state action.

The Presidium of SPA was also at the position of the head of the state and exercised associated ceremonial authority concerning foreign as well as domestic affairs. The Cabinet exercised executive authority empowered by the SPA. Kim Il Sung, who had been seated as top leader of the northern part of the Korean peninsula by the Soviet Union since its occupation after liberation from Japanese rule in 1945, was appointed as Prime Minister. In fact, the key players of government administration were members of the Cabinet who had concurrent positions in the party as well as the SPA. The local sovereign organ was the People's Assemblies, the members of which were elected by the respective local residents. It supervised the People's Committees, which were in charge of the administration of respective local districts.(11)

As far as the constitution and North Korean citizens are concerned, the first constitution stipulated that fundamental rights similar to those of liberal democracies be protected.

For example, freedom of speech (article 13), equal protection (article 11), right to vote and be elected (article 12), right to religion (article 14), protection of privacy (article 21), protection from arbitrary arrest (article 24), right to petition (article 25), and so forth were all addressed in the constitution. However, whether or not these rights were ever protected in practice is highly suspect.(12)

Although North Korea adopted constitutional principles of the Soviet Union in political structure, the first constitution could not but reflect North Korea's inherent reality. Since North Korea was just beginning to construct a socialist system, there still remained many legacies of the previous system. It was, in a sense, inevitable that the new leadership, which had yet to establish a stable power base, came to a compromise with existing non-socialist elements. Such aspects were found particularly in connection with the economic sector. For example, private ownership was broadly protected along with freedom to run businesses.(13) Citizens were also required to pay taxes according to what each one was financially capable of paying.(14) In order to rid the country of remnants of Japanese colonial rule, the constitution provided clauses that called for the confiscation of assets and land owned by Japanese and their collaborators, and to deprive them of their civil rights.(15) Interesting enough, however, was one provision, article 31, which provided protection for ethnic minorities, an addition that would seem to have been blindly adopted from the Soviet constitution,(16) since the Soviet Union consisted of many different ethnic groups while the issue of ethnic minorities was by-and-large a non-issue in North Korea.(17)

The Socialist Constitution of 1972

The second constitution of the DPRK was inaugurated in 1972 after profound transformation of the society. Here, two aspects in particular should be noted. First, Kim Il Sung ultimately came out on top in the struggle for absolute power over the country and consolidated his power into an undisputable one-man dictatorship. Unparalleled leadership of Kim Il Sung and his critical role and contribution to socialist state development were well described in the preamble of the 1972 Constitution.

Second, private ownership was completely eliminated, which ushered in the completion of the socialist central economic planning system, and the principle of collectivism was broadly introduced and strongly emphasized. Thus this new constitution was called the “Socialist Constitution” of the DPRK as it epitomized North Korea’s successful transition to a socialist system via the removal of non-socialist elements inherent in the constitution of 1948. The constitution provided that “class antagonisms and all forms of exploitation and oppression of man by man have been eliminated for ever,”(18) and that “the historic task of industrialization has been accomplished successfully.”(19) However, these expression did not mean that socialist construction of the state had been completed but would continue until North Korea reached the high phase of communism where “not only classless society but also a highly advanced society where there is no distinction between mental and physical labour and each member of society works according to his ability and receives according to his needs.”(20)

The 1972 Constitution was drastically different from its 1948 predecessor, not only in formality and contents but also in its level of sophistication.(21) It professed that the DPRK was an “independent socialist State representing the interests of all the Korean people,”(22) based on proletarian dictatorship.(23) The *juche* ideology of the Korea Workers’ Party was expressively incorporated in the constitution as the guiding principle of the state and regarded as a “creative application of Marxism-Leninism” to the conditions of North Korea.(24) The status of the party was thereby enhanced into constitutional recognition. The principle of democratic centralism was defined as the basic principle of organization and activity of state organs.(25) This means that once citizens elect their representatives, they should obey representatives’ decisions, and lower authority should obey higher authority. There are no checks and balances among state organs but only strict hierarchical domination and submission.

This constitution also created the presidency and made him the head of the state, a position that carried a four-year term with no limit on reelection.(26) Although the SPA was still the supreme sovereign organ and elected the country’s president, *de facto* state power was the president’s to exercise. Kim Il Sung was of course inaugurated as the

first president and served in that position until his death in 1994. Furthermore, the constitution created and renamed specific other government organs. The Central People's Committee (CPC) was created, the chairman of which was the president. It became the supreme guiding agency of state sovereignty and policymaking.(27) In addition, the Cabinet, renamed the "Administrative Council," was led by the prime minister, and became the policy enforcement agency under the supervision of the president and the CPC.(28)

The constitution also made changes in terms of citizens' rights. The collectivist principle of "one for all and all for one" was adopted as the basis of the rights and duties of citizens.(29) Thus, "mass line" and "mass movement" were inserted as constitutional principles.(30) Collectivism became the basic orientation of education at all levels. Private ownership for means of production was eliminated along with the right to run business;(31) private ownership of goods was limited to personal use items only.(32) As the state was responsible for providing all the daily necessity the people would need via a rationing and public distribution system, the system of taxation was abolished.(33) And even amid the beginning of dialogue between North and South Korea in the early 1970s, a peaceful unification clause was also inserted into the constitution although the victory of socialism was still the ultimate goal of the state.(34) This all was an expression of North Korea's confidence in its own made-for-Korea socialist system.

The 1992 Amendment for Power Succession

It was twenty years before amendment to the 1972 document would occur. This revision, however, was a result of a build up of external events in the 1980s that were brought to their culmination at the turn of the decade, ushering in radical changes that would alter the geopolitical world order and signal the end of the cold war. The Soviet Union and Eastern European states that formed the Communist bloc fell into decline and later collapse; equally important, Communist China continued on its path of transformation, enacting measures incrementally so as to adopt a market system. This new post-cold war period that began in the 1990s thus drove North Korea into a

desperate state as the country was forced to try and find its own way to survive in the new, radically altered foreign environment, *sans* reliance on its traditional trading partners for markets and contiguous allies for significant assistance and support. All these external events had a huge impact on the North Korean economy as well as political survival itself.(35) Isolated, North Korea has for some time now been forced to attract foreign investment and boost trade in a desperate attempt to climb out of economic destitution. Dialogue with South Korea has resumed in this regard. All of this came at a very bad time as preparation for the succession of power from the aging Kim Il Sung to his son Kim Jong Il required greater time for the junior Kim to consolidate his power.

With this in mind, amendment to the constitution was made in 1992. First, eliminated from the document was the expression of Marxism-Leninism in conjunction with *juche* ideology and instead the philosophical principle of *juche* ideology was constitutionalized by itself.(36) Second, the leading role of the party was emphatically stipulated.(37) Proletarian dictatorship was replaced with dictatorship of people's democracy,(38) although the constitution expressed that the DPRK was a socialist state in article 1 as it used to be. However, it is not clear why such change was made in consideration of the socialist theory that "proletarian dictatorship" is a more developed stage than "dictatorship of people's democracy" in the process of socialist revolution. It might have happened from the defensive sense of vulnerability since the collapse of the European socialist states. Third, North Korea's policy toward South Korea was also changed from an aggressive expression to a more receptive one for coexistence.(39) At least from the viewpoint of constitutional expression, North Korea seems to renounce a North Korea initiated revolutionary unification since 1992 as the 1992 Constitution supports the principle of peaceful unification. It was natural that the new revision removed the foreign policy clause of international cooperation with socialist states based on Marxist-Leninism and proletarianism by adopting independence, peace, and solidarity as the basic principles of foreign policy.(40)

The most important point of this 1992 revision was the enhancing of the National

Defense Commission (NDC) as a separate constitutional organ. Before this, the NDC was merely a subcommittee of the Central People's Committee.(41) However, the 1992 Constitution created a new chapter for this commission with six articles.(42) Before this revision, the President, as the chief commander of the state, held the chairmanship of the commission as *ex officio*, leading state military affairs.(43) The 1992 amendment separated the highest military leadership from the authority of the president and conferred it on the Chairman of the National Defense Commission. Now the Chairman of the NDC became the chief commander of the state and exercised the highest military authority. As Kim Jong Il was elected as its chairman, he solidified his status as successor, *de jure* and *de facto*.

In the economic realm, several provisions were also supplemented in order to emphasize an independent national economy and the development of science and technology.(44) The most notable change in this area was that constitutional ground was laid for the support of an "open-door" policy, something that could be inferred from the inclusion of article 37: "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." Although the Joint Venture Act had come into being in 1984--but lacked constitutional grounding at that time--the creation of this provision suggested a more positive attitude and active policy toward attracting foreign investment. Investment of this nature was possibly seen--as it is today--as a means to assist the country in surmounting its economic hardships. Prior to this amendment, top leadership had already decided in 1991 to create the Rajin-Sonbong Free Economic Trade Zone. Soon after this 1992 amendment, Pyongyang promulgated a series of laws concerning foreign investment in North Korea.(45)

Two years after this revision, North Korean leader Kim Il Sung passed away. His death in 1994 heralded imminent change in the power structure. However, in spite of his death, the presidency remained vacant for four years until the new 1998 Constitution finally abolished the presidency. The fact that there had been no political instability during the four-year absenteeism of the president is proof that Kim Jong Il's control had

already dug deep, unshakable roots. All that was needed was constitutional change fitted for his direct rule.

The New 1998 Constitution of the Kim Jong Il Era

The current constitution, which was built upon the old but refashioned in 1998,(46) was tailor-made by Kim Jong Il and designed to suit his personality and method of rule. First, although junior Kim established and enjoyed formidable and unquestionable authority in his fiefdom, his authority was inherited, and thus his legitimacy bound to his father's legacy. To capitalize on his father's sacred reputation and superior charismatic leadership, Kim Jong Il ceremoniously credited the establishment of North Korea to his father by elevating him as the country's eternal president, where Kim Il Sung continues to reign posthumously. Rules based on Kim Il Sung's teachings have been professed in order to recruit public support and justify Kim Jong Il's rule. This notwithstanding, overcoming the economic difficulty that the country has faced also stood as an urgent problem threatening Kim Jong Il's legitimacy and thus a problem for his regime to solve. Hence, existing principles in the economic sector required alterations to ensure a more pragmatic direction. If one looks closely, elements addressing these two concerns are reflected in the new constitution.

In its preamble, the 1998 Constitution named itself the "Kim Il Sung Constitution," which legally embodies Comrade Kim Il Sung's *juche* state construction ideology and achievement. Kim Il Sung was idolized as "the founder of the DPRK and originator of the Socialist North Korea," and now the DPRK and its citizens have Kim Il Sung as "the eternal President of the Republic." Essentially, this means that only Kim Il Sung was, is, and shall ever be worthy of the role of President of the DPRK, a position stipulated in the preface of the new constitution. This leadership-affirmed truth thus justified the abolishment of the presidency. This rhetorical and structural change was, of course, a reflection of Kim Jong Il's character and motivations. The powers that seemingly went to the grave with the senior Kim were instead creatively transferred to the son. Kim Jong Il herein strengthened the authority of the National Defense

Commission by adding “an organ for general control over national defense” to the existing, “the highest military leading organ of State power.”(47) This thereby empowered the Chairman of the NDC to direct and command all the armed forces and guide “defense affairs as a whole.”(48) The NDC chairmanship was elevated to the highest position of the state when Kim Jong Il was reelected as the chairman via the new constitution. This amounts to delegation of state sovereignty to the Chairman of the NDC, since this phrase is interpreted comprehensively.(49) This also suggests that military force is the backbone of Kim’s leadership, its means for both regime survival and overcoming the state crisis. To the latter issue, Kim Jong Il himself even suggested construction of a “prosperous and powerful nation” as the goal of his new era. In sum, supremacy of military forces is the principle by which Kim Jong Il intends to rule, a principle that has aptly been coined “military-first politics.”(50)

Accompanying change in tandem with the abolishment of the presidency was also made to vest more authority to the Presidium of the SPA and the Cabinet. The President of the SPA Presidium represents the state as the head of the state.(51) The authority of the President and the Central People’s Committee, which was also abolished in the current constitution, was distributed to the SPA Presidium and the Cabinet respectively. Presidential authority concerning foreign and external affairs as the head of the state and the Chairman of the CPA was transferred to the Presidium of SPA, while his authority concerning government management as the head of the executive and the CPA was given to the Cabinet. Thus the Cabinet is not only the highest executive enforcement organ but also expanded to become the general state management organ.(52) Although the constitution delegated many authorities--with the exception of military affairs--to other state organs, these designations have not undermined Kim Jong Il’s invincible authority as top leader of the state. He is the General Secretary of the Korea Workers’ Party, the Chairman of the NDC and the chief commander of the Korean People’s Army.

The other component of constitutional changes is concerned with overcoming North Korea’s grave economic difficulty. For example, social organizations were added to subjects that can own the means of production, in addition to the state and cooperative

organizations.(53) On the other hand, the objects of state ownership were reduced, while those of private ownership as well as those of social and cooperative organizations were expanded.(54) Citizens can own income from legal economic activities, in addition to the products of individual sideline activities including those from the gardens of cooperative farmers.(55) This means that citizens can make money through commercial activities, which has been tolerated after the collapse of the public rationing system and now legalized by the constitution. This amounts to the initial reception of a primitive market economy. In this regard, creation of citizens' freedom to travel should be noticed.(56) Individuals can travel for business as long as constitutional expression is concerned, although residents still need licenses to travel.(57) Protection of patent rights, in addition to existing inventor's rights and copyrights, was newly included in consideration of the expanded protection of intellectual property rights.(58)

The new constitution also strengthens the autonomy of individual economic entities. The state shall introduce an independent cost accounting system in the economic management system and utilize such economic levers as prime costs, prices, and profits.(59) Expansion of an independent enterprises method will hopefully bring about expanded autonomy in the economic management of individual entities. Introduction of the concepts of costs, prices, and profits is concerned with the introduction of market economy, although constitutionalization of these concepts will not bring about a market economy automatically.

Under the previous constitution, foreign trade activities were monopolized by the state. But the current constitution allows social and cooperative organizations to engage in them.(60) The constitution also provides constitutional ground for creating a special economic zone,(61) where foreign investors can enjoy broader freedom of economic activities.(62)

Although the new constitution adopted some initial steps needed to begin the first stage of creating a market economy, retention of the general socialist principle of autarky, as

well as the regime's seemingly ongoing political inflexibility, still inhibits the rapid growth toward a market economy. These changes were made within tolerable limits for the regime's survival without undermining the current *status quo*. All told, the current constitution manifests the dilemma North Korean leaders still face.

Concluding Remarks

The constitution of North Korea is no more than a character of the law of North Korea. In North Korea where the rule of law does not govern but the directives and words of leaders and administrative directives do, legal grounds for state actions are not sought for their justification. Although the constitution is the highest law in form, it functions merely as a tool of propaganda. In other words, the constitution in North Korea exists not for the protection of citizens' rights and interests but merely as a tool to showcase the superiority of the state's system to its citizens and outside observers alike. In this regard, the mere existence of a provision for a fundamental right does not guarantee that right. The lack of constitutional ground also does not indicate the impossibility of action by the state either: the Joint Venture Act of 1984,⁽⁶³⁾ and widespread travel of residents--in search of food--before legal provisions were created for such actions in 1998 are cases in point. These situations allow the state a great deal of discretion in the exercise of its authority. Neither does the state find any restraint to check its limitless exercise of public authority, nor do any such legal mechanisms exist either.

However, North Korean leadership has tried to adjust itself to the new environment via constitutional changes. They have tried to lessen the gap between law in the book and law in action. If an open-door policy is the inevitable option that must be chosen to overcome the country's current economic difficulty, law will be one of the most important vehicles to win over foreigners' trust in the system. Relevance of law in managing a society should be enhanced in North Korea to draw foreign attention for economic cooperation. Therefore, the importance of examining the law in North Korea, including its constitution, is a rising necessity for all North Korea observers.

The constitutional history of North Korea suggests that revisions are possible anytime the country's leadership decides to change the direction of state management or keep in step with environments in flux. The wishes of citizens have not been at issue and are unlikely to be for some time. This is unfortunate, but in the perspective of Kim Jong Il's regime, this makes constitutional revision in North Korea straightforward once the top leadership makes up its mind.

(1) The authority to adopt and amend the constitution in the DPRK has belonged to the Supreme People's Assembly since the first constitution. See 1948 Constitution, article 104; 1972 Constitution, article 76(1); 1992 Constitution, article 91(1); and 1998 Constitution, article 91(1). Predictably, constitutions have been adopted or amended by a unanimous vote at the SPA without public debate in advance. See Fukushima Masao, *On the Socialist Constitution of the Democratic People's Republic of Korea* (Pyongyang: Foreign Languages Publishing House, 1975), pp. 83, 90.

(2) 1998 Constitution, article 11.

(3) *Ibid.*, article 3.

(4) As is well known, Weber's "ideal types" make a distinction between 1) charismatic, 2) traditional, and 3) rational-legal authority. As it is, North Korean authority tends to fall under this first category. See Max Weber, *Economy and Society*, Vol. 1, Roth and Wittich, eds. (Berkeley: University of California Press, 1978), pp. 212-301.

(5) Although the 1992 revision was not extensive, this revision still holds significant meaning. Therefore, the 1992 Constitution will be also reviewed under a separate section.

(6) The 1948 Constitution is also referred to as the "People's Democratic Constitution."

(7) This first constitution consisted of 10 chapters of 104 articles. Ten chapters were as follows: Ch. 1. Principles (arts. 1-10); Ch. 2. Fundamental Rights and Duties of Citizens (arts. 11-31); Ch. 3. Supreme Sovereign Organ, Sect. 1. Supreme People's Assembly (arts. 32-46), Sect. 2. Presidium of SPA (arts. 47-51); Ch. 4. State Central Executive Organs, Sect. 1. Cabinet (arts. 52-62), Sect. 2. Ministries (arts. 63-67); Ch. 5. Local Sovereign Organs (arts. 68-81); Ch. 6. Court and Prosecutor's Office (arts. 82-94); Ch. 7. State Budget (arts. 96-99); Ch. 8. National Security (art. 100); Ch. 9. State Emblem, Flag and Capital (arts. 101-103); Ch. 10. Procedure for Constitutional Amendment (art. 104).

(8) For the details, see Dae-Sook Suh, *Korean Communism: 1945-1980* (Honolulu: The University of Hawaii, 1981), p. 499; also see Dal-kon Choi and Young-ho Shin, *Bukhanbop-ippum (Introduction to North Korean Law)* (Seoul: Se-Chang, 1998), pp. 51-52; and Fukushima Masao, *supra* note 1, pp. 122-124.

(9) 1948 Constitution, article 3.

(10) *Ibid.*, article 37.

(11) *Ibid.*, articles 68-81. The 1972 Constitution additionally instituted the Local Administrative Committees as the administrative enforcement agencies of local affairs. 1972 Constitution, articles 128-132.

(12) For a more in depth review of human rights protection in North Korea, see Jae Jean Suh *et al.*, eds., *White Paper on Human Rights in North Korea*, (Seoul: Korea Institute for National Unification, 2003); Amnesty International's report, online at www.amnesty.org/web/web.nsf/print/prk-summary-eng; and the U.S. Department of State Country Report on Human Rights Practices, online at www.humanrights-usa.net/reports/dprk.html.

(13) 1948 Constitution, articles 5, 8, 19.

(14) *Ibid.*, article 29.

- (15) *Ibid.*, articles 5, 6, 12.
- (16) See USSR 1936 Constitution, article 123.
- (17) North Korea got rid of this provision as it was omitted from the Constitution of 1972.
- (18) 1972 Constitution, article 6.
- (19) *Ibid.*, article 24.
- (20) *Ibid.*, article 25.
- (21) The 1972 Constitution consisted of eleven chapters and 149 articles. The chapters are as follows: Ch. 1. Politics (arts. 1-17); Ch. 2. Economy (arts. 18-34); Ch. 3. Culture (arts. 35-48); Ch. 4. Fundamental Rights and Duties of Citizens (arts. 49-72); Ch. 5. The Supreme People's Assembly (arts. 73-88); Ch. 6. The President of DPRK (arts. 89-99); Ch. 7. The Central People's Committee (arts. 100-106); Ch. 8. The Administrative Council (arts. 107-114); Ch. 9. The Local People's Assembly, People's Committee and Administrative Committee (arts. 115-132); Ch. 10. The Court and the Procurator's Office (arts. 133-146); and Ch. 11. Emblem, Flag and Capital (arts. 147-149).
- (22) 1972 Constitution, article 1. The first constitution did not mention "socialist state" at all.
- (23) *Ibid.*, article 10.
- (24) *Ibid.*, article 4.
- (25) *Ibid.*, article 9.
- (26) *Ibid.*, articles 89-99.
- (27) *Ibid.*, articles 100-106.
- (28) *Ibid.*, articles 107-114.
- (29) *Ibid.*, article 49. The article 68 also provided that "Citizens must display a high degree of collectivist spirit" and "cherish their collective and organization and develop the revolutionary trait of working interests of the homeland and the revolution."
- (30) *Ibid.*, articles 12, 13.
- (31) *Ibid.*, article 18.
- (32) *Ibid.*, article 22.
- (33) *Ibid.*, article 33. It provided that "The State abolishes taxation, a hangover of the old society." In the 1948 Constitution, article 29 provided that citizens should pay tax.
- (34) *Ibid.*, article 5. Interesting to note, South Korea also amended its constitution in 1972 to extend President Park's rule under the pretext of legitimizing North and South dialogue for peaceful unification.
- (35) For an in depth synopsis of the impacts of the collapse of the Communist bloc on the DPRK economy, energy and agricultural sectors, see James H. Williams, David Von Hippel and Nautilus Team, "Fuel and Famine: Rural Energy Crisis in the DPRK," *Asian Perspective*, vol. 26, No. 1 (Spring, 2002), pp. 111-40; Andrew Natsios, *Special Report: The Politics of Famine in North Korea* (Washington, D.C.: United States Institute of Peace, 1999), online at www.usip.org; Marcus Noland, "Famine and Reform in North Korea," working paper, Institute for International Economics (July, 2003), online at www.iie.com/publications/author_bio.cfm?author_id=26; and Michael E. O'Hanlon and Mike Mochizuki, *Crisis on the Korean Peninsula* (New York: McGraw-Hill, 2003).
- (36) The 1992 Constitution, article 3 provided that "The DPRK is guided in its activities by the *juche* idea, a world outlook centered on people, a revolutionary ideology for achieving the independence of the masses of people."
- (37) The 1992 Constitution, article 11 provided that "The DPRK shall conduct all activities under the leadership of the Workers' Party of Korea."
- (38) See *ibid.*, article 12. Compare with the article 10 of the 1972 Constitution.
- (39) Compare article 9 of the 1992 Constitution with article 5 of the 1972 Constitution.
- (40) 1992 Constitution, article 17. Compare with the 1972 Constitution, article 16.
- (41) 1972 Constitution, article 105.
- (42) 1992 Constitution, articles 111-116.
- (43) 1972 Constitution, article 93.
- (44) See *ibid.*, articles 19, 26, 27, 28.

- (45) For example, Foreign Investment Act (1992), Foreign Enterprise Act (1992), Contractual Joint Venture Act (1992), Foreign Economic Trade Zone Act (1993), and so forth.
- (46) The 1998 Constitution has 10 chapters of 166 articles. Ten chapters are as follows: Ch. 1. Politics (arts. 1-18); Ch. 2. Economy (arts. 19-38); Ch. 3. Culture (arts. 39-57); Ch. 4. National Defense (arts. 58-61); Ch. 5. Fundamental Rights and Duties of Citizens (arts. 62-86); Ch. 6. The Structure of the State, Sect. 1. The Supreme People's Assembly (arts. 87-99), Sect. 2. The National Defense Commission (arts. 100-106), Sect. 3. The SPA Presidium (arts. 106-116), Sect. 4. Cabinet (arts. 118-130), Sect. 5. Local People's Assembly (arts. 131-138), Sect. 6. Local People's Committee (139-146), Sect. 7. Public Procurators' Office and Court (arts. 147-162); Ch. 7. National Emblem, Flag, Anthem and Capital (arts. 163-166).
- (47) 1998 Constitution, article 100.
- (48) *Ibid.*, article 102.
- (49) The office of the Chairman of the NDC was exalted as a sacred position. According to the speech proposing to reelect Kim Jong Il as Chairman of the NDC at the first session of the 10th SPA, the chairmanship was described as follows: "The NDC chairmanship is the highest post of the state with which to organize and lead the work of defending the state system of the socialist country and the destinies of the people and strengthening and increasing the defense capabilities of the country and state power as a whole through command over all the political, military and economic forces of the country. It is also a sacred, important post which symbolizes and represents the honor of our country and the dignity of the nation." *Rodong Shinmun* (Korea Workers' Party Daily), Sept. 6, 1998
- (50) For a more complete discussion of "military-first politics," see Dae-Sook Suh, "Military First Politics of Kim Jong Il," *Asian Perspective*, vol. 26, No. 3 (2002), pp. 145-67.
- (51) 1998 Constitution, article 111.
- (52) Compare article 124 of the 1992 Constitution with article 117 of the 1998 Constitution.
- (53) 1998 Constitution, article 20.
- (54) *Ibid.*, articles 21, 22, and 24.
- (55) Compare article 24 of the 1998 Constitution with that of the 1992 Constitution.
- (56) 1998 Constitution, article 75.
- (57) This provision seems included to legalize residents' travel to seek food, rampant during the food crisis since 1994, and the state could not but accept such travel, which was out of control to those who were starving to death. Therefore, creation of the freedom to travel is the acceptance of *fait accompli*, but does not mean the automatic improvement in citizens' fundamental rights.
- (58) 1998 Constitution, article 74.
- (59) *Ibid.*, article 33.
- (60) *Ibid.*, article 36.
- (61) *Ibid.*, article 37.
- (62) On the basis of this provision, the special laws to create the Mt. Geumgang Tourist Zone, Gaeseong Industrial Complex, and Sinuiju Special Administrative Region were promulgated in 2002.
- (63) Constitutional ground for such law was provided in article 37 of the 1992 Constitution.