



1-1-2006

The 2004 Revision of Criminal Law in North Korea: - a take-off?

In Sup Han

Follow this and additional works at: <http://digitalcommons.law.scu.edu/scujil>

Recommended Citation

In Sup Han, *The 2004 Revision of Criminal Law in North Korea: - a take-off?*, 5 SANTA CLARA J. INT'L L. 122 (2006).
Available at: <http://digitalcommons.law.scu.edu/scujil/vol5/iss1/7>

This Article is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Journal of International Law by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.

5 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1 (2006)

The 2004 Revision of Criminal Law in North Korea: — a take-off?

In Sup Han*

I. Introduction

On 29 April 2004, the Democratic People's Republic of Korea (hereinafter called "DPRK," "North Korea," or "NK") revised its Criminal Law. Since its original enactment in 1950,¹ the DPRK's Criminal Law has been revised five times: 1974, 1987, 1995, 1999, and 2004. Along with the revision of the Criminal Law, the Criminal Procedure Act was also revised on May 6, 2004. The scale of the 2004 Criminal Law revision was voluminous. The number of articles was nearly doubled to 303 and its ideological tone was diluted.

The law in practice in NK cannot be presumed from a knowledge of the law in code. Rather, we can read the regime's changing concerns by the code changes in NK. The 2004 revision would be a clue for understanding how NK authorities are conscious of the recent social change, how they evaluate the seriousness of the specific activities, and how they plan their strategy of control. In retrospect, the 1974 revision of the Criminal Law was a culmination of totalitarian iron fists. Since then, criminal law has progressed gradually. The recent revisions have been made at short intervals. The 2004 revision in particular suggests the possibility of a qualitative take-off compared with other previous changes. As soon as the contents of the revision were reported at the end of 2004, it was especially noticed

* Associate Professor, College of Law, Seoul National University.

1. *See generally* Pyong Choon Hahm, Ideology and Criminal Law in North Korea, 17 AM. J. COMP. L. 77 (1969); Koo-Chin Kang, An Analytical Study of Criminal Law in North Korea, 4 LAWASIA (JOURNAL OF THE LAW ASSOCIATION FOR ASIA AND THE WESTERN PACIFIC) 1 (1973). Both articles contain English language analysis of the NK 1950 Criminal Law.

by the international community which has expressed grave concerns about the human rights situation in NK.² The information available is scarce, and our analysis is mostly based on the published text of the code,³ added to by some witnesses. The NK government officially published the Code of DPRK in August 2004, which contained the revised versions of the Criminal Law and the Criminal Procedure in 2004.

Here, I describe the changing contents of the 2004 revision, explain the background of such a change, and analyze what theoretical and practical implications the new revision holds for the present and future of NK.

II. Analogy Repealed

NK's Criminal Law has been blamed especially because it expressly allowed the analogy in the application of Criminal Law.⁴ It is most conspicuous that the

2. U.N. Comm. on Human Rights [hereinafter U.N.C.H.R.], *Question of the Violations of Human Rights and Fundamental Freedoms in Any Part of the World*, 61st Sess., Agenda Item 9 (Apr. 11, 2005), available at <http://daccessdds.un.org/doc/UNDOC/GEN/G05/101/97/PDF/G0510197.pdf?OpenElement>. The latest news is the adoption by the UN Commission on Human Rights of a resolution (E/CN.4/2005/L.30) on the Situation of Human Rights in the Democratic People's Republic of Korea (Apr.14, 2005). By this resolution, the Commission expressed its deep concern about continuing reports of systemic, widespread and grave violations of human rights in the DPRK, including torture and other cruel, inhuman or degrading treatment or punishment, public executions, extrajudicial and arbitrary detention; sanctions on citizens of the DPRK who had been repatriated from abroad, such as treating their departure as treason leading to punishments of internment, torture, inhuman or degrading treatment or the death penalty. See also U.N.C.H.R., 61st Sess., 50th mtg. at 4-5, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G05/138/89/PDF/G0513889.pdf?OpenElement>. Of course, NK strongly opposed its adoption. The representative of DPRK said DPRK categorically rejected the present draft resolution, which had been fabricated by hostile forces and their followers, with the aim of stifling his country. The draft represented an extreme manifestation of the politicization, selectivity and double standards. Its fundamental purpose was to overthrow the state system of the DPRK.
3. The 2004 Compilation of the Codebook of DPRK contains 1095 pages and 112 codes that have been enacted or revised since 1990. To my knowledge, the only prior compilation found was prepared in 2000 (Gong-wha-guk Bup-Jeon (2000) [Codebook of DPRK in 2000]) and includes 103 codes. The cover to the 2004 compilation includes the notation "dea-jung-yon" [for the general public]. It would be disputable whether this publication would be really used for the NK citizens or for the outsiders, or for both. It is certain that they constitute the present codes in NK, regardless of their degree of implementation. See Chosun minjuju-eui in-min gong-wha-guk Bup-Jeon [Codebook of DPRK in 2004], Bup-rul-chul-pan-sa (2004). [Ed. note: certain citations in this article have not been translated into English, but are available in original Korean text at cited source.]
4. Tong-il yeon-gu-won, Bukhan Inkwon Bak-seo 2004, [WHITE PAPER ON THE HUMAN RIGHTS IN NORTH KOREA 2004]. The White Paper provides a typical criticism of NK Criminal Law, pointing out that "the Criminal Law was regarded as a kind of secret document, and the NK authority did not open its Criminal Law to its people. Undemocratic

5 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1 (2006)

2004 revision articulated the legal principle called “*nullum crimen sine lege*.” Article 6 says, “[o]nly offenses which are clarified under the provisions of Criminal Law shall be criminally accountable by the state.” This article shows a contrast with the former provisions which included analogy in the application of Criminal Law. Before 2004, NK Criminal Law said, “[w]hen a person committed a criminal act for which there is no specific provision in this Law, his offense shall be punished according to a provision dealing with a criminal offense that is the most similar in its type and gravity of danger.”⁵ Analogy in Criminal Law might endanger civil liberties because Criminal Law could be interpreted widely or vaguely by judicial power. The immediate effect of the repeal of analogy was the more specific articulation of the individual clauses, and as a result, their numbers were conspicuously increased.

Comparatively speaking, the provision of analogy in criminal law was characteristic of law-making in former socialist countries. The analogy doctrine was first embodied in Article 16 of the Criminal Code of the Soviet Republic in 1926. The Soviet Republic has since repealed all of the old regime’s codes and the new Criminal Code granted the Court the power to apply an analogy to a case which was substantially criminal, but in which there was no provision directly applicable. The new socialist countries needed the legal skill of analogy in order to fill the loopholes caused by the annulment of the laws under the old regime. In 1958, when the de-Stalinization movement was in full-swing, the analogy clause was repealed by the Fundamental Principles of Criminal Law.⁶

China underwent a similar process. When the People’s Republic of China enacted the first comprehensive Criminal Law in 1979, it included an analogy clause,⁷ confessing that China was not so mature as to legally stipulate all offenses. A defense was given, however, that the clause of analogy was rarely applied to

and pre-modern practices have been sustained in the Criminal law. Analogy was allowed. Retroactive application was permitted, and the statute of limitation was negated.” [See Ed. note, *supra*, note 4.]

5. The 1950 Criminal Law, art. 9 (1950) (N. Korea); The 1987 Criminal Law, art. 10 (1950) (N. Korea). See Bukhan Buplungsip [Codebook of North Korea] 722 (Jung Kyung-Mo ed., Daeruk Yeonguso, Vol. 4, 1990). [See Ed. note, *supra*, note 4.]
6. Christopher Osakwe, *Due Process of Law and Civil Rights Cases in the Soviet Union*, in *SOVIET LAW AFTER STALIN*, PART I 179, 186 (Donald D. Barry et al. eds., 1977).
7. See *THE CRIMINAL CODE OF THE PEOPLE’S REPUBLIC OF CHINA* 46 (Chin Kim trans., Fred B. Rothman & Co. 1982). Criminal Law, Article 79: A Crime not specifically prescribed under the specific provisions of the present law may be confirmed a crime and sentence rendered in light of the most analogous article under the special provisions of the present law; provide, however, that the case shall be submitted to the Supreme People’s Court for its approval.

cases in action. By 1997, the revised Criminal Law, Art. 3, says, “anyone who commits an act deemed a crime by explicit stipulations of law shall be convicted and given punishment by law, and any act not deemed a crime by explicit stipulations of law shall not be convicted or given punishment.”⁸ One official commentary expresses that the principle of *nullum crimen sine lege* is one of the most universally acknowledged legal principles and the vast majority of nations in the world have acknowledged it. Its great significance lies in preventing judicial arbitrariness and guaranteeing the legal rights of the people.⁹ When it was articulated in China, the 1997 Law tripled the articles of the Special Provisions from 103 to 350.

The paths of the Soviet Union and the People’s Republic of China were followed by the NK Criminal Law. The first clause of NK Criminal Law in 1950 started as a simple clause of analogy. It then changed into a clause of analogy, limited by a proviso in 1987, and now has finally been repealed, accompanied by the doubled numbers of articles of the Special Provisions.

III. New Penalties: Life Imprisonment and Labor-Training

The basic penalties in NK included a death penalty and correctional labor [*Ro-dong-kyo-hwa-hyeong*] for a definite period from 6 months up to 15 years. There is no penalty of fines under a totally collective economy. Since 1987, the death penalty has been limited to five offenses: four “anti-state” offenses and one “murder offense.” Correctional labor is a just another name for the imprisonment with forced labor at “the Correctional Institution [*Kyo-hwa-so*].”

Within the 2004 revision, new penalties have been added: life imprisonment¹⁰ and labor-training. Life imprisonment is available as an alternative punishment for the five capital offenses, and for thirteen other felony offenses. The penalty of correctional labor may be imposed for a definite period ranging from one to fifteen years. For minor offenses, the offender is subject to the new penalty of labor-training [*Ro-dong-dan-ryeon-hyeong*] which ranges from six months to two years. An offender who is sentenced to labor-training is not imprisoned, but instead must work at a labor camp, factory, or mine. Offenders serving labor-training sentences are still guaranteed the basic rights of a public citizen. At present, about two-thirds

8. THE 1997 CRIMINAL CODE OF THE PEOPLE’S REPUBLIC OF CHINA: WITH ENGLISH TRANSLATION AND INTRODUCTION 34 (Wei Luo trans., 1998).

9. Zhonghua Renmin Gongheguo Xinfu Zinzhu [NEW COMMENTARY TO THE CRIMINAL LAW OF THE PEOPLE’S REPUBLIC OF CHINA] 5 (2002) (P.R.C.).

10. Literally translated, “a Correctional Labor for an indefinite period.”

5 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1 (2006)

of all offenses are punishable by labor-training. Thus, the emergence of labor-training as the preferred means of punishment suggests that a more lenient policy is emerging.

IV. The Drive towards a Market Economy and its Legal Impact

The economic crisis since the mid-1990s was caused by the failure of a self-reliant (*juche*) economy and the collapse of socialist “brother” countries. Economic disaster resulted in a great famine, which caused millions to starve to death and caused many to cross the border in search of food. The Measure for Revitalization of Economic Management was proclaimed on 1 July 2002. It envisioned a new economic policy to introduce and strengthen the market-oriented policies including price and wage adjustment, expansion of marketing channels, allowing foreign investment, and supply-side adjustment. The NK authorities justified this with official claims that the Measure seeks “the repair or betterment of the economic management based on socialist principles.”¹¹ This change implies a dilemma for the NK authorities which have to improve economic conditions without undermining the regime’s survival.¹²

The new economic trends are reflected in the 2004 revision of the Criminal Law. The “Chapter on Offenses against the Management of the Socialist Economy” was re-titled “the Chapter on Offenses against the Management of the Economy.” The number of Articles within that chapter was greatly enlarged from eight (1999) to seventy-four (2004). In fact, NK multiplied economic laws in a short period because it urgently needed foreign investment and economic revitalization.¹³ With an intent to resolve the weaknesses of a centrally planned economy, new kinds of commercial business are permitted, and new economic entities are emerging: individual, agencies, corporations, etc. The 2004 revision of the Criminal Law also focuses on economic regulations on the part of foreign trade, quality control of products, and the protection of trade-marks, etc. A violation of economic regulations is normally punishable by less than two years’ labor training, which indicates that the authorities will be more interested in

11. See Tongil Gyo-yeuk-won, Bukhan I-hae [Understanding North Korea], 143 (2006). [See Ed. note, *supra*, note 4.]
12. Dae-Kyu Yoon, *The Constitution of North Korea: Its Changes and Implications*, 27 *FORDHAM INT’L L.J.* 1289, 1304 (2003-2004).
13. See Chosun minjuju-eui in-min gong-wha-guk Bup-Jeon [Codebook of DPRK in 2004], *supra* note 4, at 801-820. 48 of the 112 articles within the Codebook of 2004 can be categorized as economic laws. Since 1998, various laws relating to Mt. Geumgang Tourist Zone, Gaeseong Industrial Complex, Sineuju Special Administrative Region, Foreign Trade Contract, and Foreign Investment Company, etc. have been enacted or revised.

controlling the abuse of commercial discretion, rather than in wielding omnipotent powers on all the economic matters. Of course, such a policy retreat may be a tactical option for breaking through the imminent hardship by activating economic agents, and encouraging foreign investments. The 2004 revision of Criminal Law suggests that NK authorities intend to encourage more economic motivation among individual agents and to secure their controlling power by specifying economic regulations.

V. Traditional Tools for the Suppression of Anti-State Criminals: Minor Change

Traditionally, socialist countries have proclaimed a ruthless suppression of so-called “anti-revolutionary elements,” and often produced the mass incarceration system called “gulags.” Many reports on NK human rights have noted an extensive abuse of “Political Prison Camps.”¹⁴

So far as Criminal Law provisions are concerned, the 1974 Criminal Law adopted the ruthless suppression of “anti-revolutionary elements” as a guiding policy. “Anti-revolutionary offenses” were categorized as the most pernicious and antagonistic offenses to the socialist regime, and “enemies of the working class” which must be eliminated.¹⁵ Anti-revolutionary offenses were therefore made punishable by death and confiscation of all one’s belongings. But, the 1987 revision contrasted with the 1974 revision. First, “anti-revolutionary” offenses were slightly ameliorated under the “anti-state” offenses. Second, the content of the anti-state offenses was diminished. Third, penalties for such offenses be punished by death and a confiscation of one’s belongings, the 1984 revision allowed for the more lenient option of correctional labor.

The 2004 revision offers the more detailed version of “anti-state and anti-national offenses.” Contrary to ideological criticism that the recent revision tried to widen the range of anti-state offenses and to strengthen their penalties,¹⁶ there is little difference between the 2004 revision and the former law, with the exception of the maximum or minimum period of imprisonment. Rather, the offense of anti-

14. *See generally* DAVID HAWK, *THE HIDDEN GULAG: EXPOSING NORTH KOREA’S PRISON CAMPS, PRISONERS’ TESTIMONIES AND SATELLITE PHOTOGRAPHS*, U.S. COMMITTEE FOR HUMAN RIGHTS IN NORTH KOREA (2003), *available at* <http://www.hrnk.org/HiddenGulag.pdf>.

15. Kim Geun-Sik, Hyong-bup-hak [THE BOOK ON CRIMINAL LAW, VOL. I] 31 (1986). [*See* Ed. note, *supra*, note 4.]

16. Kim In-gu, *North Korea Revises Criminal Law to Reinforce Insurrection Provisions*, CHOSUN ILBO (S. Korea), Dec. 8, 2004, *available at* <http://english.chosun.com/w21data/html/news/200412/200412080041.html>.

5 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1 (2006)

state propaganda/agitation or the offense of espionage, which would be applied more frequently than other anti-state offenses, receive a milder sentence. The accuracy of the proposition that the 2004 revisions “increased the penalties for anti-state crimes”¹⁷ has yet to be scrutinized.

At this time, I cannot anticipate whether the NK government will treat the anti-state offenses more harshly or leniently. However, long-term tendency tells us that NK is unlikely to become more lenient.

How about the political prison camps? NK authorities deny their existence. However, there are many reports which have collected some relevant evidence, including witnesses of defectors and commercial satellite photographs. They reportedly incarcerated about 150,000 to 200,000 persons for political reasons.¹⁸ The conditions at such camps reportedly were extremely harsh, with little food, no medical provisions, torture and death.

My question here is where the legal basis for such camps is found. The political prison camps are called “*Kwan-li-so*” and managed by the Board for National Security. *Kwan-li-so* is distinct from the *Kyo-hwa-so* which imprisons the normal criminals pursuant to the Criminal Procedure Law and Criminal Law. *Kwan-li-so* is also referred to as “control area” or “the area of special autocracy.”¹⁹

The Criminal Law does not provide for a special institution such as *Kwan-li-so*. Instead, it seems to be a special measure as a form of administrative coercion distinct from penalties under the Criminal Law. According to some refugees these “political prison camps” are meant as an infliction of forced labor along with a kind of banishment into a remote inland area because a person, by word or by

17. Vitit Muntarbhorn, Question of the Violation of Human Rights and Fundamental Freedom in Any Part of the World: Situation of Human Rights in the Democratic People’s Republic of Korea, 12, delivered to U.N.C.H.R., 61st Sess., U.N. Doc E/CN.4/2005/34, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G05/101/97/pdf/G0510197.pdf?OpenElement>.
18. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP’T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: KOREA, DEMOCRATIC PEOPLES REPUBLIC OF, at sect. 1d (2004) [hereinafter COUNTRY REPORTS], available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41646.htm>. The Country Report on Human Rights Practices-2004 repeatedly refers to the political prison camps in North Korea in which “150-200,000 persons” are estimated to be held “in remote areas for political reasons.” “Using commercial satellite imagery to locate the camps and point out their main features, defectors claimed that these camps covered areas as large as 200 square miles. The camps contained mass graves, barracks, work sites, and other prison facilities. . . . In recent years, the Government reportedly reduced the total number of prison camps from approximately 20 to less than 10, but the prison population was consolidated rather than reduced. . . . [C]onditions in the camps for political prisoners were extremely harsh and prisoners were not expected to survive. In the camps, prisoners received little food and no medical provisions.”
19. See Tong-il yeon-gu-won, *supra* note 5.

action, has complained about the dictatorship by “one-man or one-party.” Such a penalty, requiring banishment plus forced labor does not exist under the present Criminal Law. It is, therefore, suspicious that the penalties under the Criminal Law represent all kinds of the “real” penalties exercised in NK. NK practices involving extra-legal sanctions and extra-judicial proceedings shall be scrutinized in comparison with the normal penal sanctions.

The existence of anti-state offenses in NK have been often compared with the National Security Law (NSL) in South Korea (SK). In fact, a chapter on Anti-state offenses in NK is almost equivalent to the National Security Law in SK. Now, there is a big controversy on the repeal or revision of National Security Law at the National Assembly, backed by additional pressure from the civil society. Some proponents for National Security Law in SK have advocated the retention of National Security Law, arguing that it would be repealed under the condition that the provisions against anti-state offenses in NK should either be repealed first, or at the same time. The proponents of abolishing National Security Law in SK have criticized such a defensive approach in that SK has rapidly upgraded its standards of human-rights, with the exception of NSL. In practice, National Security Law has gradually been diminished, almost to the degree of withering-away. In NK, the scope of anti-state offenses has gradually been reduced, and its practical implementation seems to be gradually diminished. The disuse or repeal of National Security Law in SK may have a substantial effect on the future of the equivalent clauses in NK, and the converse is also true in the long-term.

A. The Penalty against Crossing the Border Differentiated and Reduced

Under the 1972 and 1992 Constitutional Law, “a person who betrays his fatherland and our people shall be severely punished according to the related law.”²⁰ But, in the 1998 revision of the Constitutional Law, such an expression was deleted. This constitutional change was precipitated by the mass exodus from NK due to food shortages.²¹

20. See 1992 Constitutional Law, art. 86 (1992) (N. Korea).

21. COUNTRY REPORTS, *supra* note 19, at sect. 2d. (“most observers estimated that since 1994 there have been at least tens of thousands, and perhaps several hundred thousand North Koreans in China. Most crossed the border illegally in small groups to seek food, shelter, and work.”). See also Ministry of Unification, Facts and Figures Item 7: Updated Statistics on Inter-Korean Contacts, Reunion of Separated Families, Humanitarian Assistance and North Korean Defectors (As of the end of December, 2005), <http://www.unikorea.go.kr/index.jsp> (last visited Apr. 15, 2006). The total number of people who have defected from North Korea to South Korea from 1990 to 2004 is 6,304. Between 1994 and 1998, there were 306 North Koreans who entered South Korea. 3,464

5 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1 (2006)

The original reaction to the massive exodus was the imposition of harsh penalties including public execution and incarceration in labor camps. Leaving their home country without permission was originally considered an act of treason, or at least anti-state. But, the explosive increase in the numbers of refugees made it burdensome only to depend upon such stern repression. The 1999 revision of the Criminal Law separates defectors from migrants who illegally leave the country to resolve their economic hardship. The defectors who intentionally escape the country with a subversive purpose are subject to correctional labor for more than five years, while migrants who leave for purposes of their own livelihood are subject to punishments of correctional labor for less than three years.

Now, under the 2004 revision, a more lenient attitude has appeared. First, the expression of “crossing over” has been changed to “crossing back and forth,” which means that crossing back and forth across the border happens very infrequently. Second, the penalty against a simple migrant is now greatly lessened to less than two years’ labor training. More limited cases of espionage-related defectors who sell national secrets are subject to correctional labor for more than five years, life imprisonment or, in exceptional circumstances, even death. It has been reported in recent years that, in practice, repatriated migrants have been subject to less severe punishments, or even released after investigation upon their return to NK.²² Social change made it possible for NK to assume a more lenient stance with respect to its relevant laws and practices. Though the severe penalties are reserved for a threatening effect against the regime-challenging offenses; their application will probably be diminished in the near future.

B. Hearing of Foreign Broadcast, the Collecting and Distributing of Materials Pernicious to the Authority: a New Criminalization?

Ten years ago, the attempt to hear or watch a foreign broadcast by television or radio in NK would have been suspected as “anti-state” and subject to severe punishment. One could easily be accused of trivial contempt on food shortages. But, due to an increase in the contact with outside information, there has been a retreat from the initially stern policy. Now, under Article 195 of the 2004 revision, “a person who systemically heard outside broadcasts antagonistic to the Republic

crossed from North to South over the next five years. In 2004 alone, 1,894 North Koreans defected to South Korea. These statistics show a geometric progression in the number of people leaving North Korea for South Korea.

22. COUNTRY REPORTS, *supra* note 19, at sect. 2d. It is also reported that an Autograph Letter by Kim Jong-Il on the Alleviation of Penalty against those who left the country was circulated in 2000. See Tong-il yeon-gu-won, *supra* note 5.

without any anti-state purpose shall be punished with labor-training for less than 2 years.” The same penalty is imposed upon the activity of collecting, keeping, or distributing pamphlets, photos, videotapes and printed materials which antagonize the Republic. At least under the text of the new Criminal Law, the simple hearing of a South Korean broadcast may be exempt from punishment. It is reported that the mere hearing of South Korean broadcasts are now punished by imposing self-criticism. Only the systematical or repeated hearing, collecting, keeping or distributing may be classified as a kind of misdemeanor, distinct from a label of “reactionary elements.” Though maintaining a blockade against outside communication is one of the focal concerns of NK authorities, the degree to which it is penalized will gradually be lessened, with the exception of complaints about “the Supreme Leader [*Kim Jong Il, Kim Il Sung*].”

VI. International Intervention on Human Rights in NK: Any Effect?

The NK government responded furiously to foreign criticisms of the human rights situation in NK, claiming that there was “a plot of propaganda fabricated and persistently pursued by hostile forces” as part of their psychological warfare to “overthrow the State system of the country.”²³ The NK Government has stressed that human rights should be primarily based on the protection of national sovereignty and collective rights, and that the principle of non-interference in the internal affairs of the State should be likewise emphasized.²⁴

On the other hand, NK has showed some respect for international human rights standards, albeit nominal. As the UN Special Rapporteur submitted his report,²⁵ he courteously pointed out some constructive elements on the human rights situation in NK. It is a fact that NK’s government, as a party to four key human rights treaties, submitted some country reports to the relevant monitoring committee. NK’s government has responded to the UN Human Rights Commission. At first, the Government submitted its second country report on B treaty in 2000, the first and only other report having been submitted in 1984. The Government subsequently responded to the questions and requirements posed by the UN

23. Press Release, United Nations Office at Geneva, Commission Hears Reports of Experts on Democratic People’s Republic of Korea, Belarus, Myanmar and Toxic Products (Mar. 29, 2005) (noting response of North Korea as a concerned country), *available at* [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/EB68D35D1A345970C12570F1004B6160?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/EB68D35D1A345970C12570F1004B6160?OpenDocument).

24. Muntarbhorn, *supra* note 18, at para. 20.

25. *Id.* at paras. 9-18.

5 SANTA CLARA JOURNAL OF INTERNATIONAL LAW 1 (2006)

Commission. Although its country report and answers are full of legal aspects rather than the practical ones, it is noteworthy that NK has started to communicate with the international community on human rights. Of course, it has been pointed out that such “positive/constructive aspects” do not guarantee “the key challenges concerning implementation.”

NK’s government has been exposed to the outside world as it urgently needed food support from other countries and foreign capital for economic revitalization. In order to secure food and foreign investment from the outside world, the NK regime had to respond to outside criticism that it had to be open and more accessible, as well as improve its situation with respect to human rights.

Though NK authorities have consistently denied the existence of political prison camps and massive public executions, it was nervous about the criticism from the outside world. Facing the bitter criticism on the political prison camps, supported by the commercial satellite photos and testimonials from ex-prisoners, it is reported that some of camps have been closed, and still others have been downsized or removed into other remote areas. Another example for such a consciousness would be the continuing revision of existing laws including the Criminal Law. Its successive revisions since 1987 have targeted some points mostly criticized by the international human rights community, in addition to the readjustment to an internally changing environment. “Diplomatic ping-pong” between the U.N. Human Rights Committee and NK²⁶ proceed, if gradually, towards improvements in NK’s Criminal Law as well as Criminal Procedure, albeit in law in text and not necessarily in practice.

In the long-term, international oversight and intervention on human rights may have some influence on the human rights situation in NK. Contrary to the opinion that more sunshine is needed to improve the accessibility of the international community to NK society, I want to say that the sunshine policy approach could be compatible with the oversight of human rights abuses by the NK regime.

VII. Conclusion: The Prospect for the Rule *by* Law in NK

The 2004 revision of the Criminal Law can be viewed as a kind of departure from previous revisions. Its primary change lies in the articulation of the principle of legality. Analogy and retroactivity are no longer allowed. Articles are more specified. Legal terms dilute the ideological tone. The Criminal Law is more focused on the control of economic and social offenses rather than on political

26. Jiri Toman, *Human Rights in North Korea*, LIFE & HUMAN RIGHTS, Autumn 2004, at 19, available at http://nkhumanrights.or.kr/NKHR_new/index_eng_new.htm.

The 2004 Revision of Criminal Law in North Korea 133

repression. The elements of the market-oriented economy have necessitated the more predictable regulations concerning economic activities.

The norms which have governed NK were the directives and words of “Kim” and NK has therefore been governed almost entirely by administrative directives.²⁷ The clauses of fundamental rights do not guarantee their implementation. Different economic and political environments lose sight of the charismatic rule by the Supreme Leader. The widening contact with the outside world will strengthen the importance of the rule of law.

As NK is more exposed to the outside world, it is increasingly difficult for its regime to neglect pressure from the international community, which urges the advancement of human rights. The successive reform of the Criminal Law may imply some positive signs, although the clauses on human rights remain a “nominal norm” or “a showcase” for the time being. Although the current human rights situation in NK is far different from the law in codes, the development of law-in-code can itself be evaluated as “better than nothing” and even “a potential reality.”

27. Yoon, *supra* note 13, at 1304. Yoon points out that “His” word is the principal governing norm that supersedes all else, including the law.