



WORKSHOP REPORT

Constitutional Design in North
and South Korea


May 2021

NCNK

The National Committee on North Korea (NCNK) supports and facilitates principled engagement between the U.S. and North Korea in order to promote peace and security on the Korean Peninsula and to improve the lives of the North Korean people.

NCNK is a non-governmental, non-partisan organization whose membership reflects a broad range of perspectives and subject-matter expertise related to North Korea. NCNK serves to share information among its members, advance their work, and provide the broader public with substantive and balanced information about North Korea. NCNK was founded in 2004 by Mercy Corps, a global aid and development organization.

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Introduction

In February 2021, the National Committee on North Korea (NCNK) virtually convened a group of international experts to consider the commonalities and dis-commonalities between the constitutions of the Democratic People's Republic of Korea and of the Republic of Korea. Thirteen scholars with specialties in constitutional design, constitutional law, and Korean law participated in the conference, identifying areas of both similarity and difference between the two constitutions. Participants came from countries including the U.S., South Korea, China, France, Germany, Singapore, and New Zealand. (The conference host also extended an invitation for North Korean legal scholars to participate, which was declined.) This report aims to summarize the findings of the conference, although it does not necessarily reflect the views, in whole or in part, of any individual participant.

English-language scholarship on North Korean law has been scarce, in part because of the difficulty of conducting research on the topic and in part, presumably, because of the assumption that written law means little in the country. Much of the scholarship that has been published focuses on North Korean laws related to economic policy and foreign investment, which might serve as indicators of the country's willingness to follow in the path of other Asian one-party states and engage in economic reform and opening.¹ Detailed studies of the North Korean Constitution are relatively rare.² Studies of South Korean law, in contrast, are more extensive and capable of entering into greater analytical depth.³

However, there has been little scholarship that compares the constitutional structures of the two Koreas, or that traces how the legal systems of both North and South have

¹ See Darren C. Zook, "Reforming North Korea: Law, Politics, and the Market Economy," *Stanford Journal of International Law*, Vol. 48, No. 131 (2012), pp. 131-183; and In-Ho Song, Hye-Shin Cho, and Euna Lee, "The Past, Present, and Future of North Korean Economy: An In-depth Study on the North Korean Constitution's Economic Clauses and the Economic Reality," *International Journal of Korean Unification Studies*, Vol. 25, No. 1 (2016), pp. 199-233.

² See Dae-Kyu Yoon, "The Constitution of North Korea: Its Changes and Implications," *Fordham International Law Journal*, Vol. 27, No. 4 (April 2004), pp. 1289-1305; and Patricia Goedde, "Beyond Sham: The North Korean Constitution," *Asian Perspective*, Vol. 44, No. 1 (Winter 2020), pp. 1-29.

³ See, for example, Tom Ginsburg, "The Constitutional Court and Judicialization of Korean Politics," in *Public Law in East Asia*, Albert H.Y. Chen and Tom Ginsburg, eds. (Ashgate Publishing Limited, 2013).

evolved since the nation's division.⁴ The NCNK conference, with support and input from Professor David Williams, Executive Director of the Indiana University Law School's Center for Constitutional Democracy, as well as from James Min of LimNexus LLP, aimed to lay out a foundation for such scholarship, and potentially for future international engagement addressing the topic. Conference participants considered four broad topical clusters in addressing similarities and differences between the two constitutions:

- Legality, constitutional interpretation, and constitutional enforcement
- Popular sovereignty, elections, and the role of the legislature
- Executive structure
- The role of political parties

Unsurprisingly, conference participants found extensive differences between the two constitutions, both in institutional design and in their underlying assumptions about the relationship between the state and society. Yet the two documents are not totally distinct: both allow for a very strong executive department, and both exhibit certain features to guard against subversion of the domestic political order. Yet these constitutional features have evolved in different directions over the decades. The various iterations of North Korea's Constitution have moved away from Marxism and toward an ideological structure centered around the Kim family. Constitutional changes in post-democratization South Korea, in contrast, have sought to place certain guardrails on the presidency and institutionalize the judiciary as the ultimate protector of the democratic order.

It is clear that these two constitutional systems, based on some shared traditions and history, and some very different traditions and history, have convergent and divergent aspects. We can best know a legal system in context—in its own time and place, and in context of its neighboring and related legal systems. Exploring these similarities and differences in both text and practice is necessary for understanding the constitutional and political dynamics of each country and of the Korean peninsula as a whole.

⁴ One exception is Justine Guichard, "In the Name of the People: Disagreeing over Peoplehood in the North and South Korean Constitutions," *Asian Journal of Law and Society*, Vol. 4, No. 2 (November 2017), pp. 405-445.

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The following workshop summary does not necessarily reflect the views, in part or in whole, of any individual participant. Professional affiliations are provided for informational purposes only.

Workshop Summary

The workshop Panel divided discussion of the North and South Korean constitutions into four distinct clusters representing distinct conceptual or structural issues for consideration. The following summary represents key findings and questions raised during the course of the workshop.

CLUSTER ONE: *LEGALITY, CONSTITUTIONAL INTERPRETATION, AND CONSTITUTIONAL ENFORCEMENT*

The Panel concluded that the constitutions of the Democratic People’s Republic of Korea (DPRK) and the Republic of Korea (ROK) rest on very different conceptions of the role of law and of popular sovereignty. This first cluster, on legality, concerns the role of law. The next cluster, on elections and the legislature, concerns the role of popular sovereignty.

The Panel found that the primary role of the DPRK Constitution is to organize state power and to legitimate state sovereignty. Correlatively, the role of law in general is to project and facilitate the use of state power—in other words, to govern the activity of citizens according to the dictates of the governing power, including the State Affairs Commission (SAC), the Workers’ Party of Korea (WPK), and the Supreme People’s Assembly (SPA) and its Presidium. Frequently, this constellation of ideas is called “Rule by Law”: the law is an instrument by which the government rules. As will be discussed in the next cluster, the DPRK Constitution rests on the further belief that the government will use the law to serve the good of the people.

By contrast, the ROK Constitution is designed not merely to organize state power but also to limit it by providing an outside check, especially through the work of the Constitutional Court. Correlatively, the role of law in general is at least partially defensive: it gives citizens a means of protection and redress against the government. If wronged by the government, citizens can sue in a court of law to vindicate their rights. Indeed, the Constitutional Court even has the final say in impeachment proceedings against the President, so that the law is supreme even over the most powerful office-holders. Frequently, this constellation of ideas is called the “Rule of Law”: in theory, the law itself, especially the Constitution, is the ultimate ruler and constrains what the government can do.

These differing conceptions have important temporal consequences:

- The purpose of the ROK Constitution is, in part, to prospectively structure and limit the government—in other words, to control the actions of officeholders.
- But the purpose of the DPRK Constitution is to recognize existing structures of power that have been delineated by other means and in other fora.

As will be further elaborated in the analysis of the next cluster, these different notions of legality and constitutionalism seem to derive from different notions of the relationship between society and the state. For the ROK Constitution, society and the state are different entities and have different interests. The purpose of legality, constitutions, and checks and balances is to protect society against the state.

By contrast, the DPRK Constitution rests on a more monolithic and solidaristic conception of the relationship between society and the state. In this vision, society and the state do not really have different interests; rather, both are part of an organic whole with shared interests. Indeed, society itself is not really segmented into different interest groups because all desire, or should desire, the same good. That shared good is defined through the ideology of democratic centralism, *Juche*, and Kimilsungism-Kimjongilism.⁵ As a result, rights are not conceptualized as the possession of individuals but rather as based on the collectivist principle, “All for one, one for all.” In the terms of this ideology, perhaps the most important shared good is protection from outside powers, so the citizens look to the state for protection, rather than looking to the courts for protection against the state. As will be explained in the discussion of the third cluster, on the role of the executive, this monolithic conception is especially notable in the role of the Supreme Leader, who represents both the state and the “unanimous will of the people.”

These different visions of the state/society relationship lead to different visions of constitutional interpretation and enforcement. In ROK, the Constitutional Court is charged with interpreting the Constitution, and citizens may realistically seek its protection. By contrast, in the DPRK the SPA Presidium is charged with interpreting the Constitution and rescinding unconstitutional state actions, and the public prosecutor has the power to ensure that state actors conform to the Constitution’s requirements. Because

⁵ “*Juche*” was first incorporated into the DPRK’s 1972 Constitution; it is generally understood to combine elements of nationalism, socialism, militarism, reverence for the leader, and the pursuit of national autonomy. The term “Kimilsungism-Kimjongilism,” which extends the concept of *Juche* and emphasizes reverence for the words and actions of North Korea’s previous leaders, was introduced into official rhetoric following the succession to Kim Jong Un, and incorporated into the Constitution in 2019.

the Constitution is essentially a political proclamation about the organization and legitimacy of state power, it is neither necessary nor desirable to have an apolitical interpreter such as a court. Similarly, in the ROK Constitution, the state of emergency provisions are relatively specific and detailed, so that they can be the more readily enforced. By contrast, in the DPRK the analogous provisions are considerably vaguer, so that the state authorities can interpret the limits on states of emergency as they choose.

The Panel found that these foundational ideas recurred in each of the other clusters:

- In the DPRK, the roles of the legislature, the executive, and the party all were based on the projection of state power from the governing structures to the citizens through a single governing ideology.
- In the ROK, the roles of the legislature, the executive, and the parties all were based on the limitation of state power through checks and balances, especially competition for the support of voters.

CLUSTER TWO: POPULAR SOVEREIGNTY, ELECTIONS, AND THE ROLE OF THE LEGISLATURE

The Panel concluded that the idea of popular sovereignty is central to the constitutions of both the DPRK and the ROK. Both constitutions assert that ultimate sovereignty derives from the people, and the Constitution of the DPRK repeatedly asserts that the purpose of government is to serve the people. Nonetheless, in the two constitutions, the definition of the people is somewhat different, and the way that the people manifest sovereignty is substantially different.

The Definition of the People

On the definition of the People, the ROK Constitution ascribes sovereignty to the whole of the people. By contrast, the DPRK Constitution uses at least two different definitions: in some provisions, it defines the People as the whole people, just as the ROK Constitution does, but in other provisions, it defines the People sectorally, as the working people, soldiers, peasants, and intellectuals. This latter approach is common in socialist constitutions.

The Exercise of Popular Sovereignty

In the ROK Constitution, the People exercise their sovereignty at three moments of the governing process:

- The People give original consent to the government by authorizing the Constitution, which creates, organizes, and structures their government;
- The People give continuing consent to the government by choosing their political leaders in elections and by organizing political parties; and
- The People further check their government through the exercise of certain individual rights such as free speech, petitioning, litigation, and similar activities.

At these moments, the People exercise their sovereignty directly, through their own actions by authorizing the Constitution, choosing their elected representatives, and mobilizing their rights to check the government. In other words, the ROK Constitution embeds the idea of *citizen democracy*.

In this vision, again, the State and Society are distinct and have different interests, and the State may not exercise power over society unless and insofar as Society has authorized it to do so. The three forms of popular sovereignty thus constitute a check by the People on their government, which, if unchecked might act in its own interest rather than the interest of the people.

The DPRK Constitution manifests a very different conception of the exercise of popular sovereignty: *democratic centralism*. According to this theory, the People exercise their sovereignty through the organs of the state, and state actors in turn are charged with protecting and advancing the good of the public. In the DPRK, that good is defined according to a particular ideology of Kimilsungism-Kimjongilism, *Juche*, and other indigenous elements. State actors are to instruct and educate the people and act for their good, as defined by this national ideology, and thereby enable the people to lead socialist law-abiding lives. Because these state actors exercise popular sovereignty on behalf of the people under the theory of democratic centralism, the people are generally not conceptualized as a check on the government.

In other words, in the ROK Constitution, the People exercise their sovereignty directly by controlling their government; in the DPRK Constitution, the state exercises popular sovereignty by acting for the people and the people's good.

As a result, the exercise of popular sovereignty is quite different at the three moments noted above.

At the original moment of constitution framing:

- In the ROK Constitution, “We the People of Korea” directly adopt the governing document. These opening words remain in the current ROK Constitution, adopted in 1987 as the country began its transition to democracy.
- By contrast, the lengthy preamble to the 1998 DPRK Constitution simply announces the historical fact of the Constitution as a “Kim Il Sung constitution which legally embodies Comrade Kim Il Sung’s *Juche* state construction ideology and achievements.”

At the moment of elections:

- In the ROK, the people have significant control of the process. Voters choose their representatives (1) from among a number of candidates representing a number of parties; (2) after relatively free public deliberation; and (3) on a secret ballot.
- By contrast, in the DPRK, state actors control the process. Although Article 6 recognizes “the principle of universal, equal, and direct suffrage by secret ballot,” in practice, state actors (1) vet candidates and allow only one name on the ballot; (2) restrict public deliberation; and (3) permit only public balloting. Similarly, as developed in the next cluster, the Constitution provides that the SPA shall choose the Chair of the SAC according to the “unanimous will” of the people, but the Constitution specifies no mechanism for determining that will.

By these conventional indicia, DPRK elections are therefore much less democratic than ROK elections. But, again, the DPRK Constitution does not rest on an ideal of popular democracy; instead, it rests on the ideal of democratic centralism, that state actors will ensure the good of the people by choosing the best qualified candidates. Elections might also serve functions other than popular control, such as educating and acculturating the public.

The Panel considered that the underlying ethos of the DPRK Constitution was not direct popular self-government but rather government caretaking for the people. Phrased slightly differently, the ROK Constitution embeds the idea of responsive government defined as a government that is responsive to the voters’ demands; by contrast, the DPRK

Constitution embeds the idea of responsive government defined as government responsive to the people's needs, as measured by the state actors, who are in the best position to understand those needs.

Nevertheless, the Panel also agreed that even within the parameters of democratic centralism, the government can act unjustly, and so the people might need some kind of recourse. The Panel therefore considered what sort of recourse the people might have in the DPRK Constitution other than elections. The Panel contemplated several possibilities:

- Citizens have the constitutional (or *de jure*) right to submit grievances and petitions—a right which was a part of the Soviet Constitution, as well as Confucianism and many monarchical traditions, and which the ROK Constitution also protects;
- The weight of public opinion, all by itself, may influence what the government does; or
- The Panel believed that there may be other *de facto* popular checks on government and that the subject would merit further research.

The Panel considered that these tools might influence the conduct of the government, and they might therefore represent formal or informal checks on state power by citizens of the DPRK. Precisely for that reason, however, they do not fit easily alongside the prevailing democratic centralisms of the DPRK Constitution. As a result, the Panel expressed doubt about the effectiveness of these checks, and it concluded that the topic would benefit from further study.

The Panel further considered that the ability of citizens to exercise any formal checks on state power presupposes the conscious, public discussion of governmental wrongdoing and options to address it. In order for the citizens to exercise any real influence over their government, they must have a sense that there are alternatives to the status quo, and they must have some understanding of those alternatives. But democratic centralism tends to occlude that sense: the government acculturates the citizens to the prevailing ideology, demands loyalty to it, and deliberately suppresses the consideration of alternatives. It is therefore unclear how adding certain citizen tools such as the right to petition will affect a system that is overwhelmingly rooted in democratic centralism.

The Legislature

Popular sovereignty typically manifests itself most centrally in the legislature, the most democratic element of government. Indeed, the Panel concluded that both constitutions give the legislature a salient formal role in government. Both constitutions provide that there shall be a legislature, which shall have the power to make laws, and which shall be elected by universal, equal, and direct suffrage by secret ballot—though, as already noted, the nature of elections in the two countries is quite different. It should be noted that the legislative structure is different in one respect: in the DPRK, the legislative power is largely exercised by the Presidium, and the ROK has no analogous body. Nevertheless, the Presidium is still a part of the SPA, and so its salience does not reduce the formal centrality of the legislature itself.

Even though the legislature is nominally central in both countries, the actual role of the legislature is different. Socialist constitutions typically regard the legislature and the party as the most important institutions for popular power, and so they ascribe great, indeed fairly unlimited, power to these institutions. The DPRK Constitution is similar to other socialist constitutions in this regard. The Panel also noted that in the DPRK Constitution, the legislature's role might be considered to reflect something like Rousseau's concept of the general will.

At the same time, however, real power in the DPRK is concentrated primarily in the Supreme Leader, who holds the chair of the State Affairs Committee. The SPA serves primarily to ratify decisions already made in the executive department. As will be discussed in the analysis of the next cluster, on the structure of the executive, the role of the Kim family marks a significant departure from socialist orthodoxy.

In ROK as well, the executive has routinely expanded its power at the expense of the legislature, but the legislature nonetheless still retains greater power than does the legislature of the DPRK. Indeed, the power of the ROK legislature is notable for the means given to it to check the executive. These checks include, among others:

- The power to begin the impeachment of the President, which the legislature has in fact twice exercised (in 2004 and 2016), with the final decision falling to the Constitutional Court, which has confirmed impeachment once (in 2017);

- The power to inspect and investigate state administration, as a general matter and on a regular basis;
- The power to compel ministers to attend Parliament and answer questions; and
- The power to conduct personnel hearings for executive appointments, including those for which the Constitution does not require legislative approval – although this power is given only by statute and the president has often appointed persons without the legislature’s personnel report.

The power of the legislature can, however, be fully considered only when compared to the power of the executive, which is the subject of the next cluster.

CLUSTER THREE: EXECUTIVE STRUCTURE

The same set of themes continued in the Panel’s consideration of the structure of the executive department in the two constitutions. In both countries, the executive is very strong, much stronger than the text of the constitution would suggest. But in the DPRK, that strength is central to the Constitution’s goals, and it is an essential part of its prevailing ideology. By contrast, in the ROK, the Constitution clearly seeks to place limits on the power of the presidency; the imperial presidency is thus a threat rather than a promise. In this sense, the Panel concluded, the ROK Constitution is deliberately drafted to move away from the extraordinarily strong executives of the past.

Selection of the Executive

In the ROK, the voters directly choose the president through a universal franchise, and though the President may enjoy great power while in office, Article 70 permits him or her only a single five-year term. By contrast, in DPRK, the legislature chooses the chief executive (the head of the SAC) but not by an actual tabulated vote; rather, the SPA merely recognizes “the unanimous will of the Korean people.” But that will is itself not determined by an actual vote; rather, the succession is hereditary within the Kim family. The DPRK Constitution does not actually dictate that the succession shall be hereditary, but that principle is universally recognized. It is also intimated in the preamble, and it is mandated in other foundational documents such as Ten Great Principles of the Establishment of the Unitary Ideology System. In this respect, the DPRK Constitution departs most markedly from orthodox Marxism, which would find the idea of inherited

power anathema, instead locating ultimate power in the workers, the party, and the vanguard.

Indeed, the executive structure of the DPRK Constitution has been heavily revised at each succession to conform to the new leader's particular circumstances. Kim Il Sung held the title of President, but, in deference to his unique role, neither of his successors has inherited that title; indeed, the 1998 revisions to the Constitution posthumously declared him to be the "eternal President of the Republic." Instead, upon Kim Jong Il's succession, the Constitution was revised to give primacy to the chair of the National Defense Commission, a position held by Kim Jong Il that reflected his "military first" policy. The current Constitution instead gives primacy to the chair of the State Affairs Commission, a position held by Kim Jong Un that reflects his policy to promote both military strength and economic development. Again, these changes were not intended as a prospective limit on government actors; instead, they expressed an already established reorganization of power. And though the exact structure of the executive changed, the principle of hereditary succession did not, and neither did the extraordinary power of the Supreme Leader, as explained in the next section.

Executive Power

Similarly, in the ROK, the executive power is theoretically divided between the President and the Prime Minister, even though the President is by far the more powerful of the two. By contrast, in DPRK, the Supreme Leader holds entirely unitary authority.

Under the ROK Constitution, the ROK President shares executive power with a Prime Minister (PM). To be sure, the President chooses the PM, whom the Constitution describes as the President's legislative assistant. But the PM must also secure the support of the legislature, which might be controlled by a different party. Cohabitation is therefore at least a possibility, though it has not so far happened. In addition, though the legislature may not unilaterally remove the PM, it may recommend that the president do so.

Indeed, although the President is clearly the dominant partner in the arrangement, the Panel also noted that the ROK Constitution is a mixture of elements typical of presidential systems, such as the president's veto power, and also elements more typical of parliamentary systems, such as the PM's decree power and the power to initiate

legislation. It might, therefore, be accurate to describe the structure as a presidential system “dressed up” as a semi-presidential system.

By contrast, in the DPRK, the chair of the SAC shares power with no one. Article 100 provides that the chair of the SAC is the “Supreme Leader,” and Article 103 provides that he shall be the Commander-in-Chief. By convention, he is also the head of the Workers’ Party. And, although Article 106 provides that he shall be accountable to the SPA, in practice it is understood that the SPA has no power to remove him.

In addition, as already noted in the last section, the legislature in the ROK has some meaningful power over the executive. In the DPRK, by contrast, the legislature’s role is to affirm the decisions of the Supreme Leader.

Finally, the two constitutions are similar in that each creates other executive bodies that have no actual power over the chief executive: in ROK, the State Council is purely advisory and has never been assembled; and in DPRK, the Cabinet exists solely to carry out the will of the Supreme Leader.

Theories of Executive Power

The Panel felt that the foundational differences between the two constitutions were perhaps at their most vivid in their differing theoretical approaches to executive power. In ROK, the president is directly elected by the people and so is theoretically an agent of the people. As always, however, because of agency costs, the president is likely to take on more power than allowed in the Constitution and to pursue agendas other than those that the people desire. Hence, the threat of the imperial presidency is constant, and part of the solution is checks and balances, to keep the president honest.

The underlying theory of the DPRK Constitution is very different. The people have a duty of loyalty to the regime and its ideology, which is purportedly in their best interests. Correlatively, the executive has a duty of caretaking, to be responsive to the people’s true needs rather than to their conscious wants, which may be mistaken.

In the DPRK, therefore, the idea of popular sovereignty means loyalty to the Supreme Leader, who is asserted to be uniquely qualified to govern for the people’s good, especially by asserting national sovereignty against foreign enemies. It might be possible to conceive of this arrangement as based on an implicit contract of loyalty and protection,

much as some monarchies have had, but it is unlikely that the people have any remedy if the executive violates its end of the deal.

For that reason, the Constitution presumes that the executive will fulfill its duty because the people are not actually in a position to understand whether it has done so. The Constitution will therefore work as intended only if the people and the executive truly do trust each other. That trust, moreover, must preexist the Constitution, which does not seek to engineer trust. In that sense, again, the Constitution is more a recognition of existing circumstances than an attempt prospectively to control the structure of power.

CLUSTER FOUR: *THE ROLE OF POLITICAL PARTIES*

Finally, the Panel concluded that the same collection of ideas underlies the differing role of political parties in the two constitutions: in the ROK, political parties help voters to control the government; in the DPRK, the party helps the government to control the citizens.

The ROK Constitution mandates a multiparty system, so that parties can present competing agendas to the voters. The parties thus allow voters to band together so as to exercise greater control over their government. To that end, the ROK Constitution protects the right of individuals to form political parties and to associate in other ways to advance their views and interests.

By contrast, the DPRK Constitution does not protect the right of individuals to form parties; instead, it mandates that the government shall create conditions that will allow the formation of parties. The Panel considered that this formulation is very different: rather than authorizing individuals to organize to restrain their government, it merely creates a government obligation. Again, the vector runs from the government to the people, rather than from the people to the government.

In practice, though the DPRK does have more than one party, only the Workers' Party of Korea has any power. The other parties are regarded as "friend" or satellite parties, and they do not run candidates in competition with the WPK. Indeed, the Constitution very broadly commands that the Workers' Party shall hold the leadership role.

The Panel therefore considered two additional questions for the DPRK Constitution, with additional reference to the WPK charter:

- What is the purpose of the Workers' Party?
- How much power does the Workers' Party actually have?

As to the first, the Panel recognized that, as in the ROK, the typical purpose of parties is to present competing alternatives to voters, but when there is only one party, that cannot be the purpose. The Panel therefore considered that the Workers' Party served several different objectives:

- The WPK serves to acculturate citizens to the importance of the Kim family, which some compared to a religion.
- The WPK further serves to educate citizens into the prevailing ideology of the state.
- The WPK may serve to provide the people with opportunities for an associational life, especially through mass organizations, which may help to form public opinion, which may have some influence on the government.
- The WPK may allow individuals or factions to compete within the party, including competition for legislative seats, which may allow for a very limited set of checks and balances.

As to the second question—the scope of the WPK's power—the Panel concluded that it was very difficult to gauge from the outside. As noted, the Constitution itself assigns a leadership role to the party, but it does so only in a highly general way and in only two places: the preamble and Article 11. The Constitution nowhere spells out the particular powers or roles of the party, and this vagueness reflects again a general difference between the two constitutions: the ROK Constitution is meant prospectively to restrain power, but the DPRK Constitution is meant to memorialize a pre-existing reality, which need not therefore be specified in detail. For the same reason, the preamble and Article 11 are clearly not intended to protect the power of the party as against other elements of government such as the Supreme Leader, the Korean People's Army, or the SPA Presidium.

Nonetheless, the Panel felt that under Kim Jong Un, the party leadership may have come to play a more important role. It remains to be seen whether party leadership might introduce an element of checks and balances into the lived experience of the DPRK Constitution. If so, returning to the idea of an implicit contract of popular loyalty and executive caretaking, the party leadership might serve the role of incentivizing the

executive to hold up its end of the deal. Unlike ordinary people, the party leaders would presumably be in a position to understand the prevailing ideology and to hold a position on whether it was being properly served.

Finally, the Panel also observed that in addition to protecting the power *of* parties, both constitutions also protect the people *against* malignant parties. The ROK Constitution specifically mandates a species of militant democracy by prohibiting parties that are dedicated to subverting the democratic order. The Panel observed that this provision was susceptible to abuse because the government—and hence the ruling party—has the power to initiate proceedings to ban a party. On the other hand, the danger is mitigated by the fact that the Constitutional Court will ultimately decide whether the party is dangerous.

The DPRK Constitution's ban is much broader: the state is charged with defending the people's power and the socialist system against all subversive acts of hostile elements at home and abroad. This provision would cover parties inimical to the constituted order, as does the ROK Constitution.

Although both constitutions thus take steps to block subversive parties, there are also differences in approach:

- What should count as subversive would presumably be different in the two constitutions; and
- The ROK Constitution specifies the precise steps necessary to ban a particular party, while the DPRK Constitution merely gives power to the state—another illustration of the general difference that the ROK Constitution is meant to limit state power, and the DPRK Constitution is meant to project and facilitate state power.

CONCLUSION

This report has sought to highlight core similarities and difference between the constitutions of the DPRK and the ROK. Examining each document through several different lenses has provided clear illustration of each. Some of the similarities are greater than one might initially expect, with the constitution in each place suggesting a strong legislature at the center of government, but a strong tendency in practice towards executive governance. The differences are often deeper than the text alone can illustrate:

similar commitments to the constitutional centrality of the people and popular sovereignty, for example, play out very differently in practice in each place when it comes to elections, governance, and political accountability.

It is clear from this survey that it is essential to understand each constitutional system in respect of its animating ideology and values. While the ROK Constitution adopts a model of constitutionalism more ideologically similar to other legal systems around the world, the distinctive values of *Juche*, vanguardism, and democratic centralism are the animating ideals of the DPRK Constitution, and the document can properly be understood only in this light.

Perhaps the most important difference is their core vision of law and the role of constitutionalism: rule of law in the ROK and rule by law in the DPRK. The DPRK Constitution sees law enabling and facilitating a set of beliefs and expectations underlying the Constitution. Understanding this is crucial to grasping the relationship between the organs of state; the nature and meaning of accountability under the Constitution; and the role the Constitution plays in fundamentally empowering state action rather than acting as a restraint on it. Similarly, we cannot properly understand the constitutional role of the WPK or the Supreme Leader without this context. The ROK Constitution, on the other hand, empowers and restrains in similar measure: it prescribes stricter limits on powers in various ways, from limits on emergency powers to constitutional review by the courts, and more institutional and formal methods of accountability at all levels of government. Fundamentally, the DPRK Constitution presumes (without trying to create) a pre-existing foundation of trust in its highest institutions and their use of power; the ROK Constitution is built on a skepticism of such institutions and uses of power. Read through these different lenses, similar constitutional text is often revealed to be very different in practice.