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**Movies, Markets and Mass Surveillance:
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CHANGES IN DEFECTION PATTERNS DUE TO THE POLICIES OF THE KIM, JUNG EUN REGIME

Ji Hae Oh and Soo Hyang Kim
Handong Global University

Editorial Assistance: Anna Dorothea Colby

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I. Changes in Defection Patterns

a. Gender and Age Distribution

The total number of defectors who had entered South Korea as of December 2016 was 30,490, consisting of 8,848 males and 21,642 females. The unbalanced gender ratio, discernible between 2002 and 2003, has continued since the mid-2000s, with the female ratio consistently exceeding 70 percent. In 2015, the female ratio reached 80 percent. This phenomenon is attributable to the involvement of third parties in forms such as human trafficking. The number of defectors consistently reached around 3,000 per year from the mid-2000s, and then rapidly decreased to 1,500 per year from 2012 onwards.

This decrease is thought to be attributed to the following: a formidable official warning newly issued after Kim Jung-il's death on 17 December 2011, to the effect that three generations in a family would be eliminated if anyone defected; tightened border controls made by installing barbed wire fences and surveillance cameras along the major defection routes; and a decline in the number of North Korean residents who attempted to escape from North Korea due to the partial resumption of official grain rations to discourage defections.¹

Table 1: Number of North Korean Defectors Entering South Korea (as of the end of March 2017).

*The number of North Korean defectors entering South Korea is released quarterly (the statistics as of June 2017 will be released in July 2017).

(Persons)

Category	Male	Female	Total	Percentage of female defectors
~1998	831	116	947	12%
1999~2001	565	478	1,043	46%
2002	510	632	1,142	55%
2003	474	811	1,285	63%
2004	626	1,272	1,898	67%
2005	424	960	1,384	69%
2006	515	1,513	2,028	75%
2007	573	1,981	2,554	78%
2008	608	2,195	2,803	78%
2009	662	2,252	2,914	77%
2010	591	1,811	2,402	75%
2011	795	1,911	2,706	73%

¹ Korean Bar Association (2014), *Report on Human Rights in North Korea*

2012	404	1,098	1,502	73%
2013	369	1,145	1,514	76%
2014	251	1,092	1,397	78%
2015	251	1,024	1,275	80%
2016	299	1,119	1,418	79%
March 2017 (tentative)	46	232	278	83%
Total	8,848	21,642	30,490	71%

Source: The Ministry of Unification of South Korea (website)

The age distribution in Table 2 shows that physically active people in their 20s or 30s made up the largest percentage of defectors – about 57 percent. By contrast, defectors in their teens and 40s were relatively few, accounting for 11.6 percent and 17 percent, respectively, and the percentage of defectors in their 50s is even lower, 5.5 percent. It appears that the remarkably high percentage of defectors in their 20s and 30s is closely related to the fact that more than 70 percent of defectors are female. In light of the preferences of human trafficking groups that fact is quite significant.²

Table 2: Number of North Korean Defectors by Age Group (as of the end of March 2017)

(Persons)

Category	Male	Female	Total	Percentage
Ages 0-9	629	622	1,251	4.1
Ages 10-19	1,582	1,935	3,517	11.6
Ages 20-29	2,426	6,161	8,587	28.4
Ages 30-39	2,042	6,731	8,773	29
Ages 40-49	1,306	3,858	5,164	17
Ages 50-59	487	1,173	1,670	5.5
Ages 60 and older	326	927	1,253	4.1
Total	8,808	21,407	30,215	100

² ibid.

The figures are based on the ages when defectors entered South Korea and may differ from the actual number of North Korean defectors due to the exclusion of those who arrived recently and are in protection facilities.

Source: The Ministry of Unification of South Korea (website). Percentages calculated by the author.

b. Occupational and Educational Distribution

Table 3: Number of North Korean Defectors by Professional Background in the North (as of the end of March 2017)

Category	Male	Female	Total	Percentage
Management	387	118	505	1.7
Military	653	88	741	2.4
Workers	3,834	7,671	11,505	38.1
Unemployed	3,129	11,268	14,397	47.6
Volunteer sector	74	1,121	1,195	4
Arts and sports	75	184	259	0.8
Professions	213	475	688	2.3
Non-target (children)	443	482	925	3.1
Total	8,808	21,407	30,215	100

The figures may differ from the actual number of North Korean defectors due to the exclusion of those who arrived recently and are in protection facilities.

Source: The Ministry of Unification of South Korea, www.unikorea.go.kr/main.do. Percentages calculated by the author.

According to the statistics of the Ministry of Unification shown in Table 4, about 80 percent of the defector population consists of middle school graduates (previously described as having 'high and middle school education') or less. This indicates that educational background is closely related to the motivation for defection.³

³ *ibid.*

Table 4: Number of North Korean Defectors by Academic Background in the North (as of the end of March 2017)

(Persons)

Category	Male	Female	Total	Percentage
Preschool	406	394	800	2.6
Kindergarten	135	189	324	1.1
Primary School	753	1,274	2,027	6.7
Secondary Middle and High School	5,346	21,043	21,043	69.6
College	745	2,086	2,831	9.4
University and Higher Education	1,005	1,088	2,093	6.9
Uneducated	353	485	838	2.8
Other (unidentified)	65	194	259	0.9
Total	8,808	21,407	30,215	100

The figures include dropouts of each educational level and may differ from the actual number of North Korean defectors due to the exclusion of those who arrived recently and are in protection facilities.

c. Increasing Number of Defectors in 2016

The number of defectors has been decreasing, but in 2016 it increased slightly again. North Korean experts and support groups for defectors in South Korea pointed out that the number of North Korean workers dispatched abroad entering South Korea has increased.

According to Director Yoon, Yeo-Sang of North Korean Human Rights Information Center, "the number of escapes from North Korea has not increased. The number of defectors has increased because workers who have already dispatched abroad have escaped from their workplace and have entered Korea."

Kim Hee-tae, the Secretary General of North Korea Human Rights: the Third Way, who has been supporting North Korean defectors in the Southeast Asian region, interviewed those who are at the Thai immigration detention center where the North Korean defectors are gathered around the Laotian border area. He said the number of North Korean workers who enter South Korea while legally staying overseas has increased a lot.

According to Kim, there were more than 50,000 labor contracts in Dandong and Tumen through an MOU between North Korea and China. Among them, 20,000 are now in China. Through interviews with some of them he found out that lately some workers who were legally staying abroad have been escaping and coming to Laos or Thailand.

Kim said this phenomenon has been increasing more since the spring of 2016 when a group of North Korea women workers escaped from North Korean restaurants in China. Experts point out that the reason for the increase of asylum of North Korean dispatched workers is due to the greater pressure to send foreign currency to their home country because of recent sanctions of other countries against North Korea.

In early April 2016, thirteen North Korean workers who worked at the Ryugyong restaurant in Ningbo, China, entered South Korea. In early June, three employees who worked at a North Korean restaurant in the Shaanxi Province city of Weinan, China entered South Korea. It is necessary to consider how much influence sanctions against North Korea have on this phenomenon because workers dispatched abroad have been increasing.⁴

d. Increasing Number of High-Level Defectors

Under Kim Jung Eun's ruling, the number of defectors who are top executives has risen remarkably, and the features of defection patterns are changing as family-based, asset-based, and future-oriented.

According to a visiting researcher from the Korea Institute for National Unification (KINU), the reasons for the escape of high-ranking North Korean defectors are changing. Those defectors escape from North Korea with their families and with money and are choosing to defect for the future of their children.

There were 32 elite defectors in the twenty-year period between 1991 to 2010. However, from 2013 to 2015, under the Kim Jung Eun regime, 46 elite defectors came from North Korea. The profile of defectors began diversifying in 2010, ranging broadly from diplomats and soldiers to artists and academics. This new breed of defectors has fled to South Korea not only to meet their basic needs but to fulfill other political and social desires.

Because of the growing number of high-level defectors, other high-ranking officials feel personal danger due to the increase in executive purges. North Korea has removed top executives such as Jang Sung-Taek and Hyun Young-chul under the Kim Jung Eun regime, and other high-ranking officials are under pressure to offer foreign money to the government for propaganda construction such as Changchun Street and Future Scientist Street.

In particular, high-level defectors are often accompanied by family members or holding funds. Unlike the 1990s, when most North Koreans fleeing were penniless and without their families, in the 2010s there were cases of families with millions of dollars in funds.

In the past, high-level defectors decided to defect from a fear of punishment, but contemporary high-level defectors defect because of concern for their children's future. In fact, the Ministry of Unification announced that Tae, Young Ho, who recently entered South Korea, said his motivation for defection was from a worry about his children and their future.

The increase in the number of high-level defectors implies that even if not immediately, North Korea is gradually transforming itself into a capitalist nation.⁵

II. Changes in Restriction on Defection

The number of defectors entering South Korea was on an overall increase until 2011 but has declined sharply since 2012. After Kim Jung-il died in December 2011, Kim Jung Eun's regime took over in 2012. Under his control, the North Korean government has strengthened in border control and defection-related punishment. In addition, economic conditions such as food shortages have improved a little bit.

a. Strengthened Restriction

Reasons for the decreasing number of North Korean defectors since 2000 include more stringent border patrols and inspections, forced deportations, rising costs of defection, increases in the number of legal visitors as China issued more border travel passes, and resettlements in South Korea or another third country. Since 2009, the State Security Department began to implement a

⁴ 한국 입국 탈북자, 올 들어 증가세..."해외파견 인력 탈출 증가" www.voakorea.com/a/3445311.html

⁵ 김정은 집권 후 고위층 탈북 '급증'...자금형·미래형 탈북 ↑ www.dailian.co.kr/news/view/602897/?sc=naver

new set of emergency measures against defection, and control over every avenue of defection tightened, including stronger surveillance and detection of ideological trends, strict and in-depth ideological education, travel permit checks along the borders, bed-checks, and inspections at border security units.

Furthermore, it appears that the North Korean authorities have tightened punishment for residents found using cell phones in the border regions, and have intensified surveillance of coast guards to prevent defections by sea.

During the mourning period following Kim Jung-Il's death on December 17, 2011, movement of people was tightly controlled and every family along the border region was required to take turns standing guard. The bed-check inspections were reinforced and each Neighborhood Watch (인민반) had to newly appoint a reporter (or informer).

In Onsong County, it is said that authorities threatened possible defectors by establishing land mines along the border and placing 10cm nail studded wooden boards along the Tumen River. Barbed wire fences and cameras were also installed along the major defection routes near the cities of Hoeryeong, Musan County, and Onsong County. Additionally, camouflaged traps were created and noisemakers were hung on barbed wire fences for detection.

Notably, official grain rations were partially resumed and some relief assistances were offered to discourage defections.

In an effort to prevent further attempts of defection, local party secretaries were told that they would be held responsible if they failed to keep a close watch on activities of individuals who attempted defection.

During this time, Hyesan in Yanggang Province became a new defection route, and authorities installed electronic walls and other devices to detect cell phone activities and prevent defections in the area. As a result, contacting potential defectors became very difficult.

In January 2014, a decree from Kim Jung Eun was communicated. This may have been a move to curtail the practice of North Korean defectors avoiding punishment by bribing personnel in their areas of residence. In January 2014, training sessions on this issue were held for individual imminbans in Hoeryeong, north Hamgyung Province. The participants were told, "The border areas will be transformed into politically stable zones; families with relatives in China and South Korea will be deported to South Hamgyoung Province and Gangwon Province." Those having phone calls with defectors or brokers or crossing the border will be dealt with by the State Security Department. The decree is known to include a plan to demolish private houses close to the border areas. This plan, however, has not been implemented as such forced deportation of the families of defectors may backfire, instead triggering a mass exodus of these families.

The phenomenon of North Korean defections has greatly dwindled due to the strong warning of punishment for "destroying (punishing) the three tribes" or "shooting on the spot." Such warnings about the use of firearms were made not only during the mourning period for Kim Jung-Il's death, but also during the special expense period for which the policy was applied. There is testimony that the border guards have been instructed to catch North Korean defectors, "if you do not stand up, you should fire with a gun." There are many testimonies that firearms were used during escapes. Conversely, there is also testimony that firearms in border areas are used only as threat to prevent North Korean defection, and cannot be fired.

As anti-defection measures have tightened, the fee (i.e. bribe) for the "river-crossing guides" to pay the border security guards has increased. This practice has become so widespread that at one point, an order was issued in Onsong County of North Hamgyoung Province that border guards who accept money from river-crossing guides were not penalized as long as they reported it afterward. As the number of whistle-blowing brokers (including soldiers) increased, some defectors began to investigate details and defect alone without the brokers' help. As the risk of getting caught in the

process of defection increased, the number of people trying to enter China to make money significantly decreased.

b. Punishment under the Kim Jung Eun Regime

Punishments for attempted escapes from North Korea are said to have become increasingly more serious since 2014. Penalties for the possession of illegal videos have also reportedly increased, together with crackdowns on mobile phones, which play a significant role in disseminating information from the outside world within the North.

Until 2013, any defector repatriated back to North Korea for the first time could expect to receive a sentence of no more than six months in a labor-training camp. Those repatriated for a second time would usually be sent to a long-term reeducation camp. Since 2012, North Korea has imposed tougher punishment on those arrested while attempting to flee. All repatriated defectors (regardless of whether they are first or second-time offender) are sent directly to long-term reeducation camps.⁶

c. Appeasement Policies

Besides his strong policies, Kim Jung Eun has also used some appeasement policies. According to RFA(Radio Free Asia), in 2012, Kim Jung Eun directed the State Security Department to take the defectors in South Korea back for the purpose of showing off his love for people (인민애).

As a result, the National Security Agency organized a task force and succeeded in reentering several defectors from South Korea back into North Korea. Furthermore, in 2013 nine defectors who were captured in Laos and sent back to North Korea entered famous universities (한덕수 경공업대학, 장철구 상업대) without punishment.

As a result of this appeasement policy, it has been pointed out that young people feel no guilt in defection and regard defection as a worthwhile adventure.⁷

d. Reason for the Recent Decrease of Defectors

The reason for the decrease in the number of defectors in early 2017 was the conflict between South Korea and China due to the deployment of the Terminal High Altitude Area Defense (THAAD) weapon system in South Korea. The Chinese authorities, who have raised complaints about the THAAD deployment, have strengthened the crackdown on defectors from North Korea.

It was revealed that recently dozens of Korean missionaries who helped defectors in China were deported, and many defectors were apprehended by Chinese police. It is not hard to defect from North Korea to China, but it becomes harder to leave from China to South Korea or other countries.

South Korean diplomatic officials have been asking China not to send North Korean defectors back on humanitarian grounds, but it has been reported that cooperation has not been carried out smoothly since the controversy of THAAD.⁸

III. Changes in Defection Motivation

It is important to look at the situation in which many North Koreans choose to defect and the internal contradictions of the North Korean system, as it can be a starting point for problem-solving as well as an understanding of the problems facing North Korean defectors.

a. The Kim Jung-II Regime

The analysis criteria is classified into political, economic, social, and future factors. First, because of

⁶ 2016 북한인권백서

⁷ 북 간부, 김정은 재입북 탈북자 선전에 불만. www.rfa.org/korean/in_focus/ne-iy-04212016145206.html

⁸ 1분기 한국 입국 탈북민 19% 줄어..."북한 통제 강화·사드 영향" www.voakorea.com/a/3797233.html

the change of international political order and the consciousness of crisis, North Korea continued to intensify its military strength and political persecution. In the 1990s, a new multilateral relationship was formed as the post-Cold War era began, with the collapse of the socialism that guaranteed the stability of the North Korean regime. As a result, diplomatic isolation of North Korea deepened. Thus, North Korea tried to escape from the crisis and secure its survival by establishing a military threat to the international community, a so-called 'Brinkmanship' strategy. North Korea became a rigid society in which military force dominated the population. Further strengthening of the defense force has caused the demolition of the people's economy and made people escape from the system. After Kim Jung Il 's power succession, the decentralization of power has deepened, and one of the factors of the decentralization was suspicion of the legitimacy of the supreme leader in tandem with economic difficulties.⁹

Second, North Korea's hardship was deepened by economic factors and the paralyzation of the public distribution system. The deepening of the economic hardship can be explained by both external and internal factors. As an example of an external factor, North Korea, which regarded international trade as a necessary evil and had created a CPE (Centrally Planned Economies)- based trade structure, got into economic turmoil following the collapse of socialism in the early 1990s. Distribution began to stop in 1994 and 1995, and after that the food shortage gradually worsened. The public distribution system completely collapsed in 1997, the worst cropping period. North Korea was promoting the economic independence of the household by raising wages to effectively abolish the ration system and compensate for the system by raising prices after taking 7.1 measures to improve economic management. As North Koreans entered a situation where they had to solve the problems of eating and living by themselves, they acted based on the motives of private profit rather than the plan of the state, and concentrated on the private economy. This in turn affected the occurrence of system abandonment.

Third, as far as the social factors, the overall social control system collapsed and social fluctuations occurred. North Korea divided its origin into 51 of three classes. Although North Korea officially denies the movement of social class dependent on the composition of origin, its origin is an important selection criteria for major positions. Restrictions on hierarchical movement depending on the composition of origin causes a rigid hierarchical structure; therefore, a deviation or breakaway occurs from the disobedience. Since North Korea treats those who defect as political prisoners and suppresses them, the temporary escape is leading to a permanent defect. In addition, social agitation is occurring due to the collapse of the people's life supply system, which functions as a control of the population as well as an education injecting political thought into people. The collapsed residential life supply system is growing residents' agitation by relaxing the societal control system. On the other hand, the discipline of public officials has become much more difficult, and corruption by general social control organizations such as the Ministry of Social Safety, the National Security Agency, and the People's Army has been generalized. Even by the Tumen River, the discipline of officials and soldiers can be solved by giving a bribe.

Fourth, as a future factor, the consciousness of North Koreans has changed according to the inflow of external information. This is especially related to the motives of North Korean defectors after the food crisis. As the social control system is relaxed, the development of South Korea makes the people feel the structural contradiction of North Korean society. It creates curiosity, anticipation of the outside world, and affects North Korean defectors. Changes in the consciousness of the North Korean people is a factor that propels North Korean defection.

b. The Kim Jung Eun Government

While survival because of the hunger crisis was the main motivation in the 1990s for North Korean defectors, the motivation is now changing drastically as the numbers of North Korean defectors trying to pursue better lives increases. The Ministry of Unification of the Republic of Korea conducted a survey of 859 Hanawon students in the first half of the year from 2015 to 2016. According to the report, 40.1% of respondents said that they missed class due to "hunger and

⁹ HeoJi-youn (2003), *A study on the North Korean Defector's Motive of the Escape and Sino-Korean Migration Course -Focusing on the Ideal Settlement and Behavior Change*

economic difficulties" in 2010 to 2013, but that number dropped to 12.1% in 2014 to 2016. On the other hand, the response to North Koreans' complaints about the North Korean system and free will has increased from 39.6% in 2010 to 2013 to 64.9% in 2014 to 2016.

As shown by the survey data of the Ministry of Unification, there is an increasing trend of defectors seeking a better quality of life. This is a sign that a comparison of the North and South Korean systems is spreading among North Koreans.

1. The Increase in High-Level Defectors.

Changes in the motivation for escape from North Korea are more evident in the elite class who are leaving the country and applying for asylum. As sanctions on North Korea continue to be powerful, North Korean elites living abroad, such as diplomats, are said to be under pressure due to financial problems. As the demand for reimbursement from their home country increases due to the sanctions phase, this pressure acts as an incentive to defect. In particular, the future problems of children accompanying them are presumed to be the key drivers of North Korean defectors' motivation. At a meeting of the National Assembly Information Committee, the National Intelligence Service said that "the reason for the defection of Tae-young Ho is due to the children."¹⁰

This is also the subject of discussions at other meetings. Recently, the visiting researcher of KINU attended an academic conference jointly held by Sejong Institute and the North Korean Society. At the meeting, a visiting fellow researcher said that "The reasons for the escape of high-ranking North Korean defectors are changing." The researcher added that "Given the recent escape of whole families, future income and the future of defector children is a main concern for North Korean defectors." According to him, a total of 32 high-ranking North Korean defectors escaped from 1991 to 2010.

However, a total of 46 high-ranking North Korean defections occurred from 2013 to 2015, after Kim Jung Eun took office. In addition, diplomats and trade executives, such as Lee Sung-ho, China's Trade Representative in 2013, diplomats in Africa and Southeast Asia in 2015, and Tae Young Lee in North Korea in 2016, stand out as high-ranking defectors. The visiting researcher cited the stress caused by high-ranking North Korean defectors due to the increase in executive purges. After Kim Jung Eun's ruling some of North Korea's top executives, such as Jang Sung-Taek and Hyun Young-Chul, died.

In the meantime, the current visiting researcher explained that North Korea is gradually being transformed by capitalism and an increase in the number of high-ranking defectors is implied.¹¹

2. The Media's Affection for Defection – the Korean Wave Adaptation Experience and Korean Culture Adaptation in North and Third World

Recently, external influences made a significant impact on North Korean defectors' motivations to escape. It begs the question, how much does media exposure have to do with North Koreans' attempts to escape?

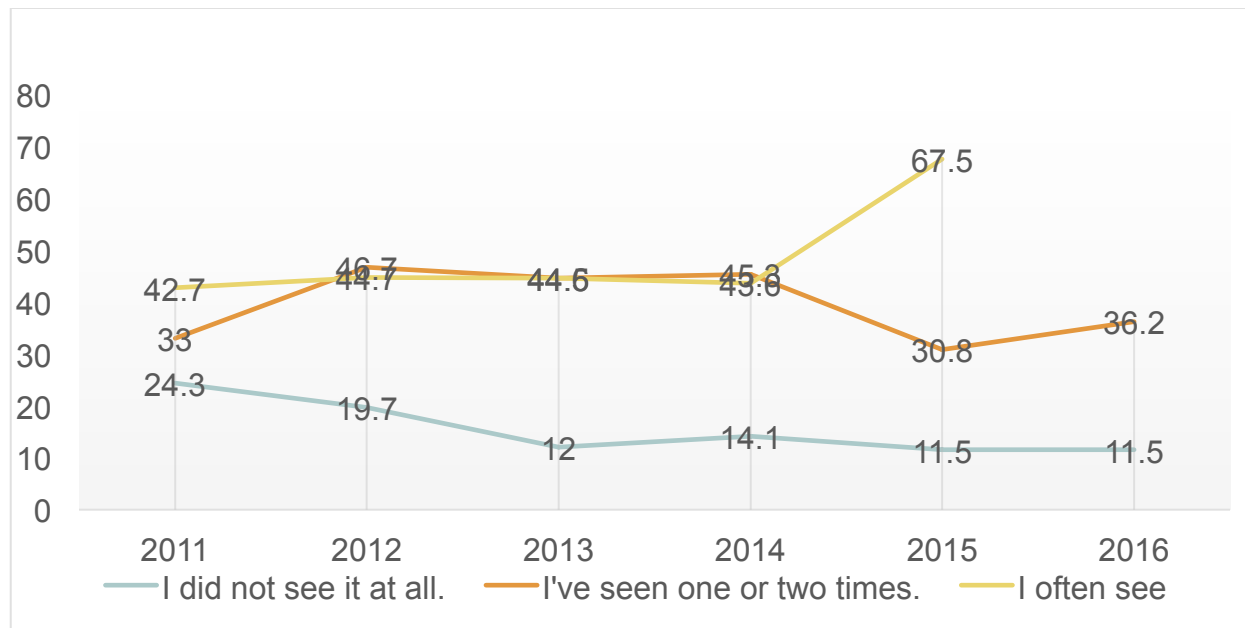
(1) When Defectors Experience Korean Wave

Based on the response of North Korean defectors, many North Koreans have encountered Korean popular culture, and some of them have frequently or regularly encountered Korean dramas, popular songs. Since the mid-1990s and early 2000s, early North Korean defectors had little chance to get to know about Korean popular culture in North Korea. The overall trend shows that the frequency of South Korean cultural contact has increased in the last five years. When the Kim Jung Eun regime took over in 2012, the amount of North Koreans encountering South Korean culture greatly increased. Because of the political and economic disruption of the Kim Jung Eun era, smuggling goods from China and the economy of the local market has become active. Because of

¹⁰ 김수암. (2016년 9월). 최근 탈북추이와 정책적 고려사항 . "정세와 정책", 페이지: 8.

¹¹ 하윤아. (2016). 김정은 집권 후 고위층 탈북 '급증'...자금형·미래형 탈북 ↑. "Dailian"
www.dailian.co.kr/news/view/602897

the increase in the number of movements between regions, North Koreans' experience of South Korean culture increased. The explosive growth of the Korean Wave during the same period also contributed to this trend.



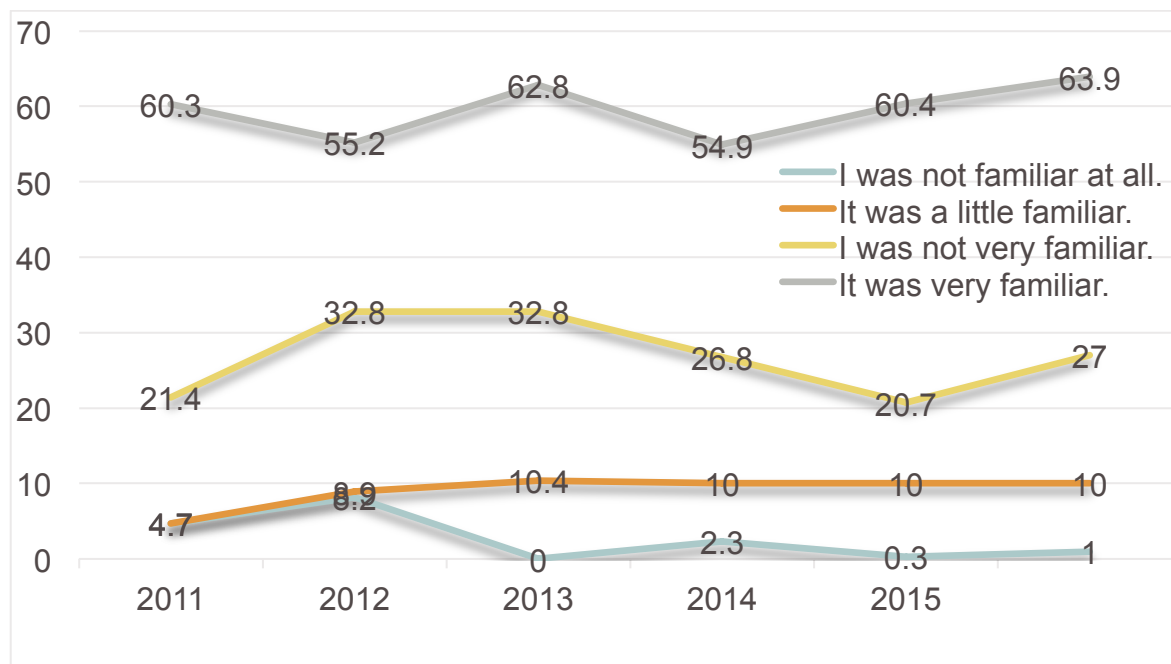
3. Genre Acceptance of the Korean Wave

There was no inclination for the Korean Wave in North Korea. It seems appropriate that the variation of the genre acceptance is a phenomenon with a regional variation rather than a universal acceptance experience. For example, in a specific space such as Pyongyang or provincial administrative districts, songs and music videos of Korean idol singers are relatively distributed and shared among young people. However, in the Hamgyeong region where the number of defectors is the greatest, Trot song is still accepted as a major genre. On the other hand, the content of the Korean Wave, such as dramas, is relatively long since it was broadcast in Korea and seems to be spreading widely to North Korea. The acceptance of the latest Korean drama seems to be especially increased for the residents of Hamkyung Province residing in the area facing the Chinese border, unlike the acceptance for popular music. In other words, Korean pop songs vary in the extent and genre of enjoyment, especially with North Korean youth living in urban areas, but not in the non-urban areas centered in Hamkyung Province. In the case of Korean dramas, they seem to be accepted without regional variation. At least in the case of popular songs, additional discussion is needed regarding the differences in accommodation space and cultural delay. In the case of dramas, an opportunity is provided to explore a universal acceptance experience.

4. The Influence of Korean Wave on North Korean Defectors

The influence of Korean dramas seems to have a considerable effect on creating various fantasies and expectations about life in South Korea. The interviews mentioned the fantasy of economic abundance, entertainment between men and women, the support of South Korean residents as a national patron, and the illusion of a violent society. At the same time, it should be remembered that information of the lives of North Korean defectors in South Korea as well as the latest information of South Korea is transmitted to North Korea through diverse channels. In other words, compared to initial defectors, recent defectors have a lot more information about South Korea when they come from North Korea.

Even though the influence of dramas as a direct motivation of defection is weak, it seems to lessen the psychological burden in the decision process to migrate to South Korea society, helping individuals justify defection.



In the graph, the survey asked how North Korean people felt about South Korea's broadcasting, movies, dramas, and music when they were exposed to South Korean culture. As shown in the graph, North Koreans were found to be familiar with South Korean culture. Although minor, familiarity with South Korean culture has been rising with the passage of time, and North Koreans are now exposed, to some extent, to South Korean culture. If defectors are not familiar with the content of South Korean culture, they may feel resistant to South Korean media, which has a lot of sensational and violent content compared to North Korea, and defectors may even have a negative perception about South Korea and unification.

It would seem that South Korean media contributed to a positive recognition of South Korean culture by the North Korean people. The high exposure rate to and affinity for South Korean culture could lead to a positive recognition of unification.¹²

IV. Changes in the Process of Defection

The path to escape mainly involves the route used by defectors and their cost. Although many North Koreans who fled the country are believed to be residing illegally in other countries such as China and Russia, they are openly asking for help to South Korea.¹³

a. Defection Route

The Tumen River region is usually used as a defection route for many North Koreans because it is easier to cross than other geographical points. However, there are various ways of fleeing such as escaping workplaces when assigned to jobs abroad, or defecting to a third country while visiting relatives in China.

In addition to China, defectors appear to be trying to move to Russia, other Commonwealth of Independent States (CIS) countries, Mongolia, and Southeast Asia. Assisted by civilian organizations, volunteers, and activists, defectors are seeking asylum and safe havens around the world, including Thailand, Japan, Canada, Australia, the United States, EU member states, and Israel.

According to the UNHCR, at the end of 2014, 1,282 North Koreans were living in refugee status globally.

¹² 이미나, & 오원환. (2013). 북한 및 제3세계에서의 한류 수용 경험과 한국 문화 적응. 방송통신연구.

¹³ 도경옥, 김수암, 이규창, 한동호, 홍민, & 임예준. (2016). *White Paper on Human Rights in North Korea*. Korea Institute for National Unification

b. Defection Cost

The actual cost of escaping North Korea has risen sharply as the crackdown on the North Korean-Chinese border has strengthened. According to Hong Min, a research committee member of KINU, North Korean leader Kim Jung Eun has been transferred to the Security Council and strengthened his control over North Korea. Even last year, he built and installed hunting traps to prevent North Koreans from defecting. It is said that North Korean defectors cost more than 10 million KRW per person.¹⁴

Another article explains an analogous situation. In the late 2000s, defectors could cross the river by paying 100 yuan (about 20,000 won) to border guards. But the cost has now risen to over 10 million won. In just six or seven years it has soared over 500 times. Nonetheless, defectors said, "Nobody knows the exact cost of defecting."

The biggest worry is that it is not safe to give a lot of money to border guards. At first, Kim Jung Eun stuck to such classical preventive measures as increasing the border guards and control units several times and punishing defenders of North Korean defectors. However, that did not work because the bribe had already passed.

Kim Jung Eun said in 2010 that he had given an incredible incentive to "not take away the bribes received by security guards if they report North Korean defectors, but rather provide them with labor party membership, promotion, and university recommendation."

After such unusual measures were taken, security guards reported to North Korean defectors. Because of the distrust among defectors and border guards, it became hard to guarantee success even after wrapping up a money bag. The number of people attempting to escape with bribery has decreased, and the border guards' income has also fallen. The North Korean government stated this regarding defectors, "Since the border guards are finally sucking their fingers, they are self-employed."

There are risks throughout North Korea when defectors cross the border and go to a Chinese city. Chinese authorities are now examining ID cards when people buy train tickets. For this reason, North Korean defectors cross the Chinese mainland in their cars or buses. Chinese authorities have recently tightened control of the southern border, as well as the Uyghur escape route, which overlaps the way for North Koreans to travel to Southeast Asia. In March and April last year, China arrested more than 350 illegal immigration brokers in the southern provinces. These incidents were also pointed out as another reason for the escalation of North Korean defectors' costs.

North Korean defectors who met in Hanawon said, "Most North Koreans are gradually closing their dreams of escaping from North Korea. Next year, North Korean defectors will have to shrink considerably."¹⁵

c. Financial Aid from Defectors in South Korea

North Korean residents' perceptions of defectors are significantly changing. Even in the early 2000s, they were regarded as "national traitors" or "betrayers," but a positive story has recently emerged.

A resident of Pyongang province said that the perception of North Korean defectors and their families has improved in that province and people said that defectors are more aware than others.

There were many people who criticized those who went to China and then South Korea due to the hunger crisis in the mid-1990s to the early 2000s. It was an inevitable choice to escape from the persistent pursuit of the Chinese Public Security and National Security Agency officials.

¹⁴ 김우영. (2016). 봇물터진 탈북, 체제 이상?... '바닥록' 금수저론'. "헤럴드경제".
http://news.heraldcorp.com/view.php?ud=20161013000309&md=20161016003800_BL

¹⁵ 권오혁, 김호경, & 주성하. (2015). 천정부지로 뛰는 탈북 비용. "동아일보".
http://news.donga.com/List/Series_70030000000712/3/70030000000712/20150925/73871901/1

It was a shocking event for the defectors of that time to go to South Korea, where the North Korean authorities regarded them as "hostile forces." However, things have now changed. External information via radio and USB has completely changed the perception of North Korean people about South Korean society.

Nowadays, North Korean parents are hoping that even their children will go to a good world (South Korea). The motivation for defection is changing from a desire just to live, to a desire of "true life" and "freedom."

Remittances from defectors outside North Korea have also had a considerable influence. Beginning in the 1960s, the North Koreans called Korean Residents in Japan who were supported by relatives in Japan the "Stem of Fuji Mountain (후지산줄기)" and called families with relatives in China since the late 1990s "Stem of Baekdu Mountain (백두산줄기)." Recently, however, when the remittance from the defectors family in South Korea is dominant, the word "Halla mountain stem (한라산줄기)" is spreading.

In this regard, a resident of Gangwon province recently blamed his daughter who was indifferent of defection, saying someone defects to South Korea to help his family in North Korea. Also, he said, "I want to go to South Korea if I am secured when I escape."

The North Korean authorities' guilt-by-association system cannot work properly because the number of defectors settled in South Korea is close to 30,000. If the North Korean government punishes both North Korean defectors and their relatives, then hundreds of thousands will be targeted.

It is inconceivable to punish by example. The residents who watched this situation might think that it best to leave the situation. Because of this, the North Korean authorities are not able to punish the defector's family, but can only strengthen their investigation or surveillance.

If we look at the policies and attitudes toward North Korean defectors, we can see that the 'loyalty' that holds together the Kim Jung Eun system is disappearing. The executives of factories and administration regard defection as a trivial matter. They think it is okay even if defectors run away to maintain their friendship by asking something of the defectors.

As the North Koreans' perception of defectors is improving, the idea of South Korean society is also ameliorating. The role of defectors in the realization of the unification of the Korean peninsula is becoming more and more important.¹⁶

d. Period for Defection Process

1. Duration of Time Between Decision Making to Defect and Fleeing from North Korea.

According to the survey, the time taken from the decision to defect to fleeing from North Korea is not long - less than a week for 33 percent of respondents. If the number of respondents taking less than a month is added in here, the total is 47.6 percent. If the number taking less than three months is added, the total is 57.3 percent. It seems that once someone has decided to defect, there is not hesitation in doing so. This is in comparison to the previous survey, which indicated that 52.4 percent of respondents took less than three months.

¹⁶ 북한서 南탈북가족 도움받는 '한라산 줄기' 뜬다는데...

www.dailynk.com/korean/read.php?cataId=nk04506&num=109476

Response	Number of respondents	Percentage (%)
Less than a month	7	6.8
One to three months	78	75.7
Four to six months	11	10.7
Seven to 12 months	5	4.9
13 months	2	1.9
Total	103	100

In general, the longer North Korean defectors stay in other countries before entering South Korea, the broader and more severe the human rights infringement and the greater importance of their character and personality. However, it is impossible to measure the extent to which the North Korean defectors stay in other countries affects their personality. That said, it is certain that the amount of time North Korean defectors spend in China and other countries during defecting has an impact on the human rights violations they have suffered because of their illegal and economically unviable status.

According to a 2014 survey, when asked how long it takes between fleeing from North Korea and entering South Korea through third countries such as Thailand, 82.5 percent answered that 'it takes three months or less' and 98.1 percent answered that 'it takes 12 months or less'. These results confirm that the amount of time North Korean defectors spend before entering South Korea has decreased. The establishment of private means of helping people to flee from North Korea, such as the use of brokers, and an increase in the number of ways in which North Korean defectors can directly enter South Korea may be the reasons for the reduction in time spent for defection.

The percentage of respondents answering that 'it takes two years or more to enter South Korea after fleeing North Korea was 22 percent in the 2008 survey, 9.44 percent in the 2010 survey (see Table 183), 11.9 percent or less in the 2012 survey, and 1.9 percent or less in the 2014 survey.

The percentage of respondents answering that 'it takes one year or more' was 37 per cent in the 2008 survey, 30.6 percent in the 2010 survey and 1.9 percent in the 2014 survey. These results confirm that the percentage of defectors who stay in other countries before entering South Korea for more than one or two years has significantly decreased in recent years.

Likewise, North Korean defectors are spending less time in China. The percentage of respondents answering that they stayed in China 'for less than a month' was 44 percent in the 2010 survey, 44.5 percent in the 2012 survey, and 71.8 percent in the 2014 survey. This trend is directly related to reductions in the total time North Korean defectors take to enter South Korea.¹⁷

Response	Number of respondents	Percentage (%)	Notes
Less than a month	0	0	Considering the error range for the time spent in third countries, these two categories cannot be broken down separately.
One to three months	3	2.4	
Three to six months	47	37	
Six months to one year	38	30	
One to two years	27	21.2	
Two years or more	12	9.4	
Total	127	100	

¹⁷ Korean Bar Association, 2014

Response	Number of respondents	Percentage (%)
Less than one month	10	10
One to three months	17	17
Three to six months	17	17
Six months to one year	19	19
One to two years	15	15
Two years or more	22	22
Total	100	100

V. Conclusion; Prospects, and Roles

In this paper, we investigated the changes in patterns of defectors in the Kim Jung Eun regime. As we have seen in this paper, much attention from South Korea's government has been focused on North Korean elites. However, the important fact that should not be missed is that the excessive defection of the elite defectors could have a negative impact on the defection of most ordinary people through the border between North Korea and China. Regardless of the extreme interest in the entry of the elite, South Korea's government should not let other ordinary defectors be perceived negatively or be alienated.

The South Korean government should pay close attention to the safety of North Korean defectors in China, and should strongly urge the Chinese authorities, through public-private cooperation and international cooperation, to stop enforcement and forced repatriation of defectors. Additionally, it is necessary to make every effort to securely facilitate the entry of North Koreans who are attempting to enter Korea via China. It is anticipated that North Korea's control and monitoring of North Korean workers who leave overseas workshops or diplomatic offices will be strengthened. The system should be checked so that workers who wish to go to South Korea can enter the country safely. A system of cooperation must be established.¹⁸

The supplementation of various policies of South Korea is essential and unavoidable. It is important for South Korea to cooperate with the governments of the countries where escape routes are widely used such as China and Thailand. Those areas where the government of South Korea is unable to reach should be addressed by NGOs and individuals.

¹⁸ 김수암. (2016년 9월). 최근 탈북추이와 정책적 고려사항. "정세와 정책", 페이지: 8.

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EXAMINING NORTH KOREAN LAW AND GOVERNMENT DIRECTIVES FOR CHANGES IN REGARDS TO CHILDREN'S HUMAN RIGHTS



Sunwoo Lee and Jihong Kim
Handong Global University

Editorial Assistance: Mary-Elizabeth Hinton

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Chapter 1. North Korea's Response Through Changes in Domestic Laws Related to Children

1. North Korea's View on the United Nations' Human Rights Acts

North Korea has a negative view of the United Nations' (UN) Human Rights Acts. North Korea maintains a clear stance that the UN and other international organizations should ensure the sovereignty of North Korea. North Korea claims that the UN has succumbed to the United States (US), has been severely impaired in fairness, and has not respected national sovereignty. Therefore, the UN Human Rights Council's resolution on North Korean human rights and the North Korean Human Rights Report should be abolished. Since the guarantee of human rights is under the control of each country, human rights are considered national rights and relate to the policy of the relevant country. However, North Korea has shown positive changes concerning human rights. The regime invited specialists of the UN human rights bodies to visit North Korea. Also, North Korea has selectively adopted UN human rights legislation that does not threaten the regime.

1) National Sovereignty

The UN has maintained the principle of respect for the sovereignty of its member states. In this respect, North Korea insists that the UN, which was created to maintain world peace and security, is failing to properly fulfill its obligations.¹⁹ In other words, North Korea has clearly shown a negative view of the UN, saying, "In the past, (the)? UN has been unconditionally following the politics of the US-led coalition, and have systematically taken away the sovereignty of our country."²⁰ These flaws are also inevitable consequences of the UN's surrender to the US and its rejection of the international legal principles and the charter requirements of respect for national sovereignty. In particular, North Korea has responded with the logic that the UN's impartiality is seriously undermined, because Western countries are using the North Korean human rights issue discussed at the UN for political purposes.²¹ Accordingly, North Korea has consistently maintained its standpoint that the UN Human Rights Council's resolution on North Korean human rights and the North Korean human rights rapporteur should be abolished.²²

2) "Our Own Interpretation" of Human Rights

North Korea denies the universal rights of the UN and raises the relativism of human rights. Thus, North Korea advocates for the concept of "Our Own Interpretation" of human rights by claiming the legitimacy and superiority of "our style" of human rights. In North Korea, the essence of human rights is defined as "the sacred right of social human beings to live and develop independently and creatively in a social group."²³ Since human rights in North Korea are the rights guaranteed by the state, it is argued that violating national rights is the greatest human rights violation. Based on these arguments, it is concluded that the strengthening of the North's "military first" policy will eventually strengthen North Korea's human rights. North Korea is refusing the flexibility of the concept of human rights, making it difficult to negotiate dialogue with the international community, including the United States, regarding human rights.²⁴

¹⁹ Kyung-Bae Min, *The Viewpoints and Responses of North Korea toward UN Human Rights Law*, Inha L. Review : The Institute of Legal Studies Inha University 17(1), 2014, p. 117

²⁰ Young-seo Han, *Respect for national independence is fundamental to international organization activities*, [KIM IL SUNG UNIVERSITY Newspaper: History and Law] 54-1., 2008, pp. 68-69

²¹ Kyung-Bae Min, *supra* note 19, p. 118

²² Il-gi Kim, *The Study on the International Community's Intervention on the Human Rights and North Korea's Strategy*, [North-east Asia Research] 26-2, The Institute Social Chosun University, 2011, p. 141

²³ Uk-rak Kim, *The subjective understanding of the nature of human rights*, [KIM IL SUNG UNIVERSITY Newspaper: History and Law], 43-4, 1997, pp. 42-43

²⁴ Kyung-Bae Min, *supra* note 19, p. 120

3) Changes to UN Legislation

North Korea has strongly rejected the human rights issue raised by the UN human rights legal system. However, North Korea has been taking a different response to selectively accepting international human rights norms in order to avoid international isolation.²⁵ With the support and cooperation of the international community in mind, North Korea accepted the UN Human Rights Law and its obligations only when those obligations do not pose a threat to North Korea's regime. At the same time, North Korea changed its domestic laws in relation to UN human rights law. In particular, China encouraged changes in the North Korean domestic legal system related to human rights in accordance with the international standards in response to the demands of the international community for the improvement of human rights in North Korea.

2 North Korea's Response Through Changes in Domestic Law

1) Optional Acceptance of International Human Rights Norms

North Korea rejects the universality of Western human rights, but promotes change in North Korea's domestic law in order to receive more support and cooperation from the international community.²⁶

2) Enactment of the Child Rights Protection Act (2010)

North Korea ratified the Convention on the Rights of the Child (the Convention) in 1990, but delayed the establishment of a single national law regulating child rights in accordance with the Convention. In 2010, the Child Rights Protection Act was enacted in North Korea. Through these efforts, the government has enacted its own legislation on the rights of children, which constitutes a single system by collecting regulations on the promotion of children's rights dispersed throughout various divisional laws. It also reflects the recommendations of the Committee on the Rights of the Child. Article 9 of the Child Rights Protection Act stipulates that "the State develops exchanges and cooperation with other countries and international organizations in the field of guaranteeing children's rights." Therefore, North Korea's enactment of the Child Rights Protection Act can be evaluated as an expression of North Korea's willingness to consult with other nations to solve problems related to children's rights by positively accepting and reflecting external recommendations, including recommendations by international organizations, related to children's rights.

Chapter 2. North Korea and Children

1. Legalization of "The Principle of Child-centeredness"

North Korea has stipulated in the Constitution its commitment to protect children and women in particular. Under Article 77 of the Socialist Constitution of North Korea, "Women have the same social status and rights as men."²⁷ The State specifically protects mothers and children through pre- and post-natal maternity leave, shortening working hours for mothers with children, expansion of day nurseries and kindergartens, and other policies.²⁸ The State creates an environment in which women can participate in society. The Constitution states that North Korea has a special obligation to protect children and women.²⁹ The "principle of child-centeredness" can also be confirmed in each relevant individual law. Article 6 of the Family Law of the Democratic People's Republic of Korea states that "the special protection of the interests of children and mothers is a consistent

²⁵ *ibid.* at 124

²⁶ *ibid.* at 128

²⁷ Korea (Democratic People's Republic of) 1972, Art. 77

²⁸ *ibid.*

²⁹ *ibid.*

policy of the Democratic People's Republic of Korea" and prescribes the principle of protection for children and mothers.³⁰

In addition, Article 1 of the Children's Rights Protection Act states, "The Children's Rights Protection Act of the Democratic People's Republic of Korea further strengthens the rights and guarantees a (a?) system for children to ensure that children's rights and interests are maximized in all areas including social life, education, health." Article 4 states, "It is the consistent policy of the Democratic People's Republic of Korea to place importance on children and to guarantee their rights and interests first, and the state should always take a deep interest in the growth and development of children." Through these regulations, North Korea once again reaffirms its "principle of child-centeredness".³¹

2. Children as Subjects of Political Ideology Education

In North Korea, education for children is abused as a tool for infusing political ideology. The purpose of their education is defined in the Constitution and the Child Welfare Act. First, as stated in the Constitution, education is to make children revolutionists and independent humans. Also, in the Child Welfare Act, education is to make children workers for the construction of a socialist country. According to many North Korean defectors' testimonies and other publications, education put an overly excessive amount of importance on political ideology. Under Article 2 of the Child Rights Protection Act, a child is defined as "the future of the motherland and the future of socialism construction." In other words, the main reason for North Korea's "principle of child-centeredness" is preparation for socialist construction and system maintenance.³²

3. The Child's "Price"

Human rights in North Korea are defined as the freedoms guaranteed by the state and society. North Korea has emphasized the importance of "nationality and society" and criticized the logic of the outside world, while urging individual sacrifice. In North Korea, they distinguish between a person with no value and a person with value. According to the (government or the people?), the following factors determine human value: age, place of residence, Sungbun, disability, etc. Based on North Koreans' testimonies, North Koreans believe that girls have far less value than boys and a disabled child is worth far less than a non-disabled child.

During conversations with North Korean defectors over the past few years, North Korean defectors used the term "person price" very often. They often use phrases such as "a person's price is high," "a person's price is low," "a person is not worth", "a person with a high price," "a person with a low price," and "a person without a price.". During the in-depth interviews, the researchers noted that a total of 130 interviewees used the term "person price." Based on the interview, the classification of "person price" in North Korea is very clear in meaning that people are valued based on their gender, physical disability, and Sungbun.³³

1) Minority in North Korea by Sex

The 130 interviewees knew that being classified as a minority based on gender is mainstream in North Korea. The interviewees answered the same question on this issue and wrote, "In North Korea, a man is like a sky and a woman is like a land." Interestingly, when the researcher started the

³⁰ You-ri Shin, *A Study on the Institutionalization of the International Cooperation to Improve the Human Rights of North Korea –In Connection with the Children's Rights Protection Law and Women's Rights Protection Law in North Korea*, Kookmin University, 2012, p.5

³¹ *ibid.* at 6

³² Korea Institute for National Unification, *The Actual condition of Child Education Rights and Trend of the Enactment for Related Regulation in North Korea*, 2012, pp. 7-8.; You-ri Shin, p.6

³³ Seok-Hyang Kim, *Minorities in North Korea - Who are They and Why are They Classified as Minorities?*, Asiatic Research Institute, Korea University, *The Journal of Asiatic Studies* 58(1), 2015, p.11

interview, more than 70% of the interviewees replied "yes" when asked if North Korea is a gender equality society. In the end, the narratives of the 130 interviewees suggest that although North Korea has a slogan of "equality between men and women," women in North Korea spend a lifetime living in a male-dominated ideology.

2) Minority in North Korea Due to Physical Disability

In North Korea, people with physical disabilities are perceived as "worthless."

In fact, North Koreans often do not use term "disabled," but more often use the word "idiot" when describing disabled human beings. The North Korean authorities enacted the "Disability Protection Act" on June 18, 2003, but none of the interviewees knew about it. The North Korean authorities signed the Convention on the Rights of Persons with Disabilities in July 2013, but none of the interviewees were aware of this fact. Many people say that the first time they learned to use the term disability was after they entered South Korea. Disabled people tend to fit into one of the two following categories: a person injured in accident after birth, also known as a "person injured for no reason," and a person born as a disabled child. Among the interviewees, many had never seen disabled people in North Korea and were surprised that many disabled individuals live in Korea. In North Korea, a person disabled at birth is recognized as a burden to society. Interviewees argue that people who are born with a physical disability in some form are often treated as people who cannot live long. They also said that it is virtually impossible to find a spouse to marry if they are fortunate enough to survive until a marriageable age, because North Koreans fear that this disorder will be passed on to posterity.³⁴

3) Minority in North Korea by Sungbun

The interviewees said that Sungbun is the most basic criterion in determining the "people price". They claim that it is North Korea's reality that the person who does not have the ingredient cannot enter the party, so the person is worthless. North Korean defectors who met during the interview expressed prejudice against minority groups. Although there was a difference in degree depending on the individual, the interviewees attempted to prevent members of the minority groups, such as women and disabled persons, from being recognized as equal to them.³⁵

4. Child Welfare in North Korea and Related Regulations

The overall legal and institutional characteristics of North Korean child welfare have changed from simply focusing on children's care to ensuring comprehensive rights for children. National awareness related to child welfare has matured in that the laws and institutions related to child welfare that are regulated by the People's Health Law, the Family Law, and the Handicapped Protection Act were reorganized in the child-centered legal system that led to the Child Rights Protection Act. On the other hand, segmental child welfare forms in each of these areas have been expanded to the area of children's rights based on human rights through the enactment of the Child Rights Protection Act. However, at this time, the concept of welfare in North Korea and the concept of welfare in a liberal democratic country must be considered differently. North Korea is in a stage where the universal concept of child welfare exists as the central focus of human rights and a more specific form than the existing concept of child welfare has not been revealed. However, in the area of health and education, there is a special guarantee for children. Therefore, as far as welfare benefits are concerned, child welfare in North Korea is still limited to childcare, education, and health.³⁶

³⁴ *ibid.* at 22

³⁵ *ibid.* at 33

³⁶ Yoonjin Lee, *An analysis on 'The Security Law of Children right' and other laws about child welfare in North Korea*, 2016, p. 214

The North Korean Child Welfare Act, including the Child Rights Protection Act, clarifies the responsibilities of the state and society to the child concerning welfare and considers the family as the main agent of welfare. This shows that the ideology of the North Korean welfare system emphasizes the importance of the family raising the child. In addition, although it is a common phenomenon in other areas of welfare in North Korea, it can be seen that there has been no systematic institutional improvement in relation to child welfare. This is due to the fact that the basic identity of welfare is not formed in North Korea. Thus, the concept of welfare for children is not well established in North Korea.³⁷

According to chronological order, the North Korean Child Welfare Act developed from the Children's Nursing Education Act of the Democratic People's Republic of Korea in 1976, the Disabled People's Protection Act of 2003, and the Children's Rights Assistance Act of the Democratic People's Republic of Korea in 2010. North Korea seems to have improved the legal system by expanding the area of child welfare.³⁸

Chapter 3. Analysis of Human Rights-Related Laws on North Korean Children

The articles in the Convention on the Rights of the Child (CRC) may be grouped into four categories of rights and a set of guiding principles. The four categories of rights are the following: Survival Rights, Protection Rights, Development rights, and Participation rights.

1. Survival Rights

- 1) Article 8 of the Socialist Constitution of Democratic People's Republic of Korea (DPRK) says, "The social system of the Democratic People's Republic of Korea is the people-centered social system in which the working people are the masters of everything and all of society serves for the working people. The State advocates and protects the interests of the working people, including workers, peasants, soldiers, and working intellectuals, who are the owners of the state and society in exploitation and oppression, and respects and protects human rights. " Children in North Korea are also protected from the State as members of the DPRK. Based on Article 8, each individual legislation prescribes the life of the child and its related provisions.³⁹ In particular, Article 72 of the Socialist Constitution states that "Citizens have the right to be treated for free, and those who have lost their ability to work due to age, illness or disability, old people and children without career have the right to material support." Children have the right to demand social security. Such social guarantee can be regarded as a provision directly connected with the life of North Korean children. Article 72 of the Socialist Constitution stipulates that the minimum guarantee for the health of a child is the responsibility of the State.⁴⁰
- 2) The North Korean Child Welfare Act, enacted in 2010, directly addressed the child's right to life. Article 11 of the Child Welfare Act states that "children have the right to life and development. The parent or guardian and the organization shall ensure that the child has the right to life protection and the right to grow mentally and physically to the fullest extent." It has adopted the UN Convention on the Rights of the Child. Furthermore, the clause clarifies not only the protection of children's lives, but also who has responsibility to protect children's lives.⁴¹ Furthermore, the State must comply with the basic principles to ensure the rights of the child. Article 8 of the Act stipulates that "the State shall ensure... all necessary things for the child's health, education, and life" in accordance with the principle of "giving the best to the children."

³⁷ *ibid.* at 215

³⁸ *ibid.* at 194

³⁹ Shin, *supra* note 30, p.8

⁴⁰ *ibid.* at 9

⁴¹ *ibid.* at 10

By using the expression "the best thing," it reveals that children should be the first priority among North Korean residents.⁴²

3) In addition to the Constitution of North Korea and the North Korean Child Welfare Act, the provisions relating to the right to life of a child are specified in several individual laws. First, the People's Health Law requires in Article 11 that "[t]he State concentrates attention to the protection of the health of women and children," and in Article 25, "organizations, enterprises, and organizations should provide children with nutritional supplements such as vitamins and nutrition needed for growth. Nursery schools and kindergartens shall ensure that the nutritional and hygienic management of children shall be in accordance with scientific principles." The regulations stipulate the obligations of nations and institutions to protect children's nutrition and health. Article 27 of the Insurance Act states that "human insurance covers the life or body of the insured person." Further, the article states, "In the case of a child, even if it is an incapable person, it can be covered by an exception rule."⁴³

4) Regulations for Children's Education and Care

① Article 7: The Democratic Republic of Korea ensures that all children are given maximum consideration to ensure the development of the child's survival by giving the world's best modern childcare setting that creates the best environment for happiness.

② Articles 15 ~ 17 express the State's guarantee of food items to be supplied to kindergarten children.

③ Article 20: This article guarantees maternity leave and guarantees feeding time during working hours. Workers must be paid equal pay.

5) National Food Distribution Regulations

① Article 12: This article states that "children must be given white rice." This shows the child-first principle in food distribution.⁴⁴

6) Regulations for Women's Counseling Centers

① Article 11: These centers must diagnose the health of working pregnant women and, if necessary, propose prenatal or postnatal leave.

② Article 12: The centers must provide timely treatment for pregnant women. This guarantees the child's right to life from its time in the uterus.

7) Regulations for Nursery schools

① Article 1: The State shall establish nursery schools for women with children between one month and three years of age.

② Article 3: The State shall endeavor to promote the healthy development of infants, prevent disease, and promote hygiene culture education.

8) Regulations for nursery schools

① Article 13: The State shall endeavor to ensure breastfeeding up to seven months after birth.

② Article 17: The nursery school shall conduct hygienic propaganda for child nutrition, hygiene,

⁴² *ibid.* at 10

⁴³ *ibid.* at 11

⁴⁴ Jung-Hun Yang, *Analysis of the Laws on Child Welfare in North Korea*, The Society for Korean Unification Culture and Arts, 2009, p.130

prevention, and nursing for the child at day care.

9) Childcare Education Law

- ① Article 22: The noble obligation of the nation is to nurture the children to keep them healthy and make them wise.
- ② Article 23: A mother should look after her children.
- ③ Article 24: Nursery schools and kindergartens provide children with enough meals and snacks according to their nutritional standards.
- ④ Article 25 ~ 28: Provide systematic medical services to children.
- ⑤ These regulations express the North Korean authorities' willingness to ensure the health and medical rights of children.

10) The People's Health Law (1980)

- ① Article 10: The State shall pay full attention to and care for the health of women and children.
- ② This regulation shows that the State considers the health care of children to be important.⁴⁵

2. Protection rights

1) Socialist Constitution (Kim Il Sung Constitution)

- ① The Socialist Constitution prohibits child labor.
- ② Article 31: "Citizens work in the Democratic People's Republic of Korea from the age of 16 years. The State prohibits the work of boys who have not reached the age of working."

2) Disability Protection Act

- ① Article 35: The age at which disabled persons can work is 16 years old. People who are under 16 years of age cannot work.
- ② The age limit is below the age of 18 under the Convention on the Rights of the Child.⁴⁶
- 3) In addition, Article 32 of the Law on the Tobacco Control of the Democratic People's Republic of Korea prohibits tobacco sales to the minors. Article 35 prohibits smoking in nurseries, kindergartens and schools. These laws are similar to laws in any other capitalist states.
- 4) Article 31 of the Preventing Infectious Diseases Act (supplement to the Standing Committee of the Supreme People's Assembly Standing Committee No. 1437) states that "citizens who work in an organization that deals with foodstuffs or nurtures children should be regularly examined" and "civilians with infectious disease cannot work in the organization." These laws provide practical provisions for protecting children from harmful substances by imposing special care obligations on childcare workers.⁴⁷

5) The Right to Protection of Personality

- ① Regulations Related to Children's Dignity

⁴⁵ *ibid.* at 131

⁴⁶ *ibid.* at 138

⁴⁷ Shin, *supra* note 30, p.26-27

- A. Furthermore, Article 26 of the Family Law prescribes that "children follow the father's last name. If they cannot follow the father's last name, the last name of the mother shall be followed. The last names of the children who do not know the parent are determined by the local administration."⁴⁸

② Protection Right During Trial

- A. According to Article 86 of the Civil Procedure Law of the Democratic People's Republic of Korea, "If the defendant is a pregnant woman or a divorced woman who raises a child who has not reached the age of one, the case is dismissed." Article 56 of the Act says, "In cases of a woman whose child has not reached the age of one or who has multiple children, the plaintiff's jurisdiction is the jurisdiction of the plaintiff's residence tribunal."
- B. These exemptions at the time of trial not only protect the mother but also the children. In addition, Article 40 of the same law provides for the protection of children by providing them with sentence reduction.
- C. In particular, the Criminal Code is closely linked to the protection of children. Article 295 of the Criminal Code punishes any crime related to a child relatively heavily in comparison with other punishable crimes. Article 295 states that a "person who had sexual intercourse with a minor who has not reached the age of 15 is subjected to a labor punishment of 5 years or less."⁴⁹

③ Protection and Assistance for Refugee Children

- A. Childcare Education Law: Article 9 states, "The Democratic People's Republic of Korea gives aid to the children who came to North Korea from a foreign country after fighting for peace and democracy for the national independence and socialism, for the freedom of science and culture, on the same terms as North Korean children."⁵⁰

3. Development Rights

- 1) In 2012, Kim Jong-un mentioned the importance of education needed for the construction of a strong country in the New Year's editorial. After that, the education system has been revised continuously. The foundation of the education system is also defined in the North Korean Socialist Constitution. The provisions related to the education of the child are discussed below.⁵¹
- 2) Article 43 of the Socialist Constitution states that "the State implements the principles of socialist pedagogy and raises future generations into a new revolutionary person who struggles for society and the people." Article 73 states that "citizens have the right to education. This right is guaranteed by advanced education system and national people education policy." Education is a right protected by the State. It is obligatory for the State to guarantee education by specifying that it is not only a duty of the State but also a right that the people can demand. Furthermore, Article 45 states that "the State develops the general 11-year compulsory education including one-year pre-school compulsory education at a level suitable to the trends of modern science and technology development and the realistic demands of socialist construction." It also requires preschool and elementary education to be compulsory.⁵²

⁴⁸ *ibid.* at 27

⁴⁹ *ibid.* at 27-28

⁵⁰ Yang, *supra* note 33, p. 132

⁵¹ Shin, *supra* note 30, p. 12

⁵² *ibid.* at 12-13

3) Regulations for Children's Education and Care

- ① North Korean children's education is stipulated in the Regulations for Children's Education and Care. First, in Article 1 of the Act, "Children in the Democratic People's Republic of Korea are the future of our country, the successor of our revolutionary cause of succession and the succession of socialism." Further, Article 36 says that "the State provides all children with compulsory education for one year in kindergarten."⁵³
- ② Article 40. "The State shall organize and operate kindergartens in order to ensure the social activities of women."
- ③ Article 18: The children who are not cared for by their parents are raised in kindergartens.⁵⁴

4) Education Law

- ① Chapter 2 from Article 2 to Article 18 define the general free compulsory education system and secondary general compulsory education. Article 33 defines education as "raising talented people with sound ideas and scientific knowledge and physical strength." Also, Articles 14 and 15 are related to the CRC.⁵⁵

5) Disability Protection Act

- ① Article 16: The cost of nursing education for the disabled who are not old enough to enter elementary school shall be borne by the State.
- ② Article 17: Persons with disabilities who are of the age to be enrolled in school must be registered with the government.
- ③ Article 19: The government shall organize special schools for special needs classes.⁵⁶

6) The People's Health Law

- ① Article 10: The State provides for children who do not have a career.⁵⁷

4. Participation Rights

- 1) Provisions relating to moral rights are equally applicable to children. Accordingly, the right to dignity can be guaranteed to children through the provisions of Article 67 of the Constitution (freedom of expression, publication, assembly, and demonstration), Article 68 (freedom of religion), Article 74 (freedom to move), and Article 79 (inviolability of persons and houses, ensuring the confidentiality of correspondence).⁵⁸
- 2) North Korean Child Welfare Act
 - ① Article 16: This articles protects citizens from arbitrary or illegal interference with privacy, family, home, and correspondence.
 - ② Article 16 protects the basic personality of a child through ensuring the right to personal activities, honor, and protection from arbitrary or unlawful interference with privacy, family,

⁵³ *ibid.* at 21

⁵⁴ *ibid.*

⁵⁵ Yang, *supra* note 44, p.134

⁵⁶ *ibid.* at 135

⁵⁷ Shin, *supra* note 30, p.24

⁵⁸ *ibid.* at 25

home, and correspondence. In particular, Article 42 stipulates respect for children in the home. Further, Article 43 prohibits punishment at home and stipulates relevant provisions so that the child will not suffer damage to human dignity.⁵⁹

③

Chapter 4. North Korean Child Welfare Act (2010) and Its Implication

1. Child Welfare Act (2010)

- 1) North Korea's welfare system is a nation-centered one in which the state is the main agent in terms supplying welfare benefits. Therefore, in the area of child welfare, North Korea seems to guarantee basic rights for children. This is in line with North Korea's external movements with the international community, apart from the characteristics of the North Korean regime. Specifically, North Korea ratified the CRC on September 21, 1990, and has been officially reviewed by the UN Committee on the Responsibilities to Children's Rights.
- 2) In other words, it is clear that the children of North Korea enjoy basic rights within the state. When considering the welfare area, children should be protected as a social minority in North Korea.
- 3) Since the State creates the law and establishes order, the relevant legal system is an essential subject to be considered before examining whether or not the law actually works.⁶⁰
- 4) The Regulations for Children's Education and Care was enacted in 1976. In 2010, the North Korean Child Welfare Act was enacted. These laws are the laws that explicitly refer to children. In particular, the North Korean Child Welfare Act has great significance in that it was enacted after three reports to the CRC committee in 1996, 2002, and 2007.⁶¹

Unit of Analysis	Contents of Analysis
Organization of the Act	Six chapters and Sixty-two articles
Contents	Chapter 1: The Basics of the Act
	Chapter 2: Rights in Social Area
	Chapter 3: Rights in Education and Health
	Chapter 4: Rights at Home
	Chapter 5: Rights in Judicial Field
	Chapter 6: Guidance and Control of Child Rights
Chapter 1	Basic Ideas, Definition of Child, International Exchange, Scope of the Act

⁵⁹ *ibid.* at 26

⁶⁰ Yoonjin Lee, *An Analysis on 'The Security Law of Children right' and Other Laws About Child Welfare in North Korea*, 2016, p.191

⁶¹ *ibid.* at 197

Chapter 2	Right to Life, Development, Name, Support, Birth, Privacy, Labor, Refugees
Chapter 3	Free Health Care, Educational Institutions, Publication, Disabled Children, Free General Education
Chapter 4	Home Care, Prohibition Against Punishment, Adoption
Chapter 5	Criminal Responsibility, Witness Examination, Child Rearing Expenses
Chapter 6	Scientific Research Business, Fund, Supervision

(Table 1. Yoonjin Lee, "An Analysis on 'The Security Law of Children Rights' and Other Laws About Child Welfare in North Korea", 2016, p. 197.)

- 5) Although the regulations related to children have been sporadically prescribed in related domestic laws and ordinances such as the Socialist Constitution, the Childcare Education Act, the Family Law, the Socialist Labor Law, the Nationality Act, and the People's Health Law, the North Korean Child Welfare Act is a compilation of these laws and ordinances.
- 6) In addition, the North Korean Child Welfare Act has introduced new regulations in order to strengthen the rights of the children in comparison with the preceding laws. The right to life and development of the child, the right to petition and appeal, the respect of the personality of the child, and the protection of the exiled child are newly added, as they were not prescribed in the preceding law. This Act provides a legal basis for the enhanced rights of the child.

2. Implication

- 1) The Child Welfare Act is a meaningful regulation in that the government put some effort to reflect the CRC in its enactment. It is a positive change in that North Korea has shown its willingness to reflect most of the children's rights set forth in the CRC in the Child Welfare Act.
- 2) The Act demonstrates that they reflected the United Nations' Convention on the Rights of the Child and are aware of the international human rights violations. This characteristic is evident in Article 10 of the Act, which says, "The international treaty regarding child's rights, to which the DPRK is a member, has the same effect as this Act," demonstrating North Korea's willingness to implement the CRC.⁶²
- 3) As a party to the UN's CRC, North Korea has adopted the CRC, has set up the "child" as the subject of a set of rights, and has independently enacted legislation to guarantee the rights of the child. Comparing the definitions of children in the CRC and the Child Welfare Act, the age gap is not resolved. Children under 18 years of age are protected according to the CRC, but the North Korean Constitutional law and the Child Welfare Act set the age at 16. It is mainly, or at least partly, due to mandatory military service in North Korea at the age of 16 or 17.
- 4) Although the North Korean authorities have enacted the Child Welfare Act based on the CRC, the government still has reserved certain rights. For example, many rights mentioned above in the Participation Rights section are excluded.
- 5) Despite the provisions of the CRC, the rights not reflected in the North Korean Child Welfare Act are as follows:

	CRC	North Korea Child Welfare Act (2010)
Article 14	Freedom of conscience and religion	Not reflected.

⁶² You-ri Shin, p.95

Article 15	Freedom of assembly and association	Not reflected.
Article 17	Access for domestic and international information and materials	Not reflected.
Article 33	Protection from illegal use of drugs and psychotropic substances and transactions	Not reflected.
Article 34	Protection from sexual abuse	Not reflected.
Article 38	Armed conflicts and conscription of children under the age of 15 are not allowed.	Not reflected.

(Table 2. The Rights Not Reflected in the North Korean Child Welfare Act⁶³)

- 6) First, citizenship and civil liberties that are likely to have a negative impact on the maintenance of the North Korean regime are not reflected. Second, the North Korean Child Welfare Act does not reflect the drugs and trafficking that are emerging as social problems in North Korea. Third, it does not reflect the provisions of the CRC at the time of armed conflict.
- 7) Article 32 of the CRC requires that adequate punishment or sanctions be imposed to ensure the effective prohibition of child labor. However, the North Korean Child Welfare Act merely stipulates that institutional organizations and individual citizens cannot make children work. The CRC also specifically prohibits torture or other cruel, inhuman or degrading treatment or punishment of a child, but other provisions of the North Korean Child Welfare Act merely prescribe the right of a child at all stages generally.

Chapter 5. Conclusion

The child is the subject of welfare and must be entitled to that right. Therefore, legal and institutional support for welfare improvement based on children's rights is necessary. According to the CRC, the United Nations has declared in the Universal Declaration of Human Rights that children have the right to "special protection and assistance." It also emphasizes the need to provide the necessary protections and resources to the family as a basic group of society and as a natural environment for all members, especially children's growth and welfare. The child must be sufficiently prepared to lead an individual life in society. Every child has the right to special protection and assistance, but the legal system must enforce this law. Therefore, the State should ensure that the child has various rights to be enjoyed as a citizen of a country including equality, the right to health, the right to education, and the right to social security prescribed by the Constitution through the enactment of child welfare laws. Moreover, it should be acknowledged that the level of children's rights guaranteed by the relevant laws will vary depending on what purpose and philosophy is enacted by the children's welfare laws. Therefore, the law related to children's welfare establishes how a child will be treated when the law is based on basic human rights of the child.

On the other hand, the fundamental purpose of the North Korean child welfare laws is to achieve the succession of North Korean communist construction and revolutionary achievements through the overall protection of children's rights. North Korea explicitly introduced the "Human Rights Guarantee Clause" (Article 8) for the first time in the revision of the Socialist Constitution in 2009.

⁶³ *Trends in North Korea's Enactment of Laws Related to Women's Rights and Child Rights*, Korea Institute for National Unification, 2011

The Children's Rights Protection Act also suggests that the North Korean authorities are actively responding to the international community's continued interest in the human rights situation of North Korean children and their urging for improvement. In January 2009, the Committee on the Rights of the Child reviewed the Third and Fourth Integration Report (December 2007) of North Korea and expressed their concern about the right to health of children, sexual exploitation and trafficking of children, the right of children to acquire jurisdiction and nationality, and physical and mental protection rights. The Committee urged North Korea to make improvements. It is necessary for North Korea to continue to pay attention to the implementation of the law, because the legislation is conscious of the international community's condemnation of the human rights of North Korea and North wants to improve its image on the world stage. In January 2009, the Committee on the Rights of the Child expressed regret that after the deliberation of the Second Periodic Report (2002) submitted by North Korea, many recommendations suggested by the Committee on the Rights of the Child were inadequately or only partially addressed. It also reflects many of the obligations of the parties as provided for in the Child Rights Protection Act, but with many declarative provisions. The international community also expects that there will be limitations in actual implementation due to North Korea's difficult economic conditions. Moreover, in the politically sensitive citizenship and human rights aspects of the Child Protection Act, North Korea is still showing passive legislation. The international community must continue to urge North Korea to change its attitude.⁶⁴

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⁶⁴ *ibid.*, pp.24-25

EXAMINING NORTH KOREAN LAW AND GOVERNMENT DIRECTIVES IN REGARDS TO CHANGES IN HUMAN RIGHTS POLICIES

Mi Jung Kim and Young Sun Song
Handong Global University

Editorial Assistance: Anna Dorothea Colby

I. Introduction

With a large number of reports, studies, and direct and circumstantial evidence including testimonies of the defectors, it is accepted in most parts of the world that the human rights of North Koreans are gravely infringed and that they are deprived of even the most basic rights. North Korea, however, has consistently maintained its stance that there are no human rights infringement issues in its territory. So where is this discrepancy coming from? Does North Korea have a concept of human rights at all? What does its law say about it? Does North Korea have laws related to human rights that are just not enforced, or are the laws missing altogether? These questions prompted the research and examination of the North Korean human rights laws discussed in this paper.

This report looks at some of North Korea's legislation (Constitution, social welfare legislation, other laws indirectly related to social welfare/human rights with an emphasis on the labor laws, and criminal law) and government directives to see what has been done in North Korea in terms of human rights protection, and to see if North Korea's attitude toward human rights has changed at all.

II. Constitution and Change in North Korea's View of Human Rights

The Constitution is not the highest law of the land in North Korea, as the 'supreme' leader's words or instructions take the highest rank, followed by policies of the Labor Party.⁶⁵ Because the Constitution is subject to change according to the will of the supreme leader and policy changes of the Party, the rights guaranteed in it have gone through a series of changes, and these changes reflect how North Korea's view on human rights has changed.

○ Enactment

The North Korean Constitution was enacted in 1948. Regardless of what was actually taking place, on paper the Constitution guarantees various basic rights commonly found in other constitutions, including: equal rights (Article 13), the right to vote/eligibility for election (Article 12), freedom of speech and the press, freedom of assembly and association (Article 13), freedom of conscience and religion (Article 14), the right to be paid for work (Article 15), the right to rest (Article 16), and the right to be educated (Article 18). As hinted by the equal rights and various freedom rights, and the definition of the term human rights in North Korea's dictionary as "rights to freedom and equality that a person must have as a human being," human rights in North Korea in the 1950s acknowledged some aspects of natural rights and shared basic standards of universal human rights that are seen in liberal democracies.⁶⁶

○ 1972 Constitution

With the 1972 amendment, the Constitution became a 'socialist constitution.'⁶⁷ In the 1972 Constitution, North Korea found collectivism as the source of basic rights.⁶⁸ A provision (Article 29) was added that stipulated that a citizen's rights and duties are based on the principle of 'one for all, all for one.'⁶⁹ Human rights based on the principle of collectivism pursues rights which a person can only exercise socially. Therein an individual cannot escape from the community, and only has independent rights as a member of a group and not as an individual.⁷⁰

In the 1990s, North Korea started using the term 'our own style of human rights (우리식 인권).' This kind of human rights differs from both that of liberal democracy and that of socialism. While law is generally a means of proletarian dictatorship in socialist societies, North Korean law is distinct in that it has a religious aspect as it is used to build the cult of personality.⁷¹ This new way of looking at human rights was necessary to justify the state actions after human rights issues in North Korea

⁶⁵ Yang-Yi Joo, "A Study on the changes or Regulations related to Human Rights in North Korea", Master's dissertation, University of North Korean Studies, p.24, 2014

⁶⁶ *ibid.* at 16

⁶⁷ *ibid.* at 75

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ *ibid.* at 18

⁷¹ Kang Woo Park, "Guideline of Criminal Policy After Reunification of Korea", Korean Criminology Review, p.4, 2015

were brought up in international society.⁷² Because an individual's rights spring from and depend on the people's collective interests, imposing thorough sanctions on enemies invading the interests of the people is necessary to protect the human rights of the people as a whole.⁷³ This idea is used to justify the prison camps criticized by the international community because human rights can only be realized if the enemies that long for and sympathize with the capitalism are put away.⁷⁴

- 2009 Amendment

The 'our own style of human rights' ideology continues to lead the 2000s. However, in 2009, North Korea included the word "human rights" in its Constitution for the first time. Before this amendment, the earlier version only declared that the state defends and protects the people's interest, whereas now Article 8 provides that the state respects and protects human rights. The term "human rights" was previously included in lower legislation, but 2009 marked the first time it appeared in the Constitution.⁷⁵ It shows North Korea has a high awareness of the international community's reaction towards the human rights issues in North Korea.

III. Changes in North Korean Laws in Regard to Human Rights (After 2000)

A. Social Welfare Legislation

Starting with the Disabled People Protection Act in 2003, North Korea enacted various social welfare legislations in the 2000s, mainly targeting vulnerable social groups such as the disabled, the elderly, children, and women. Facing pressure from outside the country about human rights violations and the lack of safety nets for its people, North Korea started making human rights legislation for women, children, etc. that do not pose a danger to the maintenance of the regime.⁷⁶

- Disabled People Protection Act (2003)

This law is made of six chapters and addresses recovery, education, cultural life, and labor of the disabled.⁷⁷ What is particularly noteworthy about this legislation is that it came before the Convention on the Rights of Persons with Disabilities which was adopted by the United Nations General Assembly in 2006 and was implemented in 2008.⁷⁸

However, many of its provisions are declaratory at best, and are especially abstract, as they lack specificity.⁷⁹ Compared to the Convention, North Korea's law does not stipulate the principle of non-discrimination, and does not cover those with "intellectual or sensory impairment."⁸⁰ It has been reported that this Act was amended to match the international standard.⁸¹ The full text of the amendment has not yet been disclosed, but it still draws attention because it came from the new Kim Jong-Un regime.⁸²

- Elderly Protection Act (2007)

This act stipulates the protection of the elderly as the government's obligation. It has six chapters and forty-seven articles and covers the rights, interests, health, and happiness of those sixty years old or older.⁸³

Besides foreign propaganda, North Korea had another reason to legislate this law: according to the North Korean census, the population of those sixty-five years of age or older was 2,097,000 (which is 8.7% of the whole population (24,052,000)) in 2008 (a society enters aging society if the

⁷² Joo, *supra* note 1, at 22

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ Kyung-bae Min, "The Viewpoints and Responses of North Korea toward UN Human Rights Law", Inha Law review, p. 125, 2014

⁷⁶ 북한법제의 변화와 남북강원도 협치, 강원포럼, p.1, 2014

⁷⁷ Disabled People Protection Act, 2003

⁷⁸ Min, *supra* note 11, at 129

⁷⁹ *ibid.*

⁸⁰ Joo, *supra* note 1, at 105

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ Elderly Protection Act, chapter 1, 2007

population of those sixty-five years old or older forms 7% or more of the whole population.)⁸⁴ Hee-Chul Ryang, vice-chairperson of Josun Elderly Protection Federation (조선연로자보호연맹), said the elderly population passed the aging level set by the UN in 2005 and the government took measures to legally protect the health and life of the elderly.⁸⁵ So far, North Korea has not joined the UN Principles for Older Persons.

- Social Security Act (2008)

The Social Security Act has its importance in the fact that it proclaimed social security as a law for the first time.⁸⁶ This law connects the Constitution and the Social Insurance Law, which was enacted in 1946. These three laws have a vertical relationship with each other, with the Constitution on top, the Social Security Act in the middle, and the Social Insurance Law at the bottom.⁸⁷ The Constitution lays out responsibilities and duties of the state regarding social welfare in an incredibly broad and abstract manner, the Social Insurance Law gives a very specific criteria for welfare payments, and the Social Security Act bridges the other two laws by stipulating in detail national social welfare policies.⁸⁸ Unlike other social welfare legislation made in the 2000s, this law covers every citizen in North Korea, including those covered by the aforementioned legislation.⁸⁹

- Children's Rights Act (2010)

North Korea ratified the Convention on the Right of the Child in 1990 but had long postponed enacting a single legislation that regulated the rights of children. There was no concept of child welfare in North Korea, but there was legislation and regulations governing the education and running of day-care centers, etc. to deal with the welfare of children.⁹⁰ These previous efforts culminated in the legislation of the Children's Rights Act in 2010. This law compiled provisions related to the promotion of children's rights that were widely dispersed in many laws, including the Law on the Upbringing of Children, Family Law, Education Law, People's Health Act, Criminal Law, Labor Law, the Disabled People Protection Act, etc., and made an independent law with more concrete provisions for the guarantee of children's rights.⁹¹

By making this law, North Korea tried to prove that it is aware of the demands for improvement from the international community. Chapter 9 provides that the state develop exchanges and cooperation with international organizations in the area of children's rights protection.⁹² Chapter 10 states the international conventions to which North Korea is a party have the same effect and force as this law. This shows, at least ostensibly, that North Korea is willing to abide by international conventions.⁹³

- Women's Rights Act (2010)

In 2001, North Korea joined the Convention on the Elimination of All Forms of Discrimination Against Women. North Korea then positively reacted to and accepted some of the recommendations made by the Committee on the Elimination of Discrimination Against Women, and this Women's Rights Act resulted from those efforts.⁹⁴

Legislated on the same day as the Children's Rights Act, the Women's Rights Act was adopted in 2010 and amended and supplemented in 2011. In enacting this law, North Korea emphasized the importance of this particular legislation as a measure to guarantee the rights and interests of

⁸⁴ Chulsoo Lee, "Trends in North Korea's Social Welfare Legislation since 2000", Review of North Korean Studies, p.246, 2016

⁸⁵ Daily NK, "북, 고령화대비 '연로자보호법' 채택", www.dailynk.com/korean/read.php?catId=nk09000&num=41618 (May 23, 2007)

⁸⁶ Lee, *supra* note 20 at 183

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ *ibid.* at 178

⁹⁰ Joo, *supra* note 1, at 111

⁹¹ Min, *supra* note 11 at 128

⁹² Children's Rights Act, Chapter 9, 2010

⁹³ *ibid.* at Ch.10

⁹⁴ Min, *supra* note 11 at 127

women in all areas.⁹⁵

This process seems to be the result of North Korea's awareness of denunciations and demands for improvements by international forums such as UN organizations.⁹⁶ This is clearly shown in Chapter 10 of the law, which provides that the international conventions regarding women's rights that North Korea is a party to have same effect/force as this law.⁹⁷

The fact that these laws were made only in the 2000s reflects and emphasizes how much these vulnerable social groups had been neglected by the regime for so long.

B. Other Human Rights Related Legislation (Those Indirectly Related to Social Welfare)

Besides the social welfare legislation above, North Korea has made other legislation indirectly related to social welfare or human rights in general. These include: the Red Cross Law (2007), the Labor Measurement Law (2009), the Labor Protection Law (2010), the Common Education Law (2010), and the Higher Education Law (2010). After briefly looking at the education laws, the labor legislation will be examined in detail.

○ Education Laws

The Common Education Law stipulates that there is to be compulsory education. North Korea has consistently emphasized the cultivation of manpower necessary for the building of a strong and prosperous nation.⁹⁸ In order to create that it is important to provide the next generation with an adequate political and ideological education, and these laws are in place to reinforce such an education.⁹⁹ In actuality the main purpose of the Common Education Law seems to be the political education of children.¹⁰⁰

C. Labor Legislation

Enactment of the Labor Measurement Law and the Labor Protection Law has made a great change in labor legislation in North Korea since 1978, when the Socialist Labor Law was legislated. The Socialist Labor Law covers labor in general, and the Labor Measurement Law and the Labor Protection Law deals with specific issues that the Socialist Labor Law spelled out.

○ The Socialist Labor Law (1978, amended in 1999)¹⁰¹

Chapters 6, 7, and 8 in the Socialist Labor Law are related to North Korean human rights issues. Chapter 6, which is about "labor protection," stipulates that the State shall ensure "labor protection precedes production (Art. 53)." It requires the State entities, companies, and social collectives to educate laborers on labor protection policies and technical safety knowledge (Art. 54). It also stipulates that State entities, companies, and social collectives shall provide a safe work place and regular health examinations for the laborers (Art. 55 - 58). It further provides that the State shall provide nutritional supplements to laborers free of charge and that it shall be responsible for protecting the lives and health of laborers (Art. 60 - 61).

Chapter 7 is about "labor and rest" and it stipulates that laborers shall have a right to rest. It guarantees an eight-hour workday limit and one day of rest per week (Art. 63 - 64). It also provides that laborers, office workers, and agricultural workers are entitled to 14 days of holiday per year (Art. 65).

Chapter 8 is about "social benefits for laborers" and it broadly covers housing, food, medical treatment, child care, education, maternity leave, and social insurance (Art. 68 - 79).

⁹⁵ Joo, *supra* note 1 at 109

⁹⁶ Min, *supra* note 11 at 128

⁹⁷ *ibid.*; Women's Rights Act, Ch.10, 2010

⁹⁸ 북한법제의 변화와 남북강원도 협치, 강원포럼, p.2, 2014

⁹⁹ *ibid.*

¹⁰⁰ *ibid.*

¹⁰¹ The Socialist Labor Law, 1978

○ The Labor Measurement Law (2009)¹⁰²

"Labor measurement" in the realm of the Labor Measurement Law means an evaluation standard, used in estimating labor per hour, assuming that the labor is done under identical working environments (Art. 2). Compared to the Socialist Labor Law, which contains only four articles about labor measurement, the Labor Measurement Law deals with labor measurement in great detail.

The purpose, however, of the Labor Measurement Law is to encourage laborers to work harder and make more profit by increasing productivity, rather than to enhance the human rights of the laborers. Article 1 of the Labor Measurement Law stipulates that the purpose of the law is to make labor more efficient for enhancing productivity and building a socialist economy. Article 5 stipulates that applying labor measurement is an important condition to create more social wealth.

Considering its purpose of expanding wealth drawn from the language of the Law itself, and the North Korean 2009 New Year's Address¹⁰³ as its background, it was evaluated that legislation of the Labor Measurement Law was against the human rights of North Korean laborers in general.¹⁰⁴

○ The Labor Protection Law (2010)¹⁰⁵

The Labor Protection Law received positive evaluation because it was legislated in a way that strengthens the human rights of North Korean laborers and supplements the Socialist Labor Law.¹⁰⁶

In Chapter 3, the law stipulates that "Enterprises, companies, and organizations shall secure labor protection environment for laborers. If not, they cannot make laborers work (Art. 16 – 17)."

Compared to the Socialist Labor Law, which simply mentions that the State shall ensure labor protection precedes production (Art. 53), the Labor Protection Law specifies the duty of employers regarding labor protection and makes that duty a condition.

In addition, compared to the Socialist Labor Law, which simply provides that laborers are entitled to regular health examinations (Art. 58), the Labor Protection Law further requires that "Enterprises, companies and organizations that operate in areas with a high risk of labor accidents shall provide an onsite hospital, protective drugs, and nutritional supplements to laborers (Art. 22).

Compared to the Socialist Labor Law, which makes employers provide protective equipment and necessary work materials free of charge, the Labor Protection Law necessitates that employers shall provide those materials free of charge "or with charge." There is a possibility that employers would provide the protective equipment and necessary work materials free of charge, but the provision stipulating that such materials may be provided with charge was evaluated to be against the human rights of North Korean laborers. The provision seems to be reflecting North Korea's economic crisis.¹⁰⁷

By examining the changes in North Korean law specific to labor legislation, it can be said that the human rights of North Korean laborers has been strengthened because the new law has provided more detailed provisions for the protection of human rights.

North Korean government directives, however, also need to be examined to see whether the North Korean government has been conforming to the law and whether the law has had an actual, practical effect.

○ Government Directives Related to Labor:

In examining North Korean government directives, North Korea's overseas laborers were focused on because this issue was not covered by the COI report,¹⁰⁸ and more concrete evidence of human

¹⁰² The Labor Measurement Law, 2009

¹⁰³ It is shown in the North Korean 2009 New Year's Address that North Korean regime was concerned about its economy because of its great failure in the previous year. 최진욱 외, "2009년 북한 신년 공동사설 분석, 통일정세분석 2009-01, 통일연구원, p. 1, 2009

¹⁰⁴ 이규창, "2009년 헌법 개정 이후 북한 노동법제 동향," 통일정세분석 2011-04, 통일연구원, p. 19, 2011

¹⁰⁵ The Labor Protection Law, 2010

¹⁰⁶ 이규창, *supra* note 40 at 18

¹⁰⁷ *Id.* at 18-19

¹⁰⁸ 신창훈 & 고명현, UN 북한인권조사위원회 보고서와 그 이후의 북한인권, 아산리포트, 아산정책연구원, p.

rights violations by the North Korean government may be observed from outside North Korea.¹⁰⁹

North Korea's Policy for Overseas Laborers

It is widely held that the number of North Korean laborers abroad has increased since the start of the Kim Jong-Un regime in 2011. After Kim Jong-Un seized power, he gave an instruction to "Send out laborers as many as possible. It does not matter whether one or two people flee."¹¹⁰

According to Director Jeon Hyeon Jun from the Northeast Asia Peace and Cooperation Institute, the reason for such a directive was presumed to be the North Korean government's need of foreign currency because of economic sanctions imposed upon the North Korean government following its provocations.¹¹¹

Because of a lack of official data from the North Korean government regarding the total number of North Korean overseas laborers, there have been several attempts to estimate the number of North Korean overseas laborers among different organizations working for North Korean human rights.

Korea Development Institute (KDI), a think tank in South Korea, has collected and organized several estimations of the number of North Korean overseas laborers in chronological order¹¹² and it has been reorganized for the purpose of this paper. According to Table 1 below, the Korea Institute for National Unification (KINU) has estimated that there are 110,000 to 123,000 North Korean overseas laborers as of 2016.

Table 1: Estimated Numbers of North Korean Overseas Laborers

Year	Institution	Report	Estimation
2012	Int'l Network for the Human Rights of NK Overseas Labor (INHL)	The Conditions of the North Korean Overseas Labor	60,000-65,000
2013	Ministry of Foreign Affairs	해외파견 북한 근로자 현황	46,000
2014	The Asan Institute for Policy Studies	UN 북한인권조사위원회 보고서와 그 이후의 북한 인권	52,300-53,100
2016	Korea Institute for National Unification (KINU)	북한해외노동자의 인권 세미나 주제발표	110,000-123,000

North Korea has sent out laborers to about forty-five countries all over Asia, Africa, the Middle East, and Europe.¹¹³ According to a study, the amount of money that the North Korean government earns through its overseas laborers is approximately \$1,200,000,000~2,300,000,000 per year.¹¹⁴

Sending laborers to other countries is a common practice, but in the case of North Korean overseas workers some are subject to forced labor because they are not informed of the working conditions and salary amount before being sent, and because they live under strict surveillance.¹¹⁵

Even for a voluntary application for overseas labor, a desire to earn money and enjoy liberty should not be interpreted as the workers' genuine desire, but as a reflection of the "constant pressure they

18, 2014

¹⁰⁹ The truthfulness of North Korean defectors' testimonies has been greatly challenged in the area of North Korean human rights and there has been limit in obtaining evidence of human rights violation because testimonies of North Korean defectors were the only source.

¹¹⁰ Daily NK, "김정은, '한두명 탈북해도 상관없어' 노동자 해외 파견,"

<http://www.dailynk.com/korean/read.php?cataId=nk05002&num=106528> (May 17, 2015)

¹¹¹ ibid.

¹¹² 최영운, "북한 해외 노동자 현황: 통계데이터 중심으로," KDI 북한경제리뷰 2017-02, 한국개발연구원, pp.

102-03, 2017

¹¹³ 신창훈 & 고명현, *supra* note 44 at. 21

¹¹⁴ "The Conditions of the North Korean Overseas Labor", International Network for the Human Rights of North Korean Overseas Labor (INHL), pp. 12, 17, 2012. - 아산리포트에서 재인용

¹¹⁵ Yoon Yeo-sang et al, "Human rights and North Korea's Overseas Laborers: Dilemmas and Policy Challenges", Database Center for North Korean Human Rights (NKDB), p.29, 2015

live under due to the chronic economic crisis and a closed system that ultimately pushed them overseas.”¹¹⁶

Because the purpose of this paper is not proving whether North Korea’s policy and action for its overseas laborers constitutes forced labor, the focus will be on whether the North Korean government conformed to its own labor legislation in regards to human rights.

Typical issues related to the human rights of North Korean overseas laborers are confiscation of passports, unfair structure in making contracts, and infringements of fundamental rights.¹¹⁷

When North Korean laborers arrive in hosting countries, the North Korean government confiscates the laborers’ passports and makes them live a group lifestyle. Although the laborers are in different countries, they live under the same strict control and surveillance experienced in North Korea.¹¹⁸

As for an unfair process in contract making, out of eighteen former North Korean migrant workers that NKDB interviewed, none of them had ever written or seen a contract.¹¹⁹ “Absence of proper explanation on contract term and working conditions was unexceptional for every hosting country, regardless of the kinds of occupation, ranks or responsible institutions.”¹²⁰

As for the wages, North Korean laborers receive only about 10% of their total earnings because 70% belongs to the North Korean government from the outset, and the other 20% is spent on membership fees for the Workers’ Party of Korea, loyalty payments to the Kim family, taxes, insurance costs, and fees for food and other expenses.¹²¹

Moreover, it seems that the North Korean government does not conform to its own labor legislation and it continues the infringement of fundamental rights. According to a news report, at least forty North Korean overseas laborers died in the previous year due to accidents, illness, and suicide.¹²²

Testimony reveals that North Korean laborers work –twelve to sixteen hours a day on average and can have only one day of rest per month.¹²³ Because North Korean laborers go to work places where people in hosting countries do not want to work, the type of work that North Korean laborers engage in is very intense and involves severe danger. NKDB wrote that “most of North Korean laborers worked largely in the labor-intensive and low value-added industries such as welding, logging, and construction.”¹²⁴

Safety measures are scarce in the work place¹²⁵, and when a laborer gets injured in the course of working, sometimes the company in the hostcountry covers the cost, but at other times, the patient has to cover the cost by himself.¹²⁶ Consequently, it is hard for North Korean overseas laborers to receive proper medical treatment.¹²⁷

North Korean overseas laborers working under such harsh conditions for twelve to sixteen hours a day without proper protection or compensation for industrial accidents is clearly against the domestic law of North Korea. Although North Korean domestic law does not apply to North Korean laborers who are in foreign countries, examining the North Korean government’s policy for overseas laborers is still meaningful in the sense that North Korean law applies to North Koreans who are residing in North Korea.

¹¹⁶ *ibid.* at 52-53

¹¹⁷ 이용희, “북한 노동자 외국 파견 정책의 추이와 전망”, 국제통상연구 제21권 제4호, p.122, 2016

¹¹⁸ Daily NK, *supra* note 46

¹¹⁹ Yoon, *supra* note 51 at 83

¹²⁰ *ibid.* at 84.

¹²¹ 이용희, *supra* note 53 at 123

¹²² Yonhapnews, “北해외근로자, 산업재해·질병·자살로 올해만 최소 40명 희생(종합)”, retrieved from www.yonhapnews.co.kr/bulletin/2016/09/19/0200000000AKR20160919156451014.HTML?from=search

¹²³ 신창훈 & 고명현, *supra* note 44 at 22

¹²⁴ Yoon, *supra* note 51 at 108

¹²⁵ *ibid.* at 90

¹²⁶ *ibid.* at 112

¹²⁷ 중앙일보, “북한 해외노동자 한달 평균 7명 사망...아파도 제대로 된 치료 못받아”, <http://news.joins.com/article/20216763> (June 24, 2016)

Therefore, it is not unreasonable to say that the North Korean government does not follow its own labor law, especially labor protection law regarding overseas laborers, irrespective of jurisdiction. By examining North Korean labor legislation and relevant North Korean government directives, a gap is seen between North Korean labor legislation and reality.

D. Characteristics of the Above Legislation

From the legislation made in the 2000s above, a pattern is seen in the recent North Korean legislation trend.

- Frequent Amendments
 - North Korea has been making frequent amendments with recent legislation. For example, the Social Security Act, enacted in 2008, was amended three times in four years.¹²⁸ In comparison, the Labor Law of 1978 was amended two times in 20 years.
 - Even the laws that existed before were less frequently amended. The People's Health Act, which was enacted in 1980, was amended in the 2000s.¹²⁹
 - There were no big changes in each amendment, but each shows that the legislation trend in North Korea is being modernized and internationalized.¹³⁰
- Targets Specific Groups
 - Previously, legislation was for all people. Now there is separate legislation for specific groups of people such as the elderly, women, and disabled people, etc.¹³¹
 - One big law is broken down into more specific laws. Labor law is broken down into the Labor Measurement Law and the Labor Protection Law, and Education law has become the Common Education Law and the Higher Education Law.¹³² This too is a sign of the legislation trend becoming more modernized and internationalized.
- Enforcement Issue
 - Most of the time, this legislation is only nominal. There are no enforcement ordinances, etc. to put the laws in practice.¹³³ It is therefore questioned whether the legislation is just to fulfill the basic requirements of promoting North Korea's policy progress at home and abroad, instead of enforcing the laws to provide a better life for its people.¹³⁴
 - In the case of disabled people, special/separate educational institutions have been absent, and this absence has continued even after the legislation of the relevant act.¹³⁵ Except for the security or welfare coming from old-age pensions, there are no public service programs designed for the elderly.¹³⁶ As for women and children, except for maternity leave and public day-care facilities respectively, there are needs for other public services.¹³⁷

The legislation of North Korea has many problems and issues, but the issue of enforcement is the most important one. However, despite its defects, it is clear that North Korea has at least made efforts to signify progress is happening, and that there was an understanding of human rights when the laws were enacted. At least on the surface, North Korea is in the right direction in terms of the protection and guarantee of human rights.

VI. Criminal Law

While North Korea's recent legislation shows its effort to at least attempt to comply with international standards, its criminal law deviates from this trend. Along with advances in human rights protection with social welfare legislation, North Korea made some improvements in criminal

¹²⁸ Lee, *supra* note 20 at 251

¹²⁹ *ibid.* at 10

¹³⁰ *ibid.*

¹³¹ *ibid.*

¹³² *ibid.*

¹³³ *ibid.* at 14

¹³⁴ *ibid.*

¹³⁵ *ibid.* at 252

¹³⁶ *ibid.*

¹³⁷ *ibid.*

law as well, especially with its 2004 amendment. However, unlike other legislation that at least appears on the right track, North Korea has not been able to keep that facade with its criminal law.

- 2004 Amendment

In 2004, criminal law was amended to include a total of nine chapters and 303 articles, which is a great increase in number compared to the 1999 amendment that only had 161 articles.¹³⁸ This alone shows what a big change this amendment brought to criminal law.

Among many changes in the amendment, what is particularly noteworthy is that North Korea finally did away with its analogical interpretation and adopted the principle of legality (*nullum crimen sine lege*). In the 1987 criminal law, there was a provision that stated if there was no criminal law provision dealing with the problem at issue, then a provision dealing with similar conduct would apply.¹³⁹ Because North Korea completely abolished the laws of the Japanese colonial period, regarding them as 'criminal documents,' the analogical interpretation was there to fill in the gap that the new laws failed to address.¹⁴⁰ However, this could easily be used arbitrarily or be abused by the authorities, and it was a sign of the underdevelopment of North Korean human rights.¹⁴¹ Because of this, in 2004 North Korea deleted the provision of analogical interpretation and added a provision stating a person would be criminally charged for conduct that is written in the criminal law.¹⁴²

Furthermore, North Korea made vague provisions clearer and more specific.¹⁴³ For example, while the 1999 criminal law stated "a person who did a terrorist attack," the amended language says "a person who did a terrorist attack by murdering, kidnapping or injuring."¹⁴⁴

- Amendment to Criminal Procedures

In 2004, North Korea also amended its criminal procedures.¹⁴⁵ This amendment provides procedures for arrest and detention, as well as regulations that prohibit torture and other inhumane conduct.¹⁴⁶ In particular, it stipulates the duty to notify the family of the person arrested, which was a procedure that captured the attention of many international human rights organizations (Article 183).¹⁴⁷

- Regressions

With the 2004 Amendment, North Korea seemed to be making progress in protecting and respecting human rights even in the area of criminal justice, along with social welfare law legislation. However, North Korea's improvement and progress with respect for human rights protection seems to be regressing with its later amendments (there are new provisions in the below amendments that can be seen as improvements in terms of better protection of human rights, but this report focuses on the provisions that regressed from the progress made in earlier amendments).

- 2007 Amendment

In 2007, North Korea amended its supplementary provisions of criminal law, which is unusual. With this amendment, additional punishment can be imposed on any crimes, not just offences against the state.¹⁴⁸ Because of this change, authorities can now even impose the death penalty for any illegal conduct.¹⁴⁹ This can be interpreted as the regime's efforts to consolidate its power by

¹³⁸ In Sup Han, "The 2004 Criminal Law Revision in North Korea – a taking-off toward the rule by law?", Seoul Law Journal, p.410, 2004

¹³⁹ *ibid.* at 415

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

¹⁴² Criminal Law, article 9, 2004 Amendment

¹⁴³ Han, *supra* note 74 at 421

¹⁴⁴ *ibid.*

¹⁴⁵ Min, *supra* note 11 at 126

¹⁴⁶ *ibid.*

¹⁴⁷ *ibid.*

¹⁴⁸ Joo, *supra* note 1 at 99

¹⁴⁹ Min, *supra* note 11 at 126

strengthening national discipline through stability in social order.¹⁵⁰

- 2009 Amendment

This amendment increased the penalty for defectors and strengthened the penalty for offences related to outside cultural materials.¹⁵¹ Whereas before only bringing and circulating materials into North Korea was punishable, mere possession of materials is now punishable as well.¹⁵² The 2009 Amendment is characterized by its organization of regulations related to maintenance of the system, and by its reinforcement of punishment for acts against the system.¹⁵³ This shows that the main purpose of having criminal law in North Korea, at least when the amendment was made, was to maintain the regime and the system.¹⁵⁴ This reorganization of regulations related to maintenance of the regime can be seen as a measure to strengthen internal control, bearing in mind Kim Jong-Un's rise to power.¹⁵⁵

- 2013 Amendment

In its 2013 Amendment to the criminal law, North Korea added a provision that provides for the possibility of capital punishment for illegally growing opium and making drugs.¹⁵⁶ In the 2009 amendment, the penalty for the same conduct was one year or less of labor training, or five years or less of hard labor, depending on the gravity of the criminal conduct.¹⁵⁷ KINU pointed out that the North Korean criminal law's broad inclusion of capital offence poses a great threat to the North Korean people's right to life.¹⁵⁸

- 2015 Amendment

In 2015, North Korea made yet another amendment to its criminal law.¹⁵⁹ In this Amendment, it increased the penalty level for getting into contact with capitalistic culture or outside information critical of the regime.¹⁶⁰ North Korea increased the maximum sentence for 'decadent conduct' (Article 183) or bringing, possessing, or circulating 'decadent culture' (Article 184) to between five to ten years of hard labor, from less than five years (for decadent conduct) and less than two years (for possession and circulation of decadent cultural material) of the 2012 criminal law.¹⁶¹ North Korea defines decadent as something dirty and obscene, but effectively it means any capitalistic cultural materials such as Korean dramas or movies.¹⁶² It seems that North Korean authorities, well aware of how peoples' contact with outside world materials weakens the regime's grip on them, are trying to control this cultural phenomenon with stricter criminal law.

Since criminal law is directly related to Kim Jong-Un's strong grip over his people and the maintenance of the North Korean regime, and since evidence of the regime and the social system weakening is found frequently, it seems that North Korea has given up on appearing to respect human rights with its criminal law. The survival of the regime seems to take precedent over North Korea's reputation in the international community.

V. Conclusion

¹⁵⁰ Changdo Kim, "A Comparative Study on the Criminal Law of the South and North Korea In preparation for Unification of the Korean Peninsula", master's dissertation, Chanwon National University, p.53, 2014

¹⁵¹ Min, *supra* note 11 at 126

¹⁵² *ibid.*

¹⁵³ Kim, *supra* note 86 at 54

¹⁵⁴ *ibid.*

¹⁵⁵ *ibid.*

¹⁵⁶ VOA Korea, "한국 통일연 "북한 개정 형법, 생명권 위협...마약 제조범에 사형 추가"", <https://www.voakorea.com/a/3789331.html>, (Mar. 30, 2017); this information is included in "White Paper on North Korean Human Rights 2017" published by Korea Institute for National Unification (KINU)

¹⁵⁷ *ibid.*

¹⁵⁸ *ibid.*

¹⁵⁹ Yonhap news, "[단독] 북, 외부정보 접촉시 처벌 강화...최고 노동교화 10년", <http://www.yonhapnews.co.kr/bulletin/2017/04/02/0200000000AKR20170402008100014.HTML> (Apr. 2, 2017); This amendment has not been made publicly available yet. Yonhap News Agency, which is the largest news agency in Korea obtained the amendment and shared some of new provisions in its article.

¹⁶⁰ *ibid.*

¹⁶¹ *ibid.*

¹⁶² *ibid.*

As examined throughout this paper, there have been substantial changes made in North Korean law in regards to human rights. Besides some regressions in criminal legislation which the North Korean regime used for its own need to strengthen control over its people, North Korean law has been reflecting the demands of international society.

The inclusion of a human rights concept in the 2009 Amendment of the Constitution, adoption of the principle of legality in the 2004 Amendment of the Criminal Law, legislation of the Labor Protection Law in 2010, and legislation of both the Children's Rights Act and the Women's Rights Act in 2010 are examples of North Korea's response to pressure from the UN.¹⁶³

By examining changes in North Korean law, significant development in North Korean law became apparent. A number of provisions regarding human rights were added, and the language in those provisions became more specific. However, most of the time, that legislation was only nominal because no proper measure taken to enforce the laws.

According to a periodical published by the South Korean Ministry of Unification, North Korea is following in China's footsteps by amending and reforming the law in its legal amendments and reformation, but still, North Korea is not fully adopting the rule of law. The publication also pointed out that the development in North Korean law is a good sign, because although the rule of law in North Korea is nominal, it is, in a sense, operating North Korean society.¹⁶⁴

Through this research, it became apparent that many organizations studying North Korea view North Korean law as a tool to prepare for the reunification era. Analyzing North Korean law and its relevant directives regarding human rights can be an effective way of showing human rights violations by North Korea and a significant way to press the North Korean government to better protect North Korean human rights.

¹⁶³ Min, *supra* note 11 at 110

¹⁶⁴ "북한법을 보는 방법", 주제가 있는 통일문제 강좌 11, 통일부, pp.48-50, 2006

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NORTH KOREAN HUMAN RIGHTS ACT

Susanna Kim and Youn gyu Lee
Handong Global University

Editorial Assistance: Mary-Elizabeth Hinton

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1. Introduction

1.1 Legislative Background

1.1.1 Concept of Human Rights and Conditions

Human rights are the rights of human beings as men. In other words, it is the heavenly right that a human naturally has since birth. Human rights are not granted by anyone, but established by the Creator in natural law.¹⁶⁵

In 1948, the United Nations defined human rights as follows: "Basic Civil Rights approved in a democratic Constitution such as survival, freedom, life, and personal security is freedom from arbitrary detention, imprisonment, and banishment, right to fair trial and public hearing by impartial trial, freedom of thought, conscience and religion, and freedom of holding peaceful assembly or assembly." It also includes economic, social, and cultural rights like the right to work, education, and social security. A person has the right to enjoy a community's culture and to share the interests of progress in science and art.

Likewise, human rights must be prioritized among the international community and established for an environment in which human beings are given rights by mutually respecting the rights of others. Therefore, it is argued that issues of human rights should start from an awareness that these rights are the most precious and important rights of human beings that should be established at a transnational level across borders, not determined by situations in each country.¹⁶⁶

1.1.2 Present Situation of Human Rights in North Korea

Despite the belief that the issues of human rights should be dealt with from a transnational point of view, the most embarrassing question for researchers on human rights issues in North Korea is "Why do great powers demand improvement of human rights in North Korea?" This certainly interferes in North Korea's internal affairs and at the same time leads to an infringement of its sovereignty. Judging by a strictly legal standard, it seems to be valid in moral and ethical terms, but it is a fact that the international community cannot make a strong claim from a formal legal viewpoint.

Complaints of countries being criticized by the international society for their own human rights issues at home, such as the release of political prisoners or the death penalty, are: firstly, sovereign nations cannot interfere in other countries' political, cultural, and societal diversity, which cannot be judged by all nations at the same level; secondly, cases of human rights abuses that arise from a process of legitimate law enforcement through national consensus are matters that every country undergoes; lastly, nationals understand and accept all these matters, and it is claimed that it is not proper for the great powers to intervene.¹⁶⁷

However, looking at the current state of human rights in North Korea, the situation is too serious to avoid merely because of the criticisms that come from "international interference in internal affairs." According to the White Paper on Human Rights in North Korea (2016) published by the Database Center for North Korean Human Rights, in the last decade, violations of individual dignity and liberty and reproductive rights, which includes self-determination of pregnancy and birth, have increased.¹⁶⁸ Arbitrary or illegal arrests, detention, and interring political prisoners prohibited by the international society accounted for 64% of the total number of cases (39,788 cases). Of the 368 total cases, 360 abortions (about 98%) occurred forcibly. Thus, the reproductive rights of women, which include the right to life of embryos and to health of pregnant women, are not being

¹⁶⁵ 이보드레, *A Study on the North Korean Human Rights Act*, A Master's Thesis, Graduate School of Soongsil University, 2016, p.5

www.riss.kr/search/detail/DetailView.do?p_mat_type=be54d9b8bc7cdb09&control_no=89c5df4930aae071ffe0bdc3ef48d419.

¹⁶⁶ Park Kwang-Deuk, *The Study for North Korea Human Rights Act's Actuality and Improvement*, 2011, p. 139 - 140, 142 - 143 <http://insight.dbpia.co.kr/article/related.do?nodeId=NODE01741095>.

¹⁶⁷ ibid. at pp.142-143

¹⁶⁸ *Most Violations of Human Rights to Individual Dignity and Liberty are Worst in North Korea*, MUNHWA, www.munhwa.com/news/view.html?no=2016101001070403025001.

protected.¹⁶⁹ The reasons why this phenomenon continues in North Korea is due to a male-dominated political culture, social discrimination, and overall social atmosphere that treats women at a lower level than men. These societal issues are difficult to rectify. In this respect, despite an objecting party voicing that North Korea can control its “internal affairs,” there has been an opinion in South Korea that the North Korean Human Rights Act is necessary.

Figure 1: Cases of Violations of the Right to Individual Dignity and Liberty (Number, %)

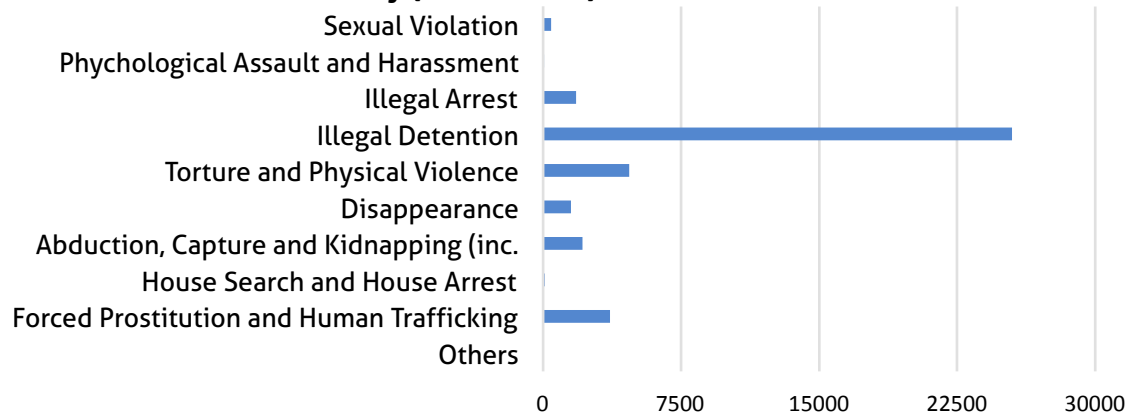
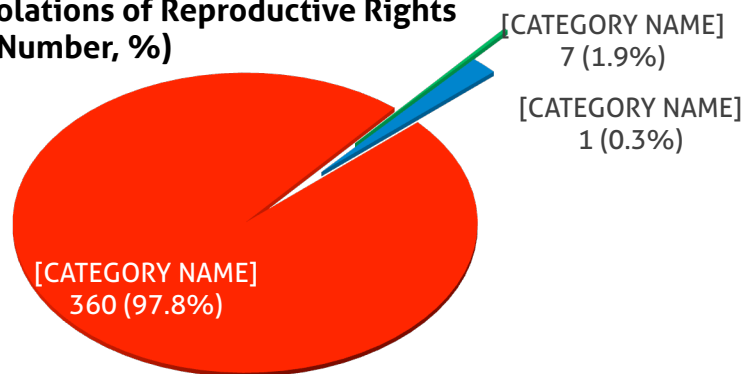


Figure 2: Cases of Violations of Reproductive Rights (Number, %)



1.1.3 Necessity of Enacting North Korean Human Rights

With respect to the protection of human rights in North Korea, the Republic of Korea has been considering an Act focused on North Korea’s human rights for many years and finally implemented the “North Korean Human Rights Act” on September 4, 2016, in order to protect and improve the human rights for North Koreans. The reason that the Republic of Korea enacted and enforced this Act is discussed below.

1.1.3.1 Fulfillment of Constitutional Obligation

The first reason that the North Korean Human Rights Act is necessary is to guarantee fundamental rights to the people as specified in the Constitution.

Article 1 of the Act states that the Republic of Korea shall be a democratic republic. The sovereignty of the Republic of Korea shall reside in the people and all State authority shall emanate from the people. Article 3 states that the territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands. Article 4 states that the Republic of Korea shall seek unification and shall formulate and carry out a policy of peaceful unification based on the basic free and democratic order. Article 10 states that all citizens shall be ensured human worth and dignity and

¹⁶⁹ Ahn et al. (2016), *White Paper on North Korean Human Rights*, pp.197-198

have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals. If Article 1 and Article 3 are interpreted together, all the territory of the Republic of Korea is under a political system of a democratic republic, because the Republic of Korea is a democratic republic and its territory consists of the Korean peninsula and its adjacent islands. This means that the North Korean regime provisionally implements the socialist system in North Korea.

Therefore, North Koreans are citizens of the Republic of Korea and are entitled to basic human rights like South Koreans. It can be said that it is necessary to enact the North Korean Human Rights Act for improvement of North Koreans' lives by the South Korean government.

The Republic of Korea has an obligation to enact related laws to guarantee its peoples' rights to pursue happiness as stipulated in Article 10 of the Constitution. Accordingly, the North Korean Human Rights Act has been enacted in order to prepare for the reunification referred to in Article 4. This establishment of the North Korean Human Rights Act is an important first step with respect to improvement of North Korean human rights.¹⁷⁰

1.1.3.2 Fulfillment of Universal Value

In respect to the fulfillment of the universal value of men, the protection of human rights is an object which must be fulfilled regardless of boundary lines, such as the borders, nations, states, ideologies, and religions that are set by humans.¹⁷¹ In addition, solving economic problems has an inseparable relation with the guarantee of human rights. In a country where economic matters are not resolved, it is difficult for that country to guarantee the right to life and right to food for its people. In fact, the economic system in North Korea is based on communism, but communism has long been over, and the needs of the North Koreans have dramatically increased. This fact is well-known to the international society.¹⁷²

1.1.3.3 Our Peoples' Matter

The Republic of Korea is a country put in a special situation created by a divided peninsula. South Koreans must handle the issue of human rights violations occurring in North Korea, which is a normative task. Rather than indiscriminate and pluralistic supports, planned and systematic ones through unification of channels can help improve the human rights situation in North Korea. It is highly probable that North Korea will easily accept the help, because North Korea is aware that it is unlikely that political support will be available through legal means. In order for this to happen, institutions need to conduct systematic research and related laws need to be established. The North Korean Human Rights Act also plays a role of jurisdiction over these matters.¹⁷³

2. Domestic and Foreign Situation Until the Establishment of North Korean Human Rights Act

2.1. America and Japan

Prior to the enactment of the North Korean Human Rights Act in the Republic of Korea, the United States and Japan enacted laws similar to the North Korean Human Rights Act in accordance with their respective needs. In the United States, the North Korean Refugee Relief Act was passed through Congress in July 2003 to help North Korean refugees. At the same time, although the North Korean Re-Freedom Act of 2003 was submitted to Congress, there were many problems in the process of review and failed to be passed. In 2004, 16 Congressmen on the International Relations Committee and the Asia-Pacific Subcommittee Chairman, Jim Rich, laid the foundation for the North Korean Human Rights Act by updating the North Korean Freedom Act. This bill was passed through the U.S. House of Representatives in July 2004, through the U.S. Senate in September 2004, and

¹⁷⁰ Park Kwang-Deuk, *Study on Justification for the of Enactment North Korean Human Rights Act and Prospect*, 2013, pp.50-51 <http://insight.dbpia.co.kr/article/related.do?nodeId=NODE02209426>

¹⁷¹ *ibid.* at p.53

Lee Woo-Young, *Usefulness of North Korean Human Rights Resolution – Why is it the Resolution*, Seoul: Korean Diplomacy and Northeast Asian Studies and National Assembly Legislation Survey, 2011, pp.13-16 https://www.nars.go.kr/brdView.do?cmsCd=CM0008&brd_Seq=426

¹⁷² *Supra* note 170, p.54. *See also* Chosun Ilbo- Korean Newspaper, December 19, 2012

¹⁷³ *Supra* note 170, pp.55-56

signed by the President in October 2004. In 2008, the bill for the reinstatement of the North Korean Human Rights Act was enacted. The bill extended the lifespan of the Act until 2012 and passed through the House of Representatives in May, through the Senate in September 2008, and signed by the President of the United States on October 7, 2008. The United States has extended the implementation of the North Korean Human Rights Act by passing that bill on re-approval, which will prolong the Act until 2017.¹⁷⁴

Briefly examining the main contents of the North Korean Human Rights Act of the United States, it consists of Chapter 1 entitled "Human Rights Improvement Measures for the North Koreans," Chapter 2 entitled "Measures to Support North Korean Residents in Need," and Chapter 3 entitled "Protection Measures for North Korean Refugees." The United States also allocates a budget of \$10,000 to help North Korean refugees. In addition, the U.S. State Department has special envoys on North Korean human rights to oversee the enforcement of laws and to promote and coordinate efforts in order to ensure the human rights of North Koreans. The budget is allocated by concrete specifications in the law that limit where the funds can be used. Further, having special envoys to oversee human rights' enforcement shows America's desire for improvement of human rights in North Korea. Due to this Act, North Korean defectors were able to move to the United States easily.¹⁷⁵

In the case of Japan, the law was enacted in 2006, two years after the US. The original name of the North Korean Human Rights Act was the "Act on the Countermeasures Against Abductions and Other Human Rights Violations by Authorities of North Korea." Therefore, the purpose of the North Korean Human Rights Act of the US is different. Based on the human rights situation adopted at the UN General Assembly, this bill was enacted under the recognition that it is a task to solve abduction issues of Japanese citizens, which were the most acute ones in Japan at the time, and to tackle the issue of human rights violation by the authorities of North Korea with the help of the international society.¹⁷⁶

Simply taking a look at the main contents, Article 2 and Article 3 of the Act stipulate that the issue of abduction from the authorities of North Korea should be the responsibility of the state and local public entities by means of national criminal acts, to investigate, and to develop public opinions, so as to let the people know of the kidnapping issues. Article 4 sets up the week for the development of human rights violations in North Korea. Article 5 sets out the annual report. Article 6 strengthens the international linkage. Article 7 contains measures to be taken if the authorities of North Korea do not improve the situation of human rights violations.¹⁷⁷ The North Korean Human Rights Acts of the United States and Japan have not been effective in combatting the human rights abuses of the North Koreans; rather, the Acts can be evaluated as a measure to strengthen the hegemonic power of the US and Japan and show the status of developed countries rather than improve the human rights of the North Koreans. The US Act focuses on dealing with North Korean refugees rather than improving the human rights of the North Koreans. In the case of Japan, its bill is designed to solve the abduction issues of Japanese citizens. These Acts are different from the North Korean Human Rights Act of South Korea.¹⁷⁸

2.2. Situation of Congress in Enactment of North Korean Human Rights Act in South Korea

In the process of establishing the North Korean Human Rights Act of the Republic of Korea, the 16th National Assembly passed this resolution calling for the improvement of North Korean human rights in 2003. During the 17th National Assembly in June 2005, a bill on humanitarian aid and improvement of the North Koreans was presented. However, in 2008, the Uri Party, which was the majority party at the time, rejected the North Korean Human Rights Act, so it was not discussed and

¹⁷⁴ Kim Dong-Hwan, *Comparative Analysis of North Korean Human Rights Act in Korea, US, and Japan*, *Research in North Korean Studies*, North Korean Institute in Dongguk University, Vol. 4, 2008, pp.33-34. See also Kim Tae-Hun, *Necessity and Direction of the Enactment of North Korean Human Rights Act – Resources: How do we have to deal with the North Korean Human Rights Act*, Seoul: Policy Committee of Advancement Unification Party, 2012, pp.4-5. *Supra* note 170, p.45

¹⁷⁵ Park Kwang-Deuk, *The Study for North Korea Human Rights Act's Actuality and Improvement*, 2011, p.151

¹⁷⁶ See the footnote 11, p. 152-153. *Supra* note 170, p.46

¹⁷⁷ *Supra* note 175, p.153

¹⁷⁸ *Supra* note 170, p.46

failed to be accepted at the expiration of the term. In the 18th National Assembly, the following four legislative proposals were submitted: the North Korean Human Rights Act in July 2008, the North Korean Human Rights Promotion Bill in July 2008, the North Korean Human Rights Act in November, and the North Korean Human Rights Act in December. The Assembly rejected the bill as it had many issues and was abandoned due to the expiration of the term of the 18th National Assembly.¹⁷⁹

The opposition party's position on the North Korean Human Rights Act has changed after the public execution of Jang Sung Taek in December 2013. Since the execution, negative opinions from the public about North Korean human rights spread across South Korea. In January 2014, the Democratic Party leader Kim Han-gil said in a press conference, "We would prepare the North Korean human rights law at the party level." The new Political Democratic Union (PDU) (the ex-opposition party and current ruling party) compiled the law related to North Korean human rights in April 2014, when a representative proposed the North Korean Human Rights Promotion Act. In the same year, the Saenuri Party (the ex-ruling party and current opposition party) proposed the North Korean Human Rights Act with the support of Representative Kim Young-woo. The Saenuri Party kept distance from the PDU by stipulating that the purpose of the bill is "necessary for dialogue and humanitarian assistance projects between the two Koreas." Moreover, the Ministry of Unification established a humanitarian aid council to coordinate the humanitarian aid projects for the North Koreans and constructed a Human Rights Information Center in the Ministry of Unification to replace the North Korean Human Rights Archives under the Ministry of Justice. Finally, on March 2, 2016, during the presidential election of Park Geun-hye, the North Korean Human Rights Act was passed by the approval of 212 seats and 24 abstentions.¹⁸⁰

3. Body – Articles

3.1 Article 1 - Purpose of the Legislation

The purpose of this Act is to contribute to the protection and improvement of human rights of North Koreans by pursuing the right to liberty and right to life prescribed in the Universal Declaration of Human Rights and other international conventions on human rights.

Article 1 of the Act stipulates the meaning of human rights and the pursuit of the right to liberty and right to survival on the basis of the International Covenants on Human Rights. In the Republic of Korea, the so-called conservative camp views the right to liberty as a more important concept of human rights, while the progressive camp views the right to survival as a more important human right. The contrast in views between the two parties was reflected in the process of enactment of the North Korean Human Rights Act. In other words, the two parties insisted that their position was the most important concept for human rights. Thus, the ruling party desired to give back the political freedom to the North Koreans persecuted by ideological control; whereas, the opposition party desired to provide humanitarian assistance to those people whose basic rights to survival were ignored. However, during the legislative process, the National Assembly agreed to the promotion of both the right to liberty and the right to survival. Consequently, the intention of the PDU's integration was reflected and both the right to liberty and the right to survival became part of the bill.¹⁸¹

3.2 Article 2 – Basic Principles and Obligations of the State

(1) The State shall affirm that North Koreans have dignity and worth as human beings and the right to pursue happiness, and shall endeavor to protect and promote the human rights of North Koreans (hereinafter referred to as "improvement of human rights in North Korea").

(2) In addition to efforts to improve human rights in North Korea, the State shall also endeavor to establish peace on the Korean Peninsula.

¹⁷⁹ Brief Story of the North Korean Human Rights Act, last searched December 7, 2012

<http://iel.egloos.com/2938524/> Supra note 6, p. 59

¹⁸⁰ The North Korean Human Rights Act Sees the Light in 11 Years, Good Or Bad Strategy, 2016

<http://the300.mt.co.kr/newsView.html?no=2016012908417699606>

¹⁸¹ 이보드레, supra note 165, pp. 65-66

(3) The State shall prepare sustainable and stable finances necessary to improve human rights in North Korea.

Article 1 of the Act stipulates that the purpose of this Act is to contribute to the protection and promotion of human rights of the North Koreans. Article 2 provides the principle for fulfillment. Paragraph 1 of this Article discusses the dignity and value of North Koreans. In other words, the issue of human rights in North Korea is a matter of universal value and the State has a duty to guarantee and protect human rights. Although the above contents have already been theoretically and legally recognized in accordance with Article 3 and Article 10 of the Constitution of the Republic of Korea, the government of the Republic of Korea cannot exercise effective controls over the regions in North Korea. However, North Koreans are citizens of the Republic of Korea. Therefore, they have dignities as human beings and the right to pursue happiness. The government of the Republic of Korea has once again emphasized and acknowledged that it has an obligation to make national efforts to promote North Korean human rights.

In Article 2, there is a need to include additional humanitarian assistance. Although humanitarian assistance is already mentioned in Articles 6, 8, and 10, it is an opinion that it is necessary to have a declarative rule as a grand principle or a state's responsibility. The North Koreans are still exposed to unsanitary conditions and are threatened by health conditions. Additionally, North Koreans face a major shortage of food and medical supplies. Thus, humanitarian assistance to North Korea is an appropriate and indispensable measure in order to guarantee the minimum human livelihood of the North Koreans. In particular, South Korea's view of North Korean issues has changed due to domestic situations and the actions of North Korea's regime. South Korea needs to fulfill its obligation to promote this humanitarian policy to North Korea in the long-term "regardless of the political situation."¹⁸²

3.3 Article 3 - Definition

The term "North Koreans" in this Act means persons who have their domicile, lineal ascendants and descendants, spouse, workplace, and other bases of living north of the Military Demarcation Line (MDL).

Article 3 stipulates that "North Koreans" are persons who are located in the northern area of the Korean Peninsula. In order for the Act to apply, the area of North Korea must be a "residence" and a "living base" for North Korean citizens. If either of these two requirements is not met, they will not be protected by the Act. Therefore, although the issue of North Korean defectors is an important part of North Korean human rights, a problem still exists concerning the narrow scope of application of the Act. North Korean defectors are those who leave North Korea and temporarily or permanently reside in the Republic of Korea or a third country or workers dispatched to a third country. Particularly, North Koreans ("hereinafter referred to as the "overseas defectors") who have crossed the border for the protection of their right to life because of their lack of food or other reasons have been abandoned with no legal protection by relevant nations.

Due to this fact, the South Korean government must establish a fundamental alternative to compatriots who are in the blind spot of the law. The law should not only officially investigate the actual situation of human rights of overseas defectors, but also provide humanitarian assistance, such as food and medicine directly to the defectors by law, and indirectly support the organizations that help them. There is a need for regulations to enable systems to cooperate with such organizations. It should also be pointed out that as a governmental obligation, China should make an effort to persuade the United Nations High Commissioner of Refugees (UNHCR) to recognize the activities of UNHCR. In the long run, it is also possible to consider establishing settlement areas for overseas defectors, which guarantees safe places for them in connection with the international society.¹⁸³

3.4 Article 4 - Relationship with Other Acts

Except as otherwise expressly provided for in the Inter-Korean Exchange and Cooperation Act, the

¹⁸²이보드레, *supra* note 165, pp.68-70

¹⁸³이보드레, *supra* note165, pp.70-73

Inter-Korean Cooperation Fund Act, and the Development of Inter-Korean Relations Act, efforts to improve human rights in North Korea shall be governed by this Act.

3.5 Article 5 -North Korean Human Rights Advisory Committee

(1) In order to provide advice on policies related to the improvement of human rights in North Korea, there is hereby established a North Korean Human Rights Advisory Committee (hereinafter referred to as the "Committee") in the Ministry of Unification.

(2) The Committee shall be comprised of not more than ten members recommended by the National Assembly, including chairperson; and the chairperson shall be elected by and from among its members. When the National Assembly recommends Committee members, the negotiating body of the political party to which the President currently belongs or formerly belonged and, the other negotiating bodies, shall recommend one half of the members, respectively, and the Minister of Unification shall commission such members.

(3) Matters necessary for the composition, operation, etc. of the Committee shall be prescribed by Presidential Decree.

3.6 Article 6 - Master Plans and Action Plans to Improve Human Rights in North Korea

(1) Every three years, the Minister of Unification shall formulate a master plan to improve human rights in North Korea including the following matters (hereinafter referred to as "master plan") after obtaining advice from the Committee and consultation with the heads of relevant central administrative agencies:

- 1. Investigation into the status of human rights in North Korea;*
- 2. Plans for protecting and promoting human rights in North Korea, including inter-Korean human rights dialogue and humanitarian assistance;*
- 3. Other matters prescribed by Presidential Decree relating to the protection and improvement of human rights in North Korea.*

(2) Each year, the Minister of Unification shall formulate an action plan to improve human rights in North Korea (hereinafter referred to as "action plan") based on the relevant master plan, after obtaining advice from the Committee.

(3) Upon formulating a master plan or an action plan, the Minister of Unification shall report it to the National Assembly without delay.

The master plan is an important task of the Minister of Unification prescribed by the Act. Because this plan will soon form the framework of a policy of North Korean human rights, this part should be refined to make it more detailed and clear. In particular, the above subparagraph 2 should be divided into a section on human rights dialogue and a section on humanitarian assistance between the two Koreas, in order to be consistent with the purposes of Articles 7 and 8, which state that the details of the policy should be included.

Meanwhile, there is no information on what should be included in the action plan, so it seems necessary to supplement this section. Furthermore, the reason why the Minister of Unification has an obligation to report to the National Assembly on the master plan, the action plan, results, and evaluation of the plans (Article 6 Clause and Article 15) is to secure national consensus to fulfill a national plan for the improvement of North Korean human rights. In order to further promote the purpose of this Act, it is necessary to consider the provision of disclosure of related information so that the public can be informed. This will bring about interest in the issue of North Korean human rights and will have the effect of encouraging social empathy and public support for important national plans.¹⁸⁴

3.7 Article 7 - Promotion of Inter-Korean Dialogue on Human Rights

¹⁸⁴이 보드레, *supra* note 165, pp.79-80

(1) The Government shall promote inter-Korean human rights dialogue on important matters for the improvement of human rights in North Korea.

(2) Article 15 of the Development of Inter-Korean Relations Act shall apply mutatis mutandis to the matters necessary to appoint the representatives for inter-Korean dialogue on human rights.

(3) Other matters necessary to promote inter-Korean dialogue on human rights shall be prescribed by Presidential Decree.

Inter-Korean human rights dialogue can be defined as all kinds of communication through formal and informal devices that the Korean government will hold with the authorities of North Korea to protect the rights of North Koreans. This is a representative project inevitably accompanied by a high level of political action related to the governmental policy of North Korea. The government must try to engage in dialogue and cooperation about human rights with patience, so as to bring stability and peace on the Korean Peninsula. In the long term, it is necessary to democratize North Korea; but first, North Korea and South Korea must fully recognize and embrace the reality that the political systems are completely different.¹⁸⁵

3.8 Article 8 - Humanitarian Assistance

(1) In providing North Korean authorities or agencies with any humanitarian assistance for North Koreans to promote human rights in North Korea, the State shall endeavor to ensure that the following matters are complied with:

1. Assistance shall be delivered transparently in accordance with internationally recognized delivery standards;

2. Assistance shall be provided preferentially for vulnerable social groups, such as pregnant women and infants.

(2) The State shall endeavor to ensure that the subparagraphs of paragraph (1) are also complied with in delivery of humanitarian assistance by private and non-governmental organizations, etc.

Article 8 of the Act declares a principle that a State shall abide by when providing humanitarian assistance to North Koreans. That is, if humanitarian assistance is provided to North Koreans for the promotion of human rights in North Korea, it should be promoted transparently in accordance with recognized delivery standards and the assistance for vulnerable social groups, such as pregnant women and infants, shall be prioritized (Paragraph 1). Regarding humanitarian assistance by private organizations, these matters shall be respected (Paragraph 2).¹⁸⁶

Humanitarian assistance can be defined as the business of providing various goods for the guarantee of the right to survival of the North Koreans. First of all, as mentioned above, in order to prevent the possibility that the grand principle of humanitarian assistance will be controlled by domestic and overseas situations or other North Korean policies, the South Korean government should implement "humanitarian support from a long-term perspective regardless of political situation" as the State's obligation. In other words, in the North Korean situation where malnutrition and poverty are prevalent, the support for survival needs to be supplemented with laws of "unconditional humanitarian assistance" in the North Korean Human Rights Act, so as not to be connected with political and military situations.¹⁸⁷

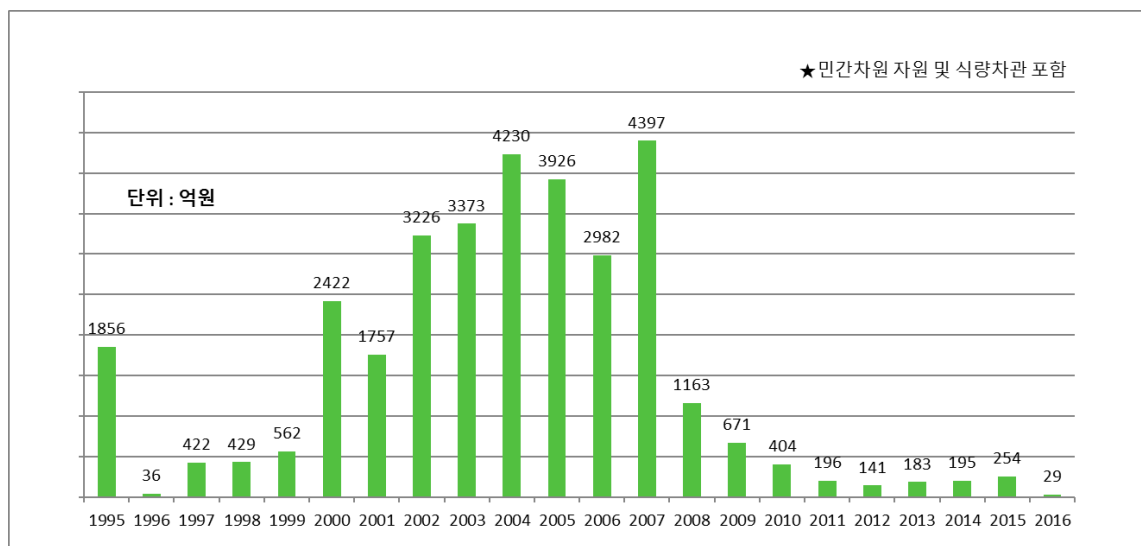
Figure 3: Annual Status of Humanitarian Aid to North Korea (Including Private Support) ¹⁸⁸ [Unit: 100 Million won]

¹⁸⁵ 이보드레, *supra* note 165, p.82

¹⁸⁶ 이보드레, *supra* note 165, p.48

¹⁸⁷ 이보드레, *supra* note 165, p.83

¹⁸⁸ Humanitarian Cooperation, Ministry of Unification www.unikorea.go.kr/content.do?cmsid=3099.



Between 2000 and 2007, humanitarian assistance was actively given and inter-Korean talks, such as the "June 15 Joint Declaration" (2000) and the "Declaration for the Development of Inter-Korean Relations and Peace and Prosperity" ("10 4 Joint Declaration") (2007), were held through cooperative channels between the two Koreas. In this regard, it should not be overlooked that there have been several summits during the German unification process.¹⁸⁹

3.9 Article 9 - International Cooperation for Improvement of Human Rights in North Korea

(1) *The State shall cooperate with international organizations, international bodies, foreign governments, etc. in implementing human exchanges and the exchange of information, etc. for the improvement of human rights in North Korea; and shall also endeavor to raise the international community's awareness on the improvement of human rights in North Korea.*

(2) *In order to facilitate international cooperation for the improvement of human rights in North Korea under paragraph (1), an Ambassador for North Korean Human Rights Issues may be appointed within the Ministry of Foreign Affairs (hereinafter referred to as "Ambassador for North Korean Human Rights Issues.")*

(3) *Necessary matters relating to the duties, qualifications, etc. of the Ambassador for North Korean Human Rights Issues shall be prescribed by Presidential Decree.*

Article 9(2) of the Act requires the appointment of an Ambassador for North Korean Human Rights Issues (hereinafter referred to as, "Ambassador") for international cooperation for the improvement of human rights in North Korea. The main role of the Ambassador is to establish a cooperative system with international organizations and foreign governments to improve human rights in North Korea. Pursuant to Article 5(2) of the Act on the Appointment and Powers of Government Delegates and Special Envoys, the Ambassador is a civilian who is not subject to the Foreign Service Act and is recognized as a government representative within the scope of a specific mission.¹⁹⁰

3.10 Article 10 - Establishment of North Korean Human Rights Foundation

(1) *In order to investigate the actual status of human rights in North Korea and to engage in research, policy development, etc. related to the improvement of human rights in North Korea, including inter-Korean dialogue on human rights and humanitarian assistance, the Government shall establish a North Korean Human Rights Foundation (hereinafter referred to as the "Foundation").*

(2) *The Foundation shall be a corporation and duly formed upon completion of registration for its incorporation at the seat of its principal office.*

(3) *The Foundation shall perform the following functions, and may have separate organs assigned to*

¹⁸⁹이보드레, *supra* note 165, p.86

¹⁹⁰이보드레, *supra* note 165, p.87

perform the following functions:

1. Each of the following, for the improvement of human rights in North Korea, including inter-Korean dialogue on human rights:

(a) Investigation and research into the status of human rights in North Korea;

(b) Development of alternative policies and provision of recommendations to the Government for inter-Korean human rights dialogue, etc.;

(c) Other functions deliberated on by the Committee and designated by the Minister of Unification;

(d) Provision of assistance to civil groups necessary to implement any program described in items (a) through (c);

2. Each of the following, for the improvement of human rights in North Korea, including humanitarian assistance:

(a) Investigation and research into demand for humanitarian assistance in North Korea;

(b) Development of alternative policies and provision of recommendations to the Government for humanitarian assistance to North Korea;

(c) Other functions deliberated on by the Committee and designated by the Minister of Unification;

(d) Provision of assistance to civil groups necessary to implement any program described in items (a) through (c).

(4) Other matters necessary to establish the Foundation shall be prescribed by Presidential Decree.

Basically, this organization, which has the character of a foundation under the civil law, is a device for carrying out the following two kinds of projects: "Inter-Korean Human Rights Dialogue" and "Humanitarian Assistance." During the legislative process of the National Assembly, the government emphasized the necessity of establishing the foundation as a position to promote the inter-Korean dialogue. Because the Ministry of Unification cannot undertake all tasks related to humanitarian assistance directly, the Ministry of Unification should be in charge of a policy related to North Korean human rights and the foundation should take care of implementing humanitarian assistance, respectively.¹⁹¹

3.11 Article 13 - Center for North Korean Human Rights Records

(1) In order to collect and record information on the status of North Korean human rights and information for the improvement of human rights in North Korea, there is hereby established a Center for North Korean Human Rights Records (hereinafter referred to as the "Center") in the Ministry of Unification.

(2) The Center shall perform the following functions, and shall be assigned to collect, research, preserve, publish, or otherwise deal with various kinds of materials and information:

1. Investigation and research into human rights in North Korea;

2. Functions relating to the Korean War prisoners detained in North Korea, abductees in North Korea, and separated families;

3. Other functions deliberated on by the Committee and acknowledged by the Minister of Unification as necessary.

(3) Any of the functions prescribed in the subparagraphs of paragraph (2) may be out-sourced to outside institutions. In such cases, subsidies may be granted to cover necessary expenses, within budgetary limits.

(4) The Center shall have one head, appointed or commissioned by the Minister of Unification, from

¹⁹¹이보드레, *supra* note 165, pp.93-94

among public officials belonging to the Senior Civil Service Corps or persons with profound knowledge and experience in the human rights issues of North Korea.

(5) Materials collected and recorded by the Center shall be transferred to the Ministry of Justice every three months, and the Ministry of Justice shall establish an organ assigned to preserve and manage the materials related to records on North Korean human rights.

(6) Other matters necessary for the composition, operation, etc. of the Center shall be prescribed by Presidential Decree.

Article 13(1) of the Act requires the Center for North Korean Human Rights Records (hereinafter referred to as the "Center") to be located in the Ministry of Unification. In accordance with Article 13(5) of the Act and in paragraph (1) of the Enforcement Decree, the Ministry of Justice shall establish the North Korean Human Rights Archives (hereinafter referred to as "Archive").¹⁹²

3.12 Article 14 - Cooperation of Relevant Agencies, etc.

(1) The Minister of Unification may request other administrative agencies, public organizations, and relevant persons to submit materials, state opinions, or provide cooperation for other matters necessary for policy implementation.

(2) The head of the administrative agency, public organization, or relevant person in receipt of a request under paragraph (1), shall comply with such request, except in extenuating circumstances.

(3) The head of any relevant central administrative agency or local government who intends to enact or amend any statute, municipal ordinance, etc. that provides for affairs prescribed in this Act, shall pre-notify the Minister of Unification thereof.

3.13 Article 15 - Reports to National Assembly

(1) Each year, in addition to a master plan and an action plan, the Minister of Unification shall report the following matters, on the improvement of human rights in North Korea, to the National Assembly, prior to the opening of its regular session:

1. Status of human rights in North Korea;

2. Results and progress of improving human rights in North Korea;

3. Status of formulation and implementation of plans for repatriation of Korean War prisoners detained in North Korea and abductees in North Korea, reunion of separated families, etc.;

4. Results of projects implemented respectively by the State, local governments, and public institutions in connection with the affairs prescribed in subparagraphs 1 through 3, and the assessment thereof;

5. Other matters acknowledged by the Minister of Unification as necessary to improve human rights in Korea.

(2) If necessary, the National Assembly may recommend that the Government correct or improve any report made under paragraph (1).

4. Relative Organizations

4.1 North Korean Human Rights Foundation

The North Korean Human Rights Act creates the governmental service system for overseeing North Korean projects, the North Korean Human Rights Improvement Organization, and major policy means by which the organizations will complete their work. The North Korean Human Rights Act establishes the North Korean Human Rights Foundation, the North Korean Human Rights Advisory Committee, the Ambassador for North Korean Human Rights Issues, the Center for North Korean Human Rights Records, and the North Korean Human Rights Archives. The major policies to accomplish South Korea's goals include pressure on North Korea, international cooperation,

¹⁹²이보드레, *supra* note 165, p.100

humanitarian assistance, supporting civic group activities, and strengthening capacity.¹⁹³

4.2 Center for North Korean Human Rights Records and North Korean Human Rights Archives

The North Korean Human Rights Act requires the Ministry of Justice to preserve and manage the materials related to records of North Korean human rights by transferring collected and recorded data from the Center to the Ministry of Unification every three months. Matters necessary for organization and operation of the Center are to be provided by a Presidential decree. Not only will this Center and the North Korean Human Rights Archives suppress and warn of human rights abuses by North Korean authorities, but they will also be in charge of the collection and preservation of various evidentiary materials for the purpose of establishing the transition period after the reunification.¹⁹⁴

4.3 North Korean Human Rights Advisory Committee

The matters that the Minister of Unification oversees are the necessity for improvement of North Korean human rights, such as the master plan and the action plan regarding improvement of human rights in North Korea, the operation of the North Korean Human Rights Foundation, and the management of the Center for North Korean Human Rights Records. In addition, in Article 6, it specifies the purpose of the master plan to include investigating realities of human rights in North Korean, determining how to improve North Korean human rights, conducting human rights dialogue and humanitarian assistance between the two Koreas, and obeying Presidential decrees with respect to the improvement of human rights of North Koreans.¹⁹⁵

4.4 Ambassador for North Korean Human Rights Issues

The Ambassador for North Korean Human Rights Issues has an obligation to cooperate with international organizations, international bodies, and foreign governments and strives to raise the international society's interest in promoting human rights in North Korea. To this end, the Ambassador maintains channels with persons in charge of the major international organizations for human rights, like the United Nations High Commissioner for Human Rights and the United Nations Special Rapporteur on Human Rights in North Korea, and conducts international cooperation and information exchange from time-to-time.

Additionally, the Ambassador will be able to perform tasks, such as attendance of the UN General Assembly/Human Rights Council, and endeavors to form an international consensus to promote human rights in North Korea. Further, the Ambassador attends international conferences related to human rights in North Korea, communicates and cooperates with domestic and overseas North Korean human rights bodies, overseas Koreans and government officials from other countries, and exchanges opinions with lawmakers and related experts.¹⁹⁶

5. Cases

After the Act was enacted, people questioned the effectiveness of the North Korean Human Rights Act, because North Korea is not a region directly affected by the laws of the Republic of Korea. Further, the Act proposes that cases of human rights violation in North Korea be recorded in order to inform the international society. The acute difference between the conservative (ex-ruling party and current opposition party) and the progressive (ex-opposition party and current ruling party) was so serious that each of them opposed the establishment of organizations proposed by the opposite party. For that reason, the establishment of the North Korean Human Rights Foundation had been delayed until May 2017 and related cases have not been reported. The government's main priority has been postponed due to reasons like former President Park Geun-hye's impeachment, who actively promoted the passage of this Act.

6. Position on the Act

¹⁹³ *Direction of North Korean Human Rights Policy After the Enactment of the North Korean Human Rights Act - KINU*, p.9 www.unikorea.go.kr/nkhr/sub04_2.jsp?type=bbs&mode=view&page=1&cid=53138.

¹⁹⁴ *Ibid.* at pp.16-17

¹⁹⁵ *Supra* note 29, p.27

¹⁹⁶ *Supra* note 29, p.29

6.1 The Public Stance in South Korea

Those who object to the enactment of the North Korean Human Rights Act assert that its contents are an interference with the internal affairs of North Korea and that the North Korean Human Rights Act will not help improve the relationship between North and South Korea. Whereas, those who support the Act voice that it is irresponsible for South Koreans, as people from the same predecessors as North Koreans, to close their eyes to human rights suppression in North Korea. Further, these people support the idea that legal institutionalization is positively necessary in order to fulfill South Korea's obligations under the Constitution.¹⁹⁷

People who take a more conservative stance support the North Korean Human Rights Act for numerous reasons. First, conservatives believe the Act should be supported because of the purge of Jang Sung-taek, the People's Armed Forces Hyun Young-cheol, and Chief of General Staff Lee Young-gil and political prisoners. Second, since the inauguration of the Kim Jong-un regime, the pressure of the international society has increased due to the numerous nuclear tests and testing of long-range missiles, which caused economic damage that made circumstances for the North Koreans more difficult. Third, this Act is justifiable due to the Kim Jong-un's referral to the International Court of Justice. Finally, conservatives argue that the North Korean Human Rights Act is a preparatory step toward unification and that North Korea's efforts to improve human rights are an expression of willingness to break down North Korea's dictatorship and to be transformed into a democratic society.

On the other hand, bodies that oppose the North Korean Human Rights Act are the organizations consisting of North Korean defectors, such as Free North Korea Radio and Fights For Free North Korea (FFNK). These organizations have maintained amicable relations with the National Intelligence Service and have shown special loyalty to former President Park Geun-hye. When the Park Geun-hye government tried to cause controversy over human rights in North Korea, the bodies contend that the government was trying to get tens of billions of dollars for business expenses under the guise of human rights activists.¹⁹⁸

6.2 Anticipation of Each Party's Stance Before and After Election

6.2.1 Saenuri Party

The Saenuri Party (the ex-ruling party and current opposition party) claims the enactment of the North Korean Human Rights Act is necessary. However, the Act must include a plan that addresses the issue of the right to survival (mostly economic and social rights) and focuses on the right to liberty in North Korea (mainly political and civic rights). This party, in particular, criticized the Democratic Party (the ex-opposition party and current ruling party) who believed that the enactment of the North Korean Human Rights Act is unnecessary, even though the situation in North Korea is horrible. However, they do believe that the government should find ways to improve the issues of North Korean human rights together with the accurate investigation of human rights abuses from outside organizations.¹⁹⁹ Furthermore, the Democratic Party has opposed the enactment of the North Korean Human Rights Act, creating an atmosphere of belief that the issue of the North Koreans' food is the responsibility of South Korea's government. However, such an allegation of the Democratic Party has appeared as support of the dictatorial government of North Korea.

While the controversy continued, a field office of the United Nations for Human Rights in North Korea opened in Seoul in June 2015. The opening of this office changed the atmosphere of the international society. On March 2, 2016, the North Korean Human Rights Act was overwhelmingly approved and passed in the National Assembly by a vote of 212 in favor, 0 against, and 24 abstaining. (The ex-ruling party contended that the ex-opposition party did not disapprove of this

¹⁹⁷ Park Kwang-Deuk, *Study on Justification for the of Enactment North Korean Human Rights Act and Prospect*, 2013, p.60

¹⁹⁸ *The North Korean Human Rights Act Becomes Tools Making Money by North Korean Defectors*, (2016) <http://blog.daum.net/oursociety/663>

¹⁹⁹ Kim Moo-Sung, *The Democrats, the North Korean Human Rights Act Must Be Passed*, (2010) <http://bbongpd.tistory.com/1620>

due to the outcome of the general election).

However, the North Korean Human Rights Foundation, which is the most important organization, claims that the Democratic Party prevented the formation of a board of directors consisting of 12 members by rejecting the appointment of four out of five members that the Democrats recommended. Further, the Democratic Party is blamed for suspending the funds designated for research related to the improvement of North Korean human rights and policy development issues, such as investigating the realities of human rights of the North Koreans, promoting inter-Korean human rights dialogue, and supporting humanitarian assistance. The Foundation's leased office is left empty which has created a ridiculous situation. The Saenuri Party (the ex-ruling party and current opposition party) held the Democrats (the ex-opposition party and current ruling party) responsible for the fact that such a situation occurred because the Democrats did not submit a recommendation list. Furthermore, the Saenuri Party insists that the Ministry of Justice should keep evidence and records in order to punish those who oppress the human rights of the North Koreans.²⁰⁰

6.2.2 Democratic Party

The Democratic Party could not agree to the enactment of the North Korean Human Rights Act that the Saenuri Party pushed because the main contents in the bill were focused on the political freedom of the North Korean Human Rights Foundation, so the Foundation could support organizations related to its goals in North Korea. The Democrats have been against this movement, arguing that the bill's contents are far from supporting humanitarian assistance for North Korea and have nothing to do with the right to survival of the North Koreans. The Democrats suggest that the substantial improvement of the North Korean human rights is more important than establishing the North Korean Human Rights Act. The North Korean Human Rights Acts of the United States and Japan support the improvement of human rights for North Koreans, but the Acts made the two countries apposite in believing that the present Act in South Korea has no effectiveness.

Looking closely at the contents that the Saenuri Party wanted to include in the North Korean Human Rights Act, there is a probability that the Act would make North Korea raise its guard rather than substantially improve North Korean human rights. First of all, the human rights issues are on the stage to be resolved right after establishing mutual trust between the two Koreas. In the present situation, the relationship between North and South Korea will deteriorate if the North Korean Human Rights Act is passed before trust is built.

Moon Jae-in, who is the President of the Republic of Korea at this time, said in a press conference, "If the human rights situation in North Korea falls short of the international norms, that part should be improved as soon as possible." He argued in an official statement dubbed "Ten Tasks for Human Rights Policy," "I do not agree with that purpose to internationally put the human rights issues in North Korea to shame or to politically oppress." Moreover, he contended that the most important matter in North Korean human rights issues is the right to survival and that such policy should be continuously supported by humanitarian assistance.

Finally, the Democrats insist that the North Korean Human Rights Act is an excessive interference in the internal situation in North Korea, including problems with North Korean defectors and the interference in humanitarian assistance of third countries against North Korea. Further, the bill merely expresses US policy to broadly regulate and interfere with the issues of the Korean Peninsula. Democrats believe that US interference will hinder the ability of the two Koreas to reach peace and stability on the Korean Peninsula and hinder the international society's exertion to resolve problems on the Korean Peninsula through various talks.

²⁰⁰ *The North Korean Human Rights Act Targeting at Collapse of North Korean System and Change of its Regime*, (2016) www.tongilnews.com/news/articleView.html?idxno=115749 National Assembly Passed the North Korean Human Rights Act in 11 Years – Yesterday and Today, (2016) www.newdaily.co.kr/news/article.html?no=321920; Jeong Jin-Seok, *Still, the Democrats Blocks the North Korean Human Rights Act*, (2016) www.newdaily.co.kr/news/article.html?no=324889 Saenuri Claims the Enactment of the North Korean Human Rights Act by Being Shocked with North Korean Tyranny... Min Hyun-Joo Voicing "We Should Not Ignore the North Korean Human Rights Anymore", www.dailynk.com/korean/read.php?catald=nk02600&num=101903

6.3 North Korea

When the Act was passed in March 2016 and enacted in September of the same year, North Korean Internet media propagandist "Meari" (meaning echo) lashed out as follows: "South Korean authorities are officially trying to enforce 'the North Korean Human Rights Act,' which is a vicious law against the same people to confront on September 4. This is unbearable blasphemy against our people. The human rights issues in the Democratic People's Republic of Korea do not exist in the first place." The article expressed sarcasm by saying that if Park Geun-hye was interested in human rights, she should have made the South Korean Human Rights Act to reflect on and resolve its own human rights issues, which are the world's most embarrassing and devastating issues, not the enforcement of the North Korean Human Rights Act that blatantly finds fault with the non-existent North Korean human rights issues. It also showed threats by stating, "Keep in mind that a warning from the Democratic People's Republic of Korea does not seem to be just empty words," declaring that "North Korea will fight for its system regarding a scheme of the North Korean Human Rights Act, consider its provocation of a war, and firmly counteract this." Even after the Act came into effect, as a response to its enforcement, Meari posted an article titled "Commotion of a Plot of Human Rights That Will Definitely Count the Cost" in a section called "Among Our Peoples" that reprimanded the North Korean Human Rights Act without hesitation. Further, "Labor Newspaper" published a white paper that states, "South Korea is a hell where human beings cannot live." The hostile attitudes of the North Korean authorities stem from the fact that they feel threatened by the South Korean government. The North Korean Human Rights Act is considered a tactic to overthrow North Korea by force and to ultimately exercise physical control over North Korea.²⁰¹

6.4 Brief Conclusion

Since President Moon Jae-in was elected as the 19th President of South Korea, North Korea unexpectedly broadcasted the result of the Republic of Korea's election through the DPRK's public broadcasting system. The North Korean policy of the Park Geun-hye government was based on toughness and pressure, rather than dialogue; in contrast, Moon Jae-in's North Korea policy revolves around dialogue between the two countries. Moon Jae-in's policy stands in direct contrast to the previous government's position, which is positive news for North Korea. President Moon Jae-in has argued that the direction of North Korean Human Rights Act should be focused on the right to life and the substantial protection of human rights rather than political liberty and internal interference, which he reflects in his North Korean policy. At the moment, the North Korean Human Rights Act is facing the biggest crisis since its enactment. Nevertheless, public opinion believes that this Act's symbolism is still important for the following four reasons: first, securing financial resources has become easier with the enforcement of a unified national budget; second, collecting and publishing data on a regular basis has become a priority; third, sharing information of reality in North Korea and cooperating with international organizations, such as the United Nations and other countries, has become practical; lastly, collecting evidence on the basis of recorded data for trials of oppressors after unification has begun. However, there are still many political matters that must be resolved, such as the composition of committees and the directors' recommendation due to political confrontation.

6.5 Anticipation

Since the impeachment of former President Park Geun-hye, South Korea has been highly likely to adopt the progressive policy on North Korea, especially after President Moon Jae-in took office. After the Act was enacted, the conservative efforts to establish the North Korean Human Rights Foundation based on the Act were not successful due to the progressives not making recommendations for officers. In other words, after the Act came into effect, the North Korean Human Rights Act was not being used properly. This phenomenon appears to be further intensified in the Moon Jae-in regime, which may lead to the death of the Act.

Former President Roh Moo-hyun, who led South Korea with the same North Korean policy as President Moon Jae-in, did his best to lead the North Korean regime through dialogue rather than place pressure on North Korea with substantial food aid. The likelihood of resumption of the

²⁰¹이보드레, *supra* note 165, pp.16-17

Gaesung Industrial Complex project and Mt. Geumgang Tourism Project is pretty high. Accordingly, it is highly likely that a summit with Kim Jong-un will take place. From this point of view, the North Korean Human Rights Act will be used as a means of substantive support to North Koreans rather than the purpose of the conservatives, meaning that the content is likely to be dead. The reason for this anticipation is that President Moon Jae-in insists that although Kim Jong-un is an unreasonable leader, South Korea must acknowledge that Kim Jong-un rules over North Korea and communicate with him. President Moon Jae-in points out there has been no dialogue with North Korea since 2013 and that the succession of the "Sunshine Policy" is the solution to the North Korean nuclear problem. President Moon Jae-in was the chief of staff for Former President Roh Moo-hyun, who was in charge of promoting historic summits between Roh Moo-hyun and Kim Jong-il in 2007. It is a result that compares the facts of 10 years since the 919 Joint Statement in 2005 with his experiences in assisting the six-party talks that lasted from 2003 to 2009.²⁰² The Moon Jae-in government shows progress in the full-fledged resumption of the inter-Korean relations by discussing the reopening of the Gaesung Industrial Complex and Mt. Geumgang Tourism. The government is also considering resuming private exchanges on the occasion of the 17th commemorative event of the June 15 Joint Statement that will be held in North Korea on September 15, 2017.²⁰³

7. Future Tasks

7.1 Securing Effectiveness

The North Korean Human Rights Act is limited because it is the law enacted from the South Korean point of view. In the case that North Korea accepts and adopts the Act, its effectiveness can be secured. If North Korea accepts the contents of this Act, the North Korean system could collapse. Additionally, another issue exists concerning whether the Act can help improve the lives of North Koreans despite accompanying ideological disagreement in South Korea.²⁰⁴

7.2 Applicability

Another issue concerning the enactment of the North Korean Human Rights Act is how to apply the issue of human rights to a country with a political system like that of North Korea's government. South Korea must determine how to define the value of human rights, which are universal values, with a new concept that can be mutually understood in relation to a special relationship between North and South Korea. South Korea is mistakenly considering only the way to forcefully apply the western values of human rights to North Korea, which is contrary to the North Korean definition of human rights. The North Korean regime still insists that social values, Juche Idea, and Sungoon Idea (army first ideology) are the best values. Factually, the western ideal of human rights cannot be applied in the situation where North Korea associates human rights with its national identity. Therefore, the combination of the North Korean national perceptions concerning human rights and western values concerning human rights will be a fundamental premise of legal application and its success.²⁰⁵

7.3 Exclusion of Political Availability

South Korea's North Korean Human Rights Act purely contains firm authenticity for the protection of North Koreans' human rights and peace on the Korean Peninsula. Unlike the US and Japanese stances, South Korea must consider the Act's direction from the perspective of the North Koreans. Thus, it is necessary to put in effort to prevent abuses of the Act, so as to avoid the possibility of political connection in the human rights issues of North Korea. Therefore, the Act must thoroughly maintain its humanitarian perspective. This paper emphasizes over and over that the basic principles of the human rights law should be observed. Unconditional humanitarian assistance

²⁰² "Times" Predicted the North Korean Policy of Moon Jae-in Could Be Successful, (2017), www.huffingtonpost.kr/2017/05/05/story_n_16423190.html

²⁰³ Review of Reopening Gaesung Industrial Complex and Mt. Geumgang Tourism, (2017), http://news.chosun.com/site/data/html_dir/2017/05/23/2017052300154.html

²⁰⁴ Park Kwang-Deuk, *Study on Justification for the of Enactment North Korean Human Rights Act and Prospect*, (2013), p.61

²⁰⁵ Ibid. at 62

should be implemented for the principle of the universality of human rights. North Korea also needs to show its discriminatory attitude to the human rights policy it needs. Furthermore, in the long run, South Korea ought to devise methods to induce the democratization in North Korean society from a national point of view and to persuade the unification between North and South Korea. In doing so, South Korea's North Korean Human Rights Act can ease the concerns that the Act is a tool to put pressure on North Korea like the Acts of the United States or Japan. Further, South Korea can gradually overcome the issue of effectiveness, which is the limitation of the Act. In the end, the North Korean Human Rights Act should not be used to put pressure on the North Korean regime, but should be a humanitarian law that supports human rights in North Korea. Thus, the North Korean Human Rights Act can play a significant role in helping North Koreans.²⁰⁶

7.4 Connection with Humanitarian Assistance

The enactment of the North Korean Human Rights Act should seek to have North Korea agree to and implement the Act. One of the easiest ways to derive North Korea's willingness is a link between humanitarian assistance and its human rights. North Korea currently needs economic support. Thus, the Act will likely be effective in a case where the economic support is linked to the improvement of North Korean human rights rather than unconditional support at the national level.²⁰⁷

8. Conclusions

As explained above, the main contents of the North Korean Human Rights Act are as follows: (1) securing financial resources for the protection of the human rights in North Korea; (2) unifying support channels; and (3) investigating the human rights situation in North Korea to give notice to the international community and seek cooperation. Based on an examination of the Act's enactment, political differences after the enactment, and the proposed improvements in regard to deficient parts, no disagreement exists concerning the necessity of the North Korean Human Rights Act. However, in terms how the Act should be applied, differences or acute conflicts exist depending on a "political" position or "basic rights like right to life" and on ideas of each party and organization. The Republic of Korea is the only divided country in the world with a Constitution that claims land currently under the rule of another government. Political policy on and security issues concerning North Korea was an important determinant of the presidential election. The North Korean Human Rights Act always receives press coverage during elections. If all the means and tools of the Act are used properly, the Act is beneficial; however, if not used properly, the Act becomes a simple political tool and has the danger of becoming a bad law that will aggravate disputes. The symbolism that the North Korean Human Rights Act already has is very effective. In other words, the Republic of Korea recognizes the North Koreans as their compatriots, takes interest in their human rights, plays a role in lessening North Korea's brutality that suppresses its peoples, and seeks the cooperation of the international community. However, in order to be substantively effective beyond this symbolism and play a part in the preparation for reunification, South Korea must offer humanitarian support to North Korea, complete a unified investigation, and use taxes appropriately.

This paper has examined the background, purpose, and contents of the North Korean Human Rights Act and South Korea's position on the Act. The North Korean Human Rights Act still has a symbolic meaning that attracts international attention. However, there are many things that can still be done with this Act. Many South Koreans hope that this Act will be used to suppress disputes that may arise on the Korean Peninsula, to prepare for the coming era of reunification, to improve deficiencies, and to use taxes appropriately.

²⁰⁶ 이보드레, *supra* note 165, p.64

²⁰⁷ Yoon Ye-Sang, *What is the Practical Improvement Plan for Human Rights in North Korea, Why is it the North Korean Human Rights Resolution*, Seoul: Korean Diplomacy and Northeast Asian Studies and National Assembly Legislation Survey, (2011), pp.29-33. Kwang-Deuk, *supra* note 204, p.63