

CHANGES IN THE NEW DPRK CRIMINAL CODE: CHARACTERISTICS AND IMPLICATIONS

In April 2004, North Korea once again revised its criminal code (hereinafter also referred to as code), the fifth such revision since 1950.(1) Yet the relative frequency of changes to the criminal code over the last ten years (specifically, 1995, 1999, and 2004) are a sign that emerging social phenomena in the country have exceeded the authorities power to manage the populace. Since a state 's criminal code is its basic statute for maintaining public order and peace, one can deduce that amendments to the code itself indicate that, in its existing form, the code does not adequately or effectively deal with the present scope of socially deviant behaviors within the state. This seems to be the case with the recent revisions to the North Korean criminal code, where much emphasis has been placed on social and economic areas. But what is also interesting about the recent amendments is the marked departure made from the country 's previous laws. Hence, this paper highlights those significant changes made in the 2004 revision of the Criminal Code of the Democratic People 's Republic of Korea (DPRK, or North Korea) and discusses their implications.

NEW SOCIAL PHENOMENA

It is widely understood that the collapse of the Socialist bloc in Eastern Europe and a series of natural disasters precipitated the 1990s ' energy crisis and famine in North Korea as these events exposed the vulnerabilities of the North Korean system, a system built upon decades of agricultural and economic mismanagement.(2) Starved of energy inputs, most factories, autos, tractors, and power equipment ground to a halt. Fertilizer shortages enervated agricultural lands desiccated by drought and exhausted by decades of poor agricultural policies. The inevitable food shortages sent the entire population scrambling to survive. The government could do little—and did little—to help, and its eventual breakdown of the country 's public distribution system (PDS) led people to rely more heavily than ever before on local industry and foreign assistance.(3) North Korean leadership had little choice but to allow local factory managers greater autonomy in taking care of production, sales, and management of resources, as signaled by the July 2002 market reforms. To some degree, this led to corruption and lax discipline among local officials, as well as abuse of official authority. Under the harsh

new realities, new social phenomena spread: unauthorized domestic travel, barter trade, farmers markets, street vending, prostitution, black market operations, theft, divorce, smuggling across the Sino-DPRK border, private money lending, corruption and demoralization among officials, and various other behaviors rare or unheard of in this last bastion of socialism.(4)

Crisis induced social changes and crime threaten authorities control of society. In response, the DPRK leadership has taken a new approach to deal with these phenomena, that being legal measures via amendments to the state ' s criminal code.

2004 AMENDMENT OF THE CRIMINAL CODE

Drastic Increase in the Number of Articles

At a glance, one comparing the current code with its 1999 predecessor will notice one thing: the huge increase in the number of articles listed. After the 2004 revision, the number of articles ballooned from 161 to a whopping 303. There are perhaps two reasons for the near doubling of provisions. As mentioned, the failure of the traditional North Korean command economic model and collapse of the PDS predictably gave rise to new social phenomena and concomitantly to the enlargement of autonomy of personal and legal entity. Some of the social deviations became widespread but were not punishable under the pre-revised criminal code. These are now listed as crimes in the new code, with new articles created to deal with them (many of which are related to economic activities as a reflection of the country ' s movement toward a market system). On the other hand, some of the crimes were not new, but their explication and punishments were insufficient and required greater refinement. Thus previous provisions were further elaborated and subdivided under separate articles. Thus the inclusion of new provisions and elaboration of old ones account for this significant increase.

Adoption of the Principle of Legality

Another significant change one readily notices is the inclusion of the equivalent of one of the most central maxims of modern criminal law: *nullum crimen, nulla poena sine praevia lege poenali*, a basic legal principle that essentially states that no one can be penalized for doing something that is not prohibited by law. Prior to the 2004

amendment, article 10 of the 1999 Criminal Code of the DPRK defied this principle by allowing analogous interpretation of the statute. This, however, was done away with after the 2004 revision and the problem was ameliorated with the revision of Article 6, which now states that “The state should place the responsibility for only those behaviors which are prescribed as crimes in the Criminal Code.” Unfortunately, whether or not this article is abided by in practice is difficult to judge at the moment; but at the very least, the code itself was fundamentally improved by the inclusion of this principle.

Why this change? From one perspective, external pressure may have played a role. In the last few years, North Korea has come under intense criticism from the international community for its human rights violations. Pyongyang may have calculated that such an improvement would help neutralize the United Nation’s condemnation of the human rights situation in North Korea⁽⁵⁾ and offset the newly enacted North Korean Human Rights Act in the United States.⁽⁶⁾ Pyongyang may have also calculated that such a provision would help facilitate the abolishment of the National Security Law (NSL)⁽⁷⁾ in the Republic of Korea (ROK, or South Korea), a law which the regime in Pyongyang sees as an impediment to fostering better relations between the two Koreas.⁽⁸⁾ Thus in addition to the need to address the changes in the domestic environment, this progressive development in North Korean law seems to have been made partly in consideration of international pressure.

"Light Labor" Adopted as a Formal Punishment

Another characteristic of the latest amendment is the inclusion of “light labor” as a formal punishment in the criminal code, one that has been broadly used outside the code to deal with misdemeanors. While the 1999 code specified only one type of imprisonment, “hard labor” with prison terms ranging from 6 months to 15 years, the new 2004 code specifies “light labor,” and “life time imprisonment with hard labor,” along with “limited time imprisonment with hard labor.”⁽⁹⁾ Currently, those sentenced to hard labor may receive a prison term ranging from 1 to 15 years, while those sentenced to “light labor” may receive a prison term or work under confinement of anywhere between 6 months and 2 years.

In addition to this categorization, a further distinction was made concerning “hard” and “light labor” and the deprivation of civil rights. According to the new code,

convicted criminals serving out a sentence of light labor are not to have their civil rights suspended, while the suspension of civil rights accompanies sentences of hard labor. Seeing as how DPRK citizens are tightly controlled through strict organizational ties and activity, this revision has special significance. In North Korea, individuals can hardly survive or exist beyond the organizations in which they belong. Suspending one's civil rights essentially excludes them from participating in his/her organizational activities, severing him/her from society. Hence, a sentencing of "light labor" enables one to continue his/her organizational activities. For example, a party member convicted of a misdemeanor and sentenced to two years of light labor can maintain his/her party membership, attend party education programs, and still enjoy prerogatives as a party member; those sentenced to hard labor cannot. Once a sentence of light labor is fully carried out, a person is technically allowed to return to his/her organization and work again.

Such "light labor" punishment is broadly employed in the current criminal code, in particular for crimes that are economic in nature. Thus one can infer the dilemma North Korean authorities face: the growing necessity to punish those considered to be engaged in socially deviant behaviors -- resulting from the "loosening of reins" on society as a consequence of the country's desperate economic conditions -- without exacerbating social instability. The inclusion in the new criminal code of "light labor" as a punishment is seemingly an attempt to solve this dilemma.

Recognition of Commercial Activity and Enhanced Protection of Property Rights

As a result of the failure of the PDS and subsequent loosening of reins by the central authority on DPRK citizens and means of production, North Koreans now enjoy a somewhat broader scope of freedom and autonomy in their private lives and in their organizational operations. To begin, the scope of private property was extended back in 1998. This is reflected in article 24 of the 1998 Constitution: while the pre-1998 constitution stipulated products of individuals' sideline activities from kitchen gardens of cooperative farmers, the 1998 amendment reveals a revised article 24 that includes "income earned from other legal commercial activities" belonging to one's individual property. Thus today, "legal" economic activities are more broadly allowed and, in fact, are practiced. That is, commercial activities that one can conceive are legal to engage in, so long as they do not violate the law.

Authorities also have allowed citizens greater freedom of movement.(10) During the worst years of the famine, authorities could do little but to allow people to venture beyond their permitted boundaries in search of food. To that degree (i.e., searching for food), freedom of movement is tolerated, while movement for other reasons is still largely restricted by authorities.

Commercial activities also have gained greater tolerance and legitimacy. In Pyongyang alone, foreigner visitors have noted the flourishing of street vendors and restaurants, and the semi-liberalization of markets that are slowly becoming centers of trade for foreign clothes and assorted goods.(11) Outside the capital, much seems to be going on in the area of trade, especially between DPRK citizens who live in cities near the Chinese border. In 2003, authorities themselves took the lead by constructing public markets in major cities and inviting vendors to fill them.(12) Rents/taxes are now collected by the authorities from these businesses.

On the basis of the Constitution that legitimate commercial activities are protected, various commercial activities popped up, some of which were deemed illegal and added as new types of crimes under the 2004 amendment to the criminal code. For example, people who violate private property, trademarks, and other intellectual property are subject to two years of imprisonment if convicted. Ignominious and illegal transactions, lax discipline, moral decay, and corruption -- especially among officials and factory managers -- likewise have found their punishments listed in the new code. Authorities have no doubt determined that such demoralization will bring about a decline in the one-man dictatorship 's grip on society, which has been grounded on strict discipline and socialist morality. Many of the new classification of crimes in the criminal code were created to cope with problems stemming from this condition of moral decay in society. Decadent culture and behaviors contrary to the country 's socialist norms were also prohibited. (For examples, see articles 193, 194, 261, and 262.)

However, the broadened scope of individual activity and recognition of business activity does not necessarily reflect official acceptance of a market economic system. To the contrary, the purpose of new amendments to the criminal code appear to have been made to maintain the socialist system by minimizing the side effects of the widely spread commercial activities. The socialist system still remains the fundamental principle of the current Constitution of the DPRK. In this light, the Chinese case -- i.e., economic opening under a socialist system -- seems a relevant reference to predict the future

direction of the North Korean system. But in spite of DPRK rhetoric that it will stick to socialism, the society is under significant transformation toward a market economy. The new criminal code manifests this dual aspect of North Korea.

Protection from Increased Foreign Communication and Trade

The DPRK economy is still on life support. Replenishing the hard currency shortfalls and attracting foreign capital and technology that will help resuscitate it can only come with increased foreign business and trade. Hence, foreign contact in this regard is expected to expand. But increased international transactions and communications naturally have already led to various other spin-off activities -- often immoral and corrupt -- that authorities would like to deal with from a legal standpoint. Illegal sale and import/export of foreign currencies, illegal use of credit cards, illegal engagement in foreign trade, illegal export, smuggling of historic antiques, and so on now find their definitions and punishments in the revised criminal code.

For North Korea, judicial jurisdiction will be an important issue in international criminal cases that inevitably will arise on account of this expanded activity with the international community. Without sensible legal protection for foreigners from criminal process, it would be almost impossible to expect them to bring capital and technology into the country. In order to claim jurisdictional sovereignty, North Korea will need modern criminal law like those practiced in civilized countries. In particular, North Korea has shown interest in creating special economic zones. Measures to handle the issue of criminal jurisdiction in these areas are waiting just around the corner. Overall, this situation seems to have contributed to progressive improvement of the state's criminal code.

HIGHER PROBABILITY OF ENFORCEMENT IN PRACTICE

The 2004 amendment is a manifestation toward a more legal society in North Korea. The current criminal code has a higher probability of enforcement than previous ones in consideration of the greater clarification and elaboration of crimes on the basis of practical reality alongside the dilution of political and ideological traits. The current criminal code is now more comprehensive, reflecting North Korea's desire to cover most crimes now evident in society. As the interactions in society become more and more complex due to enlargement of individual initiative, maintaining peace and order

on the strength of the code alone will be difficult. This will press authorities to make further revisions and/or separate laws to allow themselves broader legal vehicles to tackle new challenges in the future. / Dae-Kyu Yoon (Kyungnam University)

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1) This 2004 revision became more widely known to the outside world in early December 2004.

2) For a more complete view of North Korea 's energy picture, see James H. Williams, David Von Hippel, and Nautilus Team, "Fuel and Famine: Rural Energy Crisis in the DPRK," *Asian Perspective*, vol. 26, No. 1 (2002), pp. 111-140; see also David Von Hippel, Timothy Savage and Peter Hayes, "DPRK Energy Sector: Estimated Year 2000 Energy Balance and Suggested Approaches to Sectoral Redevelopment," online at www.nautilus.org; for analysis of the agricultural sector and famine, see Marcus Noland, "Famine and Reform in North Korea," working paper, Institute for International Economics (July, 2003). Available online at www.iie.com/publications/author_bio.cfm?author_id=26; and Daniel Goodkind and Loraine West, "The North Korean Famine and Its Demographic Impact," *Population and Development Review*, vol. 27, No. 2, (2001).

3) By the end of the 1990s, local regions were responsible for producing approximately 80 percent of their daily necessities, a complete reversal of what had been the case in North Korea before the collapse of Communism in 1990. Under economic duress, the central government began to falter because it could not even secure its own supply routes. This hurt local industries, forcing local regions to produce much on their own for survival. "Local factories in North Korea," *Joongang Ilbo*, March 14, 2002, online at english.joins.com/nk/article.asp?aid=20020314155910&sid=F00.

4) See Jae Jean Suh, "Social Changes in North Korea Stemming from Food Shortages," *Chosun Ilbo* (Seoul), May 9, 2002, online at

nk.chosun.com/ english/ news/ news.html?ACT=detail&res_id=6082; Jae Jean Suh, "The Second Society in North Korea," *Korean Studies*, vol. 22 (1998), pp. 17-40; Andrew Natsios' *The Great North Korean Famine* (Washington, D.C.: U.S. Institute of Peace, 2000), pp. 224-229; Andrei Lankov, "Welcome to Capitalism, North Korean Comrades," Nautilus Institute, PFO 05-01A, January 4, 2005, online at http://nautilus.org/fora/security/0501A_Lankov.html.

5) The United Nations Resolution condemning North Korea's human rights abuses in Geneva on April 16, 2003, adopted by the United Nations Commission on Human Rights on April 16, 2003, is the first resolution to condemn North Korea for "widespread and grave" abuses of human rights (see online at www.hrnk.org/resources-un.html). The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities also passed a resolution in 1997 and 1998 concerning the human rights situation in North Korea.

6) See North Korea Human Rights Act of 2004, online at www.theorator.com/bills108/hr4011.html.

7) Enacted in 1948 and revised seven times -- most recently 1988 -- the NSL basically prescribes strict judicial punishment for "anti-state" activities. Since North Korea is defined as an "anti-state entity," activities by South Koreans deemed "pro-North Korean" or supportive of pro-North groups, among other infractions, all potentially carry prison time as punishment.

8) Some (mainly conservatives within the South) see the law as one of South Korea's last defenses against the communist threat from the North. However, many experts see the NSL as anachronistic, a relic of the cold war, and its proposed abolition by the incumbent ROK government as progressive and not as a potential threat to the strong democracy now evident in South Korea. For brief discussion on this, see David Scofield, "Seoul to scrap Cold War relic, anti-North law," *Asia Times*, November 2, 2004, online at www.atimes.com/atimes/Korea/FK02Dg01.html.

9) "Hard labor" is the translation of *nodong kyohwa-hyung*, while "light labor" is that of *nodong dallyun-hyung*. Although this translation might not be correct, I distinguished them in this way since one day of the former punishment accounts for two days of the latter punishment. (art. 45).

10) The freedom of residence and movement was created in the 1998 Constitution for the first time as a fundamental right of citizens (art. 75). North Korea could not but recognize the right as a fait accompli since the authority could not control people's movements as they searched for food to survive. However, inclusion of this principle does not automatically guarantee free movement in practice. According to one South Korean daily, "North Korea has issued new ID cards to its people for the first time in five years," saying that "the new ID card has been issued to people in major cities since September but delivery to those living in the countryside has been delayed." As the daily points out, cards for Pyongyang residents are different from those of other parts of the country, which may signal authorities' attempt to regain some control over citizens' movements, in particular those seeking entry into Pyongyang. "N. Korea Issues New Identity Cards: Report," Korea Times, January 5, 2005.

11) "Cautious Development Looms in North Korea," Associated Press, January 2, 2005, online at www.kinu.or.kr/eng/bbs/content.asp?tb=kinu30&id=545&page=1&block=0.

12) For example, the Tong-il Market in Pyongyang was constructed, housing some 2,200 vendors selling everything from television sets to farm produce. Twenty more such markets are under construction in the DPRK capital, and more planned for other cities. "Small-business start-ups, including mom and pop stalls and shops, are sprouting up with government approval. Even more important, state-owned factories no longer receive subsidies to cover their losses and are encouraged to find their own markets for products, to trade with each other and to reinvest any profits. This decentralization of economic power amounts to a 'halfway house to privatization,' as one resident diplomat observed, and has created a spurt of increased economic activity as well as a budding class of hustlers and would-be entrepreneurs." Selig S. Harrison, "Riding a Tiger in North Korea," Newsweek, May 17, 2004, international ed., online at msnbc.msn.com/id/4933399/.