

The Past, Present, and Future of North Korean Economy: An In-depth Study on the North Korean Constitution's Economic Clauses and the Economic Reality

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During the founding of the two Koreas in 1948, the nations of South and North Korea diverged politically. The former adopted a liberal democratic political system, while its northern counterpart adopted a communist political system. Despite this dichotomy, each nation's Constitutions contained clauses that made provisions for similar economic systems, although their later implementations would look dramatically different.

From the mid-1990s, with the exception of Pyongyang and a few privileged classes, the distribution system began to collapse in North Korea. As a result, in the last 20 years, a people-powered internal market economy has emerged. Although North Korea's central power is maintaining a strong, unprecedented successive dictatorship, as long as widespread marketization and privatization are practiced among the people, even amidst government oppression, change in North Korea is simply a matter of time.

Keywords: North Korea, South Korea, Constitution, marketization, privatization

Introduction

Twenty years after the reunification of Germany at the end of the 20th century, the two halves of the world's only divided state, North and South Korea, still stand in stark contrast to one another. South Korea is one of the world's top ten trading powers and a member of

OECD while North Korea suffers from severe poverty and state-inflicted human rights oppression.¹ In the latter half of the 1990's alone, famine claimed the lives of three million North Koreans. Numerous political prison camps exist where hundreds of thousands are being detained even now. Further, the North Korean government is led by a strong dictatorial dynasty in its third generation of succession.

Among the many facets of the two Koreas worthy of study, this paper will focus on the economic aspect; in particular it will study changes in the economic clauses of the North Korean constitution to analyze the past and present of North Korea, as well as its prospective future.

First, in Part I ("History of North Korea"), this paper will observe the political changes in North Korea according to various important events in the nation's political history. It will explore how North Korea transitioned from a single-party dictatorship to a single-person

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1. Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, H.R.C., U.N. Doc. A/HRC/25/63 (February 7, 2014); Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, H.R.C., U.N. Doc. A/HRC/25/CRP.1 (February 7, 2014). In its report released on February 17, 2014, the UNCOI compared violations in North Korea to those of Nazi Germany, and urged, "The United Nations must ensure that those most responsible for the crimes against humanity committed in the Democratic People's Republic of Korea are held accountable. Options to achieve this end include a Security Council referral of the situation to the International Criminal Court or the establishment of an ad hoc tribunal by the United Nations." Further, the commission found that "systematic, widespread and gross human rights violations have been and are being committed . . . in many instances, the violations found entailed crimes against humanity based on state policies. The main perpetrators are officials of the State Security Department, the Ministry of People's Security, the Korean People's Army, the Office of the Public Prosecutor, the judiciary, and the Workers' Party of Korea, who are acting under the effective control of the central organs of the Workers' Party of Korea, the National Defence Commission and the Supreme Leader of the Democratic People's Republic of Korea." It also urged the international community to accept its responsibility to protect the people of North Korea from crimes against humanity, "because the Government of the Democratic People's Republic of Korea has manifestly failed to do so."

dynastic dictatorship. Specifically, it will look at the changes in the economic clauses found in the North Korean Constitution.

Part II (“North Korea’s Present”) will explore the marketization and privatization efforts initiated by local population as a means to combat economic hardship. It will further examine how the North Korean government has reacted to this phenomenon in its laws and institutions.

Part III (“North Korea’s Future”) will explain the future prospects of North Korea, in addition to the significant ramifications of the current North Korean grassroots capitalist market economy as researched through various empirical studies.

The paper will conclude with an explanation of how the economic order of South and North Korea looked relatively similar at the time of their founding, yet diverged over time, with one developing a closed economy and the other a free market economy. Finally, it will describe how, as the people of North Korea become better acquainted with a market economy, changes in North Korea on an official level are simply inevitable.

Histroy of North Korea

Political Developments of North Korea

The ideology of Communism itself justifies a proletariat dictatorship in which a dictatorship of one class rules over another class and a single-party dictatorship to accomplish this end is accepted. Further, the oppression of any opposition, even by human rights violations, is condoned in the name of ideology. The governing structure of communist states can be explained as the “principle of democratic centralism” or “principle of party rule.” Although the word “democratic” is used, the government is heavily centralized and not in the least democratic, which results in the “Party” always dominating official state organs. Unlike in liberal democracies, according to communist ideology, the head Secretary is superior to state representatives. This is why Kim

Jong-il, in the aftermath of Kim Il-sung's death in 1994, was able to ascend to the position of General Secretary of the Workers' Party of Korea, despite previously serving as the Chairman of the National Defense Commission of North Korea, which is not the state representative under the Constitution. Kim Jong-il, who attained the title in 1997, was able to hold the position until his death.² Further, Communist ideology bucks historical jurisprudence by giving superior privileges to Communist revolutionaries by supposed virtue of their capacity to predict the development of history. In other words, Communist revolutionaries are considered an exception to the rule of law. In this way, Communist ideology fundamentally condones a single-party dictatorship and exceptions to the rule of law, which justifies the oppression of all parties that oppose the Communist Party's absolute rule. Therefore, under such ideology, the natural successor of a single-party dictatorship is a single-person dictatorship — a common phenomenon observed in the Soviet Union and other Communist States.

However, North Korea went a step further and moved from a single-person dictatorship to the deification of one family. The 1956 August Faction Incident and the 1967 May Kapsan Faction Removal Incident (the large-scaled purging of opposing forces) eradicated the last of the weak checks and balances left within the Communist Party of North Korea. The colossal purges, together with the North Korean version of "burning of books and burying of scholars" that occurred between 1967 to 1972 were the beginning of the suppression of all scholarship and art forms outside of Kim Il-sung's One-Ideology. North Korea progressed from a single-party dictatorship to a single-person dictatorship and the idolization of a single personality, coupled with the deification of a single family. The product of these developments is embraced in the Ten Principles for the Establishment of the One-Ideology System (Ten Principles), which were established

2. It was only through the 2009 Constitutional amendments that the Chairman of the National Defense Commission of North Korea was enumerated as the nation's supreme leader.

from 1967 through to the early 1970s. The principles reflected in this document deify Kim Il-sung to a level that surpasses the idolization of single-person dictators in any other Communist society. In North Korea, the Ten Principles are separate from the Constitution and considered to supersede it. Without them, it is impossible to understand the core principles behind the North Korean system. Even with the demise of the official educational system after the Arduous March (a mass famine that killed millions of people) in the mid-1990s which weakened the actual binding power of the Ten Principles over the population, the Ten Principles still ideologically justify a system of hereditary succession. The Ten Principles consist of a preamble, ten articles, and sixty-five clauses, and similar to the Ten Commandments of the Bible, the text wholly deifies Kim Il-sung. In particular, Article 8 provides, "We must value the political life we were given by the Great Leader Comrade Kim Il Sung, and loyally repay his great political trust and thoughtfulness with heightened political awareness and skill." The Ten Principles elevate political life over the physical life of the individual, thus showcasing North Korea's human rights philosophy.³

According to North Korean standards, violations of human rights that occur in North Korea are not human rights violations at all. Anyone who opposes the Supreme Being and Savior Kim Il-sung and his family, so central to their "faith," no longer possess "human rights" worthy of protection. This belief is at the core of North Korea's human rights philosophy. Moreover, North Korea constructed a more elaborate form of Communist political stratification by conducting a series of political examinations in 1958 and dividing the nation into a three-

3. Kim Jong-un, "The Core Content and Political Significance of the Amendments to the 'Ten Principles'," *State Affairs & Policy* 12 (Korea Institute of National Unification, 2013), pp. 12-14. Revisions were made to the Ten Principles in June 2013, and the title was changed to "Ten Principles for the Establishment of the One-Leadership System" (comprised of ten articles and 60 clauses). Although no significant changes were made to the content, the focus of the revision was to establish the absolute leadership of Kim Jong-il's successor, Kim Jong-un.

part political classification system consisting of fifty-one subcategories. North Korea is thus a class society in which severe discrimination exists between the classes regarding all aspects of society, including food, housing, employment, and promotion.

North Korea's pseudo-religious system is also reflected in what is known as *Juche* Ideology. The meaning behind *juche* (or "self-reliance") is by itself rather innocent. However, in political reality, the ideology is conflated with the beliefs surrounding the Great Leader. *Juche* Ideology claims that, through the revolutionary theory of "Kim-Il-sung-ism", the popular masses are the socio-political driving force, and at the center of the masses is the Great Leader, who is the "top brain."⁴ Thus, the Great Leader system of North Korea can be described as a cross between Stalinist dictatorship and eastern feudalistic patriarchal totalitarianism.⁵

Emphasizing this point, Article 3 of the Ten Principles provides, "Make absolute the authority of the Great Leader Comrade Kim Il-sung. Affirming the absolute nature of the Great Leader Comrade Kim Il-sung's authority is the supreme demand of our revolutionary task and the revolutionary volition of our party and people." It is safe to say that this sort of slavish adherence to dogma served as one of the factors contributing to North Korea's economic crisis after 1967.

4. Kim Jong-il, "Discourse Between Kim Jong-il and the Leading Officials of the Korean Workers' Party Central Committee Regarding Issues Raised on the Teaching of *Juche* Ideology (July 15, 1986)," *Kim Jong-il's Writings* 162 (Pyongyang: Korea Workers' Party Press, 1992).

5. Hwang Jang-yop describes North Korean society in his book *Democracy and Communism* (Zeitgeist Seoul, 2009). Before defecting to South Korea in 1997, Hwang Jang-yop held a key position of authority in North Korea. He created the theoretical background of *Juche* philosophy; was the former President of Kim Il-sung University; the former Chairman of the Standing Committee of the Supreme People's Assembly; and the former International Secretary of the North Korea Workers' Party. Although Hwang regrets that his contribution to *Juche* strengthened Kim Il-sung's power, he remained proud of *Juche's* originality in being a human-centered philosophy that overcomes classism.

Changes to the Economic Clauses of the North Korean Constitution

The following section will elucidate how the economic clauses developed, based on the most significant amendments and revisions to them. In addition, it will take a closer look at the creation and development of the North Korean market economy, which will aid in understanding the meaning behind modifications to the Constitution's economic clauses as well as the current reality of the North Korean economy in light of the struggle between governing authorities and the local people.

1948 Founding Constitution (Constitution of People's Democracy)

Just one day before the September 9th, 1948 founding of North Korea, the Supreme People's Assembly adopted and publicly announced the Constitution of the Democratic People's Republic of Korea, also known as the People's Democratic Constitution, which was classified as the official Constitution of North Korea.⁶ The 1948 Constitution did not have separate economic clauses; rather, rules concerning North Korea's economy were set forth in Articles 5 to 10. One noteworthy feature is that these Articles departed from mainstream socialist states by allowing for a mixed economic system that recognized management and ownership of property by the State, cooperative organizations, and individuals.⁷ Article 5 stipulated that, "In the DPRK the ownership of the means of production takes the following forms: state ownership; cooperative ownership; ownership by private natural or by private juridical person." Article 6 provided that the "Maximum extent of land ownership is [from] five [to] twenty *jungbo*." Article 8 provided that "The private ownership prescribed by law of land, draft cattle, from implements and other means of production, medi-

6. The 1948 Constitution was partially amended five times before being amended as the "Socialist Constitution" in 1972.

7. Myung-rim Park, "Constitutional Making and the State Identity of the Two Koreas: A Comparative and Relational Approach," *The Korean Journal of International Studies* 49 (2009), pp. 235, 254.

um and small industrial enterprises, medium and small trade, raw materials and manufactured goods, residences and outhouses, articles of domestic economy, income and savings is protected by law," and therefore, "the right to inherit private property is ensured by law." Finally, Article 10 stipulated that "The State carries out the national economic plan," and elucidates the State's adoption of a socialist planned economy.

Of note is that, during its founding in 1948, South Korea also carried out an egalitarian and mixed economic model that adopted elements of both planned and market economies. For example, Article 84 of the first Constitution of South Korea in 1948 stipulated that "The economic order of the Republic of Korea shall be based on the realization of a social justice and the balanced growth of the national economy that is able to satisfy the basic needs of every citizen. Individual economic freedom shall be protected within these boundaries." This provision was understood to create a strong constitutional limitation on a liberal market economic order.⁸ South Korea's founding Constitution "abolished an individualistic capitalist state's order" and "adopted a socialist egalitarian principle; however, having a goal to realize a new state structure which possesses the strengths of an individualistic capitalist state — namely, where freedom, equality and creativity of each individual are in harmony."⁹

At the time of foundation, North Korea adopted a planned economy, but not a complete socialist system that denied all private property. So-called "people's markets" existed at the time of liberation, which later transitioned into "farm markets," and again to "farmers' markets."¹⁰ Even up to the 1950's, these markets served to allow individual

8. *Ibid.*, p. 255.

9. *Ibid.*, p. 255.

10. "Farmers' Market" is defined as a type of commerce in which agricultural and animal products harvested from cooperative farm joint funds and individual sideline profits are sold directly to residents at a designated location. While criticizing the farmers' markets as a backward form of business and a vestige of capitalism, North Korean authorities insisted that farmers' markets exist because the government was unable to provide their people with enough

sellers to do business for a certain period of time in a designated place while preventing private ownership and eventually absorbing the individual and cooperative establishments as State enterprises. It was namely a “nationalization” scheme.¹¹ As all private businesses transitioned into production cooperatives in August 1958, pursuant to Cabinet decision No. 140, the nationalization scheme was complete. Naturally, farmers’ markets were deemed a vestige of capitalism in need of eradication. Soon, restrictions were made on kitchen gardens in order to inhibit the earning of sideline profits. In addition, the operation of farmers’ markets was curtailed to only three days per week, and all farmers’ markets in the city were closed down. After the 1958 nationalization scheme, however, as the North Korean authorities began to solidify a socialist economy while disregarding the population’s daily necessities, clandestine dealings began to emerge between individuals. While the authorities devoted their resources to the munitions industry, these dealings grew into a flourishing black market.

1972 Constitutional Amendments (The Socialist Constitution or *Juche* Constitution)

Twenty-four years after the enactment of the 1948 Constitution, the Supreme People’s Assembly adopted the Democratic People’s Republic of Korea Socialist Constitution (1972 Constitution) during the first session of the Fifth Congress. In North Korea, this is known as the Socialist Constitution, a development of the 1948 People’s Democratic Constitution. The Socialist Constitution is also referred to as the *Juche* Constitution or Socialist Constitution of *Juche* to emphasize its origi-

consumer goods, including sufficient daily necessities and non-consumable products. *Economy Dictionary II* (in Korean) (Institute of Social Studies Economic Research Center, 1980), pp. 405-407.

11. Hyung-gon Chung, Byungyeon Kim, and Seok Lee, “The Current Situation of Marketization in North Korea and Prospects for Change of its Economic System,” *Korea Institute for International Economic Policy Research Report* 48 (2012).

nality as a constitution based on *Juche* Ideology.¹² In the 1972 Constitution, the whole of Chapter II, from Articles 18 to 34, regulates economic affairs.

The economic system in the 1972 Constitution departs from the mixed system enshrined in the 1948 Constitution, originally based on “socialist economic principles.” The trajectory of North Korea’s economy clearly shifted in the 1972 amendments. This shift is apparent particularly in the provision for ownership of the means of production. First, ownership of the means of production by natural persons or corporations, acknowledged in the 1948 Constitution, is deleted in Article 18, which stipulated, “In the DPRK, the means of production are owned only by the State and social cooperative organizations.” Further, Article 19 stipulated, “There is no limit to the property which the State can own.” Meanwhile, Article 21 indicated that the State “shall . . . gradually transform the property of cooperative organizations into the property of the people as a whole.” In addition to the elimination of private ownership of property, even the property of cooperative organizations is promised to become the people’s, and thus the State’s,¹³ by a declaration in Article 19 that the “State shall protect and develop on a preferential basis State property playing the leading role in the economic development of the country.” As regards to the definition of private property, Article 22 stated, “Private property is owned and consumed by individual citizens” and that “Private property is derived from socialist distribution according to work done and from fringe benefits granted by the State and society.” Thus, although extra income earned by individuals is allowed, it is allowed only in the sense that it is derived from the State; thus, it does not receive full state support.¹⁴ Article 22 goes on to stipulate

12. Myeong-bong Jang, “The Background, Content and Evaluation of the 1998 North Korean Constitutional Amendment (in Korean),” *Studies on North Korean Literature* 2, no. 7 (1999), p. 7.

13. According to Article 21, “The Property of the State Belongs to the Entire People.”

14. Jung-won Park, *Economic Clause of the North Korean Constitution (1998) and Economic Integration of the Two Koreas* 19 (Korea Legislation Research Center,

that “The products of individual sideline activities including those from the kitchen gardens of cooperative farmers and income property are private property,” and “The State shall protect private property and guarantee its legal inheritance.”

These changes to the constitution need to be interpreted in their historical context: Starting from the 1970s, North Korea entered into a full-fledged systematic competition with the South and cut down on food distribution under the pretext of covering the cost of funding the arms race with South Korea.¹⁵ In order to appease dissent from the population, the authorities allotted farmers 30 *pyong* (about 100m²) of kitchen garden space, which became the catalyst for farmers’ markets and black markets, a place where surplus produce or consumer goods can be exchanged. Further, this allotment resulted in a divide between cooperative farms and farmers’ markets in the agricultural economy. Although the farmers’ markets and black markets did not completely diminish the state-run distribution system, they expanded to the point of creating inroads for a market system.

As the economic recession and food shortages continued into the 1980s, the North Korean authorities reduced food distribution by 10 percent in 1987 under the pretext of “patriotic rice” (*Aegookmi*, 愛國米) for a “speed battle” (a form of socialist competition among North Koreans).¹⁶ Again, to prevent uprising, authorities allotted an additional 50 *pyong* of kitchen garden space to corporate and institutional workers. This measure contributed to the flourishing farmers’ markets of the 1980s. Ultimately, farmers’ markets became permanent and they formed in the capital and metropolitan areas as well.

However, as the expansion of farmers’ markets posed a threat to the planned economy, their days of operation were cut back to one day per week in 1987 and eventually extended only to three days per

1999).

15. The distribution amount decreased with the exception of two out of fifteen days. For example, distribution for workers decreased from 700g per day to 608g per day.

16. As a result, distribution to workers decreased once again from 608g per day to 547g per day.

week in 1989. Nevertheless, because of the ensuing shortage of consumer's goods as a result of a variety of pressures including the emphasis on "speed battles", the centralization of production of goods, the embezzlement of Party officials, the operation of Foreign Currency Earning Companies, the opening of Foreign Currency Shops, as well as the August Third People's Consumer Goods Production Movement,¹⁷ it became impossible to contain the expansion of the black markets that had formed on the basis of preexisting farmers' markets.¹⁸

In 1992, the North Korean authorities attempted to control these markets and other movements deemed antisocialist. However, these attempts proved futile and resulted in the continued life of farmers' markets and the form of black markets.

1992 Constitutional Amendments (The "Socialism of Our Own Style" Constitution)

On April 9th, 1992, at the third session of the Ninth Congress, the Supreme People's Assembly undertook the first major amendments to the 1972 Socialist Constitution in 20 years. In North Korea, the 1992 amendments are seen as a significant reflection of Kim Jong-il's "Socialism of Our Own Style," a systematic organization of the *Juche* Ideology. Thus, the 1992 Constitution is referred to as the "Socialism of Our Own Style Constitution."¹⁹

The 1992 amendments are understood as a reaction to various international crises, such as the collapse of socialism in Eastern Europe and the dissolution of the USSR, as well as to debilitating domestic situations like the aggravating shortage of power and food.

17. The August Third People's Consumer Goods Production Movement charged unemployed workers to use factory waste resources to produce consumer goods helpful to the people. A certain portion of consumer goods produced as a result of this movement flowed into the black market contributing to its growth. See Kim et al., *supra* note 12, p. 57.

18. *Ibid.*, p. 56.

19. Jang, *supra* note 13, p. 8.

Up to this point, Kim Jong-il had reinterpreted and reestablished Kim Il-sung's *Juche* Ideology into a systematic theory to present North Korea's unique version of socialism and to fortify Kim Jong-il's authority as the successor.²⁰ It is also believed that the "Socialism of Our Own Style" reflected the trajectory of Kim Jong-il's leadership, and the 1992 constitutional amendments emphasized *Juche* Ideology as a reaction to the collapse of socialism around the world.²¹

The Chapter on Economy from Articles 19 to 38 of the 1992 Constitution adopted new provisions that attempted to alter the course of North Korea's economic system. The Chapter included such provisions as state provision of "all working people with every condition for obtaining food, clothing and housing" (Art. 25), as well as the state's duty to "accelerate *Juche*-orientation, modernization, and scientific sophistication" (Art. 26), to "perform all economic activities by giving top priority to solving the problem of technical development ... and accelerate scientific and technical development and the technical innovation of the national economy" (Art. 27).

Article 28, by allowing for the "building of production facilities for the cooperative farms," appeared to provide a practical means for meeting the aforementioned promises; nevertheless, it has been understood to be a mere form of appeasement directed towards a people discontented with continuous food shortages and economic recession.

One noteworthy feature of the 1992 Constitution is that it emphasized "socialist production relations and the foundation of an independent national economy" while providing for open foreign policy. These provisions seen in Article 16 purported to guarantee the legal rights and interests of foreigners in the region. Similarly, Article 37 provided that joint ventures and cooperation of enterprises with foreign corporations and individuals would be encouraged. This was North Korea's attempt to attract foreign capital and technology into their failing economy by emulating the China's legal and systematic

20. Ibid.

21. Ibid.

reform policy, prescribed in their 1982 Constitution, which permitted foreign enterprises, other foreign economic organizations, and individual foreigners to invest in China (Article 18(1)) and protected the lawful rights and interests of the joint ventures with Chinese and foreign investment located in China (Article 18(1)).²²

This change to the Constitution is perhaps best viewed in continuity with other efforts from the 1980s whereby North Korea had aspired to make some groundbreaking changes by heavily emphasizing commercial diversification and expansion of exports. For example, in 1984, North Korea enacted the Law of the DPRK on Joint Venture, modeled after the Law of the People's Republic of China on Chinese-Foreign Joint Ventures (1979)²³; the Joint Venture Company Income Tax Law in the following year; and further the Law of the DPRK on Foreign Investment (1992), the Law of the DPRK on Collaboration (1992), the Law of the DPRK on Foreign Enterprises (1992), the Law of the DPRK on Foreign-invested Bank (1993), the Law of the DPRK on the Leasing of Land (1993), and the Law of the DPRK on Contractual Joint Venture (1995). However, despite these legislative efforts to attract foreign capital, without the appropriate foreign currency credit rating, legal system or domestic market to support such investments, North Korea was only able to elicit capital from *Jochongnyeon* (a pro-North Korean residents' league in Japan).

Legislative changes promoting openness and economic cooperation began around the time of the 1992 Constitutional amendments and are still ongoing to this day. Even though this legislation is considered a failure in its goals of attracting foreign investment, it may

22. Park, "Constitutional Making and the State Identity of the Two Koreas," p. 32.

23. In order to attract more foreign investment and remove any conflict between the many laws enacted to encourage foreign investment, the Law of the DPRK on Joint Venture and the Law of the DPRK on Joint Venture were completely amended in 1994. The newly amended Law made large-scale changes to the former provisions, which were modeled after the Law of the People's Republic of China on Chinese-Foreign Joint Ventures. These changes hoped to establish a "North Korean-style joint venture system." See Kook-yeol Bae, "The Change and Evaluation of Foreign Investment Laws in North Korea," *North Korean Studies Reviews* 16 (2012), pp. 103, 110.

be noted for breaking ground on “a two-track method,”²⁴ which provided both the environment for foreign investments and a system of supervised control.

North Korea reinforced a *Juche*-centered socialism in its 1992 amendments, yet serious power and food shortages forced North Korean farmers and workers to focus on their kitchen gardens. Soon, goods produced from decentralized production in North Korea, as well as products smuggled in from China, flooded the markets. Further, not only was surveillance and control over these unofficial economic activities limited, there was widespread bribery of government officials to have them overlook these practices.²⁵ Despite efforts from authorities to maintain the planned economic system and to revive the economy through openness and international cooperation, the stagnated state-run distribution networks and systems were a perfect breeding ground for the expansion of black markets that encroached on traditional means of provision.

1998 Constitutional Amendments (The Kim Il-sung Constitution)

Amendment Details

On September 5th, 1998, during the first session of their Tenth Congress, the Supreme People’s Assembly reflected Kim Il-sung’s ideology throughout the entire text of the Constitution, adopting a Constitution that would be referred to as the Kim Il-sung Constitution. The 1998 Constitutional amendments facilitated the country’s segue into the official commencement of the Kim Jong-il era by setting legal and systematic mechanisms to secure the new political order and rehabilitate the economy.²⁶ Further, as part of a pragmatic economic policy

24. *Ibid.*, p. 109.

25. Chung et al., “The Current Situation of Marketization in North Korea and Prospects for Change of its Economic System,” p. 59; see Jae-jean Suh, *North Korea’s Market Economy Society from Below* 26 (Korea Institute for National Unification, 2005), http://www.kinu.or.kr/eng/pub/pub_02_01.jsp?page=8&num=9&mode=view&field=&text=&order=&dir=&bid=DATA05&ses=.

that required a legal solution to North Korea's economic crisis, the economic clauses in particular went through significant changes. As the scope of the so-called "second economy" broadened, the 1998 amendments reflected economic reality and open foreign economic policies that had been only partially practiced before.²⁷

First, according to Article 20, the means of production could be owned by "social organizations" in addition to the State and cooperative organizations,²⁸ thereby empowering more economic actors. Further, although the scope of State property in Article 21 was reduced somewhat,²⁹ the scope of property was enlarged for both social cooperative organizations under Article 22 and private citizens under Article 24.³⁰ By expanding the scope of property for social cooperative organizations, it became possible for corporations and trading

26. Jang, *supra* note 13, p. 9.

27. Park, "Constitutional Making and the State Identity of the Two Koreas," p. 17.

28. "Social organizations" in North Korea refer to groups that have been organized by a particular social class and strata for the purpose of protecting their common interests and to realize a common goal according to the principle of autonomy. *Contemporary Joseon Language Dictionary* (in Korean) 1353 (1981). See also Jang, *supra* note 13, p. 17. This kind of social organization is established pursuant to the approval of an authorized State organ and obtains a legal personality under civil law. These are distinguished from cooperative organizations that are established largely pursuant to the orders of a State organ. Examples of North Korean social organizations include the Korean General Federation of Trade Unions, Korean Agricultural Workers Union, Socialist Youth League, Korean Journalist Union and the DPRK Red Cross. See Young-hwa Chung, "The North Korean 'Kim Il-sung Constitution' and Prospects of Implementing Market Economy," *Studies on North Korean Literature* 2 (1999), pp. 38-39.

29. Among the many institutions possessed by the State, "traffic and transportation" was replaced with "railway and airports," opening up opportunities for foreign individuals or corporations to invest in roads and maritime transportation.

30. The words "agricultural tools" and "fishing boats," which could be possessed by social cooperative organizations, were changed to "agricultural machinery" and "ships." Thus, tractors and other agricultural machinery, which were once exclusively owned by the State could also be owned by social cooperative organizations. Further, cooperative organizations could possess freight ships and passenger ships in addition to fishing boats.

companies engaged in profit-generating foreign trade to own the means of production, thus enabling greater levels of foreign economic activity.³¹

The scope of private property is worthy of particular attention. As the words that were formerly within the scope of ownership for cooperative organizations, such as “livestock” and “building,” were removed from Article 22, it became possible for private individuals to own livestock, homes and other forms of real estate³² as well as other forms of private property, such as “the products of individual sideline activities including those from the kitchen gardens” and “income from other legal economic activities.” Thus, through the 1998 amendments, not only did individual kitchen gardens and the profit generated through those gardens become officially supported, the economy was opened to individual profit-making through farmers’ markets and bartering.³³ This was akin to granting a constitutional seal of approval to kitchen gardens, general markets, farmers’ markets, and black markets that were prevalent throughout North Korea, albeit underground, from the 1990s.

Another noteworthy change made in terms of ownership comes from Article 24, wherein the subject of private ownership was amended from “worker” to “citizen.” In North Korea, the term “worker” refers to one who engages in either physical or intellectual labor such as a laborer, a farmer, or an office worker. The word “citizen,” however, refers to anyone who has the citizenship of a specific country and is

31. Park, “Constitutional Making and the State Identity of the Two Koreas,” p. 43.

32. The North Korean Civil Code enacted in 1990 extended the scope of private ownership by adding “private homes, items needed for family life such as household supplies and nonessentials, and contraptions such as automobiles” to the list: “socialist distribution according to labor, additional benefits of the State or society, the product of personal sideline activities like kitchen gardens, assets inherited, gifted or purchased by the citizen, and other assets obtained legally.” (Article 59). Myeong-bong Jang, *Collection of Most Recent North Korean Legislation* (in Korean) (Institute of Studies on North Korea Law, 2013), p. 311.

33. Park, “Constitutional Making and the State Identity of the Two Koreas,” pp. 33, 38, 44.

subject to the rights and responsibilities of its constitution.³⁴ This breaks away from the theory of proletarian revolution that heralds the working-class, and rather embraces the idea of citizenship, allowing all members of a nation to have the right to private property.³⁵

Second, in describing the “Daeahn business system” (North Korea’s core economic management system based on the orders of Kim Il-sung),³⁶ Article 33 of the amended Constitution provides that the State “shall introduce a self-supporting accounting system” and “utilize such economic levers as prime costs, prices and profits.” The use of words such as “self-supporting accounting system,” “cost,” “price,” and “profits” are related to a market economy and, therefore, imply that usage of this language was meant to expand the scope of freedom for economic actors.³⁷ For example, a “self-supporting accounting system” is a system that allows some flexibility for keeping private balance sheets for the purchase and sale of goods in which

34. *Joseon Language Grand Dictionary I* (in Korean) (1992), p. 379. See also Jang, *supra* note 13, p. 18.

35. Park, “Constitutional Making and the State Identity of the Two Koreas,” p. 38.

36. Based Kim Il-sung’s orders regarding “Daeahn Power Plants” in December 1961, the System enabled the Party to dominate the management of businesses by criticizing the previous system of sole responsibility as bureaucratic and individualistic. The authorities, in essence gained *de facto* control of the economy. A Party Commission was established within factory or corporation units, and the Party’s Chief Secretary was given the ultimate responsibility in terms of business production management. Since the authorities started to dominate the management of businesses, economic experts were no longer able to exhibit their expertise and factories or corporations debilitated into yet another political organ deprived of all economic logic. Soon after, the distribution system collapsed with the exhaustion of the central government’s budget, and the Daeahn Business System was in effect abolished from the 1990s. See Suh, *supra* note 25, p. 45.

37. The 1997 Law stimulated the nation’s economic development in step with the policy demands and realistic conditions of the time, and regulated the principle, procedure and method of selecting prices to raise the standard of living equally. Through this law, North Korea emphasized control of pricing, and also strengthened the awareness of fixing prices on an item’s quality as well as the supply and demand ratio. See Park, “Constitutional Making and the State Identity of the Two Koreas,” p. 41.

the corporation may reserve the profit internally, excluding any sum owing to the government (as State economic profit). On the other hand, the system is a way of imposing heavier control through management regulations over wages, funds, prize money, size of reserves; the systemization of management; use of immoveable property; supervision and control of finances; and both physical and political evaluation of workers and labor.³⁸

Third, from the perspective of foreign economic activities, the amended Constitution replaced the language in Article 36, from "Foreign trade activities shall be conducted by the State or under the supervision of the State," to "The State and social cooperative organizations shall conduct foreign trade activities." This appears to have been an attempt to revitalize foreign trade by expanding the scope of actors engaged in it and by releasing it from its State monopoly. In addition, the Trade Law was also revised in the same year as the Constitutional amendments in 1998 to reflect principles of trade diversification³⁹ and credit maintenance.

Furthermore, as the basis for establishing special economic zones similar to free economic and trade zones, the language "shall encourage the operation of various venture enterprises within the special economic zone" was added to Article 37. This language tacitly grants approval of 100 percent exclusively foreign-capital firms and corporations to be established in addition to the joint ventures and enterprises approved in the past. To attract foreign capital, North Korea had already designated the cities of Rajin and Sunbong as the "Rason" Special Economic Zone (a.k.a. Rason Economic and Trade Zone). However, the 1998 Constitutional amendments reflect North Korea's intention to expand free economic and free trade zones. The aforementioned effort to strengthen foreign trade and to participate in the international economy by amending its Constitution is closely related to the expansion of economic exchange and cooperation with South Korea as well.

38. *Ibid.*, p. 40.

39. Pursuant to North Korea's Trade Law, diversity of trade refers to trading in many sectors on many levels with various countries through diverse means and methods. *Ibid.*, p. 42.

In the same trajectory as the previously mentioned 1998 Constitutional amendments promoting openness to foreign involvement and economic cooperation, major revisions were made to various laws in 1999 including the Law of the DPRK on Foreign Investment, the Law on Rason Special Economic Zone, the Law on Wholly Foreign-Owned Enterprises, the Law on Equity Joint Venture, the Law on Contractual Joint Venture, the Law on Foreign Investment Business and Foreign Individual Tax, the Law on Foreign Exchange Management, the Law on Foreign-Invested Bank, the Law on the Leasing of Land, the Law on Foreign Economic Contracts, and the Law on Processing Trade. These modifications were introduced to reinforce central control and for the purpose of improving conditions for foreign investment.⁴⁰

On one hand, the 1998 Constitutional amendments continued the theme of economic rehabilitation through the expansion of foreign economic cooperation. However, on the other hand, as the development plans for Rason Special Economic Zone, which was implemented most ambitiously from 1993, came to a standstill, North Korea showed signs of retreating from a trade-first principle and instead emphasizing a self-sustained economy based on heavy industry.⁴¹

In sum, it can be inferred from analyzing the language of Article 19 in the 1998 Constitution that, although the Constitution purports to embrace principles of “socialist production relations” and “independent national economy,” North Korea had in fact adopted its own style of pragmatic market economy, which seeks to gain profit through

40. See Bae, “The Change and Evaluation of foreign Investment Laws in North Korea,” pp. 110, 112 (see graph 3).

41. For example, soon after the inauguration of the Kim Jong-il regime on September 17, 1998, the *Rodong Sinmun* common editorial remarked, “Foreign capital is like opium . . . only stressing foreign trade, while neglecting heavy industry . . . is not the right solution.” Chung, *supra* note 27, p. 40. Further, the Committee for the Promotion of Economic Cooperation that pursued the development of Rajin-Sonbong region officially disappeared from the reorganized ruling power. Kim Jong-il paid the price for failing to attract foreign capital into the Rajin-Sonbong Economic and Trade Zone, which was the only channel for foreign investment. See *Ibid.*

the economic sector. China's influence is believed to have played a role in this phenomenon, especially following the success of China's reform and open policy since the 1990s and its Constitutional amendments in 2004.

Policy Changes Following Constitutional Amendments

The relatively forward-thinking economic structure projected in the 1998 Constitution began to surface from the year 2000. First, in 2000 and 2001, Kim Jong-il visited China to observe its overall economy and announced the implementation of a policy reform in a statement entitled, "Regarding the Improvement and Reinforcement of Socialism and Economic Management in Accordance to the Demands of the Construction of a Strong and Prosperous Nation." This statement was followed by several measures including the 2002 July 1 Economic Management Improvement Measures (July 1 Measures),⁴² the designation of the Shinuiju Special Economic Zone, the North Korean economic inspection team's visit to South Korea, the designation of Mount Kumgang Tourist Region, and the designation of Kaesong Special Economic Zone. Of these changes, the July 1 Measures are considered to be the most significant shift in terms of the North's economic management. The core objectives of the July 1 Measures can be seen as market institutionalization, improvement of labor production, and expansion of national finances. As part of the July 1 Measures, the North Korean government allowed the sale of rice in markets in September 2002 and allowed trade in consumer goods to be undertaken in farmers' markets in March 2003, restructuring their function as part of the general or local markets.⁴³ As a result, thirty-eight general markets

42. The "July 1 Measures" refer to economic measures undertaken by the North Korean government after conceding to the limitations of a planned economy. As part of these measures, the North Korean government adopted some aspects of the market economy and changes in the distribution system. *Ministry of Unification, Understanding North Korea* (in Korean) 170 (2013).

43. Legalizing and expanding the black market into a general market in March 2003 was in essence a means to cover up the failure of the July 1 Measures.

were formed by December 2003 in Pyongyang alone. According to some sources, there are around 300 farmers' markets in the whole country.⁴⁴

Regarding economic openness and cooperation, it is worth noting that the legislative modifications that resulted after the July 1 Measures diverged into two models: "special economic zones" for foreign investment and "inter-Korean cooperation" specifically for the development of economic cooperation between the two Koreas. Examples of economic openness between the two Koreas are shown by developments such as the Basic Law of Shinuiju Special Administrative Region, Law on Mount Kumkang Tourist Region, and Law on Kaesong Industrial Complex which were enacted in 2002. Moreover, between 2003 and 2007, twenty-six enforcement regulations were enacted regarding Kaesong Industrial Complex and Mount Kumkang. Finally, the Law on North-South Economic Cooperation that serves as official guidelines for the inter-Korea cooperation was enacted in 2005.⁴⁵

Despite the 1998 amendments and the ensuing legislation that facilitated openness both internally within North Korea and between North Korean and other world economies, starting in the year 2005, North Korea resumed its efforts towards market suppression. This was possibly instigated by the surfacing of anti-socialistic elements following the introduction of general markets in 2002 (such as the rich becoming richer and the poor becoming even worse off) and commensurate with the belief that any threat to the system needs to be eradicated. In response to these concerns, three policies were initi-

The North Korean authorities attempted to resuscitate the official economy by merging the black markets into the State-owned markets because people returned to the black markets after promises of payment under the July 1 Measures went unmet. In other words, the North Korean authorities had given up controlling the black market and instead began to institutionalize them. See *Ibid.*, p. 33.

44. Chung et al., "The Current Situation of Marketization in North Korea and Prospects for Change of its Economic System," p. 63.

45. See Bae, "The Change and Evaluation of foreign Investment Laws in North Korea," p. 112.

ated: the suppression of general markets, the reinforcement of grain shops, and the exclusive sale of consumer goods by State shops.⁴⁶ Specifically in October 2005, North Korea announced a national food monopoly policy, which was, in practicality, the distribution system.⁴⁷ In December 2005 and March 2006, all forms of labor for individual profit were banned, and in September 2007, the sale of rice in markets was banned and only permissible in grain shops. Further, in April 2007, as a means of organizing the nation's farmers' markets, sales activities by women aged forty years or younger, sales activities by all men, and all exchanges that exceeded 200,000 won were banned.

Foreign policy mirrored trends in domestic policy, as seven foreign investment laws (such as the Law on Foreign Investment Corporation Financial Management and the Law on Foreign Investment Corporation Labor) were enacted in or around the year 2008. Although the content of these laws were never made public, deducing from the political climate of the time, they most likely enacted more restrictions of foreign investment.⁴⁸

2009 Constitutional Amendments⁴⁹

In April 2009, during its Twelfth Congress, the Supreme People's Assembly undertook another round of Constitutional amendments.

46. See Chung et al., "The Current Situation of Marketization in North Korea and Prospects for Change of its Economic System," p. 68.

47. In addition, dealing with food in markets was banned. However, since the State could not honor the promised distribution of food, the national food monopoly policy was in effect repealed in two months.

48. See Bae, "The Change and Evaluation of foreign Investment Laws in North Korea," p. 113.

49. Although three more amendments were made thereafter, the changes were minor. In the April 9, 2010 amendments, the Central Court and Central Prosecutor's Office were changed to Supreme Court and Supreme Prosecutor's Office. In the April 13, 2012 amendments, the preamble clarifies that North Korea is a nuclear power, the "Kim Il-sung Constitution" was modified to the "Kim Il-sung-Kim Jong-il Constitution," and the first Chairman of the National Defense Commission was appointed. Finally, in the April 1, 2013

The focus of the amendments was to solidify the authority of the Chairman of the National Defense Commission, to institutionalize “Military-First Politics,” and to respect and protect North Korean citizens’ human rights.

In reality, between the 1998 and 2009 amendments, there emerged major changes in the direction of North Korean economic policy and reality. As a response to both internal and external changes, in 1998 and the years that followed, the North Korean authorities implemented some significant economic strategies, such as the July 1 Measures, the introduction of general markets, and an emphasis on inter-Korean economic cooperation (such as Kaesong Industrial Complex and Mount Kumgang Tourism). As a result, significant changes to the economic clauses were anticipated during the 2009 Constitutional amendments, none of which actually occurred (despite changes elsewhere). Analysts have postulated that this lack of change resulted from North Korea’s desire to maintain its existing economic management system while progressively opening its economy to other nations.⁵⁰

First, from an internal perspective, the shutdown of general markets was announced in November 2008. A 100 or 150-day “battle” was enacted to blockade merchants from accessing markets in May 2009, and by the end of November 2009, currency reform was implemented, which in effect stripped the merchants of their wealth, substantially harming the *Donju*, the term for small businessmen.⁵¹ The currency reform was carried out with the anticipation that it would drastically reduce the financial infrastructure of market activity by reducing the capital of large cashholders such as large-scale merchants and brokers, and in effect devastating the market.⁵²

amendments, the name of the Kumsusan Memorial Palace, where Kim Il-sung’s corpse is enshrined, was changed to the Kumsusan Palace of the Sun.

50. Jung-won Park, “Significance and Main Characteristics of the 2009 Constitutional Amendment, the 2009 North Korean Constitutional Amendment and Changes in the North Korean System,” Institute for National Security Strategy Symposium Presentation, at 42 (October 20, 2009).

51. North Korean jargon meaning “small capitalist.”

52. Moon-soo Yang, “North Korea’s Marketization: Directional and Structural Changes (in Korean),” *KDI Review of the North Korean Economy* 45 (2013), p. 53.

The currency reform that took place in November 2009 led to grave consequences and faced significant opposition from the people. Though the effect of suppressing the market was achieved to a degree, it led to other side effects, such as skyrocketing exchange rates and market prices and critical shortages of product supply, that spiraled out-of-control so badly that the authorities completely aborted their crackdown on the market in February 2010. Finally, through the 5.26 Party Directives of 2010, the authorities retracted all control over the market. While impossible to completely confirm, it was reported that the so-called 5.26 Party Directives lifted all restrictions on the market, such as hours of operation, products, and age limits, and allowed its operation to resume in full.⁵³

In addition, the Kim Jong-un regime that began shortly after the death of Kim Jong-il in 2011 is also focusing its efforts on economy. For example, in June 2012, the North Korean authorities released the 6.28 Policies entitled, "Regarding the Establishment of Our New Economic Management System." The 6.28 Policies include smaller collective farm sub-units,⁵⁴ increased autonomy of factory enterprises, increased workers' wages, and the transfer of control over economic businesses monopolized by the Cabinet and the military.⁵⁵ These trends have continued into the year 2014.

Regarding foreign relations, after the 2009 Constitutional amendments and around the time of Kim Jong-il's death on December 17th, 2011, major modifications were made regarding laws on foreign investment, such as the enactment of the Law of the DPRK on the Mt. Kumgang Special Zone for International Tourism in 2011.⁵⁶ These

53. Chung et al., "The Current Situation of Marketization in North Korea and Prospects for Change of its Economic System," p. 72.

54. This refers to the smallest farming units.

55. Chung et al., "The Current Situation of Marketization in North Korea and Prospects for Change of its Economic System," p. 19.

56. The 2011 Law on Mt. Kumgang Special Zone for International Tourism was enacted in order to attract foreign investment and tourism from South Korea. Thus, the benefits given to former Mt. Kumgang developers were removed and instead business environment for foreign investors was improved. See

changes leading up to Kim Jong-un's accession to power reflect how the North Korean economic policies focus on foreign investment, and especially economic cooperation with China.⁵⁷ This kind of effort to bring in foreign currency has continued until recently and has resulted in attracting a substantial amount of Chinese and South Korean capital into the country. Nevertheless, the results do not compare to other socialist States, such as China or Vietnam.

North Korea's Present – North Korea's Economic Reality: Marketization and Privatization

The "market" has emerged in the nation that had for decades clung to the socialist model of a planned economy, and now the trend of "marketization" is slowly but indelibly replacing the function of planning. At present, it is hard to find another socialist economy with a higher rate of unofficial economic activity.⁵⁸ According to one research model measuring the rate of unofficial economic activity in North Korea, an estimated 83 percent of the population over the age of sixteen engages in household economic activity, such as kitchen gardens, animal husbandry and poultry, which is generally equated to the level of participation in the unofficial economy.⁵⁹

Marketization activities within North Korea are diverse and complex in nature, and can be divided into four categories: (1) Legitimate marketization behavior within the official economy, such as the institutionalization of general markets through the July 1 Measures of 2002, or the production and sale of work-at-home units that resulted from the August Third People's Consumer Goods Production Movement of 1984; (2) Illegitimate marketization behavior within the official economy, such as the procurement of natural resources and exchange

Bae, "The Change and Evaluation of foreign Investment Laws in North Korea," p. 115.

57. See *Ibid.*, p. 113.

58. Chung et al., *supra* note 11, p. 21.

59. *Ibid.*, p. 113.

of commodities through embezzlement or backdoor dealings of an official economic nature, such as state-run factories or enterprises, (3) Legitimate marketization behavior outside of the official economy, such as the sale of kitchen garden produce in markets, and (4) Illegitimate marketization behavior outside of the official economy, such as private production, sale, smuggling, foreign currency black market, and housing deals.⁶⁰

The emergence of modern marketization in North Korea dates back to the 1990's. Not only were there traces of marketization visible in the 1992 Constitutional amendments, running the gambit between control and acquiescence, the North Korean authorities seem to have overlooked these signs more regularly, perhaps coinciding with a desire to use the marketization phenomenon as a means of economic rehabilitation. Although controls over markets were reinforced between 2007 and 2009, there is a widespread belief that, as marketization had to an extent become institutionalized and legitimized, it will be hard to deter bottom-up economic movements. Through a chain of measures embracing marketization, the official and the unofficial sectors of the economy are so intricately entwined that even the planned mechanisms of the official economic sectors are supported by the operation of the market. In fact, the State is heavily dependent on the market. The Party, the military and the Cabinet all depend on the surplus of the market to supplement their financial deficits.⁶¹ The North Korean authorities are aware that marketization represents a threat to the system, yet they are unable to stop using the market as a means to overcome their serious economic situation.

As the unofficial sector becomes larger and larger, the appearance of "dollarization" and "yuanization"⁶² also intensifies, where foreign currency becomes a crucial means of exchange or storing value.⁶³ The dollarization phenomenon accompanied sharp drops in

60. See Gang-taek Lim, "Research on the Reality of Marketization in North Korea's Economy," *Korea Institute for National Unification Reports & Analyses* 93 (September 4, 2009).

61. Yang, *supra* note 52, p. 61.

62. In recent years, yuanization is progressing more rapidly than dollarization.

value for the North Korean Won from the inflation growth of the black market; the centralized foreign currency management system, in effect, collapsed. As a result, people preferred foreign currency, such as the dollar or yuan, over domestic currency.⁶⁴ Following the July 1 Measures in which the people's possession of cash had greatly increased, the sudden announcement of the November 2009 currency reform resulted in confiscation of large quantities of North Korean Won from the people. This caused the value of the North Korean Won to plummet and caused the value of foreign currency to skyrocket, ultimately aggravating the dollarization and yuanization phenomena and the people's tendency to evade use of the national currency.⁶⁵

Furthermore, starting with the mid-2000's, privatization in effect started to increase dramatically in small-scaled economic sectors closely related to daily life (such as restaurants and transportation). The types of privatization in the means of production in North Korea can be broken down into three categories: (1) the investment by "*Donju*" in state-owned enterprises who collect profits raised through the procurement of materials or processing of tolls; (2) the leasing of assets or the lending of brand name of state-owned enterprise to engage in some form of business activity, such as trading; and (3) independent corporate activities, such as the domestic industry.⁶⁶ On the other

63. Suh, *supra* note 25, p. 31 (Somewhere between 600 million to one billion USD is believed to be held within the unofficial economic sector of North Korea).

64. Moon-soo Yang, "Market Trend and Evaluation of North Korean Economy in the First Half of 2013 (in Korean)," *KDI Review of the North Korean Economy* 49 (2013), p. 57.

65. *Ibid.*, p. 57.

66. According to a statistical survey of North Korean defectors regarding the direct or indirect experience with privatization in North Korea, 75 percent responded that they had experience with consigned manufacturing with factories or corporations. In fact, the percentage of private mines operated under the name of an organization or group made up 53.6 percent. Proving employment is a common practice in privately owned businesses in North Korea, 90.2 percent answered to have experience with privately-operated noodle production facilities. Of those, 83.7 percent claimed to have experience with people who were employed with those facilities. Overall, loan investments in farms, factories and corporations were about 65-73 percent.

hand, larger-scaled privatization mechanisms are led by the children of high-ranking officials that are affiliated with the so-called privileged class of North Korea.

Privatization also applies to housing, which in principle belongs to the State. In reality, however, the exchange and sale of housing usage permits occur with the assent of the State; there is even an established real estate market price.⁶⁷ The North Korean government has in fact started to overlook the privatization of real estate and has started to impose dues for granting permission.⁶⁸

Observing the Constitutional changes with regard to the economic clauses, one can readily perceive that the North Korean government's attitude towards marketization has alternated between control and acquiescence. In general, however, the government systematically endorses the phenomenon and utilizes the same for economic rehabilitation. This reflects how serious North Korea's economic reality has become where, despite marketization representing a threat to the whole system, North Korea is dependent on the market for economic survival. However, whether marketization is the solution to North Korea's problem remains a question. Marketization is surely on the rise but is also driving the nation's economy into an unprecedented ideological paradox.

North Korea's Future – Prospects and Problems

It is difficult to project a scenario in which the North Korean govern-

Regarding title lending, approximately 57-59 percent in the fishing industry, 80 percent in the food processing industry, 71 percent in shops, 80 percent in restaurants, and 73-79 percent in the transportation industry were aware of the privatization phenomenon through personal experience. In-joo Yoon, *Study on the Privatization and Dynamics of North Korea: on the Expansion of the Private Sector with the Market as the Medium* (in Korean, 2013), p. 171 (unpublished Ph.D. dissertation, Korea University) (on file with author).

67. Jong-won Kim, *Studies on the Privatization Phenomenon of North Korea* (in Korean, 2009) (unpublished M.A. thesis, Sogang University) (on file with author).

68. *Ibid.*, p. 65.

ment implements a market economy or capitalism over the course of time based solely on observations of the systematic acceptance of market mechanisms, such as those embodied in the July 1 Measures and the 6.28 Policies. This is because despite various reformative measures, the North Korean government's ultimate goal is to stabilize its fiscal base so that the nation will regain its ability to uphold a planned economic model.⁶⁹ It appears that what the North Korean government ultimately desires is "controllable marketization."⁷⁰ Thus, marketization will be condoned or even encouraged to a certain point, but suppressed beyond it. Where exactly that point is will depend on the North Korean government's political judgment regarding the defects of marketization.⁷¹

There are some who interpret these measures, not as government-led plans to solve economic crises, but as a way of legalizing unofficial underground activity that had existed in the black markets for years.⁷² Thus, rather than rebuilding the paralyzed official economy, the mechanisms are the result of preferring use of the flourishing black market as a tool for economic rehabilitation.⁷³ In fact, throughout history, black markets have existed in every socialist state, mainly in the form of heavy industry as a means to supplement the shortage of daily necessities. The North Korean black markets also served as unofficial routes for the distribution of commodities that became scarce as a result of the government's munitions industry. The government not only recognized this function but appeared to take advantage of it.⁷⁴ However, since the economic problems that began in the

69. Suh, *supra* note 25, p. 93. North Korea's media source *Choson Sinbo* remarked, "The socialist goods exchange market introduced by the State is a temporary measure to get the nation back on its feet, a system where the top helps the bottom." Thus, they did not deny that it was a Daeahn business model, but rather submitted that the country would return to its normal function once the national economy is up and running. *Ibid.*, p. 137.

70. Yang, *supra* note 52, p. 60.

71. *Ibid.*, p. 60.

72. Suh, *supra* note 25, p. 4.

73. *Ibid.*

74. Refer to above section on 1948 Constitutional Amendment (Founding Constitution).

1980s became more severe in the 1990s, the North Korean black market was able to advance due to the population's self-motivated efforts to survive the severe hardship.

Despite the bottom-up growth of marketization and the government's proactive response, the prospect of rehabilitating the official economy through governmental institutionalization of the market seems unlikely. Rather, the dual structure of a planned and market economy is becoming more defined,⁷⁵ because the average North Korean's quality of life is perceived to have declined. Given the way in which market prices soared and taxes increased after the July 1 Measures, living became even more difficult for the people than during the heyday of the black market. Another limitation in marketization leading to actual economic development is that North Korean marketization promotes distribution (and particularly the development of foreign trade) over production;⁷⁶ therefore, it does little to encourage growth in productivity. In particular, the aforementioned systematic acceptance of marketization is in itself meaningful, but from a larger perspective, the market institutions in North Korea are not highly developed. In other words, the institutions are flawed, which can allow them to become a hotbed for abuse of power and corruption. Already in North Korea, grave signs of corruption such as monopolies, a growing gap between rich and poor, and collusion between politicians and businesses have taken root in society.⁷⁷

In terms of privatization, when assessing privatization as a right to net profit, the actual amount of privatization, when analyzed in terms of small-scale privatization like restaurants, shops, free pricing, and private employment capacities, is on par with Eastern Europe

75. Yang, *supra* note 52, p. 54 (Explains the "dual structure of North Korea's economy" as first the dual structure of a planned economy and market economy; but on another level, the dual structure of a privileged economy (the economy of the Party and military) and normal economy (the cabinet economy and people's economy); and on yet another level, the dual structure of heavy industry (including the munitions industry) and light industry).

76. *Ibid.*, p. 63.

77. See *ibid.*, p. 73.

and the Soviet Union during the early 1990s at the beginning of their systematic transition.⁷⁸ Also, in terms of privatization of state-owned enterprises, it is on par with China and Vietnam's very first stages of privatization.⁷⁹

Conclusion

The Constitutions of the two Koreas were similar during their inception. However, their later implementation and development looked wildly different. The North Korean government eventually developed into a political dynasty of sorts, ruled by the succession of one family. From an economic perspective, the iron-clad dictatorship resulted in a communist planned economy, which took the form of a controlled economy, and ultimately a failed national economy. Although some efforts have been made more recently to exercise some freedom in the economy, the country has yet to escape the essential dilemma between economic reform and maintaining a successive dictatorship. South Korea, on the other hand, has developed into a free market economy under a liberal democracy. With a thriving free market economy, South Korea has become one of the world's top ten trading powers, as well as a member of the OECD.

Today, because privatization is rapidly gaining ground in North Korea through the expansion of the market and general markets, the North Korean people have experienced a capitalistic market economy to a considerable extent. The failure of the 2009 currency reform that attempted to suppress the growth of the market as a means of govern-

78. Specifically, as regards private employment, North Korea is analogous to Hungary and Romania in 1993. In terms of small-scaled privatization, pricing freedom, and corporate reorganization, North Korea is analogous to Russia in 1991 and 1992, and Hungary in 1990 and 1992. See Moon-soo Yang, "Analysis of North Korea's Market Economy and its Level of Marketization," *Contemporary Studies on North Korea* 9 (2006), pp. 7, 38-39.

79. Hae-jung Lee and Dong-ho Cho, "Tracking the Progress of Privatization in North Korea — Focusing on a Comparison with China and Vietnam," *North Korean Studies Review* 16 (2012), pp. 163, 181-86.

ment security leads to the conclusion that in the face with marketization and *de facto* privatization, changes in the North Korean system are inescapable.

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Bibliography

- Contemporary Joseon Language Dictionary* (in Korean) 1353 (1981).
- Economy Dictionary II*. Institute of Social Studies Economic Research Center (in Korean) 405-7 (1980).
- Gang-taek Lim. *Research on the Reality of Marketization in North Korea's Economy*, Korea Institute for Nat'l Unification Reports & Analyses 93 (September 4, 2009).
- Hae-jung Lee and Dong-ho Cho. *Tracking the Progress of Privatization in North Korea — Focusing on a Comparison with China and Vietnam*, 16 North Korean Studies Rev. 163, 181-86 (2012).
- Hee-gyeong Suh. *A Comparative Study of Constitution Establishment in South and North Korea, 1947-1948*, 41 Korean Political Science Review 47, 71-73 (2007).
- Hyung-gon Chung, Byungyeon Kim, and Seok Lee. *The Current Situation of Marketization in North Korea and Prospects for Change of its Economic System*. Korea Institute for Int'l Economic Policy Research Report 48 (2012).
- Hyung-joong Park. *The Content of North Korea's 'New Economic Management System' (6.28 Policies) and Its Actual Implementation* (in Korean). KDI Rev. of the North Korean Economy 14, 18-35 (2013).
- In-joo Yoon. *Study on the Privatization and Dynamics of North Korea: on the Expansion of the Private Sector with the Market as the Medium* (in Korean), 171 (2013) (unpublished Ph.D. dissertation, Korea University).
- Jae-jean Suh. *North Korea's Market Economy Society from Below*, 26 (Korea Institute for National Unification, 2005), http://www.kinu.or.kr/eng/pub/pub_02_01.jsp?page=8&num=9&mode=view&field=&text=&order=&dir=&bid=DATA05&ses=.
- Jang-yop Hwang. *Democracy and Communism* (Zeitgeist Seoul, 2009).

- Jong-il Kim. *Discourse Between Kim Jong-il and the Leading Officials of the Korean Workers' Party Central Committee Regarding Issues Raised on the Teaching of Juche Ideology* (July 15, 1986).
- Jong-il Kim. *Kim Jong-il's Writings 162* (Pyongyang: Korea Workers' Party Press, 1992).
- Kim Jong-un. *The Core Content and Political Significance of the amendments to the 'Ten Principles.'* *State Affairs & Policy* 12, 12-14 (Korea Institute of National Unification, 2013).
- Jong-won Kim. *Studies on the Privatization Phenomenon of North Korea* (in Korean), (2009) (unpublished M.A. thesis, Sogang University).
- Joseon Language Grand Dictionary I (in Korean) 379 (1992).
- Jung-won Park. *Economic Clause of the North Korean Constitution (1998) and Economic Integration of the Two Koreas*, 19 (Korea Legislation Research Center, 1999).
- _____. *Significance and Main Characteristics of the 2009 Constitutional Amendment, the 2009 North Korean Constitutional Amendment and Changes in the North Korean System.* Institute for National Security Strategy Symposium Presentation, 42 (October 20, 2009).
- Kook-yeol Bae. *The Change and Evaluation of Foreign Investment Laws in North Korea.* 16 *North Korean Studies Rev.* 103, 110 (2012).
- Ministry of Unification. *Understanding North Korea* (in Korean) 170 (2013).
- Moon-soo Yang. *Analysis of North Korea's Market Economy and its Level of Marketization* (in Korean). 9 *Contemporary Studies on North Korea* 7, 38-39 (2006).
- _____. *Market Trend and Evaluation of North Korean Economy in the First Half of 2013* (in Korean). *KDI Rev. of the North Korean Economy* 49, 57 (2013).
- _____. *North Korea's Marketization: Directional and Structural Changes* (in Korean). *KDI Rev. of the North Korean Economy* 45, 53 (2013).
- Myeong-bong Jang. *Collection of Most Recent North Korean Legislation* (in Korean). 311 (Institute of Studies on North Korea Law, 2013).
- _____. *The Background, Content and Evaluation of the 1998 North Korean Constitutional Amendment* (in Korean). 2 *Studies on North Korean L.* 7, 7 (1999).
- Myung-rim Park. *Constitutional Making and the State Identity of the Two Koreas: A Comparative and Relational Approach.* 49 *The Korean J. of Int'l Studies* 235, 254 (2009).

Nak-in Sung. *A Historical View of the Korean Economic Constitution*. 54 Seoul Nat'l Univ. L. 133, 136 (2013).

Report of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea. H.R.C., U.N. Doc. A/HRC/25/63 (February 7, 2014).

Report of the Detailed Findings of the Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea. H.R.C., U.N. Doc. A/HRC/25/CRP.1 (Feb. 7, 2014).

Young-hwa Chung. *The North Korean 'Kim Il-sung Constitution' and Prospects of Implementing Market Economy*. 2 Studies On North Korean L. 38-39 (1999).