

The Kim Jong Eun Succession Structure and North Korean Human Rights

Focusing on the Readjustment of Human Rights–Related Laws

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I . Defining the Issue

Two years have passed since North Korea revised its Constitution on April 9th, 2009. The most noteworthy development in North Korean politics during this time was the emergence in late September 2010 of Kim Jong Eun as the successor. Against this backdrop, we will evaluate the state of North Korean human rights over the last two years and on this basis make some predictions for the future state of human rights under the Kim Jong Eun succession structure. This analysis will mainly focus on human rights–related laws established or amended since the constitutional revision in April 2009.

Major HR–Related Laws and Amendments since the 2009 Constitutional Revision

| Law | Date Adopted or Revised | Major Contents |
|--------------|---|---|
| Constitution | Revised 2009.4.9 | Stipulated respect for and preservation of human rights, clarified guiding principles of <i>songun</i> ideology, introduced new laws regarding the NDC chairman, strengthened the NDC's authority |
| | Revised 2010.4.9 | "Central Court" name changed to "Supreme Court" |
| Penal Code | Revised at an unknown date after 2009.4 | Adjusted laws related to regime maintenance, strengthened |

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| | | punishments |
| People's Economy Planning Law | Revised 2009.8.4, 2010.4.6 | Made economic plans more obligatory, accelerated, and structured |
| Goods Consumption Standard Law | Adopted 2009.11.11 | Regulated the establishment, application, and control of standards for consumption of goods |
| Labor Quota Law | Adopted 2009.12.10 | Regulated the establishment, application, and control of labor quotas |
| Labor Protection Law | Adopted 2010.7.8 | Adjusted laws and systems related to labor protection |
| Law for Protecting the Rights of Women | Adopted 2011.1 (exact date not announced) | Stipulated principles of women's rights protections (no disclosure of concrete details) |
| Law for Protecting the Rights of Children | Adopted 2011.1 (exact date not announced) | Stipulated principles of children's rights protections (no disclosure of concrete details) |

II. Overall Evaluation and Outlook

North Korea's 2009 constitutional revision drew a great deal of attention in terms of human rights issues, because it was the first time North Korea explicitly stipulated "respect for and protection of human rights" at the constitutional level. Previously human rights had only been dealt with by lesser laws such as the Attorneys-at-Law Act and the Criminal Procedure Code. Nevertheless, unfortunately, the current condition of North Korean human rights can best be described as "an outward appearance of respect for human rights, while internally violations worsen." Outward expressions of respect for human rights are evident in individual human rights laws such as the Labor Protection Law and the laws stipulating the rights of women and children. By contrast, violations of North Korean citizens' human rights have progressed in two major directions. First, the North Korean authorities have increasingly infringed on the people's civil and political rights while strengthening internal controls and punishments in order to secure the stability of the Kim Jong Eun succession. Second, in regards to economic, social and cultural rights, the regime has been forcing the people into a poor labor environment for the sake of establishing its much-promoted *kangsong daeguk* ("strong and prosperous country"). Looking at the actual condition of

human rights in North Korea over the past two years, they seem to be leaning more towards violating rather than respecting human rights. Contradictory behavior such as this appears likely to persist in North Korea for some time to come.

III. Outward Expressions of Respect for Human Rights: Adopting Human Rights Laws

When the North Korean government revised its Constitution in April 2009, it included a clause stipulating that it would "defend the interests of the working people and guarantee their human rights" (Article 8 Clause 2). The protection of and respect for human rights stipulated in the North Korean Constitution is manifested most conspicuously by the adoption of new regulations on human rights.

On July 8th 2010 North Korea introduced the Labor Protection Law. North Korea was already enforcing the Socialist Labor Law adopted in 1978, but this new law supplemented and improved on the older law with more concrete provisions. Compared to the Socialist Labor Law's 3 chapters and 27 clauses, the Labor Protection Law totals 8 chapters and 72 clauses. In addition, the Labor Protection Law provides stronger human rights guarantees through new content that was not covered in the existing Socialist Labor Law. To give several examples: first, the law specifies a labor safety education system and a re-training system for labor safety. Second, it stipulates that laborers who become unable to work due to illnesses caused by their jobs must be re-deployed to suitable alternative jobs in a timely manner. Third, the law introduces new regulations on support measures for work-related accidents.¹⁾

On January 26th 2011 KCNA reported that North Korea had recently adopted new laws for protecting the rights of women and children. As these laws have not yet been made public it is not possible to know the contents or precise dates of adoption. According to KCNA, the Law for Protecting the Rights of Women identifies issues of principle regarding women's rights, and the Law for Protecting the Rights of Children stipulates issues in children's rights protection.

1) Lee Kyu Chang, "Direction of North Korean Labor Laws after the 2009 Constitutional Revision," Unification Situation Analysis 2011-04 (Seoul: KINU, 2011), pp. 3-10.

The adoption of new laws protecting labor, women's rights, and children's rights is obviously a welcome development. This may also lead to human rights laws in other fields. However, in order for the human rights tenets expressed in the North Korean Constitution to translate into actual improvements to the human rights of North Korean citizens, they must go beyond the mere adoption of new laws. Unless they work pro-actively to implement them, these new human rights laws may be reduced to dead artifacts. Even the Socialist Labor Law established various systems for protecting workers, but in reality it was not followed most of the time. The same is true of legal structures protecting women. In 1946 North Korea passed the "Law on Equal Rights for Men and Women," but this did not lessen the problem of gender discrimination.

IV. Tighter Internal Control and Harsher Penalties: The 2009 Revised Penal Code and Weakening of Political/Civil Rights

When North Korea revised its Constitution in April 2009, it explicitly identified *songun* as a guiding ideology of the regime alongside the existing *juche* ideology (Article 3). A new chapter was added on the role of the NDC chairman, and the powers of the NDC were strengthened. At some unknown time after April 2009 North Korea made sweeping revisions to its Penal Code, implementing new measures using *songun* ideology as a legal backing. Provisions related to crimes infringing on the maintenance of national security were broadly revised and many new forms of penalization were established for harsher punishments. Regarding crimes of negligence in carrying out orders, decisions and directions, the code was revised to include orders issued by the NDC, the supreme commander, and the Party Central Military Committee. New penalties were added for the damage or theft of arms or munitions. Penalties for crimes related to the production of war munitions have been expanded and made harsher. At the same time stronger measures have been added for preventing the influx of capitalist culture. Where previously the law had only punished the import and distribution of corrupt materials, now it includes penalties for possession as well, along with stronger penalties for drug use. Penalties for causing mass disturbances, impeding work execution, and spreading false rumors were also increased. Harsher punishments for defectors were also introduced. Thus the 2009 revisions to the Penal Code were characterized by harsher punishments and adjustments to laws related to regime maintenance.²⁾

Following the April 2009 constitutional revision there were a series of incidents which had extensive impact on the civil and political rights of North Korea's citizens. As the failure of the currency reform measure of December 2009 became apparent, North Koreans' discontent reached a peak. At the end of September 2010 the Kim Jong Eun succession system was formally unveiled. Inter-Korean relations were affected by the Cheonan incident in March 2010 and the Yeonpyeong attack in November of the same year. In order to contain this growing dissent and secure the succession system, the North Korean authorities have been working to tighten internal control and increase punishments. Public executions, which had fallen off for a time in the mid-2000s, have shown a rising trend in 2009 and 2010. In particular, to prevent the influx of capitalist culture, those accused of distributing leaflets or video materials are subject to a wide variety of punishments including public execution, administrative punishments such as withholding of pay or fines, reform through labor, and confinement in political prisons. The number of defectors is declining due to a crackdown and harsher punishments for those caught defecting. Though there had been steady growth in the number of defectors entering South Korea - 2,018 in 2006, 2,544 in 2007, 2,809 in 2008, and 2,927 in 2009 - this number fell significantly to 2,424 in 2010.³⁾ This trend appears likely to continue this year.

With the recent introduction into North Korea of devices such as computers, video players, cell phones, MP3 players, and USBs, a culture of communication is forming among North Korean citizens and South Korean pop culture is becoming popular. As a result, people's awareness is changing and South Korean movies and dramas are being viewed even among the upper-middle classes and officials who uphold the North Korean system.⁴⁾ North Korea has imposed a crackdown on the spread of information in order to prevent a change in public mindset due to the influx of capitalist culture. For example the authorities have created a new consolidated surveillance organization known as "118 Sangmu" based on Kim Jong Il's January 18th directive to eradicate anti-socialist elements.⁵⁾

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- 2) Lee Baek Kyu, "Overview of North Korea's 2009 Revised Penal Code," (157th Monthly Conference of the Korea Society of North Korean Law Studies, Sept. 16, 2010).
 - 3) North Korean Refugees Foundation website www.dongposarang.or.kr (viewed on 2011.3.31)
 - 4) Lim Soon Hee and Lee Kyo Duk, "Recent Changes in Consciousness of North Koreans and Regime Instability," Unification Situation Analysis 2011-05 (Seoul: KINU, 2011), p. 16, p. 18
 - 5) Radio Free Asia www.rfa.org/korean, "Anxious North Korea Creates New Public Surveillance Organization" (2011.3.2).

The democratization movements that have spread through Northern Africa and the Middle East since January 2011 have also been a factor in weakening the civil and political rights of North Koreans. North Korea appears to be quaking with fear and desperate to stop the democratizing wind from blowing into the country. In response to the Middle Eastern regimes falling like dominoes to democratization movements in late February, Kim Jong Eun is said to have remarked, "In order to deal with the complicated international situation we must strengthen our borders," and "The hostile forces led by the US are presently seeking to overthrow the government of our Republic, and this has caused some ideological confusion within the country," (reported in Japan's *Yomiuri Shimbun* on March 10th). The North Korean media also declared, "Our ideological front will not be shaken by any reactionary ideological attacks or liberalization trends," (Pyongyang Radio, March 10th).⁶⁾

Concerned for the stability of the Kim Jong Eun succession structure, North Korea is eager to prevent its people from learning about capitalist culture and particularly about the real situation in South Korea. To prevent the democratization wave from flowing from Northern Africa and the Middle East into North Korea, they have imposed a crackdown and harsh penalties for the dissemination of outside information via flyers and video materials. In this regard, it seems likely that the authorities will again revise the penal code to enforce harsher crackdowns on the spread of outside information.

V. Tightening Discipline to Build a Strong and Prosperous Country: Adjusting Labor Laws and Diminishing Workers' Human Rights

North Korea continues to promote the slogan of building a *kangsung daeguk*. They urged workers to contribute to economic construction in order to make 2009 the year of the revolutionary apex. As part of this effort the 2009 New Years' Joint Editorial proclaimed, "In all units in every area we must strengthen work discipline, planning discipline, and financial discipline." The 2010 New Years' Editorial continued along the same line. The effort to provide the legal backing to support this resulted in the revised People's Economy Planning Law, the revised Goods Consumption Standard Law, and the newly adopted Labor Quota Law. We can interpret from this that the revisions to the People's Economy Planning Law

6) KINU, "Weekly Unification Situation Report 2011-11," p. 3.

tightened planning discipline, the Goods Consumption Standard Law strengthened financial discipline, and the Labor Quota Law improved discipline in work execution.

The stated purpose of the Goods Consumption Standard Law of November 2009 was to contribute to eliminating waste and promoting socialist economic construction. All of its 40 articles were concerned with setting standards for material consumption, applying those standards, and establishing guiding controls. It mandates compensation for losses incurred through waste and enumerates concrete examples of grounds for penalization. Regretfully, it appears that this is a reflection of the material shortages in North Korea at present.

The Labor Quota Law of December 2009 was also purportedly aimed at encouraging socialist economic construction. This law, which set more concrete parameters for the quotas established in the existing Socialist Labor Law, is characterized by a stronger system for evaluating labor quotas. First, the existing Socialist Labor Law only set evaluations for workers on collective farms. By contrast, the new Labor Quota Law expands the evaluation subjects to include institutions, companies, and organizations. Second, the Socialist Labor Law did not stipulate any specific sanctions or punishments in the event that its established norms are violated. The new law, on the other hand, contains clauses establishing sanctions and penalties according to evaluation results, thus backing up the evaluation results with legal force. However, rather than enforcing a system of evaluation and compensation based on equitable standards and procedures, this new law seems to have the ulterior purpose of stoking competitiveness among workers to boost production and thus advance socialist economic construction.⁷⁾

The most recent revision to the People's Economy Planning Law, in April 2010, revised 5 articles. The following features stand out. First, by adding a clause describing the planning of the people's economy as a "legal task," the imperative of economic planning was raised from legal ceremony to legal obligation. Second, the revised law added a clause stating "Contracts must be formed within a certain period from the time set by the People's Economic Plan." We can read into this the intention to accelerate economic planning. Third, a new clause was added stating "Institutions, companies, and organizations must directly set the order in which

7) Lee Kyu Chang, "Direction of North Korean Labor Laws after the 2009 Constitutional Revision, " Unification Situation Analysis 2011-04 (Seoul: KINU, 2011), pp. 11-20.

economic plans are carried out and must focus all efforts on the core businesses." This signifies an effort to tighten the planned aspect of economic projects.

From North Korea's position, economic improvement is fundamental to securing the Kim Jong Eun succession. As this year's New Year's Joint Editorial stated, "In 2011 the flame of the people's high living standard will burn more brightly and the battle must be fought to achieve the decisive turning point in constructing a *kangsung daeguk*." The editorial also emphasized that planning discipline, financial discipline and work discipline must absolutely be maintained in all units in order to improve economic management. Considering these points, it appears probable that North Korea will amend its labor laws in the direction of further urging the people to contribute to economic construction, and in the process the workers' labor-related human rights will inevitably grow weaker.

Appendix 1: Listing of Major Articles in the North Korean Penal Code

| Oct. 2007 Penal Code | April 2009 Revised Penal Code | Notes |
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| <p>Article 73</p> <p>Violations of the NDC's decisions, orders, & directives: up to 2 years hard labor</p> | <p>Article 73</p> <p>Violations of <u>the NDC chairman's orders, the supreme commander's orders, the NDC's decisions & directives, and the Party Central Military Committee's decisions, orders & directives</u>: up to 2 years hard labor</p> | Expanded range of punishments |
| <p>Article 74</p> <p>Failure to prepare for war production: for serious offences, up to 3 years re-education through labor</p> | <p>Article 74</p> <p>Failure to prepare for war production: for serious offences, up to 5 years re-education through labor</p> | Stronger punishment |
| <p>Article 76</p> <p>Damage to war technology: up to 2 years hard labor</p> | <p>Article 76</p> <p>Damage to <u>arms, munitions, or war technology</u>: up to 2 years hard labor</p> | More targets subject to punishment |
| <p>Article 78</p> <p>Illegal possession or transfer of arms or munitions: up to 3</p> | <p>Article 78</p> <p><u>Theft of war technology, illegal possession or transfer of arms</u></p> | More crimes subject to punishment |

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| years re-education through labor | or munitions: up to 3 years re-education through labor <u>Theft of arms or munitions, extensive theft of war technology</u> : 3-8 years re-education through labor | New clause (stronger punishment) |
| Article 80 Failure to produce supplies and raw materials needed for military production in a timely manner: for serious offenses, up to 3 years re-education through labor | Article 80 Failure to produce supplies, <u>fuel, electricity</u> , and raw materials needed for military production in a timely manner: for serious offenses, up to 5 years re-education through labor | More targets subject to punishment, stronger punishment |
| Article 86 Impersonating a soldier: up to 2 years hard labor | Article 86 Impersonating a soldier: for serious offenses, up to 5 years re-education through labor | Stronger punishment |
| Article 193 Import or distribution of decadent culture: up to 2 years hard labor | Article 193 Import, <u>possession</u> , or distribution of decadent culture: up to 2 years hard labor Import, possession, or distribution of pornographic videos: 5-10 years re-education through labor | More targets and crimes subject to punishment New clause |
| Article 217 Illegal drug use: for serious offenses, up to 2 years re-education through labor | Article 217 Illegal drug use: for serious offenses, up to 5 years re-education through labor | Stronger punishment |
| Article 219 Group disturbances resulting in death or destruction: 5-10 years re-education through labor | Article 219 Group disturbances resulting in death, <u>serious injury</u> , or destruction: 5-10 years re-education through labor | More crimes subject to punishment |
| Article 220 | Article 220 | More crimes subject to |

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| Conspiring to inhibit the management team's work through assault, threats, or insults: up to 3 years re-education through labor | Conspiring to inhibit or <u>repeatedly inhibiting</u> the management team's work through assault, threats, or insults: up to 3 years re-education through labor | punishment |
| Article 222 Inventing or spreading false rumors: up to 2 years hard labor | Article 222 Inventing or spreading false rumors: for serious offenses, up to 3 years re-education through labor | Stronger punishment |
| Article 233 Illegal border crossing: for serious offenses, up to 3 years re-education through labor | Article 233 Illegal border crossing: for serious offenses, up to 5 years re-education through labor | Stronger punishment |

Appendix 2: Listing of Changed Articles in the North Korean People's Economy Planning Law

| 2001 People's Economy Planning Law | 2010 People's Economy Planning Law | Notes |
|---|---|-------|
| Article 16: Within the first half of the year, all state planning agencies, institutions, companies, and organizations must prepare people's economy plans. This includes proposals for revision or application of existing production schedules, production and technological development, and sharing of materials among institutions, companies, and organizations | Article 16: The people's economic planning begins with a preliminary estimate. Institutions, companies, and organizations must calculate their potential production levels and release a preliminary estimate. This must be submitted to the higher agency and the state planning agency. | |
| Article 17: The people's economic plan is created in from the bottom up. Institutions, companies, and organizations must make written agreement to their assigned work plans and coordinate their demands. | Article 17: The State Planning Agency will review the preliminary estimates and release its guiding estimate in accordance with the economic development policy. This must then be ratified by the corresponding institution. Once ratified, the guiding estimate is | |

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| | sent to the institution, company, or organization. | |
| Article 27: It is the obligation of every institution, company, and organization to accurately execute the People's Economic Plan. | Article 27: <u>The People's Economic Plan is a legal task</u> and it is the obligation of every institution, company, and organization to accurately execute it. | Strengthens the legal obligation of following the economic plan. |
| Article 29: Institutions, companies, and organizations must form contracts correctly based on the People's Economic Plan. Contracts must be executed without fail. | Article 29: Institutions, companies, and organizations must form contracts correctly based on the People's Economic Plan and execute them without fail. <u>Contracts must be formed within a certain period from the time set by the People's Economic Plan.</u> | Emphasizes speed in carrying out economic plans. |
| Article 32: Institutions, companies, and organizations must first produce items anticipated by their export plan. Items anticipated by the cooperative production plan must be guaranteed within the first ten days of the month. | Article 32: <u>Institutions, companies, and organizations must directly set the order in which economic plans are carried out and must focus all efforts on the core businesses.</u> Important targets and items anticipated by the export plan must be produced first, and items anticipated by the cooperative production plan must be guaranteed within the first ten days of the month. | Emphasizes operating the people's economy according to plan. |