

# **The Basic Law of the Sinuiju Special Administrative Region: A Happy Medium Between the DPRK Constitution and Hong Kong Basic Law?**

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## **Abstract**

*This paper constitutes (1) a full-text English translation of the Basic Law of the Sinuiju Special Administrative Region of the Democratic People's Republic of Korea (DPRK, or North Korea) and (2) comparative analyses of the Sinuiju Basic Law with the DPRK Constitution and the Basic Law of the Hong Kong Special Administrative Region. To supplement the translation, the paper makes respective contextual and textual comparisons between the Sinuiju SAR and its Basic Law with (a) North Korea and its 1992 Constitution, and (b) Hong Kong and its Basic Law. The first section explores the North Korean rationale for establishing the Sinuiju SAR. It examines North Korea's autarkic ideology of *chuch'e*, past legal attempts to lure foreign investment, and the differences between the Sinuiju SAR and other North Korean and Chinese special economic zones. It then compares the Sinuiju Basic Law with the DPRK Constitution, analyzing why certain provisions were kept or rejected. The second section discusses how the legal status of both Hong Kong and the Sinuiju SAR are different, especially on issues such as constitutional significance, regional autonomy and rule of law, before delving into a comparison of their Basic Laws. By analyzing which provisions were retained or excluded from the DPRK Constitution and the Hong Kong Basic Law, the author concludes that although the Sinuiju Basic Law may be a satisfactory compromise on paper between national policy and an idealized money-making venue, in reality the Sinuiju Basic Law is an ambiguous policy charter saturated with devices of state control, signaling that the future Sinuiju SAR will be yet another unsuccessful North Korean attempt to induce foreign investment.*

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## I. Introduction

The Democratic People's Republic of Korea (DPRK, or North Korea) promulgated a new law in September 2002 to create, for the first time, a special administrative region. This paper constitutes (1) a full-text English translation of the Basic Law of the Sinuiju Special Administrative Region of the DPRK, and (2) comparative analyses of the Sinuiju Basic Law with the DPRK Constitution and the Basic Law of the Hong Kong Special Administrative Region. The translation is offered because no English version of the Sinuiju Basic Law is available except for a two-page summary. To supplement the translation, the paper makes respective contextual and textual comparisons between the Sinuiju SAR and its Basic Law with (a) North Korea and its 1992 Constitution, and (b) Hong Kong and its Basic Law.

The first section explores the North Korean rationale for establishing the Sinuiju SAR. It examines North Korea's autarkic ideology of *chuch'e*, current economic state, past legal attempts to lure foreign investment, and the differences between the Sinuiju SAR and other North Korean and Chinese special economic zones. It then compares the Sinuiju Basic Law with the DPRK Constitution. The second section discusses how Hong Kong and the Sinuiju SAR are different, especially on the issue of regional autonomy, before delving into a comparison of their Basic Laws.

By analyzing which provisions were retained or excluded from the DPRK Constitution and the Hong Kong Basic Law, the author concludes that although the Sinuiju Basic Law may be a satisfactory compromise on paper between national policy and an idealized money-making venue, in reality the Sinuiju Basic Law is an ambiguous policy charter saturated with devices of state control, signaling that the future Sinuiju SAR will be yet another unsuccessful North Korean attempt to induce foreign investment.

## II. The Sinuiju Basic Law as Compared to the DPRK Constitution

### A. Context: The Rationale for the Sinuiju SAR

#### 1. The State of the DPRK Economy

Any discussion of the DPRK economy unavoidably starts with the ideology of *chuch'e*. *Chuch'e* (also *juche*) is most often translated as self-reliance, the overarching autarkic principle that governs all of North Korean state and society. In founding the DPRK, Kim Il Sung fashioned the concept of *chuch'e* to serve as the nationalist ideology of the state, eventually basing it on three pillars: political sovereignty, economic subsistence, and military self-defense.<sup>1)</sup> *Chuch'e* ideology has evolved throughout North Korean history, which may explain some of the difficulty in defining it precisely. Bruce Cumings, a noted historian of Korea, states that the harder one tries to define *chuch'e*, the more elusive is the endeavor.<sup>2)</sup> He nonetheless finds that national solipsism constitutes the core of *chuch'e*, essentially the placement of anything Korean first.<sup>3)</sup>

Under *chuch'e*, the economic strategy of the DPRK is self-reliance. Although a recipient of Chinese and Soviet aid after the Korean War (1950-53), the DPRK declined to join COMECON, the socialist bloc market. With a focus on heavy industry, the DPRK economy developed rather successfully in the first decade after the Korean War (1950-53), but began to slow in the 1970s and 1980s when the government could not service foreign debt towards supporting its heavy industry. The DPRK survived with the help of concessional aid from China and the Soviet Union, but the collapse of the latter and the Eastern European bloc countries in the late 1980s destroyed the trade ties and markets upon which the DPRK had come to depend. Ever since then, the DPRK economy has been depressed, worsening other problems such as famine and the inability to cope with recurring natural disasters.

The DPRK economy is currently sustained by Chinese aid, humanitarian assistance, and foreign (sometimes illicit) trade.<sup>4)</sup> Meanwhile, the DPRK has

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1) Han S. Park, North Korea, *The Politics of Unconventional Wisdom*, 23 (2002).

2) Bruce Cumings, *Korea's Place in the Sun: A Modern History*, 404 (1997).

3) *Id.*

accumulated foreign debt valued by one estimate at \$11.9 billion in 1997.<sup>5)</sup> It suffers chronic trade deficits, especially with its main trading partner, China, which is believed to be financing over half the DPRK deficit (about \$500 million annually for the last seven years).<sup>6)</sup> Besides Chinese generosity, economist Marcus Noland surmises that revenues from missiles sales, drug trafficking,<sup>7)</sup> and remittances from Japan (amounting to approximately \$200-300 million) help finance the North Korean deficit.<sup>8)</sup>

South Korean investment has helped to infuse some hard currency, most notably through the Mt. Kumgang Tourist Zone in the DPRK. The famous Hyundai *chaebol*, or conglomerate, negotiated with the DPRK leadership in 1998 to bring in South Korean tourists, resulting in revenues of \$183 million for North Korea in the first nine months with a guarantee of \$942 million over the next six years, some of this being bankrolled by the ROK government.<sup>9)</sup> Meanwhile, South Korean investment and inter-Korean trade has fluctuated in the past decade, influenced by a number of roller-coaster moments like the lifting of investment restrictions in 1994 by ROK President Kim Young Sam, the precipitous 1997 Asian financial crisis, and ROK President Kim Dae Jung's policy of constructive engagement with the North (more popularly known as the "Sunshine Policy") and his June 2000 summit meeting with DPRK Leader Kim Jong Il. The current ROK President, Roh Moo Hyun, also pursues engagement with North Korea, so it appears that ROK trade and investment will continue. According to statistics from the ROK Ministry of Unification, inter-Korean trade reached \$642 million in 2002, with \$272 million in exports to the DPRK and \$370 million in imports from the DPRK.<sup>10)</sup> The Ministry of Unification has approved about 50 South Korean

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4) Bradley Babson, Economic Cooperation on the Korean Peninsula, Northeast Asia Peace and Security Network Special Report (March 6, 2003), at [http://www.nautilus.org/pub/ftp/napsnet/special\\_reports/Babson-EconomicCooperation.txt](http://www.nautilus.org/pub/ftp/napsnet/special_reports/Babson-EconomicCooperation.txt).

5) Marcus Noland, *Avoiding the Apocalypse*, 93 (2000).

6) *Id.*, at 90-91.

7) The most recent, dramatic drug smuggling incident occurred on April 21, 2003, which involved Australian special operations forces rappelling onto the North Korean vessel Pong Su in rocky waters off the Australian coast to seize altogether \$50 million worth of heroin being transported. "Heroin Trail Leads to North Korea", *Wash. Post*, May 12, 2001, at A01.

8) Marcus Noland, North Korea's External Economic Relations (February 2001), at <http://www.iie.com/publications/papers/noland0201-1.htm>.

9) Noland, *Avoiding the Apocalypse*, supra note 5, at 115, 139.

companies to invest in the DPRK between 1992 and December 2001, projects amounting to at least \$190 million (excluding the light water reactor project headed by the Korean Peninsula Energy Development Organization, or KEDO), but the rate of successful implementation of these projects and how much the DPRK gains in hard currency from these projects are not clear.<sup>11)</sup>

No discussion of the DPRK economy would be complete, especially from the North Korean perspective, without mention of the United States. American bombing during the Korean War destroyed 40 percent of total arable land and almost all significant industrial facilities in North Korea.<sup>12)</sup> North Koreans have ever since blamed the United States for their economic difficulties, also pointing to American imposition of a trade embargo under the U.S. Trading with the Enemy Act.<sup>13)</sup> Currently U.S. assistance is mainly restricted to food aid. Although the United States had also shipped heavy fuel to the DPRK under the 1994 Agreed Framework as part of the bargain for North Korea to cease operation of its graphite nuclear facilities, this has ended given North Korea's admission in October 2002 that it was processing uranium for nuclear purposes. The volatile nuclear issue has handicapped development of the North Korean economy by complicating political, and consequently economic, relations with the United States, South Korea and Japan. Whether for prestige, self-defense or bargaining purposes, DPRK nuclear aspirations worsen tense relations with the United States, leaving the most significant sanctions in place, namely prohibition of U.S. assistance to American companies that might want to do business in the DPRK and blocking assistance from international financial institutions to the DPRK.<sup>14)</sup> (The DPRK has unsuccessfully inquired into membership at the Asian Development Bank

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10) Inter-Korean trade totals \$642 million in 2002, ReliefWeb, February 3, 2003, at <http://www.reliefweb.int/w/rwb.nsf/0/82187aa94378dbcf1256cd10050528f?OpenDocument> (last visited May 18, 2003).

11) For a list of the companies and their approved investment amounts, *see* the Korea Trade Investment Promotion Agency website, at <http://crm.kotra.or.kr/main/info/nk/eng/main.php3> (last visited May 18, 2003).

12) Phillip H. Park, "Self-Reliance or Self-Destruction? Success and Failure of the Democratic People's Republic of Korea's Development Strategy of Self-Reliance", *Juche*, 21-22 (2002).

13) For a summary of the trade restrictions in place, *see* the sanctions fact sheet from the U.S. Treasury Department, Office of Foreign Assets Control, at <http://www.nautilus.org/library/security/references/sanctions.html> (last visited May 18, 2003). *See also* Trading with the Enemy Act ("TWEA"), Pub. L. 65-91, as amended 50 U.S.C. App. 5(b); 31 C.F.R. 510.201 et seq.

14) *See supra* note 13.

and World Bank, and has asked about loan assistance from the International Monetary Fund, also without any result.)<sup>15)</sup>

As for Japan, the DPRK made a grand overture in September 2002 (coincidentally timed with its economic reform initiatives and the creation of the Sinuiju SAR) when it confessed kidnapping Japanese citizens in the late 1970s. This was most likely an attempt to make amends in order to cash in on post-colonial reparations, which the DPRK expected to be at least \$10 billion.<sup>16)</sup> This tactic appears to have backfired though given domestic rage in Japan over North Korea's refusal to return the Japanese citizens. The current nuclear issue aggravates relations and can potentially block remittances to North Korea because Japan fears that it would be the most convenient target of DPRK missile threats, as justified by the failed satellite-missile launch over Japanese territory in 1998.<sup>17)</sup>

To revive its dysfunctional economy, the DPRK initiated a number of reform measures in July and August of 2002, which include: increasing wages ten- to twenty-fold; increasing the price of rice and other basic goods to reflect informal market rates; cutting subsidies to state enterprises while permitting them to set their own production plans; and devaluing the Korean won from 2.15 to 150 to the US dollar, removing the old won and making the new currency nonconvertible.<sup>18)</sup> On the heel of these reform initiatives, the DPRK leadership announced the establishment of the Sinuiju SAR in September 2002. The sustainability and ultimate success of the domestic reform initiatives remain to be seen, however. As for the viability of the Sinuiju SAR, this will be examined in this paper.

## 2. Efforts to Entice Foreign Investment: SEZs and Their Laws

The DPRK has made various attempts to attract foreign investment prior to the establishment of the Sinuiju SAR. The earliest effort was in 1984, when North Korea enacted the Law of the DPRK Joint Venture in order to draw foreign exchange and to advance technology. This move amounted to approximately \$200 million in joint

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15) Noland, *Avoiding the Apocalypse*, *supra* note 5, at 341.

16) Noland, "North Korea's External Economic Relations", *supra* note 8.

17) Noland, *Avoiding the Apocalypse*, *supra* note 5, at 104.

18) Babson, *supra* note 4.

venture projects by the end of 1991, the vast majority, about 70 to 80 percent, being made with funds from the *Chochongryon*, a pro-North Korean group of Korean Japanese.<sup>19)</sup> Disappointed with the results, North Korea inaugurated its first special economic zone, Rajin-Sonbong Free Economic and Trade Zone, located at its northeastern border, in 1991. It is now called the Raseon Economic Trade Zone since the DPRK abbreviated the names of the cities Rajin and Sonbong and also dropped the word “Free,” but this paper will use the phrase “Rajin-Sonbong ETZ” to avoid confusion.

#### a) Rajin-Sonbong ETZ

Before designating Rajin-Sonbong as a special economic zone, Kim Il Sung had visited China several times—in 1982, 1983 (Shenzhen specifically) and again in 1991.<sup>20)</sup> Although the DPRK denies imitating China,<sup>21)</sup> a pattern does emerge. The DPRK enacted its joint venture law six years after China did, which resembles it but is more restrictive.<sup>22)</sup> For example, China allowed 100 percent foreign ownership, unanimous consent on key issues, direct employment, and domestic sales, whereas North Korea was more restrictive on every count.<sup>23)</sup> The DPRK Joint Venture Law did not allow wholly foreign-owned enterprises and required unanimity on every issue, employment to be channeled through the labor administrative authority, and export only for the sales of output.<sup>24)</sup> China had designated Shenzhen as a special economic zone in 1980, a year after promulgating its joint venture law, all the while campaigning to modernize China by trade expansion and technology transfer. During the same period, Kim Il Sung also pushed for foreign trade, modernization, “scientization” and

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19) Doowon Lee, “North Korean Economic Reform: Past Efforts and Future Prospects” in *Reforming Asian Socialism: The Growth of Market Institutions*, edited by John McMillan and Barry Naughton, 328 (1996).

20) Patricia Goedde, “The Legal Framework for North Korea’s Rajin-Sonbong Free Economic and Trade Zone”, *National Bureau of Asian Research Executive Insight*, 3 (September 1997).

21) Noland, *Avoiding the Apocalypse*, *supra* note 5, at 133.

22) See Chin Kim, “North Korean and Chinese Joint Equity Venture Laws: A Comparison”, 2 *Transnat’l L.* 531-87 (1989).

23) Doowon Lee, *supra* note 19. For a more thorough examination of the differences, see Kim, *ibid.* See also Eric Yong-Joong Lee, “Development of North Korea’s Legal Regime Governing Foreign Business Cooperation: A Revisit Under the New Socialist Constitution of 1998”, *Northwestern J. of Int’l Law & Bus.* 21, 199, 203-206 (2000).

24) *Ibid.*



*chuch'e*-orientation.<sup>25)</sup> After witnessing Shenzhen's development personally, Kim Il Sung established the Rajin-Sonbong economic zone and a whole series of foreign investment laws to serve not only Rajin-Sonbong but other future special economic zones.

North Korea enacted a spate of laws and related regulations to accompany the opening of Rajin-Sonbong ETZ.<sup>26)</sup> In 1992, the DPRK Supreme People's Assembly (SPA) passed the Foreign Investment Law, Foreign Enterprises Law, and Contractual Joint Venture Law.<sup>27)</sup> In 1993, the SPA adopted the Free Economic and Trade Zone Law, Foreign Investment Enterprise and Foreign Individual Tax Law, Foreign Exchange Control Law, Land Lease Law, Foreign-Invested Bank Law, and Customs Law. The 1984 Joint Venture Law was amended in 1994 to become the Equity Joint Venture Law. That same year the Civil Proceedings Act was passed, and the External Economic Contract Law and External Civil Relations Law were adopted the next year.<sup>28)</sup>

A number of articles address these laws and regulations in detail, so their content will not be discussed extensively here.<sup>29)</sup> Generally, the laws on their face appear to provide a liberal foreign investment environment, especially for investments made in the Rajin-Sonbong ETZ, such as investor's choice in enterprise type, no customs duties on export and import materials, tax holidays and discounts, guaranteed profit remittance, and no nationalization but fair compensation given under "unavoidable circumstances"<sup>30)</sup> However, state involvement can be cumbersome: labor recruitment must be brokered by the state labor administrative agency, and hidden costs are abundant (e.g., mandatory pay raises and free meals for workers; besides rent, all

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25) Goedde, *supra* note 20, at 13.

26) Golden Triangle, Rajin-Sonbong, Collection of Laws and Regulations, Vols. 1-6 (1993-1996).

27) Comparison to the Chinese counterparts of these laws would constitute another paper and is regrettably outside the scope of this paper.

28) *Ibid.*

29) For detailed analyses of these laws, see Bryan Greyson et al, "Foreign Investment Laws and Regulations of the Democratic People's Republic of Korea", *Fordham Int'l L. J.* 21, 1677-1718 (1998), Haksoo Ko, "Foreign Investment in North Korea: An Assessment of Recent Laws and Regulations", *Va. J. Int'l L.* 38, 221 (1998), Sang-Jick Yoon, "Critical Issues on the Foreign Investment Laws of North Korea for Foreign Investors", *Wis. Int'l L.J.* 15, 325 (1997), Brendon Carr, "Ending the Hermit Kingdom's Belligerent Mendicancy", *Asia Pacific L. R.* 6, 29-55 (1998), and Goedde, *supra* note 20.

30) See the Law of the DPRK on Foreign Investment, in Golden Triangle, Vol. 1, *supra* note 26.

development costs for leasing land).<sup>31)</sup> In 1999, nine of these laws were revised following the 1998 amendment of the DPRK Constitution, which now allows foreign enterprises (as opposed to joint ventures and wholly-foreign owned enterprises established in the DPRK) to conduct business in North Korean territory and demonstrates a clear preference for foreign investment “within special economic zones.”<sup>32)</sup> The revised 1999 Foreign Investment Law incorporates foreign enterprises into its provisions, explicitly states that “overseas Koreans” (i.e., South Koreans) may invest, and no longer requires all employment contracts to be made with a North Korean labor service agency.<sup>33)</sup> Meanwhile, the Equity Joint Venture Law, Contractual Joint Venture Law and the Law on Foreign Enterprise all mention Rajin-Sonbong ETZ as the economic zone of preference and reflect more practical considerations like requiring consent of both parties before one transfers shares to a third party, reducing registration periods, and specifying approval bodies.<sup>34)</sup>

Despite the enactment of many foreign investment laws during 1993-1995, Rajin-Sonbong ETZ was not internationally launched until the 1996 investment forum sponsored by the United Nations Development Programme. The total amount of investment has fallen fall short of what the DPRK government expected. As of 2000, only about a fifth of the total \$640 million in investments pledged in 1996 has materialized (one project being a hotel casino).<sup>35)</sup> Rajin-Sonbong has basically sputtered as a special economic zone, in part due to lack of infrastructure, other cost and administrative issues, and the desire of companies to invest in or near the capital city of Pyongyang. One major complaint of foreign investors is that North Korean intermediaries intrude on labor employment issues and demand higher salaries for the workers while taking nearly a 40% cut (which, incidentally, resembles what happened when China first allowed foreign investment).<sup>36)</sup> Furthermore, although port facilities in the ETZ have potential, road and rail conditions are poor, especially for cross-border transportation of goods.<sup>37)</sup> North Korea does not have the resources to improve the

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31) See the Labor Regulations for Foreign-Invested Businesses and the Law of the DPRK on the Leasing of Land, in *Golden Triangle*, Vols. 1 and 2, *supra* note 26.

32) Constitution [*Hŏn Bŏb*] art. 37 (DPRK), available at <http://www.korea-np.co.jp/pk/>.

33) Eric Yong-Joong Lee, *supra* note 23, at 215.

34) For more details of these laws and others, see Eric Yong-Joong Lee, *supra* note 23.

35) Babson, *supra* note 4.

36) Noland, *Avoiding the Apocalypse*, *supra* note 5, at 136.

zone's infrastructure, when in fact cases like Shenzhen show that the host government, not foreign investment, is responsible for constructing adequate infrastructure in the first place.<sup>38)</sup> One Korean analyst claims that establishment of the Rajin-Sonbong ETZ actually hurt the domestic economy more than helped it because of scarce resources having to be diverted to that isolated corner.<sup>39)</sup>

#### b) Mt. Kumgang Tourist Zone and Kaesong Industrial Zone

The tourist project in Mt. Kumgang has been a much better source of revenue for the DPRK government, considering the nearly one billion dollars guaranteed by Hyundai (and implicitly by the ROK government). However, because the money goes straight into the Hong Kong bank account of "Bureau <sup>39)</sup>" controlled by Kim Jong Il, one speculation is that the funds are used for personal perks, rewards for Kim Jong Il's military circle and international purchases of military equipment, thereby propping up the military regime and doing little to remedy the nationwide problems of poverty, famine and natural disasters.<sup>40)</sup> This may be slanted conjecture though since no one outside the DPRK leadership really knows how the funds are being used in their entirety.

Hyundai's other proposed project in the DPRK, the Kaesong Industrial Complex, has just started construction and is slow-going. South Korean Hyundai Asan and Korea Land Corporation (KOLAND) are the primary developers, but their level of progress is held hostage to domestic criticism and any U.S. pressure on the ROK government to withhold assistance given current nuclear politics on the peninsula.<sup>41)</sup> Therefore, it is difficult to say how this industrial zone will impact the DPRK economy in the long-run.

In terms of their legal framework, both the Mt. Kumgang Tourist Zone and the

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37) The author visited Rajin-Sonbong in 1996 and the adjacent border areas of Russia and China in 1998 to assess transportation logistics of the greater Tumen River Economic Development Area.

38) Goedde, *supra* note 20, at 14.

39) Seung-Yul Oh, "Prospects for Economic Reforms in North Korea and Policy Recommendations", *Korean J. of Nat'l Unification* 5, 133, 136-137 (1996).

40) Noland, *Avoiding the Apocalypse*, *supra* note 5, at 139-140.

41) Kim Sam-sik, "Designation and Prospects for Gaesung Industrial Complex" (January 2003), available at <http://crm.kotra.or.kr/main/info/nk/eng/main.hp3>.

Kaesong Industrial Zone have decrees governing their development, which were passed in November 2002, shortly after the other reform initiatives.<sup>42)</sup> The Mt. Kumgang decree has 29 articles and is broad in terms of content, while the Kaesong decree has 46 articles with slightly more detail. Some of the provisions common to both decrees are as follows:

- (1) DPRK sovereignty is exercised over the zone;
- (2) The zone is managed and operated under DPRK law;
- (3) South Koreans, overseas Koreans, and corporate bodies, individuals and economic organizations of other countries may invest in the zone;
- (4) Investments in latest science and technology are encouraged;
- (5) [South Korean] developers shall develop the zone after submitting the development plan to the central institution overseeing the zone;
- (6) South Koreans, overseas Koreans and foreigners may enter and exit the zone via the fixed route with zone passes instead of visas;
- (7) Convertible currencies shall be used in the zone;
- (8) Disputes over development, management and businesses of the zone shall be settled through negotiations between the relevant parties; otherwise, the disputes shall be settled through the procedures of business dispute resolution agreed between the North and South or through arbitration and trial; and
- (9) Agreements reached between the North and South regarding the zone shall have the same validity as the decree of the zone.<sup>43)</sup>

With respect to the “agreements reached between the North and South,”<sup>44)</sup> presumably this refers to both the business contracts negotiated between both sides and

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42) For an English summary of the Mt. Kumgang decree, see Decree of Mt. Geumgang Tourist Zone and related regulations, English *JoongAngIlbo*, November 27, 2002, at <http://english.joins.com/nk/article.asp?aid=20021127181050&sid=E00>. For an English summary of the Kaesong decree, see Decree and related laws for Gaeseong industrial zone, English *JoongAngIlbo*, December 3, 2002, at <http://english.joins.com/nk/article.asp?aid=20021203100126&sid=E00>.

43) *Ibid.*

44) Supplementary Provision No. 2 in both the Mt. Kumgang Tourist Zone Decree and the Kaesong Industrial Zone Decree.

the Agreement on Commercial Dispute Resolution signed at the inter-ministerial talks in Pyongyang on December 16, 2000.<sup>45)</sup> As for what distinguishes the two decrees substantively, Mt. Kumgang includes environmental considerations given the need to preserve the pristine nature of the historical site, while Kaesong involves more business-oriented issues, such as a 50-year land lease, formation of the industrial zone management institution, no nationalization of property, no customs on exports, and mandatory hiring of DPRK laborers, with detailed regulations on labor, tax and procedural requirements of business enterprises to follow later.<sup>46)</sup>

### 3. North Korea's Legal Framework(s) for Foreign Investment

North Korea's roster of various zones (i.e., economic and trade zone, tourist zone, industrial zone, and now a special administrative region) and their different legal structures demonstrate that North Korea does not have a cohesive foreign investment legal regime. Take, for example, the separate legal structure governing North-South economic enterprises in Mt. Kumgang Tourist Zone and Kaesong Industrial Zone under their respective decrees and any North-South agreements as opposed to (1) investments by non-Korean foreign investors inside the same zones, or (2) South Korean and other foreign investors who invest outside these two particular zones, both the latter being subject to the DPRK Foreign Investment Law and attendant laws and regulations mentioned previously. The KEDO light-water reactor project and foreign energy and mining companies also operate under special legal concessions, although these types of allowances are not necessarily unique to North Korea.

Business dispute resolution is a case in point of inconsistent legal rule. According to the Mt. Kumgang and Kaesong decrees, disputes should first be resolved by mutual consultation between the parties. Failing that, the next option is to resort to any North-South agreement on dispute resolution, or arbitration and trial. This would mean either the North-South bilateral agreement on commercial dispute resolution or any dispute

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45) An English translation of this agreement as well as of the other three bilateral agreements, on investment protection, clearing settlement, and prevention of double taxation of income, can be found under Inter-Korean Relations, Inter-Korean Document, at the ROK Ministry of Unification website (September 4, 2002), at <http://www.unikorea.go.kr/en/> (last visited May 18, 2003).

46) Kim Sam-sik, *supra* note 41.

resolution mechanism specified other than the bilateral agreement in the relevant business contract negotiated between North and South Korea. The next recourse would most likely be an arbitration trial under the DPRK External Arbitration Law, adopted in 1999.<sup>47)</sup> Non-Korean investors, however, are generally to rely on the DPRK External Arbitration Law alone failing “mutual consultation” as outlined in many of the foreign investment laws. (The DPRK is not a signatory of international arbitration systems.) This example illustrates a dual-track arbitration system, one for ROK investors within the two zones, and one for those outside this arrangement. Enter the Sinuiju SAR, and a third yet unknown legal scheme emerges.

As to why the nature of every zone is different, this probably was not due to any strategic planning on the part of the DPRK leadership. As evidenced by its laws, the North Korean government has tried to direct as much foreign investment as possible into Rajin-Sonbong ETZ, on which it had spent considerable time planning and constructing, primarily through the years 1991-1996. With foreign investments not coming through as expected and a continuous downward-spiraling economy, Hyundai’s cash proposals for operating a tourist zone and developing a separate industrial complex were basically too good a deal to forego. It is not clear what compelled the DPRK to open a special administrative region in Sinuiju, but the failure of Rajin-Sonbong as a special economic zone would likely have influenced the DPRK to experiment with a new model. A number of international accounts characterize the Sinuiju SAR as simply another special economic zone, but this is not entirely accurate, given the explicit delineation of Sinuiju as a separate administrative region, on its face at least, and proclamation by DPRK Vice Minister for Foreign Trade, Kim Yong Sul, that this designation is unprecedented, “a new historical miracle.”<sup>48)</sup> Since the Rajin-Sonbong ETZ never fulfilled North Korean hopes that it would become a vibrant SEZ, Pyongyang leaders may hope that creating a special administrative region in the manner of the Hong Kong Special Administrative Region would better enable Sinuiju to become like Hong Kong. This supposition is flawed, however, as analysis in the next section will show.

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47) Gil-Sang Chin, “DPRK’s Dispute Solution System for Foreign Investment Enterprises” (1999), at [http://www.korea-np.co.jp/plk/123rd\\_issue/99129801.htm](http://www.korea-np.co.jp/plk/123rd_issue/99129801.htm) (last visited May 21, 2003).

48) “The Hermit Kingdom’s Bizarre SAR”, *TIME Asia Magazine*, October 7, 2002, available at <http://www.time.com/time/asia/magazine/printout/0,13675,501021007-356131,00.html>.

At this point, another question to address is how *chuch'e* figures into the North Korean foreign investment regime(s). After all, foreign investment would seem incompatible with the self-reliant notion of *chuch'e*. To justify the opening of Rajin-Sonbong ETZ, Kim Jong Il asserted that *chuch'e* does not mean an isolated economy, but rather one that is not subjugated to foreign domination.<sup>49)</sup> Under *chuch'e* interpretation then, foreign investment can be accommodated as a necessary means to an end, this being modernization, technology, and hard currency. Therefore, strictly confining foreign investment to small border enclaves to advance the North Korean economy without corrupting the rest of the population supposedly does not violate *chuch'e*. However, liberalizing foreign investment on a wider scale and embracing a market economy would be a more difficult endeavor. In 1994, North Korea had called China “traitors to the socialist cause” for pursuing a market economy, later quieting down as it grew more economically dependent on China.<sup>50)</sup> A major shift came in 2000, when Kim Jong Il visited Beijing and expressed North Korean support for China’s reform policy.<sup>51)</sup> Meanwhile, Kim Jong Il has started to call for “new thinking” while maintaining a “mosquito net” against imperial penetration, which signifies a prelude to more economic reforms involving foreign influence.<sup>52)</sup>

For the foreign investor, North Korea is a legal twilight zone. The legal framework for foreign investment is more illusory than normative given that different laws govern different zones, and that many legal points may be negotiable. In the Sinuiju SAR, it is still uncertain what laws would in fact apply to foreign investment. The Sinuiju Basic Law provides only an administrative framework, not an explicitly encouraging foreign investment legal regime, which is to be later imported.

#### 4. Current Status of the Sinuiju SAR

The Sinuiju SAR is indefinitely on hold, having suffered a major setback when Chinese authorities arrested Dutch-Chinese businessman Yang Bin for illegal business

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49) Bon-Hak Koo, *Political Economy of Self-Reliance: Juche and Economic Development in North Korea, 1961-1990*, 176 (1992).

50) Noland, “North Korea’s External Economic Relations”, *supra* note 8.

51) *Ibid.*

52) *Yonhap News Agency, North Korea Handbook (2003)* [hereinafter “*North Korea Handbook*”], at 370-371.

activities shortly after the DPRK announced that he had been appointed as governor of the Sinuiju SAR.<sup>53)</sup> Two prominent, plausible speculations are that China was already investigating its richest for tax evasion (*Forbes* magazine had earlier ranked Yang Bin as the second richest person in China) and that China was not ready for a bordering North Korean economic region, especially without any prior consultation between the two governments.<sup>54)</sup>

Despite proclamations of business interest from China and Hong Kong, the Sinuiju SAR would be a hard sell to most investors. It does not have ideal port facilities or any practical infrastructure in place for big business, meaning that investors would have to pay first to build a transport, communications and energy network for the SAR. Dandong, its Chinese city across the river border, would be more attractive already having infrastructure, population and businesses in place and especially future designation as a special economic area in 2004. Indeed, a North Korean objective may be to siphon investment resources from Dandong, which could explain some of China's reluctance in welcoming Sinuiju as a neighboring SAR. Although North Korea has announced that Sinuiju is to become a financial, trade, industrial and entertainment zone, some observers predict that it would more likely become a shady, off-shore haven resembling pre-1999 Macau.<sup>55)</sup> SAR designation aside, the publicity on Sinuiju is reminiscent of the opening of Rajin-Sonbong ETZ, from pronouncements of it being the next Hong Kong and relocating current residents to bring in a skilled workforce, to constructing walls around the city and promulgating laws foremost.

Even if the Sinuiju SAR were to proceed, assuming key positions filled and vital infrastructure funded, its legal uncertainty weighs at the forefront. North Korea's approach to assigning a legal framework to each zone has been on a case-by-case basis. The SPA was careful to construct laws and regulations for Rajin-Sonbong ETZ, most likely in an attempt to gain the confidence of foreign investors and to have guidelines in place to regulate the foreign investments to come. The decree for Mt. Kumgang Tourist Zone, however, was enacted three years after the zone was already operational, partly because Hyundai had already committed to investment and

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53) "China to Deal with Yang Bin According to Law", *People's Daily*, November 29, 2002, available at [http://english.peopledaily.com.cn/200211/28/eng20021128\\_107642.shtml](http://english.peopledaily.com.cn/200211/28/eng20021128_107642.shtml).

54) See Scott Snyder, "Beijing in the Driver's Seat? China's Rising Influence on the Two Koreas", *Pacific Forum CSIS Comparative Connections* (4<sup>th</sup> Quarter 2002), at [http://www.csis.org/pacfor/cc/0204Qchina\\_skorea.html](http://www.csis.org/pacfor/cc/0204Qchina_skorea.html).

55) *Ibid.*



monopolizes tourist activities in the zone, but also to attract more investments within the zone. Meanwhile, the Kaesong decree, like Rajin-Sonbong, predates foreign investment with the exception of Hyundai Asan and KOLAND's infrastructure development. Its decree is very broad, and detailed laws and regulations are to follow but are to be consistent with the four bilateral agreements signed between the two Koreas. The Sinuiju SAR is similar in this regard: the Basic Law provides for the administrative structure of Sinuiju, but the laws and regulations specifically geared toward foreign investment do not yet exist. However, there is no hint as to what foreign investment legal regime would apply. Before his arrest, Yang Bin had announced that he would hire a European for the chief justice position, assuming that person would transplant the appropriate legal system for Sinuiju.<sup>56</sup> As of now, the legal system of the Sinuiju SAR does not exist.

### *B. Textual Comparison: Sinuiju Basic Law v. DPRK Constitution*

Although the Sinuiju Basic Law is a “paper fiction” for the time being, comparing what textual provisions are contained therein as opposed to the DPRK Constitution and the Hong Kong Basic Law may offer valuable insight into just how autonomous Sinuiju would be from North Korea's central authority. This section first discusses the relevance of the DPRK Constitution in relation to the Sinuiju Basic Law before comparing the two texts.

#### 1. The Relevance of the DPRK Constitution

Like most socialist constitutions, the North Korean Constitution is a dynamic instrument that champions major party policies as they change over the years. Since inauguration of the DPRK in 1948, the Constitution has been revised in 1972, 1992 and 1998, with a few minor amendments in the years 1954-56 and in 1962. It is, however, peculiar among socialist constitutions, especially in evolutionary terms of dropping reference to Marxist-Leninism and replacing it with *chuch'e* ideology, originally stated in the 1972 Constitution as “a creative application of Marxism-

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56) “The Hermit Kingdom's Bizarre SAR”, *supra* note 48.

Leninism to our country's reality."<sup>57)</sup> The DPRK Constitution first made room for foreign investment in its 1992 revision with Article 37, which asserts "The state shall encourage institutions, enterprises, or organizations of the DPRK to establish and operate equity or contractual joint venture enterprises with corporations or individuals of foreign countries." The Constitution was amended again in 1998 in several regards, but with respect to foreign investment, Article 37 now has tacked on the end of it, "within special economic zones." Also, Article 36 was amended to permit more local entities to conduct foreign trade.

The Sinuiju SAR could be classified as a special economic zone if the term "SEZ" is interpreted broadly. "Special economic zones," or *teukbyul gyungje jido*, as stated in Article 37 appears to be a general category in which the Rajin-Sonbong Economic and Trade Zone (*gyungje muyuk jido*), Mt. Kumgang Tourist Zone (*geumgangsang gwangwang jigju*) and Kaesong Industrial Zone (*gaeseong gongub jigju*) belong. Article 37 would be the determinative provision if constitutional reference were required to justify the existence of the Sinuiju SAR. However, this may be moot since no one in North Korea would demand that justification be located in the Constitution anyway given that any mandate of Kim Jong Il takes ultimate priority.<sup>58)</sup>

Besides constitutional accommodation of the Sinuiju SAR, it would be useful to compare the Sinuiju Basic Law to the current DPRK Constitution for two reasons. First, studying where the former departs (e.g., economy, political structure) or is consistent (e.g., rights and duties of residents/citizens, court structure) with the latter may help to define the DPRK-Sinuiju SAR relationship more clearly.<sup>59)</sup> Second, how well the North Korean government honors the DPRK Constitution may shed light on how faithfully it will uphold the Sinuiju Basic Law. For instance, the durability of the Sinuiju Basic Law would have to be seriously questioned if the DPRK does not in fact completely respect the Constitution. These will be covered throughout the textual comparison next.

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57) See Chin Kim, "Constitutions of Asian States", *Case W. Res. J. Int'l L.* 13: 483, 492 (1981).

58) *North Korea Handbook*, *supra* note 52, at 153.

59) The constitutions of North Korea and China have similar provisions, so the Sinuiju Basic Law resembles the PRC Constitution in parts as well. However, this paper focuses on comparing the Basic Law with only the DPRK Constitution in order to determine the DPRK-Sinuiju SAR relationship. The relationship between the PRC Government and Hong Kong SAR will be covered in a subsequent section, however, to shed light on the DPRK-Sinuiju SAR relationship.

## 2. Sinuiju Basic Law v. DPRK Constitution

The Sinuiju Basic Law consists of 106 articles and six chapters compared to the 166 articles and seven chapters of the 1998 DPRK Constitution. Structurally, they are almost identical. Both have chapters in the same order, these being Government, Economy, Culture, Fundamental Rights and Duties of Citizens/Residents, State/Political Structure, and Emblem/Flag. The Constitution, however, includes a preamble and a chapter on National Defense placed right before the fundamental rights chapter, while the Sinuiju Basic Law has a few supplementary provisions attached. Knowing how the North Korean legal system operates provides the necessary context for analyzing the Constitution and the Sinuiju Basic Law. Rather than provide a long, preliminary account, however, it would be more appropriate to raise the relevant aspects of the legal system as the texts are analyzed below.

### a) Government

The DPRK Constitution begins with a Preamble, which gives a historical summary of how “Great Leader Comrade Kim Il Sung” created the socialist Korean state and “immortal” *chuch’e* idea, fought for the revolutionary cause and established the most superior socialist state system. The “sun of the nation” and a “genius ideological theoretician,” Kim Il Sung is proclaimed the eternal President of the DPRK. This Preamble was added in 1998, the first constitutional revision after the death of Kim Il Sung in order to preserve him as the quintessential leader of North Korea forever. The first chapter, Government, of the DPRK Constitution has 18 articles and gives an overview of the state’s priorities. First, the DPRK is identified as an independent socialist state, a revolutionary state, and one guided by *chuch’e* ideology.<sup>60</sup> It then explains that the sovereignty of the state resides in the workers who exercise their power through the representative Supreme People’s Assembly and local people’s assemblies, which are based on democratic centralism.<sup>61</sup> Although elections are by principle of “universal, equal and direct suffrage by secret ballot,”<sup>62</sup> this is inaccurate

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60) Constitution [*Hŏn Bŏb*], arts. 1-3, *supra* note 32.

61) *Ibid.*, arts. 4, 5.

62) *Ibid.*, art. 6.

because SPA and local assembly candidates are pre-screened by the Korean Workers' Party (KWP) before they can stand for election.<sup>63)</sup> The first chapter continues that the DPRK bases itself on the worker-peasant alliance (the working people as masters and society as server), conducts all activities under the KWP leadership, adheres to the class line, implements the mass line, applies the *Chongsanri* spirit,<sup>64)</sup> and accelerates socialism under national mass movements.<sup>65)</sup> Reunification of the Korean peninsula is a goal, while foreign policy is based on principles of equality, independence, nonintervention, and mutual respect and benefit.<sup>66)</sup> The legal rights and interests of foreigners in the DPRK are guaranteed,<sup>67)</sup> and the last article of the chapter emphasizes the duty to respect the law and the state's goal of perfecting the socialist legal system.<sup>68)</sup>

In contrast, the first chapter on Government in the Sinuiju Basic Law hardly mentions any of the above except with respect to guaranteeing the legal rights and interests of all residents and nonresidents in the Sinuiju SAR. It is devoid of any explicit reference to North Korean ideology. Kim Il Sung, *chuch'e*, socialism, revolution, Korean Workers' Party, class or mass lines, *Chongsanri*, national movements. None of these terms are in the Sinuiju Basic Law. It has 11 articles, but no preamble. The first article defines the Sinuiju SAR as "a special administrative unit under the sovereignty" and central authority of the DPRK. The DPRK state ("State") grants legislative, executive and judicial powers to the SAR, shall not change its legal system for 50 years, and guarantees the legal rights and interests of residents and nonresidents within the SAR.<sup>69)</sup> Except for the defense and foreign affairs of the Sinuiju SAR, the State will not interfere in its operation.<sup>70)</sup> However, the State prohibits the activities of foreign political organizations within the SAR and can declare a state of emergency in such events like war or armed insurrections, in which case the

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63) Dae-kyu Yoon, "North Korea" in Herbert M. Kritzer, *Legal Systems of the World* (2000), at 1193.

64) The *Chongsanri* spirit and method, as defined by Article 13 of the DPRK Constitution, is that "by which superiors assist their subordinates, mix with the masses to find solutions to problems, and rouse them to conscious enthusiasm preferentially through political work, with people."

65) Constitution [*Hön Bōb*], arts. 8, 10-14, *supra* note 32.

66) *Ibid.*, arts. 9, 17.

67) *Ibid.*, art. 16.

68) *Ibid.*, art. 18.

69) Basic Law of Sinuiju Special Administrative Region [*Sinuiju teukbyōlhengjōnggu gibonbōb*] ("Sinuiju Basic Law"), arts. 2-4 (2002), *see* Appendix for translation.

70) *Ibid.*, arts. 6-8.

relevant national laws will be applied.<sup>71)</sup>

The DPRK and Sinuiju SAR chapters on government are vastly different, given that one covers the North Korean state and the other, an administrative substructure. Although the DPRK promises nonintervention in the domestic affairs of the SAR and grants separate legislative, executive and judicial powers, the State retains ultimate control under the first article which brings the SAR under its sovereignty and central authority. This issue will be further addressed when discussing the PRC-Hong Kong relationship in a following section. Meanwhile, the chapters on economy illuminate further differences.

#### b. Economy

The chapters on economy in both the DPRK Constitution and the Sinuiju Basic Law are very different. The Constitution clearly proclaims an independent, socialist economy, while the Sinuiju Basic Law is much more liberal. The Constitution explains that the State rests on the foundation of an independent national economy, that only the State and social cooperative organizations own the means of production, and that State property belongs to the entire people.<sup>72)</sup> Meanwhile, the property of social cooperative organizations belongs to the collective property of those within such organizations, while private property exists to meet “the simple and individual aims of the citizen,” for example, products from kitchen gardens of cooperative farmers and “income from other legal economic activities.”<sup>73)</sup> The latter category was inserted in the most recent 1998 amendment of the Constitution to permit more means of subsistence for citizens. The Constitution proceeds to extol *chuch’e* orientation and states the necessity for a “technical revolution.”<sup>74)</sup> With respect to foreign trade, the State and social cooperative organizations may be involved in such activities, and DPRK institutions, enterprises or associations are encouraged to establish and operate joint ventures with foreign corporations or individuals within a special economic zone.<sup>75)</sup>

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71) *Ibid.*, arts. 10, 11.

72) Constitution [*Hön Bōb*], arts. 19-21, *supra* note 32.

73) *Ibid.*, arts. 22, 24.

74) *Ibid.*, arts. 26-28.

75) *Ibid.*, arts. 36, 37.

As stated earlier, “special economic zone” appears to be a broad term, under which the Sinuiju SAR would qualify. The only similarities between the chapters on Economy in both legal texts are provisions mandating an eight-hour work day (or 48-hour week in the SAR) and a minimum working age of 16 years.<sup>76)</sup> The Sinuiju Basic Law is obviously different in terms of providing assurances to potential investors regarding the investment climate of Sinuiju. These include a 50-year land lease period, land use rights (i.e., assignment, lease, sublease, mortgage), the guarantee that private property in Sinuiju shall not be nationalized (or its value being compensated if appropriated for national security reasons), unrestricted movement of foreign currency, preferential tax and tariff systems, guaranteed exit and entry of people (most likely excluding DPRK citizens), and “the convenience of exchange of goods, capital, information and communication.”<sup>77)</sup> The few restrictions listed in this chapter include the requirement for enterprises in Sinuiju to hire North Korean workers (although the SAR administration may approve foreigners for “necessary occupations”), adherence to a wage standard pre-determined between the SAR administration and the DPRK government, and prohibition against investment which harms health, national security, the environment or is technology backward.<sup>78)</sup> As for what falls explicitly under SAR authority regarding Sinuiju’s economy, the administration can decide how to develop and manage the land, execute its own monetary policy, determine tax and tariff rates, formulate and execute its own budget, inspect and issue certificates of origin for goods made in the SAR, and consider (but does not necessarily approve) applications to establish enterprises in the SAR.<sup>79)</sup>

As illustrated above, the economies of the DPRK and the Sinuiju SAR operate under different systems, one socialist and the other capitalist. The North Korean government intends to run Sinuiju as a separate bubble economy because it is diametrically opposed to its own. Like the other existing zones, the goal is to tap the revenue while insulating the rest of the population from the “contaminating” effects of capitalist activities. Although the Sinuiju Basic Law appears to provide the SAR administration with significant discretion in running Sinuiju thus far, this will be further tested by examining the political structure of the Sinuiju SAR below.

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76) *Ibid.*, arts. 30, 31, and Sinuiju Basic Law, arts. 18, 19, *supra* note 69.

77) Sinuiju Basic Law, arts. 15-17, 23-25, 31.

78) *Ibid.*, arts. 20, 21 and 29.

79) *Ibid.*, arts. 14, 23-25, 27, 28, 30.

### c. Culture

The DPRK Constitution's chapter on culture is about double the length of that in the Sinuiju Basic Law. The Culture chapter in the Sinuiju Basic Law is essentially what stands after constitutional provisions with references to socialist culture and education, cultural revolution (or revolutionary culture), language and “*chuch'e*-oriented, revolutionary literature and art” are dropped.<sup>80)</sup> Articles that are similar provide for free, compulsory education for 11 years, public preschools and nurseries (unclear if mandatory in Sinuiju), and a health insurance system.<sup>81)</sup>

Three articles of the Sinuiju Basic Law are peculiar to the region itself, however. First, literary and artistic activities are encouraged only if they do not “obstruct unification of the country or the people's solidarity,” which speaks to the issue of freedom of expression covered next.<sup>82)</sup> Second, the Sinuiju SAR must protect revolutionary historical sites.<sup>83)</sup> Third, the Sinuiju SAR may autonomously issue publications and operate media communications networks as long as these are not used to “harm the sound social conscience of residents and the social order of the region.”<sup>84)</sup> This chapter on culture is the only instance in the Sinuiju Basic Law where ideological issues like “the people's solidarity” or “revolutionary” historical sites are mentioned. However, it becomes increasingly evident that the rights granted to and within the Sinuiju SAR are limited. The North Korean state will not tolerate any action that undermines its national security or ideological foundations, as displayed by the numerous caveats placed in the Sinuiju Basic Law.

### d. Fundamental Rights & Duties of Citizens/Residents

Once references to socialism, collectivist principles and revolutionary vigilance are omitted, the chapter on citizens' rights and duties in the DPRK Constitution strongly resembles the chapter on residents' rights and duties in the Sinuiju Basic Law, with a

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80) Constitution [*Hön Bōb*], arts. 39-43, 48, 50, 52 and 54, *supra* note 32.

81) Sinuiju Basic Law, arts. 34, 35 and 38, *supra* note 69.

82) *Ibid.*, art. 36.

83) *Ibid.*, art. 37.

84) *Ibid.*, art. 40.

few exceptions. The rights guaranteed under both texts are virtually identical: the right to vote and run for election; freedom of expression, press, assembly, demonstration and association; freedom of religion; inviolable right of person and residence, and no detention, arrest or search without a legal warrant; right to submit complaints and petitions; freedom of (domestic) movement and travel; right to work; right to relax; right to medical care; right to receive an education; freedom to engage in scientific, literary and artistic pursuits; and freedom to marry. In terms of duties, the DPRK Constitution requires citizens to work, defend the country, observe the laws, and “firmly safeguard the political and ideological unity and solidarity of the people,” while the Sinuiju Basic Law describes only two duties: compliance with SAR laws and the duty to protect the nation on the part of North Korean citizens of the Sinuiju SAR.<sup>85)</sup>

Under the DPRK Constitution, however, these rights are not all absolute and only granted insofar as citizens do not act outside socialist norms and against the state.<sup>86)</sup> Thus, these rights exist only to the extent the State is not undermined. For those citizens who offend the State, intentionally or not, these rights do not apply whatsoever and repercussions are severe. Offensive acts can range anywhere from badmouthing Kim Il Sung or Kim Jong Il or tearing their photos accidentally to singing foreign songs or possessing foreign products.<sup>87)</sup> Arbitrary arrest and detention, disappearance, exile, torture and execution are not uncommon practices against those persons the State finds hostile to the system.<sup>88)</sup> Meanwhile, freedoms of speech, publication, assembly, association and religion are in name only considering that the State controls all media, assembly is only with government permission, and those caught proselytizing or corresponding with overseas evangelical groups across the border in China are subject to imprisonment if not worse.<sup>89)</sup>

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85) Constitution [*Hön Böb*], arts. 81-83, 85 and 86, *supra* note 32, and Sinuiju Basic Law, arts. 58 and 59, *supra* note 69.

86) For example, Article 82 of the DPRK Constitution reads, “Citizens shall strictly observe the laws of the State and the socialist standards of life and defend their honor and dignity as citizens of the DPRK.”

87) See the website of the Citizens’ Alliance for North Korean Human Rights for sobering, personal accounts of North Korean refugees, at [http://www.nkhumanrights.or.kr/NKHR\\_new/index\\_eng\\_new.htm](http://www.nkhumanrights.or.kr/NKHR_new/index_eng_new.htm). Earlier reports of human rights violations can also be found in Asia Watch, Human Rights in the Democratic People’s Republic of Korea (1988).

88) See the U.S. Department of State’s Country Report on Human Rights Practices 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18249pf.htm>.

89) *Ibid.*



Since the freedoms described in the DPRK Constitution cannot be taken at face value, it would be equally difficult to rely upon the rights under the Sinuiju Basic Law as guaranteed. North Korean citizens in Sinuiju would be ultimately subject under the DPRK Constitution, so their rights would not extend beyond those of their counterparts in the rest of the country. Foreign residents and nonresidents may have more leeway and would escape arbitrary detention, torture and like punishment for acts deemed offensive to North Korea since they are located outside its societal hierarchy. Nevertheless, this would not exclude the possibility of censure by DPRK or SAR authorities. As seen in the Basic Law provisions regarding culture, freedoms of expression and of publication are permitted to the extent North Korean solidarity and social order are not harmed. In the Rights chapter, these freedoms are guaranteed “in accordance with the related laws of the Sinuiju SAR,” in other words, to the extent social order is not disturbed.<sup>90)</sup> Religion, too, is allowed only if it is not used to harm social order.<sup>91)</sup> Thus, although the Sinuiju Basic Law seems to protect various rights, many of these rights may be more narrowly defined than expected.

#### e) State / Political Structure

The political structure of the North Korean state is considerably different than that of the Sinuiju SAR. Within the DPRK Constitution, the state structure is divided into the following governmental bodies in this order: the Supreme People’s Assembly (SPA), the National Defense Commission (NDC), the SPA Presidium, the Cabinet, Local People’s Assembly, Local People’s Committee, and the Public Procurators’ Office and Court, while the Korean Workers’ Party exists as the suprastructure over all these organizations.<sup>92)</sup> The Sinuiju Basic Law, on the other hand, breaks down the political structure of the SAR on a more rudimentary level: the Legislative Council, the Governor, the Administration, the Procuracy and the Judiciary. A description of the DPRK structure will be given before explaining the Sinuiju SAR structure.

According to the DPRK Constitution, the SPA is the highest state organ in North Korea with the SPA Presidium assuming this position when the SPA is in recess.<sup>93)</sup> SPA

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90) Sinuiju Basic Law, art. 45, *supra* note 69.

91) *Ibid.*, art. 46.

92) Yoon, *supra* note 63, at 1193.

93) Constitution [*Hŏn Bŏb*], arts. 87 and 106, *supra* note 32.

representatives serve five-year terms and number one per every 30,000 citizens (687 representatives were elected in July 1998 for the 10<sup>th</sup> term Assembly).<sup>94)</sup> The NDC serves as the highest military organ of state power and controls national defense, but is in reality the highest state organ when considering that (1) the 1992 Constitution elevated the NDC as the second highest state organ, (2) Kim Jong Il, also KWP General Secretary, was elected chair of the NDC in 1993 and again in 1998, and (3) the SPA, whose representatives are pre-screened by the KWP, acts as a rubber-stamping vehicle to pass measures initiated by the KWP.<sup>95)</sup> After Kim Jong Il and the NDC, the SPA Presidium appears to be the next body with significant powers. It consists of a chair, vice chair, secretaries and members, and its power exceeds that of the SPA. For example, it convenes SPA sessions, issues decrees, interprets the Constitution and laws, forms or abolishes Cabinet commissions and ministries, elects or transfers judges of the Central Court and people's assessors, grants amnesties and pardons, and forms or reorganizes administrative units, among other functions.<sup>96)</sup> The Cabinet, the executive administrative arm of the state which consists of a premier, vice premiers, commissioners and ministers, falls under the authority of the SPA Presidium.<sup>97)</sup> Its functions include adopting and implementing state policy measures, passing regulations on state management, drafting development plans for the national economy, formulating the state budget, and overseeing the commissions, ministries, other Cabinet organizations and local people's committees.<sup>98)</sup> The Local People's Assembly exists on the provincial, district and county levels, and it has the authority to approve local development plans and budget, to adopt local measures, and to elect or remove local committee leaders as well as judges and people's assessors of the local courts.<sup>99)</sup> Meanwhile, the Local People's Committee is the executive administrative organ of the local sovereignty with powers similar to the Cabinet except on a local level and acts when the LPA is in recess.<sup>100)</sup> (The DPRK procuracy and court systems will be addressed separately below in relation to those of the Sinuiju SAR.)

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94) *North Korea Handbook*, *supra* note 52, at 117.

95) Yoon, *supra* note 63, at 1192-93.

96) Constitution [*Hŏn Bŏb*], art. 110, 114, *supra* note 32.

97) *Ibid.*, art. 118.

98) *Ibid.*, art. 119.

99) *Ibid.*, arts. 131, 134.

100) *Ibid.*, arts. 139, 141.

Unlike the DPRK system, the political structure of Sinuiju is very simplified and does not involve the Korean Workers' Party. Listed first among the political bodies in the Basic Law, the Legislative Council consists of 15 members who serve five-year terms and may be foreigners.<sup>101)</sup> Like the SPA, the Legislative Council members are supposed to be "elected by secret ballot in the principle of general, equal and direct election by residents."<sup>102)</sup> However, this is highly suspect given that once-intended Governor Yang Bin had stated that he would fill half the Council positions with foreigners, which would be more reminiscent of the screening mechanism of SPA candidates by the KWP. The Legislative Council has six specified functions, these being (1) to enact, amend or repeal regulations, (2) consider and approve the budget, (3) interpret regulations, (4) deliberate administrative activity reports, (5) appoint or dismiss the Chief Justice upon the Governor's recommendation, and (6) appoint or dismiss regional or district court judges upon recommendation of the Chief Justice.<sup>103)</sup> The Legislative Council can declare and adopt decisions, however these are *subject to the approval of the Governor and the "supreme legislative body" of the DPRK, either the SPA in session or the SPA Presidium.*<sup>104)</sup> The Governor can return a decision of the Legislative Council up to two times for reconsideration, while all decisions must be recorded with the supreme legislative body of the DPRK unless returned for revision.<sup>105)</sup> One final interesting point regarding the Legislative Council is the guaranteed right of inviolability granted under the Basic Law. A Council member cannot be detained or arrested without the Legislative Council's consent except in the case of a flagrant offense, identical to the inviolability granted to SPA representatives. This probably would have come in handy for Yang Bin and his cohorts who are known to have connections with the criminal underworld and thereby would have had better means to escape China's jurisdiction.<sup>106)</sup>

Under the Sinuiju Basic Law, the Governor is the head representative of Sinuiju and his activities are accountable to the supreme legislative body of the DPRK, who appoints or dismisses the Governor to begin with.<sup>107)</sup> The Governor must swear before

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101) Sinuiju Basic Law, arts. 61-63, *supra* note 69.

102) *Ibid.*, art. 61, and Constitution [*Hön Bōb*], art. 89, *supra* note 32.

103) Sinuiju Basic Law, art. 64.

104) *Ibid.*, arts. 72-74.

105) *Ibid.*, arts. 73, 74 and 80.

106) *See* Snyder, *supra* note 54.

107) Sinuiju Basic Law, arts. 76, 77, *supra* note 69.

the SPA Presidium to be faithful to North Korea and the SAR, calling into question just how freely he would be able to fulfill his enumerated powers, which include guiding the region's affairs, directing Legislative Council decisions and Administration orders, appointing or dismissing various officials (i.e., Administration members, procurators, police chiefs) and conducting "other proposed activities."<sup>108)</sup> Granted, the point of the Sinuiju SAR is to make money, and to that end, the Governor would have much room to maneuver. However, North Korea would probably continue careful surveillance over the more social and political aspects of Sinuiju.

The Administration is a very ambiguous body since the Sinuiju Basic Law does not explain who would constitute its members, only that the Governor heads it and has the power to appoint or dismiss its members. The Administration is to determine what departments should be created for Sinuiju. Although Sinuiju residents may be appointed as departmental heads, North Korean officials are not excluded as possibilities.<sup>109)</sup> Compared to the Legislative Council and the Governor, the Administration has the longest list of duties and powers (see Appendix, Article 36) and would require a decent bureaucracy to handle everything. Presumably, the Administration and staff would be mostly comprised of North Koreans, in which case the implementing arm of the Sinuiju government would most likely continue the interventionist habits and surveillance practices of North Korean state management. This would significantly reduce the autonomy of the Sinuiju SAR.

While the DPRK Constitution combines the procuracy and judiciary under a single heading, the Sinuiju Basic Law separates them into different sections. The combination of these two systems under the DPRK Constitution indicates the tight interrelation between the procuracy and the judiciary in North Korea, which act as enforcement mechanisms of the KWP. The Constitution makes it clear that the Public Procuracy and the Central Court are subservient to the SPA and the SPA Presidium.<sup>110)</sup> This relationship is also evident given that the SPA appoints the Chief Justice of the Central Court, while the SPA Presidium appoints the other judges and people's assessors of the Central Court.<sup>111)</sup> The Procuracy ensures strict compliance of laws by

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108) *Ibid.*, arts. 78, 79.

109) *Ibid.*, art. 82.

110) Constitution [*Hŏn Bŏb*], arts. 152 and 162, *supra* note 32.

111) *Ibid.*, arts. 91 and 110.

everybody, ensures that all state decisions and directives conform with the Constitution, laws, decrees, directions and decisions of the SPA, NDC, SPA Presidium and the Cabinet, and must bring legal proceedings against those who do not comply.<sup>112)</sup> The Courts (i.e., Central Court, Provincial or District Courts and People's Courts)<sup>113)</sup> have the duty to protect State power and the socialist system, to ensure that all strictly observe State laws and "staunchly combat class enemies and all law-breakers," and to give judgments and conduct notarial work.<sup>114)</sup>

It should be noted here that North Korean lawyers receive their salaries from the state and their cases from the North Korean Lawyers' Association, and thus work more for the state's interest instead of their clients.<sup>115)</sup> Rather than advocating on their clients' behalf, they usually encourage them to confess and express remorse.<sup>116)</sup> Therefore, the legal profession can be viewed as an extension of the State. Quasi-legal systems like the Peer Tribunal also exist to handle minor offenses.<sup>117)</sup> This is when the party committee, agency or enterprise of the accused creates a tribunal to mete out punishments like compulsory labor without pay, fines, self-criticism or admonition.<sup>118)</sup> For accused officials, the central or local people's assembly may determine the legal recourse, which may be a warning, demotion, dismissal or withholding of salary for up to one year.<sup>119)</sup> In terms of administrative review, individuals may submit a complaint or petition to the relevant state organ for offenses committed within it or a subordinate unit.<sup>120)</sup>

The Sinuiju Basic Law has very brief sections on the Procuracy and the Judiciary. The Procuracy is to consist of a regional and district procurators, although it is unclear how many district procurators there will be.<sup>121)</sup> The Chief Procurator heads the Regional Procuracy with a term of five years.<sup>122)</sup> The Procuracy must ensure

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112) *Ibid.*, art. 150.

113) The Special Court is comprised of the Military Court and the Railroad Court.

114) Constitution [*Hŏn Bŏb*], art. 156, *supra* note 32.

115) Yoon, *supra* note 63, at 1196.

116) *Ibid.*

117) *North Korea Handbook*, *supra* note 52, at 153.

118) *Ibid.*

119) *Ibid.*

120) *Ibid.*

121) Sinuiju Basic Law, art. 85, 87, *supra* note 69.

122) *Ibid.*, art. 87.

compliance with laws and regulations, investigate and prosecute criminal offenses, and protect the legal rights, personal assets and lives of individuals and juridical persons.<sup>123)</sup> Curiously, the duty to ensure that administrative decisions conform with Legislative Council decisions and Administration decrees is not listed among its functions. This omission does not reflect the unique, auditing responsibility of the DPRK Public Procuracy since the latter must also ensure that state decisions and directives conform with the Constitution, SPA laws and decisions, and NDC and Cabinet decisions, decrees and orders. Nonetheless, this raises the issue of whether proper administrative review can be achieved in the SAR because the Sinuiju Procuracy functions do not include a check on the administrative region's compliance with their own laws, regulations, decisions and decrees. Although residents have the right to submit complaints or petitions, it is unknown how these would be handled if at all.

As for the Sinuiju court system, the structure outlined in the Basic Law reflects some aspects of the North Korean system. For example, one judge and two people's assessors comprise the judicial panel in a trial (or three judges in the event of a "special" trial though this is not defined).<sup>124)</sup> Trials are to be public, but may be closed in special cases.<sup>125)</sup> Again, this is not defined, although the equivalent provision in the DPRK Constitution states that hearings may be closed to the public as stipulated by law. This could potentially be overridden by any mandate from Kim Jong Il, however. In both texts, the defendant is guaranteed the right of defense, but as seen in the section on rights and duties, this is an illusory right, at least in North Korea, since some alleged offenders never have a public trial or are encouraged to confess by their assigned lawyers.<sup>126)</sup> Like the DPRK court system, trials in Sinuiju must be conducted in Korean, but foreigners may speak in their own language.<sup>127)</sup>

Unlike the three-level North Korean court system, however, the Sinuiju court system is comprised of the regional court and district courts, their decisions to be made under the heading of Sinuiju SAR of the DPRK.<sup>128)</sup> Also, the regional court oversees

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123) *Ibid.*, art. 86.

124) *Ibid.*, art. 95.

125) *Ibid.*, art. 96.

126) *Ibid.*, art. 96.

127) *Ibid.*, art. 97.

128) *Ibid.*, art. 91.

129) *Ibid.*, art. 98.

judicial operations in the Sinuiju SAR and serves as the court of final appeal.<sup>129)</sup> The Chief Justice of the regional court must be a resident of the SAR and serves a term of five years.<sup>130)</sup> The functions of the Sinuiju courts are also very different in nature from the DPRK courts, considering that, unlike the latter, the former need not concern itself with protecting the socialist system and maintaining vigilance against “class enemies.” Its powers are straightforward: (1) to adjudicate presented cases, (2) to protect the legal rights and personal assets of juridical persons and individuals, (3) to educate through judicial proceedings that laws and regulations are to be complied with, and (4) to enforce court decisions and judgments.<sup>131)</sup> The third point is reflective of the North Korean court’s responsibility to educate offenders and other potential law-breakers of their actions, while it remains unclear what mechanisms the courts would have at their disposal to enforce their judgments. Although it is unknown what legal system would be transplanted into Sinuiju, the prospect of integrating an outside legal system with that of the North Korean judicial system would be an intriguing albeit complicated process. For instance, how would the role of the people’s assessors be defined? What role would lawyers have? Who would be qualified to act as lawyers in Sinuiju? Would North Korean lawyers be assigned, in which case, how effectively would they advocate on behalf of clients? Are foreign investors guaranteed an effective forum for dispute resolution? It would be futile to try to picture the region’s judicial system based merely upon the eight articles in the Sinuiju Basic Law. Although a Basic Law may exist for the Sinuiju SAR, it does not bring with it a legal system. There is no sign as of yet to foreign investors that a transparent, objective dispute resolution mechanism would be in place, except perhaps for South Korean investors who might be able to rely on the North-South bilateral treaties on cross-border investments, though this too is ambiguous. Clearly, a legal framework for foreign investment will have to be in place before Sinuiju can become a viable, attractive place for investment.

#### f. Emblem, Flag

This is a brief chapter in both the DPRK Constitution and the Sinuiju Basic Law. The North Korean state has articles describing its national emblem, flag, anthem and

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130) *Ibid.*, art. 94.

131) *Ibid.*, art. 92.

capital, while the Sinuiju SAR has its own emblem and flag. It is worth simply mentioning here that the Sinuiju SAR emblem and flag are to be used independently from the North Korean emblem and flag.

#### g. Supplementary Provisions

The Sinuiju Basic Law has four supplementary provisions. The first states its entry into force on the date of adoption (September 12, 2002). The second article explains that the DPRK laws and regulations concerning “nationality, emblem, flag, anthem, capital, territorial waters, territorial airspace and national security” will not apply to the Sinuiju SAR. The issue then is whether any and all other laws and regulations of the DPRK apply. This is not stated, but it leaves open room for the North Korean government to apply their laws and regulations selectively to the Sinuiju SAR. The third article states that laws and regulations enacted in Sinuiju shall conform with the Sinuiju Basic Law, while the final provision declares that the SPA Presidium shall interpret the Basic Law. Nothing is stated as to who has the power to amend the Sinuiju Basic Law, but this would probably be either the SPA or SPA Presidium.

Ultimate control over the Sinuiju SAR lies not with the Governor or Legislative Council, but with the government in Pyongyang. Although the Sinuiju Basic Law appears to have guaranteed broad autonomy for Sinuiju, this is not the case considering the means of control placed within the Basic Law. For example, freedoms are granted to the extent social order is undisturbed, which would be determined by North Korean authorities. The SPA or SPA Presidium has the power of final approval over Legislative Council decisions and can request revisions or simply reject them. The Governor must swear to be faithful to the DPRK, and thus abide by orders of the State. The SPA Presidium, not the Sinuiju courts, has the power to interpret the Sinuiju Basic Law. Finally, the fact that the DPRK Constitution serves as the ideal party manifesto rather than an absolute guarantee of rights should be the greatest warning that the nature of the quasi-constitutional Basic Law of Sinuiju is more elastic than it already looks. The next section compares the Sinuiju Basic Law to the Hong Kong Basic Law to explore further the relationship between the Sinuiju SAR and the North Korean government as compared to the relationship between the Hong Kong SAR and Chinese central authorities.



### III. The Sinuiju Basic Law as Compared to the Hong Kong Basic Law

#### A. Context and Relevance of the Hong Kong Basic Law

For decades, Hong Kong has been a populous, thriving financial and trade metropolis with a pre-existing legal system before reversion to China in 1997, while Sinuiju is an underdeveloped city with inadequate physical, trade, legal and financial infrastructure basically starting from scratch. This brings to question why the Basic Laws of such fundamentally different administrative regions should even be compared in the first place. Because the Hong Kong model is what the DPRK government aspires for Sinuiju, it is worth examining the similarities and differences between the two, especially the relationship between the governments of the special administrative region and of the sovereign country.

Perhaps the most salient difference between the cases of Hong Kong and Sinuiju is how the relationship between the SAR and sovereign authority is defined. The relationship between Hong Kong and China is governed by the principle of a “high degree of autonomy,”<sup>132)</sup> while this principle is nowhere mentioned in the Sinuiju Basic Law. Despite the fact that the Hong Kong Basic Law provides for a high degree of autonomy, debate has swirled around whether Hong Kong truly is autonomous from China.<sup>133)</sup> Relative to autonomous entities in the world, some legal scholars argue that Hong Kong does not possess a high degree of autonomy at all.<sup>134)</sup> On the other hand, relative to China’s special autonomous regions like Tibet or Yanbian Prefecture, Hong Kong does have much greater autonomy. This is really what is meant by a “high” degree of autonomy.<sup>135)</sup>

Relativity aside, however, the most important issue is whether the Hong Kong people believe they enjoy a high degree of autonomy compared to the period pre-

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132) The Basic Law of the Hong Kong Special Administrative Region [“Hong Kong Basic Law”], arts. 2 and 12.

133) See, for example, Yash Ghai, *Hong Kong’s New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (1998), and Ming K Chan and David J. Clark, eds., *The Hong Kong Basic Law: Blueprint for ‘Stability and Prosperity’ under Chinese Sovereignty?* (1991).

134) Brian Z. Tamanaha, “Post-1997 Hong Kong: A Comparative Study of the Meaning of “High Degree of Autonomy,”” 20 *Ca. W. Int’l L.J.* 41, 57 (1989).

135) Chan and Clark, *supra* note 133, at 41.

handover. Preservation of rule-of-law and civil rights has been among the key concerns although noise over this has gradually subsided in light of China's move toward socialist rule-of-law.<sup>136)</sup> Despite claims of Hong Kong politicians like former Governor Chris Patten and Legislator Martin Lee that rule-of-law is the greatest legacy of Hong Kong under British colonialism,<sup>137)</sup> Hong Kong has never been the perfect bastion of rule-of-law, civil rights, or democracy for that matter. For example, laws prohibited unlicensed public assemblies and political organizations, and also allowed media censure.<sup>138)</sup> Until 1985, the Governor, appointed by Great Britain, appointed all legislative council members.<sup>139)</sup> Members were elected to the Legislative Council only after the Sino-British 1984 Joint Declaration announced the 1997 reversion.<sup>140)</sup> The Bill of Rights Ordinance was passed in 1991 to protect citizens' rights given domestic discomfort after the 1989 Tianenmen Massacre and having to depend on the Basic Law provisions alone.<sup>141)</sup> Rights and other important issues (e.g., like the power of amendment of the Basic Law, balance of power between the Hong Kong government and Beijing, and the jurisdiction of the Court of Final Appeal) will be explored in the textual comparison below.

The placement of the Hong Kong Basic Law within the hierarchy of Chinese legislation is uncertain.<sup>142)</sup> Although the Chinese Constitution permits the establishment of a special administrative region under Article 31, nothing speaks to the relationship between the Basic Law and the Constitution.<sup>143)</sup> The National People's Congress (NPC) of China adopted a separate decision that the Basic Law was constitutional, but this has not determined whether the Basic Law is the controlling document in cases of

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136) See generally Randall Peerenboom, *China's Long March Toward Rule of Law* (2002).

137) Martin C.M. Lee, "The Future of Hong Kong: Prospects: The Rule of Law in Hong Kong: Implications for 1997", 547 *Annals* 165 (1996), and Christopher Munn, "The Rule of Law and Criminal Justice in the Nineteenth Century", in Steve Tsang (ed.), *Judicial Independence and the Rule of Law in Hong Kong* (2001), at 20.

138) See Richard Cullen, "Freedom of the Press and the Rule of Law", in Tsang, *supra* note 137, at 161-162; and Jacques DeLisle and Kevin P. Lane, "Hong Kong's Endgame and the Rule of Law (I): The Struggle over Institutions and Values in the Transition to Chinese Rule", 18 *U. Pa. J. Int'l Econ. L.* 195, 210-212 (Spring 1997).

139) James M. Zimmerman, *China Law Deskbook: A Legal Guide for Foreign-Invested Enterprises* (1999), at 543.

140) *Ibid.*

141) DeLisle and Lane, *supra* note 138, at 212, and Lee, *supra* note 137, at 169.

142) Ghai, *supra* note 133, at 176.

143) *Ibid.*, at 177.

conflict.<sup>144)</sup> In 1999, the Hong Kong Court of Final Appeal had for the first time ruled in an immigration case that it had the power to overrule any Chinese legislation that conflicts with the Basic Law.<sup>145)</sup> However, Beijing demanded correction, so the Court “clarified” that it cannot question the authority of the NPC as long as the latter acts in accordance with the Basic Law.<sup>146)</sup> This has not really addressed the conflict, merely adding to local ire that Hong Kong’s autonomy is compromised and judicial independence illusory.

The Sinuiju SAR, on the other hand, does not have a local population that demands autonomy, rule-of-law, civil rights or democracy, yet at least, due to the fact that Sinuiju has always been a part of North Korea. This may change as foreign investors expect a liberal environment in which to live and conduct business, but nothing in the standing Sinuiju Basic Law states any explicit principle of autonomy. In comparing the Basic Laws of Hong Kong and Sinuiju below, it will become evident that the DPRK government has even less of a hands-off approach to the Sinuiju SAR than Beijing with respect to Hong Kong.

### *B. Textual Comparison: Sinuiju Basic Law v. Hong Kong Basic Law*

Various provisions in the Sinuiju Basic Law bear a striking resemblance to aspects of the Hong Kong Basic Law.<sup>147)</sup> In terms of structure, the Sinuiju Basic Law is actually closer to the DPRK Constitution than to the Hong Kong Basic Law, for example, in the ordering and titles of chapters along with the virtual cut-and-paste of the chapter on fundamental rights and the section on the courts. The Hong Kong Basic Law consists of 160 articles, 59 more than the Sinuiju Basic Law. It has nine chapters, three more than the Sinuiju Basic Law, and three annexes. The Hong Kong Basic Law includes a Preamble, a chapter on the relationship between Chinese central authorities and the

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144) *Ibid.*

145) *See* Ng Ka Ling v. Dir. of Immigration, [1999] 1 H.K. L. REP. & DIG. 315 (Court of Final Appeal). For an excellent summary of the case, *see* Emily Johnson Barton, “Pricing Judicial Independence: An Empirical Study of Post-1997 Court of Final Appeal Decisions in Hong Kong”, 43 *Harv. Int’l LJ.* 361 (Summer 2002).

146) *Ibid.*

147) This section concentrates more on these similarities of the two Basic Laws as opposed to their differences, since the latter largely results from the fact that Hong Kong has already had a different administrative and legal structure in place.

Hong Kong SAR, a chapter on external affairs, and separate chapters on the interpretation and amendment of the Basic Law as well as for the supplementary provisions, while the annexes cover the selection method of the Hong Kong Chief Executive, the formative and voting methods for the Legislative Council, and applicable Chinese laws. The Sinuiju Basic Law does not have a preamble or chapter defining the relationship between DPRK central authorities and the SAR, while the other topics are inserted as provisions and not chapters or annexes in and of themselves.<sup>148)</sup> A comparison of the provisions themselves, however, should shed more light on what the DPRK government found useful in the Hong Kong Basic Law to emulate. The following categories are taken in order from the Hong Kong Basic Law.

## 1. Preamble

The Sinuiju Basic Law does not have a preamble like the Hong Kong Basic Law. The preamble of the latter provides a brief history of Hong Kong in terms of its originally being part of Chinese territory and the resumption of Chinese sovereignty as agreed between the Chinese and British governments. It then declares that the Hong Kong SAR is established under Article 31 of the Chinese Constitution and that “under the principle of ‘one country, two systems’, the socialist system and policies will not be practiced in Hong Kong.” Because Sinuiju does not have any history as a separate governmental entity undergoing sovereign transfer, a preamble of this nature simply would not have been necessary. Furthermore, the DPRK conveniently avoids having to justify the creation of the Sinuiju SAR, which is based upon economic necessity.

## 2. General Principles

The first few articles of the Sinuiju Basic Law’s first chapter (entitled “Government”) generally mimic those in the Hong Kong Basic Law. Article 1 of the Hong Kong Basic Law states that the Hong Kong SAR is “an inalienable part” of China, whereas Article 1 of the Sinuiju Basic Law declares that the Sinuiju SAR falls under the sovereignty and central authority of the DPRK. Article 2 of the Hong Kong

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<sup>148)</sup> The Sinuiju Basic Law has a separate chapter on its flag and emblem, whereas the Hong Kong Basic Law incorporates this subject into its “General Principles” chapter.

Basic Law explains that the NPC authorizes the Hong Kong SAR “to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication,” while Article 2 of the Sinuiju Basic Law simply states that the DPRK grants Sinuiju “legislative, executive and judicial powers.” The Sinuiju Basic Law also briefly announces under Article 3 that the DPRK will not change Sinuiju’s legal system for 50 years, whereas Article 5 of the Hong Kong Basic Law states that “The socialist system and policies shall not be practiced in the Hong Kong [SAR], and the previous capitalist system and way of life shall remain unchanged for 50 years.” In the Sinuiju Basic Law, the issue of autonomy is best addressed in Article 6, which states that North Korean governmental bodies shall not be involved in the operation of the Sinuiju SAR. As seen in the earlier analysis of the Sinuiju Basic Law, this is untrue given the ultimate power of the DPRK in overseeing the activities in Sinuiju. That the DPRK does not clearly discuss the independence of the judiciary or mention that socialism will not apply to the region also leaves room for manipulation.

### 3. Relationship Between Central Authorities & Hong Kong SAR

Although the Sinuiju Basic Law does not have a chapter on the central authority-SAR relationship, it borrows several provisions from this Hong Kong chapter, namely that the central government shall be responsible for the foreign affairs and defense of the SAR.<sup>149)</sup> Unlike Hong Kong, however, which can conduct relevant external affairs independently in accordance with the Basic Law, the Sinuiju SAR can conduct external affairs only within the delegated scope of the central government.<sup>150)</sup> Also, the Hong Kong Basic Law provides that any Chinese troops stationed in Hong Kong shall not interfere in local affairs, but the Sinuiju Basic Law states only that the State shall station soldiers “when necessary” without any assurance of nonintervention.<sup>151)</sup> From these provisions alone, it can be seen that the DPRK government would retain a tighter hold on Sinuiju than the Chinese government on Hong Kong. The Sinuiju Basic Law also borrows from Article 23 of the Hong Kong Basic Law, which prohibits the

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149) Hong Kong Basic Law, arts. 13 and 14, *supra* note 132.

150) Sinuiju Basic Law, art. 8, *supra* note 69.

151) *Ibid.*, art. 7.

political activities of foreign political organizations or bodies in the region.<sup>152)</sup> It is questionable how effectively the activities of foreign political organizations (e.g., Amnesty International, Democrats Abroad, Lawasia) are prohibited, or even defined, by the Hong Kong administration,<sup>153)</sup> but such groups would probably face more swift repercussions upon forming in Sinuiju.

#### 4. Fundamental Rights and Duties of Residents

Like the Hong Kong Basic Law, the Sinuiju Basic Law lists the criteria of being a resident in the SAR but on a more simplified scale: (1) one who is a resident before the Sinuiju SAR was formed, (2) if a DPRK citizen, one who is employed by an enterprise or regional organ of the SSAR, (3) if a foreigner, one who has resided at least seven years in Sinuiju, and (4) anyone recommended by the Governor or DPRK supreme legislative body.<sup>154)</sup> The years requirement for foreigners is the same as that in Hong Kong, except Hong Kong also requires the foreigner to take up permanent residency.

A similar catalog of rights is then listed, but the wording of the Sinuiju Basic Law more closely duplicates that of the DPRK Constitution. One major difference between the two Basic Laws, though, is that Hong Kong residents have the freedom to emigrate while North Korean citizens who are also Sinuiju residents cannot. This is evident under Article 49 of the Sinuiju Basic Law, which stipulates that the SAR “shall determine the system for movement and travel to another region of the republic or to another country.” Furthermore, the Hong Kong Basic Law adds that residents shall enjoy other rights and freedoms protected by the laws of the Hong Kong SAR, whereas the Sinuiju Basic Law does not have such a provision.<sup>155)</sup>

#### 5. Political Structure

In both the Basic Laws, the chapter on political structure provides an overview of regional governing institutions: the Chief Executive (or Governor), the Executive

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152) *Ibid.*, art. 10.

153) Chan and Clark, *supra* note 133, at 41.

154) Sinuiju Basic Law, art. 42, *supra* note 69.

155) Hong Kong Basic Law, art. 38, *supra* note 132.

Authorities (or Administration), the Legislature and the Judiciary. The Hong Kong Law adds two separate sections on District Organizations and Public Servants, while the Sinuiju Basic Law has a separate section on the Procuracy.

a. The Chief Executive (Governor)

The section on the Chief Executive in the Hong Kong Basic law is more sophisticated in detail than the section on the Sinuiju Governor. For example, a detailed method exists for selecting the Chief Executive.<sup>156)</sup> In addition, the Chief Executive must not serve more than two consecutive terms of five years each.<sup>157)</sup> He or she must declare owned assets to the Court of Final Appeal.<sup>158)</sup> He or she has more specific enumerated powers, including dissolving the Legislative Council in case of stalemate.<sup>159)</sup> Furthermore, the circumstances under which the Chief Executive must resign are spelled out (i.e., losing the capacity to discharge his or her duties, or refusing to sign a bill or pass a budget after the new Legislative Council replacing the dissolved one passes the same bill or budget).<sup>160)</sup>

While the Hong Kong Basic Law has 15 articles covering the position of the Chief Executive, the Sinuiju Basic Law has only five. The Governor is accountable to the DPRK supreme legislative body (SPA or SPA Presidium) but not to the Sinuiju SAR (although loyalty is pledged to both), unlike the Hong Kong Chief Executive who has double accountability.<sup>161)</sup> While the selection method for the Hong Kong Chief Executive is detailed, the Sinuiju Basic Law states merely that the DPRK supreme legislative body appoints and dismisses the Governor.<sup>162)</sup> There is no other mechanism for removal of the Governor. The Governor can return a decision of the Legislative Council for reconsideration up to two times (the Hong Kong Chief Executive can do this only once), but it is not clear what happens after the Governor returns a decision for the second time.<sup>163)</sup>

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156) *Ibid.*, art. 45.

157) *Ibid.*, art. 46.

158) *Ibid.*, art. 47.

159) *Ibid.*, arts. 48 and 50.

160) *Ibid.*, art. 52.

161) Sinuiju Basic Law, arts. 76 and 78, *supra* note 69, and Hong Kong Basic Law, art. 43, *supra* note 132.

162) Sinuiju Basic Law, art. 77.

Like the Hong Kong Chief Executive, the Sinuiju Governor would lead the region's affairs, promulgate laws of the SAR, appoint or dismiss public officials, and grant special pardons. One main difference is that the Hong Kong Chief Executive can appoint and remove court judges at all levels directly, whereas the Sinuiju Legislative Council would appoint or remove all judges at the recommendation of the Governor. Although the Hong Kong Chief Executive has a longer list of duties, including implementation of Central People's Government directives, the Sinuiju Governor has a duty to "conduct other proposed activities," which greatly broadens his or her powers.

From comparing the functions of the Hong Kong Chief Executive and the Sinuiju Governor, the latter appears to have wider discretion to manage the SAR given the utter lack of local institutional checks on his or her power. The only accountability is to the DPRK government, which can end the Governor's career without any reason or transparent procedure, or prolong it indefinitely. Accordingly, the Governor would conceivably be held hostage to North Korean influences, undermining the noninterference promised in the Sinuiju Basic Law.

#### b. The Executive Authorities (Administration)

The fundamental difference between the Hong Kong Executive Authorities and the Sinuiju Administration is that a functioning system already exists in Hong Kong while one would have to be created in Sinuiju. The Hong Kong Basic Law provides that principal officials of the SAR shall be Chinese citizens who are permanent Hong Kong residents with no other citizenship and who have resided continuously in Hong Kong for at least 15 years.<sup>163</sup> Meanwhile, the criteria for holding an administrative position are not clear in the case of Sinuiju. As explained in the earlier comparison to the DPRK Constitution, the Sinuiju Administration would probably involve significant North Korean participation, and thus, control.

#### c. The Legislature (Legislative Council)

Already in existence, the Hong Kong Legislative Council is composed of 60

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163) *Ibid.*, art. 80, and Hong Kong Basic Law, art. 49.

164) Hong Kong Basic Law, art. 61.



elected members, with a term of two years initially and four years thereafter.<sup>165</sup> The Sinuiju Legislative Council is to have 15 elected members, each with a term of five years (but the Chief Executive is supposed to appoint the initial Council members followed by a proper election two or three years later).<sup>166</sup> A quorum is established in the Hong Kong Legislative Council when at least half are present, while Sinuiju requires two-thirds to be present.<sup>167</sup> Under both the Basic Laws, bills or decisions are passed by a simple majority of those present.<sup>168</sup> The Chief Executive or Governor can return a respective bill or decision of the Legislative Council for reconsideration. Meanwhile any law or decision passed by either Legislative Council must be recorded with the NPC Standing Committee, in the case of Hong Kong, or the DPRK supreme legislative body, in the case of Sinuiju.<sup>169</sup> In either case, a law or decision may be “returned” (i.e., rejected), which would immediately invalidate it for the SAR.

In terms of functions, both Legislative Councils enact, amend or repeal laws (regulations in the case of Sinuiju), approve the budget, deliberate the Chief Executive’s or Governor’s administrative policies, and have a role in the appointment and dismissal of head judges. However, the Hong Kong Legislative Council has a few more specific powers and duties, these being the handling of complaints of Hong Kong residents (a shared duty with the Chief Executive), the ability to pass a motion of impeachment of the Chief Executive (for Central People’s Government decision ultimately), and the ability to summon persons to testify or give evidence as required under its delineated powers and duties (which can be blocked by the Chief Executive).<sup>170</sup> Furthermore, the Hong Kong Basic Law provides that a council member can be discharged under certain circumstances: loss of ability to handle duties, long-term absence without consent, loss of status as permanent residency, acceptance of a government appointment, bankruptcy, conviction of criminal offense, and censure for misbehavior or breach of oath.<sup>171</sup> The Sinuiju Basic Law has no counterpart for discharge. Therefore, Sinuiju Legislative Council members may stay on for the

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165) *Ibid.*, art. 69 and Annex II.

166) Sinuiju Basic Law, arts. 61 and 63, and “The Hermit Kingdom’s Bizarre SAR”, *supra* note 48.

167) Hong Kong Basic Law, art. 75, and Sinuiju Basic Law, art. 66.

168) Hong Kong Basic Law, Annex II, and Sinuiju Basic Law, art. 72.

169) Hong Kong Basic Law, art. 17, and Sinuiju Basic Law, art. 74.

170) Hong Kong Basic Law, art. 73(g).

171) *Ibid.*, art. 79.

remainder of their term with one exception—detention or arrest in the case of “a flagrant offense” (detention or arrest for anything less would require the Legislative Council’s approval).<sup>172)</sup> Hong Kong, on the other hand, has legal immunity for its Council members only with respect to their statements at Council meetings and immunity from arrest while attending or on their way to a Council meeting.<sup>173)</sup>

Once again, this comparison shows to what extent Sinuiju Legislative Council members have wide discretion in maintaining their positions, made especially obvious by their broad legal immunity. Beyond the single check of the Governor returning legislative decisions, the Legislative Council has free rein in local legislation up until the ultimate acceptance or rejection of its decisions by the DPRK government. The Sinuiju Basic Law says nothing about the transparent method of electing members to the Legislative or about its accountability to Sinuiju residents.

#### d. The Judiciary / Interpretation and Amendment of the Basic Law

The Hong Kong Basic Law provides for the continuity of the judicial system that existed prior to the 1997 changeover, and the laws already in force, such as “the common law, rules of equity, ordinances, subordinate legislation and customary law,” except for those that conflict with the Basic Law.<sup>174)</sup> Its Supplementary Provision also states that the laws previously in force shall be adopted as such in 1997 “except for those which the [NPC Standing Committee] declares to be in contravention of [the Basic] Law.”<sup>175)</sup> The Hong Kong Basic Law also stipulates the establishment of the Court of Final Appeal (CFA), which has the power of final adjudication, but does not give jurisdiction over acts of state such as defense and foreign affairs to any of the Hong Kong courts, including the CFA.<sup>176)</sup> The CFA’s adjudicative powers are not as “final” as declared under the Basic Law, however, as seen earlier with the immigration case in which the CFA had to modify its statement on having the authority to overrule

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172) Sinuiju Basic Law, art. 75.

173) Hong Kong Basic Law, arts. 77 and 78.

174) *Ibid.*, arts. 8 and 81.

175) *Ibid.*, art. 160.

176) *Ibid.*, arts. 19 and 82. *See generally*, Donna Lee, “Discrepancy Between Theory and Reality: Hong Kong’s Court of Final Appeal and the Acts of State Doctrine”, 35 *Colum. J. Transnat’l L.* 175 (1997).

mainland legislation conflicting with Hong Kong legislation. Furthermore, the power of interpretation and amendment of the Basic Law is vested in the NPC Standing Committee, seriously restricting the courts' ability to interpret provisions of the Basic Law independently.<sup>177)</sup> For instance, Hong Kong courts must request an interpretation of the relevant provisions from the NPC Standing Committee through the CFA when interpreting Basic Law provisions that concern the relationship between the SAR and Chinese Central Authorities.<sup>178)</sup> Once received, the courts are bound by the interpretation of the NPC Standing Committee.<sup>179)</sup>

Sinuiju has no separate judicial history, but the Hong Kong model is useful for comparison.<sup>180)</sup> The SPA Presidium has the power to interpret the Sinuiju Basic Law, while, interestingly, the Legislative Council has the power to interpret its own regulations.<sup>181)</sup> While the Sinuiju Basic Law has no provision regarding its amendment, the SPA Presidium, or perhaps the SPA, would most likely have this power as well. Nowhere are interpretive powers of the judiciary mentioned in the Sinuiju Basic Law. For that matter, although the regional court serves as the court of final appeal in Sinuiju, nothing is mentioned as to the courts' independence or final adjudicative powers, leading to the assumption that the DPRK views future courts in Sinuiju as state instruments. Because judges can be appointed or removed at will by the Legislative Council upon the Chief Executive's recommendation, they are indirectly subject to North Korean state influence.

## 6. Economy

The chapter on economy in the Hong Kong Basic Law is broken down into four categories: (1) Public Finance, Monetary Affairs, Trade, Industry and Commerce, (2) Land Leases, (3) Shipping, and (4) Aviation. As far as similarities go between the

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177) Hong Kong Basic Law, art. 158.

178) *Ibid.*

179) *Ibid.*

180) For more detailed analysis of Hong Kong judicial independence, see Byron S.J. Weng, "Judicial Independence under the Basic Law", in Tsang, *supra* note 137.

181) Sinuiju Basic Law, art. 4 of the Supplementary Provisions, and art 64(3). It is not entirely clear if Legislative Council "decisions" are in the same category as "regulations." The Sinuiju Basic Law appears to use the two different Korean terms interchangeably.

Basic Laws, both Economy chapters have articles that provide for the protection of property inheritance rights, compensation for lawfully appropriated property, unrestricted movement of foreign currency, autonomous issuance of certificates of origin, and promotion of investments and advanced technology. Under Article 106 of the Hong Kong Basic Law, Hong Kong is to have “independent finances.” Its financial revenues are “exclusively for its own purposes, and they shall not be handed over to the Central People’s Government.” Furthermore, China is not to levy taxes in Hong Kong.

The Sinuiju Basic Law is vague on this issue of independent finance. Although the Sinuiju SAR is granted the authority to execute its own budget and own financial policy as well as to establish tax and tariff systems, there is no overt restriction on transferring revenues to the DPRK government. In fact, the whole point of the Sinuiju SAR is to aid the North Korean economy. One news source reports that the DPRK government has agreed not to take any revenues from the SAR for the first 50 years, but this is not guaranteed whatsoever under the Sinuiju Basic Law.<sup>182)</sup> At least one mechanism for revenue could very well be the attachment of wages of the some 200,000 transplanted North Korean “model” workers (to replace the 500,000 residents to be deported), since North Korean government intermediaries skimmed at least 38% of workers’ salaries in the Rajin-Sonbong ETZ.<sup>183)</sup> The Sinuiju Basic Law states that the wage standards for Sinuiju laborers are to be decided between the Sinuiju administration and the relevant national governmental organs, which allows for such possibility.<sup>184)</sup> Also, enterprises in the Sinuiju are required to hire North Korean workers, unless they receive permission from the region’s administration to hire foreigners for necessity.<sup>185)</sup> This contradicts Article 31 of the Sinuiju Basic Law which guarantees “the entry and exit of people, and the convenience of exchange of goods, capital, information and communication.” Although Hong Kong continues as a free-trade entrepot, with freedoms of movement in workers, goods, capital and services, the word “free” is noticeably missing from the Sinuiju Basic Law, foreshadowing that the Sinuiju SAR will end up as nothing more than an over-glamorized SEZ.

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182) “The Hermit Kingdom’s Bizarre SAR”, *supra* note 48.

183) Noland, *Avoiding the Apocalypse*, *supra* note 5, at 136.

184) Sinuiju Basic Law, art. 21, *supra* note 69.

185) *Ibid.*, art. 20.

## 7. Culture

Both Basic Laws state that the SAR will promote educational, health and cultural policies. Under the longer heading of “Education, Science, Culture, Sports, Religion, Labour and Social Services,” the Hong Kong Basic Law adds more on the rights of religious organizations, systems on professional qualifications, and the provision of social services. The Sinuiju Basic Law does not get into the same level of detail, but has several unique provisions as explained in the previous comparison to the DPRK Constitution.

## 8. External Affairs

The Hong Kong Basic Law devotes a chapter to external affairs, while the Sinuiju Basic Law has the sole provision under Article 8 that (1) the DPRK state shall conduct foreign affairs relating to Sinuiju and (2) that the latter shall conduct external affairs under its name within the scope delegated by the central government (as well as issue resident passports independently). While Hong Kong can conclude agreements with foreign states and international organizations on issues related to “the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields” using the name “Hong Kong, China,” it is unknown to what extent Sinuiju may also enter independently into international agreements.<sup>186)</sup>

The DPRK government borrowed provisions from the Hong Kong Basic Law which it views as attractive, such as ultimate sovereignty, exclusive authority over defense and foreign affairs, prohibition of foreign political bodies, final approval of all regulations and decisions by the central government, a pliable Governor and a Legislative Council subject to indirect, if not direct, influence. It did not borrow language on the order of “high degree of autonomy” or “independent judicial power, including that of final adjudication,” which is most telling of the lack thereof. This comparison has demonstrated that the Sinuiju Basic Law resembles the Hong Kong Basic Law in name, form and in substance where restrictive.

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186) Hong Kong Basic Law, art. 151, *supra* note 132.

## IV. Conclusion

This paper is, admittedly, a predictive exercise because the Sinuiju SAR has not started operation. Yet the lessons that surface are worthwhile for two reasons. First, if another Governor is named and can obtain financing for the development of Sinuiju, it would be important to identify potential legal trouble-spots for foreign investors. Second, even if the Sinuiju SAR is halted indefinitely, it is valuable to know how far the North Korean government is willing to go, or not, to procure foreign investment. At first glance, the Sinuiju Basic Law appears to be a no-holds-barred approach to take advantage of capitalism. But closer examination of the Basic Law provisions tells another story, that the DPRK government has controls in place to keep the Sinuiju administration in line. Comparison of the Sinuiju Basic Law to the DPRK Constitution reveals that the Sinuiju Basic Law is a rough, amenable policy sketch for the Sinuiju SAR and that the freedoms and rights listed within it are not a firm guarantee. The Governor and Legislative Council would be accountable to the central government, not to the local population. This raises the issue of whether the Sinuiju administration can adequately act on behalf of the interests of foreign investors. The SPA Presidium can interpret and amend the Basic Law, while it also has final say over all Legislative Council regulations and decisions. The Legislative Council retains the power to interpret its own regulations and decisions. These powers seriously undermine judicial independence, which is never promised in the first place considering the North Korean view that courts are an enforcement mechanism of the state, not a check upon it. Comparison to the Hong Kong Basic Law also shows that the DPRK does not want either an independent judiciary or, related to this, a “high degree of autonomy” for Sinuiju. The fundamental difference between Hong Kong and Sinuiju lies not only in their levels of economic development but also in the preexistence of the former as a British colony and local demand for the continuation of a legal system under which rule-of-law was established, albeit imperfectly. Sinuiju was never a separate colony from the rest of North Korea, and the plan is to transplant a foreign legal system. However, the Sinuiju Basic Law illustrates that the North Korean judicial structure would dominate and clearly not be independent since interpretive powers are reserved for the Legislative Council and the SPA Presidium. Thus, importing a legal system to incorporate into the current template would be a challenging process, and, ultimately, for potential investors facing legal disputes, a risky one. Even though the Sinuiju Basic

Law may strike a reasonable balance between foreign capital inducement and socialist control in the eyes of the North Korean government, the success of the Sinuiju SAR rests upon future investors. Meanwhile, foreign investors will find that the only tangible legal structure offered by the Sinuiju Basic Law is the paper on which it is printed.

## APPENDIX

### Basic Law of Sinuiju Special Administrative Region (Full Text)

[Adopted on September 12, 2002, by the Presidium of the DPRK Supreme People's Assembly]

#### Chapter 1 Government

- Article 1        The Sinuiju Special Administrative Region ["SSAR"] is a special administrative unit under the sovereignty of the Democratic People's Republic of Korea.  
The Sinuiju Special Administrative Region is under the central authority of the State.
- Article 2        The State grants the SSAR legislative, executive and judicial powers.
- Article 3        The State shall not change the legal system of the SSAR for 50 years.
- Article 4        The State shall guarantee all the legal rights and interests of the residents and nonresidents of the SSAR.
- Article 5        The State shall safeguard the personal safety of the residents and nonresidents of the SSAR in accordance with the law.
- Article 6        The cabinet, committees, ministries, and central organ of the DPRK shall not be involved in the operation of the SSAR.  
In the event the State dispatches personnel to or instructs personnel to reside in the SSAR, the Governor's consent shall be obtained.
- Article 7        The State shall operate the defense of the SSAR.  
The State shall station military personnel in the SSAR when necessary.  
The SSAR may request assistance for maintenance of public order and disaster relief from the military post.



- Article 8           The State shall conduct foreign affairs relating to the SSAR.  
The SSAR shall conduct external affairs under its name and issue passports independently within the delegated scope by the central government.
- Article 9           The State shall draw up official documents in the Korean language.  
Official documents drawn up in other languages shall be appended after being translated into the Korean language.
- Article 10          The State prohibits the activities of foreign political organizations in the SSAR.
- Article 11          The State can declare a state of emergency in the SSAR in the event of such occurrences as war or armed insurrections. Under these circumstances, the relevant national laws shall be applied.

## **Chapter 2    Economy**

- Article 12          The land and natural resources of the SSAR are properties of the DPRK.  
The State does not permit the infringement of the land and natural resources in the SSAR.
- Article 13          The State shall develop the SSAR as an international finance, trade, business, industrial, advanced science, entertainment and tourist zone.
- Article 14          The State grants the SSAR authority to develop, use and manage the land of the SSAR.  
The State shall approve the master construction plan of the SSAR.  
The subject of construction shall follow the approved master construction plan.
- Article 15          The period for land lease in the SSAR shall be until December 31, 2052.  
After the land lease period ends, the State shall extend the lease based upon application by enterprises. The same terms of profitable business activity by enterprises shall be guaranteed.

- Article 16      The State shall allow the assignment, lease, sublease and mortgage of land use rights, buildings and facilities acquired legally in the SSAR.
- Article 17      The State shall safeguard private property and guarantee inheritance rights in the SSAR.  
The State shall not nationalize private property in the SSAR.  
In the event private property must be appropriated for the sake of national security, its value shall be compensated.
- Article 18      The minimum working age in the SSAR is 16 years old.  
The State prohibits youths under this age from working.
- Article 19      The State shall not have laborers work in excess of 8 hours per day, 48 hours per week, in the SSAR.
- Article 20      The State shall have newly established enterprises in the SSAR employ labor of the republic.  
Foreign persons may be employed for necessary occupations upon permission from the region administration.
- Article 21      The State shall have the best wage standards for laborers in the SSAR determined by agreement between the region administration and the national organs concerned.
- Article 22      The State shall have the SSAR immediately execute labor policies such as a paid leave system and a social security system.
- Article 23      The State shall allow the SSAR to execute its own financial and monetary policy.  
Foreign currency may enter and exit the SSAR without restrictions.
- Article 24      The State shall have the SSAR establish a fair and preferential tax system.  
The SSAR shall determine the tax categories and rates.
- Article 25      The State shall have the SSAR establish a preferential tariff system.  
The SSAR shall determine tariff rates.
- Article 26      The State shall have the SSAR properly establish an accounting system and strictly enforce calculations and audits.

- Article 27      The State shall allow the SSAR to formulate and execute its own budget.  
The legislative decisions related to the budget shall be recorded with the Supreme Legislative Body.
- Article 28      The State shall have the SSAR autonomously inspect goods manufactured in the SSAR and issue the certificates of origin.
- Article 29      The State shall encourage investors to invest in the SSAR.  
Investment which harms national security or the health of residents, lowers environmental protection or reduces competitive technology cannot be made.
- Article 30      The region administration deliberates the establishment applications of enterprises in the SSAR.  
Air and marine transport services are permitted upon receiving approval from the republic party organ concerned.
- Article 31      The State shall have the SSAR guarantee a favorable investment climate and favorable conditions for economic activity.  
The SSAR shall guarantee the entry and exit of people, and the convenience of exchange of goods, capital, information and communication.

### **Chapter 3      Culture**

- Article 32      The DPRK shall have the SSAR aim to promote the creative abilities of residents and to meet their sound cultural and aesthetic needs by properly executing policies in the cultural sector.
- Article 33      The State shall have the SSAR develop within one year a high standard, universal, compulsory 11-year education, including pre-school education, using the regional budget.  
Social science education courses in the SSAR shall be by agreement with the republic party organ concerned.
- Article 34      The State shall have the SSAR raise pre-school children in public nurseries and kindergartens.

- Article 35      The State shall have the SSAR accept the most modern scientific technology and actively develop areas of new scientific technology.
- Article 36      The State shall have the SSAR provide modern cultural facilities and encourage residents widely to participate in literary and artistic activities. Literary and artistic activities which obstruct unification of the country or the people's solidarity are not permitted.
- Article 37      The State shall have the SSAR particularly protect revolutionary historical sites, scenic spots, natural monuments, and cultural relics using the region's budget. The republic party organ concerned shall determine the revolutionary historical sites, scenic spots, natural monuments, and cultural relics to protect.
- Article 38      The State shall have the SSAR operate a health insurance system. The SSAR may request and receive assistance from the republic party organ concerned in case of extreme situations such as the spread of a contagious disease.
- Article 39      The State shall have the SSAR promote the physical strength of residents, and develop athletic science and technology by encouraging public athletic activities.
- Article 40      The State shall have the SSAR autonomously issue regular publications such as newspapers and magazines, and operate its own communication and broadcasting network. Publications and media communication networks may not be used to harm the sound social conscience of residents and the social order of the region.
- Article 41      The State shall have the SSAR conserve and manage the natural environment, prevent environmental pollution, and provide residents with hygienic environment and working conditions.

#### **Chapter 4      Fundamental Rights and Duties of Residents**

- Article 42      The terms of being a resident in the SSAR are as follows:
1. one who is a resident before the SSAR was formed,
  2. if a citizen of the republic, one who is employed by an enterprise

- or regional organ upon the request of the SSAR,
3. if a foreigner, one who has a legitimate occupation and has lived at least 7 years in the region,
  4. one whom the Supreme Legislative Body or Governor recommends.

- Article 43      A resident shall have the same rights and duties as anyone else in all aspects of social life.  
A resident shall not be discriminated against on the basis of sex, country, nationality, race, language, property ownership, education level, political views, or religion.
- Article 44      A resident at least 17 years old has the right to vote and run for election in the SSAR.  
For those whose election right has been revoked pursuant to law, the individual does not have the right to vote or run for election.
- Article 45      A resident has freedoms of expression, press, assembly, strike and association. This right is guaranteed in accordance with the related laws of the SSAR.
- Article 46      A resident has the freedom of religion.  
No one can use religion to harm social order.
- Article 47      A resident is guaranteed an inviolable right of person and residence, and privacy of correspondence.  
A resident shall not be detained or arrested, or his or her body, property or home searched without a legal warrant.
- Article 48      A resident shall have the right to submit complaints and petitions.  
The SSAR shall fairly deliberate and handle the complaint or petition of a resident.
- Article 49      A resident has the freedom of movement and travel.  
The SSAR shall determine the system for movement and travel to another region of the republic or to another country.
- Article 50      A resident has the right to work.  
A resident can choose an occupation based upon his or her desire and ability, and shall receive remuneration according to his or her work

- Article 51      A resident has the right to relaxation.  
A resident shall receive holiday leave as determined by the republic, while a foreigner may receive leave according to his or her national custom.
- Article 52      A resident has the right to medical treatment.  
The elderly, the sick, disabled persons unable to work, and those elderly and children without caretakers shall receive material assistance in the form of social insurance and the social security system.
- Article 53      A resident has the right to receive an education. This right is guaranteed under the educational policy of the SSAR.
- Article 54      A resident has the freedom to engage in scientific, literary and artistic pursuits.  
Copyright, trademark and patent rights shall be especially protected in accordance with the laws of the SSAR.
- Article 55      Women have the same social standing and rights as men.  
The SSAR shall protect mothers and children with policies such as maternity leave.
- Article 56      A resident has the freedom to marry.  
The SSAR shall protect marriage and family in accordance with the law.
- Article 57      A foreigner without the right of residence in the SSAR shall have the same rights and duties of residents. However, a foreigner without the right of residence shall not have the right to vote or run for election or the right to receive social benefits from the regional budget.
- Article 58      Republic citizens of the SSAR maintain the duty to protect the nation.  
The SSAR shall determine the system for military conscription.
- Article 59      The laws and regulations reflect the wishes and interests of the people and are the basic instrument of regional management.  
A resident shall observe and strictly comply with the laws and regulations enacted in the SSAR.

## **Chapter 5 [Political] Structure**

### **Section 1 Legislative Council**

- Article 60 The Legislative Council is the legislative body of the SSAR.  
The Legislative Council exercises legislative power.
- Article 61 There shall be 15 members of the Legislative Council.  
Legislative Council members shall be elected by secret ballot in the principle of general, equal and direct election by residents.
- Article 62 A Legislative Council member can become a citizen of the SSAR.  
A foreigner with the right of residency in the SSAR can become a Legislative Council member.
- Article 63 Each term of the Legislative Council is 5 years.  
The term of a Legislative Council member is the same as that of the Legislative Council.
- Article 64 The functions of the Legislative Council are as follows:  
1. to enact, amend, supplement and repeal regulations,  
2. to examine and approve the budget and reports of the budget's operation,  
3. to interpret adopted regulations,  
4. to hear and deliberate activity reports of the administrative body from the Governor,  
5. to appoint or dismiss the Chief Justice upon the recommendation of the Governor,  
6. to appoint or dismiss the judges of the regional and district courts upon the recommendation of the Chief Justice.
- Article 65 The Legislative Council shall have both regular and special sessions.  
The regular session shall be once in a quarter year, and the special session shall be called upon the request of at least one-third of the Legislative Council members in recess of the regular session.  
The annual term of the sessions shall be at least 100 days.
- Article 66 A session of the Legislative Council is established when a quorum of at least two-thirds is present.

- Article 67        The Legislative Council shall have a chair and vice chair.  
The terms of the chair and vice chair are the same as that of the Legislative Council.
- Article 68        The chair and vice chair shall be elected by the Legislative Council.  
The chair and vice chair must receive approval from at least half the attending Legislative Council members to be elected.
- Article 69        The functions of the Legislative Council chair are as follows:  
1. to preside over the Legislative Council,  
2. to decide and proclaim the date of convening,  
3. to carry out affairs commissioned by the Legislative Council.
- Article 70        The vice chair shall assist the affairs of the chair.  
The vice chair shall represent the chair in the event of a vacancy or in the performance of one's duty.
- Article 71        The members shall propose measures of the Legislative Council.  
The Governor and Administration may also propose measures to the Legislative Council.
- Article 72        The Legislative Council declares decisions.  
Decisions of the Legislative Council must receive the approval of at least half the attending members to be adopted.
- Article 73        An adopted decision of the Legislative Council shall be deliberated within one month in the event the Governor recommends reconsideration.
- Article 74        An adopted decision of the Legislative Council shall be recorded with the Supreme Legislative Body within one month.  
The Supreme Legislative Body can record an adopted decision or return it for revision.  
A decision returned unrecorded shall not be effective.
- Article 75        A Legislative Council member is guaranteed the right of inviolability.  
A Legislative Council member shall not be detained or arrested without approval of the Legislative Council except in the case of a flagrant offense.



## **Section 2      Governor**

- Article 76      The Governor represents the SSAR.  
The Governor is accountable to the Supreme Legislative Body for his or her activities.
- Article 77      The Governor of the SSAR shall be a resident who is competent in business and have the confidence of the people.  
The Supreme Legislative Body shall appoint or dismiss the Governor.
- Article 78      The Governor shall pledge to be faithful to the DPRK and the SSAR.  
The oath shall take place at the plenary meeting of the Presidium of the Supreme People's Assembly.
- Article 79      The powers and functions of the Governor are as follows:  
1. to guide the affairs of the region,  
2. to promulgate and direct the decisions of the Legislative Council and orders of the Administration,  
3. to appoint and dismiss members of the Administration,  
4. to appoint and dismiss the Chief Regional Procurator,  
5. to appoint and dismiss the Deputy Regional Procurator, Procurator, Chief District Procurator under the recommendation of the Chief Regional Procurator,  
6. to appoint and dismiss the Police Chief,  
7. to appoint and dismiss the Deputy Police Chief, departmental heads, District Police Chief under recommendation of the Chief Regional Procurator,  
8. to formulate and confer awards,  
9. to grant general amnesties and special pardons,  
10. to conduct other proposed activities.
- Article 80      In the event the Governor does not recognize an adopted decision of the Legislative Council to be in the interest of the region, the decision may be returned to the Legislative Council for reconsideration.  
The Governor may return a decision of the Legislative Council up to two times.

### **Section 3      The Administration**

Article 81      The Administration is the executive body of the SSAR and the overall managing body.  
The Governor heads the Administration.

Article 82      The Administration shall institute the necessary departments.  
Departmental heads and the Police Chief shall be composed of residents of the SSAR.

Article 83      The functions and powers of the Administration are as follows:  
1. to formulate the enactment and enforcement of laws and regulations,  
2. to formulate the budget of the region and establish executive measures,  
3. to formulate and conduct various departmental activities such as in education, science, culture, health, athletics, and environmental protection,  
4. to conduct residential administrative affairs,  
5. to maintain public order,  
6. to draft an overall construction plan,  
7. to permit construction and inspect completion of construction,  
8. to induce investment,  
9. to consider and approve applications to establish businesses,  
10. to register the right of land use and buildings,  
11. to handle taxation,  
12. to operate customs inspections, sanitation and quarantine of plants and animals,  
13. to manage infrastructure,  
14. to establish firefighting measures,  
15. to conduct external affairs as mandated by the State,

Article 84      The Administration issues decrees.

### **Section 4      The Procuracy**

Article 85      The Regional Procurator and District Procurators shall conduct the prosecutorial affairs of the SSAR.

- Article 86      The functions of the Procuracy are as follows:  
1. to ensure exact compliance with laws and regulations,  
2. to undertake the investigation and prosecution of criminal offenses in accordance with the law, and to protect the legal rights, life and personal assets of juridical persons and individuals.
- Article 87      The Chief Procurator of the Regional Procuracy shall be a resident of the SSAR.  
The Chief Procurator's term is 5 years.
- Article 88      The Chief Procurator of the SSAR shall appoint or dismiss the district Procurators upon the recommendations of the Chief District Procurator.
- Article 89      The Chief Procurator heads the prosecutorial affairs in the SSAR.  
The District Procuracy defers to the Regional Procuracy.
- Article 90      The Regional Procuracy of the SSAR is accountable to the Governor for its affairs.

## **Section 5      The Judiciary**

- Article 91      The regional court and district courts shall administer trials in the SSAR.  
Court decisions shall be made under the heading of the judiciary of the SSAR of the DPRK.
- Article 92      The functions of the judiciary are as follows:  
1. to adjudicate presented cases,  
2. to protect the legal rights and personal assets of juridical persons and individuals,  
3. to educate through judicial proceedings that laws and regulations are to be clearly complied with,  
4. to enforce court decisions and judgments.
- Article 93      Trials shall be adjudicated only according to the laws.  
No one may interfere with judicial proceedings.

- Article 94      The Chief Justice shall be a resident of the SSAR.  
The term of office of the Chief Justice shall be the same as the term of office of the Legislative Council.
- Article 95      One judge and two people’s assessors shall make up the judicial panel.  
Depending on the circumstances, three judges may make up the judicial panel.
- Article 96      Trials shall be open to the public and the defendant’s right of defense shall be guaranteed.  
Trials of special cases may be closed to the public.
- Article 97      Trials shall be conducted in the Korean language.  
Foreigners may speak in their own language in trial.
- Article 98      The regional court shall supervise the judicial operations of the SSAR.  
The regional court shall be the court of final appeal.

## **Chapter 6      Emblem and Flag**

- Article 99      The SSAR shall use its own emblem and flag independently from the emblem and flag of the DPRK.  
The SSAR shall determine the usage of its emblem and flag.
- Article 100     The emblem of the SSAR consists of the white peony blossom flower centered on light blue background which encircled above is a white banner with “Democratic People’s Republic of Korea” written on it in blue between two light blue stars, and encircled below is a light blue banner with “Sinuiju Special Administrative Region” written in white in two lines.
- Article 101     The flag of the SSAR has the white peony blossom flower centered on light blue background. The ratio of the vertical length to the horizontal width is 1:1.5.

## **Supplementary Provisions**

- Article 1        This Law shall enter into force on the date of adoption.
- Article 2        The laws and regulations of the DPRK related to nationality, emblem, flag, anthem, capital, territorial waters, territorial airspace and national security shall not apply to the SSAR.
- Article 3        The laws and regulations enacted in the SSAR shall strictly conform to this Law.
- Article 4        The Presidium of the Supreme People's Assembly shall interpret this law.