

**A STUDY ON THE INCAPACITATION MECHANISM MODEL OF THE JUCHIST
AND MARXIST-LENINIST ARTICLES AGAINST THE CORE IMPLEMENTATION
MECHANISM MODEL OF THE FUNDAMENTAL RIGHTS ARTICLES IN THE
NORTH KOREAN CONSTITUTION:
NORTH KOREA'S VIOLATIONS OF FUNDAMENTAL RIGHTS AND
INTERNATIONAL HUMAN RIGHTS TREATIES**

By
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ABSTRACT

In this dissertation, I systematically study whether the arguments of the North Korean government regarding its protection of domestic human rights and its adherence to international human rights treaties in the DPRK Official Reports are accurate. My starting point is the analysis of the sharp conflict of argument on the human rights issue between North Korea and the liberal democratic camp, which includes the U.S., U.K., and South Korea. In the DPRK Official Reports, North Korea uses a theoretical approach, focusing on the presence of Fundamental Rights Articles of its Constitution, to argue that the fundamental rights of the people have been protected internally, and that the particular rights prescribed in the international human rights treaties are guaranteed successfully. In contrast, the liberal democratic camp, in their reports on North Korean human rights compliance, contend that the government of North Korea has seriously infringed the fundamental freedoms of its people and has severely violated the international human rights treaties to which it is party. To make their arguments about North Korea's human rights practices, the U.S., South Korea, and the U.K. use a factual approach, centering on the analyses of testimony by North Korean refugees in the report.

This situation leads the North Korean government to aggressively rebuff the arguments of the U.S., U.K., and South Korea by denying and discounting the contents of their annual reports. North Korea especially concentrates on casting doubt on the credibility of the testimony. Notably, the LDC Annual Reports do not thoroughly analyze the core implementation mechanism of the Fundamental Rights Articles of the North Korean Constitution and contain very few logical rebuttals. However, considering that North Korea has attempted to deceive the world under the guise of claiming to provide human rights protections through its core implementation mechanism, the methodology of the liberal democratic camp in dealing with North Korea's claims in defense of its human rights practices is inarguably unsuccessful. Thus, in such a debate, a neutral third party, who does not possess actual information regarding the human rights situation in North Korea, may not only believe that North Korea's arguments are true, but may also believe that the liberal democratic camp's demand for an improvement of North Korea's human rights practices are merely politically-motivated fabrications. Additionally, the fundamental difference in the method of argumentation between the North Korean government and the liberal democratic countries means that there are necessarily few points of direct collision within their arguments. That is to say, these two opposing sides do not actually collide

but run parallel, and are left without the real opportunity to challenge each other's arguments as to the fundamental difference between their methodologies.

The most effective way to solve the problems inherent in the overreliance by the LDC on a factual approach is to form an opposition structure of a theoretical approach to match the theoretical approach of North Korea. To remedy this failure, I developed and formulated my own detailed theory to refute the assertions of North Korea in its official reports. The heart of the theory proposed by this dissertation is the incapacitation mechanism model of the Juchist and Marxist-Leninist Articles against the core implementation mechanism model of the Fundamental Rights Articles. The incapacitation mechanism model proves that all of the claims of North Korea in the DPRK Official Reports—that it guarantees the fundamental rights of its people or that it complies with the major international human rights treaties—are totally unrealizable, given its constitutional structure, from a theoretical standpoint. Additionally, the mechanism model proves that the liberal democratic countries' arguments about North Korea's violation of the fundamental rights and the international human rights treaties in the LDC Annual Reports, which are based on a factual approach, are true. Thus, we can draw an objective and logical conclusion to the central issue of this dissertation through the new refuting theory and its theoretical mechanism model proposed by this

dissertation.

I expect the arguments of the new refuting theory and its incapacitation mechanism model presented by this dissertation to be useful reference material, which will enable the liberal democratic camp to make more effective responses against North Korea's specious arguments grounded in the core implementation mechanism of the Fundamental Rights Articles in the DPRK Official Reports and official Implementation Reports to be released in the future.

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“I will lift up my eyes to the mountains;
From where shall my help come?
My help *comes* from the LORD,
Who made heaven and earth.”

– Psalms 121:1–2 (New American Standard Bible)

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ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CIA	Central Intelligence Agency
CRC	Convention on the Rights of the Child
DPRK	Democratic People’s Republic of Korea
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ISCI	Institute of the Study of Chuch’e Ideology
KCNA	Korean Central News Agency
KINU	Korea Institute for National Unification
KNS	Korea News Service
KPA	Korean People’s Army
KWP	Korean Workers’ Party
MOU	Ministry of Unification
MPS	Ministry of People’s Security
NDC	National Defense Commission

NGO	Non-governmental organization
NKDB	Database Center for North Korean Human Rights
NRC	National Reconciliation Council
NSA	National Security Agency
POW	Prisoner of War
RINU	Research Institute on National Unification
ROK	Republic of Korea
SPA	Supreme People's Assembly
SSA	State Security Agency
U.K. (UK)	United Kingdom
UKFCO	United Kingdom Foreign and Commonwealth Office
U.N. (UN)	United Nations
UNHRC	United Nations Human Rights Council
UNICEF	United Nations International Children's Emergency Fund
UPR	Universal Periodic Review
U.S. (US)	United States
USCIRF	United States Commission on International Religious Freedom
USSR	Union of Soviet Socialist Republics

WFP World Food Programme

WHO World Health Organization

CHAPTER ONE

INTRODUCTION

“This nation [North Korea] is the most repressive,
closed regime in the world today.”

– United States Senator Sam Brownback,
Statement in the 107th Congress, 2nd Session, July 15, 2002

I. The Central Issue of the Dissertation

The central issue of this dissertation is whether the claims of the Democratic People’s Republic of Korea (“North Korea” or “DPRK”) regarding its protection of domestic human rights and its adherence to international human rights treaties are true. North Korea’s view of its protection of domestic human rights sharply conflicts with that of the liberal democratic camp, which includes the United States (the “U.S.”), the European Union (especially the United Kingdom (the “U.K.”)), and the Republic of Korea (“South Korea” or the “ROK”). Specifically, the U.S., the U.K., and South Korea often condemn many actions of North Korea as violations of the Fundamental Rights Articles of the North Korean Constitution and international human rights treaties and urge it to begin improving its human rights record. Much of the liberal democratic camp’s conclusions are based on factual evidence centering on the analyses of testimony

of North Korean refugees and information gathered from foreign visitors to the country.¹ In response, North Korea uses a theoretical approach, focusing on the Fundamental Rights Articles of its Constitution as the core implementation mechanism, to defend itself.²

A. The Arguments of the North Korean Government in Defense of Its Human Rights Practices and Its Main Grounds for the Arguments

In the last three decades, North Korea has acceded to four major international human rights treaties. On September 14, 1981, North Korea entered into the International Covenant on Civil and Political Rights (the “ICCPR”)³ and the International Covenant on Economic, Social and Cultural Rights (the “ICESCR”).⁴ It later signed the Convention on the Rights of the Child (the “CRC”)⁵ on September 21, 1990. More recently, on February 27, 2001, the state entered into the Convention on

¹ See *infra* Chapter One.I.B.

² See *infra* Chapter One.I.A.

³ International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR].

⁴ International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

⁵ Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC].

the Elimination of All Forms of Discrimination against Women (the “CEDAW”).⁶

North Korea has submitted its official implementation reports to each relevant United Nations body to fulfill its obligation as a signatory power to the international human rights treaties. In sequence, the State submitted the *Second Periodic Report of the Democratic People’s Republic of Korea on Its Implementation of the International Covenant on Civil and Political Rights*⁷ in 2000 (the “Second ICCPR Implementation Report”), the *Second Periodic Report of the Democratic People’s Republic of Korea on Its Implementation of the International Covenant on Economic, Social and Cultural Rights*⁸ in 2002 (the “Second ICESCR Implementation Report”), the *Initial Report of the Democratic People’s Republic of Korea on Its Implementation of the Convention on the Elimination of All Forms of Discrimination against Women*⁹ also in 2002 (the “Initial CEDAW Implementation Report”), and finally the *Combined Third and Fourth Periodic Reports of the Democratic People’s Republic of Korea on Its Implementation*

⁶ Convention on the Elimination of All Forms of Discrimination against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW].

⁷ U.N. Human Rights Comm., *Second Periodic Report of the Democratic People’s Republic of Korea on Its Implementation of the International Covenant on Civil and Political Rights*, ¶ U.N. Doc. CCPR/C/PRK/2000/2 (May 4, 2000) [hereinafter 2000 Second ICCPR Implementation Report].

⁸ U.N. Econ. & Soc. Council [ECOSOC], *Implementation of the International Covenant on Economic, Social and Cultural Rights: Second Periodic Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Addendum: Democratic People’s Republic of Korea*, ¶ U.N. Doc. E/1990/6/Add.35 (May 15, 2002) [hereinafter 2002 Second ICESCR Implementation Report].

⁹ U.N. Comm. on the Elimination of Discrimination against Women, *Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (Initial Report of States Parties: Democratic People’s Republic of Korea*, ¶ U.N. Doc. CEDAW/C/PRK/1 (Sept. 11, 2002) [hereinafter 2002 Initial CEDAW Implementation Report].

of the *Convention on the Rights of the Child*¹⁰ in 2007 (the “Combined CRC Implementation Report”). In addition to implementation reports, North Korea submitted its *National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1*¹¹ in 2009 (“National Report”) in cooperation with the process of Universal Periodic Review (“UPR”).¹² These Implementation Reports and the National Report¹³ (collectively, “DPRK Official Reports”) are the official sources containing North Korea’s theoretical arguments in defense of its human rights practices.¹⁴

In these official reports, North Korea depends on a theoretical approach that

¹⁰ U.N. Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: The Combined Third and Fourth Periodic Reports of States Parties Due in 2007: Democratic People’s Republic of Korea*, ¶ U.N. Doc. CRC/C/PRK/4 (Jan. 15, 2008) [hereinafter 2007 Combined CRC Implementation Report].

¹¹ U.N. GAOR, Human Rights Council Working Grp. on the Universal Periodic Review, *National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: Democratic People’s Republic of Korea*, ¶ U.N. Doc. A/HRC/WG.6/6/PRK/1 (Aug. 27, 2009) [hereinafter 2009 National Report].

¹² The Universal Periodic Review (UPR) involves a review of the human rights records of all 192 United Nations Member States every four years. See The Office of the U.N. High Comm’r for Human Rights, Universal Periodic Review, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx> (last visited Oct. 14, 2011).

¹³ I conducted a thorough analysis of these DPRK official reports to draw correct and objective conclusions about the government’s arguments in defense of its human rights practices and the main grounds for its arguments. See *supra* Chapter One.I.A.

As of 2012, North Korea has submitted nine Implementation Reports, including two ICCPR Implementation Reports, two ICESCR Implementation Reports, one CEDAW Implementation Report, four CRC Implementation Reports, and one National Report. However, I have intentionally selected the abovementioned five official reports, which are best fit to ensure the accuracy, objectivity, and neutrality of the analysis.

¹⁴ See *infra* Chapter Four.I.A; see also *infra* Chapter Four.II.A; *infra* Chapter Four.III.A; *infra* Chapter Five.I.A; *infra* Chapter Five.II.A; *infra* Chapter Five.III.A.

centers on the general implementation mechanism of its Constitution as the main grounds for its defense of its human rights practices. In effect, the country uses its Constitution as the guaranteed mechanism of basic rights as well as compliance with international human rights treaties.¹⁵

Some examples of the State's claims regarding the North Korean Constitution as the general implementation mechanism are as follows:

- “The rights set forth in the international human rights instruments are effectively guaranteed in the DPRK through the Constitution”¹⁶
- “Respect for the dignity of a human person is a requirement set out in the Constitution”¹⁷
- “The Socialist Constitution of the DPRK . . . comprehensively provides . . . the fundamental rights . . . of citizens in all spheres of social activity, and the principles

¹⁵ See Patricia Goedde, *Legal Mobilization for Human Rights Protection in North Korea: Furthering Discourse or Discord?*, 32.3 HUM. RTS. Q. 530, 534 (2010) (“It [North Korean government] claims that it has a legal system in place for human rights protection and has submitted periodic reports to the UN treaty committees explaining its observance of international human rights treaties.(citation omitted)”). The United Kingdom Foreign and Commonwealth Office has done a similar analysis in its Annual Report on Human Rights 2009. The relevant parts of its analysis include the following statement:

The DPRK [Democratic People's Republic of Korea] consistently denies the existence of any human rights problems and rejects as unjust both this resolution and that tabled each year at the UN Human Rights Council. However, the DPRK engaged with the UN Universal Periodic Review (UPR) process in December. It submitted a national report asserting that their constitution ensures the protection of citizens' rights to freedoms of opinion, expression and assembly, and that all religions are treated equally.

U.K. FOREIGN & COMMONWEALTH OFFICE, ANNUAL REPORT ON HUMAN RIGHTS 2009 at 108 (2010) [hereinafter 2009 U.K. HUMAN RIGHTS REPORT].

¹⁶ 2009 National Report, *supra* note 11, at 6.

¹⁷ *Id.* at 7.

of their materialization.”¹⁸

- “The stipulation in the Constitution that the State shall respect and protect human rights is the manifestation of the commitment of the State to ensuring full enjoyment by citizens of human rights on a high standard.”¹⁹
- “The Constitution comprehensively provides for the fundamental rights and freedoms in all fields of State and public activity It also explicitly stipulates that these rights and freedoms are provided to everyone equally and practically”²⁰
- “Education on the Constitution . . . and [] [its] studies and dissemination are organized and conducted systematically with a view to making the citizens fully aware of their rights . . . [to] exercise the full range of their rights”²¹
- “The State secured legal guarantees for bringing up children to be reliable leaders of the future and guaranteeing their rights to the fullest possible extent through the adoption of the Constitution”²²
- “The Constitution provides for the principles and popular policies to be maintained

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ *Id.* at 4-5.

²¹ *Id.* at 6.

²² *Id.* at 13.

in political, economic, cultural and all other fields of social life, declares that every citizen is particularly ensured the true democratic rights, freedom, happy material and cultural life and stipulates the basic rights of citizens”²³

- “The DPRK has embodied the rights contained in the [international human rights] instruments . . . in the Constitution, and has taken or is taking practical measures to realize them. As a result, the rights are well protected.”²⁴
- “The rights provided by the international instruments on human rights are reliably protected by the Constitution”²⁵
- “After ratifying several international human rights instruments, the DPRK amended and supplemented the Constitution”²⁶
- “The Constitution . . . of the DPRK comprehensively and concretely provide for the rights and freedom that citizens ought to be endowed with and enjoy in the political, economic, social, cultural, civil and all other fields.”²⁷
- “The fundamental guarantee for the advancement of women is contained in the

²³ 2000 Second ICCPR Implementation Report, *supra* note 7, at 4-5.

²⁴ 2002 Initial CEDAW Implementation Report, *supra* note 9, at 9.

²⁵ *Id.* at 8.

²⁶ *Id.* at 9.

From the context of the statement, this paragraph connotes that the North Korean government amended and supplemented its Constitution to fulfill the requirements of major international human rights treaties. Thus, it can be distinguished as the part indirectly letting us know the assertion of North Korea that its Constitution is the mechanism for the implementation of human rights treaties including CEDAW.

²⁷ *Id.* at 10.

Constitution which provides for the basic freedoms and rights of citizens in political, economic, social and cultural life.”²⁸

- “The Constitution stipulates the fundamental rights . . . of citizens; the State shall effectively guarantee genuine democratic rights and liberties to all citizens”²⁹

Most notable in the analysis of North Korea’s defense methodology in its official reports is its use of the Fundamental Rights Articles in the State’s Constitution. North Korea’s main contention is that the Fundamental Rights Articles of its Constitution play specific, de facto, and critical roles in guaranteeing and supporting the general implementation mechanism that is the Constitution. For the purposes of this dissertation, the Fundamental Rights Articles will be called the “core implementation mechanism.”

In the DPRK Official Reports, North Korea provides several paragraphs arguing that the basic rights of the people have been protected internally, and that the particular rights prescribed in the international human rights treaties are guaranteed successfully through the de facto roles of the core implementation mechanism of the Fundamental Rights Articles of its Constitution.³⁰

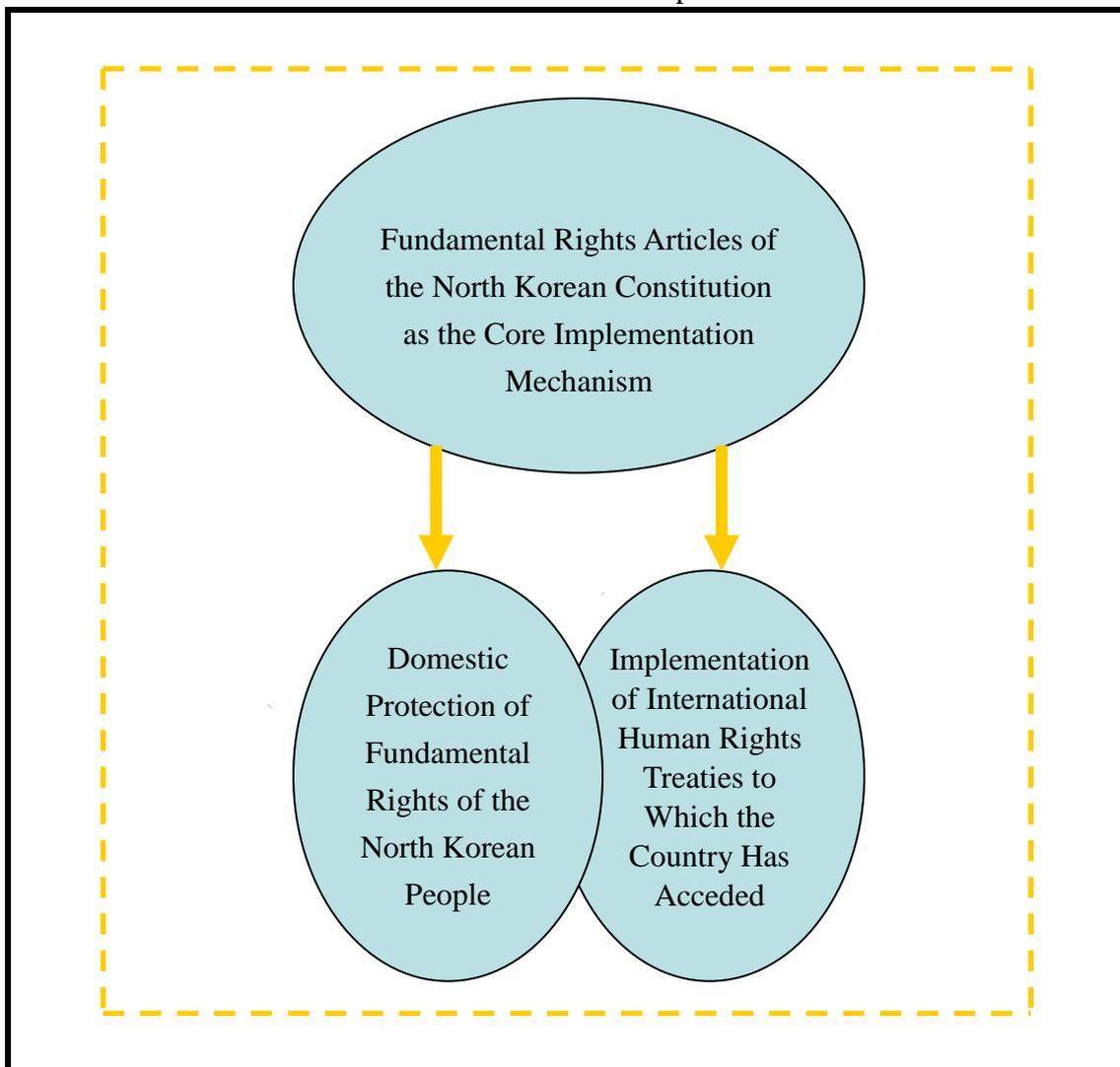
²⁸ *Id.* at 14.

²⁹ 2007 Combined CRC Implementation Report, *supra* note 10, at 17.

³⁰ *See infra* Chapter Four.I.A.1; *see also infra* Chapter Four.I.A.2; *infra* Chapter Four.II.A.1; *infra*

The core implementation mechanism model of the North Korean Constitution, which shows both North Korea's arguments in defense of its human rights practices and the main grounds for its arguments in the DPRK Official Reports, is diagrammatized below:

<Diagram 1> The Core Implementation Mechanism Model of the North Korean Constitution in the DPRK Official Reports



Chapter Four.II.A.2; *infra* Chapter Four.III.A.1; *infra* Chapter Four.III.A.2; *infra* Chapter Five.I.A.1; *infra* Chapter Five.I.A.2; *infra* Chapter Five.II.A.1; *infra* Chapter Five.II.A.2; *infra* Chapter Five.III.A.1; *infra* Chapter Five.III.A.2.

B. The Arguments of the Liberal Democratic Camp Attacking the Human Rights

Practices of North Korea and the Main Grounds for their Arguments

Members of the liberal democratic camp, including the U.S., South Korea, and the U.K., annually release and regularly update authoritative reports on North Korea's human rights practices.³¹ These reports, collectively called the "Liberal Democratic Camp Annual Reports" or "LDC Annual Reports," include the following: *Country Reports on Human Rights Practices* by the U.S. Department of State ("U.S. Human Rights Reports");³² the *Annual Report of the United States Commission on*

³¹ The ROK Human Rights Report only covers North Korean human rights while the others have relevant sections dealing with the human rights situations in North Korea.

³² See, e.g., U.S. DEP'T OF STATE, 96TH CONG., 2D SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1979: REP. SUBMITTED TO THE COMM. ON FOREIGN AFFAIRS, U.S. H. OF REP. AND THE COMM. ON FOREIGN RELATIONS, U.S. S. BY THE DEP'T OF STATE IN ACCORDANCE WITH SECTIONS 116(d) AND 502B(b) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED. (J. Comm. Print 1980) [hereinafter 1979 U.S. HUMAN RIGHTS REPORT]; see also U.S. DEP'T OF STATE, 98th Cong., 2D SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1983: REP. SUBMITTED TO THE COMM. ON FOREIGN AFFAIRS, U.S. H. OF REP. AND THE COMM. ON FOREIGN RELATIONS, U.S. S. BY THE DEP'T OF STATE IN ACCORDANCE WITH SECTIONS 116(D) AND 502B(B) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED. (J. Comm. Print 1984) [hereinafter 1983 U.S. HUMAN RIGHTS REPORT]; U.S. DEP'T OF STATE, 99th Cong., 2D SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1985: REP. SUBMITTED TO THE COMM. ON FOREIGN AFFAIRS, U.S. H. OF REP. AND THE COMM. ON FOREIGN RELATIONS, U.S. S. BY THE DEP'T OF STATE IN ACCORDANCE WITH SECTIONS 116(D) AND 502B(B) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED. (J. Comm. Print 1986) [hereinafter 1985 U.S. HUMAN RIGHTS REPORT]; U.S. DEP'T OF STATE, 102D Cong., 2D SESS., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1991: REP. SUBMITTED TO THE COMM. ON FOREIGN AFFAIRS, U.S. H. OF REP. AND THE COMM. ON FOREIGN RELATIONS, U.S. S. BY THE DEP'T OF STATE IN ACCORDANCE WITH SECTIONS 116(D) AND 502B(B) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED. (J. Comm. Print 1992) [hereinafter 1991 U.S. HUMAN RIGHTS REPORT]; U.S. DEP'T OF STATE, 2000 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (2001), available at <http://www.state.gov/j/drl/rls/hrrpt/2000/eap/726.htm> (last visited July 9, 2011) [hereinafter 2000 U.S. HUMAN RIGHTS REPORT]; U.S. DEP'T OF STATE, 2004 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (2005), available at <http://www.state.gov/j/drl/rls/hrrpt/2004/41646.htm> (last visited July 9, 2011) [hereinafter 2004 U.S. HUMAN RIGHTS REPORT]; U.S. DEP'T OF STATE, 2005 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (2006), available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61612.htm> (last visited July 9, 2011) [hereinafter 2005 U.S. HUMAN RIGHTS REPORT]; U.S. DEP'T OF STATE, 2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (2007), available at

International Religious Freedom (“USCIRF Human Rights Reports”);³³ *White Paper on Human Rights in North Korea* by the Korea Institute for National Unification (KINU), a South Korean government-affiliated research institute (“ROK Human Rights Reports”);³⁴ and the *Human Rights Annual Report* by the U.K. Foreign and Commonwealth Office (UKFCO) (“U.K. Human Rights Reports”).³⁵ Each member of

<http://www.state.gov/g/drl/rls/hrrpt/2006/78777.htm> (last visited July 9, 2011) [hereinafter 2006 U.S. HUMAN RIGHTS REPORT]; U.S. DEP’T OF STATE, 2008 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (2009), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119043.htm> (last visited May 31, 2010) [hereinafter 2008 U.S. HUMAN RIGHTS REPORT]; U.S. DEP’T OF STATE, 2009 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (2010), *available at* <http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135995.htm> (last visited May 31, 2010) [hereinafter 2009 U.S. HUMAN RIGHTS REPORT]; U.S. DEP’T OF STATE, 2010 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (2011), *available at* <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154388.htm> (last visited Mar. 20, 2013) [hereinafter 2010 U.S. HUMAN RIGHTS REPORT]; U.S. DEP’T OF STATE, 2011 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (2012), *available at* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dlid=186279> (last visited July 9, 2013) [hereinafter 2011 U.S. HUMAN RIGHTS REPORT]; U.S. DEP’T OF STATE, 2012 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (2013), *available at* <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dlid=204210> (last visited July 9, 2013) [hereinafter 2012 U.S. HUMAN RIGHTS REPORT].

³³ See, e.g., U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANNUAL REPORT OF THE UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM 2008 (2008) [hereinafter 2008 USCIRF HUMAN RIGHTS REPORT]; see also U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANNUAL REPORT OF THE UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM 2009 (2009) [hereinafter 2009 USCIRF HUMAN RIGHTS REPORT]; U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANNUAL REPORT OF THE UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM 2010 (2010) [hereinafter 2010 USCIRF HUMAN RIGHTS REPORT].

³⁴ See, e.g., OK, TAE HWAN ET AL., WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 1996 (1996) [hereinafter 1996 ROK HUMAN RIGHTS REPORT]; see also LEE, KEUM-SOON ET AL., WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 2004 (Lee, Keum-Soon et al. eds., 2004) [hereinafter 2004 ROK HUMAN RIGHTS REPORT]; LIM SOON-HEE ET AL., WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 2006 (Lim Soon-Hee et al. eds., 2006) [hereinafter 2006 ROK HUMAN RIGHTS REPORT]; LEE, KEUM-SOON ET AL., WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 2009 (Center for North Korean Human Rights Studies at KINU ed., 2009) [hereinafter 2009 ROK HUMAN RIGHTS REPORT]; PARK YOUNG-HO ET AL., WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 2010 (Center for North Korean Human Rights Studies at KINU ed., 2010) [hereinafter 2010 ROK HUMAN RIGHTS REPORT]; KIM, KOOK-SHIN ET AL., WHITE PAPER ON HUMAN RIGHTS IN NORTH KOREA 2011 (Center for North Korean Human Rights Studies at KINU ed., 2011) [hereinafter 2011 ROK HUMAN RIGHTS REPORT].

³⁵ See, e.g., U.K. FOREIGN & COMMONWEALTH OFFICE, ANNUAL REPORT ON HUMAN RIGHTS 2006 (2006) [hereinafter 2006 U.K. HUMAN RIGHTS REPORT]; see also U.K. FOREIGN & COMMONWEALTH OFFICE,

the liberal democratic camp expends significant effort and resources to collect related information, analyze it thoroughly, and evaluate whether the human rights of the North Korean people are being domestically protected and whether the country is complying with the major international human rights treaties. Accordingly, the LDC Annual Reports provide an official basis from which to cull out the main arguments of the U.S., South Korea, and the U.K. regarding the human rights practices of North Korea.³⁶ In addition, the LDC Annual Reports appear to also serve as rebuttals to the assertions of North Korea in its official reports.³⁷ In contrast to the arguments of the North Korean government, the liberal democratic camp contends that the government of North Korea has seriously infringed the fundamental freedoms of its people and has severely violated

ANNUAL REPORT ON HUMAN RIGHTS 2007 (2008) [hereinafter 2007 U.K. HUMAN RIGHTS REPORT]; U.K. FOREIGN & COMMONWEALTH OFFICE, ANNUAL REPORT ON HUMAN RIGHTS 2008 (2009) [hereinafter 2008 U.K. HUMAN RIGHTS REPORT]; 2009 U.K. HUMAN RIGHTS REPORT, *supra* note 15; U.K. FOREIGN & COMMONWEALTH OFFICE, HUMAN RIGHTS AND DEMOCRACY: THE 2010 FOREIGN & COMMONWEALTH OFFICE REPORT (2011) [hereinafter 2010 U.K. HUMAN RIGHTS REPORT]; U.K. FOREIGN & COMMONWEALTH OFFICE, HUMAN RIGHTS AND DEMOCRACY: THE 2011 FOREIGN & COMMONWEALTH OFFICE REPORT (2012) [hereinafter 2011 U.K. HUMAN RIGHTS REPORT]; U.K. FOREIGN & COMMONWEALTH OFFICE, HUMAN RIGHTS AND DEMOCRACY: THE 2012 FOREIGN & COMMONWEALTH OFFICE REPORT (2013) [hereinafter 2012 U.K. HUMAN RIGHTS REPORT].

³⁶ In addition to these LDC Annual Reports, there are other authoritative reports on the human rights situation in North Korea, including those by the U.N. and several international non-governmental organizations (NGOs) for human rights. Nevertheless, the starting point of this dissertation is to analyze the sharp conflict of argument on the human rights issue between North Korea and the liberal democratic camp, which includes the U.S., U.K., South Korea. Therefore, the basic framework of their arguments takes the opposition structure of “country versus country.” In this sense, it is natural that the reports of the U.N. and international human rights NGOs cannot be used as main sources to show the official assertions of the liberal democratic countries.

³⁷ It is worthwhile to mention that the LDC Annual Reports were not originally published in order to refute the arguments of North Korea in its four Implementation Reports and the National Report. However, looking at the results, these reports are ideal and official sources containing not only the relevant assertions of the liberal democratic countries on the issue of this dissertation but also offering refutations to North Korea’s claims in the DPRK Official Reports.

the international human rights treaties to which it is party.³⁸

To make their arguments about North Korea's human rights practices, the U.S., South Korea, and the U.K. use a factual approach in the LDC Annual Reports, centering on the testimony of North Korean refugees and the interpretation of information gathered from foreign visitors to North Korea.³⁹ Thus, the "Democratic People's Republic of Korea" section of the 2006 U.S. Human Rights Report indicates that the U.S. compiled this section with "[i]nformation from interviews, press reports, nongovernmental organizations (NGOs) reports, and refugee testimony obtained over the past decade, and supplemented where possible by information drawn from more recent reports from visitors, both private and official, to the country and NGOs working on the Chinese border."⁴⁰ Although there appear to be a variety of sources relied upon, the most compelling sources are the testimony of North Korean refugees and information from private and official visitors to the country.

That the reports would rely on testimony of refugees is not surprising; North Korea, after all, is a closed society.⁴¹ For example, the government of North Korea

³⁸ See *infra* Chapter Four.I.D; see also *infra* Chapter Four.II.D; *infra* Chapter Four.III.D; *infra* Chapter Five.I.D; *infra* Chapter Five.II.D; *infra* Chapter Five.III.D.

³⁹ See *infra id.*

⁴⁰ 2006 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

⁴¹ See LARRY DIAMOND, THE SPIRIT OF DEMOCRACY: THE STRUGGLE TO BUILD FREE SOCIETIES THROUGHOUT THE WORLD 341 (2009) ("[T]he world's most brutally closed society, North Korea."); see

does not allow the visitation of the UN special rapporteur for human rights in North Korea⁴² nor of human rights activists who are involved with international human rights NGOs.⁴³ Notwithstanding its closed-door policy, North Korea has allowed certain international NGOs and international organizations which are not directly related to human rights activities to visit its territory.⁴⁴ However, even such foreign visitors are subjected to unfriendly conditions and are prohibited from coming in contact with citizens to obtain information about their treatment and fundamental freedoms.⁴⁵

also PAUL FRENCH, *NORTH KOREA: THE PARANOID PENINSULA – A MODERN HISTORY* 32 (2nd ed. 2007) (“Even the Albanians described North Korea as ‘an unbelievably closed society’ . . .”).

⁴² See Soo-Am Kim, *A Strategy for the Coevolution of North Korean Human Rights* 13, (The East Asia Inst., Working Paper No. 12, 2011) (“The North Korean authorities do not recognize the existence of the UN Special Rapporteur for North Korean Human Rights and refused to allow its visit, because the Rapporteur was nominated by a UN Human Rights Resolution.”); see also Special Rapporteur for Human Rights in North Korea, *[Rep. on the] Situation of Human Rights in the Democratic People’s Republic of Korea*, ¶ 4, U.N. Doc. A/61/349 (Sept. 15, 2006) (by Vitit Muntarbhorn) [hereinafter 2006 U.N. Human Rights Report]. (“It is regrettable that, to date, the authorities of the Democratic People’s Republic of Korea have declined to invite him into the country, despite several requests from the Special Rapporteur to visit the country.”).

⁴³ See Kim, *supra* note 42, at 13 (citing “[R]epeated turndowns on . . . international human rights NGOs’ requests for visits, without the North’s having a self-monitoring system, will only aggravate the conflict between the North and the international community.”).

⁴⁴ See, e.g., Scott Snyder, *American Religious NGOs in North Korea: A Paradoxical Relationship*, 21.4 ETHICS & INT’L AFF. 423, 426 (2007) (“[F]our American NGOs that continue their operations in North Korea with religious funding but with differing backgrounds and motivations are the American Friends Service Committee (AFSC), the Eugene Bell Foundation (EBF), Christian Friends of Korea (CFK), and Global Resource Services (GRS).”); see also *id.* (“All of these NGOs are still operating projects in the North despite the end of the food crisis and the ramping up of tensions over the North Korean nuclear program; and all of these programs continue with the awareness by DPRK counterparts that they are religiously backed . . .”); AFP (Agence France-Presse), *WFP Launches Food Aid Programme in Flood-Hit North Korea*, CHANNEL NEWSASIA (SINGAPORE) (Aug. 22, 2007), http://www.channelnewsasia.com/stories/afp_asiapacific/view/295270/1.html (“The WFP [World Food Programme] said visits by its own assessment teams to 11 counties in two provinces [of North Korea] have confirmed the extent of the losses there, adding that more visits would be made.”).

⁴⁵ One NGO confirms that “a considerable problem for all NGOs in this area [North Korea] is not only the persistent state monitoring, but the limited access to the people.” The Center for Applied Policy Research at the University of Munich, *The NGO Experience in North Korea*, http://www.cap-lmu.de/transatlantic/topics/korea_ngo.php (last visited Sept. 29, 2011) (“In particular, NGOs from the US

In congruity with its closed-door policy, the government of North Korea, as a general rule, prohibits visits by outside journalists and foreign news reporters.⁴⁶ Although a limited number of foreign government officials, outside journalists, and foreign news reporters of the liberal democratic camp have had the chance to visit North Korea, these visitors cannot talk to or freely interview North Korean citizens, or travel anywhere beyond authorized areas.⁴⁷ Even the ambassadors of liberal democratic countries⁴⁸ residing in North Korea are prohibited from interacting with ordinary North Koreans,⁴⁹ as the regime keeps a tight grip on the activities of foreign diplomats.⁵⁰

and South Korea are subject to continual suspicion [in North Korea]”); *See* Norbert Vollertsen, *The Reality of North Korea*, in THE 3RD INTERNATIONAL CONFERENCE ON NORTH KOREAN HUMAN RIGHTS & REFUGEES: 2002 TOKYO JAPAN 29, 31 (Citizens’ Alliance for North Korean Human Rights ed., 2002) (“Knowledge about the overall humanitarian situation in North Korea is . . . not available for the normal foreign visitors, aid worker”); *see also* 2006 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 61 (“Humanitarian aid workers . . . in Pyongyang are subject to severe internal travel restrictions”).

⁴⁶ *See* Pan Suk Kim, *Government and Politics*, in NORTH KOREA: A COUNTRY STUDY 165, 194 (Andrea Matles Savada ed., 4th ed. 1994) (“No external media are allowed free access to North Korea. . . .”); *see also* Sharon LaFraniere, *Visitors See North Korea Still Stunted by Its Isolation*, N.Y. TIMES, Dec. 27, 2010, at A1 (“Journalists are rarely granted visas to North Korea, one of the world’s most secretive and militaristic societies.”).

⁴⁷ The U.S. Department of State confirms that “North Korea does not allow representatives of foreign governments, journalists, or other invited guests the freedom of movement that would enable them to fully assess human rights conditions or confirm reported abuses.” 2006 U.S. HUMAN RIGHTS REPORT, *supra* note 32. *See* 2006 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 118 (“[N]orth Korea stated that journalists could travel to any region in North Korea to meet with individuals they wish to meet. North Korea also insisted that foreign reporters are free to collect information and report it However, the facts indicate that contact with foreign journalists remains controlled.”); *see also id.* (“North Korea did agree to guarantee the activities of foreign reporters at the time it opened diplomatic relations with Germany. But the State Department report pointed out that the North Korean government continued to strictly control the activities of foreign visitors.”).

⁴⁸ The U.S. and South Korea do not have any official diplomatic relations with North Korea. However, the U.K. established diplomatic relations with the country in 2000.

⁴⁹ *See* Kim Young-Jin, ‘*Doubt over NK Succession Not Enough for Revolt*,’ THE KOREA TIMES (Sept. 28, 2011), http://www.koreatimes.co.kr/www/news/nation/2011/09/116_95649.html (“[U.K. ambassador to North Korea] Hughes said while it remained exceedingly difficult to interact with citizens”); *see also* Martin Uden, *Visit to Pyongyang – 11-14 March. The Programme*, AMBASSADOR TO THE REPUBLIC OF

In addition to restrictions of visitors, all domestic mass media such as television, radio, newspapers, and books are subject to strict censorship.⁵¹ The North Korean government completely controls all information, including those regarding human rights violations in the country, so that such violations rarely leak out to the rest of the world.⁵² Given these restrictions, there is little alternative, if reports are to use factual information, to relying on the testimony of North Korean refugees, as well as those of private and official visitors to the country, to analyze, interpret, and assess human rights conditions in North Korea.

KOREA MARTIN UDEN'S BLOG (Mar. 23, 2011), <http://blogs.fco.gov.uk/martinuden/2011/03/23/visit-to-pyongyang-11-14-march-the-programme/> [hereinafter U.K. AMBASSADOR TO SOUTH KOREA'S BLOG] ("Life for my colleagues in Pyongyang is undoubtedly challenging. . . . There is virtually no social interaction with North Koreans, other than with the local Embassy staff provided by the DPRK government . . ."); Vollertsen, *supra* note 45, at 31 ("Knowledge about the overall humanitarian situation in North Korea is . . . not available for the . . . diplomat [in the country].").

⁵⁰ See Moon Gwang-Lip, *Jong-Un Still in Shadow: Envoy*, KOREA JOONGANG DAILY (Sept. 29, 2011), <http://koreajoongangdaily.joinsmsn.com/news/article/html/111/2942111.html?cloc=joongangdaily%7Chome%7Cnewlist1> ("The ambassador said that what he observed in North Korea was limited because of the regime's tight control of foreign diplomats' activities . . ."); see also U.K. AMBASSADOR TO SOUTH KOREA'S BLOG, *supra* note 49 ("[L]ife [in Pyongyang] is very circumscribed and restricted, as well as somewhat oppressive in such a state-controlled environment."); 2006 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 61 ("[D]iplomats in Pyongyang are subject to severe internal travel restrictions . . .").

⁵¹ See 2005 U.S. HUMAN RIGHTS REPORT, *supra* note 32 ("Domestic media censorship continued to be enforced strictly, and no deviation from the official government line was tolerated."); see also HUMAN RIGHTS WATCH, WORLD REPORT 2006 (EVENTS OF 2005) at 292 (2006) [hereinafter 2006 HUMAN RIGHTS WATCH REPORT] ("All media are either run or controlled by the state, and all publications are subject to official censorship.").

⁵² See 2009 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 22 ("The DPRK . . . tightly controls the flow of information in and out of the country. This tight control makes it difficult to gather detailed and timely data about . . . related human rights in North Korea."); see also Special Rapporteur for Human Rights in North Korea, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled "Human Rights Council": Rep. of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea*, ¶ 7, U.N. Doc. A/HRC/4/15 (Feb. 7, 2007) (by Vitit Muntarbhorn) [hereinafter 2007 U.N. Human Rights Report] ("Freedom of expression and association and access to information are impeded by the closed nature of the State and rigid State control over the information flow . . .").

Similarly, USCIRF uses the same methodology. It states in its 2009 Religious Freedom Report that given North Korea's many restrictions, its investigation relies on the testimony of North Korean refugees. The USCIRF states:

In addition to the government's strict control over religion, the DPRK also tightly controls the flow of information in and out of the country. This tight control makes it difficult to gather detailed and timely data about religious freedom and related human rights in North Korea. Therefore, in 2005 the Commission authorized researchers to begin interviews with North Korean refugees to study conditions in the country and for refugees seeking asylum in China. These interviews resulted in two studies.(citation omitted)⁵³

Like both the U.S. Human Rights Reports and USCIRF Report, the 2011 edition of the ROK Human Rights Reports clearly shows that its main argument methodology is also based on the testimony of North Korean refugees. The 2011 ROK Human Rights Report states:

The [North Korean Human Rights Research] Center⁵⁴ has . . . periodically conducted systematic and professional in-depth personal interviews with North Korean defectors [North Korean refugees]⁵⁵ in South Korea to

⁵³ 2009 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 22.

⁵⁴ See 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 8 ("The Korea Institute for National Unification (KINU) in Seoul established its North Korean Human Rights Research Center in December 1994 for the purpose of managing various data and source materials related to the human rights situation in North Korea in a systematic and professional way.").

⁵⁵ Throughout this dissertation, I use the terms "refugees," "defectors," and "escapees" interchangeably. All North Korean defectors are technically recognized as "refugees" in the 1951 U.N. Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees, even though they are economic migrants. One study notes:

The North Korean refugees have been variously referred to as "defectors," "escapees," and "illegal [economic] immigrants." These labels accord them little legal protection. Advocacy groups have argued for these North Koreans to be officially recognized as refugees on two fundamental premises. First, they have a well-grounded fear of persecution – a key determinant of refugee status – as a result of the oppressive social and political control in North Korea (citation omitted). Second, the North Koreans are considered refugee sur place, that is, refugees who did not leave their country of origin for

ascertain the reality of the human rights situation behind the walls of North Korea. Based on the information obtained through our research and investigations we have built an extensive computerized database, and since 1996 we have published this “White Paper on Human Rights in North Korea” every year in both Korean and English. In order that we may better grasp the North Korean realities on the ground, the contents of this White Paper are based on in-depth personal interviews with North Korean defectors in South Korea, with emphasis on recent arrivals. . . .⁵⁶

In addition, the 2009 ROK Human Rights Report states:

In our efforts to look at the reality more closely, the “2009 White Paper on Human Rights in North Korea” has attempted to compare, analyze, and verify every aspect of the recent situation based on in-depth personal interviews with “defectors” (or North Korean refugees) who came into South Korea recently⁵⁷

The U.K. Human Rights Reports also relies on defector testimony. In its 2010

Report, UKFCO reveals:

The Democratic People’s Republic of Korea (DPRK) has repeatedly claimed that international concern about its human rights has the sole aim of undermining the regime, and that it has its own, adequate system for the protection of human rights. However, information from a variety of sources, much of it from North Korean defectors, paints a picture of serious and widespread abuse. This includes political prisons and labour “rehabilitation” camps; regular use of the death penalty, including extrajudicial and public

fear of persecution but who fear persecution upon return. Claims of severe punishment, including death, incarceration in labor camps, and further discrimination, have been documented to support the North Koreans’ bid for asylum.

Jaime Koh, *Human Insecurities or Liabilities? The Changing Security Paradigms and the Case of the North Korean Refugees*, in HUMAN SECURITY: SECURING EAST ASIA’S FUTURE 17, 19 (Benny Teh Cheng Guan ed., 2012); See GLYN FORD & SOYOUNG KWON, NORTH KOREA ON THE BRINK: STRUGGLE FOR SURVIVAL, 134 (2008) (“[E]conomic migrants can be turned into refugees. When they set off they are not refugees but they become so when they arrive. This is because North Korea punishes those it apprehends on their return; economic migrants become, according to the UNHCR, *refugee sur place* because of this threat.”); see also *infra* Chapter Two.II.A.

⁵⁶ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 8-9.

⁵⁷ 2009 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 9.

executions; routine use of torture and inhumane treatment; and severe restrictions on freedom of speech, movement, assembly, and information.⁵⁸

In the same way, its Report of 2008 also discloses that “As the DPRK refuses to accept any independent human rights monitoring, much evidence of this comes from North Koreans who have left the country as defectors They provide consistently shocking reports of serious and widespread violations of basic human rights in the country.”⁵⁹

II. Statement of Problem

North Korea’s response to the arguments of the liberal democratic countries is predictable. The government aggressively rebuffs the arguments of the U.S., U.K., and South Korea by denying and discounting the contents of their annual reports. North Korea especially concentrates on casting doubt on the credibility of the testimony. For example, the government insists that the so-called North Korean “defectors,” on whose testimony the liberal democratic camp relies, were actually kidnapped or fooled into betraying their country by South Korea and American interest groups.⁶⁰ Additionally,

⁵⁸ 2010 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 180.

The name of the report has been changed from “Annual Report on Human Rights by the United Kingdom Foreign & Commonwealth Office” to “Human Rights and Democracy: The Foreign & Commonwealth Office Report” in March 2011.

⁵⁹ 2008 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 139.

⁶⁰ See Korea News Service [KNS] in Tokyo, *KCNA [Korean Central News Agency] Commentary Blasts S. Korean Puppet Group’s Abduction of Inhabitants of DPRK*, KNS IN TOKYO (Apr. 9, 2011),

the DPRK contends that the South Korean government and these American interest groups brainwashed the North Korean people they kidnapped and also bribed others to vilify the government.⁶¹ The government of North Korea further argues that the arguments of liberal democratic camp regarding its alleged violations of human rights are politically-motivated attacks that are nothing but complete lies, deception, and fabrication.⁶² Along with these defenses, North Korea points to the Fundamental

<http://www.kcna.co.jp/item/2011/201104/news09/20110409-26ee.html> (“Most of ‘the defectors from the north’ touted by the group [of traitors in south Korea] were lured and abducted by the south Korean authorities and pro-U.S. right-wing conservative forces in an organized and planned manner in disregard of their will or wishes.”); *see also id.* (“It is nobody’s secret that the south Korean authorities have long conducted operations to abduct inhabitants of the DPRK by all conspiratorial methods after laying a dense network of its intelligence agents, organizations for anti-DPRK operations under the guise of ‘organizations for rescuing defectors from the north’”); *Id.* (“[T]he south Korean authorities have . . . hired abductors in the areas close to the DPRK.”); Yonhap News, *S. Korea Rejects N. Korea’s Repeated Proposal for Talks on Defectors*, YONHAP NEWS (Apr. 22, 2011), <http://english.yonhapnews.co.kr/northkorea/2011/04/22/33/0401000000AEN20110422004100315F.HTML> (“[P]yongyang accused Seoul of kidnapping the defectors and attempting to force them to stay.”); *Id.* (“[T]he North held a press conference where 10 repatriated citizens repeated the regime’s allegations, according to the North’s official Korean Central News Agency [KCNA]. One of them, identified as Ok Song-hyok, alleged that his group was ‘kidnapped, mistreated and pressed to remain in South Korea,’ according to the KCNA.”); Lee Seok Young, *Drifting Defectors ‘Kidnapped,’ Says NK*, DAILY NK (July 1, 2011), <http://www.dailynk.com/english/read.php?catald=nk01500&num=7903> (“‘There was a lecture by a local NSA [National Security Agency] official on the 26th, where he said that traitors who were fooled into defecting by the persuasion and deception of the South Chosun [Korea] puppets would be open to the stern judgment of the motherland.’”).

⁶¹ *See* KNS in Tokyo, *NRC [National Reconciliation Council] Accuses S. Korea of Using ‘North Defectors’ for Smear Campaign*, KNS IN TOKYO (Mar. 23, 2010), <http://www.kcna.co.jp/item/2010/201003/news23/20100323-15ee.html> (“This [puppet conservative] group . . . drastically increased a budget for ‘assisting defectors from the north’ while cutting down a budget for cooperation with the DPRK and set up ‘Hana centers’ in more areas of south Korea as centers for brainwashing ‘defectors from the north’ and educating them in conspiratorial plots against the DPRK.”); *see also* UPI [United Press International], *North, South Korea set for talks*, UPI (Mar. 7, 2011), http://www.upi.com/Top_News/Special/2011/03/07/North-South-Korea-set-for-talks/UPI-14481299518663/ (“North Koreans apparently trying to flee state repression are being brainwashed in South Korea, the government in Pyongyang claims.”).

⁶² *See* 2009 National Report, *supra* note 11, at 15 (“The United States is making an undisguised attempt to interfere in the internal affairs of the DPRK and change its system under the pretext of ‘human rights protection.’”); *see also* KCNA, *S. Korean Group of Traitors’ ‘White Paper on Human Rights of North’ under Fire*, ANGLO-PEOPLES KOREA FRIENDSHIP BLOG (July 15, 2011), <http://juche007-anglo-peopleskoreafriendship.blogspot.com/2011/07/s-korean-group-of-traitors-white-paper.html> [hereinafter ANGLO-PEOPLES KOREA FRIENDSHIP BLOG] (“The south Korean puppet group of traitors is distributing

Rights Articles of its Constitution.

Despite its far-fetched arguments and the untruthfulness of its rebuttals, North Korea's defense demonstrates that it understands well the liberal democratic camp's chief method of argumentation and, for its part, deals with the camp's method very effectively.

On the other hand, the liberal democratic camp fails to refute the theory of the core implementation mechanism of the North Korean Constitution. The LDC Annual Reports do not thoroughly analyze the core implementation mechanism of the North Korean Constitution and contain very few logical rebuttals. The camp bases its entire argument on the testimony of defectors and private and official visitors to North Korea. Therefore, considering that North Korea has attempted to deceive the world under the guise of claiming to provide human rights protections and to the adherence of the international human rights treaties through the core implementation mechanism of the Fundamental Rights Articles, the LDC's methodology dealing with North Korea's

the so-called '2011 white paper on human rights of north' malignantly slandering and insulting the socialist system centered on the popular masses in the DPRK and the independent and genuine life of its people."); *Id.* ("The white paper in which they claimed 'comprehensively surveyed the human rights situation in the north' is nothing but a dirty document against the DPRK as it is peppered with all sorts of lies, deception, fabrication and mud-slinging and a profound confusing of right and wrong."); *Id.* ("This is lashing the people of the DPRK into towering resentment as it is a politically-motivated unpardonable provocation against the inviolable system and dignity of the DPRK."); *Id.* ("The puppet group is making desperate efforts to tarnish the international image of the DPRK winning victory after victory and calm down the people from all walks of life in south Korea calling for improved inter-Korean relations through the conspiratorial human rights racket."); Harold Mandel, *Kim Jong-un Appears Likely to Succeed His Father in North Korea*, SUITE101, May 21, 2011, available at <http://www.suite101.com/content/kim-jong-un-appears-likely-to-succeed-his-father-in-north-korea-a372155> (last visited Sept. 17, 2011) ("North Korea . . . insist[s] that these reports of human rights abuses in North Korea are simply not true.").

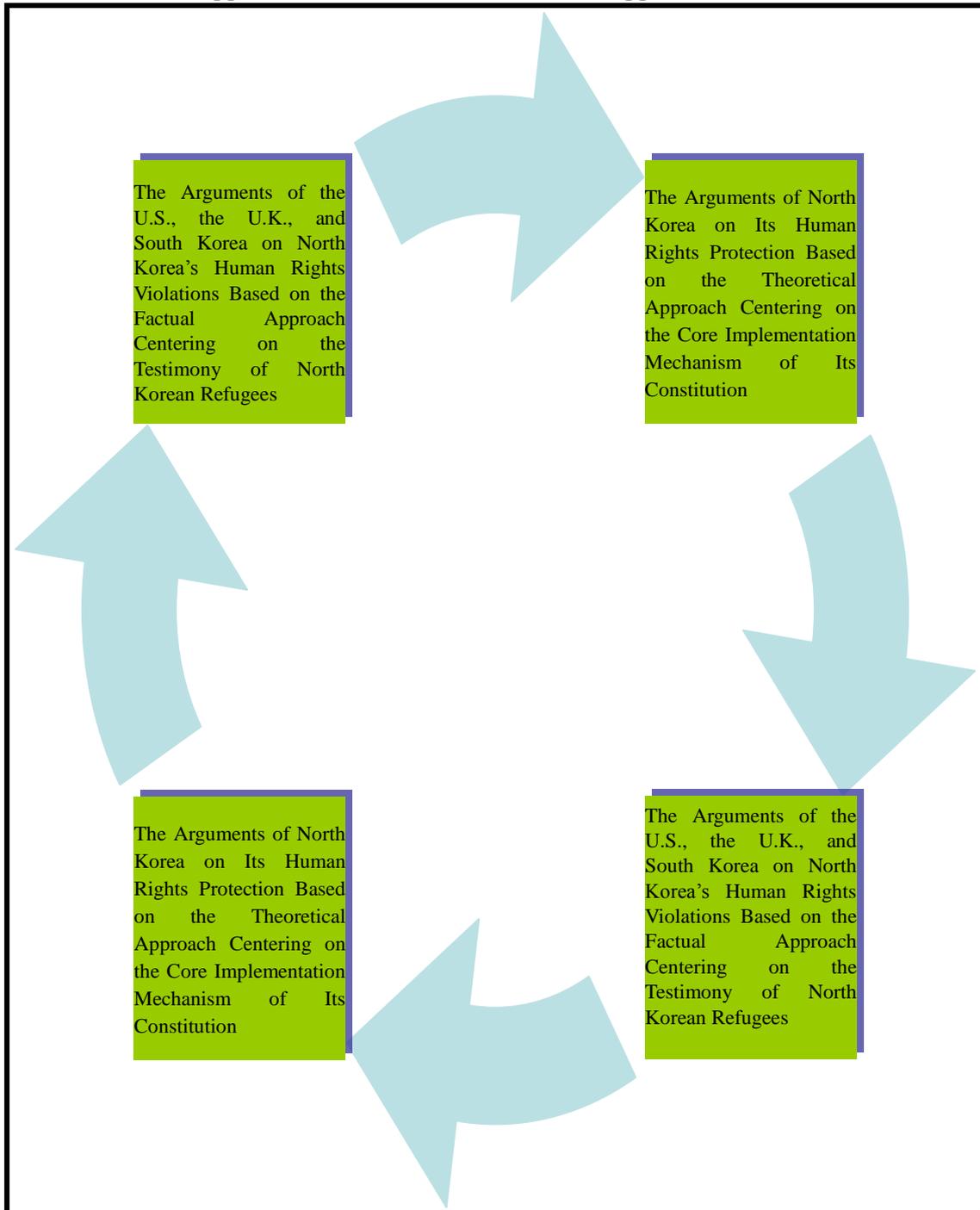
claims is inarguably unsuccessful.

In such a debate, a neutral third party, who does not possess actual information regarding the human rights situation in North Korea, may not only believe that North Korea's arguments are true but may also believe that the liberal democratic camp's demand for an improvement of North Korea's human rights practices are merely politically-motivated lies.

Along with the absence of thorough analysis and logical rebuttal of the core implementation mechanism, the other problem is the ineffective opposition structure caused by the fundamental difference in argumentation method. As reviewed earlier, North Korea's theoretical approach to defend its protection of human rights stands in stark contrast to the factual approach taken by members of the liberal democratic camp. However, the fundamental difference in the method of argumentation between the two parties means that there are few points of direct collision within their arguments. In other words, North Korea continues to focus on its core implementation mechanism of the Fundamental Rights Articles, insisting that it protects the human rights of its people through it, while, on the other hand, the three countries repeatedly concentrate on the testimony of North Korean defectors, maintaining their contention that North Korea violates the fundamental rights of its people. These two opposing sides do not actually

collide but run parallel, and are left without the real opportunity to challenge each other's arguments as to the fundamental difference between their methodologies.

<Diagram 2> The Ineffective Opposition Structure of the DPRK's Theoretical Approach Versus the LDC's Factual Approach



III. The Development of a New Refuting Theory and Its Mechanism Model against North Korea's Theory of the Core Implementation Mechanism

A more effective way to deal with the liberal democratic camp's accusations is to form a theoretical opposition approach to match the theoretical approach of North Korea. To that end, this dissertation proposes the theoretical approach of "the new refuting theory and its mechanism model."⁶³

Since the heart of North Korea's theoretical approach is the core implementation mechanism of the Fundamental Rights Articles of its Constitution, the most effective way to combat North Korea's theoretical argumentation methodology is to refute that methodology by demonstrating the impossibility of performance of this core implementation mechanism model through the refuting theory. In addition, if we can develop the new refuting theory and its mechanism model to prove it successfully, it means that we can also demonstrate the falsity of North Korea's arguments in the DPRK Official Reports concerning its human rights protection and adherence to international human rights treaties.

Moreover, carefully considering that the two problems arising from the liberal democratic camp's factual approach are "the absence of thorough analysis and logical

⁶³ See *infra* Chapter One.III.B; see also *infra* <Diagram 3>.

rebuttal of the core implementation mechanism”⁶⁴ and “the ineffective opposition structure caused by the fundamental difference in the method of argumentation,”⁶⁵ the new refuting theory and its mechanism model of this dissertation against North Korea’s theory of the core implementation mechanism would have the advantage of solving the two above-mentioned problems simultaneously.

In result, I conclude that the development of the new refuting theory and its theoretical mechanism model, which can be supported by the contents and arguments of the U.S., U.K., and South Korea in the LDC Annual Reports, is the most effective way to rebuff North Korea’s arguments in the DPRK Official Reports in defense of its human rights practices.

A. The Prototype for the Development of the New Refuting Theory and Its Mechanism Model

In that case, where can we find the prototype for the development of the new refuting theory and mechanism model, which retains objectivity, logicity, and neutrality, and is also harmonious with the contents and arguments of the fact-based LDC Annual Reports?

⁶⁴ *See supra* Chapter One.II.

⁶⁵ *See supra id.*

The following statements sourced from reliable studies on human rights conditions in North Korea fulfill these standards considerably; although they are not detailed or systematic, they provide a prototype after which an effective refutation theory and mechanism model can be modeled:

- “The [North Korean] constitution [of 2009] provides for ‘freedom of religious belief’ [in the first part of Article 68]; however, reports indicated that in practice the government severely restricted religious freedom The law also stipulates that religion ‘should not be used for purposes of dragging in foreign powers or endangering public security.’ [in the latter part of Article 68.] Genuine religious freedom did not exist.”⁶⁶
- “[D]espite the DPRK government’s assertion . . . that there are no limitations on religious practice, Article 68 [of the Constitution of 1998] also has provisions on drawing in foreign forces and harming the state or social order, provisions that could lead to potentially severe limitations that could easily result in the arbitrary application of the constitutional provision on ‘freedom of religious beliefs.’”⁶⁷
- “The fundamental reason for North Korea’s difficulty in guaranteeing the freedom

⁶⁶ 2009 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

⁶⁷ DAVID HAWK, “THANK YOU FATHER KIM IL SUNG”: EYEWITNESS ACCOUNTS OF SEVERE VIOLATIONS OF FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION IN NORTH KOREA 12 (2005); 2006 U.N. Human Rights Report, *supra* note 42, at 13.

of religion in accordance with the Socialist Constitution [of 1998] stems from its belief that religions are a means of foreign encroachment and would inflict harm on North Korea's social disciplines.”⁶⁸

- “Legally speaking, North Korea is still capable of restricting religious freedom, because it continues to believe that foreign influences can use religion as a conduit to disrupt national and social order.”⁶⁹
- “Although the DPRK committed to protect religious freedom in its constitution and international human rights treaties, and claims to adhere to those commitments, there is little evidence that the freedom of . . . religion exists in North Korea.”⁷⁰
- “The [North Korean] constitution [of 1998] provides for freedom of speech and of the press [in Article 67]; however, the government prohibited the exercise of these rights in practice. Articles of the constitution that require citizens to follow ‘socialist norms of life’ [(in Article 42)] and to obey a ‘collective spirit’ [(in Article 63)] took precedence over individual political and civil liberties.”⁷¹
- “Although the [North Korean] constitution [of 2009] theoretically guarantees

⁶⁸ 2006 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 146.

⁶⁹ 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 325.

⁷⁰ 2009 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 22.

⁷¹ 2006 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

freedom of speech [in Article 67], constitutional provisions calling for adherence to a ‘collective spirit’ [(in Article 63 and so forth)] restrict all reporting that is not sanctioned by the government in practice.”⁷²

- “Article 67 [of the North Korean Constitution of 1998] . . . provides for ‘freedom of speech, of the press, demonstration and association.’ However . . . these freedoms are overshadowed and . . . limited and circumscribed by other constitutional provisions, including that . . . ‘the State shall eliminate the way of life inherited from the outmoded society and establish a new socialist way of life [emphasizing collectivism⁷³] in every sphere.’ [in Article 42.]”⁷⁴
- “Article 67 of the 1998 DPRK Constitution provides for ‘freedom of speech, of the press, demonstration and association.’ However, as is the case with ‘freedom of religious beliefs,’ these freedoms are overshadowed and heavily, if not entirely, limited and circumscribed by other constitutional provisions.”⁷⁵
- “As will be seen in the perceptions and experiences of the former North Koreans [i.e. North Korean defectors] interviewed for this report, the constitutional limitations

⁷² FREEDOM HOUSE, FREEDOM OF THE PRESS 2010: NORTH KOREA (2010), *available at* <http://www.freedomhouse.org/report/freedom-press/2010/north-korea> (last visited May 1, 2012) [hereinafter 2010 FREEDOM HOUSE PRESS FREEDOM REPORT].

⁷³ See *infra* Chapter Four.III.B; see also *infra* note 407 and accompanying text.

⁷⁴ HAWK, *supra* note 67, at 12; 2006 U.N. Human Rights Report, *supra* note 42, at 13.

⁷⁵ HAWK, *supra* note 67, at 26.

and restrictions [by the Juchist and Marxist-Leninist Articles⁷⁶] in fact completely override the ‘rights’ that are set forth in the [Fundamental Rights Articles of] DPRK constitution.”⁷⁷

B. The Key Factors, Logical Flow, and Theoretical Structure Extracted from the Prototype and Their Application for the Development of the New Refuting Theory and Its Mechanism Model

A thorough analysis and reasonable expansion of the ideas from the above-mentioned statements, from the U.S. Human Rights Reports, USCIRF Human Rights Reports, ROK Human Rights Reports, U.N. Human Rights Reports, Freedom House Press Freedom Reports, and other publications of USCIRF, enable us to acquire the vital clues, core premises, key factors, logical order and flow, and theoretical structure to establish the new refuting theory and to develop the corresponding mechanism model

⁷⁶ See *infra* Chapter One.III.B.1.

⁷⁷ HAWK, *supra* note 67, at 26.

It is worthwhile noting that, according to USCIRF, the violations of fundamental rights are the practical results of the powerful influence of the Juchist and Marxist-Leninist Articles over the country at large. The USCIRF Human Rights Report provides an important analysis, showing the relationship between the DPRK’s human rights violations in the refuting theory and the liberal democratic countries’ arguments in their annual reports, which are grounded in the testimony of North Korean refugees who experienced and witnessed first-hand the infringements of the fundamental rights in North Korean society as a whole. According to the analysis, the new refuting theory and mechanism model can work in harmony with the contents and arguments of the fact-based LDC Annual Reports, and vice versa. That is to say, this analysis demonstrates that the new refuting theory and its theoretical mechanism model can be supported by the contents and arguments of the U.S., U.K., and South Korea in the LDC Annual Reports, and vice versa. See *infra* Chapter One.III.B.4; see also *infra* Chapter Four.I.D; *infra* Chapter Four.II.D; *infra* Chapter Four.III.D; *infra* Chapter Five.I.D; *infra* Chapter Five.II.D; *infra* Chapter Five.III.D.

that will expose the falsity of North Korea's arguments in the DPRK Official Reports and to prove the truth of the liberal democratic countries' assertions in the LDC Annual Reports.

1. The Fundamental Rights Articles and the Juchist and Marxist-Leninist Articles within One Constitutional Boundary

North Korea established its first Constitution on September 8, 1948. As of 2012, it was amended and supplemented six times, in 1972, 1992, 1998, 2009, 2010, and 2012.

The most recent amendments were on April 13, 2012.

The North Korean Constitutions of 1998 and 2009, which are used not only in the above-mentioned statements but also in the DPRK Official Reports,⁷⁸ incorporate two fundamentally distinct types of articles that have opposing viewpoints on human rights.

One of the two distinct types of articles pertains to the Fundamental Rights Articles,

⁷⁸ The above-mentioned credible research sources focus their key points around the Fundamental Rights Articles and the Juchist and Marxist-Leninist Articles, based on the North Korean Constitutions of 1998 and 2009.

Meanwhile, North Korea made its Second ICCPR Implementation Report, Second ICESCR Implementation Report, Initial CEDAW Implementation Report, Combined CRC Implementation Report between the years of 2000 and 2007, and its National Report in 2009. Therefore, the contents of the Fundamental Rights Articles in its four Implementation Reports and one National Report are based on the North Korean Constitutions of 1998 and 2009, respectively. *See supra* Chapter One.I.A.

One of the immediate objectives of the new refuting theory and its mechanism model is to demonstrate theoretically the impossibility of the performance of the core implementation mechanisms of the Fundamental Rights Articles of the Constitutions of 1998 and 2009 in the DPRK Official Reports by showing how the Juchist and Marxist-Leninist Articles work against the Fundamental Rights Articles.

Accordingly, to ensure the rationale and consistency of this dissertation, it is important to analyze the contents of the Fundamental Rights Articles and Juchist and Marxist-Leninist Articles of the North Korean Constitutions of 1998 and 2009, and to study the theoretical relationship between the two types of articles and their logical dynamics.

including those contained in the first part of Article 68 regarding the freedom of religion and Article 67 regarding the freedom of speech, press, assembly, and association. As reviewed earlier, these articles are the core implementing mechanisms of the North Korean Constitution. Thus, as is argued by North Korea in the DPRK Official Reports, the Fundamental Rights Articles are, in their very nature, supposed to protect the fundamental freedoms and guarantee the basic rights of the North Korean people.⁷⁹

Meanwhile, the full distrust in and strong hostility toward religion, and the emphasis of collectivism, among many other principles, are key doctrines of Juche ideology and Marxism-Leninism.⁸⁰ Thus, the second distinct type of article is what I will call the “Juchist and Marxist-Leninist Articles,” including those found in the latter part of Article 68, showing a distrust in and hostility toward religion,⁸¹ Article 63 for the collectivist principle,⁸² and Article 42 for a new socialist way of life, which is the socialist lifestyle emphasizing collectivism.⁸³

The notable point is that Juche ideology and Marxism-Leninism are the two anti-

⁷⁹ See *infra* Chapter Four.I.A; see also *infra* Chapter Four.II.A; *infra* Chapter Four.III.A; *infra* Chapter Five.I.A; *infra* Chapter Five.II.A; *infra* Chapter Five.III.A.

⁸⁰ See *infra* Chapter Four.I.B; see also *infra* Chapter Four.II.B; *infra* Chapter Four.III.B; *infra* Chapter Five.I.B; *infra* Chapter Five.II.B; *infra* Chapter Five.III.B.

⁸¹ See *infra* Chapter Four.I.B.

⁸² See *infra* Chapter Four.III.B.

⁸³ See *id.*; see also *infra* note 407 and accompanying text.

fundamental rights and ruling ideologies controlling North Korea.⁸⁴ Thus, from the logical and theoretical standpoint, it is natural for the Juchist and Marxist-Leninist Articles, which faithfully incorporate the core principles of the two anti-fundamental rights and ruling ideologies, to take the disposition of anti-fundamental rights articles and to position themselves as ruling articles. Namely, the Juchist and Marxist-Leninist Articles are effectively the anti-fundamental rights and ruling articles from the logical and theoretical standpoint.

2. Incapacitation Stage – Verifying the Falsity of North Korea’s Arguments

The Fundamental Rights Articles and the anti-fundamental rights articles, in their very nature and workings, are bound to clash with each other in performing their function and role within one constitutional boundary. That is to say, the clash in

⁸⁴ See *infra* Chapter Three; see also MICHAEL SETH, *A HISTORY OF KOREA: FROM ANTIQUITY TO THE PRESENT* 355 (2010) (“Perhaps no Communist regime ever emphasized ideology as much as North Korea.”); Charles Armstrong, *The Role and Influence of Ideology*, in *NORTH KOREA IN TRANSITION: POLITICS, ECONOMY, AND SOCIETY* 3, 6 (Kyung-Ae Park & Scott Snyder eds., 2012) (“Ideology has always played a key role in communist systems, and North Korea is no exception. Marxist-Leninist regimes all depended on ideology and information control when neither coercion nor material incentives were sufficient.”); NATASHA EZROW & ERICA FRANTZ, *DICTATORS AND DICTATORSHIPS: UNDERSTANDING AUTHORITARIAN REGIMES AND THEIR LEADERS* 4 (2011) (“The dictatorship of North Korea (a personalist/single-party regime) shares many characteristics with totalitarian regimes. Ideology plays a strong role in the North Korean regime. The state’s [official] ideology, Juche, serves to . . . subordinate the people under the will of the state(citation omitted).”); MARK O. DICKERSON ET AL., *AN INTRODUCTION TO GOVERNMENT AND POLITICS: A CONCEPTUAL APPROACH* 291 (8th ed. 2009) (“In totalitarian states [such as North Korea and so forth], political doctrine amounts to an official religion. [M]arxism–Leninism is taught in the schools and otherwise made the only publicly acceptable system of belief, while proponents of competing ideologies are subject to persecution.”); MARVIN PERRY ET AL., *WESTERN CIVILIZATION: IDEAS, POLITICS, AND SOCIETY* 750 (Nancy Blaine et al. eds., 9th ed. 2009) (“It [the totalitarian dictatorship] strives to control the inner person: to shape thoughts, feelings, and attitude in accordance with the party ideology, which becomes an official creed. It . . . seeks to create a ‘new man,’ one who dedicates himself body and soul to the party and its ideology.”). See *infra* Chapter Four.II.B.

function and operation between the two types of articles is inevitable from a logical and theoretical standpoint.

The issue of the functional clash is solved by the relationship of superiority and relative inferiority between the two types of articles. The anti-fundamental rights and ruling articles have superiority over the Fundamental Rights Articles in their function and working. Therefore, the Juchist and Marxist-Leninist Articles incapacitate the Fundamental Rights Articles, which are the core implementation mechanisms of North Korean Constitution, at the time of this functional clash.

For instance, the anti-fundamental rights and ruling article declaring the distrust in and hostility toward religion has precedence over the Fundamental Rights Article for religious freedom. As a result, the latter part of Article 68 overpowers the first part of Article 68 in an inevitable clash of their functioning. Similarly, the anti-fundamental rights and ruling articles stipulating collectivism are given precedence over the Fundamental Rights Article for freedom of speech, press, assembly, and association. Consequently, Articles 63 and 42 incapacitate Article 67 in the process of their own role and functional performance.

The resulting weakening of the Fundamental Rights Articles lead to the theoretical impossibility of performing the core implementation mechanism model

centered on the Fundamental Rights Articles of the North Korean Constitution in the DPRK Official Reports. Consequently, all of the arguments of the North Korean government in defense of its human rights practices in its official reports, which are grounded in this theoretical approach, are totally unrealizable given its constitutional structure and mechanism. That is to say, this impossibility of performance proves false any notion that North Korea guarantees the fundamental rights of its people or that it complies with the major international human rights treaties from a logical and theoretical standpoint. I have identified this as the “Incapacitation Stage” of the new refuting theory.

3. Human Rights Violation Stage – Verifying the Truth of the Liberal Democratic Countries’ Arguments

After completely weakening the Fundamental Rights Articles, the Juchist and Marxist-Leninist Articles wield strong influence over the North Korean society at large without any difficulty or obstruction. The practical results of this powerful leverage are manifested in the severe violations of fundamental rights and international human rights treaties in North Korea.⁸⁵ In essence, since the sole function of the anti-

⁸⁵ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

fundamental rights and ruling articles is to carry out the anti-human rights doctrines of Juche ideology and Marxism-Leninism,⁸⁶ there is no constitutional basis to secure the human rights of the North Korean people or to prevent the government from violating such protections prescribed by international human rights treaties.

It necessarily follows, logically and theoretically, that the arguments of the U.S., South Korea, and the U.K. condemning the DPRK's human rights violations in the LDC Annual Reports are proven true by the constitutional structure and mechanism of North Korea. I have identified this stage of the new refuting theory as the "Human Rights Violation Stage."

4. The Relationship between the New Refuting Theory and the Annual Reports of the Liberal Democratic Countries

As evidenced in the analysis of the USCIRF Human Rights Report, the DPRK's human rights violations, caused by the powerful influence of the Juchist and Marxist-Leninist Articles over North Korean society as a whole, as indicated in the new refuting theory and its mechanism model, are in accord with the testimony of North Korean refugees who experienced and witnessed first-hand the severe violations of fundamental

⁸⁶ See *infra* Chapter Three.

rights in their country.⁸⁷ Thus, the DPRK's human rights violations in the refuting theory coincide with the arguments of the liberal democratic camp in the LDC Annual Reports, which are based on this testimony.

In this way, the arguments of the new refuting theory and its incapacitation mechanism model presented by this dissertation not only logically and theoretically support the testimony of North Korean refugees and the contentions of the liberal democratic countries in their regular reports, but they are, in turn, practically and factually supported by the testimony of North Korean escapees and the arguments of the liberal democratic camp.

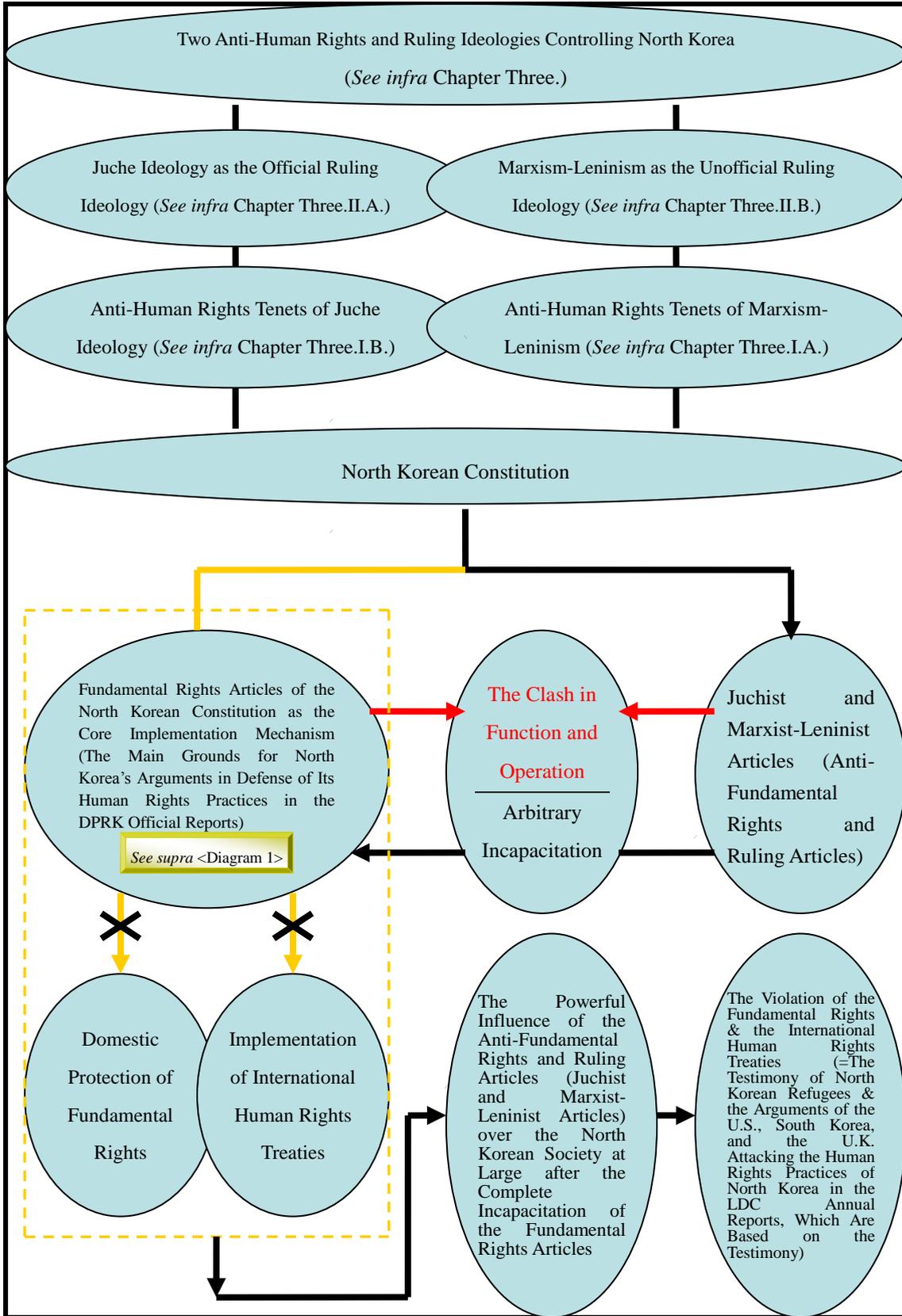
C. The Diagrammatization of the New Refuting Theory and Its Incapacitation Mechanism Model

The following diagram incorporates all aspects of the newly developed refuting theory and its incapacitation mechanism, including the core premises, key factors, logical order and flow, and theoretical structure. The diagram also incorporates the evidence for verifying the falsity of North Korea's arguments in the DPRK Official Reports and for verifying the truth of the liberal democratic countries' assertions in the

⁸⁷ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

LDC Annual Reports. Finally, the diagram shows the relationships between the points of contention of the new refuting theory, the testimony of North Korean defectors, and the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are grounded in this testimony.

<Diagram 3> The New Refuting Theory and Its Incapacitation Mechanism Model



IV. The Outline of the Study

In Chapter Two, I will take the time to review the literature concerning human rights violations in North Korea. In addition, this chapter will provide the background information that explains how a factual approach relying on refugee testimony became the mainstream method in the studies on North Korean human rights by the liberal democratic camp. In Chapter Two, I will also examine the originality of the new refuting theory and its incapacitation mechanism model under the mainstream research conditions, and the significant and substantial scholarly contribution of this dissertation.

In Chapter Three, I will provide a full definition of the terms “Juche ideology” and “Marxism-Leninism.” I will focus particularly on the strict analysis of “Juche as the anti-human rights ideology,” “Juche as the official ruling ideology of North Korea,” “Marxism-Leninism as the anti-human rights ideology,” and “Marxism-Leninism as the unofficial ruling ideology of North Korea.”

“Juche ideology and Marxism-Leninism as the two anti-fundamental rights and ruling ideologies controlling North Korea” is the major premise, as well as the starting point of the new refuting theory and its incapacitation mechanism model. However, the North Korean government disagrees with the respective positions and characteristics of Juche ideology and Marxism-Leninism. Therefore, before I begin in earnest to

demonstrate the impossibility of the performance of the core implementation mechanism model in the DPRK Official Reports through the new refuting theory and its mechanism model in Chapter Four and Chapter Five, it is essential to define each ideology and analyze their respective positions and characteristics thoroughly. Doing so will help consolidate the new refuting theory and its incapacitation mechanism model and make them uncontroversial.

In Chapter Four and Chapter Five, I will rebuff North Korea's arguments in defense of its human rights practices in its official reports more specifically and more systematically through a thorough study of the new refuting theory and its incapacitation mechanism model. I will address each of North Korea's argument in turn, beginning with North Korea's arguments about its protection of freedom of religion (Chapter Four.I.), the right to vote and to be elected (Chapter Four.II.), freedom of speech, press, assembly, and association (Chapter Four.III.), the right to an adequate standard of living (Chapter Five.I.), the right to health (Chapter Five.II.), and the right to education (Chapter Five.III.) in its official reports. The resulting infringements of three representative civil and political rights will be addressed in Chapter Four, and three economic, social and cultural rights in Chapter Five.

The contents and article numbers of the Fundamental Rights Articles and the

Juchist and Marxist-Leninist Articles, which are the two central pillars of the new refuting theory and its incapacitation mechanism model in Chapter Four and Chapter Five, will be based on the official English translation of the North Korean Constitution of 2009 by the government in its official website, “Naenara [My Country]: Democratic People’s Republic of Korea.” Using this translation will guarantee the neutrality and objectivity of this study⁸⁸ and obtainability of the related research materials.⁸⁹

This does not mean that the new refuting theory and its incapacitation mechanism model in Chapter Four and Chapter Five of this dissertation are out-of-date. There is a practical indentialness in the contents and the article numbers of all the Fundamental Rights Articles and the Juchist and Marxist-Leninist Articles between North Korean Constitutions of 1998, 2009, 2010 and the one of 2012.⁹⁰ Thus, the new refuting

⁸⁸ Neutrality and objectivity of this study: This refers to the necessity of using the official translation by the government. There are two types of English translations of the North Korean Constitutions. One is the official version of North Korean government, such as the one in its official website, “Naenara [My Country]: Democratic People’s Republic of Korea” and the other type is of individual researchers or scholars outside of the government. *See, e.g.*, CHONG BONG-UK, A HANDBOOK ON NORTH KOREA 165-190 (Han Seung-jong & Kwak Seung-ji eds., 1998); *see also* NovexCn.com (International Legal Database), Democratic People’s Republic of Korea Law Contents: DPRK’s Socialist Constitution (1998), http://www.novexc.com/dprk_constitution_98.html (last visited Oct. 14, 2010). However, there are some differences between the two types of English translations. Since the basic structure of the new refuting theory and its incapacitation mechanism model is to refute the arguments of North Korea, which are based on the contents of the Fundamental Rights Articles of its Constitution, with the contents of the Juchist and Marxist-Leninist Articles of the same Constitution, the best way to keep neutrality and objectivity of the research, as well as to prevent the dispute over the arbitrariness of the study of this dissertation, is to use “the official translations of North Korean government.”

⁸⁹ Obtainability of the official translation: As of July 2013, the North Korean government does not provide its official English translation of the Constitution of 1998, 2010, and 2012 in Naenara. The latest and the only available English version of North Korean Constitution by the government is the Constitution of 2009. *See infra* app. at 328–367.

⁹⁰ *See infra* app. at 315–327.

theory and its mechanism model based on the North Korean Constitution of 2009 is applicable to prove the falsity of North Korea's arguments in defense of its human rights practices, which are grounded in its Fundamental Rights Articles of the Constitutions of 2010 and 2012 as well as the ones from 1998 and 2009.

Finally, in Chapter Six, I will draw a final conclusion on the issue raised in Chapter One of this dissertation, grounded in the conclusions drawn from the research on the incapacitation mechanism model of the Juchist and Marxist-Leninist Articles against the core implementation mechanism model of the Fundamental Rights Articles, which have been addressed in Chapters Four and Five.

CHAPTER TWO

REVIEW OF THE LITERATURE

“From the [North Korean] escapees, the world is finally hearing the truth, the stark realities facing the people of North Korea. We now know the truth about the dictatorship. We are hearing about the human rights abuses”

– Mr. Seong[-]Min Kim, The President of Free North Korea Radio
Testimony in the 109th Congress, 2nd Session, April 25, 2006

I. The Existing Literature Relating to the Human Rights Situation in North Korea

As reviewed, the U.S. Human Rights Reports, the USCIRF Human Rights Reports, the ROK Human Rights Reports, and the U.K. Human Rights Reports are the authoritative reports on North Korean human rights which contain exemplary studies on the human rights violations in the country.⁹¹

The U.N. Human Rights Reports⁹² and the *Annual Report on International Religious Freedom* by the U.S. Department of State (“U.S. Religious Freedom Reports”)⁹³ also provide very high-quality research on this subject.

⁹¹ See *supra* Chapter One.I.B.

⁹² See, e.g., 2006 U.N. Human Rights Report, *supra* note 42; see also 2007 U.N. Human Rights Report, *supra* note 52.

⁹³ See, e.g., U.S. DEP’T OF STATE, 107TH CONG., 1ST SESS., ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM 2001: REP. SUBMITTED TO THE COMM. ON INT’L RELATIONS, U.S. H. OF REP. AND

In addition to these public-sector studies, NGOs have actively conducted research as well. For instance, the *Human Rights Watch World Report* by Human Rights Watch,⁹⁴ the *Amnesty International Report* by Amnesty International (AI) (“AI Human Rights Reports”),⁹⁵ *Freedom in the World* by Freedom House,⁹⁶ the *White Paper on North Korean Human Rights Statistics* by the Database Center for North Korean Human Rights (NKDB)⁹⁷ add to the literature.

These studies are not, of course, confined to regular or irregular reports. A considerable number of reliable books on the human rights violations in North Korea

THE COMM. ON FOREIGN RELATIONS, U.S. S. BY THE DEP’T OF STATE IN ACCORDANCE WITH SECTION 102 OF THE INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998. (J. Comm. Print 2001) [hereinafter 2001 U.S. RELIGIOUS FREEDOM REPORT]; *see also* U.S. DEP’T OF STATE, 2010 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA (2010), *available at* <http://www.state.gov/j/drl/rls/irf/2010/148874.htm> (last visited Mar. 20, 2013) [hereinafter 2010 U.S. RELIGIOUS FREEDOM REPORT].

The U.S. Department of State publishes not only the U.S. Human Rights Report but also the U.S. Religious Freedom Report annually. I intentionally chose the “USCIRF Human Rights Report” rather than the “U.S. Religious Freedom Report” as one of the main, official sources showing the rebuttals of the liberal democratic countries against North Korea’s arguments in defense of its human rights practices to obtain a diversity of research sources.

⁹⁴ *See, e.g.*, 2006 HUMAN RIGHTS WATCH REPORT, *supra* note 51.

⁹⁵ *See, e.g.*, AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 1977 (1977) [hereinafter 1977 AI HUMAN RIGHTS REPORT]; *see also* AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 1980 (1980) [hereinafter 1980 AI HUMAN RIGHTS REPORT]; AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 1989 (1989) [hereinafter 1989 AI HUMAN RIGHTS REPORT]; AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 1993 (1993) [hereinafter 1993 AI HUMAN RIGHTS REPORT]; AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 2011: THE STATE OF THE WORLD’S HUMAN RIGHTS (2011) [hereinafter 2011 AI HUMAN RIGHTS REPORT]; AMNESTY INTERNATIONAL, AMNESTY INTERNATIONAL REPORT 2012: THE STATE OF THE WORLD’S HUMAN RIGHTS (2012) [hereinafter 2012 AI HUMAN RIGHTS REPORT].

⁹⁶ *See, e.g.*, FREEDOM HOUSE, FREEDOM IN THE WORLD 2010: NORTH KOREA (2010), *available at* <http://www.freedomhouse.org/report/freedom-world/2010/north-korea> (last visited Oct. 7, 2012) [hereinafter 2010 FREEDOM HOUSE HUMAN RIGHTS REPORT].

⁹⁷ *See, e.g.*, YEO-SANG YOON ET AL., WHITE PAPER ON NORTH KOREAN HUMAN RIGHTS STATISTICS 2007 (2008).

have been published. Examples include, among many others, *A Prison Without Bars: Refugee and Defector Testimonies of Severe Violations of Freedom of Religion or Belief in North Korea* by the USCIRF,⁹⁸ *“Thank You Father Kim Il Sung”: Eyewitness Accounts of Severe Violations of Freedom of Thought, Conscience, and Religion in North Korea* by David Hawk,⁹⁹ *The Hidden Gulag: Exposing North Korea’s Prison Camps – Prisoners’ Testimonies and Satellite Photographs* by the same author,¹⁰⁰ *The Hidden Gulag (Second Edition): The Lives and Voices of “Those Who are Sent to the Mountains”* by the same author,¹⁰¹ *Hunger and Human Rights: The Politics of Famine in North Korea* by Stephan Haggard and Marcus Noland,¹⁰² *Witness to Transformation: Refugee Insights into North Korea* by the same authors,¹⁰³ *Marked for Life: Songbun, North Korea’s Social Classification System* by Robert Collins,¹⁰⁴ *Escape from Camp 14: One Man’s Remarkable Odyssey from North Korea to Freedom in the West* by Blaine

⁹⁸ USCIRF, *A PRISON WITHOUT BARS: REFUGEE AND DEFECTOR TESTIMONIES OF SEVERE VIOLATIONS OF FREEDOM OF RELIGION OR BELIEF IN NORTH KOREA* (2008).

⁹⁹ HAWK, *supra* note 67.

¹⁰⁰ DAVID HAWK, *THE HIDDEN GULAG: EXPOSING NORTH KOREA’S PRISON CAMPS – PRISONERS’ TESTIMONIES AND SATELLITE PHOTOGRAPHS* (2003).

¹⁰¹ DAVID HAWK, *THE HIDDEN GULAG (SECOND EDITION): THE LIVES AND VOICES OF “THOSE WHO ARE SENT TO THE MOUNTAINS”* (2012).

¹⁰² STEPHAN HAGGARD & MARCUS NOLAND, *HUNGER AND HUMAN RIGHTS: THE POLITICS OF FAMINE IN NORTH KOREA* (2006).

¹⁰³ STEPHAN HAGGARD & MARCUS NOLAND, *WITNESS TO TRANSFORMATION: REFUGEE INSIGHTS INTO NORTH KOREA* (2011).

¹⁰⁴ ROBERT COLLINS, *MARKED FOR LIFE: SONGBUN, NORTH KOREA’S SOCIAL CLASSIFICATION SYSTEM* (2012).

Harden,¹⁰⁵ *Escaping North Korea : Defiance and Hope in the World's Most Repressive Country* by Mike Kim,¹⁰⁶ *Nothing to Envy: Ordinary Lives in North Korea* by Barbara Demick,¹⁰⁷ *Under the Loving Care of the Fatherly Leader: North Korea and the Kim Dynasty* by Bradley K. Martin,¹⁰⁸ *North of the DMZ: Essays on Daily Life in North Korea* by Andrei Lankov,¹⁰⁹ *The Hidden People of North Korea: Everyday Life in the Hermit Kingdom* by Ralph Hassig and Kongdan Oh,¹¹⁰ *Political Prisoners' Camps in North Korea: The Testimony of An Myong-chol, an Ex-Guard at a Political Prisoners' Camp in North Korea* by Kim Yong-sam,¹¹¹ *Political Prisoners' Camps in North Korea: Replicas of Stalinist Gulags* by the Institute for South-North Korea Studies¹¹² and so forth.

Furthermore, there are works written by North Korean defectors themselves. To

¹⁰⁵ BLAINE HARDEN, *ESCAPE FROM CAMP 14: ONE MAN'S REMARKABLE ODYSSEY FROM NORTH KOREA TO FREEDOM IN THE WEST* (2012).

¹⁰⁶ MIKE KIM, *ESCAPING NORTH KOREA: DEFIANCE AND HOPE IN THE WORLD'S MOST REPRESSIVE COUNTRY* (2008).

¹⁰⁷ BARBARA DEMICK, *NOTHING TO ENVY: ORDINARY LIVES IN NORTH KOREA* (2009).

¹⁰⁸ BRADLEY K. MARTIN, *UNDER THE LOVING CARE OF THE FATHERLY LEADER: NORTH KOREA AND THE KIM DYNASTY* (2010).

¹⁰⁹ ANDREI LANKOV, *NORTH OF THE DMZ: ESSAYS ON DAILY LIFE IN NORTH KOREA* (2007).

¹¹⁰ RALPH HASSIG & KONGDAN OH, *THE HIDDEN PEOPLE OF NORTH KOREA: EVERYDAY LIFE IN THE HERMIT KINGDOM* (2009).

¹¹¹ KIM YONG-SAM, *POLITICAL PRISONERS' CAMPS IN NORTH KOREA: THE TESTIMONY OF AN MYONG-CHOL, AN EX-GUARD AT A POLITICAL PRISONERS' CAMP IN NORTH KOREA* (1995).

¹¹² THE INSTITUTE FOR SOUTH-NORTH KOREA STUDIES, *POLITICAL PRISONERS' CAMPS IN NORTH KOREA: REPLICAS OF STALINIST GULAGS* (1993).

cite a few examples, they are *The Aquariums of Pyongyang: Ten Years in the North Korean Gulag* by Chol-hwan Kang,¹¹³ *This is Paradise!: My North Korean Childhood* by Hyok Kang,¹¹⁴ *Long Road Home: Testimony of a North Korean Camp Survivor* by Yong Kim,¹¹⁵ *Eyes of the Tailless Animals: Prison Memoirs of a North Korean Woman* by Soon Ok Lee,¹¹⁶ and so forth.

II. The Mainstream Use of the Factual Approach in the Studies on the Human Rights in North Korea

A. Historical Background

Unlike the vibrant research on North Korean human rights in the public and private sectors these days, which are based on the testimony of North Korean defectors, the interpretation of the information from the outside visitors to the country, and the assessment of the human rights there based on these sources, the research of the 1970's,

¹¹³ CHOL-HWAN KANG & PIERRE RIGOULOT, *THE AQUARIUMS OF PYONGYANG: TEN YEARS IN THE NORTH KOREAN GULAG* (Yair Reiner trans., rev. ed. 2005).

¹¹⁴ HYOK KANG & PHILIPPE GRANGEREAU, *THIS IS PARADISE!: MY NORTH KOREAN CHILDHOOD* (Shaun Whiteside trans., 2005).

¹¹⁵ YONG KIM, *LONG ROAD HOME: TESTIMONY OF A NORTH KOREAN CAMP SURVIVOR* (Suk-Young Kim trans., 2009).

¹¹⁶ SOON OK LEE, *EYES OF THE TAILLESS ANIMALS: PRISON MEMOIRS OF A NORTH KOREAN WOMAN* (Bahn-Suk Lee & Jin Young Choi trans., 1999).

1980's, and even the early 1990's was more sparse.¹¹⁷ This was due to the serious lack of basic information and essential data for the studies. The number of North Korean escapees to South Korea in the 1970's and 1980's totaled 31 and 64, respectively.¹¹⁸ There was no other source of information on country conditions due to the thoroughly closed nature of the country.¹¹⁹ Considering that the major settlement of all North Korean escapees in the 1970's and 1980's was in South Korea, due to the sharp ideological conflict between South Korean democracy and North Korean communism under the cold war system,¹²⁰ these small numbers were insufficient to permit the

¹¹⁷ See Scott Snyder & Kyung-Ae Park, *Introduction*, in *NORTH KOREA IN TRANSITION: POLITICS, ECONOMY, AND SOCIETY* at vii, xii (Kyung-Ae Park & Scott Snyder eds., 2012) ("For instance, almost no literature regarding North Korean human rights existed in the early 1990s as a result of the absence of credible eyewitness testimony. . . . However, the stream of literature now available provides chilling evidence of the dire consequences of the failures of the North Korean system . . . (citation omitted)").

¹¹⁸ See GABRIEL JONSSON, *TOWARDS KOREAN RECONCILIATION: SOCIO-CULTURAL EXCHANGES AND COOPERATION* 152 (2006) ("In the . . . 1970s, the numbers [of North Korean defectors to South Korea] were . . . 31 . . ."); see also *id.* ("[O]nly 64 North Koreans had defected [to South Korea] during the 1980s . . ."); Peter Beck et al., *Perilous Journeys: The Plight of North Koreans in China*, in *KOREA YEARBOOK 2007 (VOLUME 1): POLITICS, ECONOMY AND SOCIETY* 253, 257 (Rüdiger Frank et al. eds., 2008) ("North Korea's social controls and indoctrination have proved amazingly effective. Before 1990, there were only a handful of defections to South Korea and some clandestine cross-border remittances or trade with relatives in China. Little information flowed in or out of the country.").

¹¹⁹ See *supra* Chapter One.I.B.

¹²⁰ See HASSIG & OH, *supra* note 110, at 220 ("Before the 1990s, [North Korean] defectors were hailed in South Korea as *yongsa* ("national heroes"), and upon their arrival the government proudly presented them in press conferences during which they praised South Korea and criticized North Korea."). Considering that "trophy refugees" are "the living symbol[s] of the rival ideology's failures" and "dissidents who fled those countries the U.S. condemned as being repressive," these North Korean refugees to South Korea in the 1970's and 1980's were literally "trophy refugees" in the viewpoint of the South Korean government, in a manner of speaking. See Joan Fitzpatrick, *Flight From Asylum: Trends Toward Temporary "Refuge" and Local Responses to Forced Migrations*, 35 VA. J. INT'L L. 13, 28 (1994) ("[T]he collapse of communist regimes in the East removed the realpolitik rationale for a generous asylum policy. Little gain could be gleaned from the 'trophy refugee,' the living symbol of the rival ideology's failures."); see also Karen Musalo, *Protecting Victims of Gendered Persecution: Fear of Floodgates or Call to (Principled) Action?*, 14 VA. J. SOC. POL'Y & L. 119, 130 (2007) ("These factors no longer exist; refugees come from countries all around the world, and few (perhaps with the exception of Cubans) fit the category of 'trophy' refugees - a term used to describe dissidents who fled those countries

liberal democratic countries to conduct active and objective research on the human rights violations in North Korea.¹²¹ This chronic situation was not improved in the early 1990's. The number of North Korean defectors to South Korea from 1990 until 1993 was still only 34.¹²²

The limits of the research on North Korean human rights in the 1970's, 1980's, and the early 1990's were actually revealed in various studies. For example, even the U.S. Human Rights Reports, which is one of the pathfinders in public sectors on the studies of North Korean human rights, did not contain any information on the country at all before 1980. It was the 1979 U.S. Human Rights Reports in 1980 that included a section on the country for the first time.¹²³ However, the two main sources of relevant information for the section¹²⁴ at that time were not North Korean defectors, but the U.S.

the U.S. condemned as being repressive.”).

¹²¹ See HASSIG & OH, *supra* note 110, at 219 (“Defectors are a valuable source of information about what is happening in North Korean society, although their testimony must be used judiciously. . . . However, when numerous defectors tell similar stories with different details, their testimony becomes quite credible.”).

¹²² See *infra* <Table 1>.

¹²³ See Vernon Joseph Vavrina, Jr., *Human Rights and American Foreign Policy: Violations of the Integrity of the Person, Selected Cases, 1969-1980.*, (Apr. 16, 1984) (unpublished Ph.D. dissertation, Georgetown University), AAT 8505727 at 335 (“Older U.S. State Department Reports on Human Rights Practices contain no information at all on the DPRK. However, a report released in [] [1980] does include a section on North Korea.”).

¹²⁴ See, e.g., 1979 U.S. HUMAN RIGHTS REPORT, *supra* note 32, at 469 (“[T]he Pueblo crew in 1968 was beaten, starved, and otherwise abused.”); see also *id.* (“a. Torture[:] Ali Lameda’s report on his imprisonment explains that torture and beating were used on Korean prisoners during interrogation, although physical torture was not used on Ali Lameda and a fellow foreigner, Jacques Sedillot. Crew members of the Pueblo were beaten. Further information is unavailable.”); *Id.* (“b. Cruel, Inhumane, or Degrading Treatment or Punishment[:] Lameda reports deprivation of food to force ‘confessions,’ as well

crew of the USS Pueblo¹²⁵ and the Venezuelan poet Ali Lameda, who was employed by the North Korean government as a translator for Kim Il Sung's memoirs into Spanish and later detained for around 7 years (from September 1967 until May 1974) within the country.¹²⁶

The research conditions in the 1980's and the early 1990's were no different. To cite some examples, the 1983 U.S. Human Rights Report states the following:

The United States does not have diplomatic relations with the Democratic People's Republic of Korea and thus does not have direct access to information on the situation in North Korea. Because of the closed nature of the society, there was little new information in 1983 on human rights practices in North Korea.¹²⁷

In addition, the 1991 U.S. Human Rights Report states that "The United States does not have diplomatic relations with the Democratic People's Republic of Korea.

as solitary confinement, continuous interrogation, enforced waking periods, poor or non-existent medical treatment, and deprivation of visits, parcels, correspondence, writing materials, newspapers, and clothing changes. Prisoners are reportedly regarded as persons without rights."); *Id.* at 470 ("c. Arbitrary Arrest or Imprisonment[:] . . . Lameda was reportedly told that his requests for a lawyer of his choice and an open trial were 'bourgeois.'"); *Id.* ("d. Denial of Fair Public Trial[:] Lameda was twice denied public trial. After his first arrest he was imprisoned for a year without a hearing; after the second, he was put through a closed session without benefit of counsel of his choice or even knowledge of the charges."); *Id.* ("e. Invasion of the Home[:] . . . Lameda reported . . . that his residence was not respected and that listening devices were used against him.").

¹²⁵ "On 23 January 1968, while off Wonsan, North Korea, *Pueblo* was attacked by local forces and seized. One crewmember was killed in the assault and the other eighty-two men on board were taken prisoner. . . . After eleven months in captivity, often under inhumane conditions, *Pueblo's* crew were repatriated on 23 December 1968." Dep't of the Navy: Naval Historical Ctr., USS Pueblo, <http://www.history.navy.mil/photos/sh-usn/usnsh-p/ager2.htm> (last visited Oct. 9, 2012).

¹²⁶ See MICHAEL BREEN, KIM JONG-IL: NORTH KOREA'S DEAR LEADER: WHO HE IS, WHAT HE WANTS, WHAT TO DO ABOUT HIM 110 (rev. ed. 2012) ("Ali Lameda, a Venezuelan poet . . . , worked in Pyongyang in 1966 as [a] copy editor[], improving the Spanish . . . translations, . . . of Kim Il-sung's speeches and various publications. [He was] arrested after criticizing the propaganda, accused of being [a] CIA spy[], and sentenced to 20-year prison terms. Lameda was freed in 1974, after the Romanian leader, Nicolae Ceausescu, personally intervened.").

¹²⁷ 1983 U.S. HUMAN RIGHTS REPORT, *supra* note 32, at 804.

North Korea does not allow representatives of foreign governments, journalists, or other invited visitors the freedom of movement that would enable them to assess human rights conditions there.”¹²⁸

The situation was the same for the Human Rights Reports of AI, which is one of the pioneers in the studies on North Korean human rights in private sectors. The following statements in the 1977 AI Human Rights Report show the difficulties inherent in a research study on the human rights violations in North Korea at that time particularly well:

Amnesty International has carefully monitored all available information from North Korea and can only report that it contains no detailed evidence whatsoever regarding arrests, trials and imprisonment in that country. Furthermore, there appears to be a complete censorship of news relating to human rights violations. Despite its efforts Amnesty International has not been able to trace any information, even positive, on the subject of such rights in North Korea.¹²⁹

The research conditions in the 1980’s and the early 1990’s were not any different from those in the 1970’s. To cite some instances, the 1980 AI Human Rights Report states that “The [North Korean] government maintains severe restrictions on access to,

¹²⁸ 1991 U.S. HUMAN RIGHTS REPORT, *supra* note 32, at 887.

The 1985 U.S. Human Rights Report also makes a statement to the same effect as follows:

The United States does not have diplomatic relations with the Democratic People’s Republic of Korea; even representatives of governments that do, as well as journalists and other occasional invited visitors to North Korea, are not permitted the freedom of movement that would enable them effectively to assess human rights conditions there.

1985 U.S. HUMAN RIGHTS REPORT, *supra* note 32, at 791.

¹²⁹ 1977 AI HUMAN RIGHTS REPORT, *supra* note 95, at 192.

travel in, and dissemination of information in, the country. It therefore continues to be very difficult to collect information on human rights concerns within Amnesty International's mandate."¹³⁰

In addition, the 1989 AI Human Rights Report reported that "As in previous years, authorities and media in the Democratic people's Republic of Korea (DPRK) rarely provided information about arrests, political trials, imprisonment or the death penalty and assessment of human rights was extremely difficult."¹³¹

The 1993 AI Human Rights Report depicts the situation as follows:

Information about human rights concerns was severely limited and difficult to verify. Human rights issues were rarely reported in the media, which is controlled by the government of President Kim Il Sung, and there was no independent group in the country monitoring and recording human rights problems. Access to the country remained restricted and Amnesty International received no reply to its request to visit the country during the year.¹³²

The dire economic circumstances of North Korea since the 1990s, and consequently the extremely worsened food situation since the mid-1990s brought on a noticeable increase in the number of North Korean refugees to China.¹³³ The numbers

¹³⁰ 1980 AI HUMAN RIGHTS REPORT, *supra* note 95, at 207.

¹³¹ 1989 AI HUMAN RIGHTS REPORT, *supra* note 95, at 181.

¹³² 1993 AI HUMAN RIGHTS REPORT, *supra* note 95, at 180.

¹³³ See Peter Beck et al., *supra* note 118, at 253 ("The economic collapse of the Democratic People's Republic of Korea (DPRK)—North Korea— and the famine in that country in the 1990s and subsequent food shortages have prompted scores of thousands to escape their country's hardships and seek refuge in the People's Republic of China (PRC)—China— and beyond"); see also MIKYOUNG KIM,

are estimated to be a minimum of 10,000 to a maximum of 300,000, though the exact figure is open to debate.¹³⁴ Nevertheless, the increase in the number of North Korean refugees in China didn't decisively contribute to the vitalization of studies on North Korean human rights, because interviewing the refugees for research purposes within Chinese territory was not easy, due to crackdowns by the Chinese government and the forcible repatriation of the refugees by the Chinese authorities and North Korean security agents.¹³⁵ Thus, the researchers of the liberal democratic countries and human rights NGOs have had considerable difficulties undertaking and conducting the studies on the human rights situations in North Korea via information of North Korean

SECURITIZATION OF HUMAN RIGHTS: NORTH KOREAN REFUGEES IN EAST ASIA 45 (2012) (“China has been on the receiving end of a massive influx of Korean refugees since the mid-1990s. Pyongyang’s failure to feed its own people has driven a starving population in search of food across the dangerous 850-mile-long border between the two countries.(footnote omitted)”).

¹³⁴ See KIM, *supra* note 133, at 45 (“The exact number of North Korean escapees in China is open to debate. The Chinese government’s conservative estimate is 10,000; Seoul’s calculation is between 10,000 and 30,000; humanitarian organizations put the figure as high as 300,000.”).

¹³⁵ See 148 CONG. REC. S6801 (daily ed. July 15, 2002) (statement of Sen. Sam Brownback) (“It is estimated . . . that up to 300,000 North Korean refugees in China are living a precarious and dangerous life, hiding by day, begging by night, in an effort to avoid being captured and repatriated back to North Korea by Chinese and North Korean agents brazenly operating inside China.”); see also *id.* at S6802 (“They [North Korean refugees in China] are hiding by day . . . trying to keep from being caught and sent back into North Korea, which is what China does. If they catch people from North Korea, they treat them as economic migrants and ship them back into starvation, refugee camps, persecution, and probably death.”); Peter Beck et al., *supra* note 118, at 275 (“On the basis of our interviews with aid workers, an estimated 150-300 North Koreans are repatriated from China every week.(citation omitted)”); *Id.* at 254 (“In China, the border crossers live in hiding from crackdowns and forcible repatriations by China and neighbouring countries, vulnerable to abuse and exploitation. If repatriated to the North, they face harsh punishment, possibly execution.”); Yoonok Chang et al., *Migration Experiences of North Korean Refugees: Survey Evidence from China*, in KOREA YEARBOOK 2009 (VOLUME 3): POLITICS, ECONOMY AND SOCIETY 301, 301-302 (Rüdiger Frank et al. eds., 2009) (“The Chinese government has responded to this influx with intensified surveillance of the border and periodic crackdowns on the refugee community, while consistently refusing to grant North Korean refugees asylum or to establish a process through which their refugee status claims could be processed.”).

defectors in China.¹³⁶

On the other hand, at approximately the same time, the number of North Korean defectors into South Korea also increased.¹³⁷ It was this massive surge of North Korean defectors in South Korea since the mid-1990s that made a large contribution toward the increase of active and objective studies on the human rights violations in North Korea.

The majority of the North Korean refugees that have come into South Korea are refugees from China, who have managed to escape their homeland since the mid-1990s,¹³⁸ North Korean refugees from Thailand, who have escaped through China and Laos,¹³⁹ North Koreans from Mongolia, who arrived there via China,¹⁴⁰ and North

¹³⁶ See Yoonok Chang et al., *supra* note 135, at 304 (“Because of the tightened security situation in the border region, conducting such interviews has become much more difficult, if not altogether impossible, since the interview period.”); *see also id.* (“Because these refugees do not have legal status in China, in the cases where respondents were suspicious and refused to answer on paper, the responses were memorised by the interviewers to dissipate this anxiety.”); Peter Beck et al., *supra* note 118, at 261 (“There is a consensus among missionaries, aid workers and [human rights] NGOs that Beijing has steadily increased the pressure on North Korean asylum seekers and those helping them.(citation omitted) It implemented a system of rewards for turning in North Koreans and fines for supporting them.”); *Id.* (“Since 2000, China has increasingly targeted the [human rights] NGOs and aid workers who help North Koreans.(citation omitted)”).

¹³⁷ See *infra* <Table 1>; *see also* JONSSON, *supra* note 118, at 152 (“However, from then the figures [of North Korean defectors to South Korea] rose due to the North’s economic hardship and food shortage: . . . there were 487 defectors during the 1990s. The number of the defectors fleeing to the South during the years between 2000 and 2004, were 312, 583, 1,139, 1,281 and 1,894, respectively.(citation and footnote omitted)”); HASSIG & OH, *supra* note 110, at 219-220 (“In the 1990s, as economic conditions deteriorated in the North . . . defections increased to 533, the number rapidly rising at the end of that decade and into the 2000s: 71 in 1998, 148 in 1999, 312 in 2000, 583 in 2001, and 1,139 in 2002.”).

¹³⁸ See Yoonok Chang et al., *supra* note 135, at 302 (“[W]e know from data collected by the government of the Republic of Korea (South Korea) that even those who succeed in getting out [of North Korea] have often spent substantial time in China, many having fled during the peak famine years of the mid-1990s.”).

¹³⁹ See Voice of America, ‘North Korean Refugees Seek Freedom Via Thailand,’ VOICE OF AMERICA (Dec.

Koreans from Russia, who were mostly loggers in lumber camps in Siberia.¹⁴¹ Very few of the North Korean refugees have directly defected into South Korea by way of land and sea through the Korean Peninsula, and those who have done so have frequent brushes with death during their journey.¹⁴²

<Table 1> Number of North Koreans Entering South [Korea]¹⁴³

28, 2011), <http://www.voanews.com/content/north-korean-refugees-seek-freedom-via-thailand-136370353/150081.html> (“Since 2004 the number of North Koreans arriving in Thailand each year has risen from just a few dozen to more than 2,000. North Koreans fleeing oppression in their homeland secretly travel across China and Laos to reach Thailand - where authorities generally do not send them back home. Most refugees eventually end up in South Korea.”).

¹⁴⁰ See James Brooke, ‘*Refugee Plan For Mongolia Adds to Dispute On North Korea*,’ N.Y. TIMES, (Sept. 28, 2003), <http://www.nytimes.com/2003/09/28/world/refugee-plan-for-mongolia-adds-to-dispute-on-north-korea.html?pagewanted=2&src=pm> (“Since the late 1990’s, missionary groups have quietly brought hundreds of North Koreans to Mongolia . . . for eventual settlement in South Korea. . . . The prime minister said bona fide North Korean refugees who reached Mongolia were allowed to travel on to Seoul, the destination most North Koreans preferred . . .”).

¹⁴¹ See Chung Min-uck, ‘*Russia more flexible than China on N. Korean defectors*,’ THE KOREA TIMES (Apr. 26, 2012), http://www.koreatimes.co.kr/www/news/nation/2012/04/116_109742.html (“Since the 1950s, Pyongyang has sent loggers to eastern Siberia to earn hard currency. It is estimated that there are over 20,000 North Korean loggers working there. Suffering cold weather, exploitation and surveillance from state-owned North Korean entities, they have started to flee the working site in search of freedom.”); *see also id.* (“There have been numerous defection attempts by the loggers since being sent to work in Russia. Experts believe if the workers are returned to North Korea, they will face harsh punishment and possibly execution. Fortunately, they were granted refugee status in Russia by the United Nations.”); *Id.* (“Russia is relatively cooperative with the South Korean government in the North Korean defector issue,” said a foreign ministry official on condition of anonymity. “In Russia, the process of sending them to South Korea is well institutionalized based on standards given by the United Nations. . . .”); Kim Yoon-mi, ‘*Russia regards N.K. defectors as refugees, Korean envoy says*,’ THE KOREA HERALD (Feb. 27, 2012), <http://view.koreaherald.com/kh/view.php?ud=20120227000946&cpv=0> (“Russia has a stable protocol to help North Korean defectors head for South Korea with the support of the United Nations High Commissioner for Refugees, said Wi Sung-lac, Korean ambassador to Russia.”); *Id.* (“Through consultations with the UNHCR, Russia established a ‘formula’ to take them to Seoul in humanitarian perspectives in 1993. They still use such methods (when dealing with North Koreans),” he [the Korean ambassador to Russia] said.”).

¹⁴² See Choe Sang-Hun, ‘*Four North Koreans Defect to South Korea [by Sea]*,’ N.Y. TIMES, (Dec. 31, 2008), <http://www.nytimes.com/2009/01/01/world/asia/01nkorea.html> (“Escapes from North Korea through the heavily guarded land and sea borders between the two Koreas are uncommon. More than 14,000 people from the hunger-stricken North have defected to South Korea since the end of the Korean War in 1953, but most of the defectors have gone through China.”).

¹⁴³ Ministry of Unification (MOU), MOU Initiatives: Introduction to NK Refugee Issues, <http://eng.unikorea.go.kr/CmsWeb/viewPage.req?idx=PG0000000536> (last visited Oct.14, 2012).

/ Year	Past- 89	'90~ 93	'94~ 98	'99~ 01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11. 11	Total
Male	564	32	235	564	513	468	625	422	509	570	612	666	578	765	7,116
Female	43	2	71	479	625	813	1,269	961	1,509	1,974	2,197	2,261	1,798	1,767	15,776
Total	607	34	306	1,043	1,138	1,281	1,894	1,383	2,018	2,544	2,809	2,927	2,376	2,532	22,892
Share of Female (%)	7	6	23	46	55	63	67	69	75	78	78	77	76	70	69

Unlike the process of interviewing the refugees in China, gathering information from the refugees in South Korea is relatively easy and safe. Additionally, as of November 2011, there has been an overall trend of a clear and steady increase in the number of North Korean defectors in South Korea, while the number in China has passed its peak in 1998 and 1999 and has shown a continued decreasing trend since 2000.¹⁴⁴ Furthermore, although there are Korean refugees in Western nations,¹⁴⁵ their numbers are not sufficient to secure reliable testimony for objective research on the

¹⁴⁴ See KIM, *supra* note 133, at 45 (“According to Lee [Keum-Soon at KINU],(citation omitted) the number of those fleeing reached a peak in 1998–99. There has been a gradual decline since the year 2000, when the estimated number of escapees ranged from 75,000 to 125,000. By 2005 the number was down to between 30,000 and 50,000.”).

¹⁴⁵ The U.S., U.K., Japan, Australia, Germany, Netherlands and so forth, have North Korean refugees as well. See 2012 AI HUMAN RIGHTS REPORT, *supra* note 95, at 205 (“More than 23,500 North Koreans were granted nationality in South Korea; hundreds were in Japan. According to figures released in 2011 by UNHCR, the UN refugee agency, there were 917 North Korean asylum-seekers in ‘refugee-like situations’ in 2010 in countries including Australia, Germany, Netherlands, UK and USA.”).

human rights situations in North Korea in comparison to that of South Korea.¹⁴⁶

The relative freedom of interviews for research purposes, the steady increase of North Korean defectors, and the sufficient number of refugees in South Korea for credible studies means that the South Korean government has ideal conditions for these studies on the human rights situation in North Korea through the serviceable, stable, and sufficient security of key sources.¹⁴⁷

B. The Good Effects and Adverse Effects

These research environments first contributed to the vitalization of the studies on North Korean human rights in South Korea. The primary example is the ROK Human Rights Reports. KINU began in earnest to publish its annual ROK Human Rights Report starting from 1996 through the extensive personal interviews with North Korean escapees in South Korea. The 2011 ROK Human Rights Report says as follows in this regard:

¹⁴⁶ The number of refugees in these countries is a decided minority compared to that of South Korea, due to the overwhelming preference of North Korean defectors for South Korea over other liberal democratic countries. See Goedde, *supra* note 15, at 531 (“[N]orth Korean refugees steadily stream into South Korea with individual accounts about their hardships back home.(citation omitted)”); see also Yoonok Chang et al., *supra* note 135, at 302 (“Relatively few refugees want to remain in China: Most want to resettle permanently in South Korea”); Yoonok Chang et al., *North Korean Refugees in China: Evidence from a Survey*, in THE NORTH KOREAN REFUGEE CRISIS: HUMAN RIGHTS AND INTERNATIONAL RESPONSE 14, 22 (Stephan Haggard & Marcus Noland eds., 2006) (“[T]he survey asked about the preferences of the refugees concerning their ultimate place of domicile; where would they like to live? As can be seen, very few express a preference for living in North Korea [1%]. South Korea [64%] is the favored destination, followed by the United States [19%].”).

¹⁴⁷ See *supra* note 121 and accompanying text.

[s]ince 1996 we have published this “White Paper on Human Rights in North Korea” every year in both Korean and English. In order that we may better grasp the North Korean realities on the ground, the contents of this White Paper are based on in-depth personal interviews with North Korean defectors in South Korea, with emphasis on recent arrivals¹⁴⁸

On the other hand, the research environments, which were beginning to be set up in South Korea since the mid-1990s, also made a contribution towards breeding more active and vibrant studies on the human rights violations in North Korea in liberal democratic countries other than South Korea, because it has facilitated the collaborative research between South Korea and other countries through the sharing of testimony, information, and data from North Korean defectors in South Korea. These features are revealed particularly well in the relevant studies of the U.K. and U.S., which keep close ties with South Korea, on North Korean human rights infringements.

For example, UKFCO clearly states that “Seoul is a major centre of information about human rights in the DPRK and activism on the issue.”¹⁴⁹ in the 2010 U.K. Human Rights Report.

Similar statements appear in the 2009 USCIRF Human Rights Report.¹⁵⁰

USCIRF has also cited the importance of refugee testimony in *A Prison Without*

¹⁴⁸ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 9.

¹⁴⁹ 2010 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 181.

¹⁵⁰ *See, e.g.*, 2009 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 24 (“The most reliable information comes from North Korean groups in South Korea”).

Bars: Refugee and Defector Testimonies of Severe Violations of Freedom of Religion or

Belief in North Korea:

In addition to interviews with some 30 North Korean refugees now residing in South Korea, a number of interviews were conducted with former North Korean police and other security officials who had defected to South Korea. The former North Korean police agents provided valuable insight into the way in which religious freedom is actively repressed in the DPRK.¹⁵¹

The same is true for the studies on the human rights violations in North Korea by individual researchers of the liberal democratic countries. For instance, David Hawk, a leading expert on North Korean human rights and a prolific writer on the subject, says the following in the research methodology of his book, *“Thank You Father Kim Il Sung”*: *Eyewitness Accounts of Severe Violations of Freedom of Thought, Conscience, and Religion in North Korea*:

Forty former North Koreans presently residing in South Korea were interviewed for this study on the basis of a detailed questionnaire prepared by David Hawk and reviewed by [the United States] Commission [on International Religious Freedom] staff. . . . The interviews were carried out over the period from November 2004 to April 2005. Each interview was conducted in person and usually lasted several hours.¹⁵²

In *The Hidden Gulag: Exposing North Korea’s Prison Camps – Prisoners’*

¹⁵¹ USCIRF, *supra* note 98, at 4.

¹⁵² HAWK, *supra* note 67, at 130.

See USCIRF, *supra* note 98, at i5 (“That report [*“Thank You Father Kim Il Sung”*: *Eyewitness Accounts of Severe Violations of Freedom of Thought, Conscience, and Religion in North Korea*], based on extensive interviews with North Korean refugees who fled through China to South Korea from 1999 – 2003, was the first of its kind to draw on testimony from refugees to provide a much needed window on religious freedom conditions inside North Korea and the consequences for refugees who are forced to return.”).

Testimonies and Satellite Photographs, Mr. Hawk states:

This report is based . . . on thirty in-depth interviews with former North Koreans who found asylum in South Korea. These interviews were conducted largely in Seoul in August 2002, November–December 2002, and February 2003. Most of the information in this report comes from former prisoners, who during their interviews described in detail the situations of their imprisonment, their living and work units, and their treatment and observations while imprisoned or detained. These prisoners’ accounts are corroborated and amplified by accounts from former prison guards The perspectives of the prison guards are further amplified by a former prison-system official “defector”¹⁵³

Finally, in *The Hidden Gulag (Second Edition): The Lives and Voices of “Those Who are Sent to the Mountains,”* Mr. Hawk states that “This report is based on more than sixty in-depth personal interviews with former prisoners in North Korea’s detention facilities who subsequently escaped to South Korea. This is in addition to interviews with several former guards at the camps who later defected to South Korea.(footnote omitted)”¹⁵⁴

The remarkable increase in the number of North Korean refugees since the mid-1990s promoted and facilitated the studies on the human rights abuses in North Korea, not only by the U.S., South Korea, and the U.K., but also by individual researchers. These studies, and the publication of them, which were brought on by this increase, led the world to be more concerned about the miserable lives of the North Korean people.

¹⁵³ HAWK, *supra* note 100, at 14.

¹⁵⁴ HAWK, *supra* note 101, at 13.

But at the same time, it has also produced adverse effects by causing human rights observers and scholars to neglect and ignore the research method of theoretical approaches in the field of the research on this subject, in favor of the absolute mainstream use of factual approaches.

III. The Originality and the Scholarly Contributions of This Dissertation

The very first theoretical studies on the incapacitation mechanism of the Juchist and Marxist-Leninist Articles appeared in the U.S. Human Rights Reports. For example, the 1979 U.S. Human Rights Report argues that “The latest constitution, promulgated in 1972, purports to guarantee a wide range of rights, including . . . freedom of the press, religion . . . and association Other articles of that constitution eliminate or render meaningless the guarantee of those rights.”¹⁵⁵

Additionally, the same report maintains that “The North Korean constitution [of 1972] states that all citizens have freedom of speech, press, assembly, association, and demonstration [in the Article 53]. In practice, however, those rights are nullified by other articles of the constitution which require citizens strictly to obey the ‘socialist

¹⁵⁵ 1979 U.S. HUMAN RIGHTS REPORT, *supra* note 32, at 467.

norms of life' and to obey a 'collective spirit.'"¹⁵⁶

Fully considering that even AI Reports, which have the longest history in North Korean human rights studies along with U.S. Human Rights Reports, have had to rely on only the assessment of the human rights in North Korea based on the analyses of the testimony of North Korean defectors and the interpretation of the information from the outside visitors to the country until just recently, the U.S. State Department's attempt to study the human rights violations in North Korea through both the theoretical approaches as well as the factual approaches in the late 1970's was really an epoch-making event at that time. Unfortunately, the incapacitation mechanism model in the U.S. Human Rights Report has not been developed any further since 1979. The same or similar short expressions as the abovementioned ones from the 1979 U.S. Human Rights Report have sometimes been quoted and used in applications in other U.S. Human Rights Reports, USCIRF Human Rights Reports, ROK Human Rights Reports, U.N. Human Rights Reports, Freedom House Press Freedom Reports, other publications of USCIRF, and so forth.¹⁵⁷

¹⁵⁶ *Id.* at 471.

¹⁵⁷ *See supra* Chapter One.III.A.

In addition to these relatively well-known research sources, for example, the abovementioned short statements in the 1979 U.S. Human Rights Report were also used in applications in such book as *North Korea: A Country Study*:

Although Article 53 of the [North Korean] constitution [of 1972] states that North Korean citizens have freedom of speech, press, assembly, association, and demonstration, such activities are permitted only in support of government and KWP [Korean Workers' Party]

Although we should appreciate the value of these brief statements in these credible research sources as the prototypes for the development of the new refuting theory and its incapacitation mechanism model of this dissertation,¹⁵⁸ these statements in major research sources are neither systematic nor sufficiently detailed to effectively and persuasively refute the core implementation mechanisms of the Fundamental Rights Articles of the North Korean Constitution and North Korea's arguments in defense of its human rights practices based on them in the DPRK Official Reports.

Additionally, they only deal with two Fundamental Rights Articles – freedom of religion, and freedom of speech and of the press, assembly and association. Thus, they are also limited in research scope.

Herein lie the originalities of this dissertation. I developed and formulated my own systematic refuting theory and its mechanism model in detail to refute the assertions of North Korea in its official reports logically and objectively, under the current research conditions that include few preexisting studies and analysis on the human rights violations in North Korea through theoretical approaches and theoretical refutations. In fact, no books, articles, journals, periodicals, or dissertations analyze

objectives. Other articles of the constitution require citizens to follow the socialist norms of life; for example, a collective spirit takes precedence over individual . . . liberties. Kim, *supra* note 46, at 194.

¹⁵⁸ See *supra* Chapter One.III.B.

the core implementation mechanism models of the Fundamental Rights Articles of North Korean Constitution as in-depth as this dissertation. No other studies explain the incapacitation mechanism models of the Juchist and Marxist-Leninist Articles as systematically as well. Additionally, no other research addresses the theoretical relationship between the two types of articles and their logical dynamics in the North Korean Constitution in minute detail as this dissertation.

This dissertation covers a total of six major fundamental rights, which is enough to draw an objective conclusion on North Korea's violations of domestic human rights and the international human rights treaties.

In addition to these originalities, this dissertation makes a significant and substantial contribution to legal scholarship. Intensive studies on North Korean human rights, based on theoretical approaches, are needed now more than ever, considering the latest situations regarding the intensified dispute between North Korea and the liberal democratic countries over its human rights violations, and the endemic problems inherent in the repeated opposition structure of theoretical approaches versus factual approaches with the lack of comprehensive analyses of and theoretical rebuttals against the core implementation mechanism of the North Korean Constitution's Fundamental

Rights Articles.¹⁵⁹ Thus, this dissertation, which hones in on these specific subjects, can make a significant and substantial contribution to the interpretations of the North Korean Constitution and the fields of international human rights law, as well as research on law as ideology through these intensive studies under the abovementioned circumstances.

Finally, in addition to the scholarly originality and contributions, this dissertation also makes realistic and practical contributions to North Korean human rights. Human rights have a universal, priceless value. Thus, the issue of North Korean human rights is very important and should not be ignored, since the situation in North Korea, in particular, is extremely grave. In addition, human rights violations in this country are matters of the reality in our world today. Millions of North Korean people are crying out under the indescribable oppression of the dictatorial government. Nonetheless, North Korea has attempted to dilute these factors by suppressing facts and deceiving the world under the guise of claiming to provide human rights protections through the core implementation mechanism of the Fundamental Rights Articles of its Constitution. Thus, to establish and develop the new refuting theory and its incapacitation mechanism model of the Juchist and Marxist-Leninist Articles is to let the world know about the

¹⁵⁹ See *supra* Chapter One.II.

realities of human rights under the brutal dictatorship of the country and to bolster the world's appreciation of the sanctity of the human rights of the North Korean people in the real world.

CHAPTER THREE

JUCHE IDEOLOGY AND MARXISM-Leninism AS THE TWO ANTI-HUMAN RIGHTS AND RULING IDEOLOGIES CONTROLLING NORTH KOREA

“Kim Jong-Un’s succession as North Korea’s supreme leader after the death of his father, Kim Jong-Il, in December 2011 had little impact on the country’s dire human rights record.”

– HUMAN RIGHTS WATCH, WORLD REPORT 2013 (EVENTS OF 2012) (2013)

I. Juche Ideology and Marxism-Leninism as the Anti-Human Rights

Ideologies

A. Marxism-Leninism as the Anti-Human Rights Ideology

The term, Marxism-Leninism, was first used by Joseph Stalin, who ruled the Soviet Union from 1928 to 1953.¹⁶⁰ Marxism-Leninism is a compound word of “Marxism” and “Leninism,” and refers to the theories of Karl Marx and Vladimir Ilyich Lenin, respectively.¹⁶¹ After the Russian Revolution, Lenin not only inherited,

¹⁶⁰ See DAVID E. INGERSOLL & RICHARD K. MATTHEWS, *THE PHILOSOPHIC ROOTS OF MODERN IDEOLOGY: LIBERALISM, COMMUNISM, FASCISM* 179 (1986) (“[I]t was Stalin who first used the term Marxism-Leninism, rather than Marxism . . .”).

¹⁶¹ See CIRCA [CAMBRIDGE INT’L REFERENCE ON CURRENT AFFAIRS] RESEARCH & REFERENCE INFO., *CASSELL DICTIONARY OF MODERN POLITICS* 184 (Roger East & Tanya Joseph eds., 1994) (“The term [Marxism-Leninism] combines the words Marxism and Leninism to stress its lineage from the two greatest theorists of communism, Karl Marx and Vladimir Ilyich Lenin.”). The term, Marxism-Leninism-Stalinism, is rarely used, because “[S]talin’s theoretical contributions to the development of Marxism-Leninism were rather meager . . .” INGERSOLL & MATTHEWS, *supra* note 160, at 179.

defended, and developed Marx's ideas but also converted his theories into a practical doctrine known as Marxism-Leninism."¹⁶²

Marxism-Leninism is fundamentally based on the theory of dialectical materialism.¹⁶³ A man is just flesh, according to the theory of Marx.¹⁶⁴ Thus, Marxist-Leninist ideology rejects all religious truths and spiritual elements.¹⁶⁵ Regarding the concept of Godless materialism in Marxism-Leninism, Pope Pius XI criticizes that "[t]here's no room for the idea of God; there is no difference between matter and spirit, between soul and body; there is neither survival of the soul after death nor any hope in a future life." (citation omitted)¹⁶⁶

Marxism-Leninism is also grounded in the theory of historical determinism, as

¹⁶² See Marxists Internet Archive, Chinese Communism: Report [of Lin Piao] to the Ninth National Congress of the Communist Party of China [CPC] (Delivered on Apr. 1 and Adopted on Apr. 14, 1969), http://www.marxists.org/subject/china/documents/cpc/9th_congress_report.htm (last visited Jan. 17, 2013) [hereinafter Lin Piao's Report to the 9th National Congress of the CPC] ("After the death of Marx and Engels, almost all the parties of the Second International betrayed Marxism, with the exception of the Bolshevik Party led by Lenin. Lenin inherited, defended and developed Marxism in the struggle against the revisionism of the Second International."); see also GEORGE KURIAN, *DICTIONARY OF WORLD POLITICS* 213 (2002) ("After the Russian Revolution, V. I. Lenin transformed Marx's theories into a practical creed known as Marxism-Leninism.").

¹⁶³ See DAVID A. LAW, *RUSSIAN CIVILIZATION* 115 (1975) ("Dialectical materialism is the concept that matter is the substance of all reality and that dialectics is the process which brings about the changes in matter. This concept recognizes that all matter is in motion and that motion is caused by the opposing forces in matter.").

¹⁶⁴ See Yong-Choon Kim, *Chuch'e Philosophy*, in *ENCYCLOPEDIA OF ASIAN PHILOSOPHY* 168, 169 (Oliver Leaman ed., 2001) ("[M]arxist-Leninist philosophy . . . regarded life as a mere biological substance . . .").

¹⁶⁵ See MATTHEW ALLEN SHADLE, *THE ORIGINS OF WAR: A CATHOLIC PERSPECTIVE* 46 (2011) ("He [Marx] also claims to describe history by means of a scientific approach that not only does not rely on religious truths, but even denies the existence of spiritual realities.").

¹⁶⁶ ALBERTO M. PIEDRA, *NATURAL LAW: THE FOUNDATION OF AN ORDERLY ECONOMIC SYSTEM* 91 (2004).

dialectical materialism is a type of historical determinism.¹⁶⁷ The heart of the theory is that historical development is wholly decided by material conditions, and not by the free thoughts of men.¹⁶⁸ Therefore, the idea of Marx and Lenin also denies the idea of man's free will.¹⁶⁹

The key tenets of Marxism-Leninism are the distrust and hostility of religion;¹⁷⁰ the pursuit and consolidation of a totalitarian dictatorship;¹⁷¹ the pursuit and consolidation of collectivism;¹⁷² the pursuit and consolidation of a centrally planned economy;¹⁷³ and the pursuit of the possession of strong military power against imperialism.¹⁷⁴

¹⁶⁷ See NORMAN LEVINE, *MARX'S DISCOURSE WITH HEGEL* 312 (2012) ("Dialectical materialism was a form of historical determinism in which the controlling law devolved from the metaphysical principles of nature.").

¹⁶⁸ See ANNE FAIRCHILD POMEROY, *MARX AND WHITEHEAD: PROCESS, DIALECTICS, AND THE CRITIQUE OF CAPITALISM* 58 (2004) ("The most extreme position takes Marx's 'dialectical materialism' or 'historical determinism' to say that historical and/or dialectical development is strictly determined by the material conditions existing at any given time . . ."); see also MICHAEL J. WHITE, *POLITICAL PHILOSOPHY: AN HISTORICAL INTRODUCTION* 337 (2nd ed. 2012) ("Historical or dialectical materialism is a variety of determinism which, as understood by Marx, implies that social or political change is not really brought about by 'ideas,' that is, by various schemes for social or political reform.").

¹⁶⁹ See GREG L. BAHNSEN, *PUSHING THE ANTITHESIS: THE APOLOGETIC METHODOLOGY OF GREG L. BAHNSEN* 84 (2007) ("[T]here are two basic types of Atomism: deterministic and non-deterministic. Deterministic atomism denies free will, as in . . . Marxism[-Leninism]. . . Marxism[-Leninism] ultimately crushes free will through its concept of historical determinism which results in predictable (i.e., unavoidable) outcomes.").

¹⁷⁰ See *infra* Chapter Four.I.B.

¹⁷¹ See *infra* Chapter Four.II.B.

¹⁷² See *infra* Chapter Four.III.B.

¹⁷³ See *infra* Chapter Five.I.B.

¹⁷⁴ See *infra id.*

These features create an anti-human rights ideology for dictatorial powers, which violates human dignity, cheapens human values, and destroys the people's hope in life.

B. Juche Ideology as the Anti-Human Rights Ideology

Juche ideology was created by Kim Il-Sung, who is the founding father of the DPRK, and it was inherited and further developed by his son and successor, Kim Jong-Il. Juche ideology, which is sometimes called Kimilsungism,¹⁷⁵ is translated as “self-reliance” or “master of one's self.”¹⁷⁶

The key tenets of Juche ideology are, very much like Marxism-Leninism, the distrust and hostility of religion;¹⁷⁷ the pursuit and consolidation of a totalitarian dictatorship;¹⁷⁸ the pursuit and consolidation of collectivism;¹⁷⁹ the pursuit and consolidation of a centrally planned economy;¹⁸⁰ and the pursuit of the Songun (military-first) policy for the possession of strong military power against U.S.

¹⁷⁵ See CHONG, *supra* note 88, at 97 (“Kim Jong-il, in a thesis presented in March 1982 and entitled ‘On the Juche Idea,’ said that Juche was formally designated to be called Kimilsungism. North Korean ideologists have since used the two words – Juche Idea and Kimilsungism – to refer to the same concept.”).

¹⁷⁶ See SETH, *supra* note 84, at 355 (“Juche can be translated as ‘self-reliance.’”); see also FORD & KWON, *supra* note 55, at 55 (“The word *Ju-che* is a combination of two Korean letters (*Ju* – master and *Che* – oneself), thus literally meaning ‘master of one's self.’”).

¹⁷⁷ See *infra* Chapter Four.I.B.

¹⁷⁸ See *infra* Chapter Four.II.B.

¹⁷⁹ See *infra* Chapter Four.III.B.

¹⁸⁰ See *infra* Chapter Five.I.B.

imperialism.¹⁸¹

The notable point is that the key principles of Juche ideology are similar to those of Marxism-Leninism. This is because Kim Il-Sung adopted the key principles of Juche ideology in imitation of those of Marxism-Leninism. The North Korean government admitted this fact openly for two decades, stating that “[t]he Juche idea . . . [is] a creative application of [the universal principles of] Marxism-Leninism to the conditions of our country.”¹⁸² in its Constitution of 1972. The two doctrines are not identical. Rather, Kim Il-Sung chose specific principles that were necessary to maintain and strengthen his one-man dictatorship. Kim Jong-Il then developed the ideology of his father and interpreted it under the same standards. While most of the key creeds of Marxism-Leninism were extremely useful for the dictatorship of both the senior Kim and the junior Kim, the Marxist-Leninist principle of proletarian internationalism¹⁸³ was an exception. The essence of proletarian internationalism can

¹⁸¹ See *infra id.*; see also *infra* note 517 and accompanying text.

¹⁸² ADRIAN BUZO, *THE GUERRILLA DYNASTY: POLITICS AND LEADERSHIP IN NORTH KOREA* 37 (1999); See T.B. MUKHERJEE, *THE SOCIAL, ECONOMIC, AND POLITICAL IDEAS OF THE GREAT PRESIDENT KIM IL SUNG* 200 (1983) (“It is true that he [Kim Il-Sung] himself terms it [Juche idea] a creative application of the universal principles of Marxism-Leninism.”).

¹⁸³ The Encyclopedia of Marxism states that “[Proletarian] Internationalism is the ethical value of the workers’ movement towards the interests of the working class of *all* countries over and above the interests of the working class in any one country, and the practice of organising on an international basis. The term came into use in the 1850s” Marxists Internet Archive, *Encyclopedia of Marxism: Internationalism*, <http://www.marxists.org/glossary/terms/i/n.htm#internationalism> (last visited Sept. 29, 2012). Additionally, Lenin put forward an interpretation on proletarian internationalism as follows at the Second Comintern Congress:

[P]roletarian internationalism demands, firstly, that the interests of the proletarian struggle

be summed up in the following short slogan from *the Communist Manifesto* by Karl Marx and Friedrich Engels: “Proletarians [Workers] of all countries, Unite!”¹⁸⁴ Marx played a central role forming the First International¹⁸⁵ in 1864 to spread his ideas and fulfill them across all Europe. Lenin also organized the Third International¹⁸⁶ in 1919 to propagate Marxism-Leninism. Kim Il-Sung knew the importance of this principle among Marxist-Leninist nations. For this reason, he incorporated the principle into Article 16 of the North Korean Constitution of 1972, which provides that “The state [of DPRK], in accordance with the principles of Marxism-Leninism and proletarian

in one country be subordinated to the interests of the proletarian struggle on a world scale, and, secondly, that a nation which is achieving victory over the bourgeoisie be able and willing to make the greatest national sacrifices for the sake of overthrowing international capital.(citation omitted)

BERNARD S. MORRIS, *AUTHORITY AND CONTROL IN INTERNATIONAL COMMUNISM: 1917-1967* at 40-41 (2012).

¹⁸⁴ See Marxists Internet Archive, Marx & Engels Internet Archive: Manifesto of the Communist Party (Chapter IV), <http://www.marxists.org/archive/marx/works/1848/communist-manifesto/ch04.htm> (last visited Jan. 20, 2013) (“The famous final phrase of the Manifesto, ‘Working Men of All Countries, Unite!’ in the original German is: ‘*Proletarier aller Länder, vereinigt euch!*’ Thus, a more correct translation would be ‘Proletarians of all countries, Unite!’”).

¹⁸⁵ See WALTER JOHN RAYMOND, *DICTIONARY OF POLITICS: SELECTED AMERICAN AND FOREIGN POLITICAL AND LEGAL TERMS* 85 (7th ed. 1992) (“Established in 1864, as the International Workingman’s Association by exiles from various countries (including Karl Marx, who was expelled from his native Germany) for the purpose of advancing the cause of the workers. After the defeat of the Paris Commune in 1871, the International was dissolved.”).

¹⁸⁶ One reliable dictionary of politics defines the Third International, as follows:

Established in 1919, in Moscow, Russia, as an agency of the Russian communists under the leadership of Vladimir I. Lenin. Its primary function was . . . to promote the cause of communism throughout the world. It was dissolved in 1943, by Josef Stalin as an act demonstrating good will towards the United States and her allies. The Internationals are also known as Cominterns [Communist Internationals].

Id.; See Marxists Internet Archive, Encyclopedia of Marxism: Communist International (Comintern), <http://www.marxists.org/glossary/orgs/c/o.htm#communist-international> (last visited Jan. 20, 2013) (“Communist International (Comintern)[:] Also called the Third International, created by the Bolsheviks in March 1919, setting up Communist Parties, affiliated to the International, in almost every country in the world. . . . The Communist International . . . was disbanded in 1943 by Stalin, as a gesture of conciliation with the Allied powers.”).

internationalism, unites with the socialist countries, unites with all peoples of the world opposed to imperialism, and actively supports and encourages their national-liberation and revolutionary struggles.”¹⁸⁷ Nonetheless, Kim Il-Sung was more interested in the consolidation of his dictatorial power within the DPRK than he was in the unity and solidarity among the communist countries. Therefore, he adopted nationalism as one of the principles of his Juche ideology to consolidate and keep his dictatorial power.¹⁸⁸

Kim Il-Sung was well aware of the features of nationalism that excites more patriotic

¹⁸⁷ Foreign Languages Publishing House [of DPRK], *Socialist Constitution of the Democratic People's Republic of Korea*, in THE CONSTITUTIONS OF THE COMMUNIST WORLD 227, 234 (Foreign Languages Publishing House [of DPRK] trans., William B. Simons ed., 1980).

¹⁸⁸ There is an argument that Kim Il-Sung's adoption of nationalism rather than proletarian internationalism as one of the creeds of his Juche ideology resulted from the political dynamics of North Korea between China and Soviet Union in the 1950s and 1960s:

Kim Il-Sung's choice of nationalism instead of [proletarian] internationalism as one of the tenets of his Juche ideology was just the result of North Korea's neutrality in Sino-Soviet border conflict in 1950s and 1960s as well as the part of a political and ideological effort to stand in the right middle of both China and Soviet Union during the periods.

IN K. HWANG, THE NEUTRALIZED UNIFICATION OF KOREA IN PERSPECTIVE 98 (1980).

However, the argument does not withstand to reason. First of all, the analysis of fact relevance, which is the major premise of this argument, was incorrect. North Korea did not, in fact, remain neutral in the Sino-Soviet border dispute. Kim Il-Sung took the side of China in the border conflict unconditionally after 1962. The situation among the three countries at the time is well described in one of the books of Professor Andrei Lankov at Kookmin University in Seoul, South Korea:

At first the North Korean press did not mention the Soviet-Chinese conflict, and Korean delegations of all levels continued to visit both Moscow and Peking. In July 1961, in Peking, Kim Il Sung and Zhou En-lai signed a treaty of friendship, co-operation and mutual assistance, which is still in force today, and this strengthened the alliance between the two countries. A week earlier a similar treaty was signed with the Soviet Union and both treaties went into effect simultaneously.(citation omitted)

After 1962, however, the DPRK began its drift toward Peking. The North Korean media ceased to cite Soviet examples. In 1962-4, following the 22nd Congress of the Soviet Communist Party, where open criticism was directed against Chinese leaders, the rapprochement between the DPRK and China accelerated. For a few years North Korea almost unconditionally supported the Chinese position on all important issues. . . . During these years *Nodong sinmun*, an official daily newspaper, often published articles in support of the Chinese position on various issues.

ANDREI LANKOV, FROM STALIN TO KIM IL SUNG: THE FORMATION OF NORTH KOREA, 1945-1960 at 64-65 (2002).

Secondly, it is difficult to find any reasonable causal relationship between North Korea's efforts for neutrality and Kim Il-Sung's adoption of nationalism instead of proletarian internationalism as one of the principles of Juche ideology, even if we suppose that the country observed neutrality in the border conflict.

feelings from the people than does internationalism, so it would contribute much more to the political stability in North Korea than the Marxist-Leninist principle of internationalism and strengthen domestic solidarity.

However, though there is no denying that the emphasis of proletarian internationalism is at least a superficial difference between the two ideologies, it is difficult to say that it is substantial enough to mark Juche ideology and Marxism-Leninism as radically different. With this in mind, we need to look at the fact that nationalism as a principle of Juche ideology is not pure nationalism. Kim Il-Sung regarded both the internationalism of Marx and Lenin and the nationalism of Juche ideology as important, so he attempted to reconcile the two concepts.¹⁸⁹ According to him, “He who does not love his own country cannot be loyal to internationalism, and he who is unfaithful to internationalism cannot be faithful to his own country and people. A true patriot is precisely an internationalist and vice versa.’(citation omitted)”¹⁹⁰ Additionally, he stressed that “The Juche idea we advocate does not conflict with

¹⁸⁹ See KONGDAN OH & RALPH C. HASSIG, NORTH KOREA THROUGH THE LOOKING GLASS 17-18 (2000) (“As a practicing communist, Kim [Il Sung] attempts to reconcile nationalism [of Juche ideology] with communist internationalism [of Marxism-Leninism]: ‘internationalism and patriotism [nationalism] are inseparably linked with each other. . . . Loving Korea is just as good as loving the Soviet Union.’(citation omitted) His rationale for this assertion is that by strengthening the revolution in Korea, the international communist revolution is strengthened.(footnote omitted)”).

¹⁹⁰ Hongkoo Han, *Colonial Origins of Juche: The Minsaengdan Incident of the 1930s and the Birth of North Korea-China Relationship*, in ORIGINS OF NORTH KOREA’S JUCHE: COLONIALISM, WAR, AND DEVELOPMENT 33, 57 (Jae-Jung Suh ed., 2012).

internationalism [of Marxism-Leninism].”¹⁹¹ Consequently, the nationalism of Juche ideology became a peculiar mixture of Juche nationalism and the internationalism of Marxism-Leninism. The end product is a North Korean style of Marxism-Leninism, tailored for the dictatorship of the Kim family.¹⁹²

In spite of this fact, and the absence of differences in the key principles of Juche ideology and Marxism-Leninism, North Korea began to intensively propagandize the superiority of Juche ideology over Marxism-Leninism starting from the early 1990s, in the aftermath of successive collapses of the Soviet Union and her satellite countries in Eastern Europe before and after 1990.¹⁹³ North Korea generally presents two grounds in its argument for the superiority of Juche ideology. One is that Juche ideology,

¹⁹¹ KIM IL SUNG, KIM IL SUNG: SELECTED WORKS (VOLUME V) 122 (Foreign Languages Publishing House [of DPRK] trans., 1972).

¹⁹² See Chongko Choi, *Korea, North*, in ENCYCLOPEDIA OF WORLD CONSTITUTIONS 488, 489 (Gerhard Robbers ed., 2007) (“The name for communism as practiced in North Korea is *juche*, Kim Il Sung’s interpretation of Marxism-Leninism that emphasizes nationalism”); see also FRENCH, *supra* note 41, at 32 (“Essentially, Juche is based upon the classic works of Marxism from Marx and Engels through Lenin”).

One reliable encyclopedic dictionary of Asian philosophy also supports the analysis that Juche ideology is essentially the North Korean style of Marxism-Leninism:

In North Korea the long-time ruler, Kim Il-sung, through the assistance of scholars under his rule, developed the so-called *chuch’*e philosophy, which means the philosophy of self-identity or philosophy of subject. It was intended to be the unique philosophy of Korean communism, and it has also been called Kim Il-sung’s philosophy. In reality, it is a reformulation of Marxism[-Leninism] or dialectical materialism with a vision of a classless society. Because of the iron rule of Kim Il-sung and then of his son, Kim Chong-il, there has been no freedom of alternative views in philosophy or religion in North Korea.

Kim, *supra* note 164, at 168.

¹⁹³ See *infra* Chapter Three.II.B.

unlike Marxism-Leninism, admits to the free will of humans.¹⁹⁴ The creator of the

Juche, Kim Il-Sung, actually states the following concerning his idea:

[t]he idea [of Juche] . . . [means] that the masters of the revolution and construction are the masses of the people and that they are also a motive force of the revolution and construction. In other words, it is an idea that one is responsible for one's own destiny and that one has also the capacity for hewing out one's own destiny.(citation omitted).¹⁹⁵

However, Juche ideology is essentially grounded in historical determinism, which denies man's free will, just like Marxism-Leninism.¹⁹⁶ Additionally, Juche ideology embraces collectivism, which centers on the denial of the free will of the individual as its key principle. Thus, this assertion of North Korea, which is based on Kim Il-Sung's statement that his ideology respects the free will of humans, is not only a logical contradiction but also very specious propaganda.

The contention that the people are the masters of revolution and history is specifically called "the philosophical theory of Juche." However, Juche ideology also

¹⁹⁴ One reliable encyclopedic dictionary of Asian philosophy introduces this ground for its argument, suggested by North Korea, on the superiority of Juche ideology to Marxism-Leninism:

Pak Sung-dok, who is the president of the Institute of the Study of Chuch'e Ideology [ISCI] and the leading thinker of *chuch'e* philosophy in North Korea, claims that *chuch'e* ideology is superior to Marxism-Leninism. . . . Pak quotes the teaching of Kim Il-sung, which is as follows: 'The human being is the master of his own destiny; this is the heart of *chuch'e* ideology and the essence of the revolutionary ideology'(citation omitted). . . . In the *chuch'e* worldview, man is the subject and master, who determines the destiny of himself and the world.

Kim, *supra* note 164, at 168-169.

¹⁹⁵ FORD & KWON, *supra* note 55, at 55.

¹⁹⁶ See Kim, *supra* note 164, at 168 ("[I]t [Juche ideology] is a reformulation of Marxism[-Leninism] or dialectical materialism . . ."); see also *supra* note 167 and accompanying text.

has an essential prerequisite for this philosophical theory, which is called “the Revolutionary View of the Leader.” The fact that this argument of North Korea is unsubstantiated propaganda comes to be clearer when we review the core content of the condition precedent to the philosophical theory. The key of the Revolutionary View of the Leader is that all North Korean people must be under the leadership of the Great Leader Kim Il-Sung, Dear Leader Kim Jong-Il, and Supreme Leader Kim Jong-Un, the son of Kim Jong-Il and the current dictator of the country, to be the masters of their own destiny.¹⁹⁷

This structure is very similar to that of Marx’s theory of historical materialism, which is the application of his theory of dialectical materialism to human history.¹⁹⁸ Judging from its appearance, Marx’s theory also seems to admit the free will of man, because he declares that “men make their own history.” However, the essential prerequisite for the declaration is that material things¹⁹⁹ are the driving force of human

¹⁹⁷ Dr. Ilpyong J. Kim, who is an expert on the political system of North Korea, explains “the philosophical theory of Juche” and “the Revolutionary View of the Leader” as follows:

The *Juche* ideology consists mainly of two parts – the philosophical theory, which maintains that the masses are the masters of history and revolution, and the guiding principle, or the “Revolutionary View of the Leader,” which asserts that “nonetheless, the masses are not able to take up spontaneously any revolutionary course unless they are organized into revolutionary forces and are led by the *Suryong* (leader).”

ILPYONG J. KIM, HISTORICAL DICTIONARY OF NORTH KOREA 63 (2003).

¹⁹⁸ See Marxists Internet Archive, Encyclopedia of Marxism: Historical Materialism, <http://www.marxists.org/glossary/terms/h/i.htm#historical-materialism> (last visited Sept. 29, 2012) (“This concept [of Historical Materialism] is founded on Dialectical Materialism applied to history. Another name for the ‘materialist conception of history’ formulated by Marx and Engels . . .”).

¹⁹⁹ See KWASI WIREDU, PHILOSOPHY AND AN AFRICAN CULTURE 84 (1980) (“‘Material’ in dialectical

history.²⁰⁰ As what Karl Marx really wanted to emphasize through his theory of historical materialism was not man's free will but instead the material, what Kim Il-Sung really wanted to stress through his theory of Juche ideology was not the free will of man but his absolute leadership. The concept of an individual's free will in Juche ideology is just a skillful ploy to drum up a sense of absolute loyalty to the three Leaders into the mass of people, without breeding any antipathy. After all, like Marxism-Leninism, Juche ideology is no more than an anti-human rights ideology, which denies free will, despite North Korea's intensive propaganda that Juche ideology is superior to Marxism-Leninism because it respects the free will of man.

The other ground for North Korea's argument on the supremacy of Juche ideology over Marxism-Leninism is that Juche ideology, unlike Marxism-Leninism, admits to the existence of spiritual realities such as the immortality of the soul and eternal life after death.²⁰¹ However, Juche ideology is fundamentally based on

materialism refers to matter in a neutral technical sense in which the material is simply that which has mass and position and is in motion. 'Material' in historical materialism refers to material things in an economic sense.'").

²⁰⁰ See LAW, *supra* note 163, at 115 ("Marx recognized matter rather than ideas as the substance of reality. He did not believe as Hegel that ideas determine the course of history. He contended that the opposition between material things and the forces of matter determine the course of history."); see also Max Eastman, *Against the Marxian Dialectic*, in MARXISM: THE INNER DIALOGUES 177, 182 (Michael Curtis ed., 2nd ed. 1997) ("[T]he general course of history is determined not by the nature of man, but by the nature of things. Says Marx: Man makes his own history, but he does not make it out of conditions chosen by himself, but out of such things as he finds at hand. . . .").

²⁰¹ See Kim, *supra* note 164, at 169 ("Another important difference, according to Pak [Sung-dok, who is the president of the ISCI in North Korea], between *chuch'e* philosophy and Marxism-Leninism is the view of life. He claims that viewing life . . . as a mere material entity is wrong, and even Marxist-Leninist

dialectical materialism, which rejects all religious truths and spiritual realities, just like Marxism-Leninism.²⁰² Additionally, Juche ideology, as its core principle, is embedded with distrust and hostility for religion, which generally presupposes spiritual realities. Thus, North Korea's assertion that its ideology admits to spiritual realities is not only a logical contradiction but also very specious propaganda.

The fact that North Korea's argument is but an unsubstantial propaganda ploy becomes clearer when we review Juche's theory of the Immortal Socio-Political Body. The theory actually talks about spiritual realities and promises eternal life after death to the North Korean people.²⁰³ However, the theory of Juche also has, as an essential prerequisite for this eternal life, the requirement of absolute loyalty to the three Leaders and the KWP.²⁰⁴ As shown in this condition precedent, what Kim Il-Sung really

philosophy which regarded life as a mere biological substance, has a limitation.”).

²⁰² See *supra* note 196 and accompanying text.

²⁰³ DON BAKER, *KOREAN SPIRITUALITY* 147 (Henry Rosemont, Jr. ed., 2008) (“[I]t [Juche] offers a solution to a problem all human beings face in their existence as separate and distinct individuals. It promises believers that . . . they can overcome death and gain immortality.”); see also *id.* at 151 (“Juche believers expect that their faith will be rewarded with immortality, as religious believers do.”); HY-SANG LEE, *NORTH KOREA: A STRANGE SOCIALIST FORTRESS* 146 (2001) (“The physical life of an individual person is limited, but the life of the masses united as an independent social-political organism is immortal. . .”).

²⁰⁴ See JASPER BECKER, *ROGUE REGIME: KIM JONG IL AND THE LOOMING THREAT OF NORTH KOREA* 71 (2005) (“The core of this theory [of the Immortal Socio-Political Body] holds that ‘the Suryong (or Leader) is the supreme brain of a living body, the Party is the nerve of that living body, and the masses are only endowed with [the eternal] life [after death] when they offer their absolute loyalty.’”); see also *id.* (“The Theory [of the Immortal Socio-Political Body] states that ‘without the Suryong [leader], which is the brain, and the Party, which is the nerve, the masses will remain dead bodies because they are no more than arms and legs.’”); BAKER, *supra* note 203, at 147 (“Juche says that because Juche will last until the end of time, all those who hold fast to Juche philosophy and unite within a Juche-based organization under the guidance of a leader who embodies Juche will enjoy an eternal sociopolitical life after their

wanted to stress through the theory of his Juche ideology was not eternal life after death but the absolute loyalty of the North Korean people. This concept of eternal life and immortality of the people in Juche ideology is therefore just a ploy to hammer in a sense of absolute loyalty to the three Leaders into the masses. After all, like Marxism-Leninism, Juche ideology is no more than an anti-human rights ideology, which denies all spiritual elements, despite North Korea's intensive propaganda that Juche ideology is superior to Marxism-Leninism because it admits to spiritual realities.

II. Juche Ideology and Marxism-Leninism as the Ruling Ideologies Controlling North Korea

A. Juche Ideology as the Official Ruling Ideology of North Korea

Juche is the official ruling ideology, stipulated in the North Korean Constitution. Article 3 of the Constitution clearly declares, "The Democratic People's Republic of Korea is guided in its activities by the Juche idea and the Songun [military-first] idea, a world outlook centred on people, a revolutionary ideology for achieving the

body has died."); *Id.* at 149 ("[N]orth Koreans, and all humanity, are urged to unite in ironclad unity around Kim Jong Il's leadership. Only by doing so can they create the eternal sociopolitical community"); LEE, *supra* note 203, at 146 ("A person can acquire immortality only as a member of the immortal social-political organism: By uniting around the leader organizationally and ideologically, under the guidance of the party, the masses form a social-political organism, which has immortal vitality as an independent being.").

independence of the masses of the people.”²⁰⁵

It is true that the same article of the North Korean Constitution also proclaims a military-first policy, which puts the North Korean People’s Army first in resource distribution and state affairs. However, Juche ideology, which was derived from Marxism-Leninism, already contains a military-first policy within itself and the latter is purely based on the former.²⁰⁶ Additionally, this military-first policy is merely a governmental policy rather than systematized ideology like Juche or Marxism-Leninism, in spite of its official title in Article 3 of the Constitution. Therefore, it is more reasonable to say that Juche is the only official ruling ideology of North Korea.

B. Marxism-Leninism as the Unofficial Ruling Ideology of North Korea

The powerful influence of Marxism-Leninism in North Korea has a long history.

The country was founded upon the key principles of orthodox Marxism-Leninism and

²⁰⁵ Naenara [My Country]: Democratic People’s Republic of Korea, Constitution: Chapter I Politics, <http://naenara.com.kp/en/great/constitution.php?2> (last visited May 3, 2012) [hereinafter North Korean Constitution Chapter I].

This is Article 3 of the North Korean Constitutions of 2009, 2010, and 2012. The contents of Article 3 of the North Korean Constitutions of 1992 and 1998 are the same except “the Songun idea [the idea of ‘military-first’].” Article 3 of the Constitutions of 1992 and 1998 do not contain this concept. *See infra* app. at 321–322.

²⁰⁶ *See infra* Chapter Five.I.B.4; *see also* Ilpyong J. Kim, *Kim Jong Il’s Military-First Politics*, in NORTH KOREA: THE POLITICS OF REGIME SURVIVAL 59, 62 (Young Whan Kihl & Hong Nack Kim eds., 2006) (“[K]im Jong Il’s military-first politics is based on his father’s ruling ideology of juche”); MARCUS NOLAND, KOREA AFTER KIM JONG-IL 8 (2004) (“[M]ilitary-first’ ideology, which is portrayed as emanating from *juche* thought”); Suk Hi Kim, *Will North Korea Be Able to Overcome the Third Wave of Its Collapse?*, in THE SURVIVAL OF NORTH KOREA: ESSAYS ON STRATEGY, ECONOMICS AND INTERNATIONAL RELATIONS 28, 34 (Suk Hi Kim et al. eds., 2011) (“*Songun* (military-first) policy is a North Korean adaptation of *Juche* to the present domestic and world political situation”).

the sole official guiding philosophy of the state was originally Marxism-Leninism.²⁰⁷

From the beginning, Marxism-Leninism had a near absolute influence over the political, economic, social, and military systems of North Korea. Additionally, all North Korean people received thorough education on Marxist-Leninist theory. Kim Il-Sung emphasized that “The tendencies of slighting the . . . ideological work of the Party or neglecting the studies of Marxist-Leninist theory must be criticized severely from the standpoint of Party principles.”²⁰⁸ He also stressed that “What our Party must study, study and study is not the Bible nor any religious dogma, but precisely this Marxist-Leninist theory.”²⁰⁹

However, no article of the first Constitution of North Korea, which was established in 1948, directly mentions the status of Marxism-Leninism, not to mention the key principles of it.²¹⁰ It was Article 4 of the North Korean Constitution of 1972

²⁰⁷ See SETH, *supra* note 84, at 355 (“Originally the state was founded on the principles of orthodox Marxism-Leninism. Marxism-Leninism provided Kim Il Sung and the other North Korean leaders with a vocabulary . . . for achieving the goal of establishing a strong independent Korea.”); see also FRENCH, *supra* note 41, at 31 (“Upon the foundation of the DPRK, the guiding political philosophy was largely Marxist-Leninist”); Sung Chul Yang, *Understanding the North Korean Political Framework*, in UNDERSTANDING KOREAN POLITICS: AN INTRODUCTION 269, 286 (Soong Hoom Kil & Chung-In Moon eds., 2001) (“[M]arxism-Leninism has been its ‘official’ ideology; the WPK [Workers’ Party of Korea] has been its ‘official’ party since 1948; and the party, state, and military organization have been running largely in accordance with the principles of democratic centralism and of proletarian dictatorship.”).

²⁰⁸ KIM IL SUNG, KIM IL SUNG: SELECTED WORKS (VOLUME I) 254 (Foreign Languages Publishing House [of DPRK] trans., 1971).

²⁰⁹ *Id.* at 179.

²¹⁰ Sung-Chul Yang, a chair-professor at Korea University in Seoul, South Korea, assures us that this was a temporary political camouflage of the North Korean government. See Yang, *supra* note 207, at 286 (“Nonendorsement of the basic principles and doctrines of communism [Marxism-Leninism] in the

that recognized the domestic standing of Marxism-Leninism officially for the first time in the constitutional history of the country. The article provided that “The Democratic People’s Republic of Korea is guided in its activity by the *Chuch’e* [Juche] idea of the Workers’ Party of Korea, a creative application of [the universal truth of] Marxism-Leninism to the conditions of our country.”²¹¹ As shown in the article, Marxism-Leninism was officially recognized not only as the universal truth but also as the fundamental source of Juche ideology and one of the two ruling ideologies of North Korea. Concerning Article 4, Dr. Sung-Chul Yang, who is an authority on the political thought of North Korea and the former Ambassador of South Korea to the U.S., noted that “North Korea still proclaims Marxism-Leninism as its official [ruling] ideology and the *Juche* idea as its creative application.”²¹² Nevertheless, the word “Marxism-Leninism” was unexpectedly purged from Article 3 of the North Korean Constitution of 1992 through constitutional amendments. Additionally, North Korea’s intensive propaganda proclaiming that Juche would replace Marxism-Leninism as the sole official

original constitution was only a temporary political camouflage.”).

²¹¹ Foreign Languages Publishing House [of DPRK], *supra* note 187, at 232; See KIM, IL-SŎNG, JUCHE! THE SPEECHES AND WRITINGS OF KIM IL SUNG 157 (Li Yuk-Sa ed., 1972) (“Only by firmly establishing Juche can each country . . . creatively apply the universal truth of Marxism-Leninism . . . to suit its historical conditions and national peculiarities . . .”).

²¹² SUNG CHUL YANG, THE NORTH AND SOUTH KOREAN POLITICAL SYSTEMS: A COMPARATIVE ANALYSIS 166 (1994). He seems not to have reflected the amendments of North Korean Constitution of 1992 in the book, even though it was published in 1994. He published the revised edition of the book in 1999.

ruling ideology began in earnest right after this abrupt change in the most official document of the country. Furthermore, some scholars of the liberal democratic countries, who paid attention exclusively to the propaganda of the North Korean government without the multilateral review of and full consideration for the background of the deletion of the term from the Constitution, have accepted the argument of the country at face value, and continue to make the same claims as that of North Korea.²¹³

However, from a common-sense point of view, it doesn't quite make sense that Marxism-Leninism, which has exercised great influence over every part of the country for nearly half a century since the foundation of the DPRK, would lose all its domestic leverage and position just by the deletion of the term from the North Korean Constitution in 1992. All the political, economic, social, and military systems, which were derived from and based on the key principles of Marxism-Leninism and Juche ideology, are still operating in North Korea.²¹⁴ In a way, the whole country can be said

²¹³ See, e.g., HASSIG & OH, *supra* note 110, at 174 (“As North Korea’s national ideology, *Juche* eventually supplanted Marxism-Leninism, mention of which was dropped from . . . the 1992 revision of the state constitution.”).

Dr. Young Whan Kihl, who is a professor emeritus of political science at Iowa State University, also made the statement to the same effect with that of Dr. Hassig and Dr. Oh:

Initially North Korea had adopted Marxism-Leninism as its ruling philosophy when it proclaimed the establishment of the Democratic People’s Republic of Korea (DPRK) on September 7, 1948. Marxism-Leninism was subsequently replaced by the so-called *juche* ideology, which it alleged was a creative application of Marxism-Leninism to suit the local condition that prevailed in North Korea. A constitutional revision in 1992 deleted reference to Marxism-Leninism.

Young Whan Kihl, *Staying Power of the Socialist “Hermit Kingdom”*, in NORTH KOREA: THE POLITICS OF REGIME SURVIVAL 3, 8 (Young Whan Kihl & Hong Nack Kim eds., 2006).

²¹⁴ See *infra* Chapter Four.I.D; see also *infra* Chapter Four.II.D; *infra* Chapter Four.III.D; *infra* Chapter

to be still under the influence of the Marxist-Leninist ideology. This is because Juche ideology, which has been intensively propagandized as the only official ruling ideology of the country since the early 1990s, is the North Korean approach to Marxism-Leninism and all the key principles of Juche ideology were made just in imitation of those of Marxism-Leninism.²¹⁵

To conclude, the expurgation of Marxism-Leninism from the Constitution of 1992 was North Korea's crafty strategy to stop its public image from plummeting in the eyes of the international society, especially in the face of the collapse of Marxist-Leninist systems. The end of Marxism-Leninism in Central and Eastern Europe and the collapse of the Soviet Union demonstrated the inefficacy of the theories of Marx and Lenin. Thus, North Korea did not have any reason to continue to proclaim Marxism-Leninism as one of its official ruling ideologies and the essential source of Juche ideology in its Constitution from the political viewpoint of loss and gain, even though all the national systems in effect were still grounded in the Marxist-Leninist principles. If North Korea persisted in proclaiming the failed ideology as one of its official ruling ideologies in its most formal document open to the world, it was certain that the disgraceful reputation of a failed Marxist-Leninist state would also be placed upon

Five.I.D; *infra* Chapter Five.II.D; *infra* Chapter Five.III.D.

²¹⁵ See *supra* Chapter Three.I.B.

North Korea. Additionally, if the country insisted on the declaration that “[t]he *Chuch’e* [Juche] idea of the Workers’ Party of Korea . . . [is] a creative application of [the universal truth of] Marxism-Leninism”²¹⁶ in its Constitution, it would mean that the country was admitting that Juche ideology, which is essentially based on Marxism-Leninism, also follows suit as a failure. Even so, true abandonment of Marxism-Leninism was not an option for Kim Il-Sung and Kim Jong-Il, because that would mean the renunciation of the national systems supporting their dictatorships, and furthermore, the renunciation of their dictatorships.²¹⁷ Thus, the most effective countermeasure to deal with these delicate situations would be to proclaim to the world North Korea’s severance of ideological ties with Marxism-Leninism, at least superficially, through the complete deletion of the word, “Marxism-Leninism,” from its Constitution.²¹⁸ Dr. Ilpyong J. Kim, professor emeritus of political science at the

²¹⁶ Foreign Languages Publishing House [of DPRK], *supra* note 187, at 232; *See supra* note 211 and accompanying text.

²¹⁷ Dr. Russell Ong at the University of Strathclyde in U.K. talks about this situation of the dictatorial regime of North Korea, which is grounded in the key principles of Marxism-Leninism, as follows:

In reality, the ossification of the North Korean regime can be traced back to the nature of the system Kim Il-Sung created. Since 1953, Kim’s [dictatorial] regime and his successor’s have been characterized by inseparability in the state’s political, economic and foreign policies. Preservation of the Marxist-Leninist regime in North Korea generally requires adherence to established dogma in all areas of policies and fundamental changes such as the complete abandonment of socialism [Marxism-Leninism] are likely to undermine the stability of the [dictatorial] regime itself.

RUSSELL ONG, CHINA’S SECURITY INTERESTS IN THE POST-COLD WAR ERA 55 (2002).

²¹⁸ Article 10 of the North Korean Constitution of 1972 used the term “dictatorship of the proletariat,” which is one of the core concepts of Marxism-Leninism, rather than “the dictatorship of the people’s democracy.” *See infra* app. at 317–318. According to one reliable source, “[f]ollowing the collapse of socialist bloc. [before and after 1990], Pyongyang replaced Proletarian Dictatorship [dictatorship of the

University of Connecticut, depicts these overall situations relating to North Korea's

expurgation of Marxism-Leninism from its Constitution of 1992 as follows:

The DPRK constitution [of 1972] used to contain a phrase stipulating that *juche*, which is a creative application of [the universal truth of] Marxism-Leninism, must be upheld as the guiding principle of North Korean ideology. However, the word Marxism-Leninism was deleted from the constitution of 1992 in the aftermath of the collapse of the communist bloc of nations in Eastern Europe and the Soviet Union [before and after 1990].²¹⁹

North Korea also prepared and developed the logic of propaganda showing its people why Marxism-Leninism can no longer be the essential source of *Juche* ideology

proletariat] with People's Democratic Dictatorship [the dictatorship of the people's democracy] in [Article 12 of] the Socialist Constitution revised on April 1992." CHONG, *supra* note 88, at 103. However, "the dictatorship of the people's democracy" and "dictatorship of the proletariat" are equivalent in meaning, in spite of the difference in the wording of the terms. See FRANCIS J. KASE, *PEOPLE'S DEMOCRACY; A CONTRIBUTION TO THE STUDY OF THE COMMUNIST THEORY OF STATE AND REVOLUTION* 25 (1968) ("The decisive point in determining the essence of the state is not the mere form of the political organization, but its content which forms its flesh and blood. The content of the people's democracy is the dictatorship of the proletariat (citation omitted)."); see also OTTO WILHELM KUUSINEN ET AL., *FUNDAMENTALS OF MARXISM-LENINISM: MANUAL* 655 (Clemens Palme Dutt trans., Clemens Palme Dutt ed., 1961) ("That form was people's democracy as a *new form of democracy fulfilling the functions of proletarian dictatorship*"). Thus, we come to understand that "the dictatorship of the people's democracy" is the camouflaged version to remove the Marxist-Leninist traces in the expression of "dictatorship of the proletariat," which is a one-man dictatorship under the guise of the rule of proletariat (working class) over the so-called bourgeois exploiters. See *infra* Chapter Four.II.B; see also Alexander J. Groth, *Dictatorship*, in *THE WORLD BOOK ENCYCLOPEDIA* (VOLUME 5) at 191, 191 (Robert J. Janus et al. eds., 2000) ("In spite of denying their citizens numerous basic freedoms, however, many dictatorships call themselves 'people's republics' or 'people's democracies.'"); GRAYSON KIRK, *WHAT IS COMMUNISM? A PICTURE SURVEY OF WORLD COMMUNISM* 58 (Richard M. Ketchum ed., rev. ed. 1963) ("After the Bolsheviks under Lenin seized power [through the violent revolution in 1917], it became clear immediately that . . . the dictatorship of the proletariat was evolving into the dictatorship of the party and finally, of one man."). That is to say, the replacement of the words in the North Korean Constitution of 1992 is another political camouflage of the government along with the deletion of the word, Marxism-Leninism, from the same Constitution.

Finally, the deletion of the words, "[i]n accordance with the principles of Marxism-Leninism and proletarian internationalism," from Article 17 of the North Korean Constitution of 1992 is also a political camouflage. Foreign Languages Publishing House [of DPRK], *supra* note 187, at 234. The article still stipulates the contents of "the principles of Marxism-Leninism and proletarian internationalism" in minute detail, even though the article does not directly use the words anymore. See YANG, *supra* note 212, at 873 ("Article 17[:]. . . . The state actively supports and encourages the struggles of people in countries that unite with all the peoples of the world . . .").

²¹⁹ Kim, *supra* note 206, at 62.

and why Juche is the sole official ruling ideology of North Korea. The logic of propaganda was simple: “Marxist-Leninist thought, which denies free will and spiritual realities, has a limitation. Juche is the most advanced type of human thought which complemented these weak points of Marxism-Leninism. Therefore, only Juche ideology, which was created by the Great Leader Kim Il-Sung, is qualified to be the ruling ideology of DPRK.”²²⁰

Paul French, an expert on North Korean and Chinese matters, introduces the logic of propaganda of the North Korean government, which was started in earnest right after the deletion of Marxism-Leninism from its Constitution:

Juche is described by Pyongyang as superior to all other systems of human thought, including Marxism[-Leninism], though it admits that its basis is Marxist-Leninist theory and that it was, at first, officially a ‘creative application of [the universal truth of] Marxism-Leninism,’ (citation omitted) even though now all references to Marx, Engels and Lenin have been expunged from official Juche texts.²²¹

However, as we reviewed earlier, Juche’s admission of the free will of man and spiritual realities are in name only and Juche ideology is just a poor imitation of Marxism-Leninism, which is an anti-human rights ideology for dictatorial powers.²²²

²²⁰ See *supra* Chapter Three.I.B; see also *supra* note 194 and accompanying text; *supra* note 201 and accompanying text.

²²¹ FRENCH, *supra* note 41, at 32; See *id.* at 113 (“Essentially, Kim [Jong-il] argued that Juche was a higher form of organisation than Marxism-Leninism and therefore North Korea would not follow the Soviet economy into the dustbin of history.”).

²²² See *supra* Chapter Three.I.B; see also *supra* Chapter Three.I.A.

Thus, the logic of propaganda of the North Korean government is no more than political maneuvering to prevent domestic agitation and the ideological restlessness of the mass of its people that might have been instigated by expunging Marxism-Leninism, which was previously ingrained as the universal truth, the fundamental source of Juche, and one of the two ruling ideologies of the country.

The eminent scholars and researchers of the liberal democratic countries who analyzed this political ploy and grasped the political maneuvering of the North Korean government actually do not hesitate to confidently declare that the country is still under the influence of Marxist-Leninist ideology even now, regardless of the deletion of references to Marxism-Leninism in the North Korean Constitution of 1992. To cite a few examples, Professor Howard J. Wiarda at the University of Georgia states that “The collapse of the Soviet Union, the repudiation of Marxism-Leninism in Eastern Europe, and the abandonment of Marxism-Leninism on the part of many Third World states (Angola, Ethiopia, Mozambique, Nicaragua, among others) have left the world with only four remaining Marxist-Leninist states: China, Cuba, North Korea, and Vietnam.”²²³

In addition, Emeritus Professor Robin Okey at the University of Warwick, who is

²²³ HOWARD J. WIARDA & ESTHER M. SKELLEY, *DILEMMAS OF DEMOCRACY IN LATIN AMERICA: CRISES AND OPPORTUNITY* 116 (2005).

a Fellow of the Royal Historical Society, emphasizes that “The events of autumn 1989 introduced many distinctive factors into the communist end-game No doubt the chief reason some communists sought new paths in the late 1980s was that the communist utopia had failed. . . . Prosperity could not be planned in the absence of normally functioning markets and prices. . . . North Korea still survives as a Marxist-Leninist state despite its atrocious [economic] record.”²²⁴ comparing North Korea’s situation to the collapse of Marxism-Leninism in Eastern Europe before and after 1990.

Furthermore, Professor Leslie Holmes at the University of Melbourne enunciates that Marxism-Leninism is still one of the two ruling ideologies of North Korea, along with Juche ideology, explaining its relation to the nationalism of Juche ideology:

One important element often found in the ‘practical’ ideology, but which in a real sense contradicts the ‘proletarian internationalism’ of classical Marxism[-Leninism], is official nationalism. A prime example of this can be found in North Korean ideology, which is described as ‘Marxism-Leninism and Juche’; Juche is very much a nationalist ideology.²²⁵

And aside from these in-depth analyses of renowned professors, Arch Puddington, who is the vice president of research at Freedom House, says with definite certainty that “[N]orth Korea . . . is a one party, Marxist-Leninist regime.”²²⁶

²²⁴ ROBIN OKEY, THE DEMISE OF COMMUNIST EAST EUROPE: 1989 IN CONTEXT 72 (2004); *See infra* Chapter Five.I.B.

²²⁵ Leslie Holmes, *Communist and Post-Communist Systems*, in *ENCYCLOPEDIA OF GOVERNMENT AND POLITICS (VOLUME 1)* at 223, 226 (Mary Hawkesworth & Maurice Kogan eds., 2nd ed. 2004).

²²⁶ ARCH PUDDINGTON, *FREEDOM IN THE WORLD 2012: THE ARAB UPRISINGS AND THEIR GLOBAL*

Additionally, Jasper Becker, who is the publisher of Asia Weekly and an expert on Chinese and North Korean matters, states that “[a] Marxist-Leninist state like North Korea is the product of a revolutionary ideology”²²⁷

Furthermore, Dr. Nicholas Eberstadt, an expert of North and South Korean matters, does not hesitate to label North Korea as “Marxist-Leninist state,” stating that “Like other Marxist-Leninist states, North Korea’s leadership analyzes the struggle between ‘imperialist’ and ‘socialist’ camps in terms of the ‘correlation of forces.’”²²⁸

Finally, one of the highest ranking North Korean defectors to South Korea clearly supports the analyses and opinions of these eminent scholars and researchers. Mr. Duk-Hong Kim defected from North Korea along with Jang-Yeop Hwang, who is the architect of Juche ideology, in 1997, or about five years after the time of the official deletion of Marxism-Leninism from the North Korean Constitution.²²⁹ He specifically majored in political economy at Kim Il Sung University and worked at the KWP Institute for Juche Ideology after his graduation. Thus, he was in a position to know

REPERCUSSIONS: SELECTED DATA FROM FREEDOM HOUSE’S ANNUAL SURVEY OF POLITICAL RIGHTS AND CIVIL LIBERTIES 5 (2012).

²²⁷ BECKER, *supra* note 204, at 44.

²²⁸ NICHOLAS EBERSTADT, *THE END OF NORTH KOREA* 77 (1999).

²²⁹ See Public Broadcasting Service (PBS), Kim Duk Hong: Interview with a North Korean Defector, <http://www.pbs.org/wgbh/pages/frontline/shows/kim/them/defector.html> (last visited Jan. 30, 2010) (“Kim Duk Hong is one of the highest ranking officials to defect from North Korea. He escaped from North Korea in 1997 . . . along with Hwang Jang Yop, the architect of the North Korea regime’s ideology known as ‘Juche,’ meaning ‘self reliance.’ Kim was Hwang’s assistant for many years.”).

whether Marxism-Leninism was still exercising its powerful influence over North Korea despite the government's expunging Marxism-Leninism. According to an interview with Mr. Kim:

[Question of reporter:] So you waited more than 40 years before defecting. Why did you take so long?

[Answer of Duk-Hong Kim:] Before I left, I studied Marxism[-Leninism] and Communism. I realized that Kim Jong Il's government is following Marxism[-Leninism] literally. At this time, I thought that someone should speak up about this, so I did.²³⁰

Nonetheless, Marxism-Leninism has not been mentioned in the North Korean Constitution, which is the most formal document of the country, since 1992. In addition, the North Korean government has declared Juche as its sole official ruling ideology since its Constitution of 1992. It is hard to say that Marxism-Leninism is an additional official ruling ideology of North Korea under these circumstances. So for the purposes of this thesis, I have identified Marxism-Leninism as the "unofficial" ruling ideology of North Korea.

²³⁰ *Id.*

CHAPTER FOUR

CIVIL AND POLITICAL RIGHTS

“The [United Nations] Human Rights Council [remains] . . . [d]eeply concerned at the persisting deterioration in the human rights situation in the Democratic People’s Republic of Korea, at the continuing reports of systematic, widespread and grave violations of civil, political . . . rights in the Democratic People’s Republic of Korea . . . and urging the Government of the Democratic People’s Republic of Korea to respect all human rights and fundamental freedoms fully”

– The UNHRC Resolution (A/HRC/22/L.19),
Adopted in the 22nd Session, March 21, 2013

I. Freedom of Religion

A. The Arguments of the North Korean Government and Its Main Grounds for the Arguments in the DPRK Official Reports

The first part of Article 68 of the North Korean Constitution is the Fundamental Rights Article concerning the issue of religious freedom within the country. It stipulates that “Citizens have freedom of religious belief. This right is granted through the approval of the construction of religious buildings and the holding of religious ceremonies.”²³¹

North Korea uses a theoretical approach, which focuses on the core

²³¹ Naenara [My Country]: Democratic People’s Republic of Korea, Constitution: Chapter V Fundamental Rights and Duties of Citizens, <http://naenara.com.kp/en/great/constitution.php?6> (last visited May 3, 2012) [hereinafter North Korean Constitution Chapter V].

implementation mechanism of this Fundamental Rights Article, as the main grounds for its arguments in defense of its practices of religious freedom in the DPRK Official Reports. That is to say, the country introduces the first part of Article 68 of its Constitution as the guaranteed mechanism for the domestic protection of the religious freedom of its people, as well as the core implementer for the articles on this freedom in the international human rights treaties to which it has acceded in the reports.

1. The Fundamental Rights Article as the Guaranteed Mechanism for the Domestic Protection of Freedom of Religion

North Korea adverts to this mechanism in a series of its official reports. Thus, in paragraph 45 of the National Report, the North Korean government argues that “Citizens are guaranteed under [the first part of Article 68 of] the Constitution freedom of religious beliefs such as the right to practise religion of their own free choice, to set up religious buildings and facilities, to freely hold religious ceremonies openly or privately, individually or in community with others and to give religious education.”²³²

Additionally, in paragraph 40 of the same report, the government states that “The DPRK legalized, as fundamental . . . rights, . . . the freedom of . . . religious beliefs [in the first

²³² 2009 National Report, *supra* note 11, at 9.

part of Article 68 of its Constitution] and is ensuring them in practice.”²³³

In paragraph 7 of the Second ICCPR Implementation Report, the North Korean government states that “The Constitution . . . stipulates the basic rights of citizens including . . . the freedom of religious belief”²³⁴ In paragraph 111 of the same report, the country argues that “Article 68 of the Constitution states: ‘Citizens have freedom of religious belief. This right is ensured by the permission to build religious buildings and have the legal freedom to select any religious ceremonies.’ Thus people have the legal freedom to select any religious belief, to build religious facilities”²³⁵

Similarly, in paragraph 76 of the Initial CEDAW Implementation Report, the North Korean government states that “The Constitution . . . provides that women are guaranteed, enjoy and exercise on an equal footing with men such basic rights as . . . the freedom of religious beliefs (article 68)”²³⁶

Finally, in paragraph 58 of the Combined CRC Implementation Report, the North Korean government states that “The Constitution stipulates the fundamental rights . . . of citizens; [c]itizens are guaranteed . . . freedom of religious beliefs (art. 68)”²³⁷

²³³ *Id.* at 8.

²³⁴ 2000 Second ICCPR Implementation Report, *supra* note 7, at 4-5.

²³⁵ *Id.* at 30.

²³⁶ 2002 Initial CEDAW Implementation Report, *supra* note 9, at 12.

²³⁷ 2007 Combined CRC Implementation Report, *supra* note 10, at 17.

Additionally, in paragraph 76 of the same report, the government contends that

“[c]itizens have freedom of religious beliefs (art. 68)”²³⁸

2. The Fundamental Rights Article as the Core Implementer for the Articles on Religious Freedom in the International Human Rights Treaties

Once again, North Korea presents the Fundamental Rights Article to argue its adherence to international human rights treaties in various reports.

Article 18, paragraph 1 of ICCPR stipulates that “Everyone shall have the right to freedom of . . . religion. This right shall include freedom to have . . . a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”²³⁹ Paragraph 2 of the same article of the Covenant provides that “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”²⁴⁰ Regarding the freedom of religion in the Covenant, North Korea states, in paragraph 111 of the Second ICCPR Implementation Report, that the first part of Article 68 of its Constitution is the core mechanism to carry out Article

²³⁸ *Id.* at 20.

²³⁹ ICCPR, *supra* note 3, art. 18, ¶ 1.

²⁴⁰ ICCPR, *supra* note 3, art. 18, ¶ 2.

18 of the ICCPR:

Article 18. Freedom of Religious Belief

111. [The first part of] Article 68 of the Constitution states: “Citizens have freedom of religious belief. This right is ensured by the permission to build religious buildings and have the legal freedom to select any religious ceremonies.” Thus people have the legal freedom to select any religious belief, to build religious facilities or structures, to have or refuse to have religious ceremonies individually or collectively in an open or closed way, to organize religious bodies and have activities, to teach religion, etc.²⁴¹

Article 14, paragraph 1 of CRC stipulates that “States Parties shall respect the right of the child to freedom of . . . religion.”²⁴² In paragraph 90 of the Combined CRC Implementation Report, North Korea provides the first part of Article 68 of its Constitution as the key implementer to carry out Article 14 of the CRC as follows:

D. Freedom of . . . religion (art. 14)

90. As was stated in paragraphs 79 and 80 of the initial report and paragraphs 61 and 96 of the second periodic report, the Government guarantees the freedom of citizens to religious belief in accordance with [the first part of] article 68 of the Constitution. Christian churches, Catholic churches and Buddhist temples are regularly performing religious ceremonies and other activities. No child is deprived of the right to religious belief.²⁴³

3. The Diagrammatization of the Core Implementation Mechanism Model

The core implementation mechanism model of the first part of Article 68, which

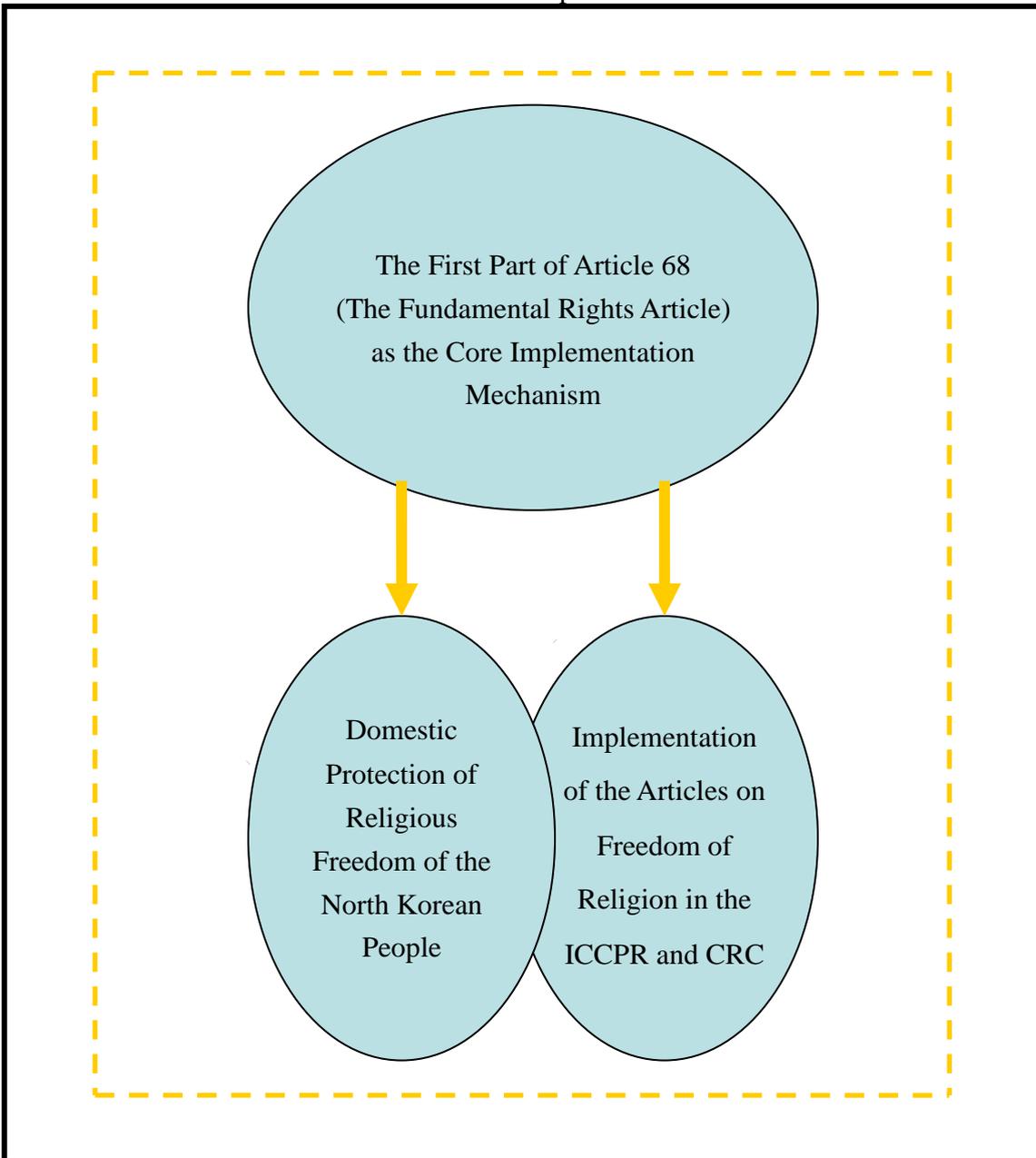
²⁴¹ 2000 Second ICCPR Implementation Report, *supra* note 7, at 30.

²⁴² CRC, *supra* note 5, art. 14, ¶ 1.

²⁴³ 2007 Combined CRC Implementation Report, *supra* note 10, at 24.

shows both North Korea's arguments in defense of its practices of religious freedom and the main grounds for its arguments in the DPRK Official Reports, is diagrammatized below:

<Diagram 4> The Core Implementation Mechanism Model of the Fundamental Rights Article in the DPRK Official Reports



B. The Juchist and Marxist-Leninist Article and the Influence of Juche Ideology and Marxism-Leninism on the Article

The latter part of Article 68 of the North Korean Constitution is the Juchist and Marxist-Leninist Article concerning the issue of religious freedom in the country. It provides that “Religion must not be used as a pretext for drawing in foreign forces or for harming the State or social order.”²⁴⁴

The North Korean government gives its official interpretation of the latter part of Article 68 as follows:

Article 68, paragraph 2, of the Constitution states: “Religion must not be used as a pretext for drawing in foreign forces or for harming the State and social order.” Foreign forces in this provision means the foreign aggressive forces that invade other countries to violate their sovereignty. The Korean people still remember those who under the cloak of religion infiltrated the country to engage in acts of espionage, subversion, sabotage and ideological disruption, causing serious harm to their independent development.²⁴⁵

This deep distrust and strong refusal of religion, which is demonstrated in the Juchist and Marxist-Leninist Article, is one of the key tenets of Juche Ideology and Marxism-Leninism, the two anti-human rights and ruling ideologies controlling North Korea.

²⁴⁴ North Korean Constitution Chapter V, *supra* note 231; *See supra* Chapter One.III.A.

²⁴⁵ U.N. Comm. on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Second Periodic Reports of States Parties Due in 1997: Addendum: Democratic People's Republic of Korea*, ¶ 24, U.N. Doc. CRC/C/65/Add.24 (Nov. 5, 2003) [hereinafter 2003 Second CRC Implementation Report].

1. The Anti-Religious Nature of Marxism-Leninism and Its Influence on the Juchist and Marxist-Leninist Article

The deep distrust in and the strong hostility against religion permeating the latter part of Article 68 are exactly in line with the attitudes of Marx and Lenin on religion. According to Marx, religion is nothing other than a product of evil and a social evil that should be redressed.²⁴⁶

Marx continues to make disparaging remarks about religion in *A Contribution to the Critique of Hegel's Philosophy of Right*:

The abolition of religion as the *illusory* happiness of the people is the demand for their *real* happiness. To call on them to give up their illusions about their condition is to call on them to *give up a condition that requires illusions*. The criticism of religion is, therefore, *in embryo, the criticism of that vale of tears* of which religion is the *halo*.²⁴⁷

According to Marx, religion is the biggest obstacle to true happiness. For this reason, Marx maintains that religion should be abolished.

Finally, when it comes to Marx's distrust and hatred of religion, we cannot forget his statement that religion is the opium of the people. He emphasizes that "Religion is the sigh of the oppressed creature, the heart of a heartless world, and the soul of soulless

²⁴⁶ See Nicholas Lobkowitz, *Karl Marx's Attitude toward Religion*, in *MARXISM: THE INNER DIALOGUES* 155, 155 (Michael Curtis ed., 2nd ed. 1997) ("He [Marx] looked on religion as a consequence of a more basic evil, the evil of a society in which man 'has not yet found himself or has already lost himself again.' (citation omitted).").

²⁴⁷ Marxists Internet Archive, *Works of Karl Marx 1843: A Contribution to the Critique of Hegel's Philosophy of Right (Introduction)*, <http://www.marxists.org/archive/marx/works/1843/critique-hpr/intro.htm> (last visited May 18, 2009).

conditions. It is the *opium* of the people.”²⁴⁸ in the same essay. This metaphor involving “the *opium* of the people” can be interpreted in several ways.

One of the points Marx wanted to stress through this figure of speech is that religion, as a social evil, is highly addictive as well as contagious as opium is to the person who immerses himself in it. Thus, to Marx, religion is a potential risk factor, which can thrust the whole of society into chaos.

Furthermore, Marx’s analogy seems to denigrate religion as a temporary balm. Opium has a well-known ability to temporarily ease the pain and suffering of human beings. It seems as if Marx wanted to stress through the metaphor that religion is a fictional product, which was created by humans for its own convenience.²⁴⁹ Professor Gerald A. Cohen, formerly of Oxford University, states “Marx’s awareness that religion’s source is deep in human need is evident in his statement that it is the opium of the people.”²⁵⁰ I take this interpretation made by Professor Cohen to mean that religion is fabricated by man to temporarily forget its misery, hopelessness, solitude, and the like. Professor Joseph M. Bochenski, former professor at the University of Fribourg, Switzerland, compares this purpose of “human-made religion” to a “sedative”

²⁴⁸ *Id.*

²⁴⁹ *See id.* (“The foundation of irreligious criticism is: *Man makes religion*, religion does not make man. . . . Man is *the world of man* – state, society. This state and this society produce religion . . .”).

²⁵⁰ GERALD A. COHEN, *KARL MARX’S THEORY OF HISTORY: A DEFENCE* 353 (expanded ed. 2000).

and “tranquiliser” in his article, *Marxism-Leninism and Religion*: “When Marx said that ‘Religion is the opiate of the people’ he seems to have meant that it is a type of sedative, tranquiliser, made practically necessary by the hopelessness of life.(footnote omitted)”²⁵¹ We can also link religion as a “human need” with the approach of Professor Emeritus Bruce Mazlish at Massachusetts Institute of Technology. He writes in one of his books, *The meaning of Karl Marx*, that “What Marx has in mind is the Feuerbachian idea that man, rather than being created in the image of God, creates God in his own image, i.e., out of real, earthly needs and desires.”²⁵²

All things considered, Marx’s metaphor regarding “religion as the *opium* of the people” can be interpreted comprehensively to mean that the very core of religion is just the pretense of a God created by human need to temporarily tranquilize various mental anguishes, alleviate emotional injuries, lighten the burdens of life, and mitigate loneliness. Therefore, to Marx, a religion is not the fundamental solution to the problem of human agony and fears but merely an unrealistic superstition, a symbol of deception, an object of distrust, and spiritual slavery to harm the social order.²⁵³

²⁵¹ Joseph M. Bochenski, *Marxism-Leninism and Religion*, in RELIGION AND ATHEISM IN THE U.S.S.R. AND EASTERN EUROPE 1, 9 (Bohdan R. Bociurkiw et al. eds., 1975).

²⁵² BRUCE MAZLISH, *THE MEANING OF KARL MARX* 77 (1984); *See id.* (“Religion is a matter of anthropology, not theology, for Feuerbach.”).

²⁵³ *See* PIEDRA, *supra* note 166, at 91 (“Marxism-Leninism does not recognize the existence of any supernatural or creative force. It is based exclusively on the real world and insists that this life is the only life. Man must be liberated form the idea that there is a Supreme Being and reject the superstitions and

Meanwhile, the religious values of Lenin, who is the successor of Marx's theory, are demonstrated clearly in this statement in his essay, *The Attitude of the Workers'*

Party to Religion:

We must combat religion. This is the A B C of Marxism. The Marxist must be an enemy of religion. . . . The philosophic basis of Marxism is dialectic materialism. This dialectic materialism fully accepts the historical traditions of the Materialism of the eighteenth century in France and of Feuerbach in Germany – which is absolutely atheistic, and definitely hostile to all religion. . . . Our program necessarily includes the propaganda of atheism.²⁵⁴

Lenin also does not hesitate to liken religion to contagion in his letter to Maxim

Gorki in 1913:

Every religious idea, every idea of God, even flirting with the idea of God, is unutterable vileness . . . of the most dangerous kind, 'contagion' of the most abominable kind. Millions of sins, filthy deeds, acts of violence and physical contagions . . . are far less dangerous than the subtle, spiritual idea of God decked out in the smartest 'ideological' costumes . . .²⁵⁵

Marx and Lenin's distorted views of religion, full of distrust and hostility, were faithfully reflected in their theory and have become one of the core principles of Marxism-Leninism.²⁵⁶ Additionally, this anti-religious tenet of the unofficial ruling ideology of North Korea was publicly legislated in the latter part of Article 68, which is

spiritual slavery of the past.”).

²⁵⁴ EDWARD LODGE CURRAN, *FACTS ABOUT COMMUNISM* 59 (1937).

²⁵⁵ ROBERT CONQUEST, *THE HARVEST OF SORROW: SOVIET COLLECTIVIZATION AND THE TERROR-FAMINE* 199 (1987).

²⁵⁶ See KURIAN, *supra* note 162, at 213 (“Marxism’s theoretical basis as expressed in *Das Kapital* rests on numerous tenets, among them . . . the suppression of religion . . .”).

the Juchist and Marxist-Leninist Article on religious freedom.

2. The Anti-Religious Nature of Juche Ideology and Its Influence on the Juchist and Marxist-Leninist Article

Kim Il-Sung's view of religion was greatly influenced by those of Marx and Lenin. Thus, his attitude towards religion was also full of profound distrust and hatred. We can deduce this through his official statements concerning religion. For example, he states the following:

Religion is a superstition. All the religions, be they Christianity or Buddhism, belong in essence to the same superstition. Historically, religion has always been the tool of the ruling class who want to deceive, suppress and exploit the working class for the benefit of their interests. In the modern age, the imperialists have been using religion as an ideological tool to invade the underdeveloped countries.(citation omitted)²⁵⁷

In addition to this remark, his other statement, as follows, also reveals his religious values well:

Those elements who have sneaked into the Democratic Party and are now perpetrating reactionary acts are in general of the following categories: First, they are the pro-American elements who, influenced by U.S. propaganda in the past, worship the United States and harbour illusions about it. The United States had sent to our country missionaries under the mantle of religion long ago to build churches in many places and disseminate Christianity and ideas of U.S. worship, and made preparations over tens of years to dominate Korea some day. This was an insidious trick

²⁵⁷ INSTITUTE FOR SOUTH-NORTH KOREA STUDIES, THE HUMAN RIGHTS SITUATION IN NORTH KOREA: REALITY OF SELF-STYLED PARADISE 69 (1992).

of the United States to feign sympathy with the Koreans and establish its influence in Korea under the cloak of religion. . . . Yet, some of the pastors and church elders, taken in by such religious propaganda, are trying to sell out our country for dollars, worshipping the United States like a God.²⁵⁸

Furthermore, he emphasizes the following:

(We) cannot carry such religiously active people along our march toward a communist society. Therefore, we tried and executed all religious leaders higher than deacon in the Protestant and Catholic churches. Among other religiously active people, those deemed malignant were all put to trial. Among ordinary religious believers, those who recanted were given jobs while those who did not were held at concentration camps.(citation omitted)²⁵⁹

As every sentence in his statements reveals, Kim Il-Sung regards religion as a fictional product created by the imperialists for their ideological invasion. In addition, to the creator of Juche, religion is not only an excuse for drawing in foreign powers but also a social evil to disrupt North Korean society.

Kim Il-Sung's distorted views of religion, full of distrust and hatred, were faithfully reflected in his theory and have become one of the key principles of Juche ideology. Additionally, this anti-religious tenet of the official ruling ideology of North Korea was publicly legislated in the latter part of Article 68, which is the Juchist and Marxist-Leninist Article on religious freedom.

²⁵⁸ KIM, *supra* note 208, at 183.

²⁵⁹ 2006 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 136.

C. The New Refuting Theory and Its Incapacitation Mechanism Model

The North Korean Constitution contains two fundamentally distinct types of articles that have opposing viewpoints on religious freedom. One is the first part of Article 68, which is the Fundamental Rights Article, and the other is the latter part of Article 68, which is the Juchist and Marxist-Leninist Article.

As reviewed earlier, the first part of Article 68 serves as the core implementing mechanism of the North Korean Constitution for its freedom of religion.²⁶⁰ Thus, as is argued by North Korea in the DPRK Official Reports, the Fundamental Rights Article is, in its very nature, supposed to protect this fundamental freedom of the North Korean people.

On the other hand, the full distrust in and strong hostility toward religion is a key tenet of Juche ideology and Marxism-Leninism.²⁶¹ Thus, from the logical and theoretical standpoint, it is natural for the Juchist and Marxist-Leninist Article, which faithfully incorporates the core principle of the two anti-fundamental rights and ruling ideologies controlling North Korea, to take the disposition of an anti-fundamental rights article in order to suppress religious freedom, and to position itself as the ruling article. Namely, the latter part of Article 68 is not only the Juchist and Marxist-Leninist Article,

²⁶⁰ See *supra* Chapter Four.I.A.

²⁶¹ See *supra* Chapter Four.I.B.

but also works as the anti-fundamental rights and ruling article from the logical and theoretical standpoint.

We reviewed that the clash in function and role between the guarantee of religious freedom and the distrust in and hostility toward religion is inevitable from a logical and theoretical standpoint.²⁶² Similarly, these two extremes both in their very nature and workings, as demonstrated by the first part of Article 68 and the latter part of Article 68, are bound to clash with each other in performing their function and role within one constitutional boundary.

The issue of the functional clash is solved by the relationship of superiority and relative inferiority between the two types of articles. The latter part of Article 68, which is the anti-fundamental rights and ruling article declaring the distrust in and hostility toward religion, has superiority over the first part of Article 68, which is the Fundamental Rights Article for freedom of religion, in their function and operation. As a result, the latter part of Article 68, which is also the Juchist and Marxist-Leninist Article, incapacitates the Fundamental Rights Article, which is the core implementation mechanism of the North Korean Constitution, at the time of this functional clash.

The resulting weakening of the Fundamental Rights Article leads to the

²⁶² *See supra id.*

theoretical impossibility of performing the core implementation mechanism model centered on the first part of Article 68 in the DPRK Official Reports. Consequently, all of the arguments of the North Korean government in defense of its practices of religious freedom in its official reports, which are grounded in this theoretical approach, are totally unrealizable given its constitutional structure and mechanism. That is to say, this impossibility of performance proves false in the Incapacitation Stage any notion that North Korea guarantees the religious freedom of its people or that it complies with the articles on this freedom in the international human rights treaties from a logical and theoretical standpoint.

After completely weakening the Fundamental Rights Article, the Juchist and Marxist-Leninist Article wields strong influence over the North Korean society at large without any difficulty or obstruction. The practical results of this powerful leverage are manifested in the severe violations of fundamental rights and international human rights treaties in North Korea.²⁶³ In essence, since the sole function of the anti-fundamental rights and ruling article is to carry out the anti-religious doctrines of Juche ideology and Marxism-Leninism, there is no constitutional basis to secure the religious freedom of the North Korean people or to prevent the government from violating such

²⁶³ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

protections prescribed by international human rights treaties.

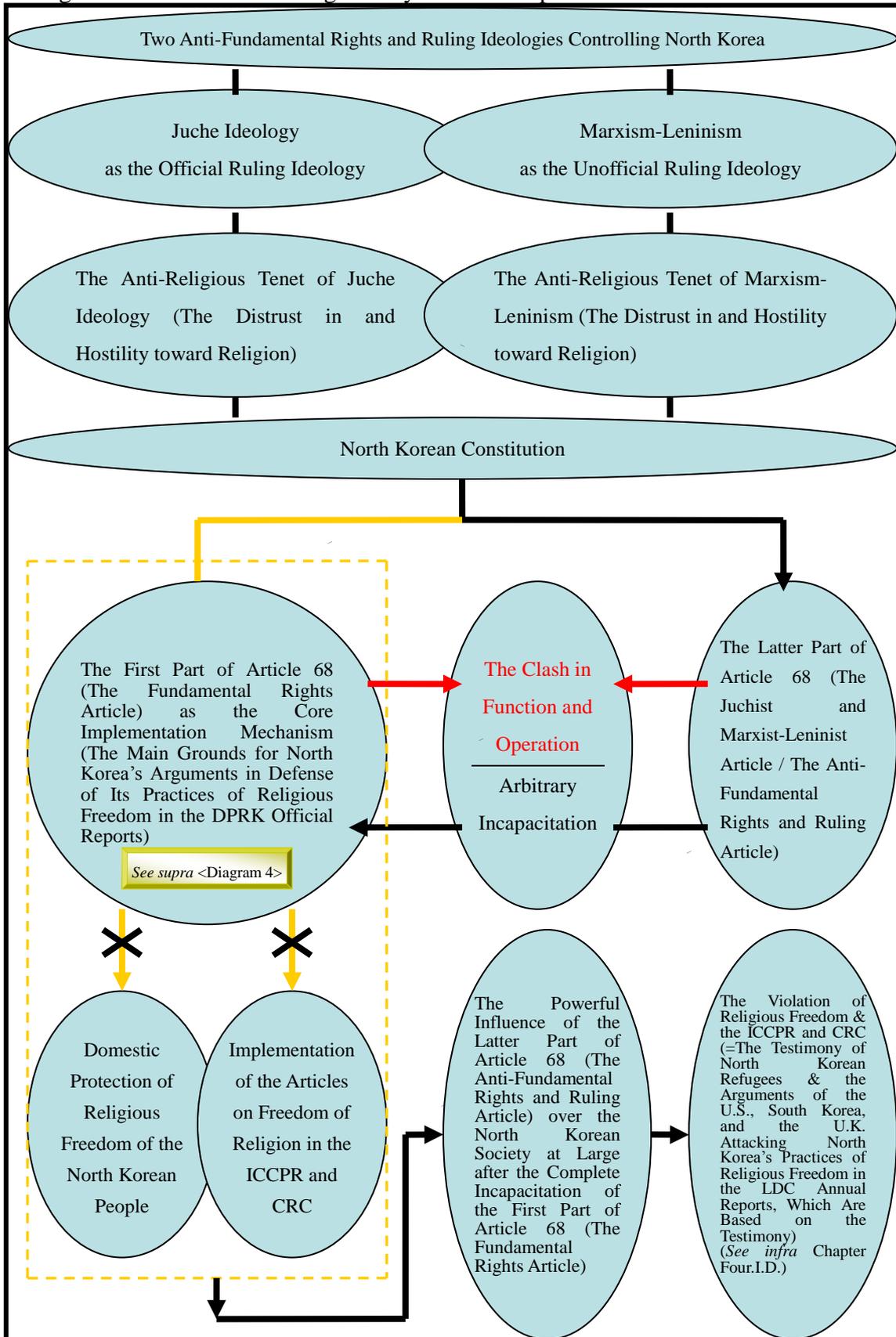
It necessarily follows, logically and theoretically, that the arguments of the U.S., South Korea, and the U.K. condemning the DPRK's violations of religious freedom in the LDC Annual Reports²⁶⁴ are proven true by the constitutional structure and mechanism of North Korea in the Human Rights Violation Stage.

The following diagram incorporates all aspects of the newly developed refuting theory and its incapacitation mechanism model of the latter part of Article 68, including the core premises, key factors, logical order and flow, and theoretical structure. The diagram also incorporates the evidence for verifying the falsity of North Korea's arguments in the DPRK Official Reports and for verifying the truth of the liberal democratic countries' assertions in the LDC Annual Reports. Finally, the diagram shows the relationships between the points of contention of the new refuting theory, the testimony of North Korean defectors, and the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are grounded in this testimony.²⁶⁵

²⁶⁴ See *infra* Chapter Four.I.D.

²⁶⁵ See *infra id.*

<Diagram 5> The New Refuting Theory and Its Incapacitation Mechanism Model



D. The Major Contents of the LDC Annual Reports

As evidenced in the analysis of the USCIRF Human Rights Report, the DPRK's violations of religious freedom, caused by the powerful influence of the Juchist and Marxist-Leninist Article over North Korean society as a whole, as indicated in the new refuting theory, are in accord with the testimony of North Korean refugees who experienced and witnessed first-hand the severe violations of this freedom in their country.²⁶⁶ Thus, the DPRK's violations of religious freedom in the refuting theory coincide with the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are based on this testimony.

In this way, the arguments of the new refuting theory and its incapacitation mechanism model presented by this dissertation not only logically and theoretically support the testimony of North Korean refugees and the contentions of the liberal democratic countries attacking North Korea's violation of religious freedom in the LDC Annual Reports, but they are, in turn, practically and factually supported by the testimony of North Korean escapees and the arguments of the liberal democratic camp.

The major contents of the testimony of North Korean defectors, and the arguments and analyses of the U.S., South Korea, and the U.K., which are based on this

²⁶⁶ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

testimony, in the LDC Annual Reports are as follows:

1. U.S. Human Rights Report

The 2009 U.S. Human Rights Report discloses that “The government repressed and persecuted unauthorized religious groups. Defectors reported that persons engaged in religious proselytizing, persons with ties to overseas religious groups, and repatriated persons who contacted foreigners while outside the country were arrested and subjected to harsh punishment.”²⁶⁷ The report cites a 2007 Asia News report that “[t]he army [had] published and distributed a pamphlet to soldiers warning them [] [of] the dangers of Christianity and urging vigilance against its spread within the armed forces.”²⁶⁸ Furthermore, the report also cited an Associated Press account of a public execution of a woman and imprisonment of her family for distributing the Bible.²⁶⁹

The section of the 2010 U.S. Human Rights Report dealing with religious freedom in North Korea refers the reader to the DPRK section of the 2010 U.S. Religious Freedom Report for all information regarding this subject.²⁷⁰ According to

²⁶⁷ 2009 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

²⁶⁸ *Id.*

²⁶⁹ *See id.* (“According to the Associated Press, authorities publicly executed a woman on June 16 for distributing the Bible and sent her husband and three children to a prison camp.”).

²⁷⁰ *See* 2010 U.S. HUMAN RIGHTS REPORT, *supra* note 32 (“c. Freedom of Religion[:]. For a complete description of religious freedom [in North Korea], please see [the DPRK section of] the 2010

the 2010 U.S. Religious Freedom Report, “[d]efectors[] and refugees have reported the government executed opponents of the regime in recent years. Executed individuals reportedly included some targeted due to their religious activities such as proselytism Others reportedly were punished for having contact with South Korean . . . religious groups, or missionaries while in China.”²⁷¹ The report cites refugee testimony of “[t]he arrest and possible execution of underground Christian church members by the government.”²⁷² Furthermore, the report states the following:

The government deals harshly with all opponents, including those who engage in religious practices it deems unacceptable. . . . An estimated 150,000 to 200,000 persons were believed to be held in political prison camps in remote areas, some for religious reasons. Prison conditions were harsh, and refugees and defectors who had been in prison stated that prisoners held on the basis of their religious beliefs were generally treated worse than other inmates.”²⁷³

The 2010 U.S. Religious Freedom Report also claims that “[t]he government increased its investigation, repression, and persecution of unauthorized religious groups”²⁷⁴ and that “Former government security agents who defected to South Korea

International Religious Freedom Report at www.state.gov/j/drl/irf/rpt/.”).

²⁷¹ 2010 U.S. RELIGIOUS FREEDOM REPORT, *supra* note 93.

²⁷² *See id.* (“Refugees and defectors continued to say they witnessed the arrest and possible execution of underground Christian church members by the government in prior years. Due to the country’s inaccessibility and the inability to gain timely information, the continuation of this activity during the reporting period remained difficult to verify.”).

²⁷³ *Id.*

²⁷⁴ *See id.* (“Defector reports indicated the government increased its investigation, repression, and persecution of unauthorized religious groups in recent years, but access to information on current

reported intensified police activity aimed at halting religious activity at the border.”²⁷⁵

Furthermore, the report specifies the following:

In 2006 the government reportedly sentenced Son Jong-nam to death for espionage; however NGOs claimed the sentence against Son was based on his contacts with Christian groups in China, his proselytizing activities In July 2010 Son’s brother [who has defected into South Korea] reported Son was tortured and died in prison in December 2008.²⁷⁶

Not surprisingly, the 2009 U.S. Human Rights Report comes to the conclusion that “Genuine religious freedom did not exist [in North Korea].”²⁷⁷

2. USCIRF Human Rights Report

The 2009 USCIRF Human Rights Report states that “Former refugees and defectors have testified that the [religious] federations [for Buddhists, Chondokyists,²⁷⁸ Protestants, and Catholics] are led by political operatives whose goals are to implement the government’s policy of control over religious activity, gain foreign humanitarian

conditions was limited.”).

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ 2009 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

²⁷⁸ A Chondokyist is someone who follows the teachings of Chondokyo. According to the 2008 USCIRF Human Rights Report, Chondokyo is “a syncretic belief largely based on Confucianism but which also incorporates elements of Taoism, Shamanism, Buddhism, and Catholicism.” 2008 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 141.

assistance, and maintain religious sites as cultural centers.”²⁷⁹ The report also discloses that “Churches, temples, and pagodas built for the government-approved organizations are directly controlled and operated by the National Security Agency. Other public and private religious activity is prohibited and anyone discovered engaging in clandestine religious practice faces official discrimination, arrest, imprisonment, and possibly execution.”²⁸⁰ Furthermore, the report divulges the following:

Imprisoning religious believers is reportedly quite common, according to refugee testimony, but neither the State Department nor any other official or non-governmental source has been able to document the number of religious prisoners. The most reliable information comes from North Korean groups in South Korea, who report that an estimated 6,000 Christians are incarcerated in “Prison No. 15” in the northern part of the country.²⁸¹

In addition to the aforementioned, according to the 2009 USCIRF Human Rights Report, “[r]eligious prisoners are treated worse than other inmates. They are typically given the most dangerous tasks in the labor camps and are subject to constant abuse to force them to renounce their faith. When they refuse renunciation, they are often beaten and tortured.”²⁸² The report states that “The latest series of interviews . . . confirmed that refugees who are forcibly repatriated from China are extremely vulnerable to ill

²⁷⁹ 2009 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 23.

²⁸⁰ *Id.* at 5.

²⁸¹ *Id.* at 24.

²⁸² *Id.*

treatment in custody, hard labor, and imprisonment in North Korea's infamous prison camps if they admit, or are suspected, to . . . have converted to Christianity, or had smuggled Bibles."²⁸³ It also reveals that "[t]he government continues to offer rewards to its citizens for providing information that leads to the arrest of individuals suspected of involvement in . . . the distribution of Bibles or other religious literature."²⁸⁴

The 2010 USCIRF Human Rights Report concludes that "The Democratic People's Republic of North Korea (DPRK or North Korea) is one of the world's most repressive regimes. Severe religious freedom abuses occur regularly, including: surveillance, discrimination, and harassment of both authorized and unauthorized religious activity; the arrest, torture, and possible execution of those conducting clandestine religious activity"²⁸⁵

3. ROK Human Rights Report

The 2010 ROK Human Rights Report states that "Since the founding of the regime and pursuant to Kim Il Sung's statement that 'Religion is the opiate of the masses,' the DPRK has consistently persecuted religiously active people. It explains

²⁸³ *Id.* at 23.

²⁸⁴ *Id.* at 25.

²⁸⁵ 2010 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 40.

religion as a tool for the ruling class to exploit the masses.”²⁸⁶ The report also indicates that “Many religiously active people in North Korea have been branded as disloyal and brutally tortured or executed for their beliefs.”²⁸⁷ The report informs us that “[a]ll defectors consistently testified that one would be certainly persecuted for practicing religion on a personal level.”²⁸⁸ For example, the report discloses a defector’s testimony that “[i]n 2005 a group [of] people were arrested for trying to smuggle [] religious literature and were [] executed [as a result]. . . .(citation omitted)”²⁸⁹

The 2011 ROK Human Rights Report also reveals testimony from a defector that “[h]e/she personally witnessed a neighbor, who was a Buddhist, being forcibly banished.(citation omitted)”²⁹⁰ Another defector testified that “[h]e witnessed a person getting arrested for religious activities and [] [deported] to No. 17 Yodok Management Center [Yodok Concentration Camp].(citation omitted)”²⁹¹

According to the 2010 ROK Human Rights Report, “Most religiously active

²⁸⁶ 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 323.

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 336.

²⁸⁹ *Id.* at 340.

²⁹⁰ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 317.

²⁹¹ *Id.* at 318.

people were categorized as antinational and counter revolutionary hostile elements and subjected to ruthless persecution. Christians in particular were purged because they were regarded as tools of imperialist aggression.”²⁹² For instance, the report documents defector testimony that “[i]n 2001 a 55-year-old female Christian living in Kangso County, South Pyongan Province was arrested for having assembled others for religious purposes. She was put to death and others were locked up in correctional centers.(citation omitted)”²⁹³ The report quotes refugee testimony that “[w]hen he was at the Provincial Security Agency in 2006 a young man . . . was brought in for having spread Christianity. His elder brother had reported it. He heard that the young man was bound for a ‘management center.’(citation omitted)”²⁹⁴ The report claims that “Since 1997, North Korean citizens have been receiving education designed to prevent the spread of Christianity. The education would emphasize the necessity of detecting the individuals engaged in spreading Christianity and how to identify them.(citation omitted)”²⁹⁵

The 2010 ROK Human Rights Report states that “Since North Korea regards the

²⁹² 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 323.

²⁹³ *Id.* at 339.

²⁹⁴ *Id.* at 340.

²⁹⁵ *Id.* at 337.

Bible as a tool of cultural and ideological intrusion, the authorities deal most strictly with anyone caught in possession of a Bible.(citation omitted)”²⁹⁶ For example, the same report specifically reveals that “Defector XXX testified that the authorities found copies of the Bible in four houses in his neighborhood, and all members of those households were sent off to jail.(citation omitted)”²⁹⁷ The report discloses that “In 2004, a woman in her late 30s (husband Jo Sangsoon) living in Musan County was arrested for having read Christian literature. She was taken to the Security Agency in Rajin-Sunbong District, but no one knew what happened to her.(citation omitted)”²⁹⁸ The report cites refugee testimony that “[w]hen he was working at the Onsung Security Agency, someone was caught bringing in copies of the Bible from China His grandmother, son, and daughter-in-law were detained for over 9 months. He heard that they would be transferred to a concentration camp.(citation omitted)”²⁹⁹ Finally, the 2011 ROK Human Rights Report describes defector testimony that “[h]e . . . became a Christian in China through a Chinese pastor. He was arrested upon return to North Korea and was sentenced to serve in a correctional center for three years for having

²⁹⁶ *Id.* at 332.

²⁹⁷ *Id.* at 340.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

brought a Bible into North Korea. . . .(citation omitted)”³⁰⁰

The 2010 ROK Human Rights Report concludes that “Freedom of religion is indeed restricted in North Korea This reality is clearly demonstrated when we look at the punishments imposed on citizens who practiced religion and on those forcibly deported defectors [from China back to North Korea].”³⁰¹

4. U.K. Human Rights Report

Much of the evidence for the 2006 U.K. Human Rights Report came from North Korean defectors, who reported serious religious persecution.³⁰²

The report states that “Defectors report that Christians receive harsher treatment than other prisoners, suffering torture and execution as a direct consequence of their faith.”³⁰³ and that “[N]orth Koreans have no access to religious literature or other information.”³⁰⁴

The 2009 U.K. Human Rights Report informs us that “Although there are

³⁰⁰ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 317-318.

³⁰¹ 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 338.

³⁰² See 2006 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 61 (“Much of the evidence for this record comes from North Korean defectors, also referred to as refugees or escapees, who provide shocking reports of serious and widespread violations of basic human rights in the DPRK. The alleged abuses include . . . extreme religious persecution . . .”).

³⁰³ *Id.* at 62.

³⁰⁴ *Id.*

Anglican, Catholic and Russian Orthodox churches in Pyongyang, we believe these to be show churches, for the benefit of foreign visitors.”³⁰⁵

The 2010 U.K. Human Rights Report states that “The state ignores the ‘freedom of religion’ provision in the constitution, and persecutes all illegally held religious services and bans missionary activities.”³⁰⁶

The 2006 U.K. Human Rights Report concludes that “Although the constitution provides for freedom of religious belief, there is no genuine religious freedom [in the DPRK]”³⁰⁷

³⁰⁵ 2009 U.K. HUMAN RIGHTS REPORT, *supra* note 15, at 108.

³⁰⁶ 2010 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 183.

³⁰⁷ 2006 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 62.

II. The Right to Vote and to Be Elected

A. The Arguments of the North Korean Government and Its Main Grounds for the Arguments in the DPRK Official Reports

At the core of the right of political participation is the right to vote and to be elected.³⁰⁸ Article 66 of the North Korean Constitution is the Fundamental Rights Article concerning the issue of the right to vote and to be elected within the country. It stipulates as follows:

All citizens who have reached the age of 17 have the right to elect and to be elected, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views or religious belief.

Citizens serving in the armed forces also have the right to elect and to be elected. A person who has been disenfranchised by a Court decision and a person legally certified insane do not have the right to elect or to be elected.³⁰⁹

North Korea uses a theoretical approach, which focuses on the core implementation mechanism of this Fundamental Rights Article, as the main grounds for its arguments in defense of its practices of the right to vote and to be elected in the DPRK Official Reports. That is to say, the country introduces Article 66 of its Constitution as the guaranteed mechanism for the domestic protection of the right to

³⁰⁸ According to the 2011 ROK Human Rights Report, “The right of political participation encompasses the civic right of people to participate directly in the formation of their country, to join in the election and voting process as election candidates or voting members, and to be elected to public office.” 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 330. That is to say, at the very core of the right of political participation is the right to vote and to be elected. Thus, throughout this dissertation, I use the terms “the right of political participation” and “the right to vote and to be elected” interchangeably.

³⁰⁹ North Korean Constitution Chapter V, *supra* note 231.

vote and to be elected of its people, as well as the core implementer for the articles on this right in the international human rights treaties to which it has acceded in the reports.

1. The Fundamental Rights Article as the Guaranteed Mechanism for the Domestic Protection of the Right to Vote and to Be Elected

North Korea adverts to this mechanism in a series of its official reports. Thus, in paragraph 16 of the National Report, the North Korean government argues that “The Constitution comprehensively provides for the fundamental rights and freedoms in all fields of State and public activity such as the right to elect and to be elected”³¹⁰ Additionally, in paragraph 40 and 41 of the same report, the government states as follows:

E. Right to participate in the . . . political life

40. The DPRK legalized, as fundamental . . . rights, the right to elect and to be elected [in Article 66 of its Constitution] and is ensuring them in practice.

41. [Article 66:] All citizens who have reached the age of 17 have the right to elect and to be elected, irrespective of sex, nationality, occupation, length of residence, property status, education, party affiliation, political views or religion.³¹¹

In paragraph 7 of the Second ICCPR Implementation Report, the North Korean government states that “The Constitution . . . stipulates the basic rights of citizens

³¹⁰ 2009 National Report, *supra* note 11, at 4-5.

³¹¹ *Id.* at 8.

including . . . the right to vote and to be elected”³¹² In addition, in paragraph 156

of the same report, the government argues that:

All citizens enjoy the right to vote and to be elected. Article 66 of the Constitution stipulates: “All citizens who have reached the age of 17 have the right to elect and to be elected, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views or religion. Citizens serving in the armed forces also have the right to elect and to be elected.”³¹³

Similarly, in paragraph 76 of the Initial CEDAW Implementation Report, the North Korean government states that “The Constitution . . . provides that women are guaranteed, enjoy and exercise on an equal footing with men such basic rights as the right to vote and to be elected (Article 66)”³¹⁴

Finally, in paragraph 76 of the Combined CRC Implementation Report, the North Korean government states that “The Constitution stipulates that all citizens who have reached the age of 17 have the right to elect and to be elected, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views or religion (art. 66)”³¹⁵

³¹² 2000 Second ICCPR Implementation Report, *supra* note 7, at 4-5.

³¹³ *Id.* at 38.

³¹⁴ 2002 Initial CEDAW Implementation Report, *supra* note 9, at 12.

³¹⁵ 2007 Combined CRC Implementation Report, *supra* note 10, at 20.

2. The Fundamental Rights Article as the Core Implementer for the Articles on the Right to Vote and to Be Elected in the International Human Rights Treaties

Once again, North Korea presents the Fundamental Rights Article to argue its adherence to international human rights treaties in various reports.

Article 25, paragraph (b) of ICCPR stipulates that “Every citizen shall have the right and the opportunity . . . without unreasonable restrictions: (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”³¹⁶ Regarding the right to vote and be elected in the Covenant, North Korea offers, in paragraph 156 of the Second ICCPR Implementation Report, that Article 66 of its Constitution is the core mechanism to carry out Article 25 (b) of the ICCPR as follows:

Article 25. Participation in Public Life

. . . .

Right to Vote and to be Elected

156. All citizens enjoy the right to vote and to be elected. Article 66 of the Constitution stipulates: “All citizens who have reached the age of 17 have the right to elect and to be elected, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views or religion. Citizens serving in the armed forces also have the right to

³¹⁶ ICCPR, *supra* note 3, art. 25, ¶ (b).

elect and to be elected.³¹⁷

Paragraph (a) of Article 7 of CEDAW provides the following:

Article 7[.] States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:
(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;³¹⁸

Regarding women's right to vote and to be elected in the Convention, North Korea suggests, in paragraph 108 of the Initial CEDAW Implementation Report, that Article 66 of its Constitution acts as the key implementer to carry out Article 7 (a) of the CEDAW as follows:

Article 7. Political and Public Life

A. Right to vote and to be elected

108. Women are entitled to participate in the exercise of the State power according to their will through the Supreme People's Assembly and the people's assemblies at all levels. The Constitution provides . . . in the article 66: "All the citizens who have reached the age of 17 have the right to elect and to be elected, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views or religion."³¹⁹

Article 12, paragraph 1 of the CRC declares that "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in

³¹⁷ 2000 Second ICCPR Implementation Report, *supra* note 7, at 37-38.

³¹⁸ CEDAW, *supra* note 6, art. 7, ¶ (a).

³¹⁹ 2002 Initial CEDAW Implementation Report, *supra* note 9, at 16-17.

accordance with the age and maturity of the child.”³²⁰ In paragraph 75 of the Combined CRC Implementation Report, North Korea provides Article 66 of its Constitution as the core mechanism to carry out Article 12, paragraph 1 of the CRC:

D. Respect for the views of the child (art. 12)

75. The rights of the child to express his or her views freely and the requirement of the Convention [on the Rights of the Child] on ensuring respect for the views of the child are stated in [Article 66³²¹ of] the Constitution³²²

3. The Diagrammatization of the Core Implementation Mechanism Model

The core implementation mechanism model of Article 66, which shows both North Korea’s arguments in defense of its practices of the right to vote and to be elected and the main grounds for its arguments in the DPRK Official Reports, is diagrammatized below:

³²⁰ CRC, *supra* note 5, art. 12, ¶ 1.

³²¹ “The right to vote and to be elected” in Article 66 of the North Korean Constitution is suggested by the government as the representative fundamental right that carries out “the respect for the views of the child” in Article 12, paragraph 1 of the CRC not only in the 2007 Combined CRC Implementation Report but also in the 2003 Second CRC Implementation Report:

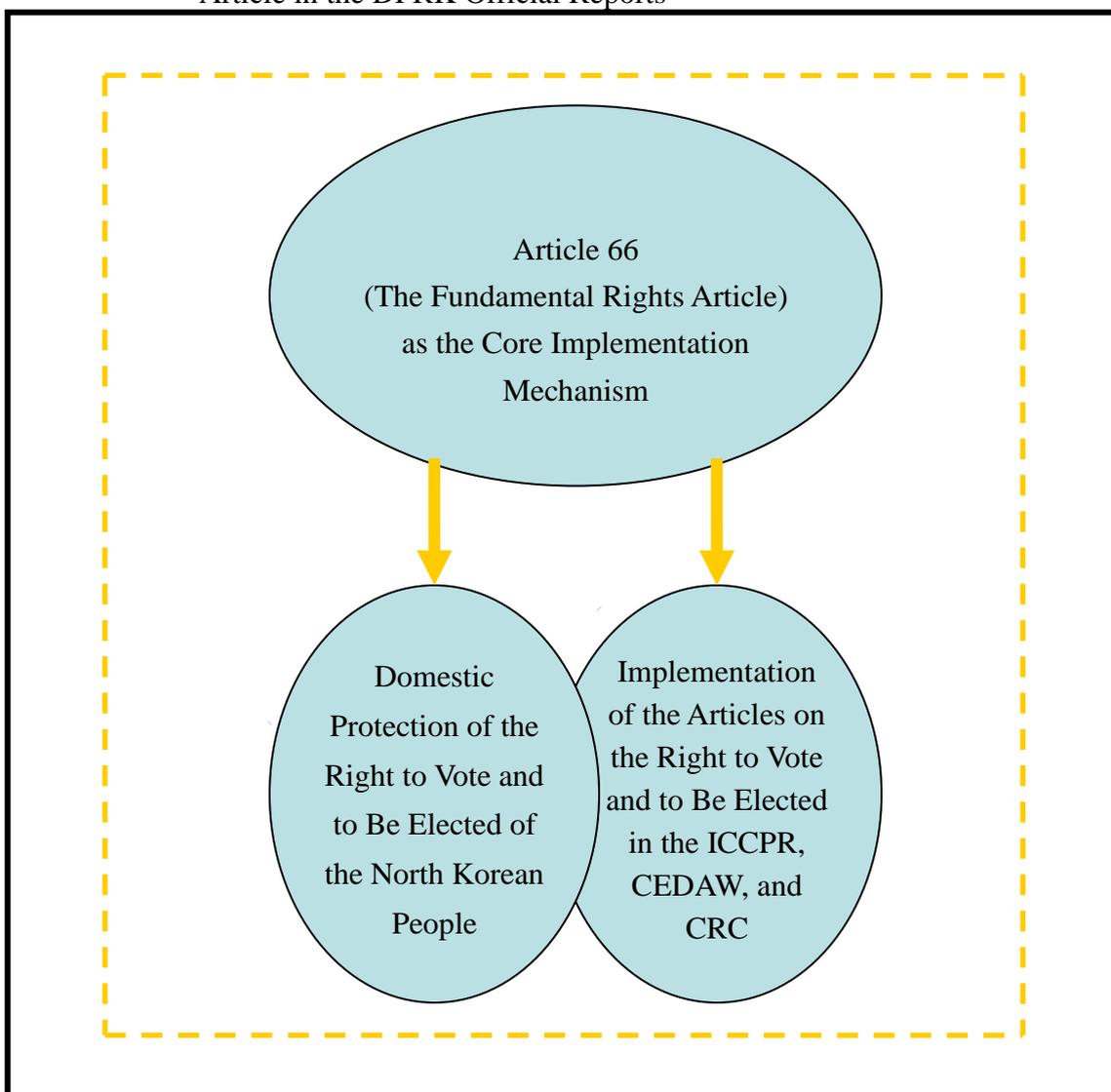
D. Respect for the views of the child (art. 12)

81. The right of the child to express his or her views freely and the provision for those views to be given due weight have been incorporated in legislation The Constitution . . . maintained the provision of the former Constitution that all citizens of 17 or more years of age have the right to vote and to be elected.

2003 Second CRC Implementation Report, *supra* note 245, at 21.

³²² 2007 Combined CRC Implementation Report, *supra* note 10, at 20.

<Diagram 6> The Core Implementation Mechanism Model of the Fundamental Rights Article in the DPRK Official Reports



B. The Juchist and Marxist-Leninist Article and the Influence of Juche Ideology and Marxism-Leninism on the Article

Dictators always justify their dictatorships. No dictators say that they are using their enormous dictatorial powers for themselves, even when they are trying to maintain and strengthen their one-man dictatorships by any means necessary. They claim that

their dictatorships are wholly for the nation and its people. The exercises of great power by the dictators to protect their vested interests are often propagandized as inevitable measures to protect the people's democracies and sovereignty from impure enemies. Their will to consolidate their dictatorial powers is also glamorized as patriotic decisions for the happiness of the masses and for the prosperities of their fatherland. We see this in Article 12 of the North Korean Constitution, which is the Juchist and Marxist-Leninist Article concerning the issue of the right to vote and to be elected in the country. It provides that "The State shall . . . strengthen the dictatorship of the people's democracy so as to firmly defend the people's power and socialist system against all subversive acts of hostile elements at home and abroad."³²³ In spite of the specious use of the term "the people's democracy," the actual nature of the form of government described in the article is totalitarianism.³²⁴

According to Dr. Francis Joseph Kase, who is an authority on communism and Marxist-Leninist theory, "[t]he people's democracies are . . . totalitarian states in which a centralized and disciplined communist party, usually through a nominal coalition, holds a monopoly of political, economic and spiritual power to the exclusion of other

³²³ North Korean Constitution Chapter I, *supra* note 205.

³²⁴ See *supra* note 218 and accompanying text.

independent groupings.”³²⁵ “The protection of the people’s sovereignty and the defense of their superior political system” in the same article are specious excuses to strengthen the totalitarianism of the Kim family without breeding antipathy from the North Korean people. Thus, Article 12 is not proclaiming the consolidation of the people’s democracy in its literal meaning, but the consolidation of totalitarianism in North Korea.

From a slightly different angle, it can be also understood that Article 12 is proclaiming the consolidation of the dictatorship of the Kim family. According to Dr. Paul Brooker at Victoria University of Wellington, New Zealand, “Totalitarianism is the most extreme way of dictatorship”³²⁶ In other words, totalitarianism can be seen as a form of dictatorship. Dr. Alexander J. Groth, who is professor emeritus of political science at the University of California, Davis, clearly indicates that “In spite of denying their citizens numerous basic freedoms, however, many dictatorships call themselves ‘people’s republics’ or ‘people’s democracies.’”³²⁷ Furthermore, even the scholars in defense of the people’s democratic dictatorship admit that it is, in fact, a

³²⁵ KASE, *supra* note 218, at 94-95.

³²⁶ Paul Brooker, *Authoritarian Regimes*, in *COMPARATIVE POLITICS* 133, 149 (Daniele Caramani ed., 2008); See STEFFEN W. SCHMIDT ET AL., *AMERICAN GOVERNMENT AND POLITICS TODAY* 4 (Carolyn Merrill et al. eds., 6th ed. 2010) (“At one extreme is a society governed by a totalitarian regime. In such a political system, a small group of leaders or a single individual—a dictator—makes all political decisions for the society. Every aspect of political, social, and economic life is controlled by the government.”).

³²⁷ Groth, *supra* note 218, at 191.

dictatorship as a form of government, although they package the necessity of the dictatorship with shallow excuses. According to Professor Wei Hu and Professor Gang Lin at Shanghai Jiaotong University in China, “The premise of the people’s democratic dictatorship is that the party and state democratically represent and act on behalf of the people but possess and may use dictatorial powers against reactionary forces.”³²⁸ They also state:

Such a form of democracy means to ensure democratic rights for people while exercising dictatorship in relationship to people’s internal enemies. Implicit in the concept of the people’s democratic dictatorship is the notion that dictatorial means are a necessary evil and that, without a dictatorship, the government may collapse and create a situation that is worse than the dictatorship.³²⁹

This “dictatorship,” which Article 12 of the Constitution proclaims that the North Korean government will strengthen, is simply defined as “Rule by a single person, or several people (e[.]g[.] military dictatorship), *unelected* and authoritarian in character.”³³⁰ According to this clear definition, a dictatorship, and furthermore, totalitarianism is essentially incompatible with the right to vote and to be elected in Article 66 of the North Korean Constitution.

³²⁸ Wei Hu & Gang Lin, *Democracy: Chinese Perspectives*, in INTERNATIONAL ENCYCLOPEDIA OF POLITICAL SCIENCE 595, 595 (Bertrand Badie et al. eds., 2011).

³²⁹ *Id.*

³³⁰ TREVOR ANDERSON & UNA MCGOVERN, THE CHAMBERS ENCYCLOPEDIA 297 (Trevor Anderson & Una McGovern eds., 2001) (emphasis added); See Groth, *supra* note 218, at 191 (“Dictatorships . . . generally lack the approval of the people . . .”).

Meanwhile, according to Allan Todd and Sally Waller, who are prolific writers on world history and politics, “A totalitarian dictatorship is often defined as a system in which a dictator is able to impose their will on party, state and society – all of which are strictly disciplined.”³³¹ In addition, one of the key characteristics of a totalitarian regime is “a sole unitary Party controlled by a sole leader.”³³² Thus, all election candidates are nominated by the wishes and injunctions of a dictator or the party under his or her control in the political system of totalitarian dictatorship.³³³ All the people under a totalitarian regime, who are no better than servants, have no choice but to send the candidates appointed by a dictator their unconditional support as well.³³⁴ Therefore, it is proven once again that the right to vote and to be elected cannot coexist with a political system that works to pursue and consolidate totalitarianism.

The pursuit and consolidation of totalitarianism, which is demonstrated in the Juchist and Marxist-Leninist Article, is one of the key tenets of Juche Ideology and Marxism-Leninism, the two anti-human rights and ruling ideologies controlling North

³³¹ ALLAN TODD & SALLY WALLER, *HISTORY FOR THE IB DIPLOMA: AUTHORITARIAN AND SINGLE-PARTY STATES* 12 (2011).

³³² SUNG-CHUL CHOI, *HUMAN RIGHTS AND NORTH KOREA* 168 (1999).

³³³ *See infra* Chapter Four.II.D.2.

³³⁴ *See infra* Chapter Four.II.D; *see also* Michael Hurst, *Totalitarianism*, in *THE WORLD BOOK ENCYCLOPEDIA* (VOLUME 19) at 343, 343-344 (Robert J. Janus et al. eds., 2000) (“**Totalitarianism**[:] The individual is considered a servant of the state and is allowed almost no freedom of choice”); MARVIN PERRY ET AL., *supra* note 84, at 749-750 (“Unlike earlier autocratic regimes, the totalitarian dictatorship is not satisfied with its subjects’ outward obedience: it demands the masses’ unconditional loyalty and enthusiastic support.”).

Korea.

1. Marxism-Leninism as a Totalitarian Ideology and Its Influence on the Juchist and Marxist-Leninist Article

Marx and Lenin's strong preference for totalitarianism was faithfully reflected in their theory; thus, the pursuit of totalitarianism has become one of the core principles of Marxism-Leninism.

It is the common opinion of many scholars and researchers that Marxism-Leninism is a totalitarian ideology. To cite a few examples, Stephen J. Lee, an expert on European political history and a prolific writer on the subject, states that "It is usual to categorize three inter-war ideologies as potentially totalitarian: Marxism-Leninism, Nazism and Fascism. Of these, Marxism-Leninism was the most coherent, based on a systematic doctrine derived from the ideas of . . . Marx and Engels, as redefined by Lenin and Stalin."³³⁵

Dr. Joseph M. Bochenski, former Rector of the University of Fribourg, Switzerland, emphasizes that Marxism-Leninism is a totalitarian ideology for a totalitarian system stating the following:

Marxism-Leninism enjoys in all Communist countries the status of state

³³⁵ STEPHEN J. LEE, EUROPEAN DICTATORSHIPS, 1918-1945 at 302 (2nd ed. 2000).

doctrine. In most of them it is the only one which can be publicly expressed and taught If we look for analogies, the position of Marxism-Leninism is best compared to some great religions like Buddhism, Christianity, or Islam during certain periods of their histories. There is, however, one capital difference: the religions did not pretend, at least in principle, to rule everything in the life of the states they were dominating, while Marxism-Leninism does make such a pretention. It is a totalitarian doctrine.³³⁶

Professor Marc Garcelon at the University of Missouri-Kansas City calls Marxism-Leninism a totalistic theory and emphasizes the totalitarian ethos of the ideology.³³⁷

Finally, Professor Andrzej Walicki, former professor at the University of Notre Dame, indicates that Marxism-Leninism as a totalitarian ideology is the full realization of the totalitarian potential of Marxism by incorporating the unabashedly totalitarian methods of Lenin.³³⁸

³³⁶ Joseph M. Bochenski, *Marxism in Communist Countries*, in *MARXIST IDEOLOGY IN THE CONTEMPORARY WORLD: ITS APPEALS AND PARADOXES* 60, 64 (Milorad M. Drachkovitch ed., 1966).

³³⁷ Professor Marc Garcelon states the following, comparing the Marxist-Leninist doctrine as the first totalistic theory in the former USSR with the neoliberal doctrine as the second totalistic theory in the country:

In this light, the narrow economic thinking of Yeltsin's advisors in late 1991 and 1992 marks a shift from one generic, totalistic theory—the Soviet doctrine of Marxism-Leninism—to a second totalistic theory—the neoliberal doctrine of generic capitalism treated simply as an ideology. Certainly, neoliberal doctrine as an “elaborate contraption” of political discourse lacks a totalitarian figurational doctrine similar to the totalitarian ethos of Marxism-Leninism. In this sense, neoliberal doctrine as a totalistic theory simply elides the political from discourse altogether—if at all, treating politics disdainfully, from the perspective of those who “know better” about property rights—rather than combining it with an extensive justification for state-terrorism as in Marxism-Leninism.

MARC GARCELON, *REVOLUTIONARY PASSAGE: FROM SOVIET TO POST-SOVIET RUSSIA, 1985-2000* at 228 (2005).

³³⁸ Professor Andrzej Walicki states the following:

Lenin, who remained to the end a communist revolutionary, subordinated everything to the ultimate goals of communism. Since his methods were unabashedly totalitarian, fully realizing the totalitarian potential of Marxist communism and adding to it the totalitarian zeal of older Babouvist origin, he deserves to be regarded as representing “totalitarian

This totalitarian tenet of the unofficial ruling ideology of North Korea was publicly legislated in Article 12, which is the Juchist and Marxist-Leninist Article regarding the right of political participation.

2. Juche Ideology as a Totalitarian Ideology and Its Influence on the Juchist and Marxist-Leninist Article

Kim Il-Sung's political system was greatly influenced by that of Marx and Lenin. Consequently, Kim's strong preference for totalitarianism was faithfully reflected in his theory, and the pursuit of totalitarianism has become one of the core principles of Juche ideology.

It is the common opinion of many scholars and researchers that Juche ideology is a totalitarian ideology. To cite a few examples, Keith A. Leitich, a political analyst and an expert on East Asia, emphasizes that Juche is a totalitarian political system stating that "[J]uché provided a theoretical basis for North Korea's closed-door policy. By 1965, Juché had become a comprehensive political theory. Eventually, Juché became a totalitarian political system that encompassed all aspects of daily life of North

communism.”
ANDRZEJ WALICKI, *MARXISM AND THE LEAP TO THE KINGDOM OF FREEDOM: THE RISE AND FALL OF THE COMMUNIST UTOPIA* 425 (1995).

Korea.”³³⁹

Thomas J. Belke, who is an author of a book on North Korea’s religion under its totalitarian system and culture, criticizes the totalitarian system pursued by Juche ideology using such an expression as “[t]he hellish juche totalitarian system”³⁴⁰ to describe it.

Professor Peter J. Atkins at the University of Durham in the U.K. states that “Juche has sought not only to influence people’s behaviour through their environment but also to grasp their minds. . . . As a discourse, Juche is holistic, exclusive, hegemonic, and intellectually totalitarian. It brooks no plurality of action or intent, and seeks to eliminate even plurality of interpretation.”³⁴¹

Finally, Dr. Natasha Ezrow at the University of Essex in the U.K. and Professor Erica Frantz at Bridgewater State University in Massachusetts, who are experts on authoritarian regimes and authoritarian politics respectively, explain North Korea’s totalitarian system, which is based on the Juche ideology of Kim Il-Sung, as follows:

The dictatorship of North Korea (a personalist/single-party regime) shares many characteristics with totalitarian regimes. Ideology plays a strong role

³³⁹ Keith A. Leitich, *Korea, North*, in ENCYCLOPEDIA OF THE DEVELOPING WORLD (VOLUME 2) at 913, 915 (Thomas M. Leonard ed., 2006).

³⁴⁰ THOMAS J. BELKE, JUCHE: A CHRISTIAN STUDY OF NORTH KOREA’S STATE RELIGION 237 (1999).

³⁴¹ Peter J. Atkins, *The Dialectics of Environment and Culture: Kimilsungism and the North Korean Landscape*, in ENVIRONMENT AND DEVELOPMENT: VIEWS FROM THE EAST AND THE WEST 309, 315 (Amitava Mukherjee & V.K. Agnihotri eds., 1993).

in the North Korean regime. The state's [official] ideology, Juche, serves to atomize the public and subordinate the people under the will of the state(citation omitted). The regime's first leader, Kim Il-sung, was credited with creating Juche, decreeing that the only way to understand the ideology was "to follow the party and the leader"(citation omitted).³⁴²

This totalitarian tenet of the official ruling ideology of North Korea was publicly legislated in Article 12, which is the Juchist and Marxist-Leninist Article on the right of political participation.

C. The New Refuting Theory and Its Incapacitation Mechanism Model

The North Korean Constitution contains two fundamentally distinct types of articles that have opposing viewpoints on the right to vote and to be elected. One is Article 66, which is the Fundamental Rights Article, and the other is Article 12, which is the Juchist and Marxist-Leninist Article.

As reviewed earlier, Article 66 serves as the core implementing mechanism of the North Korean Constitution for its right to vote and to be elected.³⁴³ Thus, as is argued by North Korea in the DPRK Official Reports, the Fundamental Rights Article is, in its very nature, supposed to protect the right of political participation of the North Korean people.

³⁴² EZROW & FRANTZ, *supra* note 84, at 4.

³⁴³ *See supra* Chapter Four.II.A.

On the other hand, the pursuit and consolidation of a totalitarian dictatorship is a key tenet of Juche ideology and Marxism-Leninism.³⁴⁴ Thus, from the logical and theoretical standpoint, it is natural for the Juchist and Marxist-Leninist Article, which faithfully incorporates the core principle of the two anti-fundamental rights and ruling ideologies controlling North Korea, to take the disposition of an anti-fundamental rights article in order to pursue and consolidate a totalitarian dictatorship, and to position itself as the ruling article. Namely, Article 12 is not only the Juchist and Marxist-Leninist Article, but also works as the anti-fundamental rights and ruling article from the logical and theoretical standpoint.

We reviewed that the clash in function and role between the guarantee of the right of political participation and the pursuit of a totalitarian dictatorship is inevitable from a logical and theoretical standpoint.³⁴⁵ Similarly, these two extremes both in their very nature and workings, as demonstrated by Article 66 and Article 12, are bound to clash with each other in performing their function and role within one constitutional boundary.

The issue of the functional clash is solved by the relationship of superiority and relative inferiority between the two types of articles. Article 12, the anti-fundamental rights and ruling article for the consolidation of totalitarian dictatorship, has superiority

³⁴⁴ See *supra* Chapter Four.II.B.

³⁴⁵ See *supra id.*

over Article 66, the Fundamental Rights Article for the right to vote and to be elected, in their function and operation. As a result, Article 12, which is also the Juchist and Marxist-Leninist Article, incapacitates the Fundamental Rights Article, which is the core implementation mechanism of the North Korean Constitution, at the time of this functional clash.

The resulting weakening of the Fundamental Rights Article leads to the theoretical impossibility of performing the core implementation mechanism model centered on Article 66 in the DPRK Official Reports. Consequently, all of the arguments of the North Korean government in defense of its practices of the right to vote and to be elected in its official reports, which are grounded in this theoretical approach, are totally unrealizable given its constitutional structure and mechanism. That is to say, this impossibility of performance proves false in the Incapacitation Stage any notion that North Korea guarantees the right of political participation of its people or that it complies with the articles on this right in the international human rights treaties from a logical and theoretical standpoint.

After completely weakening the Fundamental Rights Article, the Juchist and Marxist-Leninist Article wields strong influence over the North Korean society at large without any difficulty or obstruction. The practical results of this powerful leverage

are manifested in the severe violations of fundamental rights and international human rights treaties in North Korea.³⁴⁶ In essence, since the sole function of the anti-fundamental rights and ruling article is to carry out the totalitarian doctrines of Juche ideology and Marxism-Leninism, there is no constitutional basis to secure the right of political participation for the North Korean people or to prevent the government from violating such protections prescribed by international human rights treaties.

It necessarily follows, logically and theoretically, that the arguments of the U.S., South Korea, and the U.K. condemning the DPRK's violations of the right of political participation in the LDC Annual Reports³⁴⁷ are proven true by the constitutional structure and mechanism of North Korea in the Human Rights Violation Stage.

The following diagram incorporates all aspects of the newly developed refuting theory and its incapacitation mechanism model of Article 12, including the core premises, key factors, logical order and flow, and theoretical structure. The diagram also incorporates the evidence for verifying the falsity of North Korea's arguments in the DPRK Official Reports and for verifying the truth of the liberal democratic countries' assertions in the LDC Annual Reports. Finally, the diagram shows the relationships between the points of contention of the new refuting theory, the testimony

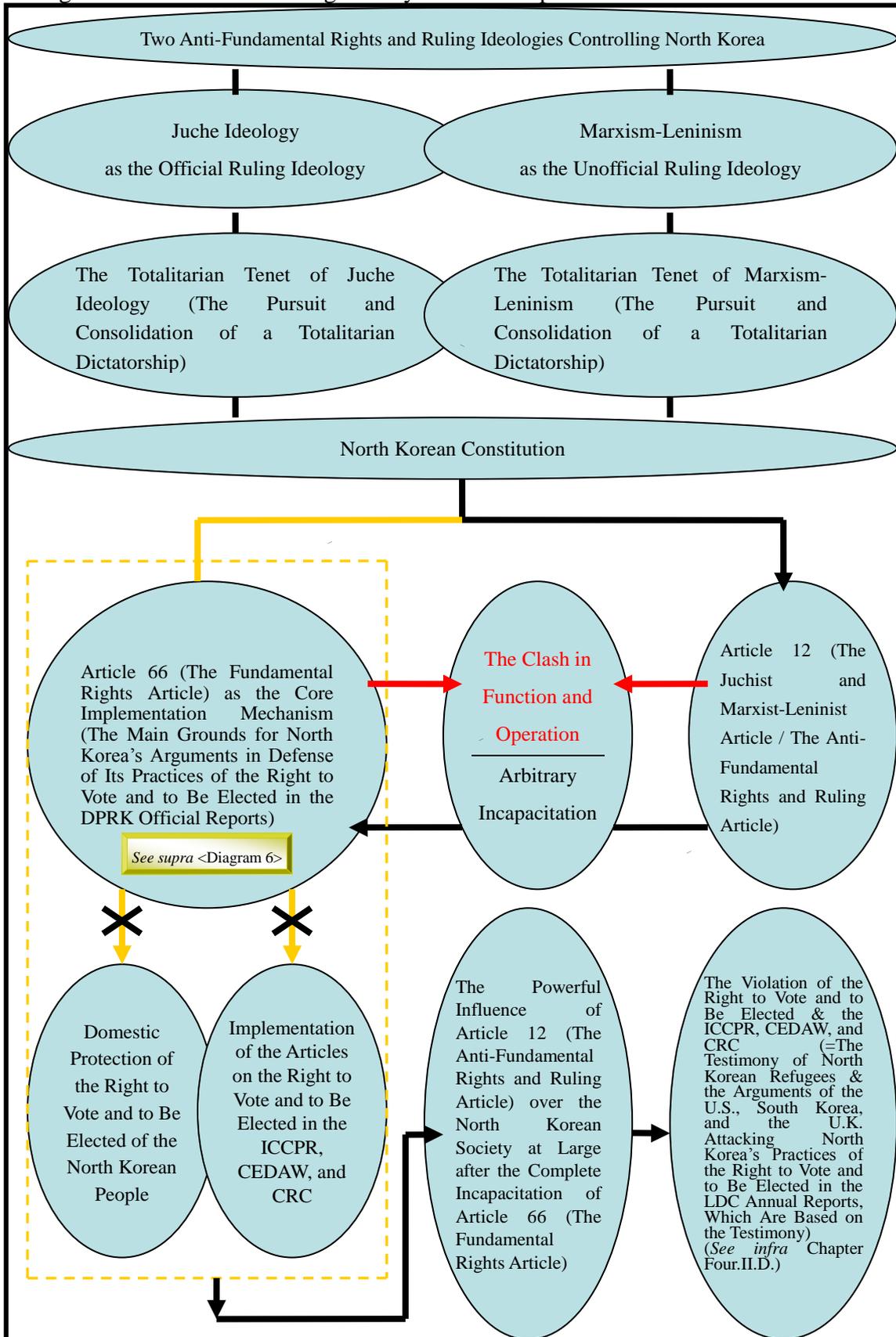
³⁴⁶ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

³⁴⁷ See *infra* Chapter Four.II.D.

of North Korean defectors, and the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are grounded in this testimony.³⁴⁸

³⁴⁸ *See infra id.*

<Diagram 7> The New Refuting Theory and Its Incapacitation Mechanism Model



D. The Major Contents of the LDC Annual Reports

As evidenced in the analysis of the USCIRF Human Rights Report, the DPRK's violations of the right of political participation, caused by the powerful influence of the Juchist and Marxist-Leninist Article over North Korean society as a whole, as indicated in the new refuting theory, are in accord with the testimony of North Korean refugees who experienced and witnessed first-hand the severe violations of this right in their country.³⁴⁹ Thus, the DPRK's violations of the right of political participation in the refuting theory coincide with the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are based on this testimony.

In this way, the arguments of the new refuting theory and its incapacitation mechanism model presented by this dissertation not only logically and theoretically support the testimony of North Korean refugees and the contentions of the liberal democratic countries attacking North Korea's violation of the right of political participation in the LDC Annual Reports, but they are, in turn, practically and factually supported by the testimony of North Korean escapees and the arguments of the liberal democratic camp.

The major contents of the testimony of North Korean defectors, and the

³⁴⁹ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

arguments and analyses of the U.S., South Korea, and the U.K., which are based on this testimony, in the LDC Annual Reports are as follows:

1. U.S. Human Rights Report

According to the 2008 U.S. Human Rights Report, “Elections of delegates to the provincial, municipal, and county people’s assemblies were held in July of 2007. The elections were not free and fair, The government openly monitored voting, resulting in nearly 100 percent participation and 100 percent approval.”³⁵⁰

The 2012 U.S. Human Rights Report states that “The government held elections of local representatives to the Supreme People’s Assembly (SPA) in July 2011. The elections were neither free nor fair, and the outcome was virtually identical to prior elections.”³⁵¹

The 2010 U.S. Human Rights Report describes that “The Democratic People’s Republic of Korea (DPRK or North Korea) is a [totalitarian] dictatorship under the absolute rule of Kim Jong-il [at present, Kim Jong-Un], general secretary of the Korean Workers’ Party (KWP) and chairman of the National Defense Commission (NDC), the

³⁵⁰ 2008 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

³⁵¹ 2012 U.S. HUMAN RIGHTS REPORT, *supra* note 32; *See* 2009 U.S. HUMAN RIGHTS REPORT, *supra* note 32 (“Elections of delegates to the SPA were held in March [of 2009]. The elections were neither free nor fair, . . .”).

‘highest office of state.’”³⁵² The 2009 U.S. Human Rights Report also claims that “[c]itizens [] [are] subject to intensive political and ideological indoctrination, which [] [is] intended to ensure loyalty to the leadership and conformity to the state’s ideology”³⁵³ Furthermore, the same report states that “The government [] [has in fact] criticized the concept of free elections and competition among political parties as an ‘artifact’ of ‘capitalist decay.’”³⁵⁴ Finally, the report concludes that “Citizens do not have the right to change their government peacefully. The KWP and the Korean People’s Army (KPA), with Kim Jong-il [Kim Jong-Un, at present] in control, dominated the political system.”³⁵⁵

Contrary to North Korea’s argument in the Initial CEDAW Implementation Report,³⁵⁶ discrimination against women is a part of the country’s political system. According to the 2010 U.S. Human Rights Report, “Women constitute[] [only] 4.5 percent of the membership of the Central Committee of the KWP [] [and hold] few key

³⁵² 2010 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

The official titles of Kim Jong-Un are First Secretary of the Korean Workers’ Party and First Chairman of the National Defense Commission. These titles began to be used in North Korea after the death of Kim Jong-Il to proclaim the deceased Kim as the eternal General Secretary of the KWP and the eternal Chairman of the NDC. However, the title of First Secretary was originally used by the Communist Party of the Soviet Union from 1953 to 1966.

³⁵³ 2009 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *See supra* Chapter Four.II.A.1; *see also supra* Chapter Four.II.A.2.

KWP leadership positions.”³⁵⁷

2. ROK Human Rights Report

The 2004 ROK Human Rights Report indicates that “Elections in North Korea are not a political process in which a plurality of political forces freely compete on the basis of their ideals and policies”³⁵⁸ According to the 2010 ROK Human Rights Report, “[e]lections in North Korea are used, internally, to confirm the people’s confidence in the party and to justify the single party dictatorship, while externally they are used as a propaganda tool to demonstrate that democracy is being practiced.”³⁵⁹ Thus, voter turnout and approval ratings are very important factors in the elections of North Korea, which in a totalitarian state typically demands the masses’ enthusiastic and unconditional support.³⁶⁰ According to the 2011 ROK Human Rights Report, “On every election day, the North Korean authorities encourage sloganeering of exactly the same phrases as follows: ‘All voters! Let’s all participate in elections as one person and cast affirmative votes.’ ‘All voters! Let’s all participate in elections and cast 100

³⁵⁷ 2010 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

³⁵⁸ 2004 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 173.

³⁵⁹ 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 354.

³⁶⁰ *See supra* note 334 and accompanying text.

percent affirmative votes.’(citation omitted)”³⁶¹ The report quotes refugee testimony that “[o]n election day, student marching bands take to the streets, playing drums and gongs to encourage voting and calling on citizens to cast affirmative votes for the local delegate for the Supreme People’s Assembly. . . .(citation omitted)”³⁶²

Concerning voting participation, the 2010 ROK Human Rights Report discloses that “Whoever does not participate in the voting or refuses to vote is suspected of harboring political motives, and is treated with suspicion and discriminated against on a daily basis thereafter. The defectors who testified said for these reasons they always participated in voting.(citation omitted)”³⁶³ The report also reveals testimony from a defector that “[i]f a resident failed to vote, he would be suspected of having political motives for not doing so, and this fact remains on the person’s record for years, adversely affecting him(citation omitted)”³⁶⁴ Furthermore, the report divulges that “If anyone holding a citizenship card failed to vote, [he/]she would be criminally charged as a ‘reactionary.’ Officials would check each voter according to the voter roster, so no one would dare miss out on voting.(citation omitted)”³⁶⁵ Finally, the 2011 ROK

³⁶¹ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 333.

³⁶² *Id.* at 334.

³⁶³ 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 357.

³⁶⁴ *Id.* at 356.

³⁶⁵ *Id.* at 357.

Human Rights Report states that “The ‘people’s unit’ leader would go around the households prodding everyone to vote. There is also a People’s Safety agent in charge of elections, so no one is excused from voting.(citation omitted)”³⁶⁶

Concerning the masses’ support for the candidates nominated by the KWP, the 2011 ROK Human Rights Report informs us that “North Koreans cast 100% affirmative votes for the party-nominated candidates. The voting procedure includes an obligatory practice of bowing to the Leader’s portrait before and after putting one’s ballot in.”³⁶⁷

The 2004 ROK Human Rights Report also states that “In connection with elections, North Korea is encouraging voters to openly cast affirmative votes for the candidates appointed by the party, because elections are opportunities to express one’s absolute loyalty to the Republic and the Leader.”³⁶⁸ Furthermore, the 2010 ROK Human Rights Report explains that “North Korean authorities always insist that secret ballots are guaranteed in all elections. However, no one would cast his or her vote against the single candidate; indeed no one would even dream of doing such a thing.”³⁶⁹

The 2011 ROK Human Rights Report discloses that “If anyone were to cast a

³⁶⁶ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 334.

³⁶⁷ *See id.* at 335 (“North Koreans always cast 100% affirmative votes [for the candidates nominated by the party] at polling places, and when they do so they must first bow to the Leader’s portrait hanging over the ballot boxes. One must bow first, put one’s ballot in, bow again, and only then can you leave the polling station.(citation omitted)”).

³⁶⁸ 2004 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 173.

³⁶⁹ 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 358.

negative vote, it would be construed as a vote against Kim Jong-il [and Kim Jong-un,] and that person would be arrested shortly after the elections. Everybody knows this, so no one would even think about casting a negative vote.(citation omitted)”³⁷⁰ The report reveals a defector’s testimony of being told he was allowed to cast a negative vote, but due to the strict vigilance of the officials, no one would dare to do so.³⁷¹ Furthermore, the report explains that the fear of retaliatory penalties barred citizens from making such a choice.³⁷² Finally, the 2010 ROK Human Rights Report divulges that “The elections are conducted under the strict surveillance of the State Security Agency, and the entire voting procedure consists of simply receiving a ballot and casting it in a “yes” or a “no” ballot box.(citation omitted)”³⁷³

The 2011 ROK Human Rights Report comes to the conclusion as follows:

Free expression of opinions by citizens is practically impossible in the candidate nominating process and when casting votes. Elections where various political forces freely contend on the basis of ideas and policies are not a part of the political process in North Korea. Rather, it is part of a political mobilization to reinforce the people with a sense of political

³⁷⁰ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 334-335; *See* 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 359 (“The officials watch every voter. If anyone were to cast a negative vote, the officials would immediately drag that person away.(citation omitted)”).

³⁷¹ *See* 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 335 (“Defector XXX testified that he was told he could cast a negative vote. But officials were watching so closely that no one would even think of doing so.(citation omitted)”).

³⁷² *See id.* at 332 (“No one would dare cast a negative vote for fear of retaliatory penalties.(citation omitted)”).

³⁷³ 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 355; *See id.* at 357 (“During elections, Security and Safety agents exercise strict control over the people.”).

participation and provide a pro forma and post facto approval of the power structure and the method of elite recruitment designed by the KWP.(citation omitted)”³⁷⁴

The 2004 ROK Human Rights Report also concludes that “Because candidates are appointed by the KWP Department of Organization and Guidance, there is no way that people can freely exercise the right to be elected [in North Korea].”³⁷⁵

3. U.K. Human Rights Report

The 2007 U.K. Human Rights Report states that “There is no mechanism to allow a change of leadership or government [in North Korea].”³⁷⁶

According to the 2012 U.K. Human Rights Report, “Kim Jong Un was formally announced as Supreme Leader of the DPRK within days of his father dying on 17 December 2011. This happened without any clear democratic process.”³⁷⁷ The 2011 U.K. Human Rights Report also indicates that “On 18 December [2011], the DPRK regime announced that Kim Jong Un was the ‘great successor, an outstanding leader of our party, army and people.’ He took over as leader without any elections or reference to

³⁷⁴ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 333.

³⁷⁵ 2004 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 173.

³⁷⁶ 2007 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 149.

³⁷⁷ 2012 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 158.

public opinion.”³⁷⁸ Furthermore, the 2012 U.K. Human Rights Report states that the Supreme People’s Assembly—the only state entity that is elected—allows only one candidate in each consistency and does not elect members by secret ballot.³⁷⁹

The 2008 U.K. Human Rights Report concludes that “There are no free and fair elections [in North Korea].”³⁸⁰

³⁷⁸ 2011 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 221.

³⁷⁹ *See* 2012 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 158 (“The Supreme People’s Assembly is the only significant state organ that appears to be directly elected, although the selection of its members is far from democratic: only one candidate stands in each consistency and voting is not secret.”).

³⁸⁰ 2008 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 140.

III. Freedom of Speech, Press, Assembly, and Association

A. The Arguments of the North Korean Government and Its Main Grounds for the Arguments in the DPRK Official Reports

Freedom of speech, press, assembly, and association are the segmentalized and detailed subtypes of the freedom of expression.³⁸¹ Freedom of speech, press, assembly, and association not only are at the heart of the freedom of expression but also form its backbone.

Article 67 of the North Korean Constitution is the Fundamental Rights Article concerning the issue of freedom of speech, press, assembly, and association within the country. It stipulates that “Citizens are guaranteed freedom of speech, the press, assembly, demonstration and association. The State shall guarantee the conditions for the free activities of . . . social organizations.”³⁸²

North Korea uses a theoretical approach, which focuses on the core implementation mechanism of this Fundamental Rights Article, as the main grounds for

³⁸¹ See JOANNE BANKER HAMES & YVONNE EKERN, CONSTITUTIONAL LAW: PRINCIPLES AND PRACTICE 292 (Dave Garza et al. eds., 2nd ed. 2012) (“The First Amendment and the rights falling under the general heading of *freedom of expression*, form the foundation of American government. Freedom of expression includes speech, press, assembly, These are the first freedoms, those essential for democracy.”); see also KENNETH JANDA ET AL., THE CHALLENGE OF DEMOCRACY: GOVERNMENT IN AMERICA 490 (Traci Mueller et al. eds., 9th ed. 2008) (“Freedom of expression encompasses freedom of speech, freedom of the press, and the right to assemble peaceably”); Gong Renren, *Freedom of Expression and Social Development: An Empirical Analysis of the Great Leap Forward*, in BRIDGING THE GLOBAL DIVIDE ON HUMAN RIGHTS: A CANADA-CHINA DIALOGUE 243, 243 (Errol P. Mendes & Anik Lalonde-Roussy eds., 2003) (“Freedom of expression, in a broad sense, is not simply confined to freedom of speech and of the press; it consists also of freedom . . . association and of peaceful assembly.”).

³⁸² North Korean Constitution Chapter V, *supra* note 231.

its arguments in defense of its practices of freedom of speech, press, assembly, and association in the DPRK Official Reports. That is to say, the country introduces Article 67 of its Constitution as the guaranteed mechanism for the domestic protection of the freedom of speech, press, assembly, and association of its people, as well as the core implementer for the articles on these freedoms in the international human rights treaties to which it has acceded in the reports.

1. The Fundamental Rights Article as the Guaranteed Mechanism for the Domestic Protection of Freedom of Speech, Press, Assembly, and Association

North Korea adverts to this mechanism in a series of its official reports. Thus, in paragraph 16 of the National Report, the North Korean government argues that “The Constitution comprehensively provides for the fundamental rights and freedoms in all fields of State and public activity such as . . . the freedoms of speech, the press, assembly, demonstration and association”³⁸³ Additionally, in paragraph 40 of the same report, the government maintains that “The DPRK legalized, as fundamental . . . rights . . . the freedom of expression, assembly and association [in Article 67 of its

³⁸³ 2009 National Report, *supra* note 11, at 4-5.

Constitution] . . . and is ensuring them in practice.”³⁸⁴ Furthermore, in paragraph 42 of the report, North Korea asserts that “All citizens have freedom of opinion and expression. . . . All citizens can express their views and opinions through TVs and publications [under Article 67 of the Constitution]. They have the freedom of literary and creative activities by virtue of the Constitution”³⁸⁵ Finally, the country contends that “Citizens have freedoms of assembly and demonstration under [Article 67 of] the Constitution.”³⁸⁶ and “Citizens have freedom of association by virtue of [Article 67 of] the Constitution.”³⁸⁷ in paragraphs 43 and 44 of the National Report, respectively.

Similarly, in paragraph 7 of the Second ICCPR Implementation Report, the North Korean government states that “The Constitution . . . stipulates the basic rights of citizens including . . . the freedom of speech, press, assembly, demonstration and association”³⁸⁸ In addition, in paragraph 117 of the same report, the government argues that “All the citizens have the freedom of opinion and expression. Article 67 of the Constitution . . . guarantees this. Article 67 of the Constitution provides: ‘Citizens are guaranteed freedom of speech, of the press[, assembly, demonstration and

³⁸⁴ *Id.* at 8.

³⁸⁵ *Id.* at 9.

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ 2000 Second ICCPR Implementation Report, *supra* note 7, at 4-5.

association.] . . .[.]’”³⁸⁹ Furthermore, in paragraph 125 of the report, North Korea maintains that “Under article 67 of the Constitution, citizens have the freedom of assembly and demonstration.”³⁹⁰

In paragraph 31 of the Second ICESCR Implementation Report, the North Korean government asserts that “By article 67 of the Constitution, citizens are guaranteed freedom of assembly and demonstration.”³⁹¹

These assurances are repeated, almost verbatim, in the Initial CEDAW Implementation Report and in the Combined CRC Implementation Report. In paragraph 76 of the Initial CEDAW Implementation Report, the North Korean government states that “The Constitution . . . provides that women are guaranteed, enjoy and exercise on an equal footing with men such basic rights as . . . the freedom of speech, of the press, of assembly, demonstration and association (article 67)”³⁹²

Similarly, in paragraph 58 of the Combined CRC Implementation Report, the North Korean government states that “The Constitution stipulates the fundamental rights . . . of citizens; [c]itizens are guaranteed freedom of speech, the press, assembly,

³⁸⁹ *Id.* at 31.

³⁹⁰ *Id.* at 32.

³⁹¹ 2002 Second ICESCR Implementation Report, *supra* note 8, at 13.

³⁹² 2002 Initial CEDAW Implementation Report, *supra* note 9, at 12.

demonstration and association (art. 67)”³⁹³ Additionally, in paragraph 76 of the same report, the government emphasizes again that “[c]itizens are guaranteed freedom of speech, the press, assembly, demonstration and association (art. 67)”³⁹⁴

2. The Fundamental Rights Article as the Core Implementer for the Articles on Freedom of Speech, Press, Assembly, and Association in the International Human Rights Treaties

Once again, North Korea presents the Fundamental Rights Article to argue its adherence to international human rights treaties in various reports.

Article 19, paragraph 1 of the ICCPR provides that “Everyone shall have the right to hold opinions without interference.”³⁹⁵ Article 19, paragraph 2 of the Covenant declares that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”³⁹⁶ Regarding the freedom of speech and of the press in

³⁹³ 2007 Combined CRC Implementation Report, *supra* note 10, at 17.

³⁹⁴ *Id.* at 20.

³⁹⁵ ICCPR, *supra* note 3, art. 19, ¶ 1.

³⁹⁶ ICCPR, *supra* note 3, art. 19, ¶ 2.

the Covenant, North Korea suggests, in paragraph 117 of the Second ICCPR Implementation Report, that Article 67 of its Constitution acts as the core mechanism to carry out Article 19, paragraphs 1 and 2 of the ICCPR:

Article 19. Freedom of Speech and of the Press

117. All the citizens have the freedom of opinion and expression. Article 67 of the Constitution . . . guarantees this. Article 67 of the Constitution provides: “Citizens are guaranteed freedom of speech, of the press . . . [.]”³⁹⁷

Article 21 of ICCPR stipulates that “The right of peaceful assembly shall be recognized. . . .”³⁹⁸ Regarding the freedom of assembly in the Covenant, North Korea offers, in paragraph 125 of the same Implementation Report, that Article 67 of its Constitution is the core implementer that carries out Article 21 of the ICCPR as follows:

Article 21. Right to Peaceful Assembly

125. Under article 67 of the Constitution, citizens have the freedom of assembly and demonstration. When somebody wants to organize an assembly or demonstration he or she should notify the people’s committee and the public security organ of the district concerned three days in advance³⁹⁹

Article 22, paragraph 1 of the ICCPR prescribes that “Everyone shall have the right to freedom of association with others”⁴⁰⁰ Regarding the freedom of association in the Covenant, North Korea suggests, in paragraphs 127 and 128 of the

³⁹⁷ 2000 Second ICCPR Implementation Report, *supra* note 7, at 31.

³⁹⁸ ICCPR, *supra* note 3, art. 21.

³⁹⁹ 2000 Second ICCPR Implementation Report, *supra* note 7, at 32.

⁴⁰⁰ ICCPR, *supra* note 3, art. 22, ¶ 1.

Implementation Report, that Article 67 of its Constitution acts as the key mechanism to carry out Article 22, paragraph 1 of the ICCPR as follows:

Article 22. Freedom of Association

127. Article 67 of the Constitution stipulates that citizens have freedom of association and that the state guarantees conditions for the free activity of democratic . . . public organizations.

128. If somebody wants to organize a democratic public organization, he or she should have it registered in the Cabinet 30 days in advance. . . . These procedures are not aimed at the interference or restriction of free establishment of democratic public organizations but simply at the grasping of reality and rendering of necessary assistance by the state. There are tens of democratic public organizations [in North Korea]⁴⁰¹

Article 13, paragraph 1 of the CRC stipulates as follows:

The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.⁴⁰²

Regarding the freedom of expression in the Convention, North Korea suggests, in paragraph 88 of the Combined CRC Implementation Report, that Article 67 of its Constitution is the core mechanism that carries out Article 13, paragraph 1 of the CRC as follows:

C. Freedom of expression (art. 13)

88. Freedom of speech, press, and assembly . . . provided for in articles 67 . . . of the Constitution constitute fundamental rights of all citizens including children. While taking legislative measures to ensure the freedom of expression, the Government directed due attention to providing conditions for children to express their views in families, at schools, and

⁴⁰¹ 2000 Second ICCPR Implementation Report, *supra* note 7, at 32.

⁴⁰² CRC, *supra* note 5, art. 13, ¶ 1.

through children's unions and youth leagues⁴⁰³

Article 15, paragraph 1 of the same Convention provides that "States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly."⁴⁰⁴ Regarding the freedom of assembly and association in the Convention, North Korean government suggests, in paragraph 91 of the same report, that Article 67 of its Constitution acts as the key mechanism to carry out Article 15, paragraph 1 of CRC as follows:

E. Freedom of association and of peaceful assembly (art. 15)

91. Citizens are guaranteed freedom of speech, press, assembly, demonstration and association by virtue of article 67 of the Constitution. Children have their organizations, which are the children's union that includes students from second grade of primary schools to those in the second to third grade of secondary schools, and the youth league that includes senior students of secondary schools and those in colleges and universities. There are children's extra-curricular activity centres in such fields as science, art and sport in every province, city and county. They organize a series of meetings and demonstrations aimed at encouraging children to value justice and truth, and to shape a more brilliant future with high enthusiasm and a strong enterprising spirit. . . .⁴⁰⁵

3. The Diagrammatization of the Core Implementation Mechanism Model

The core implementation mechanism model of Article 67, which shows both North Korea's arguments in defense of its practices of freedom of speech, press,

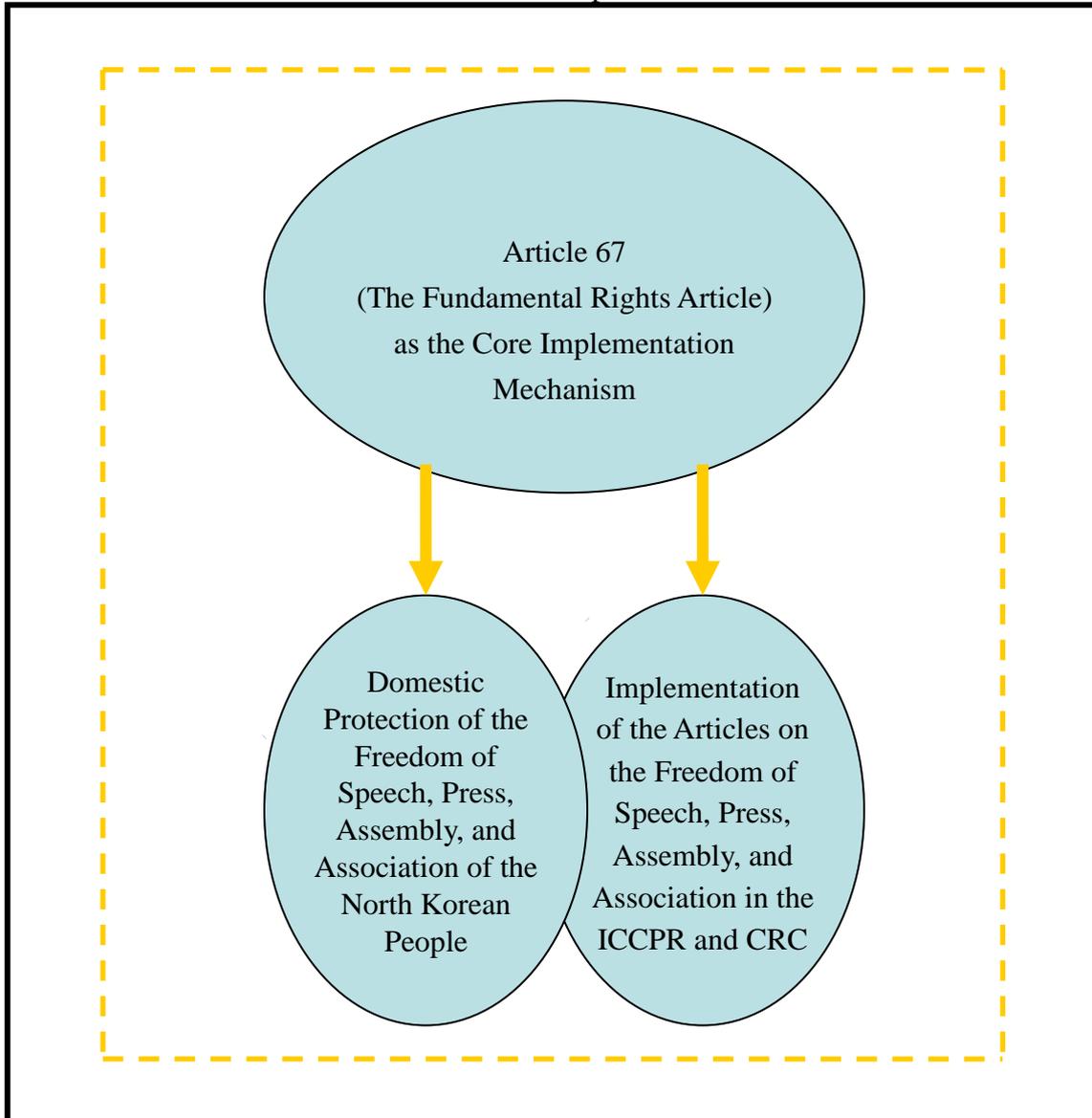
⁴⁰³ 2007 Combined CRC Implementation Report, *supra* note 10, at 23.

⁴⁰⁴ CRC, *supra* note 5, art. 15, ¶ 1.

⁴⁰⁵ 2007 Combined CRC Implementation Report, *supra* note 10, at 24.

assembly, and association and the main grounds for its arguments in the DPRK Official Reports, is diagrammatized below:

<Diagram 8> The Core Implementation Mechanism Model of the Fundamental Rights Article in the DPRK Official Reports



B. The Juchist and Marxist-Leninist Articles and the Influence of Juche Ideology and Marxism-Leninism on the Articles

The North Korean Constitution has two Juchist and Marxist-Leninist Articles concerning the issue of freedom of speech, press, assembly, and association in the country. One is Article 63, which provides that “In the Democratic People’s Republic of Korea the rights and duties of citizens are based on the collectivist principle: ‘One for all and all for one.’”⁴⁰⁶ The other is Article 42 of the same Constitution, which stipulates that “The State shall eliminate the way of life inherited from the outmoded society and establish a new socialist way of life [emphasizing collectivism⁴⁰⁷] in every sphere.”⁴⁰⁸

Collectivism as a political theory focuses on the priority of collective interests over individual rights. That is to say, the core of the thought is that personal freedoms should always be limited and sacrificed for the socialist community.⁴⁰⁹ Thus, it is

⁴⁰⁶ North Korean Constitution Chapter V, *supra* note 231; *See supra* Chapter One.III.A.

⁴⁰⁷ The key point of “a new socialist way of life” is “collectivism.” *See* JIYOUNG SONG, HUMAN RIGHTS DISCOURSE IN NORTH KOREA: POST-COLONIAL, MARXIST AND CONFUCIAN PERSPECTIVES 106 (2011) (“Collectivism is believed to be the ‘fundamental characteristic of the working class, the basis of socialist and communist lifestyle for workers united and the principal action for communists.’ Collective interests come before individual human rights under this social and political context.”); *see also* NK News, *Rodong Sinmun on Korean-Style Socialism*, NK NEWS (May 16, 2011), <http://nknews.org/2011/05/rodong-sinmun-on-korean-style-socialism/> (“[S]ocialism is the society based on collectivism. Therefore, the nature of socialism lies in collectivism. . . . For us to preserve the nature of socialism means, in the final analysis, protecting the socialist system, the collectivist ownership and collectivist lifestyle”); Kim, *supra* note 46, at 194 (“Other articles of the constitution require citizens to follow the socialist norms of life; for example, a collective spirit takes precedence over individual . . . civil liberties.”).

⁴⁰⁸ Naenara [My Country]: Democratic People’s Republic of Korea, Constitution: Chapter III Culture, <http://naenara.com.kp/en/great/constitution.php?4> (last visited May 5, 2012) [hereinafter North Korean Constitution Chapter III]; *See supra* Chapter One.III.A.

⁴⁰⁹ *See* CHOI, *supra* note 332, at 144 (“Collectivism takes a serious view of the group’s gain over that of individual, and a principle that submit individual gain under that of a group, based on this principle,

inevitable for there to be conflicts between the freedom of speech, press, assembly, and association, which is one of the most representative individual freedoms in its nature, against the collectivism in North Korea, which is “[a] socialist country that emphasizes collective principles and thought over the individual.”⁴¹⁰

It becomes clearer when we review the core feature of collectivism: Collectivism coerces uniform thinking and conformism.⁴¹¹ Professor Han-Shik Park at the University of Georgia describes the North Korean collectivist system, which focuses on uniform thinking and conformism, as “a monolithic value system whereby diverse interpretations of any social phenomenon or political event are strictly prohibited.”⁴¹² Furthermore, he emphasizes that the country has enunciated the highest level of rationalization for collectivism in the history of political theory.⁴¹³

Under this inviolable principle of collectivism in North Korea, to think and

individual gain and human rights may be always ignored.”); *see also* SONG, *supra* note 407, at 27 (“When Marxist states adopted this collective perception of human rights . . . , the idea[] of . . . collective rights . . . came to justify the . . . repression of the pursuit of individual interests.”); *Id.* (“[I]n Marxist[-Leninist] states, the interest of a nation as a collective sovereign entity took priority over individual concerns. Any right considered harmful to the collective interests of society can be immediately withdrawn.”).

⁴¹⁰ CHOI, *supra* note 332, at 166; *See supra* Chapter One.III.A; *see also infra* Chapter Four.III.D.

⁴¹¹ *See* ALFRED B. EVANS, JR., *SOVIET MARXISM-LENINISM: THE DECLINE OF AN IDEOLOGY* 92 (1993) (“[F]or Marxist-Leninists, collectivism included the idea that the conscience of the individual should be guided by and subordinated to the norms of the group to which that individual belonged.(citation omitted) Group thinking and conformism were traditionally seen in Soviet ideology as positive features . . .”).

⁴¹² *See* HAN S. PARK, *NORTH KOREA: THE POLITICS OF UNCONVENTIONAL WISDOM* 171 (2002) (“[J]uche has . . . promoted a monolithic value system whereby diverse interpretations of any social phenomenon or political event are strictly prohibited.”).

⁴¹³ *See id.* at 36 (“Nowhere in the history of political theory has this level of rationalization for collectivism been articulated.”).

express diverse views on ideologies, political systems and leaders, and social norms are against the uniform thinking and conformism of the monolithic value society.⁴¹⁴ As a result, collectivism is essentially incompatible with freedom of speech, press, assembly, and association. Collectivism is thus at odds with free expression and the exchange of a diversity of opinions and information through verbal and written language, mass media, publication, gathering, assembly, demonstration, and the like.⁴¹⁵

The pursuit and consolidation of collectivism, which is demonstrated in the Juchist and Marxist-Leninist Articles, is one of the key tenets of Juche Ideology and Marxism-Leninism, the two anti-human rights and ruling ideologies controlling North Korea.

1. Marxism-Leninism as a Collectivist Ideology and Its Influence on the Juchist and Marxist-Leninist Articles

It is agreed upon by many reputable sources that Marxism-Leninism is a representative collectivist ideology. Professor Kamaludin Gadshiiev at the Institute of World Economy and International Relations of the Russian Academy of Sciences in

⁴¹⁴ See LUDWIG VON MISES, HUMAN ACTION: A TREATISE ON ECONOMICS 152 (scholar's ed. 1998) ("All varieties of collectivist creeds are united in their implacable hostility to the fundamental political institutions of the liberal system: . . . tolerance of dissenting views, freedom of thought, speech, and the press . . .").

⁴¹⁵ See *supra* Chapter One.III.A; see also *infra* Chapter Four.III.D.

Moscow clearly states that, “As is widely known, . . . collectivism is one of the fundamental principles of ‘Marxism-Leninism,’ a doctrine that rejects individualism of all forms. In this respect, Fascism is hardly different from ‘Marxism-Leninism.’ Both represent a radical turn from that philosophical and political individualism which is the heart of the liberal-democratic . . . attitude.”⁴¹⁶

Professor Jiyoung Song at Singapore Management University also emphasizes that collectivism is the core tenet of Marxism-Leninism stating that “The . . . Marxist[-Leninist] feature in DPRK rights thinking is its prioritisation of collective interests over individual human rights.”⁴¹⁷

Professor Douglas C. Hodgson at the University of Western Australia Faculty of Law explains the collective principle of Marxism-Leninism as follows:

Such enjoyment [of human rights] . . . is dependent on the individual’s human rights not being exercised in such a manner as to harm the socialist cause or undermine collective interests. . . . Marxism-Leninism thus accords priority to the development of the socialist order as a condition for the extension of human rights. Priority is accorded to the collective rights of the proletariat class and subsequently to the socialist community itself above the rights of the individual.(citation omitted).⁴¹⁸

Similarly, Otto Wilhelm Kuusinen, who was a powerful politician and theorist of the Soviet Union, and other authors describe the importance of collectivism and its high

⁴¹⁶ Kamaludin Gadshiiiev, *Totalitarianism as a Twentieth-Century Phenomenon*, in *TOTALITARIANISM AND POLITICAL RELIGIONS—VOLUME 1: CONCEPTS FOR THE COMPARISON OF DICTATORSHIPS* 277, 292 (Jodi Bruhn trans., Hans Maier ed., 2004).

⁴¹⁷ See SONG, *supra* note 407, at 105.

⁴¹⁸ DOUGLAS HODGSON, *INDIVIDUAL DUTY WITHIN A HUMAN RIGHTS DISCOURSE* 194 (2003).

status in Marxism-Leninism:

The experience of public organisations in the socialist countries has already demonstrated that the most effective means of combating selfish individualism, which is the chief enemy of communist [Marxist-Leninist⁴¹⁹] ethics, is to counter it by active collectivism. Collectivism most of all corresponds to the ideal of communism [Marxism-Leninism] because it regards service for the common good as the highest standard of behaviour.⁴²⁰

Finally, Kim Jong-Il himself enunciates that “Collectivism, as an ideal of socialism, has developed continuously. The establishment of Marxism[-Leninism] was of great significance in the development of the concept of collectivism. . . .(citation omitted).”⁴²¹ According to Kim, Marxism-Leninism is the driving force of the development of collectivism. That is to say, his statements show that collectivism is so deeply entrenched in Marxism-Leninism as a core doctrine that they are indispensable to each other.

This collectivist tenet of the unofficial ruling ideology of North Korea was publicly legislated in Article 63 and Article 42, which are the Juchist and Marxist-Leninist Articles regarding freedom of speech, press, assembly, and association.

⁴¹⁹ See KURIAN, *supra* note 162, at 213 (“Marxism-Leninism[:] Political philosophy, generally identified with communism . . .”).

⁴²⁰ KUUSINEN ET AL., *supra* note 218, at 832. This book, entitled *Fundamentals of Marxism-Leninism: Manual*, was written and compiled by Otto Wilhelm Kuusinen and other renowned Soviet communist scholars, leading members of Communist Party of the Soviet Union, and Soviet officials.

⁴²¹ HAWK, *supra* note 67, at 82.

2. Juche as a Collectivist Ideology and Its Influence on the Juchist and Marxist-Leninist Articles

Kim Il-Sung's strong preference for collectivism was greatly influenced by those of Marx and Lenin. Many scholars and researchers discuss Kim's obsessive attitude toward collectivism. To cite a few examples, Professor Emeritus Charles F. Andrain, a scholar of comparative politics at San Diego State University, states that "For President Kim II Sung, collectivism took precedence over individual interests. Like the typical ideological monist, he perceived the political system as one organic community in which collective agencies – the nation, party, state, people – dominate the individual parts."⁴²²

Professor Jiyoung Song at Singapore Management University reveals Kim's strong preference for collectivism and deep dislike for individualism through the following statements:

The DPRK's preference for collectivism over individualism is clear in the definitions of individualism and collectivism. According to the North Korean *Dictionary of the Works of Great Leader Kim Il Sung* . . . : "[i]ndividualism is the biggest obstacle for a collective lifestyle and is the fundamental reason for all the rotten philosophies such as liberalism, individual heroism, egoism, and ambition for individual fame and success.[?]" As seen above, individualism is equated with . . . the biggest enemy of communist [socialist] lifestyle [emphasizing collectivism]. . . . On

⁴²² CHARLES F. ANDRAIN, *COMPARATIVE POLITICAL SYSTEMS: POLICY PERFORMANCE AND SOCIAL CHANGE* 82 (1994).

the other hand: [“]Collectivism aims to prioritise collective interests over individual rights and to struggle for society, the People, the Party and revolution. In other words, collectivism is a revolutionary idea under the communist [Marxist-Leninist] principle ‘one for all, all for one’ . . . [”]”⁴²³

Furthermore, Professor Young-Chul Chung at Sogang University in Seoul, South Korea, shows Kim Il-Sung’s strong preference for collectivism and deep hostility towards individualism through the following depiction:

In North Korea, individualism refers to more than the West’s liberal conception, which underlines the individual’s creativity and particularities. Individualism, seen as the foundation of capitalism, is used as the antinomy to collectivism, which provides the foundation for socialism. The chasm between these two modes is reflected in Kim Il Sung’s remark: “The process of constructing socialism, communism is the process of overcoming individualism and egoism and establishing collectivism.”(citation omitted)⁴²⁴

Kim Il-Sung’s strong preference for collectivism was faithfully reflected in his Juche theory; thus, the pursuit of collectivism has become one of the core principles of Juche ideology.⁴²⁵ Additionally, this collectivist tenet of the official ruling ideology of

North Korea was publicly legislated in Article 63 and Article 42, which are the Juchist

⁴²³ SONG, *supra* note 407, at 105-106.

⁴²⁴ Young Chul Chung, *The Suryŏng System as the Center of Juche Institution: Politics of Development Strategy in Postwar North Korea*, in ORIGINS OF NORTH KOREA’S JUCHE: COLONIALISM, WAR, AND DEVELOPMENT 89, 115 (Jae-Jung Suh ed., 2012).

⁴²⁵ Yongho Kim, *North Korea: A Perpetual Rogue State?*, in THE UNITED STATES AND NORTHEAST ASIA: DEBATES, ISSUES, AND NEW ORDER 143, 149 (G. John Ikenberry & Chung-in Moon eds., 2008) (“[T]he *Juche* ideology incorporates such principles as . . . collectivism . . . (citation omitted)”). Kim Jong-Il also enunciates that “The Great Leader Comrade Kim Il Sung authored the *Juche* idea and, on this basis, has developed the socialist idea and brought it to perfection, thus developing the concept of collectivism at a higher level (citation omitted).” HAWK, *supra* note 67, at 82. According to him, his father’s Juche ideology is the driving force of the development of collectivism built on the foundation of Marxism-Leninism. That is to say, his statements show that collectivism is so deeply ingrained into Kim Il-Sung’s ideology as a key doctrine that they are indispensable to each other.

and Marxist-Leninist Articles on freedom of speech, press, assembly, and association.

C. The New Refuting Theory and Its Incapacitation Mechanism Model

The North Korean Constitution contains two fundamentally distinct types of articles that have opposing viewpoints on the freedom of speech, press, assembly, and association. One type is the Fundamental Rights Article, such as Article 67, and the other is the Juchist and Marxist-Leninist Article, such as Article 63 and Article 42.

As reviewed earlier, Article 67 serves as the core implementing mechanism of the North Korean Constitution for its freedom of speech, press, assembly, and association.⁴²⁶ Thus, as is argued by North Korea in the DPRK Official Reports, the Fundamental Rights Article is, in its very nature, supposed to protect these fundamental freedoms of the North Korean people.

On the other hand, the pursuit and consolidation of collectivism is a key tenet of Juche ideology and Marxism-Leninism.⁴²⁷ Thus, from the logical and theoretical standpoint, it is natural for the Juchist and Marxist-Leninist Articles, which faithfully incorporate the core principle of the two anti-fundamental rights and ruling ideologies controlling North Korea, to take the disposition of anti-fundamental rights articles in

⁴²⁶ See *supra* Chapter Four.III.A.

⁴²⁷ See *supra* Chapter Four.III.B.

order to pursue and consolidate collectivism, and to position themselves as the ruling articles. Namely, Article 63 and Article 42 are not only the Juchist and Marxist-Leninist Articles, but also work as the anti-fundamental rights and ruling articles from the logical and theoretical standpoint.

We reviewed that the clash in function and role between the guarantee of freedom of speech, press, assembly, and association and the pursuit of collectivism is inevitable from a logical and theoretical standpoint.⁴²⁸ Similarly, these two extremes both in their very nature and workings, as demonstrated by Article 67 and Articles 63 and 42, are bound to clash with each other in performing their function and role within one constitutional boundary.

The issue of the functional clash is solved by the relationship of superiority and relative inferiority between the two types of articles. Article 63 and Article 42, the anti-fundamental rights and ruling articles for the consolidation of collectivism, has superiority over Article 67, the Fundamental Rights Article for freedom of speech, press, assembly, and association, in their function and operation. As a result, Article 63 and Article 42, which are also the Juchist and Marxist-Leninist Articles, incapacitate the Fundamental Rights Article, which is the core implementation mechanism of the North

⁴²⁸ *See supra id.*

Korean Constitution, at the time of this functional clash.

The resulting weakening of the Fundamental Rights Article leads to the theoretical impossibility of performing the core implementation mechanism model centered on Article 67 in the DPRK Official Reports. Consequently, all of the arguments of the North Korean government in defense of its practices of freedom of speech, press, assembly, and association in its official reports, which are grounded in this theoretical approach, are totally unrealizable given its constitutional structure and mechanism. That is to say, this impossibility of performance proves false in the Incapacitation Stage any notion that North Korea guarantees the freedom of speech, press, assembly, and association of its people or that it complies with the articles on these freedoms in the international human rights treaties from a logical and theoretical standpoint.

After completely weakening the Fundamental Rights Article, the Juchist and Marxist-Leninist Articles wield strong influence over the North Korean society at large without any difficulty or obstruction. The practical results of this powerful leverage are manifested in the severe violations of fundamental rights and international human rights treaties in North Korea.⁴²⁹ In essence, since the sole function of the anti-

⁴²⁹ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

fundamental rights and ruling articles is to carry out the collectivist doctrines of Juche ideology and Marxism-Leninism, there is no constitutional basis to secure the freedom of speech, press, assembly, and association for the North Korean people or to prevent the government from violating such protections prescribed by international human rights treaties.

It necessarily follows, logically and theoretically, that the arguments of the U.S., South Korea, and the U.K. condemning the DPRK's violations of freedom of speech, press, assembly, and association in the LDC Annual Reports⁴³⁰ are proven true by the constitutional structure and mechanism of North Korea in the Human Rights Violation Stage.

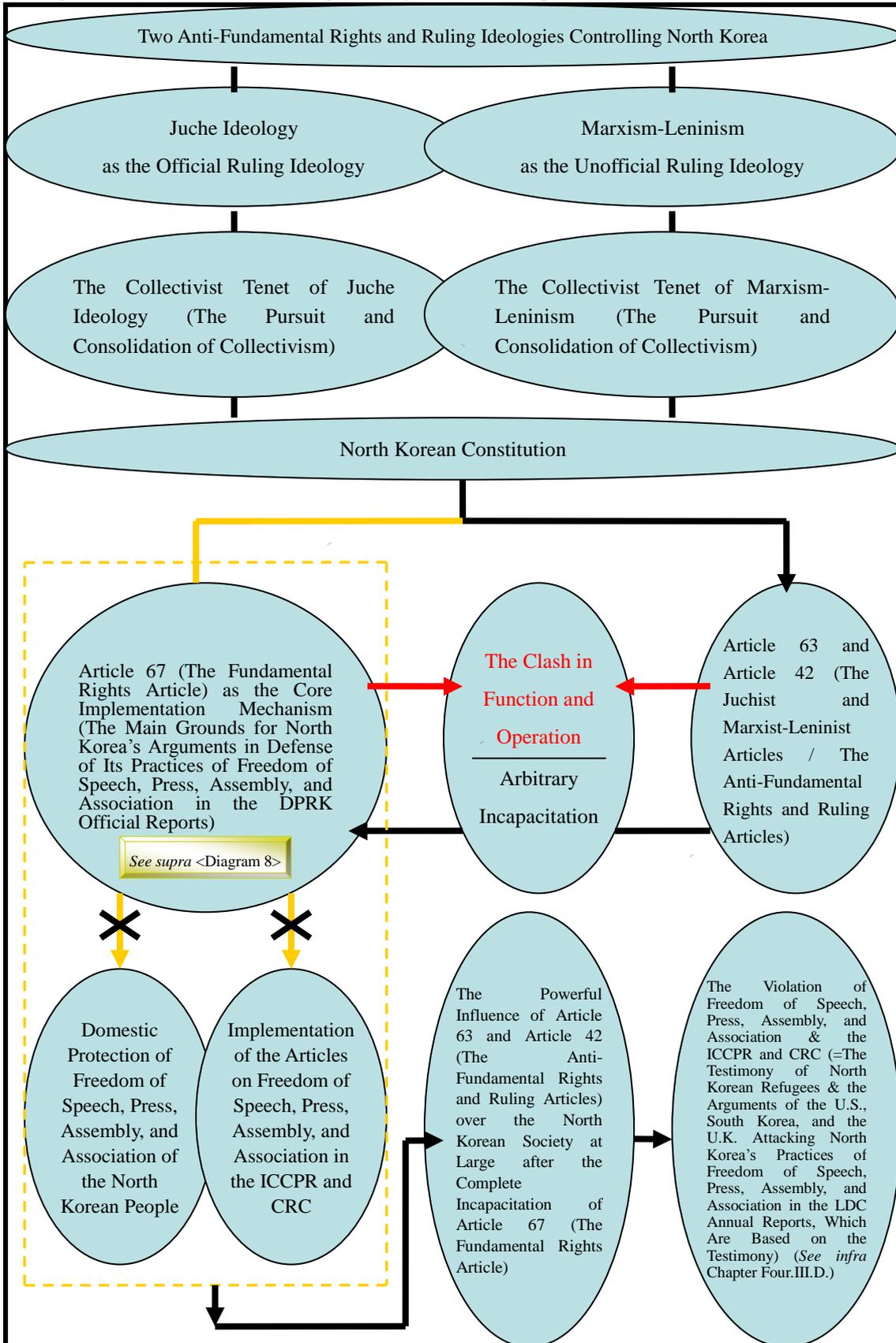
The following diagram incorporates all aspects of the newly developed refuting theory and its incapacitation mechanism model of Article 63 and Article 42, including the core premises, key factors, logical order and flow, and theoretical structure. The diagram also incorporates the evidence for verifying the falsity of North Korea's arguments in the DPRK Official Reports and for verifying the truth of the liberal democratic countries' assertions in the LDC Annual Reports. Finally, the diagram shows the relationships between the points of contention of the new refuting theory, the

⁴³⁰ See *infra* Chapter Four.III.D.

testimony of North Korean defectors, and the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are grounded in this testimony.⁴³¹

⁴³¹ *See infra id.*

<Diagram 9> The New Refuting Theory and Its Incapacitation Mechanism Model



D. The Major Contents of the LDC Annual Reports

As evidenced in the analysis of the USCIRF Human Rights Report, the DPRK's violations of freedom of speech, press, assembly, and association, caused by the powerful influence of the Juchist and Marxist-Leninist Articles over North Korean society as a whole, as indicated in the new refuting theory, are in accord with the testimony of North Korean refugees who experienced and witnessed first-hand the severe violations of these freedoms in their country.⁴³² Thus, the DPRK's violations of freedom of speech, press, assembly, and association in the refuting theory coincide with the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are based on this testimony.

In this way, the arguments of the new refuting theory and its incapacitation mechanism model presented by this dissertation not only logically and theoretically support the testimony of North Korean refugees and the contentions of the liberal democratic countries attacking North Korea's violation of freedom of speech, press, assembly, and association in the LDC Annual Reports, but they are, in turn, practically and factually supported by the testimony of North Korean escapees and the arguments of the liberal democratic camp.

⁴³² See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

The major contents of the testimony of North Korean defectors, and the arguments and analyses of the U.S., South Korea, and the U.K., which are based on this testimony, in the LDC Annual Reports are as follows:

1. U.S. Human Rights Report

According to the 2010 U.S. Human Rights Report, “There were numerous instances of persons being interrogated or arrested for saying anything that could be construed as negative towards the government.”⁴³³ The report also discloses that “The regime subjected its citizens to rigid controls. The government relied upon a massive, multilevel system of informants to identify critics and potential troublemakers. Entire communities sometimes were subjected to security checks.”⁴³⁴

The 2010 U.S. Human Rights Report states that “The government sought to control virtually all information. There were no independent media. The government carefully managed visits by foreigners, especially journalists.”⁴³⁵ The report also reveals that “Domestic media censorship continued to be strictly enforced, and no

⁴³³ 2010 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

⁴³⁴ *Id.*

⁴³⁵ *Id.*; *See id.* (“During visits by foreign leaders, groups of foreign journalists were permitted to accompany official delegations and file reports. In all cases journalists were monitored strictly. Journalists generally were not allowed to talk to officials or to persons on the street.”); *see also id.* (“For all foreign visitors, including journalists, cell or satellite phones were held at the airport for the duration of the stay.”).

deviation from the official government line was tolerated.”⁴³⁶

The 2010 U.S. Human Rights Report states that “The government prohibited listening to foreign media broadcasts except by the political elite, and violators were subject to severe punishment.”⁴³⁷ The report also discloses that “Radios and television sets, unless altered, are set to receive only domestic programming; radios obtained from abroad had to be altered to operate in a similar manner. . . . The government continued to attempt to jam all foreign radio broadcasts.”⁴³⁸ Furthermore, the report explains that “Possessing ‘antistate’ material and listening to foreign broadcasts were crimes that could subject the transgressor to harsh punishments, including up to five years of labor reeducation.”⁴³⁹ Finally, the report divulges that “Internet access for citizens was limited to high-ranking officials and other designated elites, including select university students.”⁴⁴⁰

Concerning the freedom of the assembly and association, the 2010 U.S. Human Rights Report reveals that “[t]he [North Korean] government . . . continued to prohibit

⁴³⁶ *Id.*

⁴³⁷ *Id.*

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

public meetings not previously authorized.”⁴⁴¹ The report also divulges that “There were no known organizations other than those created by the government. Professional associations existed primarily to facilitate government monitoring and control over organization members.”⁴⁴²

The report concludes that “Citizens were denied freedom of speech, press, assembly, and association, and the government attempted to control all information.”⁴⁴³

2. USCIRF Human Rights Report

The 2009 USCIRF Human Rights Report states that “The Democratic People’s Republic of Korea (DPRK or North Korea) continues to be one the world’s most repressive regimes, where dissent is not tolerated and few protections exist for fundamental freedoms, including the freedom of thought,”⁴⁴⁴

The 2010 USCIRF Human Rights Report also informs us that “The North Korean government continues to have a deplorable human rights . . . record. Dissent is not tolerated and few legal . . . protections exist for universally recognized rights. The

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ 2009 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 22; See 2012 AI HUMAN RIGHTS REPORT, *supra* note 95, at 22 (“Few governments in the region were as brutal as the North Korean regime in repressing the voices of their own people . . .”).

government controls most aspects of daily life”⁴⁴⁵ The 2009 USCIRF Human Rights Report discloses that “[t]he DPRK . . . tightly controls the flow of information in and out of the country.”⁴⁴⁶ Finally, the 2010 USCIRF Human Rights Report reports that “According to the State Department’s 2009 Report *Advancing Freedom and Democracy*, the United States seeks to continue to improve North Korean citizens’ access to outside sources of information and provide opportunities for exposure to the outside world, mainly by supporting radio broadcasts into the country.”⁴⁴⁷

3. ROK Human Rights Report

The 2011 ROK Human Rights Report states that “In North Korea, personal speech and expression is extremely limited.”⁴⁴⁸ According to the report, “[w]iretapping is enforced in an effort to cut off and control the flow of information.”⁴⁴⁹ For example, the report discloses a defector’s testimony that “[h]e used to have a telephone in his home, but since the authorities routinely conducted wiretaps, he had to

⁴⁴⁵ 2010 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 40.

⁴⁴⁶ 2009 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 22.

⁴⁴⁷ 2010 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 44.

⁴⁴⁸ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 272-273.

⁴⁴⁹ *Id.* at 275.

exercise extreme caution when using the phone.(citation omitted)”⁴⁵⁰ The report also reveals testimony from another defector that “[p]eople would commonly use post office telephones. But since the authorities conducted wiretaps, there was no guarantee of privacy or confidentiality.(citation omitted)”⁴⁵¹ Furthermore, the report describes defector testimony that “[i]n each district there is a telephone branch bureau. In each branch bureau there is a security agent’s room where they maintain wiretapping devices.(citation omitted)”⁴⁵² Finally, the 2008 ROK Human Rights Report states that “Recently, North Korea has begun to enforce strict controls over telephone calls, especially direct lines. Long distance calls can only be made through switchboard operators. In military installations, no direct calls to the outside are allowed.(citation omitted)”⁴⁵³

According to the 2011 ROK Human Rights Report, “The North Korean authorities control all means of communication in order to completely cut off the information inflow from external sources.”⁴⁵⁴ For instance, the 2006 ROK Human Rights Report discloses that “Pyongyang blocks the inflow of information [from

⁴⁵⁰ *Id.* at 276.

⁴⁵¹ *Id.*

⁴⁵² *Id.* at 276-277.

⁴⁵³ 2008 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 212.

⁴⁵⁴ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 273-274.

external sources]. All radio dials are fixed to the DPRK official broadcasting service channels and sealed. An official of the MPS [Ministry of People’s Security] visits each home every three months; if a seal is found broken the person involved is assumed to be guilty”⁴⁵⁵ The 2011 ROK Human Rights Report quotes refugee testimony that “[p]eople must register their radios, televisions, and tape recorders, and the frequencies must remain firmly fixed at all times.(citation omitted)”⁴⁵⁶

The expression of opinion, delivery of information, and interchange of ideas through publications are also severely limited in North Korea. According to the 2011 ROK Human Rights Report, “[i]t is impossible to publish any criticism of Kim Il-sung, Kim Jong-il[, Kim Jong-un] or the Korean Workers’ Party.”⁴⁵⁷ The report also discloses that “[a]ll publications support the Juche ideology and the unitary ideological system of Kim Il-sung. Publications have promoted the establishment of the Kim Il-sung/Kim Jong-il/[Kim Jong-un] hereditary succession and have fostered participation in the construction of the North Korean style life in the ‘our-style’ socialist economy.”⁴⁵⁸ Furthermore, the report reveals that “Literary works . . . , in particular,

⁴⁵⁵ 2006 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 117.

⁴⁵⁶ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 274.

⁴⁵⁷ *Id.* at 286; See 2012 AI HUMAN RIGHTS REPORT, *supra* note 95, at 205 (“Criticism of the government and its leaders was strictly curtailed, and punishable by arrest and incarceration in a prison camp.”).

⁴⁵⁸ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 285; See 2012 AI HUMAN RIGHTS REPORT, *supra* note 95, at 22 (“Several governments deliberately crushed dissenting views. In North Korea, those

are strictly controlled and supervised. All . . . publications are allowed only after they have obtained a seal of censorship issued under the control and supervision of the Ministry of Culture (a Cabinet ministry) and the Korean Workers' Party.”⁴⁵⁹

The 2011 ROK Human Rights Report quotes refugee testimony that “[i]t would be difficult for foreign ideas to penetrate society through books since the joint censor teams consisting of MPS, SSA [State Security Agency], and Party officials conduct censorship reviews of all books and printed matter three times a year.(citation omitted)”⁴⁶⁰ The report also states that “Publications are used . . . for ideological education, and the Party directly manages, censors, and controls all published materials.”⁴⁶¹ Furthermore, the report explains that “Publications are an important means of connecting the Party and the masses and are a strong organizational weapon used to mobilize the laboring masses to work for the construction of politics, economics, and culture of the party.”⁴⁶²

Meanwhile, the 2011 ROK Human Rights Report states that “Freedom of the

deviating from official ideology could end up spending the rest their lives in a bleak and remote political prison camp.”).

⁴⁵⁹ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 288.

⁴⁶⁰ *Id.* at 286-287.

⁴⁶¹ *Id.* at 285.

⁴⁶² *Id.*

press is guaranteed in Article 67 of the Constitution but only under the guidance and control of the Party and the state. The North Korean press serves as the mouthpiece of the KWP.”⁴⁶³ The report also discloses that “The press is used as a tool to turn North Koreans into ‘good communists.’ Freedom of the press is only guaranteed to the extent that it helps the masses participate even more vigorously in the construction of socialism.”⁴⁶⁴ Furthermore, the report states that “[t]he North Korean press disregards the proper functions of the press, such as providing critical commentary and objective information to citizens. It instead focuses on the propaganda of Kim Il-sung based on Juche ideology and upon indoctrinating the population.”⁴⁶⁵

According to the 2011 ROK Human Rights Report, “[t]he press in the DPRK is an advertiser, instigator, and organizer for the KWP, designed to help it achieve its goals and existing only as an educational tool.”⁴⁶⁶ The report also reveals that “Under no circumstances may the North Korean press engage in any type of criticism of the leadership or the instructions of the Great Leader Kim Il-sung[, Dear Leader Kim Jong-II, and Supreme Leader Kim Jong-Un].”⁴⁶⁷ Furthermore, the report divulges that

⁴⁶³ *Id.*

⁴⁶⁴ *Id.* at 272.

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

“Every single issue of a North Korean . . . broadcast service contains something that eulogizes Kim Il-sung and praises Kim Jong-il[, and Kim Jong-Un]. Reports on the [] [three] Kims occupy the front pages of newspapers, and their names are printed in special bold fonts.”⁴⁶⁸ Finally, the report states that “All news is written for the . . . purpose of embedding the supremacy of the North Korean system in the minds of the people. There are no critical reports . . . of sensitive issues regarding the system. However, news on negative aspects of the United States or South Korea is . . . reported in a straightforward manner.”⁴⁶⁹

Concerning the freedom of assembly and association, the 2011 ROK Human Rights Report states that “[o]nly the assemblies and associations required by the Korean Workers’ Party are permitted.”⁴⁷⁰ The report also discloses that “[N]orth Korean citizens do not have any organizations or institutions that can protect their individual rights because the only permitted assemblies and associations are those formed in response to Party instructions.”⁴⁷¹ Furthermore, the report reveals that “Independent agencies or associations are not allowed in North Korea, and all organizations and

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.* at 290.

⁴⁷¹ *Id.* at 293.

associations are subject to absolute control by the authorities, including women's organizations, labor unions, religious associations, and political parties."⁴⁷² Finally, the report explains that "Unauthorized assemblies and associations are regarded as collective disturbances that will cause social disorder."⁴⁷³

Regarding the purpose and function of social organizations in North Korea, the 2011 ROK Human Rights Report states that "Social organizations in North Korea are not 'interest groups' or 'activist groups' as understood in the West. . . . [t]hey are 'satellite organizations' of the Party that faithfully carry out the tenets of the Party."⁴⁷⁴ The report also divulges that "The main purpose of social organizations is to support the Party and to facilitate loyalty to Kim Il-sung and Kim Jong-il."⁴⁷⁵ Furthermore, the report discloses that "These social organizations act as primary control mechanisms over the people and also serve as a means of mobilizing people for mass rallies and marches at national events (i.e., movements to accomplish the goals of authorities; movements to increase productivity . . .)."⁴⁷⁶

⁴⁷² *Id.*; *See id.* at 294 ("The Korean Workers' Party is responsible for the supervision of all mass organizations. The KWP controls the people's voluntary ideas and collective actions through a system of mutual surveillance, criticism, guidance, and the like, and trains its partisans and supporters through various social organizations.").

⁴⁷³ *Id.* at 291.

⁴⁷⁴ *Id.* at 293.

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.* at 294.

4. U.K. Human Rights Report

The 2012 U.K. Human Rights Report states that “Fundamental freedoms, including freedom of speech, remain severely curtailed [in North Korea].”⁴⁷⁷ According to the 2010 U.K. Human Rights Report, “Access to information from outside the DPRK remains limited.”⁴⁷⁸ The 2007 U.K. Human Rights Report also states that “Foreign observers in Pyongyang have been able to directly confirm harsh restraints on freedom of information.”⁴⁷⁹ For instance, the 2008 U.K. Human Rights Report specifically discloses that “The state tightly controls all media. No foreign books or magazines are available for purchase; televisions and radios are pre-tuned so that they can only pick up approved domestic broadcasts; and access to the internet is only allowed to a select few.”⁴⁸⁰ The 2010 U.K. Human Rights Report also reveals that “The DPRK authorities enforce strict bans on listening to radio or watching TV programmes broadcast from outside the country. . . . These restrictions have been enforced more strictly in recent years”⁴⁸¹ Furthermore, the 2012 U.K. Human Rights Report divulges that “The DPRK government maintains tight control over media,

⁴⁷⁷ 2012 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 157.

⁴⁷⁸ 2010 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 182.

⁴⁷⁹ 2007 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 148.

⁴⁸⁰ 2008 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 140.

⁴⁸¹ 2010 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 182.

and access to foreign broadcasting is strictly limited. Reports suggest that people found accessing foreign media without authorisation are subject to punishment, including imprisonment.”⁴⁸²

Meanwhile, the 2012 U.K. Human Rights Report explains that “There is little evidence of freedom of . . . assembly; and the general population is required to attend political gatherings in support of the DPRK leadership at regular intervals.”⁴⁸³ The 2009 U.K. Human Rights Report also states that “[i]nformation from a variety of sources, much of it from defectors from the DPRK, paints a picture of serious and widespread abuse. This includes . . . severe restrictions on the freedom of speech, . . . assembly and information.”⁴⁸⁴

The 2007 U.K. Human Rights Report concludes that “There is no freedom of [speech and] expression, [and the freedom of press,] assembly, association, . . . or information [in North Korea].”⁴⁸⁵

⁴⁸² 2012 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 158.

⁴⁸³ *Id.*

⁴⁸⁴ 2009 U.K. HUMAN RIGHTS REPORT, *supra* note 15, at 107.

⁴⁸⁵ 2007 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 149.

CHAPTER FIVE

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

“The [United Nations] Human Rights Council [remains] . . . [d]eeply concerned at the persisting deterioration in the human rights situation in the Democratic People’s Republic of Korea, at the continuing reports of systematic, widespread and grave violations of . . . economic, social and cultural rights in the Democratic People’s Republic of Korea . . . and urging the Government of the Democratic People’s Republic of Korea to respect all human rights and fundamental freedoms fully”

– The UNHRC Resolution (A/HRC/22/L.19),
Adopted in the 22nd Session, March 21, 2013

I. The Right to an Adequate Standard of Living

A. The Arguments of the North Korean Government and Its Main Grounds for the Arguments in the DPRK Official Reports

Article 25 of the North Korean Constitution is the Fundamental Rights Article concerning the issue of the right to an adequate standard of living within the country.

It stipulates the following:

The Democratic People’s Republic of Korea regards the steady improvement of the material . . . standards of the people as the supreme principle of its activities. The increasing material wealth of society in our country, where taxes have been abolished, is used entirely to promote the well-being of the working people. The State shall provide all the working people with every condition for obtaining food, clothing and housing.⁴⁸⁶

⁴⁸⁶ Naenara [My Country]: Democratic People’s Republic of Korea, Constitution: Chapter II The

North Korea uses a theoretical approach, which focuses on the core implementation mechanism of this Fundamental Rights Article, as the main grounds for its arguments in defense of its practices of the right to an adequate standard of living in the DPRK Official Reports. That is to say, the country introduces Article 25 of its Constitution as the guaranteed mechanism for the domestic protection of the right to an adequate standard of living of its people, as well as the core implementer for the articles on this right in the international human rights treaties to which it has acceded in the reports.

1. The Fundamental Rights Article as the Guaranteed Mechanism for the Domestic Protection of the Right to an Adequate Standard of Living

North Korea adverts to this mechanism in a series of its official reports. Thus, in paragraph 55 of the National Report, the North Korean government argues that “The Government takes it as the supreme principle of its activities to steadily raise the material . . . standards of people and is taking various legislative . . . measures [including Article 25 of its Constitution] to meet the demands of people for affluent life

Economy, <http://naenara.com.kp/en/great/constitution.php?3> (last visited May 3, 2012) [hereinafter North Korean Constitution Chapter II].

with decent food, clothing and housing.”⁴⁸⁷ Additionally, in paragraph 57 of the same report, the government maintains that “Citizens are provided with dwelling houses from the State free of charge and have the rights to the protection of their right to use [the houses] . . . , according to [the Article 25 of] the Constitution”⁴⁸⁸

In paragraph 135(b) of the Second ICCPR Implementation Report, the North Korean government contends that “Popular policies have been adopted for the protection of family. The family is the unit in the realization of the popular policies of the state to provide all working people with every condition for obtaining food, clothing and housing under article 25 of the Constitution.”⁴⁸⁹

Similarly, in paragraph 3 of the Second ICESCR Implementation Report, the North Korean government emphasizes that “Article 25 of the Constitution defines it as the obligation of the State to use the material wealth of society entirely for the promotion of the well-being of the working people and to provide all working people with every living condition.”⁴⁹⁰ In addition, in paragraph 50 of the same report, the government states that “The DPRK Government, regarding it as the supreme principle

⁴⁸⁷ 2009 National Report, *supra* note 11, at 11.

⁴⁸⁸ *Id.*

⁴⁸⁹ 2000 Second ICCPR Implementation Report, *supra* note 7, at 34.

⁴⁹⁰ 2002 Second ICESCR Implementation Report, *supra* note 8, at 5.

of its activities to steadily improve the material and cultural life of people, has adopted various . . . legislative steps [including Article 25 of its Constitution] to meet the requirement of people for better food, clothing and housing.”⁴⁹¹ Furthermore, in paragraph 14 of the report, the government argues that “Under article 25 of the Constitution, the State provides all working people with every condition for obtaining food, clothing and housing. That is why working people [in North Korea] have no need to hold more than one full-time job to secure an adequate standard of living for themselves and their families.”⁴⁹²

In addition to the abovementioned reportings, in paragraph 41 of the Second ICESCR Implementation Report, North Korea maintains that “The State has enforced various policies for the protection of the family. The State provides all working people with every condition for obtaining food, clothing and housing under article 25 of the Constitution basically with the family as the unit.”⁴⁹³ Finally, in the same paragraph of the report, the country states that “[t]he State takes various practical measures to secure a stable life of the family, such as supply of dwelling house to working people free of

⁴⁹¹ *Id.* at 19.

⁴⁹² *Id.* at 9.

⁴⁹³ *Id.* at 15.

charge [under Article 25 of the Constitution]”⁴⁹⁴

2. The Fundamental Rights Article as the Core Implementer for the Articles on the Right to an Adequate Standard of Living in the International Human Rights Treaties

Once again, North Korea presents the Fundamental Rights Article to argue its adherence to international human rights treaties in various reports.

Article 11, paragraph 1 of the ICESCR declares the following:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.⁴⁹⁵

Regarding the right to an adequate standard of living in the Covenant, North Korea offers, in paragraph 50 of the Second ICESCR Implementation Report, that Article 25 of its Constitution acts as the core implementer that carries out Article 11 of the ICESCR as follows:

VI. ARTICLE 11 - RIGHT TO AN ADEQUATE STANDARD OF LIVING

A. Improvement of livelihood

50. . . . The Government assumes the entire responsibility of taking care of

⁴⁹⁴ *Id.*

⁴⁹⁵ ICESCR, *supra* note 4, art. 11, ¶ 1.

the material . . . life of working people under article 25, paragraph 3, of the Constitution: “The State shall provide all working people with every condition for obtaining food, clothing and housing.”⁴⁹⁶

Article 3, paragraph 1 of CRC stipulates that “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”⁴⁹⁷ Article 3, paragraph 2 of the Convention provides that “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”⁴⁹⁸ In paragraphs 63 and 64 of the Combined CRC Implementation Report, the North Korean government provides Article 25 of its Constitution, amongst others, as the core mechanism to carry out Article 3 of the CRC:

B. Best interests of the child (art. 3)

63. The Constitution . . . contain[s] the fundamental principles and requirements of article 3 of the Convention on giving primary consideration to the best interests of the children in all activities affecting them.

64. The Constitution provides . . . that the State regards the steady improvement of the material and cultural standards of people as the supreme principle of its activities, the increasing material wealth of society

⁴⁹⁶ 2002 Second ICESCR Implementation Report, *supra* note 8, at 19.

⁴⁹⁷ CRC, *supra* note 5, art. 3, ¶ 1.

⁴⁹⁸ CRC, *supra* note 5, art. 3, ¶ 2.

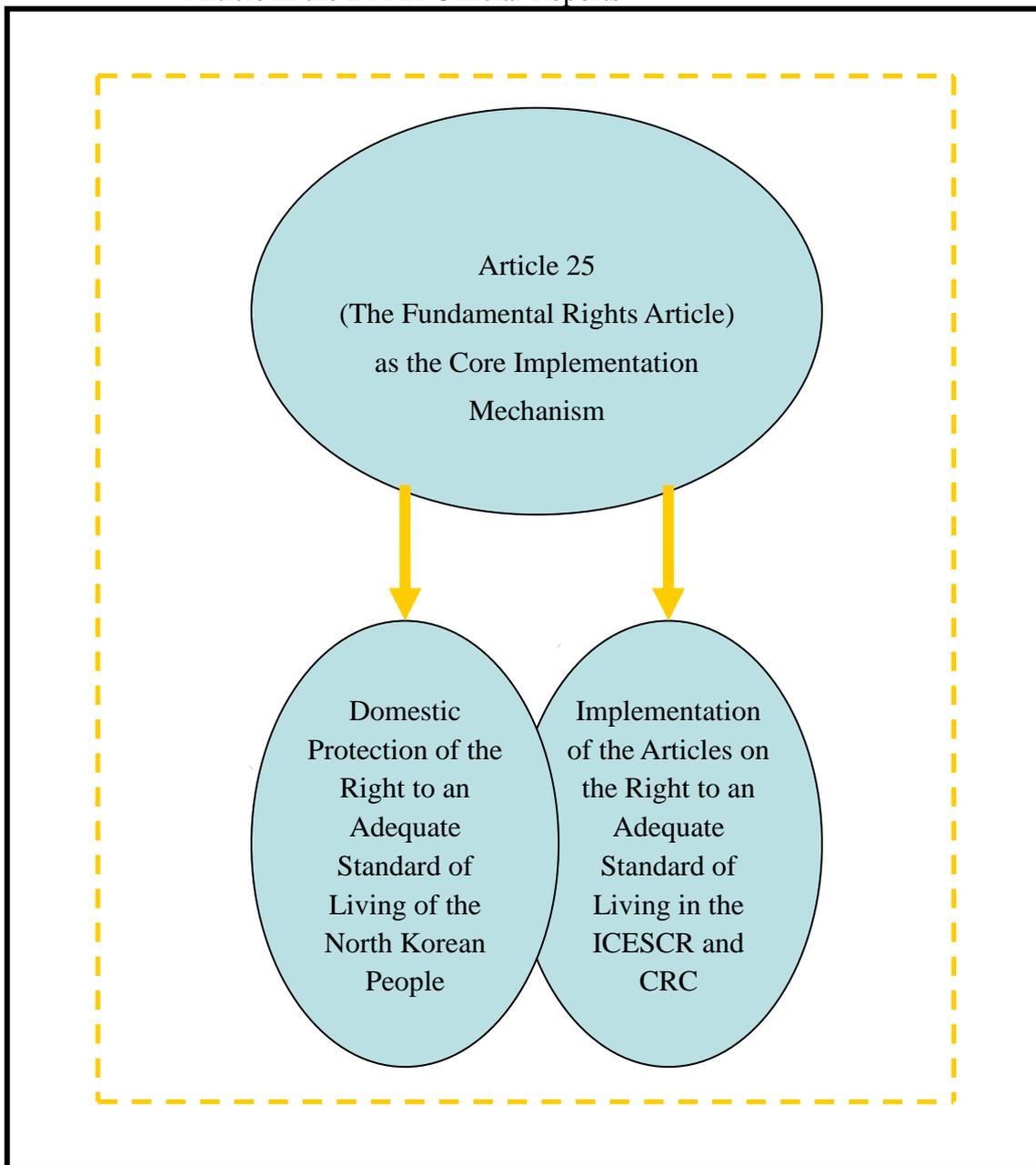
is used entirely to promote the well-being of the working people and the State shall provide all the working people with every condition for obtaining food, clothing and housing (art. 25).⁴⁹⁹

3. The Diagrammatization of the Core Implementation Mechanism Model

The core implementation mechanism model of Article 25, which shows both North Korea's arguments in defense of its practices of the right to an adequate standard of living and the main grounds for its arguments in the DPRK Official Reports, is diagrammatized below:

⁴⁹⁹ 2007 Combined CRC Implementation Report, *supra* note 10, at 18.

<Diagram 10> The Core Implementation Mechanism Model of the Fundamental Rights Article in the DPRK Official Reports



B. The Juchist and Marxist-Leninist Articles and the Influence of Juche Ideology and Marxism-Leninism on the Articles

The North Korean Constitution has two Juchist and Marxist-Leninist Articles

concerning the issue of the right to an adequate standard of living within the country.

One is Article 34, which provides the following:

The national economy of the Democratic People's Republic of Korea is a [centrally] planned economy. The State shall draw up and implement the plans for the development of the national economy in accordance with the laws of socialist economic development so that the balance between accumulation and consumption can be maintained correctly, economic construction accelerated, the people's standard of living steadily raised and the nation's defence capabilities strengthened. The State shall ensure a high rate of growth in production and a balanced development of the national economy by implementing unified and detailed planning.⁵⁰⁰

The other is Article 3 of the same Constitution, which stipulates that "The Democratic People's Republic of Korea is guided in its activities by . . . the Songun [military-first] idea"⁵⁰¹

"A centrally planned economy" in Article 34 and "a command economy" are terms which have the same meaning.⁵⁰² A command or centrally planned economy can be defined as "An economic system in which all resources are government-owned and production is coordinated by the central plans of government."⁵⁰³ On the other hand, a free-market economy, which is the opposite of a command economy, is "An economic

⁵⁰⁰ North Korean Constitution Chapter II, *supra* note 486.

⁵⁰¹ North Korean Constitution Chapter I, *supra* note 205.

⁵⁰² See ROBERT E. HALL & MARC LIEBERMAN, *ECONOMICS: PRINCIPLES AND APPLICATIONS* 42 (5th ed. 2009) ("In a command economy, resources are allocated mostly by explicit instructions from some higher authority. Because the government must plan these instructions in advance, command economies are also called **centrally planned economies**.").

⁵⁰³ WILLIAM A. MCEACHERN, *CONTEMPORARY ECONOMICS* 37 (Dave Shaut et al. eds., 2005).

system with no government involvement so that private firms account for all production.⁵⁰⁴

A market economy is an efficient system that can guarantee the right to an adequate standard of living. It improves the economic power and financial capacities of a country, which is the major premise in securing and promoting the welfare of the people.⁵⁰⁵ In contrast, as many scholars point out, a centrally planned economy prescribed in Article 34 is an inefficient system for the protection of the right to an adequate standard of living, because it ultimately leads to public poverty and misery,

⁵⁰⁴ *Id.* at 35.

As Dr. Ben S. Bernanke, who is former Chairman of the Board of Governors of the Federal Reserve System, and Professor of Economics Robert H. Frank at Cornell University pointed out astutely, there exist no pure free-market economies in the world today. Currently, most nations adopt “modified capitalist economies,” also called “mixed economies.” However, the essence of a free-market economy is that resources are distributed through the free decision making of individual in private market. Thus, as long as this function of the private market is guaranteed and operated, it still makes sense to call such economic systems free-market economies. Dr. Bernanke and Professor Frank explain in details about the issue of free-market economic system of today and its name as follows:

At the beginning of the twenty-first century we are therefore left, for the most part, with the second major form of economic system, one in which production and distribution decisions are left to individuals interacting in private markets. In the so-called capitalist, or free-market, economies, people decide for themselves which careers to pursue and which products to produce or buy. In fact, there are no *pure* free-market economies today. Modern industrial countries are more properly described as “mixed economies,” meaning that goods and services are allocated by a combination of free markets, regulation, and other forms of collective control. Still, it makes sense to refer to such systems as free-market economies, because people are for the most part free to start businesses, to shut them down, or to sell them. And within broad limits, the distribution of goods and services is determined by individual preferences backed by individual purchasing power, which in most cases comes from the income people earn in the labor market.

ROBERT H. FRANK & BEN S. BERNANKE, *PRINCIPLES OF ECONOMICS* 61-62 (3rd ed. 2007).

⁵⁰⁵ See RANDALL HOLCOMBE, *ENTREPRENEURSHIP AND ECONOMIC PROGRESS* 119 (2007) (“There is no doubt that market economies provide the environment for . . . prosperity.”); see also MCEACHERN, *supra* note 503, at 35 (“A pure market economy offers resource owners the freedom and the incentive to get the most from their resources.”); FRANK & BERNANKE, *supra* note 504, at 62 (“In country after country, markets have replaced centralized control for the simple reason that they tend to assign production tasks and consumption benefits much more effectively.”).

and the collapse of the national economy.⁵⁰⁶

Professor of Economics R. Glenn Hubbard at Columbia University and Professor of Economics Anthony Patrick O'Brien at Lehigh University explain this correlation between an economic system and the living standards of the people as follows:

In countries such as Cuba and North Korea, the free market system has been rejected in favor of centrally planned economies with extensive government control over product and factor markets.⁵⁰⁷ Countries that come closest to the free-market benchmark have been more successful than countries with centrally planned economies in providing their people with rising living standards.⁵⁰⁸

Professor of Economics William A. McEachern at the University of Connecticut also states the following:

Consider countries that have been cut in two by political and economic ideology. In such cases, the economies began with similar resources and income levels right after the split. Over time the market-oriented economies produced a much higher standard of living than the centrally planned economies. . . . As another example, income per capita in market-oriented South Korea is about 12 times that of North Korea, perhaps the most

⁵⁰⁶ See BRIAN P. SIMPSON, *MARKETS DON'T FAIL!* 22 (2005) ("Socialism leads to misery and poverty. . . . Furthermore, socialism leads to poverty because it uses a system of central planning . . ."); see also JOHN B. TAYLOR, *PRINCIPLES OF MICROECONOMICS* 513 (5th ed. 2007) ("It was the economic failure of central planning and strict state control that led to socialism's demise. The failure of the centrally planned economy in East Germany in comparison with the success of the market economy in West Germany was as close as the real world ever gets to a controlled experiment."); PETER W. SPERLICH, *ROTTEN FOUNDATIONS: THE CONCEPTUAL BASIS OF THE MARXIST-LENINIST REGIMES OF EAST GERMANY AND OTHER COUNTRIES OF THE SOVIET BLOC* 51 (2002) ("Marxist-Leninist policies have produced not only totalitarian politics but economic disasters – the persistent agricultural problems and chronic industrial backwardness of the USSR being the most obvious examples . . .").

⁵⁰⁷ See R. GLENN HUBBARD & ANTHONY P. O'BRIEN, *ESSENTIALS OF ECONOMICS* 50 (2nd ed. 2008) ("Product markets[:] Markets for goods—such as computers—and services—such as medical treatment."); see also *id.* ("Factor markets[:] Markets for the factors of production, such as labor, capital, natural resources, and entrepreneurial ability.").

⁵⁰⁸ *Id.* at 52; R. GLENN HUBBARD & ANTHONY P. O'BRIEN, *MICROECONOMICS* 52 (2nd ed. 2007).

centrally planned economy in the world.⁵⁰⁹

As in the abovementioned instance, significant economic indices between South Korea and North Korea, which are countries that share much of the same factors in terms of culture, people, national character, climate, language, the time to adopt the economic system, and so forth, besides the economic system itself, are commonly quoted to vividly demonstrate beyond mere theoretical explanations how the differences between the economic systems affect the national economic prosperity and improvement in standards of living of the people.⁵¹⁰

<Table 2> Comparison of Economic Indices between ROK and DPRK⁵¹¹

⁵⁰⁹ MCEACHERN, *supra* note 503, at 39.

⁵¹⁰ Professor of Economics Charles I. Jones at Stanford University states the following:

For example, consider North and South Korea, East and West Germany, and Hong Kong and mainland China. Historically, each pair was once a single country (and, in the case of Germany, is today). The people in each region share similar cultures, and there are no obvious advantages in geography on one side or the other. Moreover, these neighbors had relatively similar incomes. At the end of various wars, though, the regions were separated into distinct countries with different governments and institutions.

Over the course of just a few generations, enormous differences in income emerged between these siblings. North Korea is one of the poorest regions of the world today, while South Korea is one of the growth miracles. At the time of the collapse of the Berlin Wall in 1989, standards of living in East and West Germany were substantially different. And even after rapid growth in China during the last two decades, per capita GDP in Hong Kong is estimated to be 8 times higher than in China.

CHARLES I. JONES, *MACROECONOMICS* 85-86 (Jack Repcheck et al. eds., 2008); *See* CAMPBELL MCCONNELL ET AL., *MACROECONOMICS* 39 (18th ed. 2008) (“North Korea, under the influence of the Soviet Union, established a command economy that emphasized government ownership and central government planning [in 1948]. South Korea, protected by the United States, established a market economy based upon private ownership and the profit motive [in the same year].”).

⁵¹¹ THE ROK MINISTRY OF NATIONAL DEFENSE, *DEFENSE WHITE PAPER* 2008 at 317 (2008).

Professor Kyung-Ae Park at the University of British Columbia explains the economic situation of North and South Korea during the 1980s and 1990s quoting the major economic indicators of the two countries at that time:

The most dramatic losing battle [between North and South Korea] is in the economic arena. As was the case in the 1980s, North Korea’s [centrally planned] economy continues to sag in the 1990s. Since it recorded its first negative economic growth rate of minus 3.7 percent in 1990, it has exhibited negative growth for nine consecutive years. North Korea’s foreign

Classification	ROK		DPRK		Comparison of ROK and DPRK	
	2006	2007	2006	2007	2006	2007
GNI (\$ billions)	887.3	971.3	25.6	26.7	34.7 times	36.4 times
GNI per capita (\$)	18,372	20,045	1,108	1,152	16.6 times	17.4 times
Economic growth rate (%) by GNI	5.1	5.0	-1.1	-2.3	-	-
Total trade volume (\$ billions)	634.85	728.33	3.0	2.94	211.9 times	247.6 times
Total population (millions)	48.30	48.46	23.08	23.20	2.1 times	2.1 times

※ GNI (Gross National Income): International organizations such as the UN, IMF [International Monetary Fund], etc. and major advanced nations are using GNI instead of GNP [Gross National Product]. (GNI ≙ GNP [≙ GDP])⁵¹²

As Emeritus Professor Robin Okey at the University of Warwick stresses, it

debt was over \$10 billion already in 1993, which was equivalent to 50.3% of its GNP. . . . In contrast, South Korea's [free market-based] economic performance . . . had drawn world attention. According to a World Bank report, from 1985 through 1993, South Korea recorded the second highest GNP growth rate of 8.1%, after Thailand's 8.4%, and its GNP in 1996 ranked 11th in the world.(citation omitted) Its GNP was 25 times higher than that of North Korea in 1997.(citation omitted) In short, South Korea's success in economic . . . area[] stands in sharp contrast to North Korea's decline, and this has been a great challenge to Pyongyang.

Kyung-Ae Park, *Sources of North Korea's Foreign Policy Leverage toward the U.S.: The Case of the Nuclear Deal*, in *KOREA IN THE 21ST CENTURY* 131, 144 (Seung-Ho Joo & Tae-Hwan Kwak eds., 2001).

⁵¹² See THE ECONOMIST, GUIDE TO ECONOMIC INDICATORS: MAKING SENSE OF ECONOMICS 29 (7th ed. 2011) ("The difference between GDP [Gross Domestic Product] and GNI or GNP is usually relatively small, perhaps 1% of GDP"); see also Matthew Clarke, *Gross National Product (GNP)*, in ENCYCLOPEDIA OF INTERNATIONAL DEVELOPMENT 300, 300 (Tim Forsyth ed., 2005) ("For net investing economies, GNP [GNI] is usually higher than GDP as overseas income is taken into account. The differences between GDP and GNP [GNI] however are generally not significant."); N. GREGORY MANKIW, PRINCIPLES OF ECONOMICS 513 (4th ed. 2007) ("For most countries, including the United States, domestic residents are responsible for most domestic production, so GDP and GNP [GNI] are quite close.")

GDP is "the market value of all final goods and services produced within a country in a given period of time." *Id.* at 510. Additionally, GNP is "the total income earned by a nation's permanent residents (called *nationals*). It differs from GDP by including income that our citizens earn abroad and excluding income that foreigners earn here." *Id.* at 513.

demonstrates vividly that “Prosperity could not be planned in the absence of normally functioning markets and prices.”⁵¹³ In addition, as Professor of Economics N. Gregory Mankiw at Harvard University emphasizes, it graphically shows that “[m]arket economies have proven remarkably successful in organizing economic activity in a way that promotes overall economic well-being.”⁵¹⁴ Thus, almost all communist states except Cuba and North Korea, which suffered chronic public poverty and severe economic depression under the inefficient system of a centrally planned economy, have already chosen the transition from command economies to market economies.⁵¹⁵ The entrenchment of market economies in communist countries, which took to command economies previously, is a long haul. However, once the market economies start to settle down in the countries, they function as cornerstones for the development of the

⁵¹³ OKEY, *supra* note 224, at 72.

⁵¹⁴ N. GREGORY MANKIW, *ESSENTIALS OF ECONOMICS* 9 (3rd ed. 2004).

⁵¹⁵ Professor of Economics Robert E. Hall at Stanford University and Professor of Economics Marc Lieberman at New York University explains the following:

[c]ommand economies are disappearing fast. Until about 25 years ago, examples would have included the former Soviet Union, Poland, Romania, Bulgaria, Albania, China, and many others. Beginning in the late 1980s, all of these nations began abandoning central planning. The only examples left today are Cuba and North Korea, and even these economies – though still dominated by central planning – occasionally take steps away from it.

HALL & LIEBERMAN, *supra* note 502, at 42; ROBERT E. HALL & MARC LIEBERMAN, *MICROECONOMICS: PRINCIPLES AND APPLICATIONS* 41 (4th ed. 2008).

Dr. Bernanke and Professor Frank also states the following:

[w]ith the fall of the Soviet Union and its satellite nations in the late 1980s, there are now only three communist economies left in the world: Cuba, North Korea, and China. The first two of these appear to be on their last legs, economically speaking, and China has by now largely abandoned any attempt to control production and distribution decisions from the center.

FRANK & BERNANKE, *supra* note 504, at 61.

nations' economies and the driving force to promote the welfare of the people.

Professor of Economics John B. Taylor at Stanford University explains the following:

The transition from the failed centrally planned economies to market economies did not go smoothly for many countries, especially Russia and other countries that belonged to the former Soviet Union. However, in recent times, many of these countries have seen higher rates of economic growth and reason for optimism about the future. Other centrally planned economies, like Poland, Hungary, and especially China, have made more successful transitions and made great progress in raising living standards over the past decade.⁵¹⁶

All in all, the collection of the abovementioned remarks and facts show that the pursuit of and the adherence to centrally planned economy are essentially incompatible with the guarantee of the right to an adequate standard of living. The only economic system that brings improvement to standards of living into people's lives is the market economy.

Meanwhile, the pillar of the military-first policy in Article 3 of the North Korean Constitution is literally that the military must have top priority in the allocation of resources unconditionally.⁵¹⁷ Thus, this key policy of North Korea takes for granted all civilian sacrifices, losses, and sufferings, which are caused by the unbalanced and

⁵¹⁶ TAYLOR, *supra* note 506, at 513.

⁵¹⁷ See EDDIE BURDICK, *THREE DAYS IN THE HERMIT KINGDOM: AN AMERICAN VISITS NORTH KOREA* 188 (2010) ("Most pundits agree that *Songun* means simply 'military first.' In essence, the *Songun* Policy dictates that priority in resource distribution is granted to the military."); see also Suk Hi Kim, *North Korea: Yesterday, Today, and Tomorrow*, in *THE SURVIVAL OF NORTH KOREA: ESSAYS ON STRATEGY, ECONOMICS AND INTERNATIONAL RELATIONS* 11, 18 (Suk Hi Kim et al. eds., 2011) ("Sŏn'gun, often spelled *Songun*, is North Korea's "military-first" policy, which prioritizes the [North] Korean People's Army in the affairs of state and in the allocation of national resources.(citation omitted)").

unreasonable distribution system of resources for the military-first policy.⁵¹⁸

As reviewed earlier, North Korea, under the centrally planned economy, is one of the world's poorest countries.⁵¹⁹ Nonetheless, North Korea has as many as 1.1 million in the North Korean People's Army, which is the fifth largest standing armed forces in the world after China, the U.S., Russia, and India.⁵²⁰ Considering that North Korea's population is only 22.7 million, it is the world's highest standing army as a percentage of population. The country also has one of the largest stock of chemical and biological weapons in the world, with its eight biochemical production facilities.⁵²¹ Furthermore,

⁵¹⁸ See DANIEL SCHWEKENDIEK, *A SOCIOECONOMIC HISTORY OF NORTH KOREA* 88 (2011) ("These measures culminated in 1994, when the DPRK announced its military-first policy (Songun) at the peak of the ravaging famine: all scarce resources, including food, are first to be distributed to the people's army – regardless of whatever civilian losses may result."); see also Suk Hi Kim, *supra* note 206, at 35 ("[S]ongun is perceived as an aggressive policy that privileges the North Korean military at the expense of other sectors of society.").

⁵¹⁹ See *supra* Chapter Five.I.B; see also HOLCOMBE, *supra* note 505, at 119 ("North Korea, as of this writing, is still suffering under their centrally planned economy, and while North Korea is one of the poorest nations in the world, South Korea, with its market economy, is one of the more prosperous nations with one of the more rapidly growing economies.").

⁵²⁰ See Terence Roehrig, *North Korea*, in *DEFENSE AND SECURITY: A COMPENDIUM OF NATIONAL ARMED FORCES AND SECURITY POLICIES (VOLUME II: NEW ZEALAND – YUGOSLAVIA)* at 525, 536 (Karl DeRouen, Jr. & Uk Heo eds., 2005) ("North Korea is often characterized as one of the most militarized countries in the world. [I]t has a standing armed force of almost 1.1 million active duty soldiers, making it fifth largest in the world behind China, the United States, Russia, and India."); see also BARBARA A. WEIGHTMAN, *DRAGONS AND TIGERS: A GEOGRAPHY OF SOUTH, EAST, AND SOUTHEAST ASIA* 366 (3rd ed. 2010) ("North Korea, with its population of a mere 22.7 million, has the fifth largest standing army in the world after China, the United States, Russia, and India."); Tomohiko Kawaguchi, *One Year After the Kim-Kim Talks: North Korea and International Security*, in *GLOBALIZATION REDUX: NEW NAME, SAME GAME* 133, 134 (Tom Conner & Ikuko Torimoto eds., 2004) ("The North Korean People's Army, which includes the army, navy, and air force, numbers over 1.2 million, making it the fifth largest active duty force in the world. Limited production of aircraft and artillery systems continues alongside the ongoing manufacture of missiles, submarines, and armored vehicles.").

⁵²¹ See WEIGHTMAN, *supra* note 520, at 366 ("[T]he DPRK has one of the world's largest biological and chemical arsenals with enormous stocks of anthrax, cholera, and plague. It also has eight biochemical production facilities.").

it owns a very large quantity of conventional weapons.⁵²² Thus, North Korea spends an abnormally excessive ratio of defense expenditure to its GDP annually to maintain the abnormal scale of conventional forces and weapons in comparison to its economic power:

<Table 3> North Korean Annual Military Expenditures (1991-2006)⁵²³

(Figures in parentheses represent military expenditures officially announced by North Korea) (Unit: \$ billions)

Year	GNI (as announced by the Bank of Korea)	Total Budget (as announced by North Korea)	Military Expenditure	Ratio (%) of Military Expenditure to GNI [GDP]	Ratio (%) of Military Expenditure to Total Budget	Exchange Rate (1 US dollar: North Korean won)
1991	22.9	17.17	5.13 (2.08)	22.4	29.9 (12.1)	2.15
1992	21.1	18.45	5.54 (2.10)	26.3	30 (11.4)	1.13
1993	20.5	18.72	5.62 (2.15)	27.2	30 (11.4)	2.15
1994	21.2	19.19	5.76 (2.19)	27.2	30 (11.5)	2.16
1995	22.3	20.82	6.24	28	30	2.05
1996	21.4	–	5.78	27	–	2.14
1997	17.7	9.10	4.78	27	52	2.16
1998	12.6	9.10	4.78 (1.33)	37.9	52 (14.6)	2.20
1999	15.8	9.23	4.78 (1.35)	30	51 (14.6)	2.17
2000	16.8	9.57	5.0 (1.37)	29.8	52 (14.3)	2.19
2001	15.7	9.81	5.0 (1.41)	31.8	51 (14.4)	2.21
2002	17.0	10.01	5.0 (1.49)	29.4	50 (14.9)	2.21
2003	18.4	11.25	5.0 (1.77)	27.4	44.4 (15.6)	2.21
2004		2.51	(0.39)		(15.6)	139.0
2005		2.90	(0.46)		(15.9)	140.0
2006		2.94	(0.47)		(15.9)	143.0

※ The amount of military expenditures during the period [] [of] 1995 to 1997 represents estimated expenditures at the average ratio of 27% to GNI.

※ For 2003, the exchange rate before Economic Improvement Measures on July 1, 2002 is applied.

※ After 2004, the estimation of military expenditures in North Korea was restricted because of sharp increases of North Korea's exchange rate. [Only] [] [t]he amounts announced by North Korea were [] presented.

⁵²² See THE ROK MINISTRY OF NATIONAL DEFENSE, DEFENSE WHITE PAPER 2006 at 261 (2006); see also THE ROK MINISTRY OF NATIONAL DEFENSE, *supra* note 511, at 316.

⁵²³ THE ROK MINISTRY OF NATIONAL DEFENSE, *supra* note 522, at 234.

The fact that the ratio of North Korea's defense expenditure to its GDP is abnormally high becomes clearer when we review the defense budget ratio to GDP of other major countries:

<Table 4> Comparison of Military Expenditures of Major Countries⁵²⁴

Nation	GDP (\$ billions)	Defense Budget (\$ billions)	Defense Budget Ratio to GDP (%)
ROK	649.5	15.7	2.4
US	11,700.0	455.0	3.9
Japan	4,660.0	45.1	1.0
China	1,680.0	62.5	3.7
Russia	1,400.0	61.9	4.4
UK	2,130.0	49.6	2.3
France	2,000.0	51.6	2.6
Germany	2,670.0	37.7	1.4
Israel	117.0	9.7	8.3
Egypt	76.2	3.5	4.6
Saudi Arabia	236.0	19.3	8.2
Australia	598.0	14.3	2.4
Turkey	297.0	10.1	3.4
Malaysia	117.0	2.3	1.9
Taiwan	304.0	7.5	2.5
Thailand	161.0	1.9	1.2
Singapore	105.0	5.0	4.8

※ Source: *The Military Balance 2005-2006* (London: International Institute for Strategic Studies, Oct. 2005). The ROK data based on government statistics. (Exchange Rate: 1,200 won/\$ applied)

As shown in the tables, the defense budget ratio to GDP of North Korea is overwhelming compared to that of other major countries. Professor Terence Roehrig, who is the Director of the Asia-Pacific Studies Group at the U.S. Naval War College,

⁵²⁴ *Id.* at 257.

gives his explanation about this overall situation as follows:

Though estimates vary, North Korea devotes close to \$5.2 billion for defense, placing it twenty-first in the world. Defense spending represents 34 percent of GDP, the highest rate of any country in the world (CIA [Central Intelligence Agency] *World Factbook*: 2005). Most of the defense budget is devoted to maintaining a large conventional capability⁵²⁵

Professor Tomohiko Kawaguchi at the College of International Relations of Nihon University in Japan also makes a statement to the same effect that “[N]orth Korea continues to invest 25 to 33 percent of its GNP [GDP] annually in the military (as compared to 3 percent in the U.S. and 1 percent in Japan). Clearly, military spending is the top priority of the North Korean economy.”⁵²⁶

Thus, it is no wonder, then, that North Korea has a small budget and little resources for the welfare of the people under this Songun policy. Additionally, it is not surprising that North Korea cannot even invest the minimum into its economic development, which is the key premise for the welfare of the people, because of the military-first policy. For these reasons, the CIA emphasizes that “Large-scale military spending draws off resources needed for investment and civilian consumption.”⁵²⁷ Professor Kawaguchi also explains in detail about the overall

⁵²⁵ Roehrig, *supra* note 520, at 537.

⁵²⁶ Kawaguchi, *supra* note 520, at 136.

⁵²⁷ CENTRAL INTELLIGENCE AGENCY, THE CIA WORLD FACTBOOK 2012, (EAST & SOUTHEAST ASIA: KOREA, NORTH), *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/kn.html> (last updated Mar. 7, 2012).

situation of the North Korean economy and the lives of North Korean people under the military-first policy:

[t]he “military first” policy has ruined the North Korean economy. The figures speak for themselves. GNP declined by 55 percent from 1990 to 1998, to the equivalent of approximately 12 billion U.S dollars; foreign debt is rapidly approaching the same figure; foreign trade is at only 10 percent of GNP; per capita income is less than 600 U.S. dollars; many factories are being closed, with those remaining open operating at less than 20 percent of capacity; daily grain rations for ordinary people vary between 100 and 200 grams, which is the equivalent of one half to one bowl of rice; and estimates of the number of deaths from hunger and disease over the last five years range from several hundred thousand to three million – despite foreign aid equivalent to 1.6 billion U.S. dollars since 1995.⁵²⁸

Ultimately, the series of the abovementioned facts and remarks show that the pursuit of the military-first policy for the possession of strong military power is essentially incompatible with the guarantee of the right to an adequate standard of living.

The pursuit of a centrally planned economy and the military-first policy, which is demonstrated in the Juchist and Marxist-Leninist Articles, is one of the key tenets of Juche Ideology and Marxism-Leninism, the two anti-human rights and ruling ideologies controlling North Korea.

1. Marxism-Leninism for Centrally Planned Economy and Its Influence on the Juchist and Marxist-Leninist Article

⁵²⁸ Kawaguchi, *supra* note 520, at 136.

A centrally planned economy was proposed by Karl Marx in the mid-nineteenth century. Professor Emeritus Bradley R. Schiller at American University, who is a renowned economist, explains that “In the mid-nineteenth century, Karl Marx proposed a radical alternative: Marx’s writings (*Das Kapital*, 1867) encouraged communist revolutions and the development of central planning systems. The (people’s) government, not the market, assumed responsibility for deciding what goods were produced, at what prices they were sold, and even who got them.”⁵²⁹

Professor Schiller also emphasizes the following:

Marx argued that the government not only had to intervene but had to *own* all the means of production – the factories, the machinery, the land – in order to avoid savage inequalities. In *Das Kapital* (1867) and the revolutionary *Communist Manifesto* (1848), he laid the foundation for a communist state in which the government would be the master of economic outcomes.⁵³⁰

Like Marx, Lenin also preferred a centrally planned economy. He inherited this economic theory of Marx faithfully and applied it to practice following the Russian Revolution of 1917. Professor John B. Taylor explains these overall situations at the time in detail as follows:

V. I. Lenin and the Bolshevik party (also known as the Communist party) gained control of the government of Russia in the October Revolution of 1917. . . . Lenin and the Bolsheviks seized the opportunity, forcing through a completely new economic system. Most significantly, Lenin decreed that

⁵²⁹ BRADLEY R. SCHILLER, *ESSENTIALS OF ECONOMICS* 15 (7th ed. 2008).

⁵³⁰ BRADLEY R. SCHILLER, *THE ECONOMY TODAY* 13 (12th ed. 2010).

private firms would be taken over by the government, a process called **nationalization**. The Bolsheviks immediately nationalized the banking system, and by mid-1918, a massive nationalization of large- and small-scale industry was under way. . . . He [Lenin] argued that people like himself were needed to run the economy on behalf of the workers. He began controlling production from the center, appointing administrators to run each industry from offices in Moscow. In doing so, he laid the foundation of a command economy, in which government *diktats*, or commands, rather than prices and decentralized markets, would determine what was produced. In 1921, **Gosplan**, the state planning commission, was established. In 1922, the Communist party established the Soviet Union, incorporating Ukraine and other countries along with Russia into one large command economy.⁵³¹

Ultimately, the pursuit of a command economy has become one of the core principles of Marxism-Leninism. Additionally, this key economic tenet of the unofficial ruling ideology of North Korea was publicly legislated in Article 34, which is one of the Juchist and Marxist-Leninist Articles on the right to an adequate standard of living.

2. Juche Ideology for Centrally Planned Economy and Its Influence on the Juchist and Marxist-Leninist Article

Kim Il-Sung preferred the command economic system very much because the economic model of Marx and Lenin was a useful measure necessary to maintain and

⁵³¹ TAYLOR, *supra* note 506, at 506; *See supra* note 162 and accompanying text; *see also* Dic Lo & Yu Zhang, *Centrally Planned Economy*, in THE ELGAR COMPANION TO MARXIST ECONOMICS 40, 42 (Ben Fine et al. eds., 2012) (“Lenin, following [Marx and] Engels, attached much importance to the socialization of production as the material base for the construction of socialism, not just in an economic but also in a political sense.”).

strengthen his one-man dictatorship.⁵³² The Marxist-Leninist economic system in North Korea not only enabled Kim Il-Sung to have monopolistic control over the whole national economy but also facilitated his powerful control over the people through the central food rationing system of North Korean government.⁵³³

As reviewed earlier, it is true that the Marxist-Leninist economic system is an inefficient system, which ultimately leads to public poverty and misery.⁵³⁴ However, the welfare of the mass of people is just a subsidiary matter to such brutal dictators as Kim Il-Sung, Kim Jong-Il, and Kim Jong-Un, who always put maintaining their dictatorial powers as top priority above all else.⁵³⁵ Consequently, Kim Il-Sung's strong preference for the economic model of Marx and Lenin was faithfully reflected in his theory, and the pursuit of a command economy has become one of the core principles of

⁵³² See HOWARD J. WIARDA, *DEMOCRACY AND ITS DISCONTENTS: DEVELOPMENT, INTERDEPENDENCE, AND U.S. POLICY IN LATIN AMERICA* 294 (1995) (“[W]hile [the economic theory of] Marxism-Leninism may provide a useful formula for seizing and holding [dictatorial] power, it has proved less useful for managing economic . . . affairs in the complex, interdependent, economics-driven, post Cold War era.”).

⁵³³ See 2000 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 90 (“The objective of the ration system was . . . to exercise effective control over the people through the system. Additionally, it was also intended . . . to inculcate a sense of gratitude and loyalty toward the distributing authority and . . . the leader.”).

⁵³⁴ See *supra* Chapter Five.I.B; see also *supra* note 506 and accompanying text.

⁵³⁵ See FRENCH, *supra* note 41, at 272 (“As Hwang Jang-yop has observed ‘Given the choice between regime survival and national prosperity, it’s pretty clear which he [Kim Jong-il] would prefer.’”); see also HASSIG & OH, *supra* note 110, at 29 (“Both Hwang [Jang-yop] and the abducted movie director Shin Sang-ok quote Kim [Jong-il] as saying that having too many people in North Korea makes ruling difficult; Hwang even believes that Kim considered the famine of the mid-1990s a good way to weed out the untrustworthy people, who were the first to have their rations stopped.”); LAURE PAQUETTE, *SECURITY FOR THE PACIFIC CENTURY: NATIONAL STRATEGY IN A MULTILATERAL SETTING* 116 (Susan Boriotti et al. eds., 2002) (“The *Juche* philosophy (national regeneration by its own means) of North Korea has been much more important to the life of the country than any other economic concern.”).

Juche ideology.

It is the common opinion of many scholars and researchers that the pursuit of a command economy is a core principle of Juche ideology. To cite a few examples, Professor Youn-Suk Kim at Kean University in New Jersey, who is an expert on Asian economy, clearly states that “[t]he North possesses a unique type of command economy based on *juche* ideology, that is, a system of self-reliance.”⁵³⁶

In addition, Keith A. Leitich, a political analyst and an expert on East Asia, explains that “Developing a hybrid economic model of Marxism-Leninism called *Juché*, Kim II Sung attempted to build an independent, self-reliant national economy through the establishment of an all-encompassing command economy, limiting economic relations with other countries while playing Cold War allies”⁵³⁷

Furthermore, Dr. Samuel S. Kim, who is a senior research scholar at the East Asian Institute of Columbia University, describes North Korea’s command economic system based on Juche ideology using an expression such as “[*J*]uche as the official ideology and backbone of the command economy [of North Korea].”⁵³⁸

⁵³⁶ Youn-Suk Kim, *Economic Cooperation between the Two Koreas: An Historical Analysis*, in PERSPECTIVES ON KOREAN UNIFICATION AND ECONOMIC INTEGRATION 57, 58 (Young Back Choi et al. eds., 2001).

⁵³⁷ Leitich, *supra* note 339, at 914.

⁵³⁸ Samuel S. Kim, *The Two Koreas: Making Grand Strategy amid Changing Domestic Politics*, in DOMESTIC POLITICAL CHANGE AND GRAND STRATEGY 113, 129 (Ashley J. Tellis & Michael Wills eds., 2007).

Finally, Paul French, an expert on North Korean and Chinese matters, emphasizes North Korea's central planned economy based on Juche ideology in expressions such as "Central planning is enshrined in the overarching political value system – Juche."⁵³⁹ and "[t]he command economy and the havoc it has caused will last as long as Juche and its proponents remain the dominant force in [North Korean] society."⁵⁴⁰ to depict it.

This key economic tenet of the official ruling ideology of North Korea was publicly legislated in Article 34, which is one of the Juchist and Marxist-Leninist Articles on the right to an adequate standard of living.

3. Marxism-Leninism for the Military-First Policy and Its Influence on the Juchist and Marxist-Leninist Article

Lenin defines modern imperialism as follows:

[m]odern imperialism [] [is] the monopoly stage of capitalism⁵⁴¹ which . . . "converted this work of construction into an instrument for oppressing *a thousand million people* [in the colonies and semi-colonies], that is, more than half the population of the globe, which inhabits the subject countries,

⁵³⁹ FRENCH, *supra* note 41, at 113.

⁵⁴⁰ *Id.*

⁵⁴¹ Dr. Nick Vaughan-Williams at the University of Warwick in U.K. states the following: According to Lenin, imperialism was not a policy or ideology pursued by Western forces as Nikolai Bukharin had argued in *Imperialism and World Economy* [1915]. Neither, in Lenin's view, was imperialism simply the rule of financial capital, as Rudolf Hilferding had suggested in *Finance Capital: A Study of the Latest Phase of Capitalist Development* [1910]. Rather, Lenin argued that imperialism could be understood only as a specific stage of capitalism. . . .

NICK VAUGHAN-WILLIAMS, *BORDER POLITICS: THE LIMITS OF SOVEREIGN POWER* 83 (2009).

as well as the wage slaves of capitalism in the lands of civilization.”(citation omitted)⁵⁴²

Thus, from Marxism-Leninism’s point of view, the spread of the imperialist forces of the West should be blocked, and furthermore, be conquered at any cost.⁵⁴³

Then there remains the issue of attaining this ultimate goal. As Professor Emeritus of political science Peter W. Sperlich at the University of California, Berkeley pointed out well, “Typically, Marxism-Leninism is imposed and maintained by force. Without force it crumbles and melts away.”⁵⁴⁴ That is to say, force is the most essential factor of all Marxist-Leninist theories. Thus, Marxism-Leninism seeks to find the solution in the possession of a strong military force to stop the proliferation of the so-called imperialist forces of the West. According to a Marxist-Leninist thesis, “[s]o long as imperialism exists wars are inevitable.”⁵⁴⁵ In other words, an ever-present threat of war always resides in socialist countries as long as the imperialist states exist. Furthermore, in the viewpoint of the Marxist-Leninist thesis, the socialist countries are encircled by imperialist countries, which are vigilantly awaiting an opportunity to invade the Marxist-Leninist countries. For these reasons, the possession of strong military power

⁵⁴² ARIEL COHEN, *RUSSIAN IMPERIALISM: DEVELOPMENT AND CRISIS 2* (1998).

⁵⁴³ See VAUGHAN-WILLIAMS, *supra* note 541, at 83 (“In *Imperialism: the Highest Stage of Capitalism* [1916] Lenin attempted to unite the world’s proletariat against the imperialist forces of the West.”).

⁵⁴⁴ SPERLICH, *supra* note 506, at 193.

⁵⁴⁵ See RAYMOND L. GARTHOFF, *DETERRENCE AND THE REVOLUTION IN SOVIET MILITARY DOCTRINE* 32 (1990) (“As is well known, there is a Marxist-Leninist thesis that so long as imperialism exists wars are inevitable.”).

against Western imperialist forces is emphasized incessantly in Marxism-Leninism. According to Marxism-Leninism, even the time of peaceful coexistence through the diplomatic relations with imperialist states cannot be more than a so-called “breathing space for war,” which means the strategic time to prepare for the inevitable war between socialist and imperialist states and the final victory over imperialist powers.⁵⁴⁶ Dr. William E. Odom, who was a leading authority on the military affairs of the Soviet Union and a former Director of the National Security Agency (NSA) under President Ronald Reagan, explains the Marxist-Leninist emphasis on the possession of strong military power against imperialist forces:

[M]arxism-Leninism is indeed a significant factor in any explanation of why the Soviet Union built such large military forces and why they devised the kinds of war plans they did.(footnote omitted) Based on a class analysis, the General Staff could easily identify the “threat” against which it had to plan for war. The “probable enemy” included all [imperialist] countries in which private ownership of the means of production existed. The number of such countries was quite large, forming a great encircling ring around the Soviet Union, its Warsaw Pact allies, and other socialist states.

⁵⁴⁶ Dr. William E. Odom describes the so-called “breathing space for war” as follows:

Lenin first devised the ideological basis for formal diplomatic relations with imperialist states shortly after the end of the civil war. . . . Parallel to this linkage, he sought peace with the imperialist states through formal diplomatic ties, realizing his first success with the establishment of diplomatic relations with Germany at Rapallo in 1922. . . . All these policies flow consistently from his development of Marxism in his own thinking before the revolution. They make sense as a strategy only in that context; otherwise they are not only incomprehensible but also look contradictory, even absurd.

This strategy, of course, was designed to gain a so-called “breathing space [for war]” during which the Soviet Union could prepare for the inevitable military showdown with the imperialist states of the world and the complete victory of socialism. Although Lenin used the term “peaceful cohabitation,” the strategy soon became known as peaceful coexistence

WILLIAM E. ODOM, *THE COLLAPSE OF THE SOVIET MILITARY* 11-12 (2000).

Moreover, the Communist Party consistently emphasized such class analysis in its strategic guidance to the military, and its practical articulation was fairly consistent throughout Soviet history.⁵⁴⁷

This key military tenet of the unofficial ruling ideology of North Korea was publicly legislated in Article 3, which is one of the Juchist and Marxist-Leninist Articles on the right to an adequate standard of living.

4. Juche Ideology for the Military-First Policy and Its Influence on the Juchist and Marxist-Leninist Article

A powerful army under the monopolistic control of a dictator is essential to maintain and protect his dictatorship.⁵⁴⁸ Additionally, if the dictator can disguise the army's original role of being the faithful guardian to his dictatorial government, and instead, through effective propaganda, instill into the minds of the people that the army is not in his service, but in fact the defender of citizens, fighting against impure exterior

⁵⁴⁷ *Id.* at 11.

⁵⁴⁸ See MARVIN PERRY ET AL., *supra* note 84, at 750 (“If voluntary support for the [dictatorial] regime cannot be generated by indoctrination, then the state unhesitatingly resorts to terror and violence to compel obedience. People live under a constant strain.”).

The 2004 U.S. Human Rights Report states the following:

The country [North Korea] is one of the world's most militarized societies. The Korean People's Army (KPA) continued to overshadow the KWP as Kim Jong Il's [Kim Jong-Un's, at present] chief instrument for making and implementing policy. The KPA is the primary organization responsible for external security. A large military reserve force and several quasi-military organizations, including the Worker-Peasant Red Guards and the People's Security Force, assist it. In addition, an omnipresent internal security apparatus includes the Ministry of Public Security (MPS), the State Security Department, and the KWP. Members of the security forces have committed numerous serious human rights abuses.

2004 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

enemies, he can successfully instigate integral unity through its propagandized role in protecting the people's sovereignty. By breeding gratitude and respect for it, the army within the control of the dictator becomes a very helpful means to strengthen his dictatorial power. Thus, Kim Il-Sung and Kim Jong-Il devised the theory on the military-first policy of Juche ideology in imitation of the Marxist-Leninist theory on the imperialist forces of the West. As a result, the pursuit of the military-first policy for the possession of strong military power against the imperialist forces has become one of the core principles of Juche ideology.⁵⁴⁹ For this reason, Paul French, the expert on North Korean matters, stresses that "In Juche thinking, as long as imperialist countries continue to exist so the military-first line will remain paramount."⁵⁵⁰

The imperialist power of the West, which has become the biggest threat to the national security of North Korea, is none other than the U.S. in the viewpoint of the military-first policy of Juche ideology. Dr. Andrew C. Nahm, who is former professor emeritus and director of the Center for Korean Studies at Western Michigan University, states the following:

While claiming several diplomatic victories over the United States, in September 1969 Chae Yun-Hyung, vice-chairman of the Central Committee

⁵⁴⁹ See *supra* Chapter Three.II.A; see also *supra* note 206 and accompanying text; CIRCA RESEARCH & REFERENCE INFO., *supra* note 161, at 163 ("Its [Juche's] four principles are . . . (iv) national security through the maintenance of a powerful army.").

⁵⁵⁰ FRENCH, *supra* note 41, at 31.

of North Korean Journalists Union, said at the International Organization of Journalists meeting held in P'yŏngyang that "U.S. imperialism is a main force of aggression and war, international gendarme, bulwark of modern colonialism, and the most barbarous and most shameless aggressor of modern times and chieftain of world imperialism. . . . No place on earth is safe from the tentacles of aggression stretched out by U.S. imperialism and no country is free from the menace of U.S. imperialist aggression."(citation omitted)⁵⁵¹

In addition, Dr. Alexandre Mansourov, who is an expert on the Korean Peninsula and former Professor of Security Studies at the Asia-Pacific Center for Security Studies in Honolulu, Hawaii, emphasizes the following:

Below are some of the most representative examples of North Korean perceptions of Bush administration policy. First of all, revealing the mixed influence of classic Marxist-Leninist teachings on imperialism and current global balance-of-power assessments, the North Korean leaders believe that in the post-Cold War world, America's ultimate goal is to remain the world's "only superpower" and to establish a new international order that will ensure and support U.S. global hegemony.⁵⁵²

Thus, these anti-imperialist views of the world held by the North Korean leadership class easily justify North Korea's military adventurism, including its nuclear program through Juche's military theory on U.S. imperialism, which was borrowed from the imperialism of Marxism-Leninism.⁵⁵³ Additionally, as long as the U.S. and

⁵⁵¹ Andrew C. Nahm, *The United States and North Korea since 1945*, in *KOREAN-AMERICAN RELATIONS: 1866-1997* at 99, 110 (Yur-Bok Lee & Wayne Patterson eds., 1999).

⁵⁵² Alexandre Mansourov, *The Hermit Mouse Roars: North Korea*, 30.2 *ASIAN AFF.* 88, 89 (2003).

⁵⁵³ See Damon Coletta, *North Korea and Crisis Dynamics*, in *PERSPECTIVES ON U.S. POLICY TOWARD NORTH KOREA: STALEMATE OR CHECKMATE?* 65, 76 (Sharon Richardson ed., 2006) ("Presently, North Korea justifies its nuclear development in terms of protecting its sovereignty from U.S. imperialism . . .").

its allies exist, the leaders will neither weaken nor withdraw Juche's pursuit of the military-first policy for the possession of powerful military force against U.S. imperialism.

This key military tenet of the official ruling ideology of North Korea was publicly legislated in Article 3, which is one of the Juchist and Marxist-Leninist Articles on the right to an adequate standard of living.

C. The New Refuting Theory and Its Incapacitation Mechanism Model

The North Korean Constitution contains two fundamentally distinct types of articles with opposing function and operation in terms of the guarantee of the right to an adequate standard of living. One type is the Fundamental Rights Article, such as Article 25, and the other is the Juchist and Marxist-Leninist Article, such as Article 34 and Article 3.

As reviewed earlier, Article 25 serves as the core implementing mechanism of the North Korean Constitution for its right to an adequate standard of living.⁵⁵⁴ Thus, as is argued by North Korea in the DPRK Official Reports, the Fundamental Rights Article is, in its very nature, supposed to protect this fundamental right of the North Korean people.

⁵⁵⁴ See *supra* Chapter Five.I.A.

On the other hand, the pursuit of a centrally planned economy and the pursuit of the possession of strong military power against imperialism are key tenets of Juche ideology and Marxism-Leninism.⁵⁵⁵ Thus, from the logical and theoretical standpoint, it is natural for the Juchist and Marxist-Leninist Articles, which faithfully incorporate the core principles of the two anti-fundamental rights and ruling ideologies controlling North Korea, to take the disposition of anti-fundamental rights articles in order to pursue and consolidate a command economy and the military-first policy, and to position themselves as the ruling articles. Namely, Article 34 and Article 3 are not only the Juchist and Marxist-Leninist Articles, but also work as the anti-fundamental rights and ruling articles from the logical and theoretical standpoint.

We reviewed that the clash in function and role between the guarantee of the right to an adequate standard of living and the pursuit of a command economy and the military-first policy is inevitable from a logical and theoretical standpoint.⁵⁵⁶ Similarly, these two extremes, both in their very nature and workings, as demonstrated by Article 25, Article 34 and Article 3, are bound to clash with each other in performing their function and role within one constitutional boundary.

The issue of the functional clash is solved by the relationship of superiority and

⁵⁵⁵ See *supra* Chapter Five.I.B.

⁵⁵⁶ See *supra id.*

relative inferiority between the two types of articles. Article 34 and Article 3, the anti-fundamental rights and ruling articles for the consolidation of a command economy and the military-first policy, has superiority over Article 25, the Fundamental Rights Article for the right to an adequate standard of living, in their function and operation. As a result, Article 34 and Article 3, which are also the Juchist and Marxist-Leninist Articles, incapacitate the Fundamental Rights Article, which is the core implementation mechanism of the North Korean Constitution, at the time of this functional clash.

The resulting weakening of the Fundamental Rights Article leads to the theoretical impossibility of performing the core implementation mechanism model centered on Article 25 in the DPRK Official Reports. Consequently, all of the arguments of the North Korean government in defense of its practices of the right to an adequate standard of living in its official reports, which are grounded in this theoretical approach, are totally unrealizable given its constitutional structure and mechanism. That is to say, this impossibility of performance proves false in the Incapacitation Stage any notion that North Korea guarantees the right to an adequate standard of living of its people or that it complies with the articles on this right in the international human rights treaties from a logical and theoretical standpoint.

After completely weakening the Fundamental Rights Article, the Juchist and

Marxist-Leninist Articles wield strong influence over the North Korean society at large without any difficulty or obstruction. The practical results of this powerful leverage are manifested in the severe violations of fundamental rights and international human rights treaties in North Korea.⁵⁵⁷ In essence, since the sole function of the anti-fundamental rights and ruling articles is to carry out the economic and military doctrines of Juche ideology and Marxism-Leninism, there is no constitutional basis to secure the right to an adequate standard of living for the North Korean people or to prevent the government from violating such protections prescribed by international human rights treaties.

It necessarily follows, logically and theoretically, that the arguments of the U.S., South Korea, and the U.K. condemning the DPRK's violations of the right to an adequate standard of living in the LDC Annual Reports⁵⁵⁸ are proven true by the constitutional structure and mechanism of North Korea in the Human Rights Violation Stage.

The following diagram incorporates all aspects of the newly developed refuting theory and its incapacitation mechanism model of Article 34 and Article 3, including the core premises, key factors, logical order and flow, and theoretical structure. The

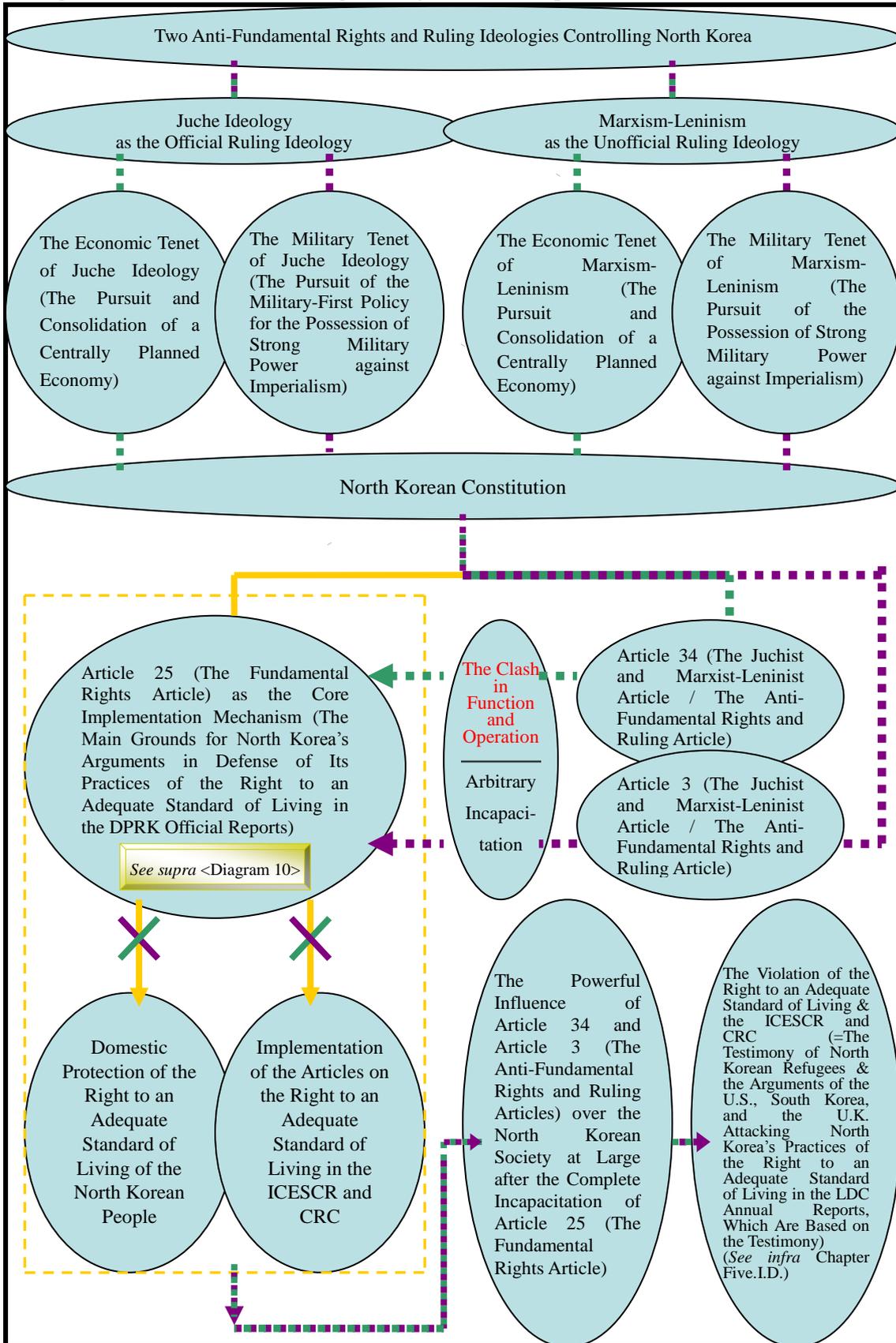
⁵⁵⁷ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

⁵⁵⁸ See *infra* Chapter Five.I.D.

diagram also incorporates the evidence for verifying the falsity of North Korea's arguments in the DPRK Official Reports and for verifying the truth of the liberal democratic countries' assertions in the LDC Annual Reports. Finally, the diagram shows the relationships between the points of contention of the new refuting theory, the testimony of North Korean defectors, and the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are grounded in this testimony.⁵⁵⁹

⁵⁵⁹ *See infra id.*

<Diagram 11> The New Refuting Theory and Its Incapacitation Mechanism Model



D. The Major Contents of the LDC Annual Reports

As evidenced in the analysis of the USCIRF Human Rights Report, the DPRK's violations of the right to an adequate standard of living, caused by the powerful influence of the Juchist and Marxist-Leninist Articles over North Korean society as a whole, as indicated in the new refuting theory, are in accord with the testimony of North Korean refugees who experienced and witnessed first-hand the severe violations of this right in their country.⁵⁶⁰ Thus, the DPRK's violations of the right to an adequate standard of living in the refuting theory coincide with the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are based on this testimony.

In this way, the arguments of the new refuting theory and its incapacitation mechanism model presented by this dissertation not only logically and theoretically support the testimony of North Korean refugees and the contentions of the liberal democratic countries attacking North Korea's violation of the right to an adequate standard of living in the LDC Annual Reports, but they are, in turn, practically and factually supported by the testimony of North Korean escapees and the arguments of the liberal democratic camp.

The major contents of the testimony of North Korean defectors, and the

⁵⁶⁰ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

arguments and analyses of the U.S., South Korea, and the U.K., which are based on this testimony, in the LDC Annual Reports are as follows:

1. U.S. Human Rights Report

The 2004 U.S. Human Rights Report states that “The WFP [World Food Programme] fed 3.36 million children during the year. A 2002 survey conducted by UNICEF [United Nations International Children’s Emergency Fund], with the cooperation of the North Korean Government, found that 20% of the 6,000 children surveyed were underweight, while another 39% were stunted in growth.”⁵⁶¹ This is in close agreement with estimates made by the UN Food and Agriculture Organization (FAO) that 37% of children suffered from stunting, and 33% of the entire North Korean population were undernourished, which are figures stated in the 2010 U.S. Human Rights Report.⁵⁶²

According to the 2000 U.S. Human Rights Report, the State controls all vital economic activity, and due to the outmoded equipment and plants and severe shortage

⁵⁶¹ See 2004 U.S. HUMAN RIGHTS REPORT, *supra* note 32 (“The WFP [World Food Programme] reported feeding 3.36 million children during the year. A nutrition survey carried out in 2002 by UNICEF [United Nations International Children’s Emergency Fund] and the WFP, in cooperation with the [North Korean] Government, found that in the sample of 6,000 children, 20 percent were underweight and 39 percent were stunted.”); see also *supra* note 44 and accompanying text.

⁵⁶² See 2010 U.S. HUMAN RIGHTS REPORT, *supra* note 32 (“The UN Food and Agriculture Organization (FAO) estimated that 7.8 million, or 33 percent of the population [of North Korea] was undernourished. FAO estimated 37 percent of children suffered from stunting.”).

of input materials, the industry operations continue to function at a very low capacity.⁵⁶³

The 2004 U.S. Human Rights Report analyzes that “The country’s traditional highly centralized and tightly controlled economy has broken down under the stress of chronic shortages of food and fuel.”⁵⁶⁴ The 2004 Report states that “The massive proportion of the GDP that is allocated to military spending, estimated to be between 25% and 33%, has severely limited and skewed economic development.”⁵⁶⁵ The 2004 Report also states that North Korea’s limited ability to borrow funds commercially is attributed to its poor credit rating, due to defaults on foreign debts.⁵⁶⁶

According to the 2000 U.S. Human Rights Report, “Famine has caused internal dislocation, widespread malnutrition, and approximately a million deaths from starvation [Harsh] [[e]conomic . . . conditions have caused thousands of persons to flee their homes.”⁵⁶⁷ The 2010 U.S. Human Rights Report discloses reports of farms

⁵⁶³ See 2000 U.S. HUMAN RIGHTS REPORT, *supra* note 32 (“The State directs all significant economic activity Industry continued to operate at much-reduced capacity that reflects antiquated plant and equipment and a severe shortage of inputs.”).

⁵⁶⁴ 2004 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

⁵⁶⁵ See *id.* (“Heavy military spending, estimated at between one-quarter and one-third of gross domestic product, has constrained and skewed economic development.”).

⁵⁶⁶ See *id.* (“Its [North Korea’s] poor credit rating, stemming from default on its foreign debt, sharply limited the amount of funds it was able to borrow commercially.”).

⁵⁶⁷ 2000 U.S. HUMAN RIGHTS REPORT, *supra* note 32; See 2004 U.S. HUMAN RIGHTS REPORT, *supra* note 32 (“[H]arsh economic and political conditions [in North Korea] have caused tens of thousands of persons to flee the country.”); see also *supra* Chapter Two.II.A.

and factories that failed to compensate or feed their workers.⁵⁶⁸ The report also divulges that “The government strictly controlled permission to reside in, or even to enter, Pyongyang, where food supplies, housing, . . . and general living conditions were much better than in the rest of the country.”⁵⁶⁹

2. USCIRF Human Rights Report

The 2009 USCIRF Human Rights Report states that “Prolonged famine and food shortage in North Korea have created a cross-border refugee problem in northern China. Over the past decade, hundreds of thousands of refugees have fled across the border to China because of famine conditions . . . and many have sought refuge in South Korea.”⁵⁷⁰ The report also discloses the following:

It is illegal to leave North Korea and those who do are punished, some severely. Due to the vast number of citizens seeking food in China, the government has been forced to ease its punishments, sentencing those repatriated to short period of detention or forced labor. However, over the past few years, refugees report that the government is returning to its harsher penalties for repatriated North Koreans, regardless of their reasons for fleeing.⁵⁷¹

⁵⁶⁸ See 2010 U.S. HUMAN RIGHTS REPORT, *supra* note 32 (“There were numerous reports that farms and factories did not pay wages or provide food to their workers.”).

⁵⁶⁹ *Id.*; See 2004 U.S. HUMAN RIGHTS REPORT, *supra* note 32 (“[O]nly members of a very small elite [in Pyongyang and other provincial capitals] and those with access to remittances from overseas had access to personal vehicles.”).

⁵⁷⁰ 2009 USCIRF HUMAN RIGHTS REPORT, *supra* note 33, at 24; See *supra* Chapter Two.II.A.

⁵⁷¹ *Id.* at 24-25; See *supra id.*

3. ROK Human Rights Report

The 2008 ROK Human Rights Report states the following:

The North Korean grain shortage had begun from the late 1980s. In 1987, North Korea for the first time reduced by 10 percent the national grain rations, which it had maintained for over 20 years. Then, in 1991 North Korea launched the so-called “two meals a day” campaign. Then in 1992 North Korea decided to reduce all grain rations by 10 percent again, except for the soldiers and workers at heavy-duty work places.(citation omitted)⁵⁷²

According to the report, rations are distributed in order of priority basis, starting with the Party staff, National Safety Protection Agency, the Military, and military industries.⁵⁷³ The report also specifies the following:

According to the testimony of a defector who came to South Korea after working for ten years at a grain administration office that handled grain purchase and distribution, the grains harvested at the farms are distributed to military units and the grains provided by the foreign sources are distributed mainly to the high-ranking officials; however, ordinary inhabitants receive 2-3 days worth of grain on major holidays like Kim Il Sung’s birthday, Kim Jong Il’s birthday, the Korean thanksgiving holiday, and so on.(citation omitted)⁵⁷⁴

Furthermore, the report discloses that a defector from Pyongyang, who left in 2006, reported the conditions to be so bad that even the people living in the privileged city of Pyongyang, were receiving one week’s worth of grain rations for an entire month.⁵⁷⁵

⁵⁷² 2008 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 260.

⁵⁷³ *See id.* at 263 (“It is believed that official rations have been distributed, on a priority basis, to the Party staff, National Safety Protection Agency, the Military, and military industries.”).

⁵⁷⁴ *Id.* at 263-264.

⁵⁷⁵ *See id.* at 264 (“A defector who defected from Pyongyang in 2006, stated the situation was so bad that even the people in Pyongyang, which is a privileged city, received only one week’s worth of ‘ration grain’

According to the 2010 ROK Human Rights Report, the food that were coming into NK through international humanitarian groups were not reaching the parts of the general population that were most affected by the grain shortage.⁵⁷⁶ For example, the report reveals testimony from a defector that “[c]itizens would line up to receive beef rations provided by UN agencies. However, after the UN staff finished taking photographs and departed the scene, the citizens would have to return the beef to the stores (rationing authorities).(citation omitted)”⁵⁷⁷ The report also divulges that “A defector who once served as a ‘people’s unit’ leader testified that she cooked ‘foreign aid rice’ at home twice in an effort to show off for (i.e. deceive) on-site UN inspectors, but she never again received ‘foreign aid rice.’(citation omitted)”⁵⁷⁸ Furthermore, the report informs us that despite UNICEF workers’ efforts to directly dispense the rice to the locals, at least 80% would end up going to the military.⁵⁷⁹ The report finds that most North Korean citizens find it natural for the foreign aid rice to go to the military,

in a month.(citation omitted”).

⁵⁷⁶ See 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 372 (“Despite the serious grain shortage, most of the food stuffs coming into North Korea through international humanitarian assistance did not seem to reach the sectors of the general population most in need.”).

⁵⁷⁷ *Id.*

⁵⁷⁸ *Id.*

⁵⁷⁹ See *id.* at 372-373 (“[U]NICEF workers would sometimes come and directly distribute ‘foreign aid rice’ to the local inhabitants. However, most ‘foreign aid rice’ did not go to the people; at least 80% of it ended up in the hands of the military . . . (citation omitted”).

and even if it is disapproved of, the people would act as if they had no complaints.⁵⁸⁰

4. U.K. Human Rights Report

The 2009 U.K. Human Rights Report states the following:

The WFP remain concerned that high rates of malnutrition continue among millions of children and women in the DPRK. The situation is more acute during the winter as temperatures drop and energy needs become greater for the vulnerable. The international community, including the Republic of Korea and the US, has indicated that it will provide assistance if there is another major food crisis. In the past, the DPRK has usually been reluctant to ask for help.⁵⁸¹

The 2012 U.K. Human Rights Report also emphasizes that the WFP assesses that the North Korean people are chronically malnourished.⁵⁸² Furthermore, the report explains that “Given the level of malnutrition . . . in the DPRK, many children do not have the basic necessities to enjoy their economic and social rights.”⁵⁸³

The 2012 U.K. Human Rights Report suggests the prevalence of severe food shortages in all regions of North Korea except Pyongyang, the capital of the country, through the following statements:

⁵⁸⁰ See *id.* at 373 (“What is interesting is that most North Koreans consider it natural that ‘foreign aid rice’ ends up going to the military. Even if people privately disapproved, they would usually pretend as if they had no complaints.”).

⁵⁸¹ 2009 U.K. HUMAN RIGHTS REPORT, *supra* note 15, at 108.

⁵⁸² See 2012 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 157 (“The World Food Programme assessment is that people in the DPRK remain chronically malnourished.”).

⁵⁸³ *Id.* at 160.

The British Embassy in Pyongyang supported several small projects to improve nutrition for young children. These included one which supplied a secure source of soybean milk to young children, two which funded greenhouses to support food growth for childcare centres, and one which provided freezers to a fish production unit supplying 261 welfare facilities. All of these projects were aimed at improving the diet of children outside Pyongyang who suffer from a particularly poor diet.”⁵⁸⁴

The 2012 Report also states that although Kim Jong Un has publicly pledged to better the living standards of his citizens over the year he’s been in power, the UK has not seen any substantial efforts in accomplishing this goal. The national priority is still proving to be focused on military spending. While the nation seeks international aid, North Korea still spent hundreds of millions of dollars launching two satellites in April and December.⁵⁸⁵ Finally, the report criticizes that “It [The DPRK] has . . . devoted significant resources to civic amenities such as amusement parks in Pyongyang, when it lacks the infrastructure to allow for effective food production or distribution in the rest of the country.”⁵⁸⁶

⁵⁸⁴ *Id.*; *See supra* note 48 and accompanying text.

⁵⁸⁵ The 2012 U.K. Human Rights Report states the following:
The DPRK leader, Kim Jong Un, has been in power for over a year and has promised publicly to improve the living standards of people. The UK would welcome efforts by the DPRK to develop its economy, but we have not yet seen any concrete measures which would achieve this. Military spending remains a national priority. While at the same time as seeking international aid, the DPRK spent hundreds of millions of dollars on two satellite launches in April and December.

Id. at 157.

⁵⁸⁶ *Id.*

II. The Right to Health

A. The Arguments of the North Korean Government and Its Main Grounds for the Arguments in the DPRK Official Reports

Article 56 and Article 72 of the North Korean Constitution are the Fundamental Rights Articles concerning the issue of the right to health within the country. Article 56 of the Constitution declares that “The State shall protect the people’s lives and improve the working people’s health by consolidating and developing the system of universal free medical service and improving the district doctor system and the system of preventive medicine.”⁵⁸⁷ In addition, Article 72 of the same Constitution stipulates that “Citizens are entitled to free medical care This right is ensured by free medical care, an expanding network of hospitals, sanatoria and other medical institutions, State social insurance and other social security systems.”⁵⁸⁸

North Korea uses a theoretical approach, which focuses on the core implementation mechanism of these Fundamental Rights Articles, as the main grounds for its arguments in defense of its practices of the right to health in the DPRK Official Reports. That is to say, the country introduces Article 56 and Article 72 of its Constitution as the guaranteed mechanism for the domestic protection of the right to

⁵⁸⁷ North Korean Constitution Chapter III, *supra* note 408.

⁵⁸⁸ North Korean Constitution Chapter V, *supra* note 231.

health of its people, as well as the core implementer for the articles on this right in the international human rights treaties to which it has acceded in the reports.

1. The Fundamental Rights Articles as the Guaranteed Mechanism for the Domestic Protection of the Right to Health

North Korea adverts to this mechanism in a series of its official reports. Thus, in paragraph 16 of the National Report, the North Korean government states that “The Constitution comprehensively provides for the fundamental rights and freedoms in all fields of State and public activity such as . . . the right[] to . . . free medical care”⁵⁸⁹ Additionally, in paragraph 62 of the same report, the government emphasizes that “Complete and universal free medical care has been provided since February 1960, which was later legalized by [Article 56 and Article 72 of] the Constitution Everyone in the DPRK receives medical service of all categories equally, practically and free of charge.”⁵⁹⁰

In paragraph 7 of the Second ICCPR Implementation Report, the North Korean government states that “The Constitution . . . stipulates the basic rights of citizens

⁵⁸⁹ 2009 National Report, *supra* note 11, at 4-5.

⁵⁹⁰ *Id.* at 12.

including . . . the right to free medical care”⁵⁹¹ In addition, in paragraph 33(b) of

the same report, the government argues the following:

The state has taken the legislative measures to protect human life and improve health, and thoroughly carries them out. Article 56 of the Constitution provides: “The state shall protect people’s lives and improve the working people’s health by consolidating and developing the system of universal free medical service and improving the district doctor system and the system of preventive medicine.”⁵⁹²

Furthermore, in paragraph 145 of the report, the government maintains that “The Constitution provides for the protection of the rights of the child by stipulating . . . [the] consolidating and developing the system of universal free medical service (article 56)”⁵⁹³

Similarly, in paragraph 46 of the Second ICESCR Implementation Report, the North Korean government states that “The child is under special protection by the State and society. The State, in conformity with the principle of ‘the best of all to the child,’ provided in the Constitution for . . . consolidating and developing the system of universal free medical service (art. 56) . . . to protect the rights of the child.”⁵⁹⁴

In paragraph 76 of the Initial CEDAW Implementation Report, the North Korean

⁵⁹¹ 2000 Second ICCPR Implementation Report, *supra* note 7, at 4-5.

⁵⁹² *Id.* at 12.

⁵⁹³ *Id.* at 35.

⁵⁹⁴ 2002 Second ICESCR Implementation Report, *supra* note 8, at 18.

government states that “The Constitution . . . provides that women are guaranteed, enjoy and exercise on an equal footing with men such basic rights as . . . the right to free medical care (article 72)”⁵⁹⁵

Finally, in paragraph 58 of the Combined CRC Implementation Report, the North Korean government states that “The Constitution stipulates the fundamental rights . . . of citizens; [c]itizens are guaranteed . . . [the] right to free medical care (art. 72)”⁵⁹⁶

2. The Fundamental Rights Articles as the Core Implementer for the Articles on the Right to Health in the International Human Rights Treaties

Once again, North Korea presents the Fundamental Rights Articles to argue its adherence to international human rights treaties in various reports.

Article 12, paragraph 1 of the ICESCR declares that “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”⁵⁹⁷ Article 12, paragraph 2 of the Covenant provides the following:

The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a)

⁵⁹⁵ 2002 Initial CEDAW Implementation Report, *supra* note 9, at 12.

⁵⁹⁶ 2007 Combined CRC Implementation Report, *supra* note 10, at 17.

⁵⁹⁷ ICESCR, *supra* note 4, art. 12, ¶ 1.

The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.⁵⁹⁸

Regarding the right to health in the Covenant, North Korea offers, in paragraph 65 of the Second ICESCR Implementation Report, that Article 56 and Article 72 of its Constitution acts as the core implementer that carries out Article 12 of the ICESCR as follows:

VII. ARTICLE 12 - RIGHT TO ENJOYMENT OF PHYSICAL AND MENTAL HEALTH

A. Physical and mental health

65. Every citizen is entitled to have his or her life protected and to enjoy physical and mental health under [Article 56 and Article 72 of] the Constitution⁵⁹⁹

Article 24, paragraph 1 of the CRC stipulates the following:

Article 24[.]1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.⁶⁰⁰

Additionally, paragraphs 2(a)-(d) of Article 24 of the Convention provide the following:

[Article 24.]2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical

⁵⁹⁸ ICESCR, *supra* note 4, art. 12, ¶ 2.

⁵⁹⁹ 2002 Second ICESCR Implementation Report, *supra* note 8, at 24.

⁶⁰⁰ CRC, *supra* note 5, art. 24, ¶ 1.

assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; (d) To ensure appropriate pre-natal and post-natal health care for mothers;⁶⁰¹

In paragraph 144 of the Combined CRC Implementation Report, the North Korean government provides Article 56 and Article 72 of its Constitution, amongst others, as the core mechanism to carry out Article 24 of the CRC:

B. Health and health services (art. 24)

144. Legislative measures [such as Article 56 and Article 72 of the Constitution] and the invariable State policy concerning the promotion of the right of the child to the enjoyment of the highest attainable standard of health and to facilities for treatment and rehabilitation have remained unchanged during the period under review.⁶⁰²

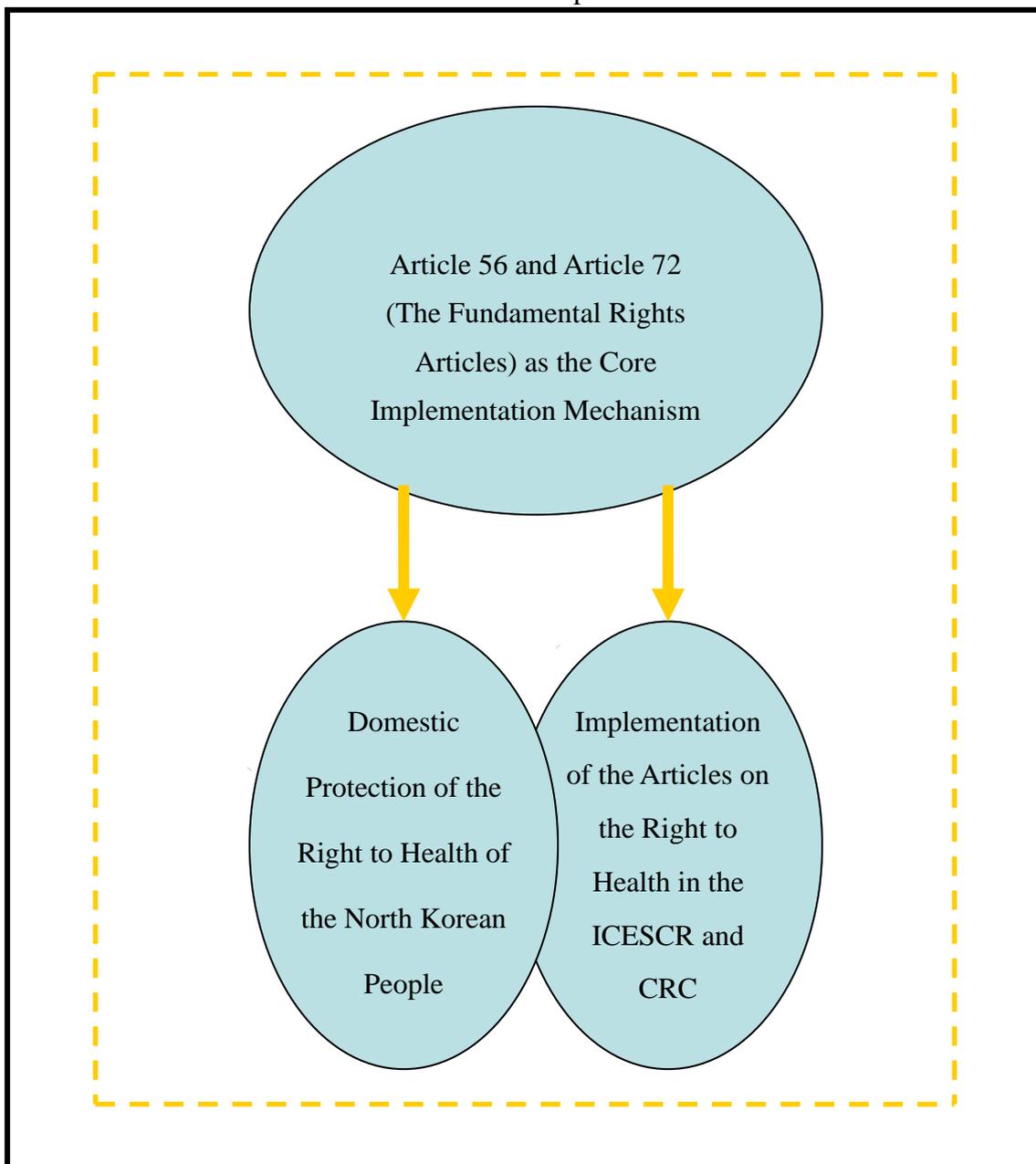
3. The Diagrammatization of the Core Implementation Mechanism Model

The core implementation mechanism model of Article 56 and Article 72, which shows both North Korea's arguments in defense of its practices of the right to health and the main grounds for its arguments in the DPRK Official Reports, is diagrammatized below:

⁶⁰¹ CRC, *supra* note 5, art. 24, ¶ 2(a)-(c).

⁶⁰² 2007 Combined CRC Implementation Report, *supra* note 10, at 35.

<Diagram 12> The Core Implementation Mechanism Model of the Fundamental Rights Articles in the DPRK Official Reports



B. The Juchist and Marxist-Leninist Articles and the Influence of Juche Ideology and Marxism-Leninism on the Articles

Article 34, which stipulates the pursuit of a centrally planned economy, and

Article 3, which provides the pursuit of the military-first policy, are the two Juchist and Marxist-Leninist Articles concerning the issue of the right to health within North Korea.

We reviewed that the pursuit of a centrally planned economy essentially cannot coexist with the guarantee of the right to an adequate standard of living in the previous section.⁶⁰³ In addition, we reviewed that the pursuit of the military-first policy for the possession of strong military power against the imperialist forces is also essentially incompatible with the protection of the same right in the section.⁶⁰⁴

As with the guarantee of the right to an adequate standard of living, the guarantee of the right to health is also a matter of the economic power and financial capacities of a country, which is the major premise in securing and promoting the welfare of its people. Thus, as long as North Korea adheres to a centrally planned economic system, which ultimately leads to public poverty and misery, as well as the collapse of the national economy, the domestic guarantee of the right to health of the North Korean people is not available.⁶⁰⁵ Additionally, so long as the country sticks to the military-first policy, which leaves a small budget and little resources for the welfare of the people, the implementation of the articles on the right to health in the international human rights

⁶⁰³ See *supra* Chapter Five.I.B.

⁶⁰⁴ See *supra id.*

⁶⁰⁵ See *supra* Chapter Five.I.B; see also *infra* Chapter Five.II.D.

treaties is impossible.⁶⁰⁶ That is to say, the pursuit of a command economy and the military-first policy are essentially incompatible with the guarantee of the right to health.

As reviewed, the pursuit of a command economy is the key economic tenet of Marxism-Leninism and Juche ideology.⁶⁰⁷ This tenet of the unofficial and official ruling ideologies of North Korea was publicly legislated in Article 34, which is one of the Juchist and Marxist-Leninist Articles on the right to health.

Additionally, the pursuit of the military-first policy for the possession of strong military power against the imperialist forces is the key military tenet of Marxism-Leninism and Juche ideology.⁶⁰⁸ This tenet of the unofficial and official ruling ideologies of North Korea was publicly legislated in Article 3, which is one of the Juchist and Marxist-Leninist Articles on the right to health.

C. The New Refuting Theory and Its Incapacitation Mechanism Model

The North Korean Constitution contains two fundamentally distinct types of articles with opposing function and operation in terms of the guarantee of the right to health. One type is the Fundamental Rights Article, such as Article 56 and Article 72,

⁶⁰⁶ *See supra id.*; *see also infra id.*

⁶⁰⁷ *See supra* Chapter Five.I.B.1; *see also supra* Chapter Five.I.B.2.

⁶⁰⁸ *See supra* Chapter Five.I.B.3; *see also supra* Chapter Five.I.B.4.

and the other is the Juchist and Marxist-Leninist Article, such as Article 34 and Article 3.

As reviewed earlier, Article 56 and Article 72 serve as the core implementing mechanism of the North Korean Constitution for its right to health.⁶⁰⁹ Thus, as is argued by North Korea in the DPRK Official Reports, the Fundamental Rights Articles are, in their very nature, supposed to protect this fundamental right of the North Korean people.

On the other hand, the pursuit of a centrally planned economy and the pursuit of the possession of strong military power against imperialism are key tenets of Juche ideology and Marxism-Leninism.⁶¹⁰ Thus, from the logical and theoretical standpoint, it is natural for the Juchist and Marxist-Leninist Articles, which faithfully incorporate the core principles of the two anti-fundamental rights and ruling ideologies controlling North Korea, to take the disposition of anti-fundamental rights articles in order to pursue and consolidate a command economy and the military-first policy, and to position themselves as the ruling articles. Namely, Article 34 and Article 3 are not only the Juchist and Marxist-Leninist Articles, but also work as the anti-fundamental rights and ruling articles from the logical and theoretical standpoint.

We reviewed that the clash in function and role between the guarantee of the right

⁶⁰⁹ See *supra* Chapter Five.II.A.

⁶¹⁰ See *supra* Chapter Five.I.B; see also *supra* Chapter Five.II.B.

to health and the pursuit of a command economy and the military-first policy is inevitable from a logical and theoretical standpoint.⁶¹¹ Similarly, these two extremes, both in their very nature and workings, are bound to clash with each other in performing their function and role within one constitutional boundary, as demonstrated by the clash of Articles 56 and 72 with Articles 34 and 3.

The issue of the functional clash is solved by the relationship of superiority and relative inferiority between the two types of articles. Article 34 and Article 3, the anti-fundamental rights and ruling articles for the consolidation of a command economy and the military-first policy, has superiority over Article 56 and Article 72, the Fundamental Rights Articles for the right to health, in their function and operation. As a result, Article 34 and Article 3, which are also the Juchist and Marxist-Leninist Articles, incapacitate the Fundamental Rights Articles, which are the core implementation mechanism of the North Korean Constitution, at the time of this functional clash.

The resulting weakening of the Fundamental Rights Articles leads to the theoretical impossibility of performing the core implementation mechanism model centered on Article 56 and Article 72 in the DPRK Official Reports. Consequently, all of the arguments of the North Korean government in defense of its practices of the right

⁶¹¹ See *supra* Chapter Five.II.B.

to health in its official reports, which are grounded in this theoretical approach, are totally unrealizable given its constitutional structure and mechanism. That is to say, this impossibility of performance proves false in the Incapacitation Stage any notion that North Korea guarantees the right to health of its people or that it complies with the articles on this right in the international human rights treaties from a logical and theoretical standpoint.

After completely weakening the Fundamental Rights Articles, the Juchist and Marxist-Leninist Articles wield strong influence over the North Korean society at large without any difficulty or obstruction. The practical results of this powerful leverage are manifested in the severe violations of fundamental rights and international human rights treaties in North Korea.⁶¹² In essence, since the sole function of the anti-fundamental rights and ruling articles is to carry out the economic and military doctrines of Juche ideology and Marxism-Leninism, there is no constitutional basis to secure the right to health for the North Korean people or to prevent the government from violating such protections prescribed by international human rights treaties.

It necessarily follows, logically and theoretically, that the arguments of the U.S., South Korea, and the U.K. condemning the DPRK's violations of the right to health in

⁶¹² See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

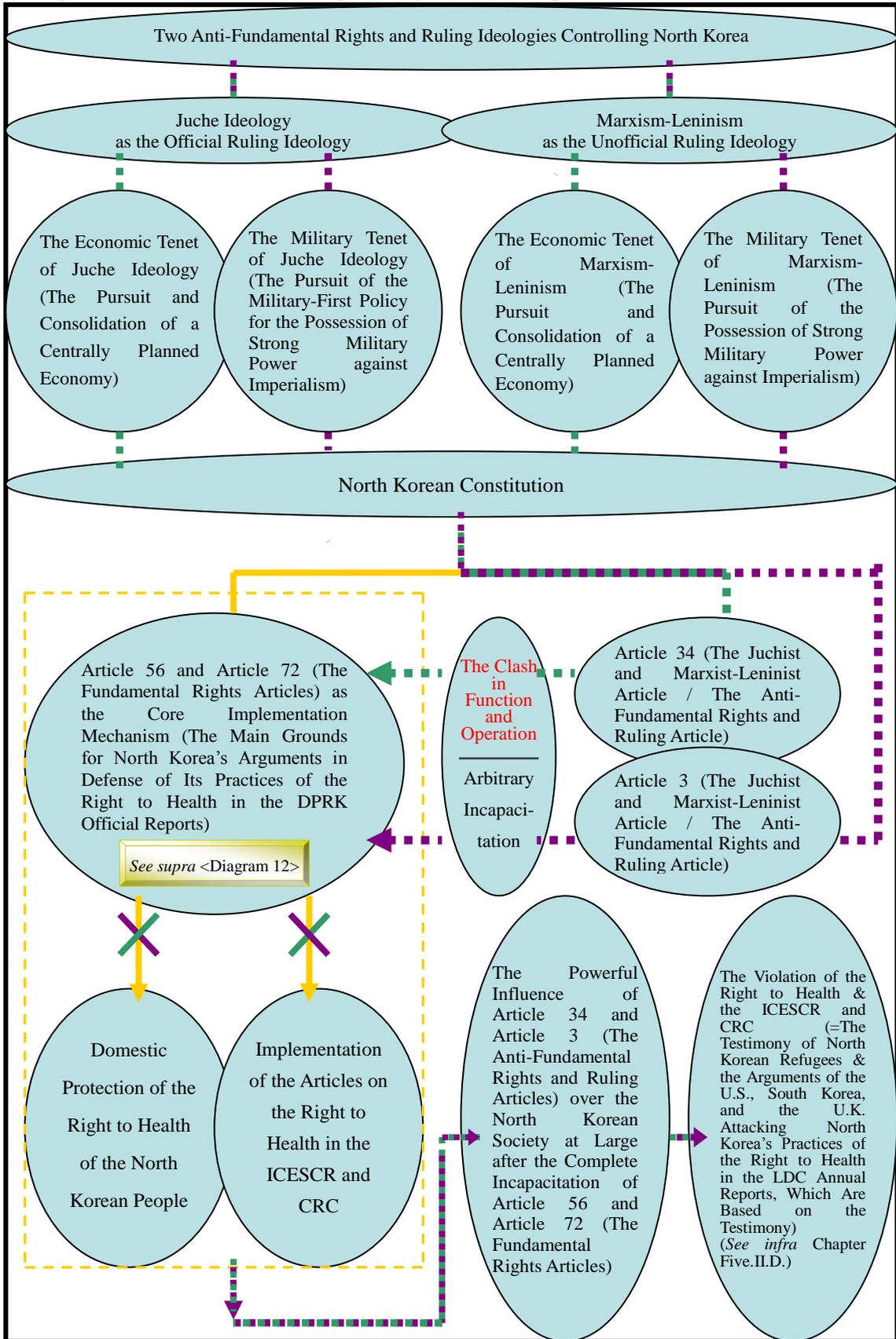
the LDC Annual Reports⁶¹³ are proven true by the constitutional structure and mechanism of North Korea in the Human Rights Violation Stage.

The following diagram incorporates all aspects of the newly developed refuting theory and its incapacitation mechanism model of Article 34 and Article 3, including the core premises, key factors, logical order and flow, and theoretical structure. The diagram also incorporates the evidence for verifying the falsity of North Korea's arguments in the DPRK Official Reports and for verifying the truth of the liberal democratic countries' assertions in the LDC Annual Reports. Finally, the diagram shows the relationships between the points of contention of the new refuting theory, the testimony of North Korean defectors, and the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are grounded in this testimony.⁶¹⁴

⁶¹³ *See infra* Chapter Five.II.D.

⁶¹⁴ *See infra id.*

<Diagram 13> The New Refuting Theory and Its Incapacitation Mechanism Model



D. The Major Contents of the LDC Annual Reports

As evidenced in the analysis of the USCIRF Human Rights Report, the DPRK's violations of the right to health, caused by the powerful influence of the Juchist and Marxist-Leninist Articles over North Korean society as a whole, as indicated in the new refuting theory, are in accord with the testimony of North Korean refugees who experienced and witnessed first-hand the severe violations of this right in their country.⁶¹⁵ Thus, the DPRK's violations of the right to health in the refuting theory coincide with the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are based on this testimony.

In this way, the arguments of the new refuting theory and its incapacitation mechanism model presented by this dissertation not only logically and theoretically support the testimony of North Korean refugees and the contentions of the liberal democratic countries attacking North Korea's violation of the right to health in the LDC Annual Reports, but they are, in turn, practically and factually supported by the testimony of North Korean escapees and the arguments of the liberal democratic camp.

The major contents of the testimony of North Korean defectors, and the arguments and analyses of the U.S., South Korea, and the U.K., which are based on this

⁶¹⁵ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

testimony, in the LDC Annual Reports are as follows:

1. U.S. Human Rights Report

The 2012 U.S. Human Rights Report cites a UNICEF report that “[t]he deteriorating health system, lack of medicine, and emergency referrals [in North Korea] affected the high rate of maternal mortality. The World Food Program found that 31 percent of [North Korean] women surveyed suffered from anemia. Anemia increases the likelihood of maternal mortality.”⁶¹⁶ The report also states the following:

The UN Committee on the Rights of the Child repeatedly expressed concern over de facto discrimination against children with disabilities and the insufficient measures taken by the state to ensure these children had effective access to health . . . and social services. UNICEF has noted that very high levels of malnutrition indicated serious problems for both the physical growth and psychosocial development of young children.⁶¹⁷

Finally, the report divulges that “Although veterans with disabilities were treated well, other persons with physical and mental disabilities reportedly were sent from Pyongyang to internal exile, quarantined within camps, and forcibly sterilized.”⁶¹⁸

2. ROK Human Rights Report

⁶¹⁶ 2012 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

⁶¹⁷ *Id.*

⁶¹⁸ *Id.*

The 2010 ROK Human Rights Report describes the testimony of a medical doctor who defected to South Korea in 2007, and reveals much about health and medical systems and services in North Korea. He reveals that in a certain district of Buryong County, North Hamkyung Province, free medical treatment is nearly nonexistent in recent years. The hospital conditions prove to be very dire when a patient has to bring his own food and bedding, and provide himself heating in the winter by bringing an electric heater or firewood. With the collapse of the economy, the free treatment system has disintegrated.⁶¹⁹ The report also provides the account of Norbert Vollertsen, a German doctor who provided medical service in North Korea from July 1999 to December 2000, before he was expelled from the country. Mr. Vollertsen testified that most hospitals did not have antibiotics or bandages, or even simple operating equipment, such as surgical knives. However, hospitals for high-ranking military officers and the elite were almost on par with modern German hospitals, and included equipment like MRI, Ultra-sonar, EKG, and X-ray cameras, demonstrating the extreme inequality

⁶¹⁹ The 2010 ROK Human Rights Report reveals the following:

A defector who used to work as a medical doctor until before he defected to South Korea in 2007 testified in detail on North Korea's health and medical system and services. This graduate of Chongjin Medical School provided the following details about the situation in XX district, Buryong County, North Hamkyung Province: The free medical treatment system has nearly ground to a halt in recent years. . . . Upon admission to the hospital, each patient must bring in food and his own bedding. Since there is no heating in winter, the patient must bring in an electric heater or firewood. . . . The so-called free treatment system has virtually disappeared with the collapse of the economy. . . .(citation omitted)

2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 383-384.

between the different levels of hospitals.⁶²⁰ A defector doctor, who practiced as a pediatrician for 30 years before his defection to South Korea in 1998, testified that medical services had become “paralyzed” around 1990. Most North Korean children are not vaccinated, despite the importance of preventative medicine as a policy, and BCG vaccines have been nonexistent after 1992. Only the cholera and Japanese influenza vaccinations are still given to a small minority of the population, such as security agents and staff members who regularly travel. All kinds of contagious diseases are rampant, due to the lack of proper vaccination at the correct stages of development.⁶²¹

In addition to the abovementioned reportings, the 2010 ROK Human Rights

⁶²⁰ The report states the following:

Norbert Vollertsen is a German doctor who provided medical service in North Korea between July 1999 and December 2000, when he was expelled. He testified that in most North Korean hospitals there were no antibiotics or bandages, nor such simple operating equipment as surgical knives. However, hospitals that were used for treatment of high-ranking military officers and the elite were almost as modernly equipped as German hospitals. Their inventory included MRI, Ultra-sonar, EKG and X-ray cameras. He testified that an enormous inequality existed between the two levels of hospitals.(citation omitted)

Id. at 381-382.

⁶²¹ The 2010 ROK Human Rights Report discloses the following:

Defector XXX had practiced medicine for 30 years in North Korea, after graduating from a medical school in 1968. Until before his defection to South Korea in 1998, he had worked as a pediatrician at XX City Hospital in North Hamkyung Province. He testified on the situation of medical service in North Korea: According to him, North Korean medical service became paralyzed about 1990. The most important medical policy is preventive medicine, but most children in North Korea do not receive preventive vaccination, and the BCG vaccines have disappeared after 1992 [with the collapse of the North Korean economy]. The only preventive vaccination still given is against cholera and Japanese influenza. But this vaccination is given only to a small minority such as security agents and staff members who frequently travel. Because children are not vaccinated at proper stages, all varieties of contagious diseases and illnesses are rampant. . . .(citation omitted)

Id. at 382-383.

Report informs us that the WHO mission chief in North Korea, Eigil Sorensen, testified the inadequacy of North Korean medical service to a point of crisis. Due to the insufficient electricity and running water, hospital hours are very limited, and patients in need of urgent care are often unable to receive treatment in time. He also reports of the lack of heating for the patients during the winter.⁶²² The 2004 ROK Human Rights Report also divulges the impact of economic hardships on the health and medical fields, including the shortage of necessities such as running water and electricity. Many North Koreans suffer from diseases from contamination, due to lack of running water, and infectious diseases, such as cholera and paratyphoid are widespread. Even tuberculosis, which had been reported to be eradicated in 1975, has made a widespread return to North Korea.⁶²³ Furthermore, the report finds that the death rate of pregnant mothers has been rising, due to the lack of obstetrics facilities and extensive

⁶²² The 2010 ROK Human Rights Report informs us with the following:
The WHO [World Health Organization] mission chief in North Korea, Eigil Sorensen, testified at an interview with South Korean reporters in January 2004, that the level of medical service in North Korea was so inadequate as to call it a crisis.(citation omitted) According to Sorensen, hospital hours are limited due to the shortages of electricity and running water, and that very frequently patients needing urgent care could not be treated in time. He also noted a complete lack of heating in the patient wards in winter months.
Id. at 381.

⁶²³ The 2004 ROK Human Rights Report divulges the following:
The economic hardship . . . had a considerable impact on the health and medical fields. It also contributed to the shortages of running water and electricity. Because there is no running water supply, many North Koreans suffer from, and are victimized by, the many diseases caused by contaminated water. Infectious diseases like cholera and paratyphoid are rampant, and tuberculosis, which North Korea reported completely eliminated in 1975, is once again widespread in North Korea.
2004 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 37.

malnourishment. From 1990 to 1996, there has been an increase from 70 out of 100,000 to 110 in the mortality rate. The infant mortality rate has also jumped from 14 out of 1000 to 22.5, from 1993 to 1999. About 30% of 450,000 breast-feeding mothers suffered from pernicious anemia and iron deficiency. Underweight newborns are also increasing in number, while their average weight has decreased from 3.3 kg to 2.2–2.6 kg.⁶²⁴ Finally, the 2010 ROK Human Rights Report indicates that North Korea receives several hundred tons of medicine from the international community every year, but is suspected to distribute most of it to special classes of the population, as there is no transparency in how the medicine is dispensed or used.⁶²⁵

The report concludes that North Korea insists that it still operates by the universal medicare system, but the harsh reality of the dire economic situation proves their claim false.⁶²⁶

⁶²⁴ The report explains the following:

Due to the malnutrition of pregnant mothers and lack of obstetrics facilities, the death rate of pregnant mothers . . . increased steadily. In 1990, some 70 out of 100,000 died and the number increased to 110 in 1996. The infant mortality rate also increased from 14 deaths out of 1,000 in 1993 to 22.5 in 1999. Some 30 percent of 450,000 baby-feeding mothers were suffering from pernicious anemia and iron deficiency. The number of under-weight newborn babies has also increased steadily since 1995, and their average weight dropped from 3.3 kilograms to 2.2-2.6 kilograms.

Id.

⁶²⁵ See 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 390 (“Each year, North Korea receives several hundred tons of medicine from the international community. However, it is suspected that most of it is being diverted for use by special classes of people, and there is absolutely no transparency as to the distribution and use of the medicine.”).

⁶²⁶ See *id.* at 381 (“North Korea maintains that its so-called universal medicare system still operates. However, the realities of economic hardship reveal otherwise.”).

3. U.K. Human Rights Report

The 2009 U.K. Human Rights Report states that while the law requires free healthcare, North Korea's economic hardships have caused a shortage in medicines and the breakdown of the public health system.⁶²⁷ The report also indicates the following:

The DPRK says it has increased spending on health through a Strategy for the Promotion of Reproductive Health 2006–10, a Strategy for Prevention of AIDS for 2002–07, and a Primary Health Care Strategy 2008–12. However, according to the UN there remains a shortage of reliable medicines and medical equipment. Progress will be slow in the absence of improved access for the World Health Organisation (WHO) and international NGOs working in the health field to assess the extent of the problem and the needs of the most vulnerable.⁶²⁸

Furthermore, the 2012 U.K. Human Rights Report explains that with the poor healthcare in North Korea, children are not able to have the basic necessities to enjoy their economic and social rights.⁶²⁹ The 2007 U.K. Human Rights Report supports this claim by stating that “The government does not respect children’s rights in the basic sense of providing adequate nutrition and health services.”⁶³⁰

⁶²⁷ See 2009 U.K. HUMAN RIGHTS REPORT, *supra* note 15, at 107 (“Although healthcare is free by law, the DPRK’s economic difficulties have led to a shortage in medicines and a deteriorating public health system.”).

⁶²⁸ *Id.*

⁶²⁹ See 2012 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 160 (“Given the level of . . . poor healthcare facilities in the DPRK, many children do not have the basic necessities to enjoy their economic and social rights.”).

⁶³⁰ 2007 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 149.

III. The Right to Education

A. The Arguments of the North Korean Government and Its Main Grounds for the Arguments in the DPRK Official Reports

Article 47 and Article 73 of the North Korean Constitution are the Fundamental Rights Articles concerning the issue of the right to education within the country. Article 47 of the Constitution declares that “The State shall provide education to all pupils and students free of charge and grant allowances to students at universities and colleges.”⁶³¹ In addition, Article 73 of the same Constitution stipulates that “Citizens have the right to education. This right is ensured by an advanced educational system and by the educational measures enacted by the State for the benefit of the people.”⁶³²

North Korea uses a theoretical approach, which focuses on the core implementation mechanism of these Fundamental Rights Articles, as the main grounds for its arguments in defense of its practices of the right to education in the DPRK Official Reports. That is to say, the country introduces Article 47 and Article 73 of its Constitution as the guaranteed mechanism for the domestic protection of the right to education of its people, as well as the core implementer for the articles on this right in the international human rights treaties to which it has acceded in the reports.

⁶³¹ North Korean Constitution Chapter III, *supra* note 408.

⁶³² North Korean Constitution Chapter V, *supra* note 231.

1. The Fundamental Rights Articles as the Guaranteed Mechanism for the Domestic Protection of the Right to Education

North Korea adverts to this mechanism in a series of its official reports. Thus, in paragraph 16 of the National Report, the North Korean government states that “The Constitution comprehensively provides for the fundamental rights and freedoms in all fields of State and public activity such as . . . the right[] to . . . education”⁶³³

Additionally, in paragraph 71 of the same report, the government emphasizes the following:

All the children receive compulsory education free of charge starting from the age of six or seven under the universal 11-year free compulsory education system [prescribed by Article 47 and Article 73 of the Constitution], giving full scope to their wishes and talents. The enrolment rate in primary school is 100 per cent, the advancement rate 99.7 per cent and the graduation rate 100 per cent.⁶³⁴

In paragraph 7 of the Second ICCPR Implementation Report, the North Korean government states that “The Constitution . . . stipulates the basic rights of citizens including . . . the right to free . . . education”⁶³⁵ In addition, in paragraph 145 of the same report, the government argues that “The Constitution provides for the protection of the rights of the child by stipulating . . . [the] provision of education to all

⁶³³ 2009 National Report, *supra* note 11, at 4-5.

⁶³⁴ *Id.* at 13.

⁶³⁵ 2000 Second ICCPR Implementation Report, *supra* note 7, at 4-5.

pupils and students free of charge (article 47)”⁶³⁶

Similarly, in paragraph 46 of the Second ICESCR Implementation Report, the North Korean government states that “The child is under special protection by the State and society. The State, in conformity with the principle of ‘the best of all to the child,’ provided in the Constitution for . . . [the] education of all pupils and students free of charge (art. 47) . . . to protect the rights of the child.”⁶³⁷ In addition, in paragraph 87 of the same report, the government maintains that “Those who have finished the 11-year compulsory education are entitled to get higher education according to their hope and aptitude under [Article 47 and Article 73 of] the Constitution”⁶³⁸

In paragraph 76 of the Initial CEDAW Implementation Report, the North Korean government states that “The Constitution . . . provides that women are guaranteed, enjoy and exercise on an equal footing with men such basic rights as . . . the right to education (article 73)”⁶³⁹ In addition, in paragraph 131 of the same report, the government argues that “All citizens both male and female fully enjoy the right to education thanks to the advanced educational system and popular education policies. The right to

⁶³⁶ *Id.* at 35.

⁶³⁷ 2002 Second ICESCR Implementation Report, *supra* note 8, at 18.

⁶³⁸ *Id.* at 30.

⁶³⁹ 2002 Initial CEDAW Implementation Report, *supra* note 9, at 12.

education and the guarantee of its realization are stipulated comprehensively in [Article 47 and Article 73 of] the Constitution⁶⁴⁰

Finally, in paragraph 58 of the Combined CRC Implementation Report, the North Korean government states that “The Constitution stipulates the fundamental rights . . . of citizens; [c]itizens are guaranteed . . . [the] right to education (art. 73)”⁶⁴¹

2. The Fundamental Rights Articles as the Core Implementer for the Articles on the Right to Education in the International Human Rights Treaties

Once again, North Korea presents the Fundamental Rights Articles to argue its adherence to international human rights treaties in various reports.

Article 13, paragraph 1 of the ICESCR stipulates that “The States Parties to the present Covenant recognize the right of everyone to education. . . .”⁶⁴² Article 13, paragraph 2 of the Covenant provides the following:

The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right: (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

⁶⁴⁰ *Id.* at 20.

⁶⁴¹ 2007 Combined CRC Implementation Report, *supra* note 10, at 17.

⁶⁴² ICESCR, *supra* note 4, art. 13, ¶ 1.

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.⁶⁴³

Regarding the right to education in the Covenant, North Korea offers, in paragraph 84 of the Second ICESCR Implementation Report, that Article 47 and Article 73 of its Constitution acts as the core implementer that carries out Article 13 of the ICESCR as follows:

VIII. ARTICLE 13 - RIGHT TO EDUCATION

A. Education policy

84. The State, under the policy of putting education ahead of all other work, spares nothing for the education of the rising generation. By the progressive education system and the popular policy of education, every citizen fully enjoys the right to education. The right to education and its realization is guaranteed by [Article 47 and Article 73 of] the Constitution⁶⁴⁴

Paragraphs 1(a)-(e) of Article 28 of the CRC stipulates the following:

Article 28[.1]. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make

⁶⁴³ ICESCR, *supra* note 4, art. 13, ¶ 2.

⁶⁴⁴ 2002 Second ICESCR Implementation Report, *supra* note 8, at 30.

educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.⁶⁴⁵

In paragraph 173 of the Combined CRC Implementation Report, the North Korean government provides Article 47 and Article 73 of its Constitution, amongst others, as the core mechanism to carry out Article 28 of the CRC:

VII. EDUCATION . . .

A. Education, including vocational training and guidance (art. 28)

173. The legislative measures [such as Article 47 and Article 73 of the Constitution] and policies [were] adopted to recognize and ensure the right of the child to education⁶⁴⁶

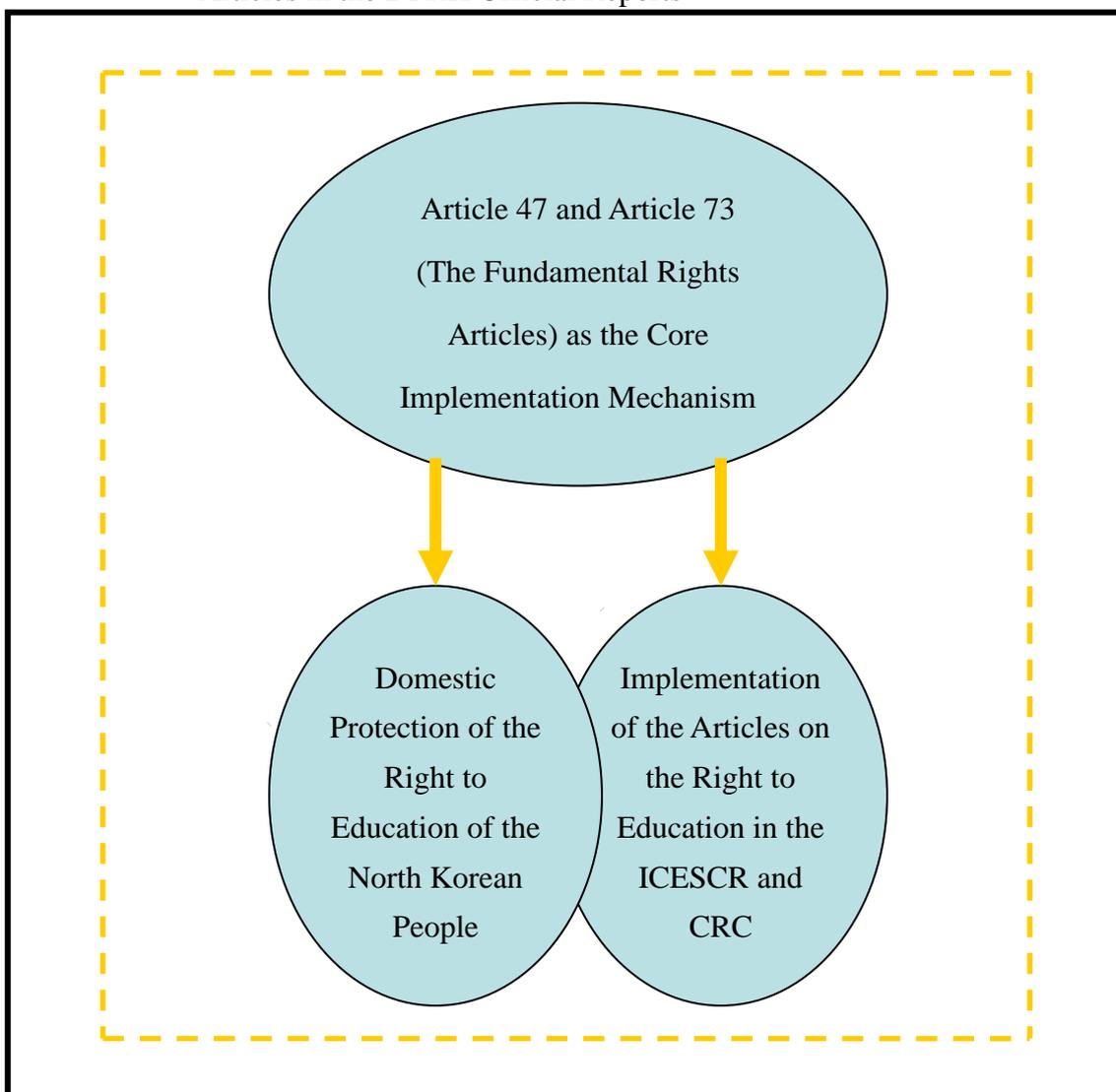
3. The Diagrammatization of the Core Implementation Mechanism Model

The core implementation mechanism model of Article 47 and Article 73, which shows both North Korea's arguments in defense of its practices of the right to education and the main grounds for its arguments in the DPRK Official Reports, is diagrammatized below:

⁶⁴⁵ CRC, *supra* note 5, art. 28, ¶ 1(a)-(e).

⁶⁴⁶ 2007 Combined CRC Implementation Report, *supra* note 10, at 42.

<Diagram 14> The Core Implementation Mechanism Model of the Fundamental Rights Articles in the DPRK Official Reports



B. The Juchist and Marxist-Leninist Articles and the Influence of Juche Ideology and Marxism-Leninism on the Articles

Article 34, which stipulates the pursuit of a centrally planned economy, and Article 3, which provides the pursuit of the military-first policy, are the two Juchist and Marxist-Leninist Articles concerning the issue of the right to education within North

Korea.

We reviewed that the pursuit of a centrally planned economy essentially cannot coexist with the guarantee of the right to an adequate standard of living in the previous section.⁶⁴⁷ In addition, we reviewed that the pursuit of the military-first policy for the possession of strong military power against the imperialist forces is also essentially incompatible with the protection of the same right in the section.⁶⁴⁸

As with the guarantee of the right to an adequate standard of living, the guarantee of the right to education is also a matter of the economic power and financial capacities of a country, which is the major premise in securing and promoting the welfare of the people. Thus, as long as North Korea adheres to a centrally planned economic system, which ultimately leads to public poverty and misery, as well as the collapse of the national economy, the domestic guarantee of the right to education of the North Korean people is not available.⁶⁴⁹ Additionally, so long as the country sticks to the military-first policy, which leaves a small budget and little resources for the welfare of the people, the implementation of the articles on the right to education in the international

⁶⁴⁷ See *supra* Chapter Five.I.B.

⁶⁴⁸ See *supra id.*

⁶⁴⁹ See *supra* Chapter Five.I.B; see also *infra* Chapter Five.III.D.

human rights treaties is impossible.⁶⁵⁰ That is to say, the pursuit of a command economy and the military-first policy are essentially incompatible with the guarantee of the right to education.

As reviewed, the pursuit of a command economy is the key economic tenet of Marxism-Leninism and Juche ideology.⁶⁵¹ This tenet of the unofficial and official ruling ideologies of North Korea was publicly legislated in Article 34, which is one of the Juchist and Marxist-Leninist Articles on the right to education.

Additionally, the pursuit of the military-first policy for the possession of strong military power against the imperialist forces is the key military tenet of Marxism-Leninism and Juche ideology.⁶⁵² This tenet of the unofficial and official ruling ideologies of North Korea was publicly legislated in Article 3, which is one of the Juchist and Marxist-Leninist Articles on the right to education.

C. The New Refuting Theory and Its Incapacitation Mechanism Model

The North Korean Constitution contains two fundamentally distinct types of articles with opposing function and operation in terms of the guarantee of the right to

⁶⁵⁰ See *supra id.*; see also *infra id.*

⁶⁵¹ See *supra* Chapter Five.I.B.1; see also *supra* Chapter Five.I.B.2.

⁶⁵² See *supra* Chapter Five.I.B.3; see also *supra* Chapter Five.I.B.4.

education. One type is the Fundamental Rights Article, such as Article 47 and Article 73, and the other is the Juchist and Marxist-Leninist Article, such as Article 34 and Article 3.

As reviewed earlier, Article 47 and Article 73 serve as the core implementing mechanism of the North Korean Constitution for its right to education.⁶⁵³ Thus, as is argued by North Korea in the DPRK Official Reports, the Fundamental Rights Articles are, in their very nature, supposed to protect this fundamental right of the North Korean people.

On the other hand, the pursuit of a centrally planned economy and the pursuit of the possession of strong military power against imperialism are key tenets of Juche ideology and Marxism-Leninism.⁶⁵⁴ Thus, from the logical and theoretical standpoint, it is natural for the Juchist and Marxist-Leninist Articles, which faithfully incorporate the core principles of the two anti-fundamental rights and ruling ideologies controlling North Korea, to take the disposition of anti-fundamental rights articles in order to pursue and consolidate a command economy and the military-first policy, and to position themselves as the ruling articles. Namely, Article 34 and Article 3 are not only the Juchist and Marxist-Leninist Articles, but also work as the anti-fundamental

⁶⁵³ See *supra* Chapter Five.III.A.

⁶⁵⁴ See *supra* Chapter Five.I.B; see also *supra* Chapter Five.III.B.

rights and ruling articles from the logical and theoretical standpoint.

We reviewed that the clash in function and role between the guarantee of the right to education and the pursuit of a command economy and the military-first policy is inevitable from a logical and theoretical standpoint.⁶⁵⁵ Similarly, these two extremes, both in their very nature and workings, are bound to clash with each other in performing their function and role within one constitutional boundary, as demonstrated by the clash of Articles 47 and 73 with Articles 34 and 3.

The issue of the functional clash is solved by the relationship of superiority and relative inferiority between the two types of articles. Article 34 and Article 3, the anti-fundamental rights and ruling articles for the consolidation of a command economy and the military-first policy, has superiority over Article 47 and Article 73, the Fundamental Rights Articles for the right to education, in their function and operation. As a result, Article 34 and Article 3, which are also the Juchist and Marxist-Leninist Articles, incapacitate the Fundamental Rights Articles, which are the core implementation mechanism of the North Korean Constitution, at the time of this functional clash.

The resulting weakening of the Fundamental Rights Articles leads to the theoretical impossibility of performing the core implementation mechanism model

⁶⁵⁵ See *supra* Chapter Five.III.B.

centered on Article 47 and Article 73 in the DPRK Official Reports. Consequently, all of the arguments of the North Korean government in defense of its practices of the right to education in its official reports, which are grounded in this theoretical approach, are totally unrealizable given its constitutional structure and mechanism. That is to say, this impossibility of performance proves false in the Incapacitation Stage any notion that North Korea guarantees the right to education of its people or that it complies with the articles on this right in the international human rights treaties from a logical and theoretical standpoint.

After completely weakening the Fundamental Rights Articles, the Juchist and Marxist-Leninist Articles wield strong influence over the North Korean society at large without any difficulty or obstruction. The practical results of this powerful leverage are manifested in the severe violations of fundamental rights and international human rights treaties in North Korea.⁶⁵⁶ In essence, since the sole function of the anti-fundamental rights and ruling articles is to carry out the economic and military doctrines of Juche ideology and Marxism-Leninism, there is no constitutional basis to secure the right to education for the North Korean people or to prevent the government from violating such protections prescribed by international human rights treaties.

⁶⁵⁶ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

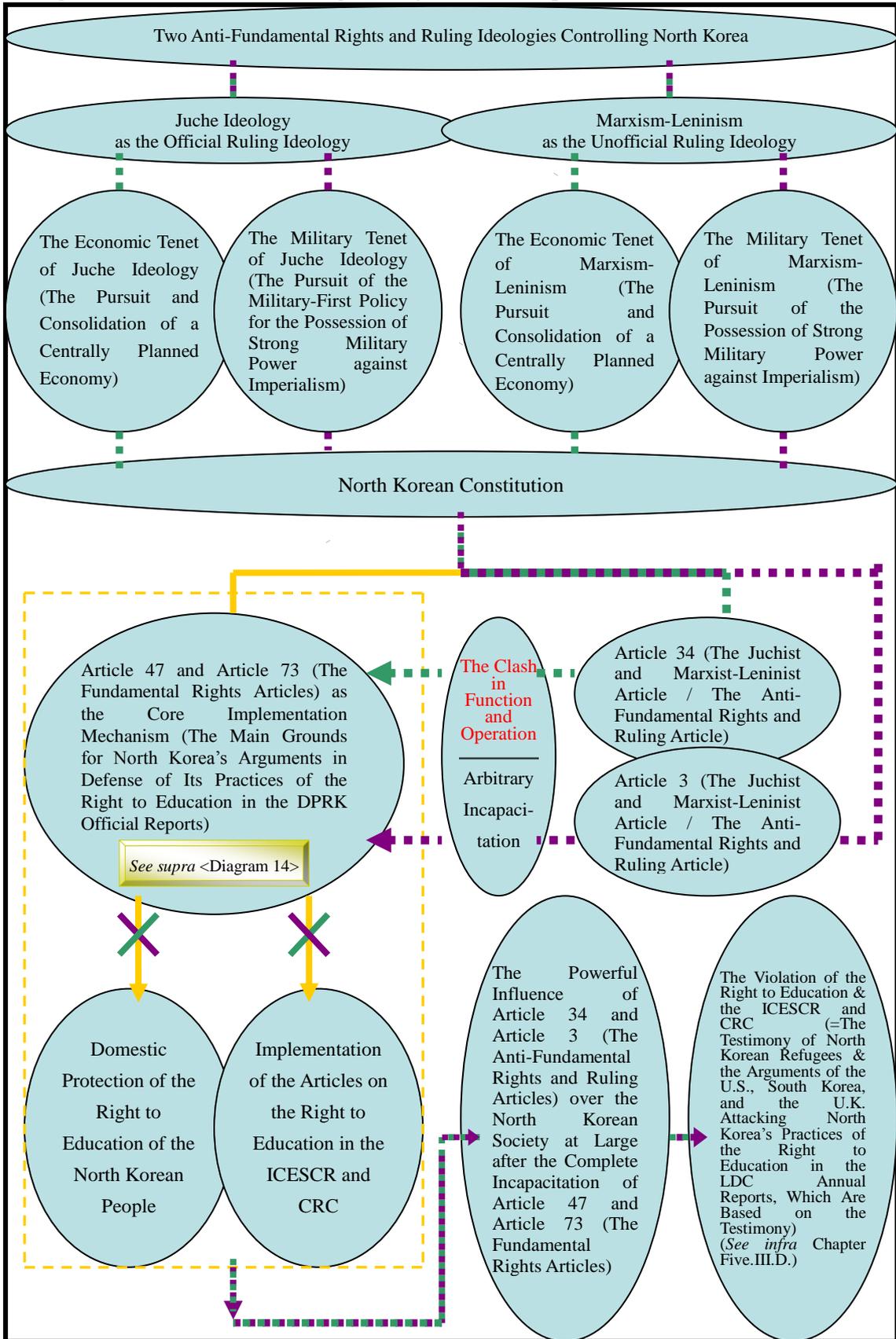
It necessarily follows, logically and theoretically, that the arguments of the U.S., South Korea, and the U.K. condemning the DPRK's violations of the right to education in the LDC Annual Reports⁶⁵⁷ are proven true by the constitutional structure and mechanism of North Korea in the Human Rights Violation Stage.

The following diagram incorporates all aspects of the newly developed refuting theory and its incapacitation mechanism model of Article 34 and Article 3, including the core premises, key factors, logical order and flow, and theoretical structure. The diagram also incorporates the evidence for verifying the falsity of North Korea's arguments in the DPRK Official Reports and for verifying the truth of the liberal democratic countries' assertions in the LDC Annual Reports. Finally, the diagram shows the relationships between the points of contention of the new refuting theory, the testimony of North Korean defectors, and the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are grounded in this testimony.⁶⁵⁸

⁶⁵⁷ See *infra* Chapter Five.III.D.

⁶⁵⁸ See *infra id.*

<Diagram 15> The New Refuting Theory and Its Incapacitation Mechanism Model



D. The Major Contents of the LDC Annual Reports

As evidenced in the analysis of the USCIRF Human Rights Report, the DPRK's violations of the right to education, caused by the powerful influence of the Juchist and Marxist-Leninist Articles over North Korean society as a whole, as indicated in the new refuting theory, are in accord with the testimony of North Korean refugees who experienced and witnessed first-hand the severe violations of this right in their country.⁶⁵⁹ Thus, the DPRK's violations of the right to education in the refuting theory coincide with the arguments of the U.S., South Korea, and the U.K. in the LDC Annual Reports, which are based on this testimony.

In this way, the arguments of the new refuting theory and its incapacitation mechanism model presented by this dissertation not only logically and theoretically support the testimony of North Korean refugees and the contentions of the liberal democratic countries attacking North Korea's violation of the right to education in the LDC Annual Reports, but they are, in turn, practically and factually supported by the testimony of North Korean escapees and the arguments of the liberal democratic camp.

The major contents of the testimony of North Korean defectors, and the arguments and analyses of the U.S., South Korea, and the U.K., which are based on this

⁶⁵⁹ See *supra* Chapter One.III.A; see also *supra* note 77 and accompanying text.

testimony, in the LDC Annual Reports are as follows:

1. U.S. Human Rights Report

According to the 2012 U.S. Human Rights Report, NGO reports found that due to hidden fees or lack of food, some children were not able to attend school regularly.⁶⁶⁰ The same report also informs us that “On September 25, [2012,] the SPA announced that the state would provide free compulsory education for all children for 12 years, an increase of one year.⁶⁶¹ However, reports indicated some children were denied educational opportunities”⁶⁶² Finally, the report states that the UN Committee on the Rights of the Child has voiced major concerns over the discrimination against children with disabilities, and the lack of proper measures by the state to enable these children to access education and social services.⁶⁶³

⁶⁶⁰ See 2012 U.S. HUMAN RIGHTS REPORT, *supra* note 32 (“NGO reports . . . indicated some children were unable to attend school regularly because of hidden fees or insufficient food.”).

⁶⁶¹ North Korea adopted the resolution of the 11-year free compulsory education system at the 4th Session of the 5th SPA, 1972. Additionally, according to the resolution, the 11-year free compulsory education has been fully executed in the country since 1975. However, North Korea adopted a new 12-year free compulsory education resolution at the 6th Session of the 12th SPA, on September 25, 2012. This was a sweeping change in the school system of North Korea, occurring about forty years after the full execution of the 11-year free compulsory education in the country.

⁶⁶² 2012 U.S. HUMAN RIGHTS REPORT, *supra* note 32.

⁶⁶³ See *id.* (“The UN Committee on the Rights of the Child repeatedly expressed concern over de facto discrimination against children with disabilities and the insufficient measures taken by the state to ensure these children had effective access to . . . education[] and social services.”).

2. ROK Human Rights Report

According to the 2010 ROK Human Rights Report, many facilities in charge of children's education and protection, including nurseries, kindergartens and school, are not able to function due to the worsening economic conditions. Many children are known to skip school in most provinces, besides Pyongyang and a few larger cities.⁶⁶⁴ Defectors testimony also reveals that due to the economic situation, a great number of students were forced to quit school.⁶⁶⁵

The 2011 ROK Human Rights Report states that "North Korea's educational facilities and equipment are known to be extremely poor. Since the economic hardships set in the early 1990s, the supply of educational equipment was mostly cut off and maintenance stopped."⁶⁶⁶ The report also explains that since September of 1975, North Korea has offered a free 11-year compulsory education program, in which the government would pay for all expenses. Defectors testified that free education was provided in most areas up until the nation was struck by the economic crisis in the 1990s. Since the crisis, the school supplies, which had previously been provided for

⁶⁶⁴ See 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 29 ("As the economic hardships [of North Korea] have worsened, various facilities responsible for children's education and protection, such as nurseries, kindergartens, and schools, are unable to fulfill their functions. In most provinces outside of Pyongyang and a few large cities, many children skip school . . .").

⁶⁶⁵ See *id.* at 449-450 ("According to our defector testimonies . . . there were a significant number of students who quit school due to the ongoing economic difficulties.").

⁶⁶⁶ 2011 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 434; See *id.* at 435 ("[T]he school facilities and educational equipment in most regions of North Korea outside of Pyongyang were very poor.").

free every semester, were decreased to being distributed every 3-5 years, and finally came to a halt as the economic situation worsened.⁶⁶⁷ Furthermore, the report informs us with the following:

As economic conditions deteriorated, many North Korean young people suffered from the inferior educational environment and the poor quality of education. This is clear from student attendance records. With regard to the sharp drop in students' attendance, the UN Committee on the Rights of the Child expressed "concern over the seasonally low attendance record of 60~80 percent and the long-term absentees due to the extended economic difficulties (Sec. 54a)." The committee also recommended that North Korea "take necessary measures to reduce and prevent student absenteeism and provide classroom heating in the winter season (Sec. 55a)."⁶⁶⁸

In addition to the aforementioned, the 2011 ROK Human Rights Report refers to a magazine report that describes the inability of elementary and middle schools in South Pyongan and North Hamkyong provinces to conduct normal class schedules because of low student attendance. The students were unable to attend due to hunger or because they were suffering from various diseases. Poverty was forcing parents to give up the opportunity to educate their children.⁶⁶⁹ The report also informs us that many North

⁶⁶⁷ The report also explains the following:

Since September 1975[,] North Korea has offered an 11-year compulsory education program North Korea has insisted that all education programs are completely free as the government pays for all expenses. North Korean defectors have testified that free education was indeed provided in most areas until the economic crisis hit the nation. From the 1990s, however, free school supplies, which had previously been provided every semester, were issued every 3~5 years, and as the economic crisis worsened these supplies were completely cut off.

Id. at 432.

⁶⁶⁸ *Id.* at 433-434.

⁶⁶⁹ The 2011 ROK Human Rights Report states the following:

Korean students are driven from the classroom to the scenes of forced labor due to national poverty. Thus, they do not receive much proper education or normal school training. For example, the report describes an account of a defector who used to teach at a middle school. The defector testifies that middle school students are sent to work on farms or construction sites for four weeks in the spring, while high school students work eight weeks total. The students' education is interfered by the heavy workload.⁶⁷⁰ The report also divulges another magazine report, which claims that “[c]hildren are not as a rule assigned to 8-hour workdays. But the middle school students in Shinuiju City, North Pyongan Province[,] were mobilized for ‘8-hour-day’ work for the development of an orchard.(citation omitted)”⁶⁷¹ Furthermore, the report discloses that “Even in recent years, North Korean students are mobilized 2~3 times a year for farming and construction projects.(citation omitted) During the peak farming season, students above the 3rd grade in elementary school are mobilized for 1~2 hours a

According to a magazine report, elementary and middle schools in South Pyongan and North Hamkyong Provinces were unable to operate on normal class schedules due to the low student attendance rate. Students would be unable to come to school because they were hungry or suffering from various diseases. Many parents would give up on educating their children due to poverty(citation omitted)

Id. at 434.

⁶⁷⁰ The report reveals the following:

According to a defector who previously taught at a middle school, North Korean middle school students are mobilized for work for four weeks in the spring. High school students are mobilized for work for eight weeks (four in the spring and four in the fall). They work on farms or at construction sites. Their workload is so heavy that it often interferes with their education.(citation omitted)

Id. at 427-428.

⁶⁷¹ *Id.* at 428.

day for farming projects.(citation omitted)”⁶⁷²

The report concludes that while North Korean authorities argued that all children were receiving their 11 years of free compulsory education, along with sufficient opportunity to develop their talents and hopes, the reality is that the children are not being given their guarantee of the right to an education.⁶⁷³

3. U.K. Human Rights Report

The 2011 U.K. Human Rights Report states that North Korea is not able to fulfill some of the most basic human rights, including adequate food and education. Even children were to participate in military drills, and many reports indicate that instead of receiving the free education they are entitled to, these children are being forced to work and provide goods and services if they wish to receive it.⁶⁷⁴ The 2012 U.K. Human Rights Report also informs that children have been removed from school for long

⁶⁷² *Id.*

⁶⁷³ The report comes to the conclusion with the following:

The North Korean authorities continued to insist that all North Korean children were receiving 11 years of free education and were given full opportunities to develop their individual talents and youthful hopes under the free education system. . . . Contrary to these assertions, however, North Korean children in reality are not guaranteed their right to an education.

Id. at 435.

⁶⁷⁴ The 2011 U.K. Human Rights Report state the following:

Some of the most basic rights, including access to food and education, were not adequately fulfilled [in North Korea]. Relatively young children were subjected to military drills, and consistent reports suggested that children had to undertake work and provide goods and services if they were to receive the free education to which they were formally entitled.

2011 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 223.

periods of time to partake in national events, such as the annual Arirang Festival, a mass gymnastics and cultural event. It also reports evidence of children's forceful participation in military drills and also child labor.⁶⁷⁵ The 2012 U.K. Human Rights Report and the 2009 U.K. Human Rights Report emphasize these poor educational environments of North Korea through their respective statements that "We also supported two small-scale projects which improved the facilities in schools for disabled people."⁶⁷⁶ and that "Our Embassy in Pyongyang sponsors a range of small-scale projects to promote longer-term cooperation with the DPRK. This includes the installation of a central heating system at a local nursery school"⁶⁷⁷ Finally, the 2009 U.K. Human Rights Report notes North Korea's claims of increasing education spending in recent years, through policies such as the National Programme of Action of the Well-Being of Children 2001–10, that is formulated to include some of the UN Millennium Development goals. But without independent verification, the

⁶⁷⁵ The 2012 U.K. Human Rights Report informs us with the following:

Children are formally entitled to free education In September, the DPRK extended the period of compulsory education from 11 to 12 years. Over the past year, however, children have been removed from school for a substantial amount of time to participate in national events, for example the annual (mass gymnastics and cultural) Arirang Festival. There is also evidence that children have been forced to participate in military drills and are used for child labour.

2012 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 160.

⁶⁷⁶ *Id.* at 158.

⁶⁷⁷ 2009 U.K. HUMAN RIGHTS REPORT, *supra* note 15, at 108; *See* 2009 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 373 ("In the case of firewood, for example, . . . in middle schools[,] they [students] are required to bring firewood [for classrooms in the winter] from nearby hills, which often are barren of trees and where firewood is not easily available.").

international community cannot assess the impact of these initiatives in action.⁶⁷⁸

⁶⁷⁸ The 2009 U.K. Human Rights Report indicates the following:

The DPRK says it has . . . increased spending on education in recent years. It formulated a National Programme of Action of the Well-Being of Children 2001–10, reflecting some of the UN Millennium Development Goals. Without independent verification it is difficult for the international community to assess the impact of these initiatives.

2009 U.K. Human Rights Report, *supra* note 15, at 107.

CHAPTER SIX

CONCLUSION

“Is this not the fast which I choose,
To loosen the bonds of wickedness,
To undo the bands of the yoke,
And to let the oppressed go free
And break every yoke?”

– Isaiah 58:6 (New American Standard Bible)

We have systematically studied and thoroughly examined whether the arguments of the North Korean government in the DPRK Official Reports are true or not in the body of this dissertation so far. According to the objective and logical sub-conclusions drawn from the rigorous and in-depth research on the incapacitation mechanism model of the Juchist and Marxist-Leninist Articles against the core implementation mechanism model of the Fundamental Rights Articles in Chapter Four and Five, all of the claims of North Korea that it guarantees the fundamental rights of its people or that it complies with the major international human rights treaties are totally unrealizable, given its constitutional structure, from a theoretical standpoint. Additionally, the new refuting theory and its incapacitation mechanism model proved that the liberal democratic countries’ arguments about North Korea’s violation of the fundamental rights and the

international human rights treaties in the LDC Annual Reports, which are based on a factual approach, are true. Thus, we can draw a final conclusion to the issue raised in Chapter One of this dissertation not only that the arguments of the North Korean government in the DPRK Official Reports are false, but furthermore, that the North Korean government has seriously infringed upon the fundamental freedoms of its people and has severely violated the international human rights treaties.

We addressed the resulting infringements of three representative civil and political rights in Chapter Four, and three economic, social and cultural rights in Chapter Five, on account of space considerations. However, the new refuting theory and its incapacitation mechanism model of the Juchist and Marxist-Leninist Articles can be used in application to refute the arguments of the North Korean government on the guarantee of all of the other fundamental rights in the DPRK Official Reports in addition to the ones already dealt within the chapters of this dissertation.

To cite one typical example, we can examine the right to equality. Article 65 of the North Korean Constitution stipulates that “Citizens enjoy equal rights in all spheres of State and public activity.”⁶⁷⁹ This is the Fundamental Rights Article concerning the issue of the right to equality within the country. North Korea uses a theoretical

⁶⁷⁹ North Korean Constitution Chapter V, *supra* note 231.

approach, which focuses on the core implementation mechanism of this Fundamental Rights Article, as the main grounds for its arguments in defense of its practices of the right to equality in the DPRK Official Reports. That is to say, the country introduces Article 65 of its Constitution as the guaranteed mechanism for the domestic protection of the right to equality of its people,⁶⁸⁰ as well as the core implementer for the articles on this right in the international human rights treaties to which it has acceded in the reports.⁶⁸¹

⁶⁸⁰ See, e.g., 2000 Second ICCPR Implementation Report, *supra* note 7, at 4-5 (“The Constitution provides for the principles and popular policies to be maintained in political, economic, cultural and all other fields of social life, declares that every citizen is particularly ensured the true democratic rights, freedom, . . . and stipulates the basic rights of citizens including the right to equality, . . .”); *see also id.* at 39 (“Every citizen of the DPRK has the right to public service on equal terms. This right is provided by article 65 of the Constitution that ensures equal rights in all spheres of the state and public activities.”); 2002 Second ICESCR Implementation Report, *supra* note 8, at 8 (“The State . . . does not permit any distinction, exclusion, restriction or preference made on the basis of race, colour, sex, religion, political opinion, nationality or social origin. Citizens enjoy equal rights in their choice of occupation by article 65 of the Constitution . . .”); *Id.* at 11 (“Every citizen is entitled to equal opportunity for promotion. Under article 65 of the Constitution that stipulates the equal rights of citizens in all spheres of State and public activity, the opportunity for promotion is open to anyone who has passed the ability examination . . .”); *Id.* at 28 (“Now that all health facilities are owned by the State and society and the Government values health promotion of working people without any thought of profit, the citizens are guaranteed medical service of the highest possible quality on an equal footing, irrespective of region, stratum, occupation, etc. [by Article 65 of the Constitution.]”); *Id.* at 32 (“The State takes positive measures to let every child enjoy an equal right to education [under Article 65 of the Constitution]. Education is completely free at all levels and therefore is not affected by the difference in the income of the parents. The State grants subsidies as well as scholarships to the students Such benefits are bestowed without discrimination to all of the urban or rural areas and social groups.”); 2002 Initial CEDAW Implementation Report, *supra* note 9, at 33 (“The constitutional principle of sex equality in every field of State and social life [in Article 65 and so forth] includes equal status and right of men and women before the law. By this constitutional principle . . . , everybody is entitled to equality before the law and the equal and indiscriminate protection by the law.”); 2007 Combined CRC Implementation Report, *supra* note 10, at 17 (“The Constitution stipulates the fundamental rights and duties of citizens; [c]itizens shall enjoy equal rights in all spheres of State and public activity (art. 65) . . .”).

⁶⁸¹ See, e.g., 2000 Second ICCPR Implementation Report, *supra* note 7, at 6 (“The Constitution stipulates in article 65: ‘Citizens enjoy equal rights in all spheres of state and public activity.’ The DPRK citizens are ensured all the rights recognized in the Covenant without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”).

Regarding the right to equality in the ICCPR, North Korea offers, in paragraph 161 of the Second ICCPR Implementation Report, that Article 65 of its Constitution is the core mechanism to carry out Article 26 of

On the other hand, the North Korean Constitution also contains Article 12, which is the Juchist and Marxist-Leninist Article concerning the issue of the right to equality in the country. As reviewed in Chapter Four, Article 12 proclaims a political system that works to pursue and consolidate a one-man dictatorship.⁶⁸² Generally, official or unofficial policies to maintain and strengthen the despotic power of a dictator are instituted under this type of political system. One of the key examples is the classification of social strata based on a dictator's assessment of the people's political loyalty. Under the system of political hierarchy, those who form the political bedrock of a dictator or those who support his dictatorship receive excessively preferential treatment in everything from the enjoyment of culture, healthcare, and education to occupation, court rulings, and marriage.⁶⁸³ On the contrary, those who oppose or resist the dictatorship experience irrational discrimination and disadvantage in every aspect of life under this governmental policy.⁶⁸⁴ The Kim family of North Korea has

the Covenant as follows:

Article 26. Equality before the Law

161. All the citizens of the DPRK are equal before the law and enjoy, without any discrimination, the right to equal protection of the law. The Constitution . . . guarantee[s] this right. Article 65 of the Constitution provides: "Citizens enjoy equal rights in all spheres of state and public activity." The citizens of the DPRK exercise equal rights in all spheres of state and public activity without discrimination on any ground such as race, color, sex, language, religion, national or social origin, property, birth or other status. . . .

Id. at 39.

⁶⁸² *See supra* Chapter Four.II.B.

⁶⁸³ *See infra* note 686 and accompanying text.

⁶⁸⁴ *See infra id.*

implemented a system of 3 Classes and 51 Sub-Classes, which is the social hierarchy according to the political allegiance of an individual and his or her family to their regimes, to maintain and consolidate their dictatorships as follows:

<Table 5> The 3 Classes and 51 Sub-classes⁶⁸⁵

3 Classes	51 Sub-classes	Treatment
Core Class (28%)	People from the families of laborers, hired peasants (farm servants), poor farmers, and administrative clerical workers during the Yi Dynasty and Japanese occupation, Korean Workers' Party cadre members; bereaved families of the revolution (killed in anti-Japan struggles); bereaved families of patriots (killed as noncombatants during the Korean War); revolutionary intellectuals (trained by North Korea after liberation from Japan); families of those killed during the Korean Wars; families of the fallen during the Korean War; Servicemen's families (families of active People's Army officers and men); and families of honored wounded soldiers (family members of service members wounded during the Korean War).	<ul style="list-style-type: none"> • Recruit[ed] as staff of party, government or military. • Set apart from individuals of other classes, and offer special privileges (in matriculation, promotion, rations, residence, treatment and other areas).
	People from the families of small merchants, artisans, small factory owners, small service traders; medium service traders; unaffiliated persons hailing from South Korea; families of those who went to the South (1st Category); families of those who went to the South (2nd Category);	<ul style="list-style-type: none"> • Employ[ed] as low-level managers or technicians. • [A] limited number [promoted] to the "core masses" class.

⁶⁸⁵ 2006 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 94.

<p>Wavering Class (45%)</p>	<p>People who formerly were medium-scale farmers; national capitalists; families of those who went to the South (3rd Category); those who repatriated from China; intellectuals trained before national liberation; the lazy and corrupt; tavern hostesses; practitioners of superstition; family members of Confucianists; people who were previously locally influential figures; and economic offenders.</p>	
<p>Hostile Class (27%)</p>	<p>People from the families of wealthy farmers, merchants, industrialists, landowners, or those whose private assets have been completely confiscated; pro-Japan and pro-US people; reactionary bureaucrats; defectors from the South; members of the Chondoist Chongu Party; Buddhists; Catholics; expelled party members; expelled public officials; those who helped South Korea during the Korean War; family members of anyone arrested or imprisoned; spies; anti-party and counter-revolutionary sectarians; families of people who were executed; anyone released from prison; political prisoners; Members of the Democratic Party, capitalists whose private assets have been completely confiscated.</p>	<ul style="list-style-type: none"> • Assign[ed] to dangerous or heavy-duty labor. • Block[ed] and suppress[ed] from school admissions, matriculations, and party membership. • Classif[ied][] as subjects of control, surveillance and persuasion. • Control: By forcible relocation, separate accommodation[s]. • Surveillance: Place[d] under constant surveillance of movements. • Persuasion: Intensive reeducation. [V]ery limited numbers [reclassified][.] (ex. Children)

※ The following is a sample of [the] 1970 classification based on the results of a citizen registration project at the time. Source: Ministry of Unification, An Overview of North Korea, 2000, p. 420.

Thus, we come to understand that the pursuit and consolidation of a dictatorship in Article 12 is essentially incompatible with the right to equality in Article 65 of the

North Korean Constitution through the abovementioned political stratification of the 3 Classes and 51 Sub-Classes.

The incompatibility between the North Korean political system of a one-man dictatorship and the right to equality in the country has also been argued by the U.S., South Korea, and the U.K. in the LDC Annual Reports. They have condemned North Korea's violations of the right to equality under its dictatorial system using a factual approach, centered on the analyses of testimony by North Korean refugees and the interpretation of information gathered from foreign visitors of the country.⁶⁸⁶

⁶⁸⁶ The U.S. Human Rights Reports, ROK Human Rights Reports and U.K. Human Rights Reports have many related paragraphs and sentences. However, I will introduce five representative examples from the U.S. Human Rights Reports and U.K. Human Rights Reports respectively, and fifteen instances from the ROK Human Rights Reports due to space limitations of this dissertation. *See supra* note 31 and accompanying text.

See, e.g., 2010 U.S. HUMAN RIGHTS REPORT, *supra* note 32 (“The government divided citizens into strict loyalty-based classes known as songbun, which determined access to employment, higher education, place of residence, medical facilities, certain stores, and marriage prospects.”); *see also id.* (“The constitution grants equal rights to all citizens. However, the government has reportedly never granted its citizens most fundamental human rights in practice, and it continued pervasive discrimination on the basis of social status.”); *Id.* (“Only members of a very small elite class . . . had access to personal vehicles, and movement was hampered by the absence of an effective transport network and by military and police checkpoints on main roads at the entry to and exit from every town.”); *Id.* (“Class background and family connections could be as important as professional competence in deciding who received particular jobs, and foreign companies that have established joint ventures continued to report that all their employees must be hired from registers screened by the government.”); *Id.* (“[A]ccess to health care was largely dependent upon loyalty to the government.”); 2010 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 226 (“[T]he [North Korean] regime strictly classifies every individual according to his or her family background (or class origin) and degree of loyalty to the regime.”); *Id.* at 229 (“Defectors have testified that this classification, along with the background discrimination policy, has an important impact on the daily lives of the people in terms of political and social status, education opportunities, jobs, and marriage.”); *Id.* at 230 (“High-level cadres live in luxurious residences, send their children to special schools, and possess modern home appliances. . . . They own private telephones, and are allowed to read foreign publications and listen to foreign broadcasts.”); *Id.* (“Most of them live in Pyongyang and other major cities, enjoying privileges such as party membership, or administrative or military positions. In effect, they form a feudal hereditary class entitled to benefits in education, promotions, food rations, housing, and medical services.”); *Id.* at 230-231 (“Former medical doctor XXX testified that different levels of medical service were provided to people depending on their status and background. Large hospitals maintained special units for the treatment and care of party officials.”(citation omitted)); *Id.* at 236 (“Officially, North Korea does not admit to any social discrimination based on family background. . . . Nevertheless, the discriminatory practice persists in North Korea, and many people are deprived of their

Eventually, the workings of the incapacitation mechanism model of Article 12 against the core implementation mechanism model of Article 65 come to provide the theoretical and logical evidence for verifying the falsity of North Korea's arguments in defense of its practices of the right to equality in the DPRK Official Reports and for verifying the truth of the liberal democratic countries' assertions to serve as rebuttals to

political and social rights due to the background check policy.”); *Id.* at 238 (“Many defectors testified that ‘defector families’ and families of former (South Korean) POWs [Prisoners of War] are subjected to serious discrimination.”); *Id.* at 238-239 (“One defector testified that her father was a former POW (South Korean soldier captured during the Korean War). Due to this ‘defective’ or ‘bad’ family background, she was unable to go on to a good school even though her grades were excellent. Her brother could not join the Party. Her father and brother were both assigned to work in coal mines.”(citation omitted)); *Id.* at 243 (“Another defector testified that the children of defector families could never get a job anywhere, regardless of how bright they were or excellent their capabilities. They could never become a party member, either.”(citation omitted)); *Id.* at 245 (“[A] person’s family background is considered when determining the level of punishment. If the suspect had many party members in his family, the authorities would assume that the suspect could be reformed by dint of his good family environment.”); *Id.* (“The Security Agency has a set of standing regulations when handling cases. For example, if the suspect had more than 9 party members in the family, he would get a three-year reduction of punishment.”); *Id.* at 246 (“Personal background also affects marriages. Men with unfavorable personal background have little chance to overcome the class barriers(citation omitted) If one’s background is unfavorable, control apparatus such as the Security Agency will often systematically interfere with personal affairs.”); *Id.* at 247 (“North Korea assigns housing to people according to their background and forcibly relocates people from one place to another.”); 2006 ROK HUMAN RIGHTS REPORT, *supra* note 34, at 96 (“North Korean authorities [] [regard] one’s personal background [] [as] the most critical factor when selecting the candidates for positions in the Party or law-enforcement agencies, on the assumption that the class origin of those who harbor an extreme enmity toward the system does not change, even after three generations.”); *Id.* (“When appointing military officers, party officials, or officials for the judiciary, people with an unfavorable personal background are fired or reassigned to other positions. In extreme cases, even vehicle drivers at party or judiciary organizations have been fired because of a poor personal background.”); 2008 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 141 (“The government divides North Koreans into three political groups: a loyal core class; a suspect wavering class; and a politically unreliable class. The three groups are then subdivided into 51 categories, based on the social origins of each citizen.”); *Id.* (“On the basis of this classification, the government determines where people may live and work, what job they may do and what benefits (if any) they may receive. Only those citizens classified as politically loyal can hope to obtain responsible positions in North Korean society or to live in Pyongyang.”); *Id.* at 140 (“Access to educational opportunities depends . . . on the family’s class”); 2007 U.K. HUMAN RIGHTS REPORT, *supra* note 35, at 149 (“The government does not respect children’s rights in the basic sense of providing adequate nutrition and health services. The rights of children depend on the government’s political classification of the family into which they are born.”); 2009 U.K. HUMAN RIGHTS REPORT, *supra* note 15, at 107 (“The DPRK operates a population classification system in which the ruling elite and those most loyal to the regime enjoy better access to food than others, especially those hostile to the authorities.”).

the ones of North Korea in the LDC Annual Reports.⁶⁸⁷

In addition to this right to equality, the incapacitation mechanism model of the Juchist and Marxist-Leninist Articles against the core implementation mechanism model of the Fundamental Rights Articles presented by this dissertation can logically be used in application to prove the falsity of North Korea's arguments in defense of the freedom of residence and movement, the right to privacy, the right to work, the right to culture, and so forth in the DPRK Official Reports. Furthermore, the incapacitation mechanism model can be widely applied to theoretically prove the truth of the arguments of the U.S., South Korea, and the U.K. attacking North Korea's practices of these freedoms and rights in the LDC Annual Reports.

North Korea will continue to use a theoretical approach, focusing on the Fundamental Rights Articles of its Constitution as the core implementation mechanism, to defend itself and to deceive the world with the official Implementation Reports which it will release in the future, unless it makes enough real and sustainable progress on the issue of its human rights violations to confidently allow the UN special rapporteur for human rights in North Korea or human rights activists of international human rights NGOs to visit its territory for the assessment of the human rights. However,

⁶⁸⁷ See *supra* Chapter One.III; see also *supra* Chapter Four.I.C; *supra* Chapter Four.II.C; *supra* Chapter Four.III.C; *supra* Chapter Five.I.C; *supra* Chapter Five.II.C; *supra* Chapter Five.III.C.

unfortunately, the country has neither a bit of conscience or courage to admit its violations of domestic human rights and the international human rights treaties, nor the true will to improve its human rights situations in close cooperation with the U.N. and the liberal democratic countries. As Kim Il-Sung and Kim Jong-Il had not, the current dictator Kim Jong-Un will never renounce his dictatorship, thus he will also never abandon the anti-human rights nature of Juche and Marxism-Leninism, which are very useful in maintaining and strengthening his one-man dictatorship. In addition, as long as he does not give up these ideologies, they will maintain the foursquare position as the two ruling ideologies controlling North Korea. All in all, this means that the arbitrary incapacitation of the Fundamental Rights Articles by the Juchist and Marxist-Leninist Articles under the constitutional structure and mechanism of North Korea will continue to occur now and forever. Furthermore, this continuous incapacitation means the severe violations of fundamental rights and international human rights treaties under the incapacitation mechanism of the Juchist and Marxist-Leninist Articles will continue in North Korea in the future.

From the logical and theoretical standpoint, there is a simple enough solution to secure the fundamental freedoms of the North Korean people and to prevent the government from violating such protections prescribed by international human rights

treaties—it is the replacement of Juche ideology and Marxism-Leninism with liberal democracy. As shown in the diagrams for the new refuting theory and its incapacitation mechanism model, the two existing anti-human rights and ruling ideologies controlling North Korea is not only the theoretical starting point for the incapacitation mechanism of the Juchist and Marxist-Leninist Articles but also the fundamental source of the logical streams of the mechanism.⁶⁸⁸ Thus, if we can replace them with liberal democracy, an ideology that is human rights-friendly by nature, the Fundamental Rights Articles of the North Korean Constitution can actually function normally. Additionally, the practical results of these normal and smooth functions of the articles would be manifested in the faithful guarantees of the fundamental rights of its people and the active adherence to the international human rights treaties in North Korea.

I think the issue of the replacement of Juche ideology and Marxism-Leninism with liberal democracy in North Korea is in need of further interdisciplinary research in fields such as international diplomacy, international relations, political science, economics, jurisprudence, sociology, military science⁶⁸⁹ and so forth, because the

⁶⁸⁸ See *supra* <Diagram 3>; see also *supra* <Diagram 5>; *supra* <Diagram 7>; *supra* <Diagram 9>; *supra* <Diagram 11>; *supra* <Diagram 13>; *supra* <Diagram 15>.

⁶⁸⁹ This doesn't necessarily mean a war. This is mainly for the prompt military intervention of the liberal democratic countries to ensure the North Korean people's safety and to build order and security in the

overthrow of the dictatorial regime and the establishment of a democratic government in North Korea is most likely to be brought on by complex factors that include the deepening isolation of North Korea from the rest of the world due to its failure in diplomatic strategies and responses, the intensified pressure and sanctions of the U.N. and the international society on North Korea, North Korea's adherence to a centrally planned economy and a military-first policy, the collapse of the North Korean economy, severe food shortage, mass starvation, massive North Korean defections, the weakening of North Korea's control over its people, pro-democracy revolts led by the Hostile Class and Wavering Class,⁶⁹⁰ and so forth.

I expect the arguments of the new refuting theory and its incapacitation mechanism model presented by this dissertation to be useful reference material, which enable the liberal democratic camp to make more effective responses against North Korea's specious arguments grounded in the core implementation mechanism of the Fundamental Rights Articles in the DPRK Official Reports and official Implementation Reports to be released in the future.

I also hope this dissertation will serve as an opportunity to raise awareness about the importance of research on North Korean human rights through theoretical

country when North Korea faces unexpected implosion.

⁶⁹⁰ See *supra* <Table 5>.

refutations and the necessity for the revival of studies on this subject, based on theoretical approaches.

Finally, I sincerely hope this dissertation will help the world gain interest in the actual circumstances of the terrible human rights violations in North Korea behind the veil of falsehood and deception.

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APPENDICES

<APPENDIX I> COMPARISON TABLES FOR THE RELATED PROVISIONS OF THE NORTH KOREAN CONSTITUTIONS

<Table 6> Comparison Table for the Related Provisions of the North Korean Constitutions Regarding the Freedom of Religion

Classification		Freedom of Religion	
		The Fundamental Rights Article	The Juchist and Marxist-Leninist Article
The North Korean Constitution of	2009	The first part of Article 68. Citizens have freedom of religious belief. This right is granted through the approval of the construction of religious buildings and the holding of religious ceremonies. ⁶⁹¹	The latter part of Article 68. Religion must not be used as a pretext for drawing in foreign forces or for harming the State or social order. ⁶⁹²
	2012	Same as above.	Same as above.
	2010	Same as above.	Same as above.
	1998	Same as above.	Same as above.

⁶⁹¹ North Korean Constitution Chapter V, *supra* note 231.

⁶⁹² *Id.*

	1992	Same as above.	Same as above.
	1972	Article 54. Citizens have freedom of religious belief ⁶⁹³	Article 54. Citizens have . . . freedom of anti-religious propaganda. ⁶⁹⁴

⁶⁹³ Foreign Languages Publishing House [of DPRK], *supra* note 187, at 240.

⁶⁹⁴ *Id.*

<Table 7> Comparison Table for the Related Provisions of the North Korean Constitutions Regarding the Right to Vote and to Be Elected

Classification		The Right to Vote and to Be Elected	
		The Fundamental Rights Article	The Juchist and Marxist-Leninist Article
The North Korean Constitution of	2009	<p>Article 66. All citizens who have reached the age of 17 have the right to elect and to be elected, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views or religious belief.</p> <p>Citizens serving in the armed forces also have the right to elect and to be elected. A person who has been disenfranchised by a Court decision and a person legally certified insane do not have the right to elect or to be elected.⁶⁹⁵</p>	<p>Article 12. The State shall . . . strengthen the dictatorship of the people's democracy so as to firmly defend the people's power and socialist system against all subversive acts of hostile elements at home and abroad.⁶⁹⁶</p>
	2012	Same as above.	Same as above.
	2010	Same as above.	Same as above.

⁶⁹⁵ North Korean Constitution Chapter V, *supra* note 231.

⁶⁹⁶ North Korean Constitution Chapter I, *supra* note 205.

The North Korean Consti- tution of	1998	Same as above.	Same as above.
	1992	Same as above.	Same as above.
	1972	<p>Article 52. All citizens who have reached the age of 17 have the right to elect and to be elected, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views, and religion. Citizens serving in the Armed Forces also have the right to elect and to be elected. Those who are deprived by a court decision of the right to vote and insane persons are denied the right to elect and to be elected.⁶⁹⁷</p>	<p>Article 10. The Democratic People’s Republic of Korea exercises the dictatorship of the proletariat⁶⁹⁸</p>

⁶⁹⁷ Foreign Languages Publishing House [of DPRK], *supra* note 187, at 239-240.

⁶⁹⁸ *Id.* at 233.

As reviewed earlier, “the dictatorship of the people’s democracy” and “dictatorship of the proletariat” are equivalent in meaning. *See supra* note 218 and accompanying text.

<Table 8> Comparison Table for the Related Provisions of the North Korean Constitutions Regarding the Freedom of Speech, Press, Assembly, and Association

Classification		Freedom of Speech, Press, Assembly, and Association	
		The Fundamental Rights Article	The Juchist and Marxist-Leninist Articles
The North Korean Constitution of	2009	Article 67. Citizens are guaranteed freedom of speech, the press, assembly, demonstration and association. The State shall guarantee the conditions for the free activities of . . . social organizations. ⁶⁹⁹	Article 63. In the Democratic People’s Republic of Korea the rights and duties of citizens are based on the collectivist principle: “One for all and all for one.” ⁷⁰⁰ Article 42. The State shall eliminate the way of life inherited from the outmoded society and establish a new socialist way of life [emphasizing collectivism ⁷⁰¹] in every sphere. ⁷⁰²
	2012	Same as above.	Article 63. Same as above. Article 42. Same as above.

⁶⁹⁹ North Korean Constitution Chapter V, *supra* note 231.

⁷⁰⁰ *Id.*

⁷⁰¹ *See supra* note 407 and accompanying text.

⁷⁰² North Korean Constitution Chapter III, *supra* note 408.

The North Korean Consti- tution of	2010	Same as above.	Article 63. Same as above. Article 42. Same as above.
	1998	Same as above.	Article 63. Same as above. Article 42. Same as above.
	1992	Same as above.	Article 63. Same as above. Article 42. Same as above.
	1972	Article 53. Citizens have freedom of speech, the press, assembly, association, and of demonstration. The state guarantees conditions for the free activities of . . . social organizations. ⁷⁰³	Article 49. In the Democratic People’s Republic of Korea, the rights and duties of citizens are based on the collectivist principle of “One for all and all for one.” ⁷⁰⁴ Article 38. The state eliminates the way of life left over from the old society and introduces the new socialist way of life [emphasizing collectivism ⁷⁰⁵] in all fields. ⁷⁰⁶

⁷⁰³ Foreign Languages Publishing House [of DPRK], *supra* note 187, at 240.

⁷⁰⁴ *Id.* at 239.

⁷⁰⁵ *See supra* note 407 and accompanying text.

⁷⁰⁶ Foreign Languages Publishing House [of DPRK], *supra* note 187, at 238.

<Table 9> Comparison Table for the Related Provisions of the North Korean Constitutions Regarding the Right to an Adequate Standard of Living

Classification		The Right to an Adequate Standard of Living	
		The Fundamental Rights Article	The Juchist and Marxist-Leninist Articles
The North Korean Constitution of	2009	<p>Article 25. The Democratic People's Republic of Korea regards the steady improvement of the material . . . standards of the people as the supreme principle of its activities.</p> <p>The increasing material wealth of society in our country, where taxes have been abolished, is used entirely to promote the well-being of the working people.</p> <p>The State shall provide all the working people with every condition for obtaining food, clothing and housing.⁷⁰⁷</p>	<p>Article 34. The national economy of the Democratic People's Republic of Korea is a [centrally] planned economy. The State shall draw up and implement the plans for the development of the national economy in accordance with the laws of socialist economic development so that the balance between accumulation and consumption can be maintained correctly, economic construction accelerated, the people's standard of living steadily raised and the nation's defence capabilities strengthened.</p> <p>The State shall ensure a high rate of growth in production and a balanced development of the national economy by implementing unified and detailed planning.⁷⁰⁸</p> <p>Article 3. The Democratic</p>

⁷⁰⁷ North Korean Constitution Chapter II, *supra* note 486.

⁷⁰⁸ *Id.*

The North Korean Consti- tution of			People’s Republic of Korea is guided in its activities by . . . the Songun [military-first] idea . . . ” ⁷⁰⁹
	2012	Same as above.	Article 34. Same as above. Article 3. Same as above.
	2010	Same as above.	Article 34. Same as above. Article 3. Same as above.
	1998	Same as above.	Article 34. Same as above. Article 3. The Democratic People’s Republic of Korea is guided in its activities by the Juche idea ⁷¹⁰
	1992	Same as above.	Article 34. Same as above. Article 3. Same as above.

⁷⁰⁹ North Korean Constitution Chapter I, *supra* note 205.

⁷¹⁰ FOREIGN LANGUAGES PUBLISHING HOUSE [OF DPRK], SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA 4 (Foreign Languages Publishing House [of DPRK] trans., 1998). As reviewed earlier, the Juche idea already contains the Songun [military-first] idea within itself. *See supra* Chapter Three.II.A; *see also supra* note 206 and accompanying text.

	1972	<p>Article 23. The state regards it as the supreme principle of its activities to steadily improve the material . . . standards of the people.</p> <p>The constantly increasing material wealth of society in the Democratic People's Republic of Korea is used entirely to promote the well-being of the working people.⁷¹¹</p>	<p>Article 31. The national economy of the Democratic People's Republic of Korea is a [centrally] planned economy. In accordance with the laws of economic development of socialism, the state draws up and carries out the plans for the development of the national economy so that the balance of accumulation and consumption can be maintained correctly, economic construction accelerated, the people's living standards steadily raised, and the nation's defense potential strengthened. The state ensures a high rate of growth in production and a proportionate development of the national economy by implementing a policy of unified and detailed planning.⁷¹²</p> <p>Article 4. The Democratic People's Republic of Korea is guided in its activity by the <i>Chuch'e</i> idea⁷¹³</p>
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⁷¹¹ Foreign Languages Publishing House [of DPRK], *supra* note 187, at 235.

⁷¹² *Id.* at 237.

⁷¹³ *Id.* at 232.

<Table 10> Comparison Table for the Related Provisions of the North Korean Constitutions Regarding the Right to Health

Classification		The Right to Health	
		The Fundamental Rights Articles	The Juchist and Marxist-Leninist Articles
The North Korean Constitution of	2009	<p>Article 56. The State shall protect the people's lives and improve the working people's health by consolidating and developing the system of universal free medical service and improving the district doctor system and the system of preventive medicine.⁷¹⁴</p> <p>Article 72. Citizens are entitled to free medical care This right is ensured by free medical care, an expanding network of hospitals, sanatoria and other medical institutions, State social insurance and other social security systems.⁷¹⁵</p>	<p>Article 34. Same as the relevant contents of <Table 9>.</p> <p>Article 3. Same as the relevant contents of <Table 9>.</p>
	2012	<p>Article 56. Same as above.</p> <p>Article 72. Same as above.</p>	<p>Article 34. Same as above.</p> <p>Article 3. Same as above.</p>

⁷¹⁴ North Korean Constitution Chapter III, *supra* note 408.

⁷¹⁵ North Korean Constitution Chapter V, *supra* note 231.

The North Korean Consti- tution of	2010	Article 56. Same as above. Article 72. Same as above.	Article 34. Same as above. Article 3. Same as above.
	1998	Article 56. Same as above. Article 72. Same as above.	Article 34. Same as above. Article 3. Same as the relevant contents of <Table 9>.
	1992	Article 56. Same as above. Article 72. Same as above.	Article 34. Same as above. Article 3. Same as above.
	1972	Article 48. The state consolidates and develops the system of universal free medical service and pursues a policy of preventive medical care so as to protect people's lives and promote the health of the working people. ⁷¹⁶ Article 58. Citizens are entitled to free medical care This right is ensured by free medical care, a growing network of hospitals, sanatoria, and other medical institutions, and the state social insurance and security system. ⁷¹⁷	Article 31. Same as the relevant contents of <Table 9>. Article 4. Same as the relevant contents of <Table 9>.

⁷¹⁶ Foreign Languages Publishing House [of DPRK], *supra* note 187, at 239.

⁷¹⁷ *Id.* at 240.

<Table 11> Comparison Table for the Related Provisions of the North Korean Constitutions Regarding the Right to Education

Classification		The Right to Education	
		The Fundamental Rights Articles	The Juchist and Marxist-Leninist Articles
The North Korean Constitution of	2009	<p>Article 47. The State shall provide education to all pupils and students free of charge and grant allowances to students at universities and colleges.⁷¹⁸</p> <p>Article 73. Citizens have the right to education. This right is ensured by an advanced educational system and by the educational measures enacted by the State for the benefit of the people.⁷¹⁹</p>	<p>Article 34. Same as the relevant contents of <Table 9>.</p> <p>Article 3. Same as the relevant contents of <Table 9>.</p>
	2012	<p>Article 47. Same as above.</p> <p>Article 73. Same as above.</p>	<p>Article 34. Same as above.</p> <p>Article 3. Same as above.</p>
	2010	<p>Article 47. Same as above.</p> <p>Article 73. Same as above.</p>	<p>Article 34. Same as above.</p> <p>Article 3. Same as above.</p>

⁷¹⁸ North Korean Constitution Chapter III, *supra* note 408.

⁷¹⁹ North Korean Constitution Chapter V, *supra* note 231.

The North Korean Constitution of	1998	Article 47. Same as above. Article 73. Same as above.	Article 34. Same as above. Article 3. Same as the relevant contents of <Table 9>.
	1992	Article 47. Same as above. Article 73. Same as above.	Article 34. Same as above. Article 3. Same as above.
	1972	Article 41. The state grants to all pupils and students education free of charge. ⁷²⁰ Article 42. Students of higher educational institutions and higher specialized schools are granted scholarships. ⁷²¹ Article 59. Citizens have the right to education. This right is ensured by an advanced educational system, free compulsory education, and other state educational measures for the people. ⁷²²	Article 31. Same as the relevant contents of <Table 9>. Article 4. Same as the relevant contents of <Table 9>.

⁷²⁰ Foreign Languages Publishing House [of DPRK], *supra* note 187, at 238.

⁷²¹ *Id.*

⁷²² *Id.* at 240.

<APPENDIX II> THE SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA (THE NORTH KOREAN CONSTITUTION OF 2009)

PREAMBLE⁷²³

The Democratic People's Republic of Korea is the socialist motherland of Juche which has applied the idea and leadership of the great leader Comrade Kim Il Sung.

The great leader Comrade Kim Il Sung is the founder of the Democratic People's Republic of Korea and the father of socialist Korea.

Comrade Kim Il Sung authored the immortal Juche idea and, by organizing and leading the anti-Japanese revolutionary struggle under its banner, created the glorious revolutionary traditions and achieved the historic cause of national restoration. On the basis of laying a solid foundation for the building of an independent and sovereign State in the political, economic, cultural and military fields, he founded the Democratic People's Republic of Korea.

Having put forward Juche-oriented revolutionary lines, Comrade Kim Il Sung wisely led various stages of social revolution and construction work, thus strengthening and developing the Republic into a socialist country centred on the masses, into a socialist State which is independent, self-sufficient and self-reliant in defence.

Comrade Kim Il Sung elucidated the fundamental principles of the building and activities of the State, established the best State and social system, the best mode of politics and system and methods of administering society, and laid solid foundations for

⁷²³ Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Preamble, <http://naenara.com.kp/en/great/constitution.php?1> (last visited May 3, 2012).

the prosperity of the socialist motherland and for the inheritance and consummation of the revolutionary cause of Juche.

Regarding “The people are my God” as his maxim, 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 which is united in one mind by taking care of the people and leading them through his noble benevolent politics.

The great leader Comrade **Kim Il Sung** is the sun of the nation and the lodestar of national reunification. Regarding the reunification of the country as the supreme national task, Comrade **Kim Il Sung** devoted all his efforts and care for its realization. He made the Republic a powerful bastion for national reunification. At the same time, he set forth the fundamental principle and ways of national reunification and developed the movement for national reunification into a nationwide movement, opening the way for achieving the cause of reunification through the united efforts of the whole nation.

The great leader Comrade **Kim Il Sung** clarified the basic ideals of the foreign policy of the Democratic People’s Republic of Korea. On the basis of this, he expanded and developed the country’s foreign relations and ensured that the international prestige of the Republic was exalted. As a veteran statesman in the world, Comrade **Kim Il Sung** opened up the new era of independence, carried out energetic activities for the strengthening and development of the socialist movement and the non-aligned movement, as well as for world peace and for friendship among the peoples and made an imperishable contribution to the cause of human independence.

Comrade **Kim Il Sung** was a genius in ideology and theory, a master of leadership art, an ever-victorious iron-willed brilliant commander, a great revolutionary and statesman and a great man.

The great idea of Comrade **Kim Il Sung** and the great achievements made under his leadership are the lasting treasures of the Korean revolution and the basic guarantee for the prosperity of the Democratic People's Republic of Korea.

Under the leadership of the Workers' Party of Korea, the Democratic People's Republic of Korea and the Korean people will uphold the great leader Comrade **Kim Il Sung** as the eternal President of the Republic and carry the revolutionary cause of Juche through to completion by defending and carrying forward the idea and achievements of Comrade **Kim Il Sung**.

The Socialist Constitution of the Democratic People's Republic of Korea shall be called **Kim Il Sung's Constitution**, the codification of the great leader Comrade **Kim Il Sung's** Juche-oriented ideas on and exploits in State building.

CHAPTER I POLITICS⁷²⁴

Article 1: The Democratic People's Republic of Korea is an independent socialist State representing the interests of all the Korean people.

Article 2: The Democratic People's Republic of Korea is a revolutionary State which has inherited the brilliant traditions formed during the glorious revolutionary struggle against the imperialist aggressors and in the struggle to achieve the liberation of the homeland and the freedom and well-being of the people.

⁷²⁴ North Korean Constitution Chapter I, *supra* note 205.

Article 3: The Democratic People's Republic of Korea is guided in its activities by the Juche idea and the Songun idea, a world outlook centred on people, a revolutionary ideology for achieving the independence of the masses of the people.

Article 4: The sovereignty of the Democratic People's Republic of Korea resides in the workers, peasants, soldiers, working intellectuals and all other working people. The working people exercise State power through their representative organs—the Supreme People's Assembly and local People's Assemblies at all levels.

Article 5: All State organs in the Democratic People's Republic of Korea are formed and function on the principle of democratic centralism.

Article 6: The organs of State power at all levels, from the county People's Assembly to the Supreme People's Assembly, are elected on the principle of universal, equal and direct suffrage by secret ballot.

Article 7: Deputies to the organs of State power at all levels have close ties with their constituents and are accountable to them for their work.

The electors may recall at any time the deputies they have elected if the latter lose the trust of the former.

Article 8: The social system of the Democratic People's Republic of Korea is a people-centred system under which the working people are the masters of everything and everything in society serves them.

The State shall defend the interests of the workers, peasants, soldiers, working intellectuals and all other working people who have been freed from exploitation and oppression and become the masters of the State and society, and respect and protect human rights.

Article 9: The Democratic People's Republic of Korea shall strive to achieve the complete victory of socialism in the northern half of Korea by strengthening the people's power and vigorously performing the three revolutions—ideological, technological and cultural—and reunify the country on the principle of independence, peaceful reunification and great national unity.

Article 10: The Democratic People's Republic of Korea is underpinned by the politico-ideological unity of all the people based on the worker-peasant alliance led by the working class.

The State shall revolutionize all the members of society, and assimilate them to the working class by intensifying the ideological revolution, and shall turn the whole of society into a collective, united [group] in a comradely way.

Article 11: The Democratic People's Republic of Korea shall conduct all activities under the leadership of the Workers' Party of Korea.

Article 12: The State shall adhere to the class line and strengthen the dictatorship of the people's democracy so as to firmly defend the people's power and socialist system against all subversive acts of hostile elements at home and abroad.

Article 13: The State shall implement the mass line and apply the Chongsanri spirit and Chongsanri method to all its activities, the spirit and method by which superiors assist their subordinates, mix with the masses to find solutions to problems and rouse them to conscious enthusiasm by giving precedence to political work, work with people.

Article 14: The State shall determinedly conduct the Three-Revolution Red Flag Movement and other mass movements so as to accelerate the building of socialism to the maximum.

Article 15: The Democratic People's Republic of Korea shall champion the democratic national rights of Koreans overseas and their rights recognized by international law as well as their interests.

Article 16: The Democratic People's Republic of Korea shall guarantee the legal rights and interests of foreigners in its territory.

Article 17: Independence, peace and friendship are the basic ideals of the foreign policy and the principles of the external activities of the Democratic People's Republic of Korea.

The State shall establish diplomatic as well as political, economic and cultural relations with all friendly countries, on the principles of complete equality, independence, mutual respect, non-interference in each other's affairs and mutual benefit.

The State shall promote unity with people all over the world who defend their independence, and resolutely support and encourage the struggles of all people who oppose all forms of aggression and interference and fight for their countries' independence and national and class emancipation.

Article 18: The law of the Democratic People's Republic of Korea reflects the wishes and interests of the working people and is a basic instrument for State administration.

Respect for the law and strict adherence to and execution of it is the duty of all institutions, enterprises, organizations and citizens.

The State shall perfect the system of socialist law and promote the socialist law-abiding life.

CHAPTER II THE ECONOMY⁷²⁵

Article 19: The Democratic People's Republic of Korea relies on socialist relations of production and on the foundation of an independent national economy.

Article 20: In the Democratic People's Republic of Korea the means of production are owned by the State and social, cooperative organizations.

Article 21: The property of the State belongs to all the people.

There is no limit to the property which the State can own.

All natural resources, railways, air transport service, post and telecommunications establishments, as well as major factories and enterprises, ports and banks of the country are owned solely by the State.

The State shall protect and develop on a preferential basis State property which plays the leading role in the economic development of the country.

Article 22: The property of social, cooperative organizations is collectively owned by the working people involved in the organizations concerned.

Land, farm machinery and ships, as well as small and medium-sized factories and enterprises may be owned by social, cooperative organizations.

The State shall protect the property of social, cooperative organizations.

Article 23: The State shall enhance the ideological consciousness and the technical and cultural level of the peasants, increase the role of the property of all the people in leading the cooperative property so as to combine the two forms of property in an organic way, and shall consolidate and develop the socialist cooperative economic system by improving the guidance and management of the cooperative economy and gradually transform the property of

⁷²⁵ North Korean Constitution Chapter II, *supra* note 486.

cooperative organizations into the property of the people as a whole based on the voluntary will of all their members.

Article 24: Private property is property owned and consumed by individual citizens.

Private property is derived from socialist distribution according to work done and from supplementary benefits granted by the State and society.

The products of individual sideline activities including those from kitchen gardens, as well as income from other legal economic activities shall also be private property.

The State shall protect private property and guarantee by law the right to inherit it.

Article 25: The Democratic People's Republic of Korea regards the steady improvement of the material and cultural standards of the people as the supreme principle of its activities.

The increasing material wealth of society in our country, where taxes have been abolished, is used entirely to promote the well-being of the working people.

The State shall provide all the working people with every condition for obtaining food, clothing and housing.

Article 26: The independent national economy of the Democratic People's Republic of Korea is a solid foundation for the people's happy socialist life and for the country's prosperity.

The State, adhering to the line of building a socialist, independent national economy, shall endeavour to promote the national economy on a Juche-oriented, modern and scientific basis so as to make the national economy a

highly developed, Juche-oriented economy and build material and technical foundations commensurate with a completely socialist society.

Article 27: The technological revolution is a basic link for developing the socialist economy.

The State shall conduct all economic activities giving primary preference to technical development at all times, push ahead with scientific and technological development and the technical renovation of the national economy and vigorously promote the mass technical innovation movement so as to free the working people from difficult, tiresome labour and to narrow the distinctions between physical and mental labour.

Article 28: The State shall industrialize and modernize agriculture through the rural technical revolution and improve the role of the county and its guidance and assistance to rural areas in order to eliminate the difference between town and countryside and the class distinction between workers and peasants.

The State shall undertake, at its own expense, the building of production facilities for cooperative farms and modern houses in the countryside.

Article 29: Socialism is built by the creative labour of the working people.

Labour in the Democratic People's Republic of Korea is independent and creative labour of the working people, freed from exploitation and oppression.

The State renders the labour of our working people, to whom unemployment is unknown, more joyful and worthwhile, so that they willingly work with conscious enthusiasm and creativeness for society, the collective and themselves.

Article 30: The working day shall be eight hours.

The length of the working day shall be reduced by the State in arduous trades and other special categories of work.

The State shall guarantee that the working hours are fully utilized through proper organization of labour and enforcement of labour discipline.

Article 31: In the Democratic People's Republic of Korea the minimum working age is 16 years.

The State shall prohibit the employment of those under the minimum working age.

Article 32: The State shall firmly adhere to the principle of properly combining political guidance with economic and technical guidance, the unified guidance of the State with the creativeness of each unit, unitary direction with democracy, and political and moral incentive with material incentive in the guidance and management of the socialist economy.

Article 33: The State shall direct and manage the national economy through the Tae'an work system, a socialist form of economic management whereby the economy is operated and managed scientifically and rationally on the basis of the collective efforts of the producer masses, and through the system of agricultural guidance whereby agricultural management is conducted by industrial methods.

The State shall enforce the self-accounting system in economic management to meet the requirements of the Tae'an work system, and shall make proper use of such economic levers as cost, price and profit.

Article 34: The national economy of the Democratic People's Republic of Korea is a planned economy.

The State shall draw up and implement the plans for the development of the national economy in accordance with the laws of socialist economic development so that the balance between accumulation and consumption can be maintained correctly, economic construction accelerated, the people's standard of living steadily raised and the nation's defence capabilities strengthened.

The State shall ensure a high rate of growth in production and a balanced development of the national economy by implementing unified and detailed planning.

Article 35: The Democratic People's Republic of Korea shall compile and implement the State budget according to the national economic development plan.

The State shall systematically increase its material accumulation and expand and develop socialist property by intensifying the campaign for increased production and greater economy and by exercising strict financial control in all spheres.

Article 36: In the Democratic People's Republic of Korea foreign trade is conducted by the State organs and enterprises, and social, cooperative organizations.

The State shall develop foreign trade on the principles of complete equality and mutual benefit.

Article 37: The State shall encourage institutions, enterprises and organizations in the country to conduct equity or contractual joint ventures with foreign

corporations and individuals, and to establish and operate enterprises of various kinds in special economic zones.

Article 38: The State shall pursue a tariff policy to protect the independent national economy.

CHAPTER III CULTURE⁷²⁶

Article 39: Socialist culture, which is flourishing and developing in the Democratic People's Republic of Korea, contributes to improving the creative ability of the working people and to meeting their sound cultural and aesthetic demands.

Article 40: The Democratic People's Republic of Korea shall, by carrying out a thorough cultural revolution, train all the people to be builders of socialism equipped with a profound knowledge of nature and society and a high level of culture and technology, thus making the whole of society intellectual.

Article 41: The Democratic People's Republic of Korea shall develop a truly people-oriented, revolutionary culture which serves the socialist working people.

In building a socialist national culture, the State shall oppose the cultural infiltration of imperialism and any tendency to return to the past, protect its national cultural heritage, and develop it in keeping with the existing socialist situation.

Article 42: The State shall eliminate the way of life inherited from the outmoded society and establish a new socialist way of life in every sphere.

⁷²⁶ North Korean Constitution Chapter III, *supra* note 408.

Article 43: The State shall embody the principles of socialist pedagogy so as to raise the rising generation to be steadfast revolutionaries who will fight for society and the people, to be people of the new, Juche type who are knowledgeable, morally sound and physically healthy.

Article 44: The State shall give precedence to public education and the training of cadres for the nation and closely combine general education with technological education, and education with productive labour.

Article 45: The State shall develop universal compulsory eleven-year education which includes compulsory one-year preschool education at a high level in accordance with the trend of modern science and technology and the practical requirements of socialist construction.

Article 46: The State shall train competent technicians and experts by enhancing the regular educational system as well as different forms of studying while working, and by improving the scientific and theoretical levels of technological education and education in the social and basic sciences.

Article 47: The State shall provide education to all pupils and students free of charge and grant allowances to students at universities and colleges.

Article 48: The State shall strengthen social education and provide the working people with all conditions for study.

Article 49: The State shall maintain all children of preschool age in creches and kindergartens at State and public expense.

Article 50: The State shall establish Juche in scientific research, introduce advanced science and technology in every possible way, open up new areas of science

and technology and raise the country's science and technology to the world level.

Article 51: The State shall elaborate a correct plan to develop science and technology, set up a strict discipline to implement it, and strengthen creative cooperation among scientists, technicians and producers.

Article 52: The State shall develop Juche-oriented, revolutionary art and literature, national in form and socialist in content.

The State shall encourage creative workers and artists to produce works of high ideological and artistic value and enlist the broad sections of the masses in literary and artistic activities.

Article 53: The State shall provide sufficient modern cultural facilities to meet the demands of the people who want to continually improve themselves, both mentally and physically, so that the working people enjoy a full socialist cultured, aesthetic life.

Article 54: The State shall safeguard our language from all attempts to obliterate it and shall develop it to meet present-day needs.

Article 55: The State shall thoroughly prepare all the people for work and national defence by popularizing physical culture and sport and making it their daily regime, and augment sporting skills to meet our country's reality and the trend in modern sporting skills.

Article 56: The State shall protect the people's lives and improve the working people's health by consolidating and developing the system of universal free medical service and improving the district doctor system and the system of preventive medicine.

Article 57: The State shall adopt measures to protect the environment, giving it preference over production, preserve and promote the natural environment and prevent environmental pollution so as to provide the people with a hygienic living environment and working conditions.

CHAPTER IV NATIONAL DEFENCE⁷²⁷

Article 58: The Democratic People's Republic of Korea is shored up by the all-people, nationwide defence system.

Article 59: The mission of the armed forces of the Democratic People's Republic of Korea is to defend the leadership of the revolution, to safeguard the interests of the working people, to defend the socialist system and the gains of the revolution, and to protect the freedom, independence and peace of the country from foreign aggression by implementing the Songun-based revolutionary line.

Article 60: The State shall implement the line of self-reliant defence, the import of which is to train the army to be a cadre army, modernize the army, arm all the people and fortify the country on the basis of equipping the army and the people politically and ideologically.

Article 61: The State shall establish a revolutionary command system and military climate, strengthen military and mass disciplines in the army, and give full play to the noble traditional traits of unity between officers and men,

⁷²⁷ Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Chapter IV National Defence, <http://naenara.com.kp/en/great/constitution.php?5> (last visited May 3, 2012).

combination of the military and political work and unity between the army and the people.

CHAPTER V FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS⁷²⁸

Article 62: The requirements for becoming a citizen of the Democratic People's Republic of Korea are defined by the Law on Nationality.

A citizen is under the protection of the Democratic People's Republic of Korea regardless of domicile.

Article 63: In the Democratic People's Republic of Korea the rights and duties of citizens are based on the collectivist principle: "One for all and all for one."

Article 64: The State shall effectively guarantee the genuine democratic rights and freedoms as well as the material and cultural well-being of all its citizens.

In the Democratic People's Republic of Korea the rights and freedoms of citizens shall be amplified with the consolidation and development of the socialist system.

Article 65: Citizens enjoy equal rights in all spheres of State and public activity.

Article 66: All citizens who have reached the age of 17 have the right to elect and to be elected, irrespective of sex, race, occupation, length of residence, property status, education, party affiliation, political views or religious belief.

Citizens serving in the armed forces also have the right to elect and to be elected.

A person who has been disenfranchised by a Court decision and a person legally certified insane do not have the right to elect or to be elected.

⁷²⁸ North Korean Constitution Chapter V, *supra* note 231.

Article 67: Citizens are guaranteed freedom of speech, the press, assembly, demonstration and association.

The State shall guarantee the conditions for the free activities of democratic political parties and social organizations.

Article 68: Citizens have freedom of religious belief. This right is granted through the approval of the construction of religious buildings and the holding of religious ceremonies.

Religion must not be used as a pretext for drawing in foreign forces or for harming the State or social order.

Article 69: Citizens are entitled to submit complaints and petitions.

The State shall investigate and deal with complaints and petitions impartially as stipulated by law.

Article 70: Citizens have the right to work.

All able-bodied citizens may choose occupations in accordance with their wishes and skills and are provided with stable jobs and working conditions.

Citizens work according to their abilities and are paid in accordance with the quantity and quality of their work.

Article 71: Citizens have the right to relaxation. This right is ensured by the establishment of working hours, and the provision of holidays, paid leave, accommodation at health resorts and holiday homes at State expense and by a growing network of cultural facilities.

Article 72: Citizens are entitled to free medical care, and all persons who are no longer able to work because of old age, illness or physical disability, and seniors and minors who have no means of support are all entitled to material

assistance. This right is ensured by free medical care, an expanding network of hospitals, sanatoria and other medical institutions, State social insurance and other social security systems.

Article 73: Citizens have the right to education. This right is ensured by an advanced educational system and by the educational measures enacted by the State for the benefit of the people.

Article 74: Citizens are free to engage in scientific, literary and artistic pursuits.

The State shall grant benefits to inventors and innovators.

Copyrights, inventions and patents shall be protected by law.

Article 75: Citizens have freedom of residence and travel.

Article 76: Revolutionary fighters, the families of revolutionary and patriotic martyrs, the families of soldiers of the People's Army and soldiers disabled on duty enjoy the special protection of the State and society.

Article 77: Women are accorded equal social status and rights with men.

The State shall afford special protection to mothers and children by providing maternity leave, reduced working hours for mothers with several children, a wide network of maternity hospitals, creches and kindergartens, and other measures.

The State shall provide all conditions for women to play their full roles in society.

Article 78: Marriage and the family shall be protected by the State.

The State pays great attention to consolidating the family, the basic unit of social life.

Article 79: Citizens are guaranteed inviolability of the person and the home, and privacy of correspondence.

No citizen can be placed under control or arrest nor can a citizen's home be searched without a legal warrant.

Article 80: The Democratic People's Republic of Korea shall grant the right of asylum to foreign nationals persecuted for struggling for peace and democracy, national independence and socialism or for the freedom of scientific and cultural pursuits.

Article 81: Citizens shall firmly safeguard the political and ideological unity and solidarity of the people.

Citizens shall cherish their organization and collective and work devotedly for the good of society and the people.

Article 82: Citizens shall strictly observe the laws of the State and the socialist standards of life and defend their honour and dignity as citizens of the Democratic People's Republic of Korea.

Article 83: Work is the noble duty and honour of a citizen.

Citizens shall willingly and conscientiously participate in work and strictly observe labour discipline and working hours.

Article 84: Citizens shall take good care of the property of the State and social, cooperative organizations, combat all forms of misappropriation and waste and manage the nation's economy diligently as the masters.

The property of the State and social, cooperative organizations is inviolable.

Article 85: Citizens shall constantly increase their revolutionary vigilance and devotedly fight for the security of the State.

Article 86: National defence is the supreme duty and honour of citizens.

Citizens shall defend the country and serve in the armed forces as required by law.

CHAPTER VI STATE ORGANS

SECTION 1. THE SUPREME PEOPLE'S ASSEMBLY⁷²⁹

Article 87: The Supreme People's Assembly is the highest organ of State power in the Democratic People's Republic of Korea.

Article 88: Legislative power is exercised by the Supreme People's Assembly.

The Presidium of the Supreme People's Assembly also may exercise legislative power when the Supreme People's Assembly is not in session.

Article 89: The Supreme People's Assembly is composed of deputies elected on the principle of universal, equal and direct suffrage by secret ballot.

Article 90: The Supreme People's Assembly is elected for a term of five years.

A new Supreme People's Assembly is elected according to a decision of the Presidium of the Supreme People's Assembly prior to the expiry of the former's term of office.

When unavoidable circumstances render an election impossible, the term of office of the Supreme People's Assembly is prolonged until an election can be held.

Article 91: The Supreme People's Assembly has the authority to:

1. amend or supplement the Constitution;

⁷²⁹ Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Chapter VI State Organs: Section 1. The Supreme People's Assembly, <http://naenara.com.kp/en/great/constitution.php?7> (last visited May 3, 2012).

2. adopt, amend or supplement laws;
3. approve the major laws adopted by the Presidium of the Supreme People's Assembly, when the Supreme People's Assembly is not in session;
4. establish the basic principles of the State's domestic and foreign policies;
5. elect or recall the Chairman of the National Defence Commission of the Democratic People's Republic of Korea;
6. elect or recall the President of the Presidium of the Supreme People's Assembly;
7. elect or recall the First Vice-Chairman, Vice-Chairmen and members of the National Defence Commission on the recommendation of the Chairman of the National Defence Commission of the Democratic People's Republic of Korea;
8. elect or recall the Vice-Presidents, Honorary Vice-Presidents, Secretary and members of the Presidium of the Supreme People's Assembly;
9. elect or recall the Premier of the Cabinet;
10. appoint the Vice-Premiers, Chairmen, Ministers and other members of the Cabinet on the recommendation of the Premier of the Cabinet;
11. appoint or remove the Prosecutor General of the Supreme Public Prosecutors Office;
12. elect or recall the President of the Supreme Court;
13. elect or recall the Chairmen, Vice-Chairmen and members of the Committees of the Supreme People's Assembly;
14. deliberate and approve the State plan for the development of the national economy and the report on its implementation;

15. deliberate and approve the State budget and the report on its implementation;
16. hear a report on the work of the Cabinet and the central bodies when necessary, and adopt relevant measures;
17. decide on ratification and nullification of treaties suggested to the Supreme People's Assembly.

Article 92: The Supreme People's Assembly holds regular and extraordinary sessions.

Regular sessions are convened once or twice a year by the Presidium of the Supreme People's Assembly.

Extraordinary sessions are convened when the Presidium of the Supreme People's Assembly deems them necessary, or at the request of a minimum of one-third of the total number of deputies.

Article 93: The Supreme People's Assembly requires a quorum of at least two-thirds of the total number of deputies in order to meet.

Article 94: The Supreme People's Assembly elects its Speaker and Deputy Speaker.

The Speaker presides over the sessions.

Article 95: Items to be considered at the Supreme People's Assembly are submitted by the Chairman of the National Defence Commission, the National Defence Commission, the Presidium of the Supreme People's Assembly, the Cabinet and the Committees of the Supreme People's Assembly of the Democratic People's Republic of Korea.

Items can also be presented by deputies.

Article 96: The first session of each Supreme People's Assembly elects the Credentials Committee and, on hearing the Committee's report, adopts a decision confirming the credentials of deputies.

Article 97: The Supreme People's Assembly issues laws, ordinances and decisions.

Laws, ordinances and decisions of the Supreme People's Assembly are adopted when more than half of the deputies attending signify approval by a show of hands.

The Constitution is amended or supplemented with the approval of more than two-thirds of the total number of deputies to the Supreme People's Assembly.

Article 98: The Supreme People's Assembly appoints the Bills Committee, the Budget Committee and other Committees.

The Committees of the Supreme People's Assembly consist of Chairman, Vice-Chairman and members.

The Committees of the Supreme People's Assembly assist in the work of the Supreme People's Assembly; they plan or deliberate the State policy and bills and take measures for their implementation.

The Committees of the Supreme People's Assembly work under the guidance of the Presidium of the Supreme People's Assembly during the intervals between sessions of the Supreme People's Assembly.

Article 99: Deputies to the Supreme People's Assembly are guaranteed inviolability.

No deputy to the Supreme People's Assembly may be arrested or punished without the consent of the Supreme People's Assembly or, when it is not in

session, without the consent of its Presidium, unless he or she is caught in the act.

SECTION 2. THE CHAIRMAN OF THE NATIONAL DEFENCE COMMISSION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA⁷³⁰

Article 100: The Chairman of the National Defence Commission of the Democratic People's Republic of Korea is the supreme leader of the Democratic People's Republic of Korea.

Article 101: The term of office of the Chairman of the National Defence Commission of the Democratic People's Republic of Korea is the same as that of the Supreme People's Assembly.

Article 102: The Chairman of the National Defence Commission of the Democratic People's Republic of Korea is the supreme commander of the whole armed forces of the Democratic People's Republic of Korea and commands and directs all the armed forces of the State.

Article 103: The Chairman of the National Defence Commission of the Democratic People's Republic of Korea has the following duties and authority to:

1. direct the overall affairs of the State;
2. personally guide the work of the National Defence Commission;
3. appoint or remove key cadres in the field of national defence;
4. ratify or rescind major treaties concluded with other countries;
5. exercise the right of granting special pardon;

⁷³⁰ Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Chapter VI State Organs: Section 2. The Chairman of the DPRK National Defence Commission, <http://naenara.com.kp/en/great/constitution.php?8> (last visited May 3, 2012).

6. proclaim a state of emergency, a state of war and mobilization order within the country.

Article 104: The Chairman of the National Defence Commission of the Democratic People's Republic of Korea issues orders.

Article 105: The Chairman of the National Defence Commission of the Democratic People's Republic of Korea is accountable to the Supreme People's Assembly.

SECTION 3. THE NATIONAL DEFENCE COMMISSION⁷³¹

Article 106: The National Defence Commission is the supreme defence leadership body of State power.

Article 107: The National Defence Commission consists of the Chairman, the First Vice-Chairman, Vice-Chairmen and members.

Article 108: The term of office of the National Defence Commission is the same as that of the Supreme People's Assembly.

Article 109: The National Defence Commission has the following duties and authority to:

1. map out important policies of the State for carrying out the Songun-based revolutionary line;
2. direct the whole armed forces and defence building of the State;
3. exercise supervision over the fulfilment of the orders of the Chairman of the National Defence Commission of the Democratic People's Republic

⁷³¹ Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Chapter VI State Organs: Section 3. The National Defence Commission, <http://naenara.com.kp/en/great/constitution.php?9> (last visited May 3, 2012).

- of Korea and the decisions and directives of the National Defence Commission, and take measures for their fulfilment;
4. abrogate decisions and directives of State organs which run counter to the orders of the Chairman of the National Defence Commission of the Democratic People's Republic of Korea and the decisions and directives of the National Defence Commission;
 5. establish or abolish central bodies in the field of national defence;
 6. enact military ranks and confer the ranks of major general and above.

Article 110: The National Defence Commission issues decisions and directives.

Article 111: The National Defence Commission is accountable to the Supreme People's Assembly.

SECTION 4. THE PRESIDIUM OF THE SUPREME PEOPLE'S ASSEMBLY⁷³²

Article 112: The Presidium of the Supreme People's Assembly is the highest organ of State power when the Supreme People's Assembly is not in session.

Article 113: The Presidium of the Supreme People's Assembly consists of the President, Vice-Presidents, Secretary and members.

Article 114: The Presidium of the Supreme People's Assembly may have a few Honorary Vice-Presidents.

Honorary Vice-Presidents of the Presidium of the Supreme People's Assembly may be deputies to the Supreme People's Assembly who have

⁷³² Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Chapter VI State Organs: Section 4. The Presidium of the Supreme People's Assembly, <http://naenara.com.kp/en/great/constitution.php?10> (last visited May 3, 2012).

participated in the work of State building for a long time and rendered distinguished service.

Article 115: The term of office of the Presidium of the Supreme People's Assembly is the same as that of the Supreme People's Assembly.

The Presidium of the Supreme People's Assembly continues its work until a new Presidium is elected, even after the term of the Supreme People's Assembly expires.

Article 116: The Presidium of the Supreme People's Assembly has the following duties and authority to:

1. convene sessions of the Supreme People's Assembly;
2. deliberate and adopt the new draft bills and regulations and amendments and supplements to the current laws and regulations raised in the intervals between sessions of the Supreme People's Assembly and obtain the approval of the next session of the Supreme People's Assembly for major laws which are adopted and enforced;
3. deliberate and approve the State plan for the development of the national economy, the State budget and plans for their adjustment raised for unavoidable reasons in the intervals between sessions of the Supreme People's Assembly;
4. interpret the Constitution as well as current laws and regulations;
5. supervise law observance by the State organs and take relevant measures;
6. rescind the decisions and directives of State bodies which run counter to the Constitution, laws, ordinances and decisions of the Supreme People's Assembly, orders of the Chairman of the National Defence Commission

of the Democratic People's Republic of Korea, the decisions and directives of the National Defence Commission, and the decrees, decisions and directives of the Presidium of the Supreme People's Assembly, and suspend the implementation of unwarranted decisions of local People's Assemblies;

7. conduct the election of deputies to the Supreme People's Assembly and organize the elections of deputies to the local People's Assemblies;
8. work with the deputies to the Supreme People's Assembly;
9. work with the Committees of the Supreme People's Assembly;
10. set up or abolish Commissions and Ministries of the Cabinet;
11. appoint or remove Vice-Premiers, Chairmen, Ministers and other members of the Cabinet on the recommendation of the Premier of the Cabinet when the Supreme People's Assembly is not in session;
12. appoint or remove members of Committees of the Presidium of the Supreme People's Assembly;
13. elect or recall the Judges and People's Assessors of the Supreme Court;
14. approve or nullify treaties concluded with other countries;
15. decide and make public the appointment or recall of diplomatic representatives to other countries;
16. institute decorations, medals, titles of honour and diplomatic ranks and confer decorations, medals and titles of honour;
17. grant general amnesties;
18. establish or alter administrative units and districts;

19. conduct external activities including contacts with foreign parliaments and inter-parliamentary organizations.

Article 117: The President of the Presidium of the Supreme People's Assembly organizes and guides the work of the Presidium.

The President of the Presidium of the Supreme People's Assembly represents the State and receives the credentials and letters of recall of diplomatic representatives accredited by foreign countries.

Article 118: The Presidium of the Supreme People's Assembly convenes Plenary Meetings and Meetings of the Permanent Committee.

The Plenary Meeting consists of all the members. The Meeting of the Permanent Committee consists of the President, Vice-Presidents and Secretary.

Article 119: The Plenary Meeting of the Presidium of the Supreme People's Assembly deliberates and decides on important matters arising in fulfilling the duties of the Presidium and exercising its authority.

The Meeting of the Permanent Committee deliberates and decides on matters entrusted to it by the Plenary Meeting.

Article 120: The Presidium of the Supreme People's Assembly issues decrees, decisions and directives.

Article 121: The Presidium of the Supreme People's Assembly may have Committees to assist it in its work.

Article 122: The Presidium of the Supreme People's Assembly is accountable to the Supreme People's Assembly.

SECTION 5. THE CABINET⁷³³

Article 123: The Cabinet is the administrative and executive body of the highest State power and organ of overall State administration.

Article 124: The Cabinet consists of the Premier, Vice-Premiers, Chairmen, Ministers and other members as required.

The term of office of the Cabinet is the same as that of the Supreme People's Assembly.

Article 125: The Cabinet has the following duties and authority to:

1. adopt measures for the implementation of State policies;
2. adopt, amend or supplement the regulations on State administration on the basis of the Constitution and the laws;
3. direct the work of the Commissions and Ministries of the Cabinet, organs directly under its authority and local People's Committees;
4. establish or abolish organs directly under its authority, major administrative and economic bodies and enterprises, and adopt measures for improving State administration bodies;
5. draft the State plan for the development of the national economy and adopt measures to put it into effect;
6. compile the State budget and adopt measures to implement it;
7. organize and execute the work of industry, agriculture, construction, transport, post and telecommunications, commerce, foreign trade, land administration, municipal administration, education, science, culture,

⁷³³ Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Chapter VI State Organs: Section 5. The Cabinet, <http://naenara.com.kp/en/great/constitution.php?11> (last visited May 3, 2012).

health service, physical culture and sport, labour administration, protection of environment, tourism, and so on;

8. adopt measures to strengthen the monetary and banking system;
9. inspect and control the establishment of order in State administration;
10. adopt measures to maintain public order, protect the property and interests of the State and social, cooperative organizations, and safeguard the rights of citizens;
11. conclude treaties with foreign countries and conduct external affairs;
12. rescind the decisions and directives of administrative and economic bodies which run counter to the decisions and directives of the Cabinet.

Article 126: The Premier of the Cabinet organizes and guides the work of the Cabinet.

The Premier of the Cabinet represents the Government of the Democratic People's Republic of Korea.

Article 127: The Cabinet convenes Plenary Meetings and Meetings of the Permanent Committee.

The Plenary Meeting of the Cabinet consists of all the members of the Cabinet. The Meeting of the Permanent Committee consists of the Premier, Vice-Premiers and other members of the Cabinet appointed by the Premier.

Article 128: The Plenary Meeting of the Cabinet deliberates and decides on new and important administrative and economic matters.

The Meeting of the Permanent Committee deliberates and decides on matters referred to it by the Plenary Meeting of the Cabinet.

Article 129: The Cabinet issues decisions and directives.

Article 130: The Cabinet may have non-permanent committees to assist it in its work.

Article 131: The Cabinet is accountable to the Supreme People's Assembly and to the Presidium of the Supreme People's Assembly when the Supreme People's Assembly is not in session.

Article 132: The newly-elected Premier of the Cabinet takes an oath of allegiance on behalf of the members of the Cabinet at the Supreme People's Assembly.

Article 133: The Commissions and Ministries of the Cabinet are departmental executive bodies of the Cabinet and central departmental bodies of administration.

Article 134: The Commissions and Ministries of the Cabinet supervise and guide the work of the sectors concerned in a uniform way under the guidance of the Cabinet.

Article 135: The Commissions and Ministries of the Cabinet run committee meetings and cadre meetings.

The committee meeting and cadre meeting deliberate and decide on the measures for the implementation of the decisions and directives of the Cabinet and other important matters.

Article 136: The Commissions and Ministries of the Cabinet issue directives.

SECTION 6. THE LOCAL PEOPLE'S ASSEMBLY⁷³⁴

Article 137: The People's Assembly of a province (or municipality directly under central authority), city (or district) or county is the local organ of State power.

⁷³⁴ Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Chapter VI State Organs: Section 6. The Local People's Assembly, <http://naenara.com.kp/en/great/constitution.php?12> (last visited May 3, 2012).

Article 138: The local People's Assembly consists of deputies elected on the principle of universal, equal and direct suffrage by secret ballot.

Article 139: The term of office of the People's Assembly of a province (or municipality directly under central authority), city (or district) or county is four years.

A new local People's Assembly is elected according to the decision of the local People's Committee at the corresponding level prior to the expiry of the former's term of office.

When unavoidable circumstances render an election impossible, the term of office of the local People's Assembly is prolonged until an election can be held.

Article 140: The local People's Assembly has the following duties and authority to:

1. deliberate and approve the local plan for the development of the national economy and the report on its implementation;
2. deliberate and approve the local budget and the report on its implementation;
3. adopt measures to observe State laws in the area concerned;
4. elect or recall the Chairman, Vice-Chairmen, Secretary and members of the People's Committee at the corresponding level;
5. elect or recall the Judges and People's Assessors of the Court at the corresponding level;
6. rescind unwarranted decisions and directives of the People's Committee at the corresponding level and the People's Assemblies and People's Committees at lower levels.

Article 141: The local People's Assembly convenes regular and extraordinary sessions.

Regular sessions are convened once or twice a year by the People's Committee at the corresponding level.

Extraordinary sessions are convened when the People's Committee at the corresponding level deems them necessary or at the request of a minimum of one-third of the total number of deputies.

Article 142: The local People's Assembly requires a quorum of at least two-thirds of the total number of deputies in order to meet.

Article 143: The local People's Assembly elects its Speaker. The Speaker presides over the sessions.

Article 144: The local People's Assembly issues decisions.

SECTION 7. THE LOCAL PEOPLE'S COMMITTEE⁷³⁵

Article 145: The People's Committee of a province (or municipality directly under central authority), city (or district) or county exercises the function of the local organ of State power when the People's Assembly at the corresponding level is not in session and the administrative and executive organ of State power at the corresponding level.

Article 146: The local People's Committee consists of the Chairman, Vice-Chairmen, Secretary and members.

The term of office of the local People's Committee is the same as that of the corresponding People's Assembly.

Article 147: The local People's Committee has the following duties and authority to:

⁷³⁵ Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Chapter VI State Organs: Section 7. The Local People's Committee, <http://naenara.com.kp/en/great/constitution.php?13> (last visited May 3, 2012).

1. convene sessions of the People's Assembly;
2. organize the election of deputies to the People's Assembly;
3. work with the deputies to the People's Assembly;
4. implement the decisions and directives of the corresponding local People's Assembly and the People's Committees at higher levels, the laws, ordinances and decisions of the Supreme People's Assembly, the orders of the Chairman of the National Defence Commission of the Democratic People's Republic of Korea, the decisions and directives of the National Defence Commission, the decrees, decisions and directives of the Presidium of the Supreme People's Assembly and the decisions and directives of the Cabinet and the Commissions and Ministries of the Cabinet;
5. organize and carry out all administrative affairs in the given area;
6. draft the local plan for the development of the national economy and adopt measures to implement it;
7. compile the local budget and adopt measures for its implementation;
8. adopt measures to maintain public order, protect the property and interests of the State and social, cooperative organizations and safeguard the rights of citizens in the given area;
9. inspect and control the establishment of order in State administration in the given area;
10. direct the work of the People's Committees at lower levels;

11. rescind unwarranted decisions and directives of the People's Committees at lower levels, and suspend the implementation of unwarranted decisions of the People's Assemblies at lower levels.

Article 148: The local People's Committee convenes Plenary Meetings and Meetings of the Permanent Committee.

The Plenary Meeting of the local People's Committee consists of all its members. The Meeting of the Permanent Committee consists of the Chairman, Vice-Chairmen and Secretary.

Article 149: The Plenary Meeting of the local People's Committee deliberates and decides on important matters arising in implementing its duties and exercising its authority.

The Meeting of the Permanent Committee deliberates and decides on the matters referred to it by the Plenary Meeting.

Article 150: The local People's Committee issues decisions and directives.

Article 151: The local People's Committee may have non-permanent committees to assist it in its work.

Article 152: The local People's Committee is accountable to the corresponding People's Assembly.

The local People's Committee is subordinate to the People's Committees at higher levels, the Cabinet and the Presidium of the Supreme People's Assembly.

SECTION 8. THE PUBLIC PROSECUTORS OFFICE AND THE COURT⁷³⁶

Article 153: Investigation and prosecution are conducted by the Supreme Public Prosecutors Office, the Public Prosecutors Offices of a province (or municipality directly under central authority), city (or district) or county and the Special Public Prosecutors Office.

Article 154: The term of office of the Prosecutor General of the Supreme Public Prosecutors Office is the same as that of the Supreme People's Assembly.

Article 155: Public prosecutors are appointed or removed by the Supreme Public Prosecutors Office.

Article 156: The functions of the Public Prosecutors Office are to:

1. ensure the strict observance of State laws by institutions, enterprises, organizations and citizens;
2. ensure that the decisions and directives of State bodies conform with the Constitution, the laws, ordinances and decisions of the Supreme People's Assembly, the orders of the Chairman of the National Defence Commission of the Democratic People's Republic of Korea, the decisions and directives of the National Defence Commission, the decrees, decisions and directives of the Presidium of the Supreme People's Assembly, and the decisions and directives of the Cabinet;
3. identify and institute legal proceedings against criminals and offenders in order to protect the State power of the Democratic People's Republic of Korea, the socialist system, the property of the State and social,

⁷³⁶ Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Chapter VI State Organs: Section 8. The Public Prosecutors Office and the Court, <http://naenara.com.kp/en/great/constitution.php?14> (last visited May 3, 2012).

cooperative organizations, personal rights as guaranteed by the Constitution and the people's lives and property.

Article 157: Investigation and prosecution are conducted under the unified direction of the Supreme Public Prosecutors Office, and all Public Prosecutors Offices are subordinate to their higher offices and the Supreme Public Prosecutors Office.

Article 158: The Supreme Public Prosecutors Office is accountable to the Supreme People's Assembly and to the Presidium of the Supreme People's Assembly when the Supreme People's Assembly is not in session.

Article 159: Justice is administered by the Supreme Court, the Court of a province (or municipality directly under central authority), the City (or District) or County People's Courts, and the Special Court.

Verdicts are delivered in the name of the Democratic People's Republic of Korea.

Article 160: The term of office of the President of the Supreme Court is the same as that of the Supreme People's Assembly.

The term of office of Judges and People's Assessors of the Supreme Court, the Court of a province (or municipality directly under central authority) and the City (or District) or County People's Courts is the same as that of the People's Assembly at the corresponding level.

Article 161: The President and Judges of the Special Court are appointed or removed by the Supreme Court.

The People's Assessors of the Special Court are elected by the soldiers of the unit concerned or by employees at their meetings.

Article 162: The functions of the Court are to:

1. protect through judicial procedure the State power and the socialist system established in the Democratic People's Republic of Korea, the property of the State and social, cooperative organizations, personal rights as guaranteed by the Constitution, and the lives and property of citizens;
2. ensure that all institutions, enterprises, organizations and citizens abide strictly by State laws and staunchly combat class enemies and all law-breakers;
3. give judgements and findings with regard to property and conduct notarial work.

Article 163: Justice is administered by a Court consisting of one Judge and two People's Assessors. In special cases there may be three Judges.

Article 164: Court cases are heard in public and the accused is guaranteed the right of defence.

Hearings may be closed to the public as stipulated by law.

Article 165: Judicial proceedings are conducted in the Korean language. Foreign citizens may use their own language during court proceedings.

Article 166: In administering justice, the Court is independent, and judicial proceedings are carried out in strict accordance with the law.

Article 167: The Supreme Court is the highest judicial organ of the Democratic People's Republic of Korea.

The Supreme Court supervises the judicial activities of all the Courts.

Article 168: The Supreme Court is accountable to the Supreme People's Assembly and to the Presidium of the Supreme People's Assembly when the Supreme People's Assembly is not in session.

CHAPTER VII EMBLEM, FLAG, ANTHEM AND CAPITAL⁷³⁷

Article 169: The national emblem of the Democratic People's Republic of Korea bears the design of a grand hydroelectric power station under Mt. Paektu, the sacred mountain of the revolution, and the beaming light of a five-pointed red star, with ears of rice forming an oval frame, bound with a red ribbon bearing the inscription "The Democratic People's Republic of Korea."

Article 170: The national flag of the Democratic People's Republic of Korea consists of a central red panel, bordered both above and below by a narrow white stripe and a broad blue stripe. The central red panel bears a five-pointed red star within a white circle near the hoist.

The ratio of the width to the length is 1:2.

Article 171: The national anthem of the Democratic People's Republic of Korea is "The Patriotic Song."

Article 172: The capital of the Democratic People's Republic of Korea is Pyongyang.

⁷³⁷ Naenara [My Country]: Democratic People's Republic of Korea, Constitution: Chapter VII Emblem, Flag, Anthem and Capital, <http://naenara.com.kp/en/great/constitution.php?15> (last visited May 3, 2012).