

HUMAN RIGHTS IN KOREA: SOUTH KOREA AS AN INDIRECT ACCOMPLICE IN HUMAN RIGHTS VIOLATIONS IN THE NORTH

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1. *In the spring of 2011, I traveled to the Republic of Korea under a faculty exchange grant sponsored by the Università Ca' Foscari and Ewha Women's University, Seoul, to study the migration of Koreans escaping well documented starvation and human rights abuses in North Korea and their integration in the South. I was generously assisted by colleagues at Ewha Woman's University, who arranged interviews for me with government officials, NGOs and other social institutions. I was also given substantial help by Korean and international journalists and from the local office of the UNHCR. Since my return, I have continued to research the issue, and the report presented here should be considered very much a work in progress.*

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2. Ms Chae Kyoung-hee, the director of Seoul's Samheung School for North Korean escapee children¹, greeted my visit with a good deal of suspicion. The defectors, as the escapees from famine and severe political oppression in the North are called in South Korea and who now, after over a decade of immigration, number about 20,000², are practically unanimous in branding attempts at their integration into South Korean society a colossal failure. This evaluation is, moreover, widely shared by Korean and foreign academics, journalists, and even South Korean (Republic of Korea-ROK) government officials³. So, Ms Chae was perfectly justified in suspecting that this visit by a European academic specializing in refugee integration would be a muck-raking expedition naming her school as yet another example of this failure.

She needn't have worried. The school is resounding success, and its sharp contrast with other South Korean institutions attempting to integrate the defectors points out many of the reasons South Korea is having such difficulties in dealing with the mere trickle of immigrants - no more than 3,000 per year⁴ - arriving from the North. The reasons for the Samheung School's success, and for the failure of other defector integration programs, are so clear that one can justifiably question the Lee Myung-bak government's commitment to defector integration, despite the sizable sums of money it is throwing at the issue⁵.

In recent years both internationally respected human rights NGOs

¹ KANG SEOK-HO, "Samehung: School for Children of N. Korean Defectors opens in Seoul", in Arirang News, 25 February 2011, accessible at http://www.arirang.co.kr/News/News_View.asp?category=4&code=Ne3&nseq=113077.

² KIM HYUNG-JIN, "Number of North Korean Defectors to South Korea Tops 20,000", in CNS News, 15 November 2010.

³ INTERNATIONAL CRISIS GROUP, "Strangers at Home: North Koreans in the South", 14 July 2011; HOSNIAK J. "Homecoming Kinsmen or Indigenous Foreigners? The Case of North Korean Re-settlers in South Korea", in Citizens' alliance for North Korean Human Rights, February 2011; WOO TAEK JEON, "Issues and Problems of Adaptation of North Korean Defectors to South Korean Society", in *Yongsei Medical Journal*, 2000, pp. 362-371.

⁴ YONHAP NEWS AGENCY, "Flow of NK Defectors Likely to Continue", in *Korea Times*, 4 July, 2011; KIM YONG HUN, "Defectors Coming to SK in Greater Numbers", in *The Daily NK*, 4 July 2011.

⁵ SONG BANG-HO, "North Korean Defector Policy Faces Overhaul", in *The Korea Herald*, 17 September 2012, accessible at: <http://www.asianewsnet.net/home/news.php?sec=1&id=36400>.

and some western governments have leveled a great deal of criticism at the Peoples' Republic of China for being the major force blocking the flight to safety of starving and oppressed North Koreans⁶. Doubtlessly, Beijing's desire to maintain good relations with Pyongyang have effected policies that justify, at least in part, such criticism. What has not been included sufficiently in this discourse, however, is that it is also in the Seoul government's best interests to keep the number of defectors entering the ROK each year very low, and that the failure of the defector integration programs, by reducing the "pull" factor on migration, intentionally or not, serves this purpose.

The ROK government has continued to pour money into integration programs and, in September 2010 after almost a decade of unsuccessful programs, constituted the North Korean Refugees Foundation to study the problems of integration and to fund integration projects; nevertheless, defector integration into South Korean society still is justifiably seen as a failure, with most defectors, even after several years in South Korea, still isolated, mired in poverty, experiencing long periods of unemployment, and increasingly being drawn, out of desperation, into criminal activity. Both the government and the South Korean populace in general attribute this failure to the defectors themselves, who are seen as posing insurmountable problems because of the perceived social, intellectual and emotional malformation they suffered in the North⁷. What the example of the Samheung School suggests, however, is that the principle problems lay not so much with the defectors, but rather with South Korean government policies and, more seriously, the structure of South Korean society itself.

While the cultural background of the migrants is, of course, a factor in the ease with which any group can be resettled, with very few exceptions, it is the political will and social structure of the receiving community that is the deciding factor. Non-literate tribesmen from

⁶ MARGESSON R. et al, "North Korean Refugees in China and Human Rights Issues: International Response and U.S. Policy Options", Congressional Research Service, 26 September 2007. Cf. CHARNEY J. R., "North Koreans in China: A Human Rights Analysis", in *International Journal of Korean Unification Studies*, 2004, Vol. 13, No 2, pp. 75-97; SEYMOUR, J. D., "China: Background Paper on the Situation of North Koreans in China", UNHCR, January 2005.

⁷ INTERNATIONAL CRISIS GROUP, *op. cit.*

Africa and Southeast Asia have been successfully resettled in the highly industrialized Countries of Europe and North America; refugees raised and educated in the communist Soviet block have become businessmen and investors on Wall Street. One should look, then, not only to the problems posed by the migrants, but also, and foremost, to South Korean society for the reasons for the failure of the integration programs.

There are several other schools for defector children in South Korea, set up to deal with the huge difference in the level of academic preparation in elementary and secondary schools in the North with that in schools in the South. These government-supported schools are open, however, only to children born in North Korea of two North Korean parents; the Samheung School's students, since they were born in China of non Korean citizen fathers during their mothers' flight from North Korea, are excluded from the government-sponsored programs.

The government-sponsored schools all seemed to be plagued, however, by a high drop out rate and problems of diffidence and disaffection among the students. Teachers and administrators seem resigned to a high level of frustration, reporting feelings of hopelessness and even mutual antagonism that have become the hallmark of the defectors in general⁸. At the Samheung School, on the other hand, I observed that the students were clearly enthusiastic, offering lively responses to the teacher's questions and apparently having a great deal of fun working on a geography project together. It is, of course, too early to tell how well the Samheung's students will be able to thrive once they are reintroduced into mainstream South Korean society; nevertheless, they certainly show more promise than the depressed and disaffected students in the government sponsored programs.

The Samheung school's success, moreover, cannot be attributed

⁸ World Dyan News, "Education for North Korean Teens in Need of Improvement", www.worldyannews.com, 25 May 2011; MCCURRY J., "North Korean Refugees Adapt to Life, School, and Prejudice in South Korea", in *Christian Science Monitor*, 5 August 2010; SONG SANG-HO, "Young N.K. Refugees Struggling to Adapt Here", in *Korea Herald*, 30 May 2010; HERMAN B., "Young N. Koreans Face Ostracism in the South" *Associated Press*, 22 January 2006; PARK, S.W., "Defection 'Sparks Crisis' for Kids" *Radio Free Asia*, 22 October 2009; FACKLER M., "Young North Korean Defectors Struggle in the South", in *New York Times*, 12 July 2012, Page A4.

to its having a more malleable group of students than those attending other institutions. Its students are drawn from those who have even more painful and traumatic backgrounds than most defector children. Because they were born in China during a mother's flight from North Korea, and have a father who was not a Korean citizen, their mothers cannot claim South Korean government subsidies for them. Very frequently, moreover, these children are the products of sexual slavery or forced marriages in China. Many of their mothers fled from China not only to avoid arrest as an illegal immigrant and repatriation to North Korea, but also to flee from sexual exploitation or cruel and abusive Chinese citizen husbands⁹. Children whose families have undergone such trauma almost invariably present serious pedagogical problems. Therefore, given their frequently painful backgrounds, their very positive attitude towards learning and the easy socialization that I observed during my visit are even more surprising. Moreover, many of the Samheung's children entered South Korea speaking only a Chinese dialect, and almost no Korean at all. The children I observed expressed themselves fluently, if imperfectly, in Korean.

Adding to the challenges that it faces, the school is not recognized as part of the Korean State's official integration or education program. In contrast to these other state recognized schools, the Samheung School is largely privately funded, receiving only about 5% of its funds from the Seoul government. It is a project of a defector run NGO, North Korean Intellectual Solidarity (NKIS), founded in 2008 by a group of university educated and professional defectors, who number about 600 out of the approximately 20,000 defectors who have entered South Korea in the last decade¹⁰. The large majority of the school's funding comes through the NKIS from the National Endowment for Democracy, a US based NGO supported by funding primarily from the US Department of State. This limitation in funding means that the school can enroll only a small fraction of the China born defector children who desperately need its services.

⁹ BANG SANGHEE, "The Battered Wheel of the Revolution, Briefing Report on the Situation of Violence against North Korean Women", in *Citizens' Alliance for North Korean Human Rights*, January 2011; HARDEN B., "North Korean Women Who Try to Flee to China Encounter Abuse at Home and Abroad", in *Washington Post*, 10 June 2009.

¹⁰ KIM SO YEOL, "NK Intellectual Solidarity: Preparing for the Future of North Korea", in *The Daily NK*, 22 October 2008.

The reason for the Samheung School's success, despite these handicaps, is not difficult to see. It is supervised, managed, and staffed largely by the defectors themselves, who have been chosen by the NKIS because of their pedagogical or managerial experience. The administrators and teachers are not only North Korean, but have also spent time in China and know the problems their students and their families have suffered first hand. In contrast, the Korean government schools, agencies, and programs involved in the defector integration program are managed and staffed principally by South Koreans, many of whom have a condescending and patronizing attitude toward the frequently poverty stricken immigrants from the North.

In the government sponsored transition schools, as in the general government sponsored three month long orientation program, the Hanawon, defectors are told to lose their North Korean accents, disguise their Northern origins, and to try to blend in with the South Korean populace as much as possible¹¹. They are even advised to avoid contact with other defectors, since such contact would only make their integration more difficult. Any sense of solidarity among the defectors is strongly discouraged. Such advice may be in part justified, or at least protectively well intentioned, since there is widespread prejudice against Northerners in South Korean society, but it results, in essence, in cultural humiliation and in increased isolation, both from South Korean society and, even more significantly, from each other.

This perhaps well-intentioned advice to avoid contact with other defectors feeds into the suspicion and mistrust that the defectors generally have of each other. Like many people who have survived life-threatening circumstances, they were forced by those circumstances to act in ways that they would rather forget - betrayal or perceived betrayal of friends and family, prostitution, theft of food, etc. It is only natural that they would avoid contact with others from the same group, who may know about their perceived misdeeds and report them to others. Even those who have done nothing wrong frequently have intense feelings of guilt and shame over having abandoned family. Hence, the well-intentioned but ultimately socially destructive advice to avoid contact with other defectors falls upon

¹¹ GLIONNA J. M., "A Rare Look inside the Hanawon center for North Korean Defectors", in Los Angeles Times, 9 July 2009.

very fertile ground.

The orientation of the NKIS, the Samheung School's founding organization, runs quite contrary to this attitude. It assumes that the defectors can make a valuable contribution to South Korean society both as individuals and as North Koreans. Although the NKIS was originally founded to create a higher awareness of human rights violations in North Korea, it also functions as a mutual assistance and support organization for North Koreans who have been largely excluded from intellectual and professional life in the South. Even after having lived in the South for several years, most North Korean intellectuals and professionals can find only menial jobs or jobs not utilizing their qualifications. Ms Chae told me that despite there being several professionally qualified school administrators and teachers in the defector community, she was the only defector school administrator who actually had such a job, and, she hastened to remind me, she held her position only because the school was not officially in the system.

Several commentators have stressed the importance of "social capital", or the existence of a network of contacts, in Korean society. While social capital is helpful in most societies, it is seen as particularly important in Korea. Success in South Korea depends not only on a person's financial capital and professional preparation, but also on having a network of relatives, friends, and associates who will help him further his interests¹². That the defectors lack this social capital in the ROK puts them at a distinct disadvantage. The NKIS has evolved into an organization trying to provide an answer to this problem.

In almost all migratory situations immigrants enter a new society with rather weak social capital in the mainstream society, but they compensate for this weakness by forming very strong bonds within the immigrant community, and even formalized mutual assistance organizations, through which, in time, the immigrant community becomes empowered *vis-à-vis* the mainstream society. The orientation the defectors receive in the state sponsored programs, however, in telling the defectors to deny their own identity and to avoid contact with each other, encourages extreme isolation and inhibits

¹² INTERNATIONAL CRISIS GROUP, *op. cit.*; BIDET E., "Social Capital and Work Integration of Migrants: The Case of North Korean Defectors in South Korea", in Asian Perspective, 2009, pp. 151-179.

development of a sense of empowerment among the defectors. The NKIS and the success of the Samheung School are, in fact, proof positive for a different approach.

3. Korean academics, social workers, and government officials frequently cite the debilitating effects of the defectors' having been raised in a radical communist controlled economy as causing great difficulties in integration. The most frequent reason given, however, for the failure in integrating the 2,500-3,000 defectors entering South Korea per year is what they see as the overwhelming numbers of new arrivals.

From a European or North American perspective, however, the task of integrating 3,000 immigrants per annum into a prosperous society of 50 million, which has one of the world's lowest unemployment rates, seems a good deal less than daunting. Most European governments, and even their most xenophobic parties, would be quite happy if their annual immigration responsibilities were limited to such numbers. All the more so if the immigration shared much the same race, religion, long term history, and language as the native population. Despite their coming from an authoritarian communist society, the defectors are, after all, Koreans.

The South Korean Constitution does not recognize the division of the Country, a desire for reunification is an official policy, and immigrants from North Korea have direct access to South Korean citizenship¹³. Nevertheless, the commitment to reunification has vacillated according to the South Korean administration in power and, frankly, the present government's branding of the meager trickle of migrants from the North an unmanageable flood is clear indication that its preference is to keep the numbers of defectors entering the Country each year quite low.

There are several possible reasons quite unrelated to the cultural background of the defectors themselves as to why the Lee government would prefer to limit defector immigration as much as possible. The conditions that applied during the Cold War, the model communist/capitalist conflict, when every defection from the Soviet block was seen as a vote of confidence in the capitalist system, do not apply to

¹³ A reliable English version of the ROK Constitution is available at <http://www.servat.unibe.ch/iel/ks00000.html>.

the North/South Korea conflict. The horrendous human rights and economic conditions in the North are widely recognized, and there is little need for further anathematization of the Pyongyang regime. Moreover, the large majority of the defectors have fled essentially for economic reasons; although these economic conditions are desperate, most of the defectors would have a difficult time arguing a case of political persecution under the stipulations of the 1951 Geneva Refugee Convention¹⁴. Many of them fled from famine, and their flight does not automatically imply a condemnation of the structure of North Korean society or even of the Pyongyang regime. The defectors do not represent, therefore, a political or public relations advantage for the ROK.

Moreover, the principal Countries of transit for the defectors, China and, now, Thailand, serve this function quite unwillingly. Both of them want to maintain good relations with Pyongyang as well as with Seoul; China is openly hostile to the defectors, and frequently deports them back to North Korea¹⁵, while Thailand, more sensitive to international humanitarian concerns, wants to keep as low a profile on this matter as possible. Both Countries are both important trading partners with the ROK, and it would complicate South Korea's relations with these Countries appreciably if there were a major increase in the flow of defectors.

4. Perhaps even more important than these diplomatic and economic considerations, however, is the clearly negative attitude of the South Korean populace toward the defectors. It is no secret that the defectors encounter a great deal of prejudice and social rejection upon

¹⁴ SMITH H., "North Koreans in China: Defining the Problems and Offering Some Solutions" in AKAHA T., VASSILEVAN A. (eds), *Crossing Borders, Human Migration Issues in Northeast Asia*, 2005, pp. 165-190, available at: <http://i.unu.edu/unu/u/publication/000/002/174/crossingborders.pdf>. For a contrasting view, see ROBERTSON P., "The Problem of North Korean Refugees in China and Possible solutions", Human Rights Watch, July 19, 2012; BROOKINGS-BERN PROJECT ON INTERNAL DISPLACEMENT, "Legal Grounds for Protection of North Korean Refugees", September 2010, available at: <http://www.unhcr.org/refworld/docid/4ca58cad0.htm>.

¹⁵ RAJAGOPALAN M., "Between Benign Neglect and Active Deportation: Chinese Policy on North Korean Refugees", Sino-NK, NK News, 27 February 2012, accessible at <http://www.sinonk.com/2012/02/27/between-benign-neglect-and-active-deportation-chinese-policy-on-north-korean-refugees/>; CHANG YANOOK, HAGGARD S., NOLAND M., "Migration Experiences of North Korean Refugees: Survey Evidence from China", Peterson Institute for International Economics, March 2008.

entering the South. A recent report of the International Crisis Group has outlined the various forms of discrimination that the defectors suffer on a personal and professional level, including incidents of overt bigotry in the media¹⁶. The report and other sources attribute this prejudice to the years of demonizing of the North subsequent to the Korean War and the radically conformist nature of Korean society, which, according to the International Crisis Group report, tends to anathematize even small divergences in attitude and behavior. In short, there is very little public support in the ROK for an increased intake of defectors¹⁷.

ROK government officials are highly cognizant of this negative public opinion. In fact, in order to avoid a public outcry, considerable efforts are made not to publicize the considerable sums the government spends in integration and stipends to the defectors. The government has, however, done almost nothing to improve acceptance of the defectors among South Koreans. The only example of a State funded public campaign to combat anti defector prejudice, a series of TV spots ostensibly to convince employers of the benefits of hiring a defector, presented the defectors in such an idealized light that even the director of the government agency to fund such projects had to admit that they would be laughably ineffective. In a State such as the ROK, where there is certainly no shortage of marketing and public relations talent, the ineptitude of these meager attempts of raising the image of the defectors seems to justify questioning of the government's commitment to the enterprise.

While some commentators have attributed the conformist attitude at the core of anti defector prejudice to Korea's Confucian tradition, Confucianism alone cannot explain the Korean intolerance for even minor cultural differences. China, with as strong a Confucian tradition as Korea, in its absorption of almost 300,000 Vietnamese refugees in the early 1980s, conducted what is perhaps the most successful refugee integration program in modern times¹⁸. While most of the Vietnamese refugees were ethnic Chinese, there were still major cultural, ideological, and linguistic differences with the native Chinese population. Moreover, in the immigration there were also substantial

¹⁶ INTERNATIONAL CRISIS GROUP, *op. cit.*

¹⁷ *Ibid.*

¹⁸ JUNO JUNG, "Vietnamese Refugees, Well Settled in China, Await Citizenship", UNHCR, 10 May 2007, accessible at <http://www.unhcr.org/print/464302994>.

numbers of ethnic Vietnamese and Lao. China had, of course, a very strong political imperative to accept and successfully to integrate the refugees from Viet Nam, but the example does serve to debunk the idea that the Confucian tradition alone can be used to explain Korean society's resistance to cultural diversity.

We return, in fact, to the question of political will. Driven by political considerations, the Moscow oriented allegiances of the Hanoi regime, the Chinese were able to overcome resistance and successfully integrate a large refugee population whose original economic and social orientation - the ethnic Chinese Vietnamese were largely capitalist entrepreneurs and Roman Catholics - was appreciably different from that of the local Chinese population or, for that matter, of the Chinese government.

Moreover, the success of the Chinese integration program cannot be attributed to Beijing's authoritarian nature. Fewer than 7% of the refugees resettled in China registered a desire to leave and be resettled in another Country¹⁹. Such positive results cannot be obtained by authoritarian pressure. It was an expression of Beijing's political will; a similar political will does not seem to exist in Seoul.

This conformist orientation in the ROK is, in fact, enforced by both the educational and the legal framework of the society. A recent publication of the world yearbook of education states that the South Korean public education system is geared almost exclusively toward economic productivity; teachers are not trained to motivate students to question social norms, nor are they encouraged to do so themselves²⁰. Moreover, despite several attempts from civil libertarian groups, the ROK still has not enacted an anti discrimination law. Given this situation, it is not difficult to understand why the prejudice directed at the defectors persists.

In view of the entrenched prejudice against the defectors among the South Korean populace and the radically conformist nature of that society, it seems that nothing short of a major government campaign to combat this problem, involving a general liberalization of social norms, would do much good. It seems, however, that the ROK government is not willing to take the political risks that such a

¹⁹ *Ibid.*

²⁰ KIM WHOE & T., "Globalization and Dirigisme: Teacher Education in South Korea", in THOMAS E. (ed), *Teacher Education, Dilemmas and Prospects*, Kogan, London, 2002, pp. 33-34.

campaign would involve and, in fact, it exacerbates the problem by persisting in placing the blame for the failure of integration programs on the heads of the defectors. Clearly, under present circumstances, a major increase in the number of defectors entering the ROK would cause a political crisis for the Lee government; it is to the government's decided advantage that numbers of defectors stay low.

5. While we have no specific evidence to prove conclusively that the South Korean government is controlling the numbers of defectors entering the South, the very low percentage of the estimated 50-100,000 North Korean escapees in China²¹ that actually makes its way into the South indicates that the South Korean government is doing very little to ease their way and may, in fact be putting up barriers or providing other disincentives to defection. While the trip from Northeast China through Southeast Asia and on to Seoul is expensive and arduous, there are many NGOs assisting both financially and practically. Therefore, given that conditions in China are very harsh and there is real danger of being forcibly repatriated to North Korea, one may justifiably look for reasons why only 3-6% per year of those who have escaped into China attempt eventually to enter the ROK.

Discouragement of defection was, in fact, a tacit but clear part of the previous ROK government's "Sunshine" policy of reconciliation with the North, and there are credible reports of ROK consulates' in Countries of transit either dragging their feet or even refusing to help the defectors²². A 2007 Brookings Institution report states that the much shorter and cheaper route from northeast China through Mongolia had to be practically scuttled through lack of cooperation

²¹ This number represents a low, realistic estimate. Some North Korean refugee advocacy NGOs estimate the number of North Koreans who have fled into China at as high as 400,000. If these NGOs' estimates are closer to the truth, then the percentage making its way to South Korea is even much smaller. For a full discussion of this issue, see SMITH, *op. cit.*

²² HAN HEIDI, "Destination Thailand: The case of North Korean Asylum Seekers", *Focus, Asia-Pacific Human Rights Information Center*, vol. 48, June 2007; INTERNATIONAL CRISIS GROUP, "Perilous Journeys: The Plight of North Koreans in China and Beyond", *Asia Report* no. 122, 26 October, 2006; SENRI AIZU, "Nothing New in Lee Myung-bak's Policy for NK Defectors", 2009, available at <http://www.northkoreanrefugees.com/2009-04-nonewpolicy.htm>.

from the ROK embassy there²³, and there were numerous complaints by NGOs about the slowness of processing defectors for movement to the ROK by consulates in Southeast Asia²⁴.

Although the present ROK government has abandoned the "Sunshine" policy in favor of a more confrontational approach with Pyongyang, and overt blocking or delaying the passage of groups of defectors by ROK consulates seems to have ended, cheaper and shorter routes have not been reinstated and there seems to have been little attempt to eliminate red tape and to expedite the defectors' transfer to Seoul; the complicated and bureaucratic procedure, initiated ostensibly to filter out North Korean agents and necessitating approval of each individual case with the Ministry in Seoul, seems unnecessary for this caseload, which is comprised of over 70% minimally educated women from largely rural backgrounds, who would pose only a negligible security threat.

Once in China escapees wishing to resettle in the ROK must, in most cases, now make their way with the assistance of NGOs to Southeast Asia, generally Thailand, where the Thai authorities quickly turn them over to the ROK embassy for eventual movement to South Korea. Not wanting to antagonize Pyongyang, the Thais are clearly nervous about their role in this enterprise, but generally treat the defectors well and honor their requests to be referred to the ROK embassy²⁵.

The ROK embassy, however, reserves the right to deselect any of the escapees from entry into South Korea. The Bangkok embassy has, in fact, adamantly refused to discuss the procedure or the criteria used for deselection or the numbers actually deselected. When asked, the embassy not only refused comment, but also expressed hostility toward those NGOs and private persons who were helping the defectors to escape into Thailand, indicating, thereby, displeasure with the current numbers of potential defectors²⁶.

²³ NOERPER S., "Mongolia Matters", in *Brookings Northeast Asia Commentary*, No. 12, Brookings Institution, October 2007.

²⁴ Cf. SENRI AIZU, *op. cit.*

²⁵ WASSANA N., WASSAYOS N., "Illegal North Korean Migrants on Rise", in *Bangkok Post*, 6 May 2011.

²⁶ WINN P., "North Korea Defectors take to the "Underground Railroad", in *Global Post*, 8 June 2011, available at: <http://www.globalpost.com/dispatch/news/regions/asia-pacific/thailand/110606/north-korean-defectors-thailand-refugees-underground-railroad>.

Highlighting the sensitivity of the issue, the United Nations High Commissioner for Refugees (UNHCR) has said this is a matter between the Thai authorities and the ROK embassy, in which UNHCR played no role. Privately, however, UNHCR Seoul has said that it strongly suspects that the ROK authorities are, in fact, deselecting potential defectors and using criteria that went considerably beyond the expressed purpose of filtering out likely North Korean government agents or criminals. Since ROK regulations governing the admission of defectors vaguely refers to the moral standing of the candidates as a possible criteria, and defectors report having been asked about their sexual activities while in China²⁷, it is not unlikely that at least some women who had been forced into prostitution in order to survive have been deselected.

The degree, in fact, to which the ROK authorities can, unnoticed, restrict to flow of defectors into the ROK through policies and practices in its embassies in the region, is, of course, quite limited. Given the horrendous humanitarian emergency in North Korea, which the ROK now, with its reversal of the "Sunshine" policy and its confrontational stance toward Pyongyang, must recognize, and given the defectors' right under ROK law to access to South Korean citizenship, the current South Korean government cannot reinstate the controls through its embassies on defector migration that had been in place under previous administrations. Clearly, the ROK cannot brand Pyongyang as barbarically guilty of causing a humanitarian and human rights catastrophe on one hand, and deny or impede North Koreans - who, by ROK law, have a right to citizenship - to access to South Korean territory on the other.

6. Clearly, if it is, as seems to be the case, to the advantage of the ROK government to keep the influx of defectors into the Country low, there would seem to be very little incentive to improve the degree of the defectors' integration into South Korean society. The present

²⁷ This allegation seems to be corroborated by the official list of documents and reports that a North Korean applicant for ROK citizenship must submit when filing the application. While the official rationale for this lengthy list of documentation is to prove that the applicant was actually a citizen of North Korea, and is not a spy for the North Korean government, the list, which includes a complete accounting of the applicant's personal life in China, seems clearly to be aimed at possible exclusion for moral turpitude. For the list see <http://www.aervat.unibe.ch/icl/ks00000.html>.

unsuccessful integration system, whether intentional or not, appreciably lowers the "pull" factor, which would encourage more Northerners to defect. At present immigration rates, the lack of effectiveness of the integration programs causes misery only for a few thousand defectors and does not create a major social problem in Korean society, and it makes potentially diplomatically embarrassing blockages of passage of defectors by ROK embassies in Countries of transit less necessary.

Potential defectors undoubtedly are informed about the hardships they will face once in South Korea. Administrators and practitioners in the government-sponsored programs claim that the isolation of North Korea is even worse than that of The Soviet Union and the Warsaw Pact East European Countries during the Cold War, where a certain amount of information concerning conditions in the capitalist West was available. North Korea, they claim, is practically hermetically sealed. North Koreans have been shut off from any international influences and have no idea of what life is like in dynamic, capitalist South Korea.

The degree to which the North Korean government has been able to seal the Country off from knowledge of life outside is, however, highly debatable. The North Korea-China border is highly porous, and there is an increasing traffic of people, goods and information shuttling between the two Countries²⁸.

More important, however, in assessing defectors' knowledge of what to expect in the ROK, is that the large majority of the defectors have not entered South Korea directly from the North, but rather enter the South after having spent several months, and in most cases even years, in China, where information concerning life in the South is readily and easily available. While the primary motivation of most of the defectors upon entering China is simply to escape famine and

²⁸ ROBERTSON P., *op. cit.* While defending the idea of Convention refugee status for North Koreans in China, the author also describes active commercial traffic across the China-North Korean border, with North Koreans entering China to obtain food and goods and then returning to North Korea to sell them. See also SHUSTER M., "Awareness Of Outside World Growing In North Korea" Northwest Public Radio, 15 June, 2010, available at <http://www.npr.org/templates/story/story.php?storyId=127836840>; LANKOV A., "Changing North Korea: Yim Su-keong and Cracking the Propaganda Picture", in 3WM Magazine, 2 June 2012. Available at <http://thethreewise-monkeys.com/2012/06/26/changing-north-korea-andrei-lankov-on-yim-su-kyong-and-cracking-the-propaganda-picture/>

economic hardship, without consideration of further migration, what they learn about the outside world while in China obviously influences their decision-making. To be sure, those fleeing North Korea, if they have not heard it before, learn about South Korean prosperity while they are in China; they also learn, however, that the fate of the North Korean migrants in the South has not been a happy one. They know that if they will proceed to the South, a difficult struggle awaits them. Many, while in China, do, in fact, decide to return to North Korea.

If, as we posit, it is to the advantage of the ROK government to keep the rate of influx of defectors into the Country low, the sorry state of the integration programs effectively serves that end, since it is quite clear that information concerning the integration programs in the South is available to the potential migrants while they are in China. Moreover, ROK government officials, who tend to be very recondite concerning shortcomings of government programs in other areas, are extremely open about the failings of the integration programs. While they blame the failure of the programs generally on the difficult nature of the defectors and do not offer any critique of the programs themselves, they do not hesitate to publicize their failure. The same is true in academic circles²⁹.

The Korean media seems to cooperate in this effort. The few success stories concerning defectors generally are products of foreign or international press attention, and are not taken up to any great extent in the Korean press. Even the appointment, for the first time, of a defector to a major post in the Unification Ministry this year and his later election to the Korean Parliament was carried only by the wire services and received only occasional notice in the Korean press³⁰.

In most other situations and in most societies, the open

²⁹ Cfr., among many examples, TARA O. (Institute of National Security Studies), "The Integration of North Korean Defectors in South Korea: Problems and Prospects", in *International Journal of Korean Studies*, Vol. XV, No. 2, Fall 2011, pp. 151-169.

³⁰ For a notable exceptions see: KIM HEE-JIN, "Defector-turned-lawmaker, a first in the South", in *Joong Ang Daily*, 23 April, 20012, available at <http://korea Joongangdaily Joinsm.com/news/article/article.aspx?aid=2951844>; SONG SANG HO, "North Korean Defectors Emerge from Periphery", in *The Korean Herald*, 18 April, 2012, available at <http://my.news.yahoo.com/north-korean-defectors-emerge-periphery-041003471.html>. (N.B. This newspaper, although published in Seoul, is an English language paper intended primarily for U.S.-Based Koreans) Both these articles stress, however, not the success of the defectors, but rather their utility, i.e. the role of the defectors in the current government's confrontational approach to North Korea.

announcement of the failure of a program would imply suggestions as to how the program could be improved. Such, however, is not the case with the publicity around integration programs. It seems that primary motivation of both the government and the media is to spread abroad, both internationally and to any potential defectors, that the defectors' successful integration into South Korean society is practically impossible. Whether intended or not, the establishment of such a discourse serves to let Countries of transit know that the ROK has no intention of encouraging increased defection and, perhaps more important, puts the potential defectors on notice that they should not expect a warm welcome in Seoul, and that they may be well advised to proceed no further.

Despite the very positive example of the Samheung School, the prospects for future successful integration of the defectors do not, in fact, seem very great. There seems to be a lack of practical incentives to improve the integration situation, and despite the money that the ROK government is throwing at the program, there are no indications that any real restructuring of current integration programs are even being considered. In the absence of such a restructuring, the increased spending through the North Korean Refugees Foundation can have only very limited positive effects and, in fact, intensifies the perception that integration of people who are products of the North Korean regime are simply impossible to integrate successfully into South Korean society.

7. The Samheung School's success depends upon a group of defectors, the NKIS, who, essentially, took matters into their own hands, found funding from the outside, and established an institution free of the condescending prejudices of South Korean society. Ironically, what the NKIS did, although an anomaly in the ROK, is supremely Korean.

The example of North American Korean immigrants of forming tightly woven mutual assistance associations, through which the immigrants help each other professionally, financially, and emotionally in the face of a certain amount of cultural resistance and misunderstanding by the majority population, has made the Korean

immigration to North America an undisputed success story³¹. In North America the Korean associations can, of course, qualify for some government funding; since many South Koreans have friends and relatives who have emigrated and benefited from such organizations, the success of such organizations promoting social and economic integration cannot have gone unnoticed by the ROK government. In the ROK, on the other hand, as we have noted, the training in the government orientation centers actively discourages the formation of such organizations. The director of the government sponsored North Korean Refugees Foundation has confirmed that government funding of organizations fostering defector solidarity is not even being considered.

8. Far from turning part of the integration program over to defector control and fostering defector solidarity, the ROK government has only just begun, after more than a decade of defector immigration, even to listen to the defectors on integration programming³². There still seems to be no organized way in which the defectors could register their views concerning integration programs, although the government's soliciting of their opinions and suggestions was one of the recommendations of the recent International Crisis Group report³³. Nevertheless, it is very unclear what positive effect merely listening to defector views could have; the programs are still almost exclusively run by South Koreans, who have no direct knowledge of defector experiences and frequently very little authentic sympathy with the defectors themselves.

Given the highly conformist nature of South Korean society, encouraging and funding institutions manned and run by defectors would be tantamount to sanctioning social diversity. While the logistics of forming and facilitating such organizations would not be difficult to execute, the political and social repercussions of such a move would go far beyond issues relating to the defectors. Reports on

the development of civil society in the ROK state that while South Korean NGOs have made considerable progress on issues such as corruption and the environment, they have been both much less active and much less effective in moving the society towards greater tolerance, not just toward the defectors but also toward any group defying behavioral norms³⁴. Therefore, institutionalizing groups that support the development of social diversity does not seem likely.

The conclusions we can draw concerning the possibility of integrating even the small numbers of defectors that manage to make their way to South Korea are, therefore, not very promising. The application of principles of integration successfully used in other cultures does not seem to be possible in the ROK, not so much because of the nature of the immigrants, but rather because the nature of Korean society. Moreover, there seem to be neither political nor economic incentives for the Lee government, despite its financially generous gestures made towards integration, to move Korean society in the direction of increased tolerance and social flexibility.

Of course, the discourse around defector integration, in the last analysis, is taking place in the context of the much greater, and ultimately much more critical question of Korean reunification. Viewed from the perspective of a possible, or even an obligatory commingling of the two now very distinct societies inhabiting the Korean peninsula, should the Pyongyang regime implode, this cultural rigidity presents serious problems the implications of which go far beyond matters of humanitarian concerns or even human rights.

It is beyond the scope of this paper to examine the position of the current South Korean government concerning the constitutionally mandated goal of reunification with the North. The Lee government has, however, made it quite clear that it is less concerned with attaining that goal than were previous ROK governments³⁵; in fact, when the Lee government came into power in 2008, it attempted to disband the Reunification Ministry. Clearly, having an apparent

³¹ BBC Special Report, "The Korean American Success Story", 30 March 2011, accessible at <http://www.bbc.co.uk/news/world-us-canada-12888908>.

³² See MOK YONG JAE, "Call Center making Being North Korean Easier", in Daily NK, 15 September 2011. It seems, however, that this new call center functions primarily only to receive complaints about discrimination, and not to receive client based ideas concerning programming.

³³ INTERNATIONAL CRISIS GROUP, "Strangers at Home...", cit.

³⁴ SUNGSOO JOO, SEONMI LEE, YOUNGJAE JO, "The explosion of CSOs and Citizen Participation: An Assessment of Civil Society in South Korea 2004", Civicus, 2006; LOWRY C., "Civil Society Engagement in Asia: Six Country Profiles", East-West Center, 14-16 July 2008, pp. 14-28.

³⁵ SUH JAE JEAN, "The Lee Myung-bak Government's North Korea Policy - A Study on its Historical and Theoretical Foundation", Korea Institute for National Unification, May 2009.

sampling of North Korean society in the form of 20,000 or so defectors, which has been deemed impossible to integrate in the South, fits well into the agenda of those who are discouraging reunification with the North. Two Koreas may, however, not be an option, and Seoul may, one day, have to learn to live with and recognize as coequal citizens not just 20,000, but rather 20 million of their Northern brethren.

CONTRASTO ALL'IMMIGRAZIONE IRREGOLARE NEGLI ACCORDI DI RIAMMISSIONE DELL'UNIONE EUROPEA

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SOMMARIO: 1. Gli accordi di riammissione nel quadro dell'evoluzione dei Trattati europei. - 2. Le innovazioni contenute nel Trattato di Lisbona e la competenza a stipulare. - 3. Il contenuto tipico degli accordi. - 4. Tra incentivi positivi e negativi. - 5. I rischi per i diritti fondamentali dei migranti. - 6. (segue). Le clausole di non incidenza. - 7. (segue). La decisività della prassi amministrativa e giudiziaria nell'attuazione delle procedure di riammissione.

1. A seguito della fine della guerra fredda il fenomeno della presenza irregolare di stranieri extracomunitari nei Paesi dell'Unione europea ha conosciuto un progressivo e rilevante incremento, determinando il conseguente emergere ed intensificarsi di iniziative intese a limitare l'immigrazione clandestina o comunque irregolare.

È appunto nel quadro delle misure di contrasto al fenomeno dell'immigrazione irregolare che debbono essere inseriti gli accordi di riammissione; con essi, infatti, le parti contraenti si impegnano a riammettere sui rispettivi territori i loro cittadini, che sono fermati perché si trovano illegalmente nel territorio di un'altra parte contraente, ed eventualmente anche a riammettere altri migranti che non sono loro cittadini, ma che sono transitati sul loro territorio prima di essere intercettati nell'altro Stato.

Sotto il primo profilo, cioè con riferimento alla riammissione dell'immigrato irregolare nel Paese di origine, gli accordi di