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## The Case of Anticipating Changes in the North Korean Food Safety Regime

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#### ABSTRACT

*This Article aims to provide one of the world's first analyses of the North Korean food safety regime. Very rarely has this regime been a subject of discussion, as much attention has been diverted to food security issues. However, food safety remains a critical problem for the people.*

*I will analyze North Korea's food safety regime and the factors that create, influence, and develop food safety protections; it will subsequently discuss trends that illustrate how food safety standards are evolving in the country.*

*In Part I, I introduce the concept of evolving food safety regimes. I draw upon certain theoretical underpinnings of this concept by defining regime and reviewing the causes of regulatory failure that ultimately follow changes in regimes.*

*In Part II, I study the developments in North Korea's food safety regime from a legal perspective, going beyond merely discussing political transformations. I discuss the developments in the country's laws and regulations by touching upon different elements of the food safety regime separately. This is a rather novel study and I use this methodology to identify and distinguish different elements undergoing social progress separately.*

*In Part III, I cautiously make predictions of changes in North Korea's food safety regime. As a general phenomenon in the area of food law, naturally, a regime is not static. Decision-making procedures that comply with the law, introduction of transparent lawmaking processes, predictable implementation and enforcement of the law, and raising public awareness are all important tasks. While deification of the Kim family will most likely continue as a primary political priority, it is still likely that the government will delve into structural fragmentation problems, societal segmentation problems, and raise public participation in the near future as it continues to realize that a well-established and stable legal food safety regime is critical. It will be very difficult for the government to ignore when food safety accidents occur and people become increasingly aware of regulatory failures.*

## INTRODUCTION

To some, North Korea's food safety regime may appear to lie somewhere between law and society.<sup>1</sup> Many perceive a large disconnect between the two worlds, and often these two do not even overlap.<sup>2</sup> In fact, North Korea's rule-of-man governance, in which an absolute ruler can exercise arbitrary power,<sup>3</sup> might seem as though there is no law to begin with. In general, scholars have attempted to discuss and address this dislocation between worlds.<sup>4</sup> Society is commonly interpreted as the "social experience" or the reality that people live in.<sup>5</sup> It is about living the everyday life and facing societal consequences that come with it, either positive or negative. According to this perspective, society is often separate from the law, since law and its application are more or less "secondary bod[ies] of phenomena."<sup>6</sup> It is the normative standard that fails to define society as it exists.<sup>7</sup>

Undoubtedly, food security issues have been the topic of debate when discussing food production. This, too, creates a common enthymeme that not much can be said about food safety regulations in North Korea. It is undeniably true that no dominant understanding of North Korea's food safety regime exists. With increased information on North Korea now available,<sup>8</sup> this Article recognizes law as a valid constituent of the food safety regime, explains the aspects of the regime that make it unique, and emphasizes that the regime is worth independent study. While there is almost no comprehensive legal study on this subject, any analysis must address two major factors that impede a researcher's ability to fully understand North Korea's food regime: (1) North Korea is one of the world's most secluded nations,<sup>9</sup>

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<sup>1</sup> Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 60 (1984).

<sup>2</sup> Patricia Goede, Essay, *Law "Of Our Own Style": The Evolution and Challenges of the North Korean Legal System*, 27 FORDHAM INT'L L.J. 1265 (2003).

<sup>3</sup> Simon Chesterman, *An International Rule of Law?*, 56 AM. J. COMP. L. 331, 333 (2008).

<sup>4</sup> Gordon, *supra* note 1, at 60.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *See id.*

<sup>8</sup> In South Korea, there has been significant growth in both the quality and quantity of research resources available on North Korea during the past two decades. For information on growing research resources, *see* ATSUHITO ISOZAKI, WILSON CTR., UNDERSTANDING THE NORTH KOREAN REGIME 3–4 (2017), [https://www.wilsoncenter.org/sites/default/files/ap\\_understandingthenorthkoreanregime.pdf](https://www.wilsoncenter.org/sites/default/files/ap_understandingthenorthkoreanregime.pdf) [<https://perma.cc/7HB9-R5J3>].

<sup>9</sup> *See* RALPH HASSIG & KONGDAN OH, THE HIDDEN PEOPLE OF NORTH KOREA: EVERYDAY LIFE IN THE HERMIT KINGDOM (2009).

and (2) its food safety regime continues to exist and evolve in living raw form. It is alive in that it is constantly changing and progressing as part of its “social experience”<sup>10</sup> and serves as an excellent independent study case for a food law scholar. At the same time, the journey to understanding North Korea’s food safety casts light on important social progress implications. This Article will analyze North Korea’s food safety regime and the factors that create, influence, and develop food safety protections; it will subsequently discuss trends that illustrate how food safety standards are evolving in the country.

Part I introduces the concept of evolving food safety regimes. It draws upon certain theoretical underpinnings of this concept by defining “regime” and reviewing the causes of regulatory failure that ultimately follow changes in regimes. Part II studies the developments in North Korea’s food safety regime from a legal perspective, going beyond merely discussing political transformations. Part II also discusses the developments in the country’s laws and regulations by touching upon different elements of the food safety regime separately. This is a rather novel study, and thus this methodology identifies and distinguishes different elements undergoing social progress separately. Part III cautiously predicts future changes in North Korea’s food safety regime.

## I

### EVOLVING FOOD SAFETY REGIMES

Although there is no mathematical formula available to predict definite and certain changes in a food safety regime, it is possible to make informed predictions. This is partly because history repeats itself,<sup>11</sup> and similar transformations have taken place in other parts of the world.<sup>12</sup> For example, scholarship points out that although North Korea traces China’s experience in its legal reform, the two nations differ because North Korea’s speed of social progress is rather slow, and the North Korean government faces difficulty in shifting swiftly from a rule-of-man system to a rule-of-law system.<sup>13</sup> This transition

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<sup>10</sup> See Gordon, *supra* note 1, at 60.

<sup>11</sup> G.W. TROMPF, THE IDEA OF HISTORICAL RECURRENCE IN WESTERN THOUGHT 2–3 (1979).

<sup>12</sup> In a sequel to this study, this author aims to do an analysis of North Korea’s food safety regime compared to China’s.

<sup>13</sup> Bukhan Bubeul Bonuen Banbup [How to Read North Korean Laws], S. KOR. MINISTRY OF UNIFICATION 47, [http://www.unikorea.go.kr/board/file/bbs\\_000000000000](http://www.unikorea.go.kr/board/file/bbs_000000000000)

influences many aspects of the food safety regime, as explained later. This Article will discuss several factors that influence North Korea's food safety regime: (1) constitutional amendments that indicate North Korea's policy direction, (2) North Korea's adopted ideologies, (3) North Korea's political structure, (4) North Korea's social structure, (5) state-led efforts to raise public awareness, and (6) grassroots activism.

In North Korea, the food safety regime is built on a rule-of-man governance system. Building a food safety regime in the country is analogous to a young child with building blocks. The child plays with a few blocks and builds a tower. When the tower wobbles and falls to the ground, the child realizes the mistake it made with its last few blocks. The child then makes another attempt—this time with a fresh commitment to perhaps make it taller and more stable. Through trial and error, slight changes in the design of the structure may even take place. One potential problem exists in that the child can exercise discretionary creativity that may be short-lived. When the new structure it tries to build completely fails, the child notices it cannot achieve its intended goal with the old model, and the child's envisioning of the tower design may even change drastically.

In the real world, the child's building blocks are the different elements that make up the food safety regime in a rule-of-man state. Albeit drastically simplified for analogy, this well encapsulates Kim Jong Un's role in building the food safety regime. In a country like North Korea, where rules are made based on decision makers' preferences and society operates on a rule-of-man system, understanding the food safety regime may heavily equate to understanding the person in charge. Perhaps this is why the North Korean food safety regime appears to exist somewhere between law and society.

The discussion of constantly changing food safety regimes begins by defining what a "regime" means. Originally from the French term *regimen*, regime is understood as a system of both rules and principles in a subject area.<sup>14</sup> Food safety "regime" then translates to the system of informal and formal rules and principles that pertain to a nation's food safety. Constituents that make up a regime can include policies, regulations, rules, agencies, and related stakeholders and their related

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mAJMv2u4KHdGchn6.unikorea11 [<https://perma.cc/YAU7-VZW3>].

<sup>14</sup> *Regime*, ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/regime> [<https://perma.cc/9J5W-YYJM>] (last visited Feb. 17, 2020).

activities.<sup>15</sup> Therefore, for the purpose of this Article, regime means the collection of laws, policies, rules, practices, and standards that define what is considered “safe for human consumption.”<sup>16</sup> In a rule-of-man system, regimes may even reflect the values preferred by a small group of people or individuals.<sup>17</sup>

Scholars use different concepts to interpret and explain a food safety regime. For example, Snyder calls each facet of a society that makes up a food safety regime a “world.”<sup>18</sup> As part of his work on the food safety situation leading up to the melamine crisis in China, he identified three worlds: the “social field of transnational markets,” the “social field of domestic economic relations,” and “government, regulation and law.”<sup>19</sup> This Article further proposes that in this regime, separate constituents undergo what Kuhn would call periods of “incremental” change.<sup>20</sup>

One way to further understand regimes is to study the main causes behind major forces that drive changes in regimes. These changes can occur from loopholes in regulations, particularly in areas where the two worlds of law and society fail to overlap.<sup>21</sup> For food safety regulations, inadequately designed regulations that are vague, ambiguous, or otherwise poorly drafted fail to regulate in conformity with the intended purpose.

Existing scholarship attempts to spell out the causes of the regulatory failures in various food safety regimes but not in North Korea specifically. Grabosky provides various reasons for regulatory failure including “bad science,” “bad planning,” “defects of programme implementation,” and “bad politics.”<sup>22</sup> Bernstein purports

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<sup>15</sup> See John K. Setear, *An Iterative Perspective on Treaties: A Synthesis of International Relations Theory and International Law*, 37 HARV. INT'L L.J. 139, 141–45 (1996).

<sup>16</sup> Wim Verbeke, Lynn J. Frewer, Joachim Scholderer & Hubert F. De Brabander, *Why Consumers Behave as They Do with Respect to Food Safety and Risk Information*, 586 ANALYTICA CHIMICA ACTA 2, 2–7 (2007).

<sup>17</sup> Ningxin Dong, *The Rule of Law and Economic Development—A Case Study of China*, 14 (2017), <http://web.isanet.org/Web/Conferences/HKU2017-s/Archive/d25cfe13-9851-4e87-b15a-36975f46f035.pdf> [https://perma.cc/8WW3-E26A].

<sup>18</sup> FRANCIS G. SNYDER, *FOOD SAFETY LAW IN CHINA* 9–99 (2015).

<sup>19</sup> *Id.* at 16, 40, 60.

<sup>20</sup> THOMAS S. KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* 48 (1970).

<sup>21</sup> Gordon, *supra* note 1, at 60.

<sup>22</sup> Guanqi Zhou, *The Regulatory Regime of Food Safety in China: A Systemic Not Accidental Failure* 22 (May 2016) (unpublished Ph.D. dissertation, University of Adelaide), <https://digital.library.adelaide.edu.au/dspace/bitstream/2440/100197/2/02whole.pdf> [https://perma.cc/3T79-ZLUH] (quoting Peter N. Grabosky, *Counterproductive Regulation*, 23 INT'L J. SOC. L. 347, 360 (1995)).

that, according to the “regulatory life cycle,” regulatory agencies develop relationships with those under their supervision and regulation.<sup>23</sup> Vogel addresses “informal resolution of issues” and a “culture of consensus between regulators and the regulated.”<sup>24</sup> Stigler proposes that regulation is often corrupt itself in that certain private and sectional interests exist within.<sup>25</sup> Other scholars take a micro-political perspective; pertaining to the food safety regime in China, some have argued that loopholes in the regulations were due to risk assessment and management problems that curbed the incentive to regulate and control food safety risks.<sup>26</sup> Again, no scholars have yet identified potential problems or engines behind changes in the North Korean food safety regime. This Article aims to start the discussion.

As a general phenomenon in the area of food law, naturally, a regime is not static. Food safety regimes constantly change as they are subject to both external and internal forces. Social forces affect the philosophical and theoretical frameworks that serve as the acceptable boundaries for tolerance, expectation, and the understanding of food safety, which evolve as a society continues to develop. Reinterpreting theory into practice, paradigm shifts take place as new food safety concerns surface, raising unprecedented questions, challenges, and issues. The public is then more receptive to new and nuanced campaigns for safe food.<sup>27</sup>

Using discussions and existing scholarship on regulatory failures and food safety regimes, an attempt should be made to understand and predict important changes in a framework where there is no rule-of-law system in place. This is not because North Korea’s food safety regime is unknown to the outside world. Rather, it is because understanding the internal dynamics will partially shed light on the largely

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<sup>23</sup> Zhou, *supra* note 22, at 22 (quoting MARVER H. BERNSTEIN, REGULATING BUSINESS BY INDEPENDENT COMMISSION (1955)).

<sup>24</sup> Zhou, *supra* note 22, at 22 (citing DAVID VOGEL, NATIONAL STYLES OF REGULATION: ENVIRONMENTAL POLICY IN GREAT BRITAIN AND THE UNITED STATES (1986)).

<sup>25</sup> Zhou, *supra* note 22, at 22 (citing George Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3, 3–21 (1971)).

<sup>26</sup> See generally Shumei Chen, *Sham or Shame: Rethinking the China’s Milk Powder Scandal from a Legal Perspective*, 12 J. RISK RES. 725 (2009); Hon-Ming Lam et al., *Food Supply and Food Safety Issues in China*, 381 LANCET 2044 (2013).

<sup>27</sup> Qijun Jiang & Ying Zhu, *Challenges for Enforcing Food Safety Law and Regulations in China: Case Studies of Government Agencies in the Shanghai Region*, 18 ASIAN-PAC. L. & POL’Y J. 36, 38 (2016) (citing Sarah Biddulph et al., *Rule of Law with Chinese Characteristics: The Role of Campaigns in Law Making*, 34 L. & POL’Y 373 (2012)).

unanswered question of what a society's transition into a rule-of-law system will mean to the broader universe of food safety.

## II

### NORTH KOREA'S FOOD SAFETY REGIME IN A RULE-OF-MAN SYSTEM

In a state where the rule of law, in principle, has very weak foundational standing, the food safety regime in its raw form would be subject to all sorts of arbitrary and discretionary factors. As in the case of a young child with building blocks, different forms of "arbitrary creativity" come into play. This then implies that changes in the regime can take place arbitrarily by the will of a certain powerful group of people and can be paid for by wealth.<sup>28</sup> Accordingly, such changes would be imposed based on a top-down model.

While maintaining the cautious approach of refraining from making formalistic assumptions of the world with no rule of law, changes can be anticipated because even in a country that runs on a rule of man, legal reforms are a very strong hint to changes in the leader's policies and preferences. While it is challenging to predict such changes, China's recent experience evolving its rule-of-man system to a comprehensive regulatory regime serves as a comparison and flags potential developments that North Korea may experience.

#### *A. Constitutional Reforms Made in Parallel with Sociopolitical Changes in North Korea*

Though North Korea's power concentration limits the ability to administer laws and thus predict changes, amendments to North Korea's Constitution serve as a window into the leadership's policy preferences. This manifests itself by the changes that have taken place in parallel with sociopolitical changes in the country. While the North Korean Constitution stipulates that the law is the "basic instrument for State administration,"<sup>29</sup> North Korea is still a State where political power practically establishes the law in both its design and implementation.<sup>30</sup> In its design, the law in North Korea is consciously limited in many aspects; one can propose that it is even carefully

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<sup>28</sup> See Plato, *Republic, Three Elements of Man, Perfection: Classical Utopias*, BRITISH LIBRARY <http://www.bl.uk/learning/histcitizen/21cc/utopia/perfection1/elements1/elements.html> [https://perma.cc/2D4J-JMNE] (last visited Feb. 17, 2020).

<sup>29</sup> SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA Apr. 9, 2009, art. 18 (N. Kor.).

<sup>30</sup> Michael W. McKay, *The Big Picture: The Rule of Law*, 52 LA. B.J. 436 (2005).

drafted to ensure its limited scope within the country so that political leaders of the country can interpret the law how best suits their desires. There is ample room for open interpretation and discovery by the outside world.<sup>31</sup> Because this system relies solely on one political party and the country's leader (*Suryong*, meaning "Great Leader" or "Supreme Leader"), many further assume that its legal system is only a "façade" that prolongs the survival of the State.<sup>32</sup> To many more, North Korea is simply a country "as abstract as the planet Neptune,"<sup>33</sup> leaving the entire question of the role of law hanging in the air. Such confusions only accumulate as its laws and regulations are often very difficult to study, and research can only be done to the extent that the country allows disclosure of its laws to the outside world.<sup>34</sup>

From this perspective, there seems to be almost no possibility to predict changes of an entire regime by looking into the law, as decisions are made based on discretionary creativity by one or two individuals in the Kim family. An attempt in making *ex ante* estimates would almost certainly fail if analysts attempt to read one individual's mind. Despite difficulties in relying on traditional legal and institutional developments to indicate North Korea's policy direction, researching these developments is far from groundless because it can lead to important predictions. The constitution, in this respect, serves as a useful hint to the policy preferences of the very small group of people who make decisions in the country. As one scholar wrote, "Each of the constitutions of North Korea has emerged out of transformative moments when cumulative political change necessitated a corresponding legal expression to legitimate and articulate the new orientation and outlook of the state."<sup>35</sup> Thus, there is important scholarly value in taking a legal perspective in studying North Korea's food safety regime because it provides an opportunity to understand the role of law in the universe of food safety.

A careful look at the constitutional amendments over the past seven decades suggests that North Korea's Constitution reforms run parallel

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<sup>31</sup> As discussed later, even its food safety standards system remains confidential to the outside world.

<sup>32</sup> Darren C. Zook, *Reforming North Korea: Law, Politics, and the Market Economy*, 48 STAN. J. INT'L L. 131, 134 (2012).

<sup>33</sup> Hon. Patrick Border, *Reflections from the Other Korea*, 15 HAW. B.J. 18, 18 (2011).

<sup>34</sup> Korean National Police University Research Business Foundation, 2012 *nyun yihu je-gaejungdwen bukhanbupryungyeongu* [Study of North Korea's Laws and Regulations Revised After Years] 19 (2017) (S. Kor.) (translation by Yi Seul Kim).

<sup>35</sup> Zook, *supra* note 32, at 135.

with, and almost represent, the different sociopolitical reforms that, in turn, initiate changes in the food safety regime. Such understanding makes it possible to conduct a comprehensive study beyond the parameters of solely looking at political and economic factors. Each of these periods shows changes, degrees of openness, and the influence of external factors.

North Korea's first constitution was adopted by the Supreme People's Assembly at its first session on September 8, 1948, as the final product of a draft based on the Soviet Union's 1936 Constitution.<sup>36</sup> Since then, the country has amended its constitution seven times: in 1948, 1972, 1998, 2009, 2012, 2013, and 2016.<sup>37</sup> It is important to note that the first two revisions were made under the supervision of Kim Il-Sung, while the third and the fourth were made under Kim Jong Il's supervision, and the fifth, sixth, and seventh were made under Kim Jong Un's supervision. An examination of the constitutional amendments under the different political leaders is one way to categorize different phases of changes. The simultaneous law reforms and sociopolitical changes<sup>38</sup> provide potential to predict certain changes by discerning different elements undergoing social progress: rule-of-man governance strictly around *juche* ideology, structural fragmentation, and social segmentation

### ***B. Deification, Ideologies in a Rule-of-Man System, and the Food Safety Regime***

Similar to constitutional amendments, the State's ideology also serves as an indicator of food safety regime developments. This Section will analyze and discuss the implications of the *juche* and *snuggun sasang* ideologies and their dominating effect on the political landscape and thus, how food safety regimes are prioritized. The *juche* ideology is a philosophy and almost a religion to the people.<sup>39</sup> It justifies and

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<sup>36</sup> Korean National Police University Research Business Foundation, *supra* note 34, at 24–25.

<sup>37</sup> Zook, *supra* note 32, at 132; Mathew Ha, *Amended North Korean Constitution Reaffirms Kim Jong Un's Steadfast Faith in His Nuclear Arsenal*, FOUND. FOR DEF. DEMOCRACIES (July 15, 2019), <https://www.fdd.org/analysis/2019/07/15/amended-north-korean-constitution-reaffirms-kim-jong-uns-steadfast-faith-in-his-nuclear-arsenal/> [<https://perma.cc/5SWA-BJF3>].

<sup>38</sup> See Zook, *supra* note 32, at 134–35.

<sup>39</sup> B.C., *Just One More Religion?*, ECONOMIST (Apr. 7, 2013), <https://www.economist.com/erasmus/2013/04/07/just-one-more-religion> [<https://perma.cc/WS42-QMDV>].

controls almost all policies and state directions.<sup>40</sup> While the term *juche* directly translates to “self-reliance” in Korean,<sup>41</sup> it serves as the foundation of the rule-of-man system employed in North Korea. Under this ideology, Kim’s family has a distinguished lineage in which Kim Il-Sung (Kim Jong Un’s grandfather) is portrayed as a divine being and power.<sup>42</sup> Article 3 of the State’s constitution stipulates that the *juche* ideology is the “guiding principle for all [Workers’ Party] actions.”<sup>43</sup> The preamble of the Workers’ Party Charter states that the party is guided only by Kim Il-Sung’s *juche* ideology and his revolutionary thoughts.<sup>44</sup> There are concrete documents to put this ideology into practice. It is administered using a monolithic guide,<sup>45</sup> the Ten Principles for the Establishment of the One-Ideology System, which serves as a practical guideline for the people.<sup>46</sup> It explains the divinity of Kim Il-Sung and mandates unconditional obedience, party-wide ideology, willpower, and revolutionary unity to center on Kim Il-Sung.<sup>47</sup> As a vital philosophy that “reign[s] supreme,” it also allows Kim Il-Sung’s influence to survive multiple generations.<sup>48</sup> As very strong conceptual principles, they are very much infused in people’s lives through society and have a significant impact.<sup>49</sup>

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<sup>40</sup> Amended SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA Dec. 1972, art. 3 (N. Kor.).

<sup>41</sup> Columbia Law Sch., *Juche Ideology*, [http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/North%20Korea%20materials/3.html](http://www2.law.columbia.edu/course_00S_L9436_001/North%20Korea%20materials/3.html) [https://perma.cc/NV4P-9JJX] (last visited Feb. 17, 2020) [hereinafter *Juche*].

<sup>42</sup> *See id.*

<sup>43</sup> Amended 1972 SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA Dec. 1972, art. 3 (N. Kor.).

<sup>44</sup> *Juche*, *supra* note 41.

<sup>45</sup> Korean National Police University Research Business Foundation, *supra* note 34.

<sup>46</sup> Columbia Law Sch., *Ten Principles for the Establishment of the One-Ideology System*, [http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/North%20Korea%20materials/10%20principles%20of%20juche.html](http://www2.law.columbia.edu/course_00S_L9436_001/North%20Korea%20materials/10%20principles%20of%20juche.html) [https://perma.cc/QE5W-JMQ6] (last visited Feb. 17, 2020) [hereinafter *Ten Principles*].

<sup>47</sup> Fyodor Tertitskiy, *The Party’s 10 Principles, Then and Now*, NK NEWS (Dec. 11, 2014), <https://www.nknews.org/2014/12/the-partys-10-principles-then-and-now/> [https://perma.cc/J4E8-5CNT].

<sup>48</sup> *Ten Principles*, *supra* note 46; Christopher Green, *Wrapped in a Fog: On the North Korean Constitution and the Ten Principles*, SINO-NK (June 5, 2012), <https://sinonk.com/2012/06/05/chris-green-on-10-principles> [https://perma.cc/5B98-GXGY].

<sup>49</sup> *Juche*, *supra* note 41. “Entering the 1980s, North Korea put up the so-called ‘the fuhrer doctrine,’ explaining that ‘the Suryong (Leader) is an impeccable brain of the living body, the masses can be endowed with their life in exchange for their loyalty to him, and the Party is the nerve of that living body.’ This formed the frame of today’s *Juche* Ideology and enabled North Korea to begin an unreserved propaganda campaigns [sic] to justify the father-to-son power succession plan.” *Id.*

Law, in this sense, is used as a tool to further the supreme principles.<sup>50</sup> In terms of the hierarchy of the legal system, the Ten Principles rest at the top, followed by the Korean Workers' Party rules, followed by the constitution, and then rules and regulations promulgated by agencies and state officials.<sup>51</sup>

*Juche* first made an appearance in the 1972 Constitution.<sup>52</sup> Interestingly, it did not make its debut immediately during Kim Il-Sung's political era. In fact, it took a generation for it to become a part of the constitution, in 1972.<sup>53</sup> This delay is perhaps attributable to the fact that, prior to 1972, North Korea was more interested in devoting its limited resources and time to wiping out its Japanese colonization history.<sup>54</sup> Around this time, the country had to focus on constructing and establishing an independent country and a sovereign government. Its laws were also based heavily on the Soviet Union's Constitution as a new communist state.<sup>55</sup>

It was not until the 1980s that Kim Jong Il (Kim Il-Sung's son and Kim Jong Un's father) sought to develop the State's own ideology as "the only pure socialist state remaining," after observing that the Soviet Union and China had begun to undertake economic and political reforms.<sup>56</sup> Within two decades, *juche* had become a binding ideology in every part of the society from culture to the economy.<sup>57</sup> Any activities that were not seen to conform to the ideology were strictly prohibited, and offenders were criminally liable. By 1998, when Kim Jong Il had become Chairman of the National Defense Commission, Kim Il-Sung was officially known as the "Eternal President."<sup>58</sup> He and his words were still of divine authority even though, in practice, Kim Jong Il was the *de facto* ruler and the Supreme Leader as stipulated in

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<sup>50</sup> See DPRK Updates "Ten Principles," N. KOR. ECON. WATCH (Aug. 9, 2013, 1:55 PM), <http://www.nkeconwatch.com/2013/08/09/dprk-updates-ten-principles/> [<https://perma.cc/XKN8-FE2D>].

<sup>51</sup> Korean National Police University Research Business Foundation, *supra* note 34, at 19.

<sup>52</sup> Zook, *supra* note 32, at 138–39.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> 1948 CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA art. 4 (N. Kor.).

<sup>56</sup> Zook, *supra* note 32, at 139.

<sup>57</sup> See generally KIM JONG-IL, ON THE JUCHE IDEA (1982).

<sup>58</sup> Zook, *supra* note 32, at 143; see also Cho Jae-Hyun, Bughanheonbeob-ui byeonhwa-e gwanhan yeongu [*Study on North Korea's Constitutional Law Amendments*], available at [https://academic.naver.com/article.naver?doc\\_id=79765256](https://academic.naver.com/article.naver?doc_id=79765256) [<https://perma.cc/Z8AD-R64P>].

the 2009 Constitution.<sup>59</sup> Kim Jong Il was the “guardian and cultivator” of the *juche* state.<sup>60</sup> In fact, three out of the seven constitutions of North Korea are named after either Kim Il-Sung, Kim Jong Il, *juche* ideology, or the “revolutionary ideology” created by the “great leader” Kim Il-Sung.<sup>61</sup>

In 2009, another ideology, known as *sunggun sasang*, made an appearance in the constitution.<sup>62</sup> Directly translated as “military-first ideology,” it did not aim to substitute the *juche* ideology, but rather supplement it.<sup>63</sup> It was introduced as an additional philosophy and ideology for the State and its people. According to this ideology, the North Korean army plays both a political and a military role, for which it receives priority in state resources.<sup>64</sup> From the perspective of food law scholarship, the prioritization of military production and supply serves as direct evidence of societal fragmentation.

As such, deification and ideological isolation imply certain patterns in the food safety regime. For example, the 2009 Constitution departed from its predecessors by completely erasing any mention of communism and Marxist-Leninist ideology, or any foreign ideologies for that matter. The *juche* state was the most superior system for the State to build and maintain power.<sup>65</sup> The country had distinguished itself from any other communist states, meaning that now there was room, supported by law, for the State to introduce policies and regulations to further its unique ideological path. This was proven by the “society-family hybrid” State of North Korea in the 2009 Constitution.<sup>66</sup> It referred to North Korea as a society-family hybrid and

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<sup>59</sup> Zook, *supra* note 32, at 143; *see also* Jae-Hyun, *supra* note 58.

<sup>60</sup> Zook, *supra* note 32, at 143; *see also* Jae-Hyun, *supra* note 58.

<sup>61</sup> *See* JONG-IL, *supra* note 57, at 16, 18.

<sup>62</sup> Amended 1972 SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA Apr. 9, 2009, arts. 3, 59, 109 (N. Kor.).

<sup>63</sup> *See* Kim Nam Sik, *What Is ‘Seongun Politics’?*, TONGIL NEWS (Dec. 30, 2004, 10:56 AM), <http://www.tongilnews.com/news/articleView.html?idxno=50938> [<https://perma.cc/UDK2-3TYP>].

<sup>64</sup> Zook, *supra* note 32, at 146.

<sup>65</sup> Amended 1972 SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA Apr. 9, 2009, pmbl. (N. Kor.); Jung Eung Ki, *Bughan Sahoejuuiheonbeob-ui gibon-wonli-juchesasang [Fundamental Principles of the Socialist Constitution of North Korea – Juche Idea]*, 51 INST. L. STUD. PUSAN NAT’L UNIV. L. REV. 219 (2010); Zook, *supra* note 32, at 146.

<sup>66</sup> Amended 1972 SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA Apr. 9, 2009, pmbl. (N. Kor.) (“Comrade Kim Il Sung . . . always mixed with the people, devoted his whole life to them and turned the whole of society into a large family . . .”).

emphasized the strong bond between society and family.<sup>67</sup> People were now grouped together as both parts of the society and a large *family*.<sup>68</sup> Such references to a “society-family hybrid” or familism created a stronger foundation for a patriarchal society that Kim Il-Sung used to justify passing his supreme political powers down the family tree as well.<sup>69</sup> Internally, North Koreans were required to support state policies that were defying other foreign ideologies and international relationships. This strengthening of the *juche* ideology has affected domestic production and consumption of food products.<sup>70</sup> With tightened control on the influx of foreign goods and strictly limited relationships with foreign entities, North Korean consumers have become increasingly selective, choosing either voluntarily or involuntarily to consume local food products.<sup>71</sup>

### C. Structural Fragmentation

Structural fragmentation in governance ironically originates from the strong rule-of-man system. This Article presupposes that the rule-of-man system, based on the *juche* ideology, is a formalistic one that lacks both structural and practical tools to de facto ensure fair and efficient governance in the food safety regime.

While the food processing industry (*shikryo gagong gongup*) emphasizes improving living standards, North Korea’s complex governance structure for food safety often inhibits regulatory progress.<sup>72</sup> At the outset, the State operates on government organs and the Korean Workers’ Party for state affairs, in which Kim Jong Un heads both branches.<sup>73</sup> Yet the governance structure is extremely fragmented, with modest centralization improvements made in the last decade. Since 1948, much of the State’s work focused on ensuring and

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<sup>67</sup> Zook, *supra* note 32, at 146.

<sup>68</sup> *Id.* at 147.

<sup>69</sup> *Id.*; see also Jae-Hyun, *supra* note 58.

<sup>70</sup> Sue-Lin Wong & James Pearson, *Here’s What It’s Like Inside a North Korean Grocery Store*, BUS. INSIDER (May 11, 2017, 8:45 AM), <https://www.businessinsider.com/north-korea-trump-store-food-2017-5?IR=T%2F> [<https://perma.cc/S97N-948L>].

<sup>71</sup> *Id.*; see also JONG-IL, *supra* note 57, at 14–16.

<sup>72</sup> See Kim Young Hui, *Bukhan shikryo gongup siltaewa junmang* [*Current Status and Prospect of the North Korean Food Industry*] (Jan. 1, 2009), [http://icals.snu.ac.kr/html/rnd\\_policy/rnd\\_trand.asp?flag=READ&idx=627&s\\_bun1=%uAE30%uD0C0](http://icals.snu.ac.kr/html/rnd_policy/rnd_trand.asp?flag=READ&idx=627&s_bun1=%uAE30%uD0C0) [<https://perma.cc/HN2V-GCFH>] (translation by Yi Seul Kim).

<sup>73</sup> See 2019 Supreme People’s Assembly Organization Chart, MINISTRY UNIFICATION (Apr. 11, 2019), <http://nkinfo.unikorea.go.kr/nkp/theme/getPowerStructureDang.do> [<https://perma.cc/8424-7ZT6>].

strengthening control over many aspects of people's lives. Different tools were used, such as state institutions, ministries, and organs.<sup>74</sup>

In the first constitution that entered into effect in 1948, the intent of strengthening control was not so obvious as the Korean Workers' Party (KWP) was still very devoted to constructing the State.<sup>75</sup> The constitution still had conflicting interests to accommodate in its text, as it was not unchallenged, and it ended up accommodating ideas that would be much less likely to appear today, such as recognizing private ownership of properties and private enterprises.<sup>76</sup> Almost three decades later, however, Kim Il-Sung was able to gain full control of the KWP, and the constitution reflected well this expansion of power. Under Kim Il-Sung's new control, private ownership of properties and enterprises were not allowed by law.<sup>77</sup> Bolstering the power of the Kim family became explicit in 1992 when the National Defense Commission (NDC) (*gukbangwiweonhoe*) became an independent agency and the highest military organ in the country.<sup>78</sup> In 1998, structural reforms took place, but these were considered more of a simple clarification to emphasize Kim Jong Il's authority and effect a bolstering of his political power. Under the revisions, Kim Jong Il was to serve as Chairman of the NDC, General-Secretary of the KWP, and Commander-in-Chief of the Korean People's Army simultaneously.<sup>79</sup> In addition, the KWP was able to exercise and maintain supreme authority over all areas of society.<sup>80</sup> The NDC saw an expansion of power in the 2009 Constitution to control and manage state affairs and "issue edicts . . . of any sort on any topic."<sup>81</sup> The recent revisions placed very limited restrictions on the leaders of the country. However, a stronger rule-of-man system centered on one particular individual has resulted in structural fragmentation in the country's food safety regime. To better understand this structural fragmentation, a review of the food governance structure is important.

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<sup>74</sup> Zook, *supra* note 32, at 135.

<sup>75</sup> *Id.* at 135–36.

<sup>76</sup> Eung Ki, *supra* note 65, at 219; Zook, *supra* note 32, at 135–36.

<sup>77</sup> Zook, *supra* note 32, at 136.

<sup>78</sup> *Id.* at 139–40.

<sup>79</sup> *Id.* at 143.

<sup>80</sup> Eung Ki, *supra* note 65; *see also* Zook, *supra* note 32, at 145; Jae-Hyun, *supra* note 58, at 143.

<sup>81</sup> Zook, *supra* note 32, at 145.

### 1. Party Organs

In general, the congressional party that selects the Chairman of the Workers' Party of Korea (currently Kim Jong Un) oversees seven different organs that serve various functions:

- (1) Organizes the Party Central Military Commission;
- (2) Elects the members of the Political Bureau;
- (3) Organizes the Executive Policy Bureau as it elects the Vice-Chairman in the Bureau;
- (4) Elects members for the Control Commission;
- (5) Elects the members of the Party Central Auditing Commission;
- (6) Appoints nineteen department and office heads; and
- (7) Supervises Municipal and Provincial Party Representatives.<sup>82</sup>

The Municipal and Provincial Party Representatives elect the heads of the following committees: Pyongyang Municipality, Nason Municipality, Nampo Municipality, Kangwon Province, Yanggang Province, Chagang Province, North Pyongan Province, South Pyongan Province, North Hwanghae Province, South Hwanghae Province, North Hamgyong Province, and South Hamgyong Province.<sup>83</sup>

### 2. Government Organs

In terms of the government organs, the State Affairs Commission is headed by Chairman Kim Jong Un after being elected in 2016 by the Supreme People's Assembly. The State Affairs Commission supervises three ministries; namely, the Ministry of People's Armed Forces,<sup>84</sup> the Ministry of State Security, and the Ministry of People's Security.<sup>85</sup> It also supervises the State Physical Culture and Sports Guidance Commission.<sup>86</sup> To understand the food safety regime, it is important to note the system's administrative organization and recognize that the

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<sup>82</sup> The nineteen departments and offices comprise the following: Organization and Guidance Department, Propaganda and Agitation Department, Cadres Department, *Light Industry Department*, Economic Affairs Department, Science and Education Department, International Department, Military Department, Machine-Building Industry Department, Working Organization Department, *Agriculture Department*, Party History Institute, Document Archive Department, Civil Defense Department, Appeals Office, Finance Accounting Department, General Affairs Department, United Front Department and Office No. 29. See *Party Organs*, MINISTRY UNIFICATION, [https://www.unikorea.go.kr/eng\\_unikorea/relations/infoNK/leadership/party/](https://www.unikorea.go.kr/eng_unikorea/relations/infoNK/leadership/party/) [https://perma.cc/5KE9-9EU2] (last visited Feb. 17, 2020).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

State Affairs Commission supervises forty-five organizations that indirectly affect the food regime in the Cabinet.<sup>87</sup>

In essence, there are seven ministries that oversee safe food production and consumption. Among these seven, food processing factories and agencies (giyupso) are supervised by the Ministry of Light Industry, led by Il Yong Choi, as part of the Cabinet directly supervised by the State Affairs Commission.<sup>88</sup> While public record of his background with the Light Industry dates back to 2008, Choi's relevant experience in food safety is unknown.<sup>89</sup> Often, the Supreme Leader handpicks the related personnel that monitor and supervise the governance of food processing factories and agencies.

### *3. Current Food Safety Regime Structure*

Meanwhile, North Korea's limited efforts to centralize the monitoring of food production do exist on record. Prior to July 2009, central state agencies located in Pyongyang were directly supervised by the Ministry of Light Industry, and those located in the suburbs were supervised by the relevant municipal city or county instead of the Ministry.<sup>90</sup> This was revised in 2009 with the Supreme People's Assembly's Notice 161 to create the new Ministry of Food and Consumer Goods Industries.<sup>91</sup> With the creation of this ministry, the central state food factories located in Pyongyang came under the direct supervision of the Ministry of Food and Consumer Goods Industries. Likewise, suburban food-processing factories came under supervision of the same ministry, albeit indirectly.<sup>92</sup> This was because factories in the suburban areas still remained under the supervision of the People's Committees in the relevant municipal city or county.<sup>93</sup> This suggests, however, that there is still much fragmentation in the structure. For example, when it comes to food produced and processed by cooperative groups, the Cabinet's relevant administrative agencies, such as the

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<sup>87</sup> *See id.*

<sup>88</sup> *Id.*

<sup>89</sup> *North Korea Information Portal*, REPUBLIC KOR., MINISTRY UNIFICATION, <http://nkinfo.unikorea.go.kr/nkp/theme/viewPeople.do> [https://perma.cc/HLA3-SA4B] (last visited Feb. 17, 2020).

<sup>90</sup> Hui, *supra* note 72, at 3.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

Agricultural Department and the Fisheries Department, retain control and supervision over them.<sup>94</sup>

To make matters worse, the food-processing industry in North Korea is generally classified into three different large groups for policy matters.<sup>95</sup> The first group in the food-processing industry processes raw ingredients from agriculture, meat, and seafood. Its aim is to produce raw ingredients for groups other than consumers. The second group in the industry focuses on using the raw ingredients from the first group to produce a novel food product. The last group uses foods produced by the first and the second group to produce other novel food products. Generally, North Korea limits much of its resources to the first and the second group as a State policy.<sup>96</sup> The classification of the three different groups assists our understanding of the resource allocation and prioritization. But it also serves as direct evidence of the food industry being structurally fragmented from its deep roots, with state resources allocated by the State depending on political priorities. Therefore, ideologies cannot be seen independent from this issue.

In addition, despite the planned governance structure, agency jurisdiction often gets ignored as Kim's orders will prevail, which becomes a serious challenge to proper supervision of the food safety governance regime. In particular, at the inspection stage of the food processing industry, there have been problems with determining the proper agency supervision arrangement.<sup>97</sup> For example, Kim Jong Un visited Kumsanpo Salted Seafood Factory in January 2018 to emphasize the importance of sanitary food-production practices. There, he was joined by factory workers and nine individuals holding government positions with various committees that did not pertain to food safety.<sup>98</sup> At this supervision trip, Kim Jong Un established several mandates: sanitary food production practices; hygienic environments both in and out of the factory; the elimination of possible origins of contamination; and a focus on proper storage and management of ingredients, food additives, and containers.<sup>99</sup> Kim also emphasized the importance of state-of-the-art product inspection equipment, processes,

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 1.

<sup>96</sup> *Id.*

<sup>97</sup> Lee Seung Hyun, *North Korea's Kim Jong-Un, Geumsan Fish Processing Plant*, TONGILNEWS.COM (Aug. 8, 2018), <http://www.tongilnews.com/news/articleView.html?idxno=125780> [https://perma.cc/S8CZ-8TMH] (title of webpage translated by Yi Seul Kim); *North Korea Information Portal*, *supra* note 89.

<sup>98</sup> Hyun, *supra* note 97; *North Korea Information Portal*, *supra* note 89.

<sup>99</sup> Hyun, *supra* note 97.

and product-inspection procedures. Finally, Kim set a mandate to adhere to principles that allow for fast, precise, scientific, and objective inspection.<sup>100</sup> However, many of his official visits to food production and processing facilities are similar to the aforementioned example where he is often accompanied by powerful bureaucrats who hold little specialized knowledge and experience about sanitary food-production practices.<sup>101</sup>

#### ***D. Social Segmentation***

Access to safe food differs strikingly based on the family group an individual belongs to, education level, wealth, geographic location, and nationality, as discussed below. The food safety regime is a complex system in which society is segmented both horizontally and vertically.<sup>102</sup> Since the 1948 Constitution, there was much devotion paid to centralizing power to the Kim family and maturing as a country.<sup>103</sup> This societal segmentation became evident in the 1972 Constitution as Kim Il-Sung's power became unchallengeable. Over the decades, as Kim's family continued to build its lineage and power, the country has witnessed severe social segmentation based on family political status, education, and wealth, among other factors. Interestingly, this segmentation has become even more drastic since Kim Jong Un took power in 2011. North Korea can be considered one of the most socially segmented nations in the world.

##### *1. Vertical Segmentation*

For the purpose of analyzing North Korea, understanding vertical segmentation is rather self-explanatory because of its inherent hierarchical foundation. At the top of the hierarchy rests Kim and his

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<sup>100</sup> *Id.*

<sup>101</sup> In such a political system, agency coordination and jurisdiction may be of secondary matters in terms of importance. Likewise, it is well known that Pyongyang's seafood buffet restaurant, named Taedonggang Seafood Restaurant, which was visited by South Korea's President Moon and North Korea's Kim Jong Un, was planned by the Korean Worker's Party's Political Bureau. North Korea's army got involved in catching the body of fish needed to run the restaurant. *Now On My Way to Meet You* (Channel A television broadcast Sept. 30, 2018) (showing that agency coordination and jurisdiction are of secondary matters).

<sup>102</sup> Such fragmentation has previously been mentioned by scholars such as Zhou Guanqi, John K. Yasuda, and Francis Snyder.

<sup>103</sup> Zook, *supra* note 32, at 137.

immediate family.<sup>104</sup> For this special group, there are exclusive food processing factories, agencies, and farms.<sup>105</sup>

At the core of these exclusive establishments for the Kim family is the Howi Science Research Center, which is composed of Basic Science Research Center, Mancheongsan Research Center, and Cheongamsan Research Center.<sup>106</sup> Out of these three research centers, the Basic Science Research Center was the first to be established in 1982 when Kim Il-Sung was seventy years old.<sup>107</sup> The Center's motto is "the Leader's Longevity and Health is Most Important After He Reaches Age 40."<sup>108</sup> This Center is known to study food safety exclusively for Kim's family.<sup>109</sup> These three research centers continue to exist today for the exclusive purpose of promoting Kim Jong Un's health, particularly after February 2009 when he rose to power.<sup>110</sup>

The Basic Science Research Center employs approximately two thousand researchers, research assistants, and clinicians. Researchers are known to have majored in physiology, microbiology, food engineering, genetic engineering, and linguistics.<sup>111</sup> The Basic Science Research Center runs eight research laboratories. Lab 1 focuses on developing nutritious and fine-tasting beverages.<sup>112</sup> This lab includes an alcohol research team that works on developing alcoholic beverages aimed at extending life, a crop research team, and a spice research team.<sup>113</sup> Lab 2 focuses on researching rare herbs and organic plants.<sup>114</sup> Lab 3 is in charge of developing both delicious and nutritious meat with a low level of cholesterol.<sup>115</sup> Various teams, such as the beef research team, the pork research team, and the poultry research team, exist to

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<sup>104</sup> His family is often referred to as the "fifth family" (5-go-daek).

<sup>105</sup> Kim Ju Won, Kimssi ilga 'Mansumuganggyeonguso'ggaji daemullim [Kim's Family Passed down to the Mansu Mugang Research Institute], RADIO FREE ASIA (Feb. 24, 2015), [https://www.rfa.org/korean/weekly\\_program/ae40c528c77cac00c758-c228aca8c9c4-c9c4c2e4/co-su-02242015095830.html](https://www.rfa.org/korean/weekly_program/ae40c528c77cac00c758-c228aca8c9c4-c9c4c2e4/co-su-02242015095830.html) [<https://perma.cc/W7U7-FQ98>] (translation by Yi Seul Kim).

<sup>106</sup> Kim Ju Won, Kimilsung ilga gungangeul wyihan yeongugiguandeul [Kim Il-Sung Research Institute for Family Health], RADIO FREE ASIA (Feb. 3, 2015), [https://www.rfa.org/korean/weekly\\_program/ae40c528c77cac00c758-c228aca8c9c4-c9c4c2e4/co-su-02032015093908.html](https://www.rfa.org/korean/weekly_program/ae40c528c77cac00c758-c228aca8c9c4-c9c4c2e4/co-su-02032015093908.html) [<https://perma.cc/N7ER-SDAB>] (translation by Yi Seul Kim).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *See id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

conduct qualitative research.<sup>116</sup> These research teams use an exclusive farm located in Hwanghae Province.<sup>117</sup> Lab 4 conducts studies on organic vegetables and fruits that Kim Jong Un enjoys.<sup>118</sup> The focus of this group is to find and develop produce with maximized taste, scent, and nutrition.<sup>119</sup> The greenhouse for Lab 4 is also located in Hwanghae Province. Lab 5 exclusively works on fish products and includes a freshwater fish research team, a marine fish research team, and a marine plants research team.<sup>120</sup> The lab works on removing any unpleasant odor from fish and develops methods to extract nutrition from fish.<sup>121</sup> Lab 6 is wholly composed of experts working on developing cigarettes that can prevent lung cancer and high blood pressure.<sup>122</sup> There are two teams in Lab 6: a domestic cigarette research team and an overseas cigarette research team.<sup>123</sup> Lab 7 researches illnesses and is composed of an obesity research team, an arteriosclerosis research team, and a high blood pressure team.<sup>124</sup> Lab 8 uses different kinds of analysis indicators to study raw ingredients and components of specialized, local food products.<sup>125</sup>

Aside from the Basic Science Research Center that operates eight different labs, there are two other research centers, as mentioned above. These two centers employ approximately 130 and 280 experts, respectively.<sup>126</sup> While not much information is available, Cheongsan Research Center is also known as the 965th Army to study food, illness, and conducting research related to health.<sup>127</sup> Mancheongsan Research Center falls under the supervision of the 73rd Division (73 Chongguk) and is located in Pyongyang.<sup>128</sup> This center researches foodborne illness prevention methods for all state events in

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> JoonAng Ilbo, *Bukhan Kimjungil ilga Mansumugangyeonguso Jonjehanda* [North Korean Kim Jong Il Family Mansu Mugang Research Institute], JOONGANG DAILY (Feb. 22, 2011), <https://news.joins.com/article/5091831> [<https://perma.cc/KK5T-CGR3>], (translated by Yi Seul Kim).

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

which Kim's family participates.<sup>129</sup> All staff members at the research centers are graduates of Kim Il-Sung University College of Life Sciences, Medical Science University (Pyongyang Medical University), Pyongyang Light Industry University, and Pyongyang Foreign Language University.<sup>130</sup> Research center employees must adhere to strict safety measures and are subject to extensive political background checks to ensure the Kim family's safety and health.<sup>131</sup>

In addition to these research centers, North Korea operates a farm for an extremely selective range of produce for the Kim family.<sup>132</sup> Produce cultivated in these greenhouses undergoes strict cleaning and microscopic testing at a factory specifically established for this purpose.<sup>133</sup> Only elite university graduates in their twenties are hired.<sup>134</sup>

Since the 1970s, besides prioritizing Kim's family, North Korea has divided its general population into four different social classes underneath Kim's family.<sup>135</sup> Immediately underneath Kim's direct family is the "core crowd group," followed by the "common crowd group," then the "complicated crowd group," and lastly the "hostile class," also known as the "remainders."<sup>136</sup> The "core crowd" consists of Korean War veteran families, formal visitors to Kim Jong Un, honored soldiers, and persons of merit who have made significant contributions to the State.<sup>137</sup> This special crowd lives in Pyongyang and has access to some of the State's finer-quality food products. The "common crowd" includes labor workers, farmers, soldiers, and intellectuals throughout the country.<sup>138</sup> The "complicated crowd group" is, as the name suggests, families of those punished, military draft evaders, and South Korean defectors.<sup>139</sup> The "hostile class," the "remainders," includes families of North Korean defectors who have settled down in South Korea, pro-Japanese persons, spies,

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<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Elizabeth Shim, *Kim Jong Un Is Paranoid About Food Safety, Says Source*, UNITED PRESS INT'L (July 8, 2015, 12:13 PM), [https://www.upi.com/Top\\_News/World-News/2015/07/08/Kim-Jong-Un-is-paranoid-about-food-safety-says-source/8121436368705/](https://www.upi.com/Top_News/World-News/2015/07/08/Kim-Jong-Un-is-paranoid-about-food-safety-says-source/8121436368705/) [<https://perma.cc/9YVD-SHSH>].

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Now On My Way to Meet You: Interview with Defectors* (Channel A television broadcast Feb. 12, 2018) [hereinafter *Interview with Defectors*].

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

religious persons, party antagonists, landowners, and businesspersons.<sup>140</sup> The last group of people live far from Pyongyang and are subject to food produced from local ingredients of substandard quality, as discussed later.

One separate branch of consumers that exists in North Korea comprises the foreigners and tourists. There are set meals for foreigners,<sup>141</sup> and foreigners are usually taken to a specific set of restaurants around the country. The experiences foreigners have at these restaurants do not reflect what most of the public in other parts of North Korea consume on a daily basis.

A unique feature of social segmentation in North Korea that undoubtedly exists in the food safety regime is the collective punishment that affects three generations.<sup>142</sup> North Korea is one of the very few countries in the world, if not the only, that places liability on three generations for an act done by an individual.<sup>143</sup> Accordingly, if the liable individual and his or her family live in Pyongyang, they will be relocated to a rural community. If the liable individual's family already lives in a rural community, they will be relocated to a much more rural community, and so forth.<sup>144</sup> A combination of their location and criminal record will, in turn, affect their future generations' education, economic status, employment, et cetera.<sup>145</sup>

## 2. Horizontal Segmentation

The horizontal societal segmentation is much less clear to an outsider. Food production is different from other industries and is mostly managed by the local government.<sup>146</sup> Food production factories in Pyongyang mainly focus on serving Pyongyang citizens. As first-class citizens of the country, better food is provided to ensure continued obedience and loyalty to the party. There are large-scale facilities that produce crops, flour, kimchi, rice, bread, soy and bean sauce, and beer

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<sup>140</sup> Yoo Gwangjin, *Bughan-ui Sahoechejewa Gyecheung-gujo-e Gwanhan Gochal* [Study on North Korea: A Study on the Social System and Strata Structure of North Korea], 10 N. KOR. STUD. J. 51 (1980); see also *Interview with Defectors*, *supra* note 135.

<sup>141</sup> Fuchsia Dunlop, *Eating in North Korea: 'We Were Being Fed a Story'*, FIN. TIMES, (Sept. 21, 2017), <https://www.ft.com/content/1f9bbfc0-9d93-11e7-9a86-4d5a475ba4c5> [<https://perma.cc/P2XP-73RW>].

<sup>142</sup> See Gwangjin, *supra* note 140; see also *Interview with Defectors*, *supra* note 135.

<sup>143</sup> See Gwangjin, *supra* note 140; see also *Interview with Defectors*, *supra* note 135.

<sup>144</sup> See also *Interview with Defectors*, *supra* note 135; Zook, *supra* note 32, at 149–50.

<sup>145</sup> Zook, *supra* note 32, at 148–50.

<sup>146</sup> Hui, *supra* note 72, at 96.

with the aim of producing high-quality food for the local residents.<sup>147</sup> These factories use best-quality ingredients from the countryside together with imported ingredients for production. Factories in the countryside are allocated production quotas for these Pyongyang factories.<sup>148</sup>

A review of the Pyongyang City Management Law that was promulgated in 1998 and amended twice—in 2010 and 2014—proves the extra care the State has taken when it comes to managing food safety.<sup>149</sup> Although the amendments were not designed to exclusively target improving food safety, they included many aspects dealing with food safety issues. To understand social segmentation between Pyongyang and the rest of the State, it is important to discuss the textual changes in this law. In 2010, the phrase “capital city establishment policy” first made an appearance in the Pyongyang City Management Law. With this policy, the State seems to have made it very clear that there would be extra measures to ensure that Pyongyang has its own development plan. In fact, the policy was not merely about city planning; rather, it was a concrete plan devised to provide a special citizenry status to people living in Pyongyang, which is viewed as a privilege by the entire country’s population. The city management plan was to be designed carefully and precisely to allow step-by-step systematic management of the city.<sup>150</sup> Kim Jong Un’s plan to develop Pyongyang into a location more than a mere capital city is well articulated in Article 49, which states that “all organizations, agencies and associations shall be actively mobilized and be interested in building Pyongyang into the center of the ‘seonggun culture.’”<sup>151</sup> With the absence of a policy that applies uniformly across the entire nation, the State has a clear lack of appropriate implementation of its uniform food safety policies.

In other cities and provinces, local mid- and small-sized factories producing products such as corn, sauce, oil, alcohol, and sweets serve their local populations. There exists a clear distinction between Pyongyang and rural areas in this regard. In rural areas, most food

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<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> DPRK PYONGYANG CITY MANAGEMENT LAW, KOREAN NATIONAL POLICE UNIVERSITY RESEARCH BUSINESS FOUNDATION, 2012 NYUN YIHU JE-GAEJUNGDWEN BUKHANBUPRYUNGYEONGU [2012 STUDY ON NORTH KOREAN LAWS], 36–37 (2017) (S. Kor.).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

ingredients are produced locally; therefore, the quality of the production is inconsistent and differs between provinces. The central government designates one crop factory for each province, and each district is also allocated one factory for sauce, oil, alcohol, and sweets.<sup>152</sup> The people often resort to marketplaces to gain access to safer food produced with better-quality ingredients. In Haeju, there are three major marketplaces with approximately five thousand sellers.<sup>153</sup> In Hweryung, there are two major marketplaces with approximately 2,500 sellers as of 2013.<sup>154</sup> The State has also been moving to specialize in certain production. Fruit-processing factories are mainly based where the fruit is grown, such as Hwanghaedo Guail-gun, Hwangju-gun, Eunyul-gun, Bongsan-gun, Sookcheon in Pyeongnam, and Bukcheon in Hamnam.<sup>155</sup> Fish-processing factories are focused around Shinpo, Kimchaek, and Wonsan production bases.<sup>156</sup> Meat and soda drink factories are focused in large cities such as Pyongyang, Cheongjin, Hamheung, and Shineuiju, where the consumer base exists.<sup>157</sup> Each of these bases would be worthwhile subjects for further study.

#### ***E. State-Led Efforts (Public Awareness)***

Food Hygiene Law, as a principal body of law governing food hygiene practice in the country, was most recently revised in April 2013 with the purpose of protecting and promoting people's health.<sup>158</sup> Following the revision, Article 4 now newly stipulates that any organization that produces, sells, or supplies foodstuffs shall first be issued a hygiene license from the relevant sanitary supervision authority.<sup>159</sup> This applies throughout the country beyond Pyongyang.

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<sup>152</sup> Hui, *supra* note 72, at 2.

<sup>153</sup> KWAK IN-OK, REPUBLIC OF KOREA MINISTRY OF UNIFICATION, BUKHANSHIJANG SILTAEBUNSUK MIT BYUNGHWANG BANGHYANGSUNG [NORTH KOREA MARKET ANALYSIS AND CHANGE DIRECTION STUDY], 2-3 (2013), [http://www.prism.go.kr/homepage/origin/retrieveOriginDetail.do?cond\\_research\\_name=&cond\\_research\\_start\\_date=&cond\\_research\\_end\\_date=&cond\\_organ\\_id=1250000&research\\_id=1250000-201400026&leftMenuLevel=120](http://www.prism.go.kr/homepage/origin/retrieveOriginDetail.do?cond_research_name=&cond_research_start_date=&cond_research_end_date=&cond_organ_id=1250000&research_id=1250000-201400026&leftMenuLevel=120) [https://perma.cc/7WRA-FYNQ] (translation by Yi Seul Kim).

<sup>154</sup> *Id.*

<sup>155</sup> Hui, *supra* note 72, at 2.

<sup>156</sup> *Id.* at 3.

<sup>157</sup> *Id.*

<sup>158</sup> Joseonminjuuiinmingonghwagug siglyopum-wisaengbeob [Democratic People's Republic of Korea Food Hygiene Act], effective Apr. 4, 2013.

<sup>159</sup> *Id.* at art. 3.

Without a hygiene license, any organization is prohibited from either producing food products or operating a related business.<sup>160</sup>

In order to further ensure food safety, North Korea developed an official industry standardization system known as “KPS,” administered by the National Quality Supervision Bureau. The National Quality Supervision Bureau sets the mandatory standards in the State.<sup>161</sup> The National Quality Supervision Bureau was established in August 1949.<sup>162</sup> It is directly under the supervision of the National Standard-Setting Research Center, Central Measurement Science Research Center, and the Quality Certification Center as stipulated in the Quality Supervision Law, Standardization Law, and Measurement Law.<sup>163</sup>

Article 5 of the Standardization Law stipulates that unifying standards are a basic requirement for the communist system.<sup>164</sup> The Standardization Law was amended in 2015 to include detailed procedures and requirements for drafts of standards. Under Article 14 (Drafting of Standards for Production of Novel Goods and Introduction of Novel Technique), agencies are required to submit a proposed draft of national standards to the State’s central standard supervision authority.<sup>165</sup> Under Article 23, if any produced good fails to meet national standards or no applicable national standards exist, the producer cannot be granted a production plan authorization, price, or labeling authorization.<sup>166</sup> The National Standard-Setting Research Center is in charge of international coordination, creating provisions to standardize information services, and amending and setting industry standards.<sup>167</sup> Standardization Law, Article 31, prohibits external disclosure of any national standards without the required supervising department’s authorization.<sup>168</sup> For this reason, the number of existing standards and the details are yet to be confirmed. Some speculate that

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<sup>160</sup> *Id.* at art. 4.

<sup>161</sup> Bukhaneui Gukga Gyugyuk (KPS) Gwa ‘Gukga Pumjil Gamdokguk’ [North Korea’s National Standard (KPS) and ‘National Quality Supervision Bureau’], NK TECH, [http://www.nktech.net/inform/nkt\\_briefing/nkt\\_briefing\\_v.jsp?s\\_code\\_cd=focus&record\\_no=179](http://www.nktech.net/inform/nkt_briefing/nkt_briefing_v.jsp?s_code_cd=focus&record_no=179) [<https://perma.cc/47QM-SJZ3>] (last visited Feb. 17, 2020) (translation by Yi Seul Kim).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

there are approximately 120 health- and hygiene-related standards and 134 standards regarding agriculture, forestry, and livestock.<sup>169</sup>

Although it may be a foreign idea to many, the State has additionally established food standards for specific food menus, such as Pyongyang Cold Noodles and Rice Cakes, as part of its state-led efforts to improve food safety. In addition, in furtherance of improving its standards, the State engaged in active collaboration with a number of countries such as China (2002), Laos (2003), Vietnam (2004), South Korea (2004), and Russia (2005).<sup>170</sup> It also uses private standards such as Hazard Analysis and Critical Control Points (HACCP) for a selected variety of food products.<sup>171</sup> In the end, compliance with these international standards may also indicate strong orientation with other states that claim to endorse a system with the rule of law and the important principles that go with it.

Interestingly, in addition to these efforts, the State has also become active in collecting information from abroad for reference and research at home. In 2018, among the resources collected via agencies and consulates stationed abroad were research products for microalgae reproduction, safe seeds to consume that needed fewer fertilizers, Russian potato varieties that harvest more than 60 tons per 9,917.4 square meters, samples of potato powder, food produced from processed potato powder, and samples of vinegar drinks.<sup>172</sup>

### ***F. Strengthening Grassroot Participation***

Often, it is the training and education of food safety that determines what is indeed implemented and practiced. In fact, training and education are at the core of realizing food safety. One notorious example is the popularity of the petrol-cooked clams in the country: “On the east coast, North Koreans cook clams on a sheet of metal. On the west coast, they pour petrol over them and set them on fire. Then

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Bae, Gimchi Maegju Hwajangpum Deung ISO·HACCP Gugjepumjil Injeung Hwalbal [Active ISO / HACCP International Quality Certification in North Korea, Kimchi, Beer, and Cosmetics], YNA (May 28, 2019), <https://www.yna.co.kr/view/AKR20190527139000504> [<https://perma.cc/9FHN-EP98>].

<sup>172</sup> Kim Ji Young, *Buk Nodongdang, Sasilsang ‘Haewye Sanup Seupayi Hwaldong’ Jisi* [North Korean Labor Party In Effect Orders For “Overseas Industrial Espionage”], SISAPRESS.COM (May 18, 2018), <http://www.sisapress.com/journal/articlePrint/175433> [<https://perma.cc/3YB2-44NM>] (translation by Yi Seul Kim).

they put more petrol on and keep going until they think it's done."<sup>173</sup> With a slight concern for the safety of the food, the people then pour and drink *soju* straight from the empty clam shell as a sterilization mechanism.<sup>174</sup> The lack of necessary information and education regarding food safety has created a situation where foreigners have created a list of foods to avoid.<sup>175</sup>

Nevertheless, information flow is increasing inside the country due to technological development, which in turn has encouraged and strengthened grassroots participation and empowerment in the food safety regime. According to the amended 2013 Product Differentiation Code Law, Article 2 mandates product differentiation codes to be used in production and distribution.<sup>176</sup> Article 26 newly stipulated that all products must display production year and storage conditions.<sup>177</sup> At the same time, although the network does reach overseas, a study shows that there are approximately five million cellphones that are currently being used in the general population. These smartphones allow Pyongyang users to download food delivery applications called "Okryu" that have chicken, beer, and cold noodles delivered to the comfort of their homes.<sup>178</sup> "[C]onsumer goods are becoming increasingly sophisticated and QR or matrix barcodes can be found on a wide range of products, like makeup and soft drinks."<sup>179</sup>

Grassroots participation is closely intertwined with growing awareness of food safety-related problems. A strong hint to the food production and food safety level in a country is the gross national production level.<sup>180</sup> However, North Korea has not disclosed any

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<sup>173</sup> Jamie Fullerton, *A Guide to North Korean Food from a Man Who's Been Eating It for 14 Years*, VICE (Feb. 17, 2018), [https://munchies.vice.com/en\\_us/article/53qbd8/a-guide-to-north-korean-food-from-a-man-whos-been-eating-it-for-14-years](https://munchies.vice.com/en_us/article/53qbd8/a-guide-to-north-korean-food-from-a-man-whos-been-eating-it-for-14-years) [https://perma.cc/QM3K-8J5M].

<sup>174</sup> *Now On My Way to Meet You* (Channel A television broadcast Nov. 25, 2018).

<sup>175</sup> Fullerton, *supra* note 173.

<sup>176</sup> Korean National Police University Research Business Foundation, *supra* note 34, at 58.

<sup>177</sup> *Id.* at 59.

<sup>178</sup> Hwang Tae Hoon, *Buk, 5myungjoong 1 Myungggol Hyudaejunhwa . . . Chiken-mekju Baedal Eppgaji Deungjang* [North, 1 in 5 Mobile Phones . . . Appears Up to Chicken and Beer Delivery App], DONGAILBO (Nov. 12, 2018), <http://news.donga.com/NewsStand/3/all/20181110/92812375/1> [https://perma.cc/84JR-4TPG] (S. Kor.).

<sup>179</sup> Wong & Pearson, *supra* note 70; see also *Now On My Way to Meet You* (Channel A television broadcast Aug. 19, 2018).

<sup>180</sup> Francis Snyder & Yi Seul Kim, *China's 2015 Food Safety Law: Crossing the River but Feeling the Stones and Avoiding Low Branches?*, 6 CHINESE J. COMP. L. 1 (June 2018).

figures regarding its economy.<sup>181</sup> Accordingly, researchers must review changes in spending in different sectors to make an educated guess of North Korea's productivity. From 2017 to 2018, North Korea officially stated that the country increased national expenditure on education by 5.9%, improving economic independence or self-reliance (*juche*) by 4.9%, and public health by 6.0%.<sup>182</sup>

Although the country has continued to strengthen its own ideology, at the same time it has slowly progressed on opening up its borders and seeking economic growth. This was particularly noticeable in the 1992 Constitution, which tried to indicate such a trend. For the first time, the constitution mentioned the potential for economic prosperity.<sup>183</sup> Yet, it still took eight years until the 1984 Joint Venture Act entered into effect. The Act established the Rajin-Sonbong free trade zone, and the 1992 Constitution reaffirmed the legitimacy of this trade zone.<sup>184</sup>

In 1992, the constitution took a small turn from distancing and antagonizing itself from South Korea.<sup>185</sup> It emphasized “independence, peace, and friendship” (*jaju pyeonghwa chinseon*) as part of its foreign policy.<sup>186</sup> It even recognized the democratic rights (*minjujuuijeok minjokgweonri*) of Koreans living outside its borders.<sup>187</sup> This became the stepping stone to building the Kaesong Industrial Complex a decade later.<sup>188</sup>

This development was still made with caution and perhaps a struggle between interests: the 1992 Constitution emphasized that the State had exclusive ownership of production means and stipulated collectivism as the policy foundation.<sup>189</sup> Today, while this has not changed, the general public suffers much from solely relying on the

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<sup>181</sup> Benjamin Katzeff Silberstein, *North Korea's Economic Contraction in 2018: What the BoK Numbers Tell Us*, N. KOR. ECON. WATCH (July 26, 2019, 2:30 AM), <https://www.nkeconwatch.com/2019/07/26/north-koreas-economic-contraction-in-2018-what-the-bok-numbers-tell-us/> [https://perma.cc/YT29-AZS9].

<sup>182</sup> Alex McIntyre & Adrian Leung, *How Big Is North Korea's Economy? Pick a Number, Any Number*, BLOOMBERG (June 10, 2018), <http://www.bloomberg.com/graphics/2018-north-korea-economy-size> [https://perma.cc/4DEY-3NJB].

<sup>183</sup> Dae-Kyu Yoon, *The Constitution of North Korea: Its Changes and Implications*, 27 *FORDHAM INT'L L.J.* 1289, 1299–1300 (2004).

<sup>184</sup> Zook, *supra* note 32, at 141.

<sup>185</sup> Yoon, *supra* note 183, at 1299.

<sup>186</sup> Zook, *supra* note 32, at 140–41.

<sup>187</sup> *Id.* at 141.

<sup>188</sup> See Yoon, *supra* note 183, at 1300.

<sup>189</sup> Amended 1972 SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA Apr. 9, 1992, art. 5 (N. Kor.).

State's production means. North Korea sparsely grows wheat and most of its milling raw materials are imported.<sup>190</sup> Article 14 of the Food Hygiene Law was revised in 2013 to stipulate that when food product, raw ingredients, or additives are imported, the national border quarantine inspection agency would register the item according to its category and conduct a hygiene safety test.<sup>191</sup> Such reading of the law suggests that the State is open to trade and thus positive about meeting international food safety standards.

Market participation at the grassroots level warrants careful study, as it is where the issues of food security and problems of food safety cross boundaries in North Korea. While the 1948 Constitution recognized and permitted private property and private enterprises, these ideas were abolished once the *juche* ideology was established in 1972.<sup>192</sup> In this respect, 1972 was the year that marked North Korea closing off private market participation.<sup>193</sup> Three decades later, however, the 1998 Constitution formally recognized private economic activities, and this leeway was also granted to the sphere of foreign trade.<sup>194</sup> The constitutional amendments allowed collective organizations to conduct foreign trade, and one of the most notable features was that citizens now had freedom of movement.<sup>195</sup> Between 1992 and 1998, North Korea underwent massive starvation that many feared would endanger the survival of the state.<sup>196</sup> Death rates soared, and given the sociopolitical circumstance, it may have been a realistic choice to legitimize movement of the people, who were moving in search of food and economic opportunities.<sup>197</sup> The state-led rationing system failed as the state-led planned economy system collapsed from 1994 to 1998.<sup>198</sup>

Today, there are almost four hundred legal markets,<sup>199</sup> and private individuals are allowed to participate in the economy. In 2009, the

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<sup>190</sup> Hui, *supra* note 72, at 2.

<sup>191</sup> Korean National Police University Research Business Foundation, *supra* note 34, at 101.

<sup>192</sup> Zook, *supra* note 32, at 139.

<sup>193</sup> *See id.*

<sup>194</sup> *Id.* at 144.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *See* Rhoda E. Howard-Hassmann, *State-Induced Famine and Penal Starvation in North Korea*, *Genocide Studies and Prevention*, 7 INT'L ASS'N GENOCIDE SCHOLARS 147, 150–51 (2012).

<sup>199</sup> Anna Fifield, *Markets Helping North Koreans Become More Independent of the Regime, Poll Says*, WASH. POST (July 24, 2017), <https://www.washingtonpost.com/world/>

constitution was revised to stipulate that economic development would be led by the State.<sup>200</sup> The State's food rationing system had already halted in the mid-90s, and private individuals had to engage in economic activities.<sup>201</sup> This was particularly true in the way the private food distribution channels were developed throughout the country, focusing around Pyongyang, Haeju, and Hweryung.<sup>202</sup> Family-made food was increasingly making it into the markets as individuals started making imitation meat, sausages, sweets, and cookies.<sup>203</sup>

With all this, where is North Korea heading? The fact alone that the concepts of "rule of man," "rule of law," and "food safety regime" are so grand and abstract implies that there is open room to interpret North Korea's situation.<sup>204</sup> While there certainly is reform taking place in different areas of the country, there may be those who argue that predicting possible paradigm shifts is fruitless because it is entirely uncontrollable. Nevertheless, this Article purports that it is possible to predict changes and eventual shifts in paradigms if we trace scattered and sporadic developments in North Korea's food safety regime.

### III

#### ANTICIPATED CHANGES IN THE FOOD SAFETY REGIME

This Article presumes that important changes will take place in North Korea's food safety regime. It purports that paradigm shifts will occur in people as the society continues to evolve and develop. This is not merely because the country has a new ruler but rather because history repeats itself, and North Korea has shown similar characteristics of a food safety regime that once existed in China, as the latter transitioned into a "rule-of-law" country.<sup>205</sup> The changes are

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asia\_pacific/markets-helping-north-koreans-become-more-independent-of-the-regime-poll-says/2017/07/23/662692d4-6fa9-11e7-803f-a6c989606ac7\_story.html? [https://perma.cc/DR6D-JUM4].

<sup>200</sup> SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA Apr. 9, 2009, art. 18 (N. Kor.).

<sup>201</sup> IN-OK, *supra* note 153, at 6.

<sup>202</sup> *Id.* at 20.

<sup>203</sup> *Id.*

<sup>204</sup> See Joseph Mazur & Anca-Elena Ursu, *China's Disinterested Government and the Rule of Law*, 4 ASIA & PAC. POL'Y STUD. 376, 377 (2017) (Diversity in viewing the rule of law is deeply stemmed, in that there is even a contrasting understanding of "law" to begin with.).

<sup>205</sup> This is a separate piece of study that must be undertaken beyond the scope of this paper.

indeed incremental and slight, but they are happening via the opening up of borders, government reforms, and increased public participation.

By discerning different elements, this Article drew attention to the internal movements that continue to mold the food safety regime. A comprehensive review would allow analysts to reduce general speculation on paradigm shifts. At the same time, it has become increasingly clear that the transitioning process to a rule-of-law system plays an integral part in shaping how the future regime will look. A food safety regime is a set of principles, ideas, and notions, and ruling out the role of the law here would reduce this Article to a piecemeal study.

The preceding discussions of the country's experiences and law reforms suggest that North Korea's food safety regime has a long way to go to becoming a fully matured "rule-of-law" governance system. However, in turning to the question of what the above discussion may imply for social development, there may be some interesting notes. Given that China moved slowly away from a rule-of-man system into more of a rule-of-law system in less than two decades, we may logically conclude that the two systems of rule-of-man and rule-of-law may not be mutually exclusive to each other. Instead, the transitioning process is a continuum,<sup>206</sup> as shown in China's case, in which we can say that, as a general trend, there may be continued Kim deification, but predictability in the law may even coexist.

It is unlikely that there will be a significant change in deification and its persistence over the *juche* ideology for strong political reasons. Likewise, it would be reasonable to assume that the government would try to maintain its control of land and agricultural production.

#### *A. Movement to a Comprehensive Food Safety Law*

Reflecting on the experience China had with its Food Safety Law entering into force, it would be reasonable to predict that changes may occur when the public calls for it. In China, the initial attempt to replace the Food Hygiene Law with a new comprehensive Food Safety Law was made in 2003, when it was placed on the agenda at the National People's Congress.<sup>207</sup> However, it was not until four years later that a

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<sup>206</sup> The debate on whether the rule of man and the rule of law are mutually exclusive of each other and whether they can coexist is an interesting one. However, it is beyond the scope of this paper, and this author will be covering this debate within the context of food safety in a separate study.

<sup>207</sup> SNYDER, *supra* note 18, at 162.

white paper on food safety was prepared by the State Council.<sup>208</sup> It was only by the end of 2007 when the first version of the food safety law was read, but when public interest in food safety spiked after the melamine crisis at the end of the year, the next reading was completed within five months, and the 2009 Food Safety Law went into effect by 2009.<sup>209</sup> The implementing regulations from thereon were completed a month after the law became effective.<sup>210</sup> Such progressive revision was not only made in a timely manner but it also covered areas in which the public demanded reinforcement of risk prevention. While North Korea currently has its own version of the Food Hygiene Law that was most recently amended in 2013, it is still rather short with thirty-two provisions that, when read alone, have an excessively broad application due to their vagueness.<sup>211</sup>

Nevertheless, North Korea is still actively revisiting its laws where necessary. According to a study of 140 laws and ordinances listed in North Korea's code book, all laws are classifiable into sixteen different categories.<sup>212</sup> Among them are twenty-three laws related to agriculture, forestry, and fisheries.<sup>213</sup> In the 2012 Code, seventy-five divisional laws were newly enforced.<sup>214</sup> In 2016, a total of 31 laws were newly enforced and 109 were amended.<sup>215</sup> The River Act was revised and supplemented in 2013 to require timely digging of river bottoms when the water level rises. Water plants and garbage must be cleared to allow clear and clean water to flow at all times (Article 18 Protection and Maintenance of River Facilities).<sup>216</sup>

Some speculate that North Korea will continue to revise its environmental regulations to the extent it overlaps with food safety issues. For example, the Environmental Protection Act was enacted on April 9, 1986, but was recently revised for two consecutive years in

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<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> Democratic People's Republic of Korea Food Hygiene Act, *supra* note 158, at art. 31 ((Compensation for Damages): In case a food ingredient decomposes or goes bad, [no subject] is liable for the damage caused).

<sup>212</sup> Korean National Police University Research Business Foundation, *supra* note 34, at 33.

<sup>213</sup> *Id.* at 77.

<sup>214</sup> *Id.* at 22–23.

<sup>215</sup> *Id.* at 31.

<sup>216</sup> *Id.* at 60.

2013 and 2014.<sup>217</sup> The Environmental Protection Act, Chapter 3, contains overarching requirements on the prevention of environmental pollution, Air Pollution Control Law, and the Daedong River Pollution Prevention Law.<sup>218</sup> In the 2013 Amendment, Article 1 established the purpose of the Act (to protect the natural environment to constantly improve nature), and revisions were made to the selection of nature reserves and special protection zones (Article 11), forests and green areas (Article 17), purification of wastewater (Article 24), pollution from ships (Article 27), environmental restoration of destroyed grounds related to development of underground resources (Article 29), and compensation for damages resulting from environmental destruction (Article 52).<sup>219</sup> In the 2014 Amendment, a number of improvements were made, including an elaborate purpose clause. It now states that the Act aims “to preserve the natural environment and to constantly improve the nature” with the purpose to protect the people’s health and provide them with cultural and hygienic living and working conditions.”<sup>220</sup> Article 24 also introduced the requirement of recycling urban waste.<sup>221</sup>

There have been developments in specific food-related acts as well. Among others, the Salt Act was adopted by the Supreme People’s Assembly Standing Committee, Decree No. 255, on December 10, 2014.<sup>222</sup> According to Article 1 of the Act, the purpose of the Salt Act is to establish salt fields and build strict rules and orders for salt production and supply in order to guarantee and appropriately meet salt demand and improve the people’s living standards.<sup>223</sup> The Salt Act also includes provisions related to the principle of constructing salt fields (Article 4), the principle of salt production (Article 4), the principle of supply and use of salt (Article 5), the principles of strengthening research and technical training for talented people (Article 6), and international cooperation (Article 7).<sup>224</sup> Article 28 further requires strict quality inspection for salt produced. Article 22 (planning of salt production) and Article 34 (planning of salt demand) stipulate the

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<sup>217</sup> *Id.* at 104.

<sup>218</sup> *Id.* at 106. As one of the many examples, Daedong River is known to be used to produce Daedong River Beer.

<sup>219</sup> Korean National Police University Research Business Foundation, *supra* note 34, at 104.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.* at 80.

<sup>223</sup> *Id.* at 81.

<sup>224</sup> *Id.*

State's control of the planning, and any salt supplier must supply according to the plan and the salt supply agreement.<sup>225</sup>

In considering the scope of a potential food safety law in the country, it is important to note that North Korea remains focused on the production of basic foods and children's food products, such as corn, barley, soybeans, wheat, and soy sauce made from corn and soybeans.<sup>226</sup> Other food, such as snacks, are considered to be important as well and have often been rationed on important national holidays.<sup>227</sup>

However, since the 1990s, as the food ration system ended, private individuals have also begun selling these food products. As mentioned earlier, in marketplaces that exist around North Korea today, it is easy to see all kinds of food products, beverages, and liquors that have been homemade. It is now found that the variety and quantity of these homemade food products have surpassed those produced by the State.<sup>228</sup> Food safety law will cover all production activities,<sup>229</sup> which may include not only the State but also private activities for this reason. Taking into consideration the developments being made in different aspects by both the State and the public, it would be reasonable to predict comprehensive food safety law in the future.

### ***B. Reforms in the Governance Structure***

Reforms in the governance structure have increasingly been evaluated as a tendency to balance "government efficiency" against "individual [private] rights when it comes to a society transitioning into a rule of law society."<sup>230</sup> At one end, this results in strengthened state control. At the other end, this is a movement to reconfigure the governance system with increased predictability and transparency.

Indeed, the State has placed more focus on controlling distribution means.<sup>231</sup> Article 44 (distribution of settlement of farms) newly specified that the distribution method be based on distribution in kind

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<sup>225</sup> *Id.*

<sup>226</sup> Hui, *supra* note 72, at 99.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.* at 10.

<sup>229</sup> See Jiang & Zhu, *supra* note 27, at 41.

<sup>230</sup> RANDALL P. PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW 53–54 (2002).

<sup>231</sup> For example, in 2012, Article 44 (distribution of settlement of farms), Article 48 (purchase of farm production), and Article 53 (condition guarantee of farm business) were revised. Korean National Police University Research Business Foundation, *supra* note 34, at 82.

supplemented by cash distribution. Prior to 2012, Article 48 (Agricultural Products) stipulated that agricultural products, such as seeds, food, and livestock, must be purchased by the State with the exception of a limited amount to be used for planting, food, and livestock feed. In the 2012 revision, however, Article 48 was rewritten to include a product purchasing plan and to keep the remaining product for distribution for farmers, seeds, livestock feed, and other situations.<sup>232</sup> However, as part of its efforts to increase predictability and transparency and to tackle inconsistencies among different laws, the Republican Legislation Act was adopted in 2012. From Kim Jong Un's perspective, ensuring that the law serves its intended purposes may be a priority. It is important to clarify the hierarchy, validity, and scope of all different laws and regulations.<sup>233</sup>

At the same time, further centralization of government agencies and personnel in charge is likely to take place. This pattern is neither new nor unique in North Korea from the perspective of a food safety scholar, as agencies merging to create one monitoring agency has been a trend in many other parts of the world as well.<sup>234</sup> In an ideal world, a grouping of agencies and shared jurisdictions would mean collaboration and reinforcement of each other's roles in the system as a whole. Simply put, multiple ministries, departments, and bureaus working on an identical task may raise hopes for collaborative enforcement, implementation, and supervision of rules and laws. In reality, however, a common agency coordination problem arises in which people are left with confusion due to a lack of clear jurisdictional boundaries. This was also one of the identified reasons for the melamine crisis in China, and there has been a constant movement toward centralization of overlapping agencies.<sup>235</sup>

This is primarily because jurisdictional overlap comes at a cost. It results in under-regulation or lack of regulation at the implementation stage for reasons that include (1) a lack of incentive to motivate a single agency to take a heavier responsibility because it does not get blamed for failing to take actions and (2) an inability to fully understand the

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<sup>232</sup> *Id.*

<sup>233</sup> *See id.* at 21.

<sup>234</sup> *See* FOOD SAFETY IN CHINA: SCIENCE, TECHNOLOGY, MANAGEMENT AND REGULATION 1, 8 (Joseph J. Jen & Junshi Chen eds., 2017).

<sup>235</sup> *See* Yi Seul Kim, *Who Banned My Cheese? Is China's 2018 Cabinet Restructuring Enough?*, 1 INT'L TRADE L. & REG. 7 (2019).

regulatory scheme as a whole.<sup>236</sup> Jurisdictional boundaries are fuzzy and ambiguous to an extent that it is difficult to pinpoint the origin of a food safety problem. To make matters worse, the cost of having ambiguous jurisdictional boundaries does not stop there, as “duplicative monitoring and enforcement costs” continue to accumulate with time.<sup>237</sup> While it may take time to centralize agencies, as this often comes after a public outcry on food safety, it would be important to take a holistic point of view for further centralization and distinguish agencies based on their primary and secondary roles. As Lee wrote, “[E]ach regulatory agency’s agenda should be guided by a narrowly defined core mission, which often covers only a subset of the agency’s collective statutory duties.”<sup>238</sup> This idea is plausible if we consider that agencies are a part of the entire system under the supervision of the Korean Workers Party. Political power and dominance when determining structures in regulatory policy can be harmful.<sup>239</sup> Scholars argue that it would be desirable for agencies to collaborate, especially when doing so maximizes “the purported strengths of shared regulatory space.”<sup>240</sup> Understanding such strengths when discussing standard reform procedures is critical.<sup>241</sup>

### ***C. Growing Public Participation and Market Economy***

Scholarship suggests that China’s introduction of “market economic development” induced a rule-of-law governance system.<sup>242</sup> Free markets returned as a forum for private participation in the late

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<sup>236</sup> See William W. Buzbee, *Recognizing the Regulatory Commons: A Theory of Regulatory Gaps*, 89 IOWA L. REV. 1, 6–7, 22–33 (2003).

<sup>237</sup> Jacob E. Gersen, *Overlapping and Underlapping Jurisdiction in Administrative Law*, 2006 SUP. CT. REV. 201, 214; Andrew B. Whitford, *Adapting Agencies: Competition, Imitation, and Punishment in the Design of Bureaucratic Performance*, in *POLITICS, POLICY, AND ORGANIZATIONS: FRONTIERS IN THE SCIENTIFIC STUDY OF BUREAUCRACY* 160 (George A. Krause & Kenneth J. Meier eds., 2003); Buzbee, *supra* note 236, at 6–7, 22–33.

<sup>238</sup> Yoon-Ho Alex Lee, *Beyond Agency Core Mission*, 68 ADMIN. L. REV. 551, 554 (2016).

<sup>239</sup> See generally DAVID E. LEWIS, *PRESIDENTS AND THE POLITICS OF AGENCY DESIGN: POLITICAL INSULATION IN THE UNITED STATES GOVERNMENT BUREAUCRACY, 1946–1997* (2003).

<sup>240</sup> Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, 125 HARV. L. REV. 1131, 1137 (2012).

<sup>241</sup> *Id.*

<sup>242</sup> Jiang & Zhu, *supra* note 27, at 38.

1970s.<sup>243</sup> In 1977, they made an appearance in the countryside and emerged in the cities two years later.<sup>244</sup> Similar results may be seen in North Korea. In fact, this has already been witnessed.

The idea that China's rule-of-law developmental stage stemmed from a market economy originates from the East Asian development model.<sup>245</sup> According to the model, the state initiates a state-led economic reform by recognizing limited civil law rights, such as the right to enter contracts and consumer rights.<sup>246</sup> While the state does not grant people political rights or collective rights, it does invest in education and institutional developments.<sup>247</sup> Once this takes place, the government takes a strong stance in defending its political power. However, the government would have greater difficulty in controlling the people as they would be more educated, well informed, and able to take steps toward calling for a rule of law.<sup>248</sup> In North Korea, decision-making processes may become increasingly driven by financial gains and profits.<sup>249</sup>

It is possible to see this movement as early as the 1992 Constitution. Article 37 of the 1992 Constitution then stated that "[t]he State shall encourage institutions, enterprises, and organizations in our country to joint ventures and cooperation of enterprise with foreign corporations and individuals."<sup>250</sup> In what may seem like a liberal move aimed at economic development, the constitutional amendments encouraged investment and cooperation with foreign entities. However, in 1998, the Article was amended to limit such activity to "a special economic zone."<sup>251</sup>

As the governing law for all foreign investments in the country, the Foreign Investment Law is understood to principally govern the Rajin-

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<sup>243</sup> See Kam Wing Chan, *Post-Mao China: A Two-Class Urban Society in the Making*, 20 INT'L J. URBAN & REGIONAL RES. 134, 134 (1996).

<sup>244</sup> *Id.*

<sup>245</sup> See generally Paul W. Kuznets, *An East Asian Model of Economic Development: Japan, Taiwan, and South Korea*, 36 ECON. DEV. & CULTURAL CHANGE 11 (1988).

<sup>246</sup> Hualing Fu, *Building Judicial Integrity in China*, 39 HASTINGS INT'L & COMP. L. REV. 167, 172 (2016).

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> See Jiang & Zhu, *supra* note 27, at 48.

<sup>250</sup> Eric Yong-Joong Lee, *The Special Economic Zones and North Korean Economic Reformation with Viewpoint of International Law*, 27 FORDHAM INT'L L.J. 1343, 1354 (2003).

<sup>251</sup> *Id.*

Sonbong Free Economic and Trade Zone.<sup>252</sup> A careful read of the Foreign Investment Law also backs the State's intention to carefully select the Zone. In scholarship, the Rajin-Sonbong Free Economic and Trade Zone area is regarded as a testing ground for the State to experiment with socialist capitalism while maintaining caution against recognition of progressive economic and legal reforms.<sup>253</sup> It is, simply put, the experimental ground for conflicts between the *juche* and the capitalist systems. The implementing regulations additionally stipulate that any sale of goods is to be supervised and managed by the respective administrative authority.<sup>254</sup> Thus, the government is increasing its control and oversight over emerging forms of trade and investment arrangements.

### CONCLUSION

This Article did not aim to mechanically predict the number of years the State needed to mature into a society with a fully functioning food safety governance system. Rather, it aimed to provide a general review of the North Korean food safety situation and its governance structure, and then anticipate changes to occur as the country becomes subject to the internal dynamics within the food safety regime. It becomes possible to argue that blindly insisting on equal treatment and absolute transparency might not be ideal or feasible in the North Korean political framework; questions such as whether a rule of law is a prerequisite to safe food must also be addressed in a separate sequel piece of study. And, if so, determining what relationship these two concepts have would also be an important study particularly because the food safety regime in North Korea is under-studied and under-discussed. Indeed, further research may find that an identified pattern between the two concepts does not even exist. This Article aimed to lay the groundwork for all these following questions and to find that there certainly is a positive struggle and tension between food safety and the rule of law. In further understanding changes in the food safety regime, the discussion of different definitions of rule of law and rule of man would be important.

Having looked into some of the legal reforms that have taken place in the past few decades, it most likely seems that the juxtaposition of

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<sup>252</sup> Sang-Jick Yoon, *Critical Issues on the Foreign Investment Laws of North Korea for Foreign Investors*, 15 WIS. INT'L L.J. 325, 328 (1997).

<sup>253</sup> *Id.* at 331.

<sup>254</sup> *Id.*

food safety and food safety law will slowly transfer the country to a rule of law in the food safety regime. Kim Jong Un is often compared to his father and his grandfather and was in a politically fragile state when he became leader. In actively pursuing and ensuring stability, it is often perceived that he focuses on improving the legal framework and clarifying the relationships among different bodies of law to ensure enforcement.<sup>255</sup> This will most likely continue as the process of building predictability, stability, and transparency in drafting and enforcing laws is recognized as the engine behind certain societal developments. This, in turn, will also result in bringing in paradigm shifts, including food safety regimes as well. This is what China tells us based on its past experience and what it continues to witness today.<sup>256</sup>

What does it mean to have safe food? It would be irresponsible to leave this question unanswered, and a persistent observation of the child playing with building blocks will allow us to discover the implications of a nonarbitrary and stable food safety system. Creating administrative procedures that comply with the law, developing transparent law and decision-making processes, opening up both domestically and internationally, and raising awareness are all important tasks that the State should look into studying. While deification of the Kim family will most likely continue as a primary political objective, it is still likely that the government will delve into problems of structural and societal segmentation and raise public participation in the near future as it continues to realize that a well-established and a stable legal food safety policy is critical. It will be very difficult for the government to ignore when food safety accidents occur and when people become increasingly aware of regulatory failures.

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<sup>255</sup> Korean National Police University Research Business Foundation, *supra* note 34, at 116–17.

<sup>256</sup> See Snyder & Kim, *supra* note 180.