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The Unofficial Exercise of Property Rights in North Korea

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command economy. It would be inappropriate to use such terms as privatization or private management. However, it has been reported that gradual changes are taking place in North Korea, though unofficially, in the concept of property rights. This paper will analyze the cases of illegal or unusual exercise of property rights over the means of production owned by the state or collective entities, drawing on the conceptual debate on property rights and empirical cases.

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North Korea will allow private ownership for the private property, social ownership for the common property of the society, and individual ownership for the individual property. North Korea will make a unique distinction between "individual property" and private property. It stresses that the private property is a material condition for exploitation of men by other men. However, North Korea explains that individual property is the result of socialist distribution of the fruits of workers' labor and additional benefits of the society, and includes various material conditions that are necessary to fulfill individual demands for consumption, such as workers' income, savings, housing units, family furniture and expendable materials. North Korea emphasizes that individual property in a socialist society is different from private property, because the former can never be transformed into capital and cannot be used as a means of exploitation. Accordingly, it argues that the state will legally protect not only the state property but also the properties of the collective organizations and individuals.⁴

The property right in North Korea is the right to the interests of economic content and is comparable to personal rights. Under the North Korean civil code, the most essential components of property right are ownership and claims, as well as the right of inheritance under the family law. In short, property right in North Korea consists of the

3 *Economic Dictionary II* (Pyongyang: Social Science Publishers, 1970), p. 594 and *Economic Dictionary II* (Pyongyang: Social Science Publishers, 1985), pp. 460-1.

4 The Institute of Law at the Social Science Academy, *Civil Code Dictionary* (Pyongyang: Social Safety Agency Pub. 1997), p. 590.

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to use forms a part of the right of ownership or managerial control, along with the right of possession and disposition.⁷ People are entitled to the right of usage not only through the right of ownership and managerial control, but also through lease or rental contracts. The right of possession is the right to place the property under one's own control. In most cases, it stems from the right of ownership, but it could also develop from contracts. North Korea's civil code also defines that the right of possession stemming from a contract is temporary, and will lose its effect after a period of time. Therefore, it is assumed that the right of possession is directly linked to the right of ownership.⁸ The right to dispose is the right to change the legal status of the property, including the right to sell, rent out, or donate. Along with the right to possess and the right to use, the right to dispose is a part of the right of ownership and is the most important feature of the right of ownership. Fundamentally, the right to dispose a property belongs to the owner, and this right could be transferred to others through a contract with the owner or the delegation of authority.⁹

7 The Institute of Law at the Social Science Academy, *Civil Code Dictionary*, p. 201.

8 *Ibid.*, p. 473.

9 *Ibid.*, pp. 617-8.

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1998 constitution. The 1992 revision retained the same wording of the 1972 constitution, stipulating that “Only the state shall own all natural resources, major factories and workplaces, harbors, banks, means of transportation and communication of the nation.” However, the 1998 revision states that “Only the state shall own all natural resources, railroad, aviation, transportation and communication facilities, as well as major factories, workplaces, harbors, and banks of the nation.” The importance of transportation and communication facilities has been moved up in priority, and railroad, aviation, and transportation have been specified. Probably, this change reflected North Korea’s recognition of the importance of rail transportation on which it had to depend during the economic hardship and the communications industry in the wake of the advancing information technology.

Fourth, the 1998 constitution left open the possibility of legalizing various personal economic activities that have been tacitly allowed amid food shortage and economic hardship. For example, in the category of individual possessions it included other income garnered through legal economic profit-seeking activities. In fact, it is widely known that North Korea is allowing and continuously expanding the scope of individual profit-seeking activities.

B. Kim Jong-il’s Views on the Private Ownership

In the mid-1980s, during a dialogue with senior workers of the KWP central committee, Kim Jong-il insisted that individualism based on

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privatization of the means of production in order to develop capitalist market economy. They are indiscriminately selling off state-owned factories, workplaces and land to individuals and foreign capitalists. The democrats in modern societies will advertise that they can achieve economic prosperity by way of market economy, which is based on private ownership. However, it is a vain illusion.¹¹

Kim Jong-il continues to show his personal disapproval about allowing private ownership and transforming privatization, that is, a change from public ownership into private ownership. He insists that privatization will result in a concentration of the means of production in the hands of a small minority of exploiters and will force the workers into becoming the “slaves of capital.” He also seems to worry about the collapse of socialist system if the capitalist private ownership were restored:

The socialist traitors are transferring the socialist ownership into private ownership, arguing that the system of administrative orders is relying on the absolute rule of state ownership. The socialist ownership, which consists of state, collective, and all-people’s ownerships, is the socio-economic foundation on which the masses will fully exercise their roles as masters of the state and the society. If the socialist ownership is dissolved and transferred to private ownership, regardless of the method of privatization, it is abundantly clear that all privatized means of production will sooner or later be concentrated in the hands of a few exploiters, the privileged, and

11 Kim Jong-il, “Our Socialism is Our-style Socialism based on Juche Ideology. Speech before the Senior Workers of the Presidium of KWP, Dec. 27, 1990,” *Kim Jong-il Selected Works*, vol. 10, (Pyongyang: KWP Pub., 1997), p. 476.

most ration systems. First, in adjusting the price of rice, North Korea put into consideration the domestic supply-demand and international market situations and approved the current market prices, as well as the costs of wages and services, in light of the costs of production.

Second, North Korea introduced and expanded the individual and material incentive systems. It has taken steps to rate workplaces and factories according to their profit-earning rates and to decide workers' wages and bonus according to their productivity, eliminating the previous average system. In the agricultural sector, the productivity unit has been downsized from work platoons to squads, and approved free disposition of surplus production (70 percent) beyond the amount of mandatory procurement (30 percent).

Third, ration systems have been mostly eliminated. From July 1, 2002, all limits were lifted in the amount of purchase, except for rice. In effect, everything, except for grains, could be purchased in cash at state-run stores in unlimited numbers or amount. In addition, North Korea emphasized that economic efficiency will be used as the standard in investment decisions. In explaining the July 1 Measures, it said that "guaranteeing profits" would mean discovering ways to earn maximum profits after studying the most efficient and beneficial ways of distribution of available resources under given conditions.

In announcing the July 1 Measures, North Korean authorities warned against the possible expansion of private ownership by absolutely excluding the diversification of ownership. In order to maintain the socialist principles, they apparently determined they could

III . Unofficial Exercise of Property Rights

1. Major Actors

The following actors of unofficial economic activities are identified according to their functions, so in reality the same actor could be involved in two or more different functions. For example, a funding squad could be involved in foreign currency earning activities, and they could be classified as either a funding squad or foreign currency earners depending on which function plays the leading role.

A. Loan-sharks

The loan-shark business has been regarded as illegal in North Korea. It has been labeled as a typical social evil of exploitation in the capitalist society during the period when North Korea was nationalizing major businesses and industries. As the unofficial economic sector was expanding recently, the needs for unofficial loan or capital rose sharply, and the loan-shark business flourished to meet these demands. In the North Korean society where the capital fluidity is extremely restricted, the loan-shark business is performing an important loan function for the unofficial economic activities.

Indirect evidence of the extremely restricted capital fluidity in North Korea is the interest rate of loan sharks, along with the fact that the authorities decided to issue public bonds. The loan sharks usually

the marketplaces. They do not stop at simply taking advantage of the weaknesses of socialist economy, but they are actors in creating the unofficial economy and undermining the principle of socialist economy.

On the other hand, the foreign currency earners are official economic actors approved as such by the government. In the early stages, they used to export mushrooms, Alaska pollacks, or sea urchins to earn foreign currency. However, the scope of their activity expanded as inter-Korean exchange and cooperation increased to include the production and manufacturing of clothing and leather works. The foreign currency earners are officially sanctioned, but their endeavors are often unofficial because their roles are sometimes indistinguishable from illicit smugglers. Also, competitive elements of market economy are added to their work in the process of participating in business operations or recruiting the workforce in North Korea. Their income is a part of the gross product of the workplace or organization they belongs to, rather than individual income of someone in the party or the government. For this reason, their activities are regarded as official rather than unofficial. In order to win outside contracts, they sometimes engage in sharp competitions with other outfits or organizations.

C. Funding Squad

This is the most important actor who is located on the border of official and unofficial economic activities. Funding squads are usually

understanding about foreign countries.

It is possible that the funding squad began to engage in profit-seeking activities from the mid-1980s when North Korea launched the August 3rd Consumer Goods Production Campaign. The campaign sought to fulfill daily necessities by recycling the used materials at workplace or administrative unit levels. As time passed, however, these economic activities went beyond control. In the 1990s when food shortage and economic hardship hit North Korea, it seems that they became the center of anti-socialist or illicit economic activities. Since the products manufactured under the campaign were sold at state-run prices at state-run stores, participants of the campaign could not benefit from them. They now began to work in similar activities or in individual collection activities. These are early types of funding squad members or workers joining in the funding squad.

The appearance of funding squads is closely related with the stagnation of the North Korean economy. Funding squads developed naturally in the process of declining August 3rd Consumer Goods Production Campaign and increasing independent funding activities of some workplaces. Of course, the most important background for their growth was the backing and protection of power agencies like the party, cabinet, and the military.

host agency are in a symbiotic relationship.¹⁵ The host agency's support comes sometimes directly in the form of stable supply of fuel and source materials and other times indirectly by tacitly approving illicit activities. For example, the agency allows the funding squads to freely hire and pay their workers. Usually the workers assisting the funding squads are paid higher wages than other workers and are entitled to better welfare benefits.

Third, there is a certain ratio of profit sharing between the funding squad and the host agency. Sometimes, this relationship is described along with the contract period. These contracts are specifically concluded in a written form. In terms of the ratio of sharing, the general rule is 3:7 between the agency and the squad, and sharing takes place every month. Some 30 percent of the profits go the host agency as compensations for the use of its name and the guarantee of support. The remaining 70 percent will be used as the operating fund for the squad such as wages, automobile maintenance, procurement cost of source materials, and rental. Any amount left over is disposable by the members of the squad. The squad has the right to freely dispose of the funds within the limits of its operating fund.

15 This symbiotic relationship between the agency and funding squads reminds one to recall the mutually dependent relationship between the state and entrepreneurs in the Chinese reform process. Although there are differences of "official" and "unofficial" between the Chinese and North Korean cases, the nature of symbiosis in times of transition is quite similar. For the Chinese case, see Dorothy J. Solinger, *China's Transition from Socialism: State Legacies and Market Reforms, 1980-1990*, (NY: M.E. Sharpe, 1993), pp. 261-4.

operation of the squad lacks comparative advantage over other squads, it will discontinue the contract relationship.

B. Special Features on Property Rights

When we look into the activities of funding squads, it is clear that various authorities try to operate funding squads according to the contract terms, whereas they usually allow them to independently operate by permitting the introduction of elements of production that the squads actually possess. The unique feature is that the squads may exercise lots of rights in terms of use rights and control rights.

1) Control Right and Use Right

The funding squads are allowed to use and control the property or assets that they actually possess for purposes of maximizing profits. Included in this asset would be cash (North Korean currency, US dollars, Euros, and Japanese Yen), automobiles, and the means of production related to exploitation. Since they are unable to exercise ownership rights under the socialist economic principles, they manage these in the name of the agency, factory, or workplace with which they register their assets.

The important point is that their use or control rights would still be vulnerable to manipulation by the nominal owners. An example would be the requirement to change or extend the terms of their contract with

could transfer the titles of their assets to others.

At the conclusion of the contract period, there could be some room for dispute over the means of production. According to the socialist economic principles, individuals could not possess any means of production. Therefore, even if the squad members developed or crafted new tools or exploitation machines on their own, dispute could erupt if the agency claims rights to these items. If the dispute develops into a legal dispute, the squad mostly has to give up their rights to them. Since open disputes with the agency would not benefit individuals, they would seek compromise rather than fighting.

In sum, the unofficial exercise of property rights is quite commonplace in the areas of unofficial economic relationships between the agencies and funding squads. Not only have the funding squads' exercises of property rights been expanded, but also their rights to manage and operate public assets, especially their rights of use and control, have also been enlarged. The squads, however, are operating under significant legal constraints. They also exercise their rights of use and control over the state-owned means of production under a state mandate. If significant changes were to occur in this system or over the legal guarantees concerning the unofficial exercise of property rights, its impact on the society as a whole would be tremendous, indeed.

renamed the former farmers' market into general market, which usually has a building for rent to individual merchants. In the special economic zone (SEZ) of Najin-Sunbong, for example, the government officially issued permits to individuals with the means to operate stores or restaurants. As a result, individuals in Najin-Sunbong SEZ could now engage in business activities at the spaces rented from the authorities.¹⁶

Since the July 1 Measures, the number of stores and sales stands has increased, and private commercial activities have been expanding, including individual service businesses and organized intermediary businesses.¹⁷ During this process, the cases of the authorities renting store spaces, such as restaurants, hotels, and stores, to individuals were increasing in large cities like Pyongyang. More conspicuous cases would be the increase of service industries run by families or joint operations, and so were the cases of production of small items by individuals. As a result, roadside stores and individual-owned stores are rapidly on the increase nationwide. Recently, there were cases in which several individuals would pool their money to open a joint restaurant under the permission of the authorities.

As private business activities increased, privately operated business buses also began to appear in North Korea.¹⁸ Individuals

16 The Joong-ang Ilbo daily, "North Korea Permits Private Stores in Najin-Sunbong City," November 18, 2003. (<http://nkjoins.com/article.asp>)

17 Ministry of Unification, Information Analysis Division, "Overall Assessment of North Korean Economy of 2003," Dec. 29, 2003. (www.unikorea.go.kr/data/)

as well. In line with the marketplace stimulation measures, North Korean authorities introduced measures to reform the marketplaces into general markets in April 2003. North Korean Central News reported that the government has taken official steps to convert the farmers' markets into full-fledged general consumer markets.

This year, we have taken numerous practical measures to drastically improve the economy and people's lives. For example, we have revised the accounting laws and expanded the farmers' markets into general consumer markets. The newly expanded general markets where you can buy not only agricultural products but also industrial goods are emerging all over the nation. Since the operation of this type of market is a new experience for us, we are trying to secure cooperation from other countries, including the training of experts and learning from their experiences.¹⁹

The conversion of farmers' markets into general markets should be taken as a major change, since it not only meant an official introduction of market functions but also signified the possibility of transforming into market economy through such a change. In an interview with *Chosun Shinbo*, an official newspaper of the pro-North Korean Association of Koreans in Japan, Director Choi Hong-kyu of North Korea's State Planning Committee said that North Korea would regard the markets not as a subject of control but as part of socialist merchandise flows. This comment would indicate that North Korea would now reinterpret

19 North Korean Central News, Commentary, "America's Shameless Attempt to Accuse Us of Narcotics Smuggling," June 10, 2003.

district administration. Fifth, the merchants were required to pay market rents to the market and state income tax to the government. This would mean that the economic activities of the market have now been absorbed as part of national economy.

As a result of the appearance of general markets and the decision to permit state-run enterprises and cooperatives to participate in the markets, individuals are now officially permitted to accumulate wealth, and state-run enterprises are able to expand its scope of activities. In particular, the state-run enterprises are now able to mobilize their own funds through the markets. However, since the amount of sale is tied with the planned state targets, a safety valve has been installed to maintain state controls.

According to state plans, factories and enterprises are allowed to manufacture people's daily necessities using the by-products obtained in the process of manufacturing their basic products and sell 30 percent of them as production maintenance expenses. Goods put to sale in the market cannot exceed 30 percent limit. In order to sell more products, the factory must raise its overall production levels. For the factories and businesses, manufacturing beyond the state plan quota is a prerequisite for increasing its income from market sales.... If the state-run businesses increased their production levels on the basis of their funds earned from market operations, more goods will become available at the national level, and the result would gradually reduce the price differences between state-run stores and general markets.²²

22 Ibid.

promises to protect the inheritance and private property rights of individuals, along with the commitment not to nationalize them.²³ In the Shinuiju SAR law, North Korea will allow the operation of a complete market economic system in Shinuiju that will enjoy independent administrative, legislative and judicial authorities within the framework of one-state, two-systems and is separate from the political economic system of the central government. This Shinuiju SAR law, which contains drastic measures to experiment capitalism, is known to be comparable to the 1990 laws that established Hong Kong SAR.

The inheritance and property rights of investors are also guaranteed in the Kaesung Industrial Zone, which was established with South Korean corporations in mind. Article 7 of the law establishing the Kaesung Industrial Zone stipulates that: "The Industrial Zone shall protect the rights and profits of investors, and guarantee the inheritance rights on the invested capital. The investors' property shall not be nationalized. In the inevitable event of having to expropriate the investors' properties for reasons of public interest of the society, prior consultations with the investors are required and their value would be duly compensated for."

In fact, management activities of individuals were also guaranteed

23 In the Shinuiju SAR, the state will protect individually owned properties and guarantee the inheritance right thereof. In the Shinuiju SAR, the state shall not nationalize individually owned properties. In the event the individually owned properties needed to be expropriated for national security reasons, the state shall compensate for their due value.

