

---

---

# THE ENSHRINEMENT OF NUCLEAR STATEHOOD IN NORTH KOREAN LAW: ITS IMPLICATIONS FOR FUTURE DENUCLEARIZATION TALKS WITH NORTH KOREA

*Juliana Dowling\**  
*Dae Un Hong\*\**

On January 9, 2021, at the eighth Congress of the Workers' Party of Korea, Kim Jong-un pledged to advance North Korea's nuclear program by developing tactical nuclear weapons.<sup>1</sup> After a long silence on nuclear development, Kim seems to have sent a message to the Biden administration that North Korean nuclear issues must be a top priority for the new administration.<sup>2</sup>

Although Kim Jong-un has largely maintained the nuclearization policies of his father Kim Jong-il and grandfather Kim Il-sung, there are some accomplishments that distinguish his regime from its predecessors. Indeed, the Kim Jong-un regime's repeated nuclear tests suggest significant increases in the number and explosive yield of nuclear weapons in North Korea.<sup>3</sup> At the same time, the regime has made a little known, unique accomplishment: the establishment of nuclearization by law.

Despite being a global concern, North Korea's nuclearization has often been discussed only in terms of violation of international law. Although North Korea's external behavior is inseparable from its internal dynamics, the latter is often overlooked. For example, research on the domestic legal aspect of North

---

\* B.A., New York University, 2017; J.D., Cornell Law School, 2020 (first author).

\*\* Adjunct Professor of Law, Cornell Law School; Admitted to the District of Columbia bar and the South Korean bar (corresponding author).

1. Mitch Shin, *Kim Jong Un Declares North Korea Will Advance Nuclear Capabilities*, THE DIPLOMAT (Jan. 12, 2021), <https://thediplomat.com/2021/01/kim-jong-un-declares-north-korea-will-advance-nuclear-capabilities> [<https://perma.cc/4JW6-MEXR>].

2. Jesse Johnson, *North Korea's Kim Greets Biden Era with Plan to Upgrade Nuclear Capabilities*, THE JAPAN TIMES (Jan. 9, 2021), <https://www.japantimes.co.jp/news/2021/01/09/asia-pacific/politics-diplomacy-asia-pacific/north-korea-nuclear-us-kim-biden> [<https://perma.cc/T2ZL-6MR2>].

3. Eleanor Albert, *North Korea's Military Capabilities*, COUNCIL ON FOREIGN RELS. (Oct. 13, 2020), <https://www.cfr.org/background/north-koreas-military-capabilities> [<https://perma.cc/4LCY-8LEE>].

Korea's nuclearization is scant both inside and outside the Korean Peninsula, and few scholarly materials on the subject are available in English.<sup>4</sup>

Lack of information has been a perennial challenge for North Korea watchers. While we can gain a deep and expansive understanding of American positions on nuclear non-proliferation and diplomatic strategies, we can only see the tip of the iceberg of the North Korean parallels. Metaphorically speaking, “[an International Space Station] satellite image of a dark North Korea surrounded by its well-lit neighbors, South Korea and China, captures the darkness that swallows up information there.”<sup>5</sup> This opacity churns the rumor mill, as seen especially in recent times regarding Kim Jong-un's health or suspected death during his three-week absence in April–May 2020. Even scholars who have studied North Korea extensively are still working to obtain basic information about the hermetic country. In this respect, this paper claims that we can better understand and analyze North Korea's nuclear policy during the Kim Jong-un era by investigating North Korean law.

The nuclear policy of the Kim Jong-un regime is reflected in four (semi) laws: (1) The Ten Principles for the Establishment of a Monolithic Ideological System (TPMI); (2) The Charter of the Worker's Party of Korea (WPK); (3) The Socialist Constitution of the Democratic People's Republic of Korea (DPRK); and (4) The April 1, 2013 Law on Nuclearization.

Although the TPMI and the WPK Charter are not laws in a narrow sense—laws legislated by the Supreme People's Assembly (SPA), or *Choego Inmin Hoewi*—they function as laws in North Korea and are, thus, classified as laws in this paper. In fact, these two semi-laws rank above the North Korean Constitution in terms of authority.<sup>6</sup> Regardless, as “the North Korean political system is dominated by the Kim family's personality cult,”<sup>7</sup> the highest authority is always that of “Kim family orders, which stand above the law, including the Constitution, all forms of civil law, or regulations, and even above the more influential Korean Workers' Party [WPK] Charter.”<sup>8</sup> Kim Il-sung established this system as well as his position of *Suryeong*, supreme leader, “not only leading the [WPK] but also defining the interests of the nation-state in accordance with what the *Suryeong*

---

4. Indeed, many of the North Korean laws are not readily accessible in any form whatsoever, to its own citizens, or the world at large. Notorious for its extreme censorship, vigilant national security, and for being one of the world's most secretive states, nowhere outside of the DPRK is there a comprehensive collection of their legal materials. Only recently have a sliver of their laws been published or disclosed, only a fraction of those are available online, and only a fragment of those are translated into English—which makes researching the insular nation incredibly difficult.

5. Jessica Lee, *Guesswork and Rumors Make for Bad North Korea Policy*, FOREIGN POL'Y (Apr. 24, 2020, 1:11 PM), <https://foreignpolicy.com/2020/04/24/kim-jong-un-dead-surgery-guesswork-rumors-bad-north-korea-policy> [https://perma.cc/TLA4-RKKA].

6. See ROBERT COLLINS, COMM. FOR HUM. RTS. IN N. KOR., NORTH KOREA'S ORGANIZATION AND GUIDANCE DEPARTMENT: THE CONTROL TOWER OF HUMAN RIGHTS DENIAL 14 (2019), [https://www.hrnk.org/uploads/pdfs/Collins\\_OGD\\_Web.pdf](https://www.hrnk.org/uploads/pdfs/Collins_OGD_Web.pdf) [https://perma.cc/DJE3-WQD6].

7. ROBERT COLLINS, COMM. FOR HUM. RTS. IN N. KOR., MARKED FOR LIFE: SONGBUN, NORTH KOREA'S SOCIAL CLASSIFICATION SYSTEM 15 (2012), [http://hrnk.org/uploads/pdfs/HRNK\\_Songbun\\_Web.pdf](http://hrnk.org/uploads/pdfs/HRNK_Songbun_Web.pdf) [https://perma.cc/95GM-CVMD].

8. *Id.*

dictates.”<sup>9</sup> Below the words and personal directives of Chairman Kim Jong-un, the current hierarchy of authority is as follows: The TPMI, the WPK Charter, the Socialist Constitution, and other laws (see Figure 1).<sup>10</sup>

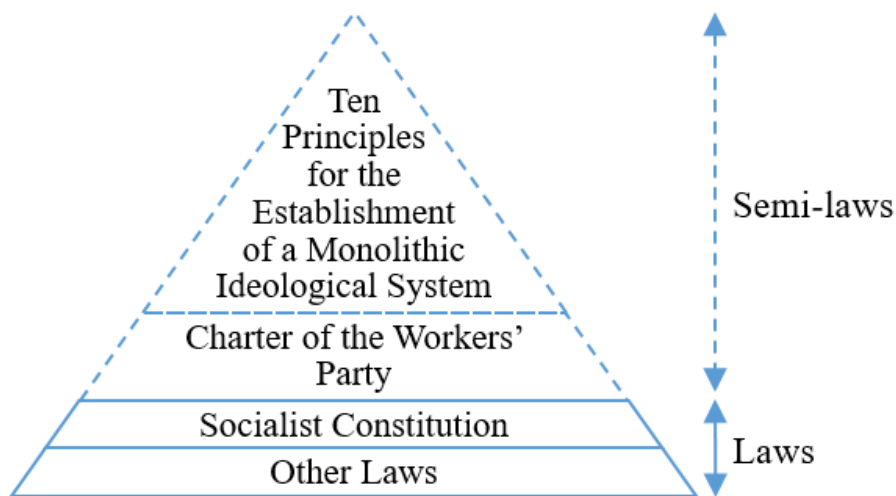


Figure 1 The Hierarchy of North Korean Laws

#### 1. THE TEN PRINCIPLES FOR THE ESTABLISHMENT OF A MONOLITHIC IDEOLOGICAL SYSTEM

In 1974, during “his anointment as his father Kim Il[-s]ung’s successor[.]”<sup>11</sup> Kim Jong-il announced the TPMI, which are divided into 65 sub-principles.<sup>12</sup> North Korean dictionaries of philosophy define the TPMI as “the ideological system by which the whole party and people are firmly armed with the revolutionary ideology of the *Suryeong* and united solidly around him, carrying out the revolutionary and construction battles under the sole leadership of the *Suryeong*.”<sup>13</sup>

An analogy is often drawn between the TPMI and the Ten Commandments, given their “similar language patterns and . . . same purpose of regulating the

9. *Id.*

10. Some place the Socialist Constitution below other laws on the grounds that the Constitution is not litigable and, thus, exists as a mere formality in North Korea, as is the case in China. *See id.*

11. Sung Hui Moon, *North Korea Steps Up Ideological Campaign Amid Tensions*, RADIO FREE ASIA (Dec. 17, 2013), <http://www.rfa.org/english/news/korea/ideology-12162013183830.html> [<https://perma.cc/Y3P2-6Q93>].

12. COLLINS, *supra* note 6, at 14.

13. Kang Mi Jin, *NK Adds Kim Jong Il to ‘Ten Principles’*, DAILY NK (Aug. 9, 2013, 5:15 PM), <https://www.dailynk.com/english/nk-adds-kim-jong-il-to-ten-princip/> [<https://perma.cc/PTF8-S5NU>].

daily lives of their adherents.”<sup>14</sup> Indeed, the North Korean political system is often described as a theocracy.<sup>15</sup> Kim Il-sung’s younger brother, Kim Yong-ju, had a “childhood experience as a Christian, [which] seemed to have influenced his decision to constitute the Ten Principles in line with Christian tradition.”<sup>16</sup> The TPMI dictate the lives of all North Koreans and, therefore, must be memorized by every citizen<sup>17</sup> and exercised during self-criticism sessions, known as *saeng-hwal-chong-hwa*.<sup>18</sup> Beginning during middle school, all citizens are required to attend weekly *saeng-hwal-chong-hwa*, “where they must admit to personal failings in public sessions and then receive criticism about them from others during the same meeting.”<sup>19</sup> Citizens first refer to an instruction from the TMPI and explain how they failed to live up to it.<sup>20</sup>

In August 2013, North Korea revised the TPMI for the first time (see the Appendix for an overview of the revision). Although the main focus of the revision was on legitimizing Kim Jong-un’s hereditary succession,<sup>21</sup> a noteworthy revision concerning nuclearization can be found in the Preamble:

The great leader and the great general’s wise leadership led our country to become a socialist power united by the leader, the party, and the public with an invincible military force centered on *nuclear power* and a strong self-reliant economy [the great leader and the great general refer to Kim Il-sung and Kim Jong-il, respectively].

14. JAE-CHEON LIM, LEADER SYMBOLS AND PERSONALITY CULT IN NORTH KOREA: THE LEADER STATE 48 (2015).

15. RA JONG-YIL, INSIDE NORTH KOREA’S THEOCRACY: THE RISE AND SUDDEN FALL OF JANG SONG-THAEK (Jinna Park trans., 2019); HAN S. PARK, NORTH KOREA: THE POLITICS OF UNCONVENTIONAL WISDOM 41–49 (2002); TARA O, THE COLLAPSE OF NORTH KOREA: CHALLENGES, PLANNING AND GEOPOLITICS OF UNIFICATION 3 (2016).

16. LIM, *supra* note 14, at 48.

17. Kang, *supra* note 13. All citizens are required to adhere to the TPMI, regardless of their *songbun*. *Songbun*, North Korea’s hereditary socio-political caste-system, classifies all citizens at birth as one of three classes—the ‘core’ or loyal, the ‘wavering,’ or the ‘hostile.’ COLLINS, *supra* note 7, at 1. Following the formation of North Korea in 1948, *songbun* was created “to protect the Kim regime” from “perceived internal political threats.” Descendants of lawyers, doctors, Christian ministers, merchants, and landlords, have low *songbun*, whereas descendants of peasants and “‘war heroes’ who died working or fighting for the North” are of higher *songbun*. NORTH KOREA: A COUNTRY STUDY 78 (Robert L. Worden ed., Library of Congress 2008); *Songbun: Social Class in a Socialist Paradise*, LIBERTY IN N. KOR. (Dec. 17, 2019), <https://www.libertyinnorthkorea.org/songbun/> [<https://perma.cc/5FJE-KN9L>]. *Songbun* affects educational advancement, job placement, food (quality and quantity), clothing, housing (conditions and location), medical care, where one may be allowed to travel, who one may marry, and the level of punishments one receives for crimes. COLLINS, *supra* note 7, at 1, 53, 65, 71, 75, 82, 95 n. 263. The “untouchables” of North Korea are subjected to pervasive discrimination throughout their lives, as are their offspring, “creat[ing] a form of slave labor for a third of North Korea’s population of 23 million citizens[,] and loyalty-bound servants out of the remainder.” *Id.* at 1.

18. Moon, *supra* note 11.

19. Alan Weedon, *Welcome to North Korea’s Political Shame Circles, Where Self-Criticism is Taken to a Whole New Level*, AUSTRALIA BROAD CORP. (Mar. 30, 2019, 5:06 PM), <https://www.abc.net.au/news/2019-03-31/welcome-to-north-koreas-self-criticism-classes/10936152> [<https://perma.cc/FGP4-SKRW>].

20. *Id.*

21. Audrey Yoo, *North Korea Rewrites Rules to Legitimise Kim Family Succession*, SOUTH CHINA MORNING POST: ASIA (Oct. 16, 2013), <https://www.scmp.com/news/asia/article/1296394/democratic-peoples-monarchy-korea-north-korea-changes-ruling-principles> [<https://perma.cc/UL6H-E8FY>].

This revision is significant because it is the most authoritative document, after the words of the Kim family, which highlights the importance of nuclear power to the regime.

## 2. THE CHARTER OF THE WORKERS' PARTY OF KOREA

Established in 1945 to create a communist society, the WPK is the founding and sole ruling political party of North Korea.<sup>22</sup> The WPK's "grip over the populace is pervasive and reaches into the daily lives of residents through indoctrination and surveillance."<sup>23</sup> The party is able to reinforce its control "by interlocking membership between party elites and chief governmental and military figures."<sup>24</sup> Most importantly, Kim Jong-un "reigns over the State in the uppermost position of the party, [as] its General Secretary."<sup>25</sup>

The Charter is the second most important source of authority after the TPMI and it lays out the WPK's bylaws, drawing out their methodology for imposing communism. The Charter specifies the WPK's "immediate goal of . . . achiev[ing] a complete socialist victory on the northern half of the Korean Peninsula, thereby accomplishing the revolutionary task of liberating the Korean people and establishing people's democracy throughout the country. The party's ultimate goal is to make the entire society oriented to *Juche* ideology and to construct a communist society."<sup>26</sup> *Juche*, or self-reliance, is the official ideology of North Korea,<sup>27</sup> and it can be interpreted as socialism or communism with North Korean characteristics. Since 1972, *Juche* has been enshrined as the guiding ideology and often advertised as (one of) the greatest achievements of Kim Il-sung.

The following paragraph is from the Preamble of the WPK Charter:

The Korean Workers' Party establishes a revolutionary power in political ideology, devises a socialist system centered on the people's masses, strengthens the people's armed forces, bolsters the country's defenses, builds the country's impregnable defenses, and develops a socialist, self-reliant national economy and socialist culture.<sup>28</sup>

In 2016, however, the Charter was revised, and the following was added to the Preamble:

The Korean Workers' Party establishes a revolutionary power in political ideology, develops a socialist system centered on the people's masses, maintains absolute control over the *byungjin* line of economic development and *nuclear force development*, determinedly prioritizes development of

---

22. *Workers' Party of Korea*, KBS WORLD RADIO (Jan. 2, 2020), [http://world.kbs.co.kr/service/contents\\_view.htm?lang=e&board\\_seq=377156#none](http://world.kbs.co.kr/service/contents_view.htm?lang=e&board_seq=377156#none) [<https://perma.cc/GS8U-W657>].

23. Dae-Kyu Yoon, *The Constitution of North Korea: Its Changes and Implications*, 27 *FORDHAM INT'L L.J.* 1289, 1290 (2003).

24. *Id.*

25. *Id.*

26. YONHAP NEWS AGENCY, *NORTH KOREA HANDBOOK 676* (Monterey Interpretation & Translation Servs. trans., 2003).

27. Yoon, *supra* note 23, at 1291.

28. CHOSŌN RODONGDANG KYUYAK [CHARTER OF THE WORKERS' PARTY OF KOREA], Preamble (N. Korea).

science and technology, builds the country's impregnable defenses, and promotes the construction of socialist economic power and a civilized country.<sup>29</sup>

What is notable in the revision is the inclusion of "nuclear force development" and the term *byungjin*. The insertion of "nuclear force development" in the WPK Charter is very significant because it indicates that absolute control of nuclear power lies within the party. Of course, Kim is at the very top of the party, but this indicates that the entire party, including Kim, is focused on this goal, complicating the dynamics of North Korea's denuclearization negotiations with the United States. The insertion of "nuclear force development" is also unique because this expression has never been mentioned in the Charters of the Communist Parties of China and the Soviet Union.

With regard to *byungjin*, meaning parallel advance,<sup>30</sup> Kim Il-sung first proposed the policy in 1962 to advance the economy and national defense simultaneously. *Byungjin* "enabl[ed] North Korea to develop the economy by providing strong national defense and improv[e] the economy by building up the defense industry."<sup>31</sup> Kim Il-sung explained that the goal of *byungjin* was to turn North Korea into a fortress, thereby preventing provocation by enemies.<sup>32</sup>

In March 2013, "Kim Jong[-u]n officially revived *byungjin*, proposing a 'new strategic line of simultaneous economic construction and nuclear armed forces construction.'"<sup>33</sup> However, in April 2018, Kim announced a major policy shift by declaring a "'great victory of the *byungjin* line,' citing the construction of 'state nuclear armed forces[.]' . . . [and] proclaim[ing] a 'new strategic line' of concentrating solely on economic construction."<sup>34</sup>

But perhaps to "strengthen its negotiating position vis-a-vis the U.S.," it seems that the "DPRK leadership may now be considering a fundamental shift" back toward *byungjin*.<sup>35</sup> On August 25, 2019, North Korean media covered Kim Jong-un's "guidance of a 'super-large multiple rocket launcher' test launch." The media report included a nearly "verbatim passage from [Kim]'s speech in 2017,<sup>36</sup> when the country was still committed to building its nuclear and intercontinental ballistic missile arsenals, [and] was likely a deliberate and highly calculated move intended to signal that Kim is considering a return to *byungjin*."<sup>37</sup> Further evidence of a shift occurred on August 31, 2019. A special article<sup>38</sup> was

29. *Id.* (emphasis added).

30. Rachel Minyoung Lee, *A Return to Byungjin? Signals from North Korean State Media*, NK NEWS (Sept. 6, 2019), <https://www.nknews.org/pro/a-return-to-byungjin-signals-from-north-korean-state-media/> [<https://perma.cc/8JAM-BKB7>].

31. *Id.*

32. Andray Abrahamian, *With Byungjin, Kim Jong Un Hedges His Bets*, NK NEWS (May 9, 2016), <https://www.nknews.org/2016/05/with-byungjin-kim-jong-un-hedges-his-bets/> [<https://perma.cc/J3UP-4VPS>].

33. Lee, *supra* note 30.

34. *Id.*

35. *Id.*

36. Which read ". . . lead and actively lend impetus to the construction of a powerful socialist state." *Id.*

37. *Id.*

38. "Special articles expound on or reinforce ideological issues or party policies that the North Korean leadership considers important." *Id.*

published making “a rare, explicit declaration . . . justif[ying] the necessity of strong defense for economic development and sa[y]ing the defense industry will ‘lead’ the national economy, evocative of the . . . *byungjin*.”<sup>39</sup>

It appears that the phrase “the *byungjin* line of economic development and nuclear force development” was not modified at the 8th Congress of the Workers’ Party of Korea in January 2021.<sup>40</sup> Where does this leave us in 2021? A *byungjin* policy is “a form of hedging. If things go well on the economic front and the leadership feels secure, we may see a tilt toward economic growth.”<sup>41</sup> On the contrary, if “the leadership feels insecure or that conditions will make economic growth difficult, one has to believe they will have no problem focusing on the military.”<sup>42</sup> While Kim Jong-un has sought to grow the North Korean economy, “the hedging narrative structure of *Byungjin* means that the DPRK will be able to buckle down, blame imperialism and endure economic pain for the sake of the country’s military concerns. They’ve done it before.”<sup>43</sup>

### 3. THE SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA

The Socialist Constitution of the Democratic People’s Republic of Korea, has been described as “[t]he document that impacts a North Korean’s way of life the least.”<sup>44</sup> In fact, “as one high-level defector explains, the [C]onstitution and Party [C]harter are ‘advertisements’ and the real law of the land is the TPMI.”<sup>45</sup> While there is a pervasive discrepancy between the written laws and law in action,<sup>46</sup> “[a] glimpse of North Korea’s Constitution can still provide observers with an understanding of how North Korea has undergone and responded to social changes and vicissitudes.”<sup>47</sup>

The first Constitution, inaugurated in September 1948, when North Korea was under heavy Soviet influence, was modeled after the 1936 Stalinist Constitution of the USSR.<sup>48</sup> Although the nascent regime was a relatively unimportant country in the Communist Bloc at that time, the Constitution was closely re-

---

39. *Id.*

40. *WPK Rules Revised at 8th Congress of WPK*, RODONG SINMUN (Jan. 10, 2021), [http://www.rodong.rep.kp/en/index.php?strPageID=SF01\\_02\\_01&newsID=2021-01-10-0001](http://www.rodong.rep.kp/en/index.php?strPageID=SF01_02_01&newsID=2021-01-10-0001) [<https://perma.cc/2LBU-FF5L>].

41. Abrahamian, *supra* note 32.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. Yoon, *supra* note 23, at 1289; *see also* NEIL GORSUCH, A REPUBLIC, IF YOU CAN KEEP IT 39–40 (2019).

47. Yoon, *supra* note 23, at 1291.

48. Andrei Lankov, *Terenti Shykov: The Other Ruler of Nascent N. Korea*, THE KOREA TIMES (Apr. 17, 2015), [https://www.koreatimes.co.kr/www/news/issues/2013/04/363\\_103451.html](https://www.koreatimes.co.kr/www/news/issues/2013/04/363_103451.html) [<https://perma.cc/X5HZ-WF2U>].

viewed, edited, and even rewritten by Soviet authorities, including Joseph Stalin.<sup>49</sup> The second Constitution, the Socialist Constitution of the Democratic People's Republic of Korea, was instituted in 1972, "after a profound transformation of North Korean society."<sup>50</sup> Kim Il-sung had "consolidated his power into an undisputable one-man dictatorship . . . [and] private ownership was totally eliminated, ushering in the completion of the Socialist central economic planning system,"<sup>51</sup> thus making it a Socialist Constitution.

Despite further drastic revisions in 1998 and 2009<sup>52</sup> and many smaller-scale amendments in between, the basic principles and characteristics of the 1972 Constitution have been largely maintained to date.

Yet there have been several interesting changes to the Constitution during Kim Jong-un's era, including last year's constitutional amendments that seem to have reinforced the personality cult and Kim Jong-un's authority over the country.<sup>53</sup> Concerning the nation's nuclearization, it is worth mentioning that the word "nuclear" was added to the Preamble of the Constitution in April 2012 and is still enshrined therein. The text translates as follows:

In the face of the collapse of the world socialist system and the vicious offensive of the imperialist allied forces to stifle the Democratic People's Republic of Korea, the great leader Comrade Kim Jong-il administered *Songun* politics; thus, he safeguarded with honor the achievements of socialism, which are the precious legacy of the great leader Comrade Kim Il-sung; developed the DPRK into an invincible politico-ideological power, a *nuclear* state, and an unchallengeable military power; and opened a broad avenue for building a powerful socialist country.<sup>54</sup>

The insertion of the term "nuclear state" in the Socialist Constitution, like the insertion of "the nuclear state" in the WPK Charter, is unique because the term has never been included in the Constitutions of existing nuclear powers, including China and Russia (formerly the Soviet Union). This would appear to suggest North Korea's level of commitment to becoming a nuclear state, which seemingly exceeds that of other (former) socialist states, such as China and Russia.

In fact, it was expected that the term "nuclear state" would "be deleted [from the Constitution] if North Korea could get the United States to partially

---

49. *Id.*

50. Yoon, *supra* note 23, at 1291.

51. *Id.*

52. Yoon, *supra* note 23, at 1300; Chloe Sang-Hun, *New North Korean Constitution Bolsters Kim's Power*, N.Y. TIMES (Sept. 28, 2009), <https://www.nytimes.com/2009/09/29/world/asia/29korea.html> [<https://perma.cc/9WUQ-TRNA>].

53. By the 2019 amendment, Kim Jong-un "was named in the Constitution for the first time," whereas "Kim Il-sung and Kim Jong-il were expressly included . . . only after their deaths, and they were only named in the [P]reamble." Kim Jong-un was also defined as "'the supreme leader who represents the state,' that is, the head of state." Atsuhito Isozaki, *North Korea Revamps Its Constitution*, THE DIPLOMAT: THE KOREAS (Aug. 26, 2019), <https://thediplomat.com/2019/08/north-korea-revamps-its-constitution> [<https://perma.cc/4ZTU-K5QR>].

54. *CHOSŌN MINJUJU'ŬI INMIN KONGHWAUK SAHOEJU'ŬI HŌNBŎP* [CONSTITUTION], Apr. 13 2012, Preamble (N. Kor.) (emphasis added).



remove a set of economic sanctions. But the second U.S.–Korea Summit in Hanoi . . . did not go that far.”<sup>55</sup>

#### 4. THE APRIL 1, 2013 LAW ON NUCLEARIZATION

On April 1, 2013, the 7th Session of North Korea’s 12th SPA adopted the law “On Consolidating the Position of Nuclear Weapons State for Self-Defense,” also known as the April 1st Nuclearization Law.<sup>56</sup> The 10 articles of the law are translated as follows:

Article 1. The nuclear weapons of the Democratic People’s Republic of Korea are just means for defense, as it was compelled to have access to them to cope with the ever-escalating hostile policy and nuclear threat of the U.S.

Article 2. They serve the purpose of deterring and repelling the aggression and attack of the enemy against the DPRK and for dealing deadly retaliatory blows at the strongholds of aggression until the world is denuclearized.

Article 3. The DPRK shall take practical steps to bolster nuclear deterrence and nuclear retaliatory strike power both in quality and quantity to cope with the gravity of the escalating danger of hostile forces’ aggression and attack.

Article 4. The nuclear weapons of the DPRK can be used only by a final order of the Supreme Commander of the Korean People’s Army (KPA) to repel invasion or attack from any hostile nuclear weapons state and to make retaliatory strikes.

Article 5. The DPRK shall neither use nuclear weapons against non-nuclear states nor threaten them with those weapons unless they join a hostile nuclear weapons state in its invasion of and attack on the DPRK.

Article 6. The DPRK shall strictly observe the rules on safekeeping and management of nuclear weapons and ensure the stability of nuclear tests.

Article 7. The DPRK shall establish a mechanism and order for the safekeeping and management of nuclear weapons and their technology so that no weapon-grade nuclear substance may leak out unlawfully.

Article 8. The DPRK shall cooperate in international efforts for nuclear non-proliferation and safe management of nuclear substances on the principle of mutual respect and equality, depending on the improvement of relations with hostile nuclear weapons states.

Article 9. The DPRK shall strive hard to defuse the danger of a nuclear war and finally build a world without nuclear weapons and fully support international efforts for nuclear disarmament against a nuclear arms race.

Article 10. The related institutions shall take thorough and practical steps to implement this ordinance.<sup>57</sup>

---

55. Isozaki, *supra* note 53.

56. *North Korean Leaders Set Agenda for Nuke Program*, TOWNHALL: NIGHT WATCH (Apr. 3, 2013, 12:01 AM), <https://townhall.com/columnists/nightwatch/2013/04/03/north-korean-leaders-set-agenda-for-nuke-program-n1555762> [<https://perma.cc/ZZ6T-YM38>].

57. *Id.*

The country appears to engage in a “blame nuclearization on the United States discourse,” as it “plac[es] the responsibility and cause for its nuclearization on the hostile policy and nuclear threat of the U.S.”<sup>58</sup> The April 1st “law stipulates North Korea’s permanent possession of nuclear weapons ‘until the world denuclearizes’” and seems to propose that “while North Korea will never give up its nuclear weapons, it intends to use nuclear weapons for defensive purposes only and to manage them with maximum safety.”<sup>59</sup> Scholars also believe that the law “implies additional nuclear tests for verifying new nuclear warheads and delivery systems” to “increase[e] the range and accuracy of long-range missiles . . . while further developing its mobile launchers . . . and continuously making its nuclear weapons more high-tech, smaller, lighter, and diversified.”<sup>60</sup>

Moreover, the law reaffirms North Korea’s perception of nuclear weapons as “sacred and a last bastion of survival for the regime” as well as a “national treasure of a unified Korea and a lifeline of the Korean people that cannot be given up at any price.”<sup>61</sup> However, North Korea still claims that it “will not use its nuclear weapons so long as the U.S. and other nuclear weapons states do not attack first.”<sup>62</sup> While that promise is not particularly convincing, the law is also problematic because *byungjin* “signifies that North Korea will no longer differentiate its nuclear energy for peaceful use from military use.”<sup>63</sup> Again, *byungjin* refers to North Korea’s parallel advance “to promote economic construction and raise living standards of the people while strengthening national defense capabilities ‘without increasing the defense budget.’”<sup>64</sup> Another problem with Article 4 of this law is that North Korea has not adopted a “No First Use” policy.<sup>65</sup> That is, the article implies that although North Korea will not be the first to use nuclear weapons to attack another nuclear power, it can retaliate with nuclear weapons even if a nuclear power attacks North Korea with non-nuclear weapons.

## CONCLUSION

As mentioned in this paper, nuclear statehood has been enshrined in North Korea’s highest laws during the Kim Jong-un era. What are the domestic impli-

---

58. CHEON SEONG-WHUN, KOREA INST. FOR NAT’L UNIFICATION, THE KIM JONG-UN REGIME’S ‘BYUNGJIN’ (PARALLEL DEVELOPMENT) POLICY OF ECONOMY AND NUCLEAR WEAPONS AND THE ‘APRIL 1ST NUCLEARIZATION LAW’ 4 (2013), <http://www.kinu.or.kr/pyxis-api/1/digital-files/b150d4ac-0f1b-420a-b70d-18f3e0aa9972> [<https://perma.cc/N5S3-9NML>].

59. *Id.*

60. *Id.* at 5.

61. *Id.*

62. *Id.*

63. *Id.* at 2.

64. *Id.*

65. China and India pledged “No First Use” in 1964 and 1998, respectively. Several other nuclear powers, including Russia, the United Kingdom, and the United States, have rejected it. *See generally, No First-Use Policy Explained*, UNION OF CONCERNED SCIENTISTS (May 7, 2020), <https://www.ucsusa.org/resources/no-first-use-explained> [<https://perma.cc/MJR6-M7QK>]; *India Considers No First-Use Changes*, ARMS CONTROL ASS’N, <https://www.armscontrol.org/act/2019-10/news-briefs/india-considers-first-use-changes> [<https://perma.cc/35C6-9RJ6>] (last visited Feb. 11, 2020).

cations of the codification of nuclearization? First, compared with its predecessors, the Kim Jong-un regime has made nuclearization less reversible. Removing nuclear statehood from North Korea's supreme laws would entail a cumbersome procedure, although it may not be as complex as in a democracy.<sup>66</sup> In addition, the North Korean regime has made it official to its people that nuclearization is one of the nation's greatest accomplishments. Thus, any argument in favor of abrogating nuclear statehood in the highest laws would need to be persuasive to ensure that North Koreans—especially those in power—do not lose faith in the regime.<sup>67</sup>

Second, no one besides Kim Jong-un can raise his or her voice against nuclearization in North Korea because it is against the law. In other words, supporting denuclearization would likely lead to grave punishment—being sent to political prison camps or even execution—for violating the law. Although such criminal punishment may not be surprising given that North Korea is a dictatorship, the nuclear-related legal developments that have occurred during the Kim Jong-un era are still significant in that they provide a concrete legal basis for punishment. Third, the fact that the four nuclear-related laws remain unrevised—despite Kim Jong-un's announcement in April 2018 that *byungjin* was no longer needed—confirms that there has been no fundamental shift in North Korea's nuclearization policy. That is, North Korea will never abandon its nuclear program unilaterally if it considers that the benefits of having nuclear weapons are greater than those of giving them up.

What does the codification of nuclearization suggest to the international community? First, the fact that North Korea, unlike existing nuclear states, such as China and Russia, has enshrined nuclear statehood in its supreme laws suggests the country's commitment—or perhaps impatience—to be recognized as a nuclear state by the international community. Second, the stipulation of nuclear statehood in the laws discussed in this paper suggests that a bottom-up approach will likely be less efficient than a top-down approach in denuclearization negotiations between North Korea and other countries, including the United States. Kim Jong-un appears to be the only person who can make decisions that override the nuclear-related laws. If he is not at the negotiation table, North Korean negotiators will have to report to and obtain permission from him for each and every important decision in order to also avoid violating North Korea's laws and the resulting punishment.

Although the SPA, or *Choego Inmin Hoewi*, is the highest legislative body in North Korea, “[t]here is no known case of the [SPA] overturning or even modifying a decision of the *Suryeong*.<sup>68</sup> As *Suryeong*, Kim Jong-un, “the supreme,

---

66. North Korea's legislation act, enacted in December 2011, is modeled after its Chinese counterpart and stipulates a more formal procedure for revising important laws, including the Constitution, than other laws or regulations.

67. In a dictatorship or a totalitarian state, faith is distinguished from trust in that trust is voluntary and not based on fear. Friedel Weinert, *The Role of Trust in Political Systems. A Philosophical Perspective*, 1 OPEN POL. SCI., 7, 10 (2018), <https://doi.org/10.1515/openps-2017-0002> [<https://perma.cc/V8XS-DXER>].

68. COLLINS, *supra* note 7, at VII.

*godlike* leader's words and directives are the principal governing norms that supersede all else, including the law. [Kim's] word is considered the quintessential source of enlightenment capable of dispensing justice."<sup>69</sup> The SPA is merely "a rubber-stamp legislative body doing the bidding of the [WPK] as required by the . . . Constitution."<sup>70</sup> North Korean policies are "not made by informed opinion, by the masses, or based on what benefits the people."<sup>71</sup> In fact, "SPA members cannot debate an issue or a bill."<sup>72</sup> Rather, the SPA is merely "intended to provide the appearance of procedural legitimacy."<sup>73</sup>

In short, North Korean law confirms a former high-level Korean diplomat's claim that no North Korean official except Kim Jong-un has the authority to discuss nuclear issues.<sup>74</sup> There is no rule *of* law, only rule *by* law under Kim Jong-un, who is above the law and maintains absolute power. Although these details underline the importance of having Kim at any negotiation table for nuclear non-proliferation talks, the Biden administration will likely favor a "bottom-up approach"<sup>75</sup> and reject, for the time being, the idea of negotiation between Biden and Kim who labeled each other a "thug" and a "rabid dog". The path to denuclearization talks with North Korea, let alone any agreement on denuclearization, is expected to be bumpy.

APPENDIX: TRANSLATION OF THE TEN PRINCIPLES FOR THE ESTABLISHMENT  
OF A MONOLITHIC IDEOLOGICAL SYSTEM (ABRIDGED EXCEPT THE  
PREAMBLE)<sup>76</sup>

Preamble

We are living and struggling in a historic era where the great Comrades Kim Il-sung and Kim Jong-il are constantly highly honored and where the great achievements of the *Juche* revolution and the *Songun* revolution shine their brilliance and are inherited and will be completed in accordance with the banner of Kimilsungism and Kimjongilism.

The great Comrades Kim Il-sung and Kim Jong-il are the eternal leaders of our Party and people and the Sun of Juche, whom our people have met for the first time in our history of thousands of years and highly honored, and who pio-

69. Yoon, *supra* note 23, at 1291.

70. COLLINS, *supra* note 7, at 46.

71. COLLINS, *supra* note 6, at 73.

72. *Id.*

73. *Id.*

74. Steven Borowiec, *Why Joe Biden Could Face a North Korean Nuclear Standoff Before He Even Takes Office*, TIME (Nov. 9, 2020, 10:41 PM), <https://time.com/5910016/north-korea-joe-biden> [<https://perma.cc/G4WM-FV93>].

75. *Id.*

76. BUGHAN BEOBYEONGJIB. SANG [The Compilation of North Korean Laws: vol. 1] 77–87 (Gukga Jeongbowon [National Intelligence Service] ed. 2020) (in Korean). Translation of the original version in 1974 is available at Jeong-Ho Roh, *Ten Principles for the Establishment of the One-Ideology System*, COLUM, L, SCH, (2006), [http://www2.law.columbia.edu/course\\_00S\\_L9436\\_001/North Korea materials/10 principles of juche.html](http://www2.law.columbia.edu/course_00S_L9436_001/North%20Korea%20materials/10%20principles%20of%20juche.html) [<https://perma.cc/GGT8-4K46>].

---

---

neered a new era of independence with a genius theory of ideology and outstanding leadership, opened a path to victory with the great advance of revolution and construction, and thereby laid a firm foundation for the completion of the revolutionary cause of *Juche*.

The great Comrades Kim Il-sung and Kim Jong-il are excellent theorists of ideology who produced and radiated the guiding ideas of the era of independence.

Comrade Kim Il-sung forged a new path for revolution, enabling the masses to independently and creatively shape their destiny as the masters of their own destiny by inventing the immortal *Juche* idea, which occupies the highest and brightest place in the history of human history.

Comrade Kim Jong-il completely systematized the *Juche* idea through energetic ideological and theoretical activities and developed the *Songun* idea and enriched the *Juche* idea to spread light as the complete guiding ideology of the era of independence.

The great Comrades Kim Il-sung and Kim Jong-il are eminent politicians and geniuses in creation and construction, who have made immortal achievements in front of the motherland, revolution, era, and history through tremendous revolutionary practices.

Comrade Kim Il-sung prepared the most powerful political weapon for the triumphant advance and completion of the *Juche* revolution by establishing the glorious Workers' Party of Korea, the Democratic People's Republic of Korea, and the indestructible Korean People's Army.

The great Comrades Kim Il-sung and Kim Jong-il wisely led our Party, State, and armed forces to create a shining example of construction of the Party, State, and revolutionary armed forces in the era of independence and raised our people to an independent people to exceptionally reinforce the subject of revolution.

The great Comrades Kim Il-sung and Kim Jong-il established the socialism of *Juche*, which centers on the masses, pioneered the most correct path for socialist development, and exuded the dignity and power of our country around the world.

Comrades Kim Il-sung and Kim Jong-il brilliantly carried out the two phases of social revolution and accelerated the construction of socialism to establish on this land the most superior Korean-style socialism in which there is no exploitation and pressure, the people are the masters of everything, and all things are to serve the people, and they reliably defended and further enhanced and developed the socialism of *Juche* in the midst of global political turmoil.

Under the wise leadership of the Great Leader and the Great General, our country came to wield power as a strong socialist country with the leader, the Party, and the masses united in one heart, with invincible military power centered on nuclear force and a strong independent economy.

The great Comrades Kim Il-sung and Kim Jong-il are outstanding military strategists and commanders of steel who pioneered the Korean Revolution and led us in the direction of no defeat.

Comrade Kim Il-sung smashed the two mighty imperialists to pieces with his *Juche* military ideas and excellent resourcefulness, enhanced the dignity and honor of our country and people, strengthened and developed our country with revolutionary force, and achieved a succession of victories in the fierce anti-American war.

The great Comrades Kim Il-sung and Kim Jong-il are the lodestar of the reunification of the motherland and outstanding leaders of world revolution who devoted their lives to the reunification of the motherland and the cause of human independence.

Through energetic activities, the Great Leader and the Great General offered bright prospects for the reunification of the motherland and made an eternal contribution to the realization of the cause of world independence.

The great Comrades Kim Il-sung and Kim Jong-il are peerless patriots, great revolutionaries, and compassionate parents of the people who gave everything solely for the motherland, revolution, and the masses.

The great Comrades Kim Il-sung and Kim Jong-il will eternally be with our people as a reflection of *Juche* Korea, and the immense revolutionary achievements of the Great Leader and the Great General will be eternal and immortal.

By constantly highly honoring and supporting the great Comrades Kim Il-sung and Kim Jong-il, our country will spread brilliant light throughout the world as the Land of the Eternal Sun, and the future of our country will be endlessly bright and prosperous.

To forever highly honor and dedicate our loyalty to the great Comrades Kim Il-sung and Kim Jong-il, and to inherit and complete the great achievements of Kimilsungism and Kimjongilism to the end under the leadership of the Party, the following Ten Principles for the Establishment of a Monolithic Ideological System must be faithfully observed.

1. We must give our all in the struggle to unify the entire society with Kimilsungism and Kimjongilism.
2. We must honor the great Comrades Kim Il-sung and Kim Jong-il as the eternal leaders of our Party and the people and as the Sun of *Juche*.
3. We must make absolute and desperately defend the authority of the great Comrades Kim Il-sung and Kim Jong-il and the authority of the Party.
4. We must be thoroughly armed with the revolutionary ideas of the great Comrades Kim Il-sung and Kim Jong-il and the Party's lines and policies that are the realization of these ideas.
5. We must adhere strictly to the principle of unconditional obedience in accomplishing the instructions passed on by the great Comrades Kim Il-sung and Kim Jong-il and in the Party's lines and policies.
6. We must strengthen by all possible means the entire Party's ideology, willpower, and revolutionary unity, centering on the Leader.

7. We must learn from the great Comrades Kim Il-sung and Kim Jong-il and adopt the noble mental and moral presence, revolutionary work methods, and people-oriented work style.

8. We must value the political life we were given by the Party and the Leader and loyally repay the Party's trust and thoughtfulness with heightened political awareness and work performance.

9. We must establish strong organizational regulations so that the entire Party, nation, and military move as one under the one and only leadership of the Party.

10. We must pass down the great achievement of the *Juche* revolution and the *Songun* revolution, pioneered by the great Comrade Kim Il-sung and led by Comrades Kim Il-sung and Kim Jong-il, from generation to generation, inheriting and completing it to the end.