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The Legal Development of the Environmental Policy in the Democratic People's Republic of Korea

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Abstract

Credited with transforming North Korea into a green and livable people's land due to his environmental vision, Kim Il Sung often pointed out serious environmental degradation, such as air pollution in industrial cities, water pollution, and deforestation. Eventually, the leadership turned to laws for better implementation of environmental protection. In explaining this law-making process, this Essay first discusses the understanding and interpretation of the environment in the DPRK. It is critical to discuss North Korean leaders' perceptions of the environment because their interpretation precedes the decisions and laws of the Cabinet and the Korean Workers' Party. After discussing the failings of environmental policy statements, this Essay charts the development of DPRK environmental law, beginning with the Land Law of 1977 and the Environmental Protection Law of 1986. It moves on to cover subsequent major environmental legislation like the Forest Law, the amended Environmental Protection Law, and the Law on National Land Planning along with a brief synopsis of environmental provisions found in foreign investment laws. Unfortunately, it is not possible to analyze the reality of legal enforcement of these environmental laws since no quantitative and qualitative data on this subject are available. Nevertheless, the legal texts are worth exploring to gain a clearer understanding of the policy intentions of the DPRK leadership in environmental governance. This Essay concludes that DPRK environmental law developed as a response to a combination of factors: the inefficacy of environmental policy statements alone, the worsening of environmental conditions, and the new legal priority of the DPRK leadership under the 1992 Constitution to perfect the socialist legal system.

THE LEGAL DEVELOPMENT OF THE ENVIRONMENTAL POLICY IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

*Sangmin Nam**

INTRODUCTION

The flood disaster of 1995-1996 in the Democratic People's Republic of Korea ("DPRK") drove several million people to survival's edge. Though flooding by heavy rainfall is essentially a natural phenomenon, mismanagement of land and deforestation further generated tremendous social and economic costs. Overexploitation of hilly lands and the diminishing buffer capacity of the environment around human settlements against natural impacts caused serious landslides, resulting in the major loss of human lives as well as in grains and agricultural lands.¹ The disaster subsequently exacerbated the existing famine caused in part by the lack of the country's capacity to produce and buy food from the international market.

The flood's impact on society magnified not only the relationship between land management and socioeconomic cost in the DPRK, but also the gap between political statements on environmental protection and the reality. Policy directives of leaders Kim Il Sung and his son, Kim Jeong Il, guided environmental protection in the DPRK until the mid-1980s. Environmental protection was a socialist duty, but Kim Il Sung himself admitted that the Korean Worker's Party, enterprises, and people did not respond appropriately to his environmental policy mandates.² Credited with transforming North Korea into a green and livable people's land due to his environmental vision, Kim Il Sung often pointed out serious environmental degradation, such as air pol-

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1. According to a report of the Food and Agriculture Organization ("FAO") of the United Nations and the World Food Program, about 90,000 hectares of rice paddy areas were buried under large deposits of sand and debris as of 1996. *Special Alert No. 267: Democratic People's Republic of Korea*, U.N. FAO, FA 4/50 Korea DPR (1996).

2. KIM IL SUNG, JAYENBOHO SAUPEUL GANGHWAHALDE DAEHAYE [ON STRENGTHENING NATURE PROTECTION WORKS] 392 (1993). This publication is the collection of Kim Il Sung's fifty circulars and writings on the environment, issued from 1943 to 1989.

lution in industrial cities, water pollution, and deforestation.³ Eventually, the leadership turned to laws for better implementation of environmental protection.

In explaining this law-making process, this Essay first discusses the understanding and interpretation of the environment in the DPRK. It is critical to discuss North Korean leaders' perceptions of the environment because their interpretation precedes the decisions and laws of the Cabinet and the Korean Workers' Party. After discussing the failings of environmental policy statements, this Essay charts the development of DPRK environmental law, beginning with the Land Law of 1977 and the Environmental Protection Law of 1986. It moves on to cover subsequent major environmental legislation like the Forest Law, the amended Environmental Protection Law, and the Law on National Land Planning along with a brief synopsis of environmental provisions found in foreign investment laws. Unfortunately, it is not possible to analyze the reality of legal enforcement of these environmental laws since no quantitative and qualitative data on this subject are available. Nevertheless, the legal texts are worth exploring to gain a clearer understanding of the policy intentions of the DPRK leadership in environmental governance. This Essay concludes that DPRK environmental law developed as a response to a combination of factors: the inefficacy of environmental policy statements alone, the worsening of environmental conditions, and the new legal priority of the DPRK leadership under the 1992 Constitution to perfect the socialist legal system.

I. THE ENVIRONMENT IN THE CONTEXT OF JUCHE IDEOLOGY

The North Korean leadership sees environmental problems in the context of socio-political systems and explains pollution as a serious problem that arises in capitalist systems where a few members of the exploiting class hold national sovereignty and production means at the expense of others.⁴ In their view, capitalists only pursue maximum profits and are not interested in investing in pollution preventive measures. Furthermore, capi-

3. KI-WOONG SON, *BUKHAN HWANKYUNG MOONHWA YEONGU* [STUDY OF THE ENVIRONMENTAL CULTURE OF NORTH KOREA] 165-80 (1995).

4. KIM IL SUNG, *supra* note 2, at 395.

talists do not care if they destroy the natural environment and build polluting factories.⁵ Thus, the only way to solve environmental problems is to revolutionize the capitalist system toward communism, which serves people's interests. According to Kim Il Sung, providing people with a natural environment in which they can enjoy an "independent and creative life," a key concept of North Korean ruling *Juche* ideology, is a communist responsibility.⁶

Just as *Juche* ideology is applied to most arenas of North Korean studies, it is also an essential concept to understand the North Korean government's interpretation of the environment. *Juche* ideology fundamentally regards people as the subject of history with a belief that people can create their own destinies by their own independence, creativity, and consciousness. Formally, the ideology first appeared at a party propaganda assembly in 1955 and in the 1972 Constitution. The 1972 Constitution defines *Juche* ideology as the creative application of Marxist-Leninism to the realities of life in the DPRK.⁷ It then became the only ruling ideology of the DPRK by the adoption of the new Constitution in 1992, which removed the term "Marxist-Leninist ideology" from the definition of *Juche*. The 1992 Constitution states that *Juche* is "a people-centered world-view and the revolutionary ideology to realize the independence of the masses of people."⁸ Furthermore, the revised Constitution of 1998 adds in the Preamble that Kim Il Sung created the "forever-living *Juche* ideology." Notwithstanding the constitutional upgrading of the status of *Juche*, this ideology has underpinned the rule of the DPRK regime, particularly after the collapse of the Soviet bloc, by enabling the regime to distinguish itself from former socialist countries.

Juche, a very anthropocentric philosophy, places the human at the center of everything and requires that everything serve humans. Thus, Kim Il Sung said, "Communists should also be able to conquer nature and harness it efficiently."⁹ Kim Il Sung

5. Ahn Cheon-hoon, *Hwankyung Bohobupeun Sahojijijedoeui Wooweolsungeul Guhyunhan Beobjeon* [Environmental Protection Law as a Revolutionary Law that Embodies the Superiority of Socialism], 7 GEONROJA [WORKERS] 21 (1986).

6. KIM IL SUNG, *supra* note 2, at 393.

7. N. KOREA CONST. art. 4 (amended 1972) [hereinafter 1972 CONST.].

8. N. KOREA CONST. art. 3 (amended 1992) [hereinafter 1992 CONST.].

9. KIM IL SUNG, *supra* note 2, at 363.

believed this was a revolutionary mission of communists, to change nature by combating the very fetters caused by it. Therefore, the Korean Workers' Party must strive to conquer nature, making it and society better for humans who are the center of the world. The first law relevant to the environment, the Land Law of 1977, also spells out the following in Article 5: "Under the overall construction plan of national land, the [N]ation shall systemically organize and undertake programs aiming to conquer nature by altering the national land through land protection, land construction programs, etc."¹⁰

Eighty percent of North Korean territory is mountainous terrain, while soil conditions, based on granite and gneiss, are not favorable for high agricultural productivity.¹¹ Due to the overexploitation of forest resources during the Japanese occupation and heavy bombing by American air forces during the Korean War, forest resources were not well stocked in the early stage of the North Korean regime. Considering the extremely poor conditions for survival, the leadership mobilized the public under the slogan of changing the national land. This campaign was also a means to legitimize the leadership of Kim Il Sung, who had helped Koreans regain their land from the Japanese by militarized struggle. For example, it was said that even during his guerrilla fighting against the Japanese colonial regime, he tried to take care of each head of tree and plant as he planned to make the land green again.¹² Against this backdrop, the DPRK leadership has continuously underscored the importance of land management and considers its proper implementation a patriotic duty.

Kim Jeong Il has also perceived land management as an embodiment of *Juche* since he attributes "the successful construction of a socialist country" to national land management. For symbolic value, he said that, after the independence from the Japanese colonial regime, land management began with the improvement of the Botong River, which flows through the capital of Pyongyang. Although successful construction entailed social upheaval and struggles against internal and external adversary

10. Land Law Act of 1977, art. 5 (N. Korea).

11. Im Sang-cheol, *Saingjon Jeonryakeui Darakbat Geonsul* [*The Construction of Terraced Fields as Survival Strategy*], BUKHAN [NORTH KOREA], Jan. 1995, at 68-75.

12. SON, *supra* note 3, at 116.

classes, the country was able to create "a people's utopia by having proliferated arable lands and forests, useful animals, plants and fishery resources."¹³ Even before assuming his father's leadership, Kim Jeong Il portrayed himself as a visionary leader for environmental protection. Since the 1980s, he has called for the development of environmental science and technology to mitigate air and water pollution, and the establishment of strict laws and regulations based on existing realities. His focus on the important role of science and technology meant that environmental management required a more systemic response than mere public campaigns. In the Circular on the Strengthening and Improvement of Land Management Program in 1984, he underlined land management as a key socialist mission. He also guided the enactment of the Environmental Protection Law in 1986.¹⁴

One prominent example of the DPRK regime's respect for the environment is the creation of extensive forms of nature reserves. In 1959, the Order of the Cabinet Standing Committee adopted the initial policy of creating nature reserves of various types (game, landscape, marine resources, nature, seabirds, and vegetation). That same year, North Korea established four nature reserves and four seabird reserves under the Decision of the Cabinet on the Protection of Useful Animals and Plants. Since then, the DPRK has established sixty-three reserves.¹⁵ On the basis of this policy, the North Korean government claims that North Koreans are living in park-like lands due to the environmental protection policy of the Republic, explaining that this was possible not only due to socialism but because of *Juche*.¹⁶

Though North Korea has benefited from the creation of nature reserves, the very people-centered ideology with a focus on the conquest of nature has acted as a major source of environmental disaster. To promote agricultural productivity, the North Korean government has actively promoted terraced field con-

13. *Id.* at 115.

14. *Id.* at 139.

15. The reserves are classified into one biosphere reserve, five nature reserves, eight game reserves, ten botanical reserves, six seabird reserves, eight wetland reserves, four marine resource reserves, thirteen landscape reserves. DPRK, Implementation Progress of the Convention on Biological Diversity in DPRK (2002) (a report presented at the 4th Conference on Protected Areas of East Asia, organized by the IUCN (The World Conservation Union)).

16. SON, *supra* note 3, at 116-19.

struction since 1976. The policy turned extremely steep hills and mountains into farm fields, resulting in deforestation, which subsequently caused serious soil erosion, landslides under heavy rainfall, and lack of wood for heating fuel. Terraced field construction became a major contributor to environmental and human tragedy because of the flooding it allowed in the mid-1990s. Earlier, Kim Il Sung had admitted the negative results of the policy stating, "We might need to stop the plan of cutting trees and developing terraced fields. . . . It would cause a lot of lands to be useless."¹⁷ His prediction proved true, but it was too late to reverse the adverse environmental consequences that derived from the initial belief and policy to conquer and transform nature.

II. ENVIRONMENTAL GOVERNANCE OF THE PEOPLE'S LAND

A. *Environmental Protection by Mandate*

Until the mid-1980s, environmental management was undertaken without formal law, but by Cabinet orders and decisions, and in particular, through the statements of Kim Il Sung. To build a socialist country based on *Juche* ideology, what the DPRK needed was not a legal system exercising *ex post* functions against breaching actions, but preliminary instruction and campaigns guiding people on socialist norms and rules. Thus, the DPRK employed the term "socialist law-abiding life," which demands people to possess revolutionary law-abiding dignity, respect law-abiding culture, and undertake ideological struggles.¹⁸ These are the main precepts guiding people to act in accordance with the Party's goals and policies. Since the statements and instructions of the leader as well as the Party are what people must follow, the existence of laws themselves was not viewed as extremely critical in building a socialist country.

After independence from the Japanese colonial regime and the Korean War, Kim Il Sung emphasized the importance of afforestation, pointing out the seriousness of overly extensive logging and defining forest protection as a patriotic act. He called for an active educational program for the public on the importance of forests and a strict implementation of anti-logging and

17. KIM IL SUNG, *supra* note 2, at 416.

18. Chong-Ko Choi, *Changes and Prospective of North Korean Law*, in NORTH KOREAN LAW: ITS 50 YEARS AND RECENT DEVELOPMENT 342 (Jang-Hie Lee ed., 1999).

deforestation policies, and also directed that the expansion of arable lands should avoid the destruction of forest areas.¹⁹ As North Korea adopted the economic policy of heavy industrialization during the early 1970s, environmental problems worsened. Thus, Kim Il Sung, in *Several Tasks to Develop Science and Technology of Our Nation*, criticized industries and factories for "discharging toxic pollution into rivers even though the Korean Workers' Party put great emphasis on pollution prevention."²⁰ He interpreted this issue as a systemic problem of the Party's authority, and in turn demanded more ideological training.²¹ In addition, he demanded new factories to set up environmental measures prior to construction, and existing factories to install treatment measures for toxic pollution. Also concerned about the destruction of fish resources due to oil spill accidents in the sea, Kim Il Sung demanded a more coordinated environmental policy in 1973. By First Order of the President, Kim Il Sung insisted on promoting policies for natural resources protection: protecting forest resources, useful plants and animals, and lands; designating new nature reserves, specific animal and vegetation protection areas; preventing the discharge of toxic materials into the environment; promoting scientific research to protect nature and prevent pollution; promoting public educational campaign on natural resource protection; and creating specific measures to implement these tasks.²² His policy directives alone, however, were not adequate to stem environmental degradation.

B. *Building the Legal Basis for Environmental Protection*

1. The Birth of Environmental Law: Mid-1970s - Mid-1980s

a. The Land Law of 1977

Though statements by Kim Il Sung and Kim Jeong Il gave high national priority to environmental protection, the actual situation was very different. To systemize environmental protection and land management, the DPRK finally adopted the Land

19. KIM IL SUNG, 3 KIM IL SUNG JEOJAKJIB [3 THE COLLECTION OF KIM IL SUNG'S WRITINGS] 202-07 (1979).

20. KIM IL SUNG, *supra* note 2, at 191.

21. KIM IL SUNG, 18 KIM IL SUNG JEOJAKJIB [18 THE COLLECTION OF KIM IL SUNG'S WRITINGS] 168 (1982).

22. KIM IL SUNG, 27 KIM IL SUNG JEOJAKJIB [27 THE COLLECTION OF KIM IL SUNG'S WRITINGS] 521-23 (1984).

Law of 1977. The Land Law was a result of the Five-Year Plan of Land Reconstruction introduced in 1976 to coordinate policies on land development and management. The Plan included projects on irrigation, land arrangement and improvement, terraced field construction, forest and river management for preventing flood damages, and tidal flat reclamation. At the Fifth Conference of the Fifth Supreme People's Assembly on April 29, 1977, Kim Il Sung explained that the new law was necessary to coordinate different forms of land planning efficiently as well as to promote land protection and management. Though various regulations regarding land use and planning existed, they were not sufficient to respond to environmental issues. In addition, after the revision of the Constitution in 1972, North Korea tried to develop laws for each socioeconomic sector, and the Land Law was an important outcome of the legal development plan.²³

The Land Law is the first environmental law of the DPRK, as it concentrates on land development, pollution and forest management. Recognizing that the land of the DPRK is a noble acquisition from the revolution, and the basic foundation and national wealth for the prosperity of people and future generations, the first chapters call for efficient management of land with zoning plans²⁴ and an overall construction plan for the national land. Other chapters are classified into land ownership, the overall land construction plan, land protection, land construction, and land management. Thus, articles on environmental protection are embedded in each chapter rather than contained in a separate chapter.

Articles on environmental protection mainly deal with forest issues, because, as defined under Article 30, North Korea perceives "forest construction work" as the greatest reconstruction effort on nature to insure the prosperity of the Nation and future generations.²⁵ The Land Law under Article 17 directs the overall plan for national land construction to include measures on protecting forests, and useful animals and plants. Detailed

23. KIM IL SUNG, 32 KIM IL SUNG JEOJAKJIB [32 THE COLLECTION OF KIM IL SUNG'S WRITINGS] 209-10 (1986).

24. The zoning categorizes land into six areas: agricultural, forest, industrial, residential, special, and watershed. Special area refers to cultural sites, military areas, nature reserves, and revolutionary sites.

25. Land Law Act, art. 30 (N. Korea).

provisions for forest management include:²⁶ the State's duty for forest construction work; the classification of forests into different usages based on socioeconomic value; the need for mass campaigns to green mountains; the promotion of forestry resources and sustainable use of timber resources; the conservation of specially protected forests around revolutionary spots and in nature reserves; and the protection of forests from fires and harmful insects. While the Land Law allocates over ten articles to detail forest management, other environmental issues are very briefly mentioned. For example, only one provision addresses pollution prevention by prohibiting the discharge of toxic materials, polluted water, and wastes into rivers and lakes.

b. The Environmental Protection Law of 1986

Since the early 1980s, North Korea became more proactive in developing legal bases for environmental protection by inserting environmental norms in non-environmental laws and adopting the Environmental Protection Law ("EPL"). The People's Health Law, adopted in 1980, was the first to incorporate environmental norms into its text. Article 21 states that: "the [S]tate shall prevent pollution problems in all sections of peoples' economy in order to protect living environment. Factories, industries and organizations concerned shall build up extensive green space and street trees in order that several toxic gases and materials do not contaminate air, river and land."²⁷

Because an independent environmental law did not yet exist, this Article was a unique legal expression on pollution prevention. At the same time, it was no more than a recommendation, as specific environmental standards were not established.

The EPL was adopted at the Fifth Conference of the Supreme People's Assembly in 1986. The adoption of the law was based on the need for "scientific response" to environmental problems. Efforts to resolve environmental issues by policy and mass campaigns were failing. In particular, environmental issues such as industrial pollution in heavy industrial cities, waste-water treatment, and deforestation caused by inappropriate forestry management became an important policy agenda requiring systemic coordination among governmental agencies. In other

26. *Id.* at ch. 4, arts. 30-40 (1977).

27. People's Health Law, art. 21 (N. Korea).

words, a more institutionalized system for environmental protection was required. North Korean leaders also perceived the arising phenomenon of green movements and politics in Western countries, and new environmental initiatives of international organizations.²⁸ With these considerations in mind, in 1984 Kim Jeong Il wanted to formalize legal norms and regulations on environmental protection in order to meet changing socio-economic conditions, and thus initiated the creation of the Environmental Protection Law.²⁹ Whether the 1986 EPL was truly effective is questionable since it was not supported by specific enforcement regulations until the late 1990s, but a look at some of its original provisions indicates the degree to which the North Korean leadership took environmental protection seriously.

The 1986 EPL consists of fifty-two articles grouped into five chapters. The first chapter outlines the fundamental principles of environmental protection. On the basis of socialism and *Juche* ideology, Articles 1 and 2 define environmental protection as a means to provide people with "an environment for leading an independent and creative life" and a process in "building socialism and communism."³⁰ In addition, the law defines voluntary participation in environmental protection as socialist patriotism, the State's role then being to intensify people's education to undertake this noble duty. The first chapter also describes ways to modernize environmental protection, emphasizing the improvement of scientific research and technical means, and, in that context, encouraging environmental cooperation with amicable foreign countries. Article 7 also underlines North Korea's free-nuclear and chemical weapons policy as prohibiting the "development, testing and use of nuclear and chemical weapons and prevent damages to the environment." It clarifies the country's will to fight against the presence of nuclear weapons on the Korean peninsula and in the surrounding area, which targets the deployment of U.S. nuclear weapons in and around South Korea.

Chapter 2 details the importance of and approaches for preservation and improvement of the natural environment. Re-

28. KIM, IL SUNG, *supra* note 2, at 392-405.

29. SON, *supra* note 3, at 138.

30. Environmental Protection Law, ch. 1, arts. 1-2 (1986) (N. Korea) [hereinafter EPL].

flecting the 1959 Cabinet Decision on nature reserves, Article 11 also sets up a legal basis for their existence. The law also describes the responsibilities of authorities and people to protect animals and plants, valuable scenery, groundwater, and parks. In particular, it urges authorities and people to protect native or rare animals, which shall not be caught without permission from the relevant environmental organs.

Chapter 3 on the prevention of environmental pollution covers guidelines for preventing air, water, and marine pollution, as well as damage from pesticides and radioactive materials. For air pollution regulation, technical methods to prevent pollution from factories, vehicles and residential areas are described. The law also pays considerable attention to marine pollution by setting up relatively specific guidelines for the management of waste and oil residue from ships, and tasks of marine affairs control agencies. To prevent pollution, the law also includes import restrictions on harmful pesticides, polluted foods, animal feed, and equipment containing toxic substances.

Chapter 4 on the guidance and management of environmental protection explains administrative enforcement of the EPL. Authorities are given two roles, organizational direction and supervision, while a non-standing environmental protection committee must be created to act as a catalyst for "the unified direction of the Cabinet."³¹ However, given the non-standing status of this committee, supervisory work on environmental compliance remained largely in the hands of individual agencies. Under this condition, the main administrative approach to environmental protection still prioritized land planning over pollution control.

The final chapter on compensation and punishment for environmental damages covers the duty of polluters to pay, the right of victims to demand, and the duty of environmental authorities to arrange compensation. Victims can be individuals but also governmental authorities, enterprises, and organizations. In terms of punishment, the EPL targets both foreign and national actors' violation of environmental regulations. These would include environmental contamination by foreigners and foreign ships in the territory, while national actors can mean both individuals and governmental authorities. Additionally, fi-

31. EPL, ch. 4, art. 39.

nancial and administrative liabilities for their damage to the environment are defined.

The Criminal Law is also briefly worth mentioning since it was revised in 1987 after the adoption of the EPL to include a provision on punishment against breaching environmental regulations. Article 89 states that those who cause serious damage to people's lives or marine and agricultural resources by generating pollution, such as discharging harmful materials into rivers or farm fields or emitting toxic gases, shall be punished by up to two years of labor-education.

2. Consolidating Laws on the Environment: From the 1990s

a. Institutionalizing the Socialist Legal System and the Environment

Responding to political changes, North Korea underwent significant legal change from the late 1980s. To speed up the power transition from Kim Il Sung to Kim Jeong Il in the early 1990s, the ruling system had to be institutionalized on the basis of a more completed legal structure.³² This basis is found in the constitutional revision of 1992, which stipulates "the perfection of the socialist legal system and strengthening of the socialist law-abiding life."³³ While this provision would eventually demand the creation of a systemic legal system concerning the environment, the Constitution also includes a separate article on the environment. In the chapter on Culture, Article 57 specifies, "the [S]tate shall set up measures for environmental protection prior to production, preserve the natural environment, and prevent environmental pollution, to provide people with cultural and hygienic living environment and working conditions." Moreover, the first environmental organ, the National Environmental Protection Committee, was established in 1993 (as mandated by the 1986 EPL). The Department of National Land and Environment Protection later replaced the non-standing committee in 1995, making the Department the first environmental executive agency in North Korea.³⁴

32. Choi, *supra* note 18, at 326-27.

33. 1992 CONST. ch. 1, art. 18.

34. Before this restructure, the Department was the Bureau of National Land Management under the Social Security Department. According to Kim Jeong Il, sufficient human resources of the Social Security Department were not transferred to the Environmental Department, explaining the lack of capacity in environmental management.

North Korea's participation in multilateral and bilateral activities on environmental cooperation also influenced the institutionalization of the legal and administrative systems on environmental management, though minimally given North Korea's nominal attendance at international environmental conferences. Nevertheless, political statements from North Korea show that they are learning from international trends and discussions. In particular, the North Korean government desires financial and technical assistance in the environmental field from the international community. North Korea started participating in multilateral environmental meetings like the United Nations Conference on the Environment and Development and other various forums initiated by Northeast Asian countries like China, South Korea, and Japan. For example, North Korea participated in the creation of the Northwest Pacific Action Program, a Northeast Asian regional sea program coordinated by the United Nations Environment Program, and in the operation of a Northeast Asia Sub-regional Program for Environmental Cooperation under the auspices of the U.N. Economic and Social Commission of Asia and the Pacific. North Korea also adopted bilateral agreements for environmental cooperation with Russia in 1986 and China in 1992.³⁵

In conjunction with the creation of an administrative body and involvement in international environmental cooperation, the DPRK developed many new environmental laws or laws pertaining to the environment, including the Forest Law (1992), Underground Resource Law (1992), Urban Management Law (1993), Enforcement Regulations of the Environmental Protection Law (1995), Water Resource Protection Law (1997), Natural Area and Monument Protection Law (1997), Marine Pollution Prevention Law (1997), Useful Animal Protection Law (1998), Amendment of the Environmental Protection Law

KIM JEONG IL, 14 KIM JEONGIL SEONJIB [14 THE COLLECTION OF KIM JEONG IL'S WRITINGS] 207 (2000).

35. The DPRK participated in the formation process of the Northwest Pacific Action Plan between 1991 and 1993, but it has not attended meetings since the official inception in 1994. The Northeast Asia Sub-regional Program for Environmental Cooperation was created in 1993 to build a comprehensive regional environmental mechanism. It adopted energy and air pollution, ecosystem management, and capacity building as priority issues of regional cooperation. Nam Sangmin, *Ecological — Interdependence and Environmental Governance in Northeast Asia*, in *INTERNATIONAL ENVIRONMENTAL COOPERATION: POLITICS AND DIPLOMACY IN PACIFIC-ASIA* 176-79 (Paul Harris ed., 2003).

(1999), and National Land Planning Law (2002). In addition, new laws created to attract and manage foreign investment also included articles on environmental protection, such as the Joint Venture Law (1992), Foreign Investment Law (1993), Law on Free Economy and Trade Zone (1993, revised in 1999), Law on Sinuiju Special Administrative Region (2001), Law on Mt. Geumgang Tourism Zone (2002), and Law on Gaesung Industrial Zone (2002). Although North Korea adopted detailed enforcement regulations for the EPL in 1995, and the Forest Law and the Useful Animal Protection Law in 2000,³⁶ implying that further legal specifications were necessary to implement these laws, these texts are regrettably not available. Nonetheless, the contents of the amended Environmental Protection Law, Forest Law, Law on National Land Planning, and environmental provisions found in the foreign investment laws are informative in their own right and discussed in greater detail below.

b. Amendments to the Environmental Protection Law

The Supreme People's Assembly amended the Environmental Protection Law in 1999. The amended version is not much different from the former one in terms of structure and content, but some notable revisions were made with respect to sociopolitical context and the environmental management system. In sociopolitical terms, Chapter 5 on compensation and punishment for environmental damage was removed. Instead, articles from this chapter were absorbed into Chapter 4 on the guidance and management of environmental protection. Articles in the former version specified the duty of polluters to pay, the right of victims to demand, and the duty of environmental authorities to arrange compensation. These three articles on compensation were simply integrated into one weak statement that "the loss shall be duly compensated,"³⁷ making the people's right to get compensation passive. In fact, people's ownership is perceived in North Korea as an extra blessing from the State or socialistic distribution rule rather than a personal right.³⁸ Nevertheless, the setback of the liability policy opposes the positive trend of

36. *Regulation Related to Enforcement of Law on Protection Approved*, KOREA CENT. NEWS AGENCY, Feb. 9, 2000.

37. EPL, art. 47 (amended 1999).

38. JEONG-WON PARK, A STUDY ON SITUATION AND PROSPECT OF THE LEGISLATION IN KIM JEONG IL'S REGIME OF NORTH KOREA 55 (2002).

recognizing people's economic rights by the promulgation of the Civil Law in 1990 and subsequent revisions in 1993 and 1999.³⁹

Another notable revision is in Article 8 on international environmental cooperation with foreign countries. The prerequisite term "amicable" referring to foreign countries was removed in response to the changing atmosphere of North Korean external relations after the collapse of the Soviet Union. During the 1990s, North Korea tried to build favorable diplomatic relations with Western countries and to attract more overseas financial and technical assistance with respect to the environment.

The revision of the EPL also reflects some progress in the environmental management system. Under Article 42, the revision introduces the concept of environmental impact assessment by directing development projects to undertake technical tasks for the estimation of environmental effects before their approval by environmental organs.⁴⁰ The EPL also expands categories of protected areas, from nature reserves and special protected areas to botanical, forest, game, marine resource, nature, and special reserves. This detailed system already existed since the late 1950s, and thus the revision simply reflects the current realities and legalizes the existing reserve system.

c. Forest Law

Though 76% of North Korea is covered with forest, North Korea lacks enough forest resources to fulfill its domestic demands, mainly for heating fuels during the winter. Because intensive logging of the Japanese colonial regime caused extremely serious deforestation in Korea, the North Korean government adopted strict regulations on logging and forest protection with the Decision on Forest Management under the Provisional People's Committee in 1946, at the very beginning of Nation building. While the State had continuously adopted a number of Cabinet decisions on forest management focusing on afforestation since the 1950s, the first legal basis for the current system of forest management is the Land Law, as discussed earlier. As demand grew for an independent legal basis in the early

39. *Id.* at 70.

40. The term "Environmental Impact Assessment" formally appeared in the adoption of the Law on National Land Planning in 2002.

1990s, the Ninth Supreme People's Assembly adopted the Forest Law at its Fourth Conference in 1992. The socioeconomic impacts of deforestation, decrease in timber imports from the Russian Far East due to the Soviet collapse, and institutionalization of the legal system in the early 1990s combined led to the adoption of the Forest Law.⁴¹

The Forest Law consists of five chapters and forty-seven articles. Chapter 1 explains the aim and significance of the forest policy. The definition of "forest" as forestland, as well as animals and plants in the land, demonstrates a more ecosystem-inclusive approach as compared to the South Korean Forest Law, which limits forests to strictly trees and forestland. Defining the meaning of forest in the text also distinguishes the Forest Law from the EPL. Unlike environmental protection laws in other countries like China and South Korea, the North Korean EPL does not define the meaning and scope of "environment" in the text, but takes the term for granted. Additionally, forest is divided into five categories: economic, fuel wood, general protected, lumber, and special protected. This detailed categorization of forests is based on the Chinese system rather than the Russian system that North Korea used before, indicating both the changes in North Korean external relations and the systemization of forest management based on domestic demands.⁴² Furthermore, the law also seeks to mobilize people's participation in afforestation and to strengthen their patriotism and socialistic refinement.

Forest management is considered nature reconstruction work for the prosperity of the Nation as explained in Article 10 and also in the Land Law. Subsequently, Chapter 2 on afforestation stipulates the duties of and guidelines for authorities concerned in implementing afforestation work. Chapter 3 on forest protection draws specific guidelines to prevent damages from forest fire and harmful insects, while Chapter 4 on the use of forest resources outlines the requirements for permission to cut timbers. For example, the forestry authority must create a plan to rotate logging methods to utilize timber resources efficiently.

41. Byung-II Yu, *Bukhaneui Sanrim Beoprukwa Imeupjeongchaek Yengu* [North Korean Forest Legislation and Forestry Policy], 3 BUKHAN YENGU [3 NORTH KOREA STUDIES], 138-43 (1944).

42. *Id.* at 147.

The final chapter on the guidance and control of forest management directs the Cabinet and most governmental organs, including those on national planning, labor administration, and material supply, to undertake unified guidance for forest management to ensure adequate financial and human resources, as well as equipment for forest protection. Lastly, Article 47 applies administrative and criminal liability to activities causing forest damage.

Almost all regulations of the Forest Law target the issue of forestry rather than biodiversity. Few articles directly cover biodiversity issues. Article 27 directs authorities to prohibit hunting animals, collecting plants, and grazing livestock in even non-reserve forestland if animals and plants need to be protected. The next article urges authorities, enterprises, and people to protect useful animals and plants by creating good living conditions in the forest. The concept of "useful" contains both anthropogenic and ecological implications. According to the Useful Animal Protection Law adopted in 1998, useful animals refer to those native, rare or endangered animals that contribute to people's economic development, cultural life, health, and the scenery of the national land. Internationally protected animals are also included in the concept.⁴³ Furthermore, outward and inward flows of animals and plants are regulated by requiring authorities, enterprises, and people to obtain permission for carrying seeds and samples of animals and plants in and out of the country.

d. Law on National Land Planning

National plans are the North Korean government's main means of driving society towards socialist construction, and land planning is no exception. Although national land planning was significant in policy terms, it was given legal basis with the promulgation of the Law on National Land Planning in 2002, understood as "a unified and comprehensive planning on the management of national land, resource and the environment" under Article 2.⁴⁴ All environmental initiatives fall under the heading of national land planning as Article 5 describes the duty of the

43. The Useful Animal Protection Law supplements the limited description of the Forest Law on regulations for protecting wildlife animals.

44. Law on National Land Planning 2002, art. 2 (N. Korea).

"[S]tate to undertake land management, forest management, the construction of residential and industrial zones, road construction, resource development, and environmental protection strictly according to national land planning."⁴⁵

The Law on National Land Planning is important because it designates the Department of National Land and Environmental Protection as well as its provincial bureaus as the responsible authority for national land planning. This law provides central and provincial environmental authorities substantial power over other governmental agencies. For example, the law orders other agencies to meet requests for information and cooperation from environmental authorities, and demands environmental authorities to oversee the implementation of the national land plan. In this sense, this law plays a more important role than the EPL does by providing the Department of National Land and Environmental Protection and its local bureaus with a competitive status in relation to other departments in the socioeconomic sector. Additionally, the Supreme People's Assembly ratifies the drafted national land plan at the Cabinet's request, illustrating the high importance placed on it and the drafting role of the Department.

Another considerable contribution of this law to the environment is the inclusion of the term, "Environmental Impact Assessment ("EIA")," a centerpiece of environmental policies throughout the world. Although the concept of EIA appeared in the text of the revised EPL, this is the first North Korean law to use the term officially. Article 26 demands authorities, enterprises, and organizations that plan to develop resources or land construction to submit reports of site surveys and environmental impact assessment to environmental authorities, which then have the power to reject or permit the plan.

e. Laws on Foreign Investment and Their Regulations
on Environmental Management

The DPRK began to open its land to foreign investors in the early 1990s with the designation of the Rajin-Sunbong Economic and Trade Zone on its northern border with China and Russia. Since the early 2000s, the DPRK opened more areas to foreign and South Korean investors including: the Sinuiju Special Ad-

45. *Id.* art. 5.

ministrative Region ("SSAR"), the Gaesung Industrial Zone, and the Mt. Guemkang Tourism Zone. Each economic zone is created on the basis of its own legal framework and includes its own environmental guidelines. For zones specifically created for industrial purposes like Rajin-Sunbong, Sinuiju, and Gaesung, environmental provisions are brief and vague. Meanwhile, environmental regulations are necessarily stricter for Mt. Geumgang Tourism Zone to preserve its natural scenery. Basically, environmental regulations in each zone's law follow the same stipulation in Article 5 of the 1992 Joint Venture Law and Article 11 of the 1993 Foreign Investment Law that prohibits or restricts investment or economic activities that might damage people, animal, plant, and natural resources, or pollute the environment.

The laws for Rajin-Sunbong and Sinuiju present additional regulations. Both Article 29 of the Basic Law of the SSAR and Article 13 of the Law on Rajin-Sunbong direct the State to restrict "investment that harms the safety of the nation or the health of residents, lowers environmental protection or reduces competitive technology."⁴⁶ Article 41 of the SSAR Basic Law also demands that the SSAR "conserve and manage the natural environment, prevent environmental pollution, and provide residents with hygienic environment and working conditions." Compared to these laws, the Law on Mt. Guemkang Tourism Zone has more detailed statements on environmental protection. The first article stipulates that ecological tourism requires setting up strict systems and orders in development for Mt. Geumkang. Thus, Article 12 of the law states that:

[D]evelopers shall not cut ornamental plantation in tourist areas, damage natural scenic beauty such as pine trees on coastal edges, swimming beaches, cliffs of fantastic rocks, mountains with elegant and queer geographical features, and islands with beautiful scenery, natural monuments and scenic spots and places of historic interest such as caves, waterfalls, the ruins of castles, or construct buildings and facilities [that] hinder environmental protection, but shall comply with the standard of environmental protection such as defined emission standard of pollution, noise and vibration standards.⁴⁷

46. Basic Law of Sinuiju Special Administrative Region, art. 13 (2002) (N. Korea) [hereinafter Basic Law of SSAR]; Law on Rajin-Sunbong, art. 13 (1993) (N. Korea).

47. Law on Mt. Guemkang Tourism Zone, art. 12 (2002) (N. Korea).

For pollution prevention, Article 14 urges the Management Authority of the Tourism Zone to set up "environmental protection facilities and sanitary facilities such as modern facilities of purification, sedimentation and filth treatment, and purify or treat wastes so as not to obstruct environmental protection in the course of promoting tourism."⁴⁸

Though all the laws incorporate text on environmental protection, obscure standards, such as "harming the safety of the [N]ation," are used to judge the environmental implication of an investment project.⁴⁹ Given North Korea's desperate need for foreign investment and its poor socioeconomic abilities to operate a proper environmental infrastructure, the ambiguous provisions would allow lax compliance.

CONCLUSION

The DPRK has made considerable progress in developing environmental law in the past decade. The constitutional goal of perfecting the socialist legal system, the transfer and consolidation of power to Kim Jeong Il, and the collapse of the Communist bloc gave new priority to law. Meanwhile, environmental law had to be developed for both practical and institutional reasons. Worsening environmental conditions by industrial pollution and the ecological destruction by overexploitation of forest resources demanded a better institutional response.

Before the mid-1980s, teachings of Kim Il Sung based on *Juche* ideology primarily governed environmental protection. Environmental protection was a crucial means to realize the people-centered norm of *Juche*, and thus called a patriotic deed. However, policy directives alone were not effective in leading State organs and the people to surmount environmental problems. The DPRK needed more detailed written laws to cultivate the people's "socialist law-abiding life" with respect to environmental management.

Early environmental laws like the Land Law of 1977 and the Environmental Protection Law of 1986 did not amount to much more than legislative recommendations or detailed policy guidelines. As more environmental laws were promulgated and

48. *Id.* art. 14.

49. The term is employed in the Basic Law of SSAR, art. 29, Law on Gaesung Industrial Zone, art. 4 (2002), and Foreign Investment Law, art. 11 (1993).

amended to include enforcement regulations and to grant environmental State organs greater powers, environmental governance appears to have improved. Environmental law still has a long way to go in North Korea considering the many environmental sectors left unaddressed like air and water pollution, hazardous wastes, and so on. Although North Korea is headed in the right direction policy-wise, the true effectiveness of the legal institutionalization of environmental protection remains to be seen.