

## How will Changes in North Korean Legislation Affect Inter-Korean Exchanges and Cooperation?\*

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Changes in North Korean legislation are quite important for inter-Korean exchanges and cooperation. Because the flow of inter-Korean exchanges and cooperation so far has only been done in one direction from South to North Korea, the legal system that supported them was bound to be based on North Korean law. I would like to predict that the legislative volume of the sub-legal codes will increase more and the contents of them will be subdivided in North Korea. Legislation will be further developed in areas that target foreigners, and used to strengthen and protect the power of the ruling class. There will be more legislation related to the tax system. Those changes in North Korean legislation will affect inter-Korean exchanges and cooperation. It is time to grasp in advance the various issues that may arise in that and set up countermeasures to preemptively handle them.

**Keywords:** North Korean legislation, North Korea's legislative change, the socialist rule of law, inter-Korean exchanges and cooperation, legislative assistance to North Korea

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## I. Introduction

Though many people believe that there is no law in North Korea, or even if there is a law it is useless, North Korean legislation has undergone significant changes and developments. The 'rule of law' claimed by North Korea is different from the concept of 'rule of law' that is commonly used, but the importance of it cannot be overlooked. This is because it is based on the necessity of attempting to change policies in accordance with North Korea's internal and external circumstances and legally supporting them. Authoritarian rulers often make use of a legal system to counteract the many dysfunctions that plague their regimes.<sup>1</sup> And North Korea is no exception. North Korean laws and regulations have also been used as a means to secure legal grounds for the succession of power and the protection of the regime.

Meanwhile, South and North Korea have developed exchanges and cooperation in the wake of the inter-Korean Red Cross talks in 1971, and the 2018 inter-Korean summit has become a new turning point. Exchanges and cooperation between the two Koreas can play a role as a driving force in resolving distrust between each other that has persisted since the division and restoring of national homogeneity. Furthermore, the establishment of related laws and policies for a peaceful future is also drawing attention as an important task to accomplish. Inter-Korean exchanges and cooperation should be conducted through legal procedures, so both the recognition of and consensus on the legal system between the two Koreas are essential.

Therefore, it is significant to analyze the impact of North Korea's legislative changes on the progress of inter-Korean exchanges and cooperation. It is not an exaggeration to say that the future changes in inter-Korean relations depend on inter-Korean exchanges and

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1 Ginsburg and Moustafa researched how authoritarian rulers use "judicial institutions," and I would like to expand the discussion to "legislation." Quoted from Tom Ginsburg and Tamir Moustafa, "Introduction: The Functions of Courts in Authoritarian Politics," in *Rule by Law: The Politics of Courts in Authoritarian Regimes* (Cambridge: Cambridge University Press, 2008), p. 21.

cooperation. It is necessary to understand North Korean laws and systems from a mid- to long-term perspective, and to design exchanges and cooperation between the two Koreas based on this understanding.

This study explains why the changes in North Korean legislation are important for inter-Korean exchanges and cooperation. It also explains what changes are currently taking place in North Korean legislation and the future prospects associated with it. Then, it examines how the future changes in North Korean legislation will affect inter-Korean exchanges and cooperation. Hopefully, the study will be used to draw up countermeasures for changes in North Korean legislation and promote inter-Korean exchanges and cooperation.

## **II. Why Changes in North Korean Legislation are Important for Inter-Korean Exchanges and Cooperation**

### ***1. The pattern of inter-Korean exchanges and cooperation***

Exchanges and cooperation between the two Koreas so far can be divided into two main categories: trade and economic cooperation, humanitarian aid projects.<sup>2</sup>

Inter-Korean trade and private economic cooperation projects began after the so-called "7/7 Declaration" in 1988, when Daewoo Co., Ltd. received approval from the government for 519 North Korean ceramics through Hong Kong brokerage. Since then, economic exchanges between the two Koreas have developed in the order of general trade, consignment processing trade, and direct investment. At the time of the start of inter-Korean trade, only simple product trade was carried out, but afterwards, South Korea began to supply raw materials and

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2 The following is a summary of the contents of the website of the Ministry of Unification of the Republic of Korea. See South Korea, the Ministry of Unification, "Inter-Korean Exchanges and cooperation," <<https://www.unikorea.go.kr/unikorea/business/cooperation>> (date accessed April 19, 2020).

equipment, and then began consignment trade to process and import finished products from North Korea.

The first investment in North Korea was made in 1993, when Daewoo Co., Ltd. was approved for cooperation with North Korea and produced shirts, bags, and jackets at Nampo Industrial Complex. Thereafter, a total of 100 cooperative projects were approved until 2013, but seven projects were canceled due to North Korean factors and company circumstances, resulting in a total of 93 approved projects.<sup>3</sup> South Korean private companies' direct investment in the North has been carried out in various areas, including Gaeseong, Pyongyang, Nampo and Goseong, while most of their direct investment has been made in special zone areas such as the Gaeseong Industrial Complex and Mt. Geumgang. The representative examples of inter-Korean economic cooperation projects are the Gaeseong Industrial Complex and the Mt. Geumgang Tourism Project.

The Gaeseong Industrial Complex began on August 22, 2000, when Hyundai Asan Co. of South Korea signed an agreement with the North's Korea Asia-Pacific Peace Committee and the National Economic Cooperation Federation on the construction and operation of industrial zones in Kaesong for the purpose of building industrial zones and back-to-back cities. About 54,000 North Korean workers and 800 South Korean workers were employed by 124 companies operating in the complex. But in response to North Korea's fourth nuclear test and long-range missile launch on February 10, 2016, the South Korean government suspended the operation of the Gaeseong Industrial Complex altogether, and the North also shut down the complex. By industry, there were 73 textile companies, 24 machine metals, and 13 electrical and electronic companies. It is known that the accumulated output of the Gaeseong Industrial Complex before closing was \$ 3.14 billion.

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3 They include Mt. Geumgang tourism, and exclude Gaeseong Industrial Complex. See South Korea, the Ministry of Unification, "Inter-Korean Exchanges and cooperation," <<https://www.unikorea.go.kr/unikorea/business/cooperation>> (date accessed April 19, 2020).

The Mt. Geumgang Tourism Project prepared a breakthrough in inter-Korean exchanges and cooperation before the Gaeseong Industrial Complex. On April 20, 1998, South Korean entrepreneurs were allowed to visit North Korea in accordance with the “measures to revitalize inter-Korean economic cooperation” announced by the South Korean government. In June of that year, Ju-yung Chung of Hyundai Group visited North Korea and agreed specifically with the Korea Asia-Pacific Peace Committee on tourism and development projects at Mt. Geumgang. The historic Mt. Geumgang tourism project began on November 18, when the Geumgang ship departed from Donghae Port for the first time. Since then, 934,662 cumulative tourists have been to Mt. Geumgang. However, the so-called “Park Wang-ja incident”<sup>4</sup> occurred on July 11, 2008, and the project has been suspended since the South Korean government temporarily suspended the tour program the following day.

On the other hand, in the 1990s, the South Korean government played a major role in organizing the framework of inter-Korean economic cooperation at the private level. In August 1990, the Inter-Korean Exchanges and Cooperation Act and the Inter-Korean Cooperation Fund Act were enacted. With the announcement of the “Measures to Revitalize Inter-Korean Economic Cooperation” on two occasions in 1994 and 1998, a legal environment was provided for the expansion of private economic cooperation. In the 2000s, full-scale dialogue began between the inter-Korean authorities, and the government-level economic cooperation project was promoted. As the first inter-Korean inter-governmental project, the Imjin River flood prevention project was discussed, and afterwards, the Gyeongui Line and Donghae Line railroad/road connection projects, agricultural

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4 On the morning of July 11, 2008, a female tourist from South Korea died of a North Korean military shooting at a North Korean military control zone near a beach in the Mt. Geumgang Tourist Area. For details of the incident, see Herskovitz Jon and Junghyun Kim, “South Korean tourist shot dead by North soldier,” *Reuters*, July 11, 2008, <<https://www.reuters.com/article/us-korea-north-shooting/south-korean-tourist-shot-dead-by-north-soldier-idUSSEO14908720080711>> (date accessed May 28, 2020).

cooperation projects, raw materials for light industry, and underground resource development cooperation projects were promoted.

In 2010, when the so-called “Cheonanham incident”<sup>5</sup> occurred, the South Korean government implemented “5 · 24 measure,” which includes North Korean vessels not fully permitted to operate in the South Korean waters, cessation of inter-Korean trade, South Koreans not allowed to visit North Korea, no new investment in North Korea, and suspension of humanitarian aid projects. Humanitarian aid to North Korea for infants and other vulnerable people and the Gaeseong Industrial Complex were an exception to this measure, but currently only humanitarian aid remains possible for the projects, with the closure of the complex in 2016.

## **2. *One-sided dependence on North Korean legislation***

When analyzing the history of the inter-Korean exchanges and cooperation project, above all, I would like to point out that the flow of inter-Korean exchanges and cooperation has only been conducted in one direction from South to North Korea.

First of all, inter-Korean exchanges and cooperation have been done only in areas located in North Korea, such as Gaeseong and Mt. Geumgang. No project has been attempted in South Korea. Any investment was carried out only by the flow of South Korean capital into North Korea as well. Even considering that North Korea's economic level has been significantly lower than that of South Korea, it has been more of a unilateral aid initiative to North Korea rather than South-North cooperation. Regarding the legal system applied to the implementation of inter-Korean exchanges and cooperation, macro-contents were defined by signing an inter-Korean agreement, but

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5 On March 26, 2010, the South Korean navy's patrol ship, the PCC 772 Cheonanham, was sunk by a torpedo from a North Korean navy submarine. For details of the incident, see “Report: South Korean navy ship sinks,” *CNN*, March 27, 2010, <<http://edition.cnn.com/2010/WORLD/asiapcf/03/26/south.korea.ship.sinking/index.html>> (date accessed May 28, 2020).

specific details were governed only by North Korean legislation. Because all the projects were carried out in North Korea, the legal system that supported them was bound to be based on North Korean law.

If inter-Korean exchanges and cooperation continue to proceed only one-way as they have in the past, it will inevitably raise the issue of equity based on the principle of mutual benefit as well as the legal instability supporting the exchanges and cooperation. It is because whenever an unexpected change in the North Korean legislation governing inter-Korean exchanges and cooperation projects occurs, it affects the entire business related to the legislation. It can be a serious problem considering the structure of the North Korean legislative system, which can very easily enact or amend laws. The socialist system does not allow for the division of powers, especially the executive and legislative branches, which are independent of each other. This means that the legal system applied to inter-Korean exchanges and cooperation can be changed as soon as the North Korean authorities decide.

Therefore, if the inter-Korean exchanges and cooperation project is to be resumed, efforts should be made in a way that the inter-Korean exchanges and cooperation project can be conducted bilaterally between the two Koreas rather than one way. It needs to find a way to create exchanges and cooperation projects from North to South. And before the projects will be restarted, changes in North Korea's legislation should be steadily observed and reviewed. Based on the understanding of North Korean legislation, the two Koreas can develop together through exchanges and cooperation as partners in equal relations.

### **III. The Background and the Changes of North Korean Legislation**

#### ***1. The background of North Korean legislation***

North Korea calls itself "the socialist rule of law," and its main

contents are explained in three dimensions.<sup>6</sup> First, it is to improve legislation to complete the socialist legal system. This means legalizing all social relations in their entirety. Second, it is to strengthen compliance in society and increase awareness of it. Through collective and comprehensive school education and social education, all members of society are provided with legal knowledge of current legal norms. Third, it is to strengthen legal control in society to establish a thorough legal order. Strict legal control is emphasized, especially emphasizing the enhancement of the functions and roles of legal institutions and thorough elimination of power abuses and extraterritorial acts by workers working with state power.

The reason why North Korea emphasizes “the socialist rule of law” is to authorize and establish the national order.<sup>7</sup> The purpose of it is not to limit the power of government and defend the freedom of the people, but to regulate and control the lives of the people. North Korea's ruling class may have chosen the legal system as a means of control. The legislation has been active according to their needs, which means that laws and regulations work as effective norms in North Korea. If laws and regulations are meaningless in North Korea, there is no need to emphasize the importance of “the socialist rule of law” or to enforce legislation. In other words, the changes in North Korean legislation specifically suggest what the North Korean regime wants and needs. This is why we need to pay attention to them.

## **2. The changes in North Korean legislation**

In North Korea, the revision of legislation began widely from the time of Kim Jong-il, the former leader.<sup>8</sup> Since Kim Jong-un took power,

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6 Yoo-Hyun Jin, “The Principal's Theory of the Construction of a Socialist Rule-Based State,” *Kim Il-Sung University Journal: History and Law*, vol. 51, no. 1 (2005), pp. 45-49.

7 Tae-Wook Jeong, “North Korea's Theory of Legalism and Its Direction of Development,” *Asian Women's Law*, vol. 9 (2006), p. 147.

8 Peace Research Institute, “North Korea Transforming from Teaching to Legal,” *Unified Korea*, no. 262 (2005), p. 92.



legislation and revision of laws and regulations have occurred more frequently, and there have been developments in the judicial field, such as the expansion of the special trial system. The main characteristics of the changes in North Korean legislation since Kim Jong-un officially became a leader in December 2011 are as follows.

First, the amount of legislation has increased significantly. North Korea enacted 31 new laws and amended 81 of the existing 187 laws from 2012 to 2015.<sup>9</sup> This amounted to 43.3% of all published laws, and a significant proportion of the legislation was reorganized. This means that the North Korean government has begun to recognize the importance of legislation. In particular, the constitution was amended and economic legislation was reorganized frequently.

The North Korean Constitution has been amended five times since December 2011: April 2012, April 2013, June 2016, and April and August 2019. In the April 2012 revision, in the preamble to the Constitution, the achievements of former leader Kim Jong-il were emphasized and the Constitution itself was named “Kim Il-sung-Kim Jong-il Constitution.” In the April 2013 revision, the ‘Party’s 10 Principles of Ideology’ was revised to justify Kim Jong-un’s powers and strengthen the new system. In the June 2016 revision, as the National Defense Commission was abolished and the State Council was newly established as a national agency, Kim Jong-un was appointed chairman of the State Council, and accordingly, there were changes in terms in many provisions. The April 2019 revision was evaluated to create the “Kim Jong-un Constitution.” Kim Il-sung and Kim Jong-il were designated as historical figures, and the contents related to the ‘military-first’<sup>10</sup> idea were deleted while the policies and institutions of the Kim Jong-un era were largely reflected. The August 2019 revision

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9 Jeong-won Park, “Analysis and Prospect of North Korea’s Legal Enactment System,” *Legal Research*, vol. 53 (2017), p. 13.

10 ‘Military-first’ idea is the ruling ideology of Kim Jong Il, the former leader, who built a power system centered on the military. This concept is called “Songun” in Korean. For more information, see Cheol-woo Kim, *General Kim Jong Il’s Songun Politics: Military Politics, Politics with the Military as the Main Force* (Pyongyang: Pyongyang Publishing House, 2000).

was also for constitutional approval of Kim Jong-un's powers.

Legislation in the economic sector was also actively carried out in North Korea, especially on attracting foreign capital. The laws related to attracting foreign capital in North Korea, revised after December 2011, are as follows:<sup>11</sup> the Joint Venture Act, the Joint Venture Act, the Foreign Investment Banking Act, the Foreign Investment Business Registration Act, the Foreign Investment Business Finance Management Act, the Foreign Investment Enterprise Accounting Act, and the Foreign Investment Enterprise Act, Foreign-Invested Companies Bankruptcy Act, and Foreign Economic Arbitration Act. This indicates that the North Korean authorities have been making rapid and quantitative abundant legislative activities with the will to open up the economy.

Second, in terms of formality, North Korean legislation has been systematized. The most notable turning point in the change in North Korea's legislative system is the enactment of the Legislation Act in 2012. The Legislation Act is a law that regulates North Korea's legislative process, defines its purpose and principles, subject matter, the role and authority of the legislative authority, the order and relationship between each agency, and the method of writing the law. It was enacted in order to complete the socialist legal system by strictly establishing the system and order in the legislative project.<sup>12</sup> The Legislation Act stipulates divisional laws, regulations and bylaws in the form of North Korean laws. As a result, the relationship and order of effect between North Korean statutes, which had been unclear before, were defined.<sup>13</sup> Among the types of North Korean legal norms, it is the highest in the order of sectoral law, regulation, and bylaws, and the lower norms should not

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11 It is based on laws in *The North Korean Statutes* published by the National Intelligence Service of the Republic of Korea in 2017. See South Korea, The National Intelligence Service, *The North Korean Statutes 2017* (Seoul, 2017).

12 Article 11 of the Democratic People's Republic of Korea (hereinafter, DPRK) Legislation Act.

13 Kyung-il Heo, "Effectiveness Rankings and Effectiveness of the Laws in the Legislation Act," *Political Law Research*, no. 43 (2013), p. 35.

conflict with the higher norms.<sup>14</sup> The Legislation Act also provides for legislative institutions and legislative procedures in North Korea. In addition to the principles of formal and procedural matters related to the enactment of the law, it stipulates matters such as listening to opinions in the process of preparing a legal document, establishing a legal enactment plan, and compiling regulations.

Since the enactment of the Legislation Act, the scope of understanding of the overall legislative system of North Korea, which was indirectly guessed, has expanded and deepened to a considerable extent.<sup>15</sup> It is seen as a great help in a clearer understanding of the ranking of the North's *de facto* normative system.<sup>16</sup> And after that, the conflicts between the upper and lower norms began to be resolved. In particular, as the provisions of laws that conflict with the Constitution have been revised, the consistency of the North Korean legal system has improved. Objectively speaking, however, the quantity and quality of North Korean legislation are still insufficient and there is a limit to calling it a country under the rule of law.

### **3. The future changes in North Korean legislation**

Taking into account the changes in legislation as described above and the social and economic aspects in North Korea, I would like to predict how North Korean legislation will change. Here are four avenues of future change in North Korean legislation:

First, the legislative volume of the sub-legal codes such as regulations and bylaws will increase and the contents of them will be further subdivided. In fact, the regulations and bylaws stipulated in the Legislation Act as sub-legal forms already existed before the adoption of the Act. Since North Korea adopted the Lason Economic and Trade Zone

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14 Article 62 (2) of the DPRK Legislation Act.

15 Byungki Kim, "North Korea's legislative system focusing on the Legislation Act," *Administrative Law Research*, no. 60 (2020), p. 109.

16 In-Ho Song and Kwi-il Choi, "A Review of North Korea's Legal System-Focusing on North Korea's Law on Legislation," *Legal Research*, Vol. 27, no. 1 (2019), p. 244.

Act as the 28<sup>th</sup> decision of the permanent session of the Supreme People's Assembly on January 31, 1993, it has enacted a total of nine regulations, including the adoption of the Statistics Regulations of the Lason Economic and Trade Zone Act as the 19<sup>th</sup> Cabinet decision on March 6, 1999.<sup>17</sup> In addition, 17 regulations were enacted, including the Regulations on Development of the Gaeseong Industrial District Act, which was enacted on April 24, 2003, and 18 bylaws including the Enforcement Rules of the Automobile Management Regulations of the Gaeseong Industrial District Act, which was enacted on August 7, 2008, since North Korea adopted the Gaeseong Industrial District Act on November 30, 2002.<sup>18</sup>

In the North Korean legal system, regulations and bylaws have been enacted since the early 2000s, but there was no basis for legislative institutions and rankings of them. The institutions which establish regulations and bylaws, and rankings of them were officially prescribed when the Legislation Act was enacted. This is because the North Korean authorities have expressed their willingness to strengthen the rule of law, and it seems to be with the intention to actively utilize the legislation of subordinate legal norms such as regulations and bylaws in the future.

It is very meaningful to enforce legislative powers while delegating certain parts to lower institutions without controlling all laws and regulations by the upper institution, in the process of transitioning from a planned economic system to a market economic system. This means that

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17 The DPRK Lason Economic and Trade Zone Act was completely amended in 2011, and based on this, the number of sub-regulations is eight. It is not clear whether the sub-regulations that were enforced before the amendments made in 2011 are currently in effect or have lost effect with the amendments made in 2011. See Myung-sub Han, *Special Lecture on Unification Law* (revised edition, Paju: Han-UI M-Plus, 2019), p. 583.

18 The DPRK Gaeseong Industrial District Act stipulates that the business regulations can be enacted as a sub-regulation of the bylaws, and the Gaeseong Industrial District Management Committee, which consists of South Korean personnel, has the authority to legislate. The Gaeseong Industrial District Management Committee is known to have enacted a total of 51 business regulations so far.

it supports the policy of increasing the autonomy of each economic agent while decentralizing the powers concentrated in the central government. In the course of promoting economic reform, China took steps to decentralize the central government and expand management autonomy for state-owned enterprises. It is significantly related to the enactment of a number of sub-legal codes, including administrative and local laws, after the Legislation Act was enacted in China. In terms of legislative powers, China has a decentralized system which is different from North Korea which has a centralized system,<sup>19</sup> but the commonality can be found in terms of expanding the autonomy of sub-organizations.

Second, legislation will be further developed in areas that target foreign countries and foreigners. This is because it is the first priority to attract investment from them. Currently, the most systematic and legislative areas in North Korea's legislation are laws targeting foreign countries and foreigners, especially those related to special economic zones. The Economic Development Zone Act, adopted on May 29, 2013, calls for expanding special economic zones across North Korea, which is considered similar to the trend of special economic zones in China, called dot-line-side proliferation.<sup>20</sup> Furthermore, unlike most North Korean laws that do not have sub-legal codes, regulations and bylaws related to special economic zones such as the Lason Economic and Trade Zone Act have been steadily established and amended, so this trend is expected to continue.

Third, North Korean legislation will be used to strengthen and protect the power of the ruling class, and this trend will be particularly prominent in areas where 'rents'<sup>21</sup> are generated. In China, one of North

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19 Jeong-won Park, "Analysis and Prospect of North Korea's Legal Enactment System," p. 49.

20 Uk Yoo, "Background and Significance of the Enactment of the North Korean Economic Development Zone Act," *Unification Economy*, winter edition (2013), p. 71.

21 The 'rent' means "an export or earned income from natural gifts" like oil or "a politically created opportunity to obtain wealth through unproductive economic activity." See Hyung-joong Park, "Why didn't North Korea 'collapse' or 'reform

Korea's role models, officials' involvement in the economic growth process has also emerged as a political and social issue. The legislation on trade rights, one of the exclusive business rights in North Korea shows the above trend. In North Korea, the details of trade rights are regulated by the Trade Act. Trade transactions may be conducted by institutions, enterprises, or organizations that have obtained permission for business from the central trade guidance agency,<sup>22</sup> and trade transactions can only be made within the scope of obtaining a business license.<sup>23</sup> When signing an important trade contract, the contract must be deliberated by the central trade guidance agency,<sup>24</sup> and the transaction of funds must be made through a designated bank while payment must be made by designated payment method.<sup>25</sup> This means that in North Korea, trade activities can only be done by those authorized by political power, and the flow of funds is possible only through the monitoring and control of political power through banks. North Korea's Trade Act functions to ensure that exclusive rights to trade operate under the complete control of the ruling class, and North Korea's legislative overhaul is aimed at supporting them. Legislation is expected to be more active in the future in areas where not only the Trade Act but also the means of creating 'rents' and controlling them are needed.

Fourth, related laws will be overhauled to effectively function as a tax system. North Korea prides itself on being a "tax-free country" because of its socialist system.<sup>26</sup> However, due to marketization,<sup>27</sup> the

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and open up'?, *Modern North Korean Studies*, Vol. 16, No. 1 (2013), pp. 52-53.

22 Article 11 of the DPRK Trade Act.

23 Article 15 (1) of the DPRK Trade Act.

24 Article 16 (2) of the DPRK Trade Act.

25 Article 18 of the DPRK Trade Act.

26 Currently, there is no official tax system for North Koreans, but only the Foreign Investment Companies and Foreign Tax Act for foreigners and the tax regulations in each special economic zone.

27 Marketization is a diverse and comprehensive concept, used as a concept that contrasts with planning, and also refers to the creation and expansion of a marketplace. See Moon-soo Yang, *North Korea's Planned Economy and Marketization* (Seoul: Unification Education Center, 2013), pp. 34-35.

system that drives all the economic surplus of local governments and businesses to the central government has been changing. So the central government needs a legal mechanism to secure finances. China and Vietnam had also reformed the tax system at the stabilization stage in the transition to their current economic system.

North Korea's economic system is in a dilemma where the planned and market economies complement and conflict with each other at the same time. The market economy leaks and steals various facilities, raw materials, parts, and electric power existing in the planned economy, while supplementing the planned economy by providing food and daily necessities that the planned economy cannot provide to residents instead. On the other hand, the planned economy supplements its finances by absorbing various surpluses from the market economy in the form of taxes and quasi-taxes.<sup>28</sup> Currently, tax/quasi-tax revenues that the North Korean government takes are officially state corporate earnings from factories and businesses, market fees in general markets, state payments, service companies' national payments, trade company proceeds, land usage fees, real estate usage fees, and unofficially, revolutionary funds, donations, spot payments, patriotism, and extra tax burdens.<sup>29</sup> North Korea does not directly name "tax," but there is a system that actually corresponds to the tax system, which is expected to expand more and more in the economic sector. Furthermore, there is a possibility that a tax system will be introduced formally in the future.

#### **IV. The Effect of North Korea's Legislative Change on Inter-Korean Exchanges and Cooperation**

How will North Korea's legislative changes affect inter-Korean exchanges and cooperation? We can get the answers according to the

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28 Moon-soo Yang, "Topography and Discourse on North Korea's Marketization Discussion" (paper presented at Summer Conference of North Korean Research Association, Seoul, 2014), p. 110.

29 *Ibid.*, p. 112.

four avenues of future change as mentioned above.

First, the increase in the legislative volume of sub-legal codes such as regulations and bylaws, and the further subdivision of the contents of them will have a significant impact on economic cooperation projects. In particular, this should be noted for projects carried out in special zone areas such as the Gaeseong Industrial Complex and Mt. Geumgang. For example, the North-South agreement is basically applied to the Gaeseong Industrial Complex, but the governing laws that are specifically applied while doing business are the North and South Economic Cooperation Act and the Gaeseong Industrial District Act, its sub-regulations, enforcement bylaws, and business rules. The North and South Economic Cooperation Act and the Gaeseong Industrial District Act and its sub-rules can be established/amended only by legislative institutions of North Korea. The enforcement bylaws of the Gaeseong Industrial District Act are established/amended by the central industrial zone guidance organ which is the general affairs of the leadership,<sup>30</sup> and business rules are established/amended by the industrial district management agency which is the management committee.<sup>31</sup> It means that the North Korean authorities can easily control or change specific contents throughout the project by enacting or revising regulations and bylaws, because the relevant legal system is based on the North Korean legislation. While North Korean authorities have the authority to make laws, regulations and bylaws, South Korean officials can engage in business rules only, which are the lowest legal standards.

The circumstances in which only North Korean laws, regulations and bylaws apply to the exchanges and cooperation projects and in which North Korean authorities can unilaterally enact or amend them may lead to disputes. In fact, the South Korean government has refused to enforce the Fines Regulation and 17 implementation bylaws, which are sub-rules of the Gaeseong Industrial District Act. Since such a pattern may occur in the Gaeseong Industrial Complex as well as other

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30 Article 22 (3) of the DPRK Gaeseong Industrial District Act.

31 Article 25 (9) of the DPRK Gaeseong Industrial District Act.



special economic zones, it is necessary to consider how to resolve the inequality of the legislative system when the South and the North cooperate to jointly develop special economic zones.

Second, with regard to the prospect that legislation aimed at foreign countries and foreigners will be further developed, it would be a problem if it has little effect on inter-Korean exchanges and cooperation. Many people assume that investment laws targeting foreign countries and foreigners or special economic zone laws will also apply to South Koreans and businesses, but this is not the case. According to the North Korean legal system, foreign countries and South Korea are strictly divided. North Korea's investment legislation is divided into foreign investment legislation aimed at foreigners and North-South economic cooperation legislation aimed at Korean companies and residents. According to a related booklet in North Korea, "The investment relations of South Korean entrepreneurs are not regulated by the Foreign Investment Relations Act, but laws related to North-South Economic Cooperation are regulated separately."<sup>32</sup>

North Korea's investment-related laws, which distinguish South Korea from foreign countries, imply North Korea's discrimination against South Korean capital, so it is one of the tasks to be actively resolved to promote inter-Korean exchanges and cooperation. It is necessary to reorganize the current North Korean legislation that limits South Korean capital and make disadvantages over foreign capital.

Third, regarding the increase in legislation to strengthen and protect the powers of the ruling class in North Korea, business rights related to inter-Korean economic cooperation will also be used as a means of creating 'rents' and controlling them. In relation to trade projects between the two Koreas, the case of North Korea's Trade Act mentioned above has implications. The mission of this law, which is mentioned under the Trade Act, is to "expand foreign markets,"<sup>33</sup> and it is stipulated that "the state is intended for trade with several countries and

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32 Cheol-won Jeong, *Investment Guide for Chosun Investment: 310 Questions and Answers* (Pyongyang: Legal Publishing House, 2007), p. 60.

33 Article 1 of the DPRK Trade Act.

companies."<sup>34</sup> This means that this law applies to trade activities targeting foreign and foreign companies, excluding South Korean residents and businesses. However, if inter-Korean exchanges and cooperation are activated and the trade between the two Koreas increases, it is highly likely that the ruling class will control them in a similar way to the case of the Trade Act.

In North Korea, as marketization progresses, wealth has been concentrated in some classes and monopolies have occurred and the gap between the rich and the poor has widened.<sup>35</sup> The collusion between money and power became more pronounced, and a kind of political-business tie-up structure was established and consolidated. This situation will expand if inter-Korean exchanges and cooperation are active and large amounts of South Korean capital are invested, and the ruling class will try to control it. Therefore, it is expected that the impact of North Korea's legislation will be large where the 'rents' are created in the course of inter-Korean exchanges and cooperation.

Fourth, the prospect that the legislative system will be organized to actually function as a tax system has already been reflected when inter-Korean exchanges were made before. The tax regulation was established as a sub-regulation of the Gaesong Industrial District Act. The Mt. Geumgang International Tourism Zone Act, which was newly enacted in lieu of the Mt. Geumgang Tourism Zone Act, also has a tax regulation as a sub-regulation. In particular, South Korea was known to have given a lot of advice to the North in the drafting of the Gaesung tax regulations. Likewise, it is expected that North Korea's tax-related legislation will develop further if inter-Korean exchanges and cooperation are resumed.

## V. Conclusion

All laws have changed and developed in response to the times, and

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<sup>34</sup> Article 3 (2) of the DPRK Trade Act.

<sup>35</sup> Moon-soo Yang, *North Korea's Planned Economy and Marketization*, p. 71.

there is no exception even if it is North Korea. North Korean authorities have been actively revising legislation since Kim Jong-un took power. It had amended laws 161 times between when the country was established in 1948 and 2013. In contrast, it has amended laws 107 times since 2013. This indicates how important the current North Korean regime considers the rule of law, even if it is just a formality. Also, North Korean legislation has improved in terms of quality. The North Korean legal system was evaluated for its lack of consistency in the past, but many of those issues have been resolved since the Legislation Act was enacted. The Legislation Act clearly defines the form and effect ranking of North Korean laws such as sectoral laws, regulations, and bylaws. In addition, it systematically stipulates procedural processes such as bill submission, deliberation, and promulgation.

South Korea needs to pay attention to the changes in North Korean legislation mentioned above. Although it is now completely suspended due to international sanctions caused by North Korea's nuclear provocation, inter-Korean exchanges and cooperation should be resumed, and the two Koreas should prepare for them in advance. Because it is not only an important means to settle peace on the Korean Peninsula, but also a cornerstone to prepare for unification. While inter-Korean exchanges and cooperation have been suspended, South and North Korea have undergone many social and economic changes. Understanding each other's legislation could be the first step to bridge the gap between the two Koreas.

Therefore, I would like to suggest one of inter-Korean exchanges and cooperation projects. As a means of reopening tightly closed exchanges and cooperation, South Korea's legislative support project to North Korea can be considered. As a country with advanced legislation, South Korea has successfully participated in the modernization of securities laws in Laos, Belarus and Uzbekistan. In order to provide information such as legal advice and education, the 'Korea Law Center' has been established or promoted in China, Thailand, Cambodia, and Mongolia.<sup>36</sup>

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36 Yu-Hwan Kim and Dae-In Kim, *A Study on the Establishment Plan of the Korean*

If South Korea provides legislative assistance to North Korea as similar to other countries, it will serve as a springboard for inter-Korean exchanges and cooperation. In the process of supporting the legislation, South Korea can expect to gain more information and better understand North Korean society. Additionally, developing a North Korean legal system will result in improving the environment in which South Koreans and South Korean businesses will work in North Korea. Of course, unlike China and Vietnam which had chosen to open up after the transition, North Korea has maintained a closed attitude, so it will be a challenge whether North Korea will accept South Korea's proposal for legislative assistance.

Nevertheless, if the project starts, then it will need to make exchanges of accurate information on the legal system of the two Koreas a priority. And based on that, exchanges of technical knowledge for collecting, legislating, and managing laws and regulations will be promoted.<sup>37</sup> Especially, it would be useful in the tax sector, where there has been no precedent in which legislation has been formally enacted or implemented in North Korea. And, through this, South Korea can not only create new inter-Korean exchange fields, but also acquire North Korean legislative information.

North Korea's legislation reflects current economic and social changes in the short-term, and is closely related to prosperity and peace settlement on the Korean Peninsula in the long-run. South Korea needs to find out how to lead and cooperate rather than pursue regime changes in North Korea behind the scenes. It is time to grasp in advance the various issues that may arise in future changes in North Korean legislation and set up countermeasures to preemptively handle them.

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*Legal Reform Support Model* (Gwacheon: Ministry of Justice, 2015), pp. 61-62.

37 Hee-Doo Son, *A Study on the Trend of Internationalization of North Korean Laws* (Sejong: Korea Legal Research Institute, 2010), p. 122.

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