

Revising North Korea's Legislation on Controlling the People and Maintaining the System

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I. Raising Problems

Recently a series of the legislations which have been enacted or amended related to controlling the people were released. It was widely assumed that the Penal Code was revised (amended and supplemented) at an unknown date after April 2009, which North Korea confirmed as April 28. Afterwards, North Korea revised the Penal Code during the same year on July 21 and October 19, respectively.¹⁾ The Administrative Punishment Act had also been revised on October 16, 2011, within only 3 years of its enactment on May 20, 2008. In addition, North Korea also enacted the Resident Administrative Act on July 8, 2010. Following the implementation of the Resident Administrative Act, the legislation on controlling the people and other relevant laws in North Korea, including the existing Penal Code, the supplementary provisions to the Penal Code (ordinary crimes), Administrative Punishment Act and the People's Security Enforcement Act (formerly the Social Safety Enforcement Act), among others, had increased quantitatively.

North Korea's legislation on controlling the people along with revising the laws associated with social control is closely linked to regime stability. In the process of establishing the Kim Jong-un succession, North Korea's Penal Code and Administrative Punishment Act were

1) Note that the North Korea's Penal Code was known to have been supplemented and amended in around 2008, and the dates were confirmed to be January 15 and April 29, 2008 respectively.

amended while the Resident Administrative Act was enacted. The direction of the system that maintains control over the people in North Korea can be gauged by examining the revisions to the legislation on controlling the people. This paper will analyze the main contents of the Resident Administration Act, which was legislated in 2010, along with the revised Penal Code and Administrative Punishment Act and consider the prospects of maintaining a system of control over the people.

II. Main Contents of Revising the Legislation

1. Resident Administrative Act

On July 8, 2010, the Standing Committee of the Supreme People's Assembly adopted Decree No. 944 of the Resident Administration Act, which consisted of 4 chapters and 39 articles. When viewed as a whole, the Resident Administrative Act appears to regularize the existing contents already in the process of being implemented related to the real lives of North Koreans such as status registration, use of housing, life of the Neighborhood Association, order or accommodation, etc. A distinct characteristic is that the President and Vice-President of the Neighborhood Association must be regulations, so the Neighborhood Association meetings hold elections for the President and Vice-President positions (Article 10). It was not known that the Vice-President of the Neighborhood Association had been established. Furthermore, another distinctive stipulation is "the implementation of the management of responsible zones." The Resident Administrative Act stipulates that "the Council of the People's Commissar should determine the responsible zones of jurisdiction within the institution, enterprises and neighborhood associations, and it should be normally managed" (Article 21). Whether the Vice-President of the Neighborhood Association is in place or the management of the responsible zones is implemented, it can be assumed that the North Korean authorities will strive to strengthen control over the people.

2. Penal Code

First, the Penal Code which was revised in October 2009 added an array of sentences with monetary fines (Article 27). The fines can be applied as an additional punishment to the anti-nationalists and those who commit crimes against the people (Article 28). Second, the penalties for the crime of illegally borrowing or lending state property to individuals were strengthened. Provisions were added so that particular cases of large-scale losses in national and social cooperative organizations due to the illegal act of borrowing or lending property to individuals can be punishable by 5 to 10 years of correctional labor (Article 135).

On one hand, the amendments to the Penal Code, along with the stipulation of its monetary penalty, can be clearly perceived as an act of regulating the existing monetary penalty system. The existing Penal Code does not have the variety of monetary fines because other regulations were set forward (Judgment Decision Execution Act Article 9). On the other hand, however, fines in the Penal Code explicitly state that henceforth, they would be actively utilized with the intent to punish. It is noteworthy that this is relevant to the North Korean authorities' economic difficulties. The strengthened penalties against individuals for the act of illegally borrowing or lending state property can also be equally analyzed. It can be interpreted as the North Korean authorities strengthening their responses against the prevalent acts of illegally lending state property. On one hand, the stipulation on fines, which can be added onto

anti-nationalists and those who commit crimes against the people, appears under the evidence that ① responses to anti-nationalists and those who commit crimes against the people are strengthened from the legal system's perspective and ② anti-nationalists and those who commit crimes against the people are common occurrences from the realistic perspective.

3. Administrative Punishment Act

The Administrative Punishment Act was revised in October 2011, substantially amending 254 of the existing 199 provisions. The revision of the Administrative Punishment Act shows a prominent characteristic related to the guarantee and improvement of human rights. First, the new stipulation does not retroactively punish offenders. It stipulates that “The Administrative Punishment Act will be applied to those who commit illegal crimes in a timely manner. However, the Act will be applied to the cases where the sentences are overturned or reduced in the crimes committed under the previous Administrative Punishment Act (Article 6).” Second, it established regulations to clearly define “human rights” and to prevent human rights violations. It specifies that “Law-related officials will be provided a warning, a stern warning or less than 3 months of unpaid labor or refinement with labor punishment in the case of human rights violations...(Hereafter omitted)” (Article 165).

However, the most prominent feature of the revised Administrative Punishment Act is that up to 15 penalties for “violations against the national defense management order” were established in Chapter 2, Section 1. The penalties for violations against the national defense management order in the revised Administrative Punishment Act are similar to “the crimes of infringing the national defense management order,” which is specified in Chapter 4 of the North Korean Penal Code. There are 16 crimes that violate the national defense management order in the Penal Code.

When North Korea amended its Constitution on April 9, 2009, it proclaimed the *Juche* and Military-first (*Songun*) ideologies as its guiding principles by saying “... *Juche* and the Military-first ideologies as the guiding principles for self-activity” (North Korean Constitution, Article 3). Furthermore, the Penal Code was drastically amended on the 28th of the same month in order to adopt measures that legally support the Military-first Policy.²⁾ Penalties for violating the national defense management order were newly established through the substantial amendments to the Administrative Punishment Act. In other words, an institutional support for the Military-first Policy via the Administrative Punishment Act as the subsequent actions in accordance to the revision of the Penal Code was established. The provision for a prosecution agency to monitor the application and enforcement of administrative penalties was also established (Article 254), which was meant to be the groundwork for strengthening the aforementioned agenda.

Among the existing provisions that outline the punishment, the penalties for violations against economic management order were increased the most. An additional 17 provisions were supplemented onto the

2) Lee, Kyu-Chang, “Analysis and Evaluation of North Korean Human Rights Legislation under the Kim Jong-un Succession.” Ministry of Government Legislation, *2011 Research Report on Inter-Korean Legislation* (Seoul: Ministry of Government Legislation, 2011), p. 248.

existing 66 for an increased total of 83 provisions. Stipulations for penalties were also included in crimes against the planned production order (Article 50), co-embezzlement of state property (Article 69), illegally counterfeiting as well as using counterfeit currency (Article 78) and the violations against the public order of currency exchange (Article 80), etc. It is known that the responses to the economic management order have been considerably strengthened. Moreover, there was an increase in the number of stipulations on the penalties for violations against the cultural management order by 7 provisions (from the existing 19 to a total of 26), the general administration order by 2 (from 27 to 29) and the communal life order by 8 (from 34 to 42), among others.

III. Assessment and Prospects

North Korea concurrently strengthened Kim Jong-un's succession along with its control over the people. In particular, the North Korean mass media also reported that the North Korean authorities mobilized the "Storm Troops" organization as a means to control the public in 2011.³⁾ From the realistic and legal system's perspectives, North Korea has utilized legislations relevant to controlling the public such as the Resident Administrative Act, Penal Code and the Administrative Punishment Act, etc. as a means to continuously maintain its rule over the public security. In addition, it was discovered that North Korea enacted and publicly implemented the Administrative Censorship Act. This is attributed to the fact that a North Korean scholar published a paper in 2011 that made references to the Administrative Censorship Act as one of the North Korean laws.⁴⁾ The North Korean authorities and mass media did not publicly announce the timing or content of the Administrative Censorship Act at all, so the accurate date of enactment or the specific contents of the Act cannot be confirmed. However, based on the paper published in early 2011 that mentions the actual presence of the Administrative Censorship Act, it is speculated that the Act had been enacted closely around the time Kim Jong-un made his first official appearance as successor before and after in late September 2010. If one broadens the scope a little more, it is highly probable that the Act was enacted when it became publicly known that Kim Jong-un was nominated as the successor between January 2009 and September 2010. When looking at the name of the Administrative Censorship Act, it can be understood that the Act deals with censorships over "administrative" agency or "administrative" workers (civil servants), but it can be judged as a means to regulate crackdowns and censorship in order to control the people. Despite the name of the "Administrative" Punishment Act, in reality it regulates the crackdowns and punishment of the North Korean people.

North Korea reorganized the power structure at the 4th Party Delegates' Conference on April 11, 2012 and the 5th Session of the 12th Supreme People's Assembly on April 13, 2012. At the 4th Party Delegates' Conference in particular, the members in the public security had its entire lineup moved to the forefront.

3) Kim, Soo-Am et al., *2012 White Paper on North Korean Human Rights* (Seoul: KINU, 2012), p. 175.

4) Kim Kyung-hyun, "The Source of Administrative Law in a Republic," *Kim Il Sung University Newspaper: History of Law*, Volume 57, Issue 1 (2011), p. 109.

Even the National Defense Commission (NDC) is made up of personnel from two key sectors of the military industry and the public security.⁵⁾ In addition, North Korea held nationwide Police Substation Directors' Meeting in 13 years on November 23, 2012 and strengthened the public security's control over the people in the past year.⁶⁾ It is likely that Kim Jong-un will maintain his reign on the public security and strengthen control over the people until he becomes confident in his regime stability throughout 2013. It is highly probable that the Kim regime will constantly strive to contain any violations against the national defense management order, economic order, external thought and cultural penetration through the legal means of the Penal Code, Administrative Punishment Act, Administrative Censorship Act and Resident Administrative Act, among others.

Table 1. The Process of Establishing the Kim Jong-un Succession and Revising the Legislation on Controlling the People

January 2009	Kim Jong-un was nominated as the successor
April 9, 2009	Amendments to the Constitution -The Military-first (<i>Songun</i>) ideology was proclaimed as the guiding principle
April 28, 2009	The Penal Code was substantially revised. - Support for Military-first Politics was followed such as strengthening the penalties for crimes that infringe the national defense management order
October 19, 2009	Selected revisions in the Penal Code -Additional fines were applied to anti-nationalists and those who commit crimes against the people
July 8, 2010	Resident Administrative Act was enacted. -Clear stipulations on the position of the Vice-President of the Neighborhood Association and the management of responsible zones
September 2010	Kim Jong-un made an appearance as the official successor (at the 3 rd Party Delegates' Conference) -Presented with the title of Marshal (<i>Daejang</i>) on the 27 th -Appointed Vice-Chairman of the Central Military Commission of the Workers' Party of Korea and appointed to the Central Committee on the 28 th
October 16, 2011	Administrative Punishment Act was amended. -15 penalties for violations against the national defense management order were newly stipulated. -Increased penalties for violating economic management order
December 17, 2011	Death of Kim Jong-il

5) Park, Hyeong-Jung, "Outline of the Kim Jong-un's Ruling Coalition advanced in this April." *KINU Online Series* 2012-18, April 23, 2012.

6) *Yonhap News*, "North Korea's Kim Jong-un keen on strengthening the public security agency in his first year of ruling," reported on November 24, 2012.

April 2012	Kim Jong-un ascended to the position of Supreme Leader in North Korea - Elected as First Secretary of the Workers' Party of Korea on the 11 th (at the 4 th Party Delegates' Conference) -Elected as First Chairman of the National Defense Commission on the 13 th (at the 5 th Session of the 12 th Supreme People's Assembly)
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