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North Koreans**

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Introduction

Like many things North Korean, even commonplace terminology is laden with political significance that outsiders cannot readily see. The North Koreans I worked with in Seoul through the Korean Public Interest Lawyers Group and The Organization for One Korea explained to me that 'refugee', commonly used to describe their population, is not always their preferred terminology. 'Refugee', *strictu sensu*, may be an improper legal term for people who flee North Korea.

The different institutional priorities of domestic and international actors, as well as the preferences of the North Koreans themselves, make identifying a single term that describes those who flee North Korea particularly difficult. Understanding the terms used to define this population is important because these labels shape how North Koreans living in South Korea interact with society and define themselves. Further, the use of the term 'refugee' is beyond mere rhetoric: it guarantees a fundamental legal right to protection. This essay explains how labels for North Koreans have been embedded in political discourse, policy, and practice along with the social and legal implications these labels may have under international law.

South Korean terms for those who flee North Korea

KOREAN TERM	TRANSLITERATION	MEANING
귀순자	gwi-sun-ja	'Defector', or 'person who used to be an enemy'
난민	nan-min	'Refugee'
북한이탈주민	buk-han-i-tal-ju-min	'North Korean migrant', sometimes 'North Korean escapee'
새터민	sae-teo-min	'New settlers'
탈북자	tal-buk-ja	'North Korean refugee', also 'defector'

Since 1948, with the establishment of the two Koreas, at least five different Korean terms have been applied to North Koreans residing in South Korea. No term has gained widespread usage and North Koreans have resisted efforts to standardize a term. These labels create tension between North Korean refugee groups, South Korean governmental organisations, and international humanitarian organisations. For example, some North Koreans strongly prefer *sae-teo-min*, 'new settlers', while others favor *tal-buk-ja*, 'North Korean refugee/defector'. Within the South Korean government, the Ministry of Unification (MOU) and the Ministry of Foreign Affairs and Trade (MOFAT) have different official preferences. International humanitarian organisations prefer *nan-min*, 'refugee', although this may contradict the 1951 Convention Relating to the Status of Refugees and South Korean law. MOFAT deliberately evokes the powerful implications of naming someone a refugee by using *tal-buk-ja*, meaning 'North Korean refugee'. Overall, the fluid terminology reflects changing government policies toward North Korea alongside shifts in internal Korean politics and popular opinion.

***Gwi-sun-ja* (귀순자): 1948-1990**

The traditional term for a person fleeing North Korea is 'defector'. It is translated from *gwi-sun-ja*, literally meaning 'a person who used to be an enemy, who voluntarily surrenders and defects, and obeys his new country'. In the same vein, the Korean also conveys, 'to come back and obey'. Korean legal experts consider this expression to be old-fashioned and use 'defector' to highlight North Koreans' voluntary entrance into South Korea. *Gwi-sun-ja* is used mainly within South Korea because of the specific political connotations referring to North Korea as an 'enemy'.

From North Korea's founding in 1948 until the 1990s, when the North Korean economy was relatively strong, most people who left fled political persecution. Defecting is criminalized in North Korea, and return may result in torture, imprisonment, and even death.¹ Family members that stay behind are punished by losing status in North Korea's stratified social system, moving from 'pure' to 'wavering' or 'hostile' classes, limiting their access to food, medical care, education and employment. This stigma passes to future generations (Chan and Schloenhardt 2007).

***Nan-min* (난민): 1990s**

Prior to the 1990s, when the North Korean economy was relatively strong, defections were less common and South Koreans interpreted defections as a rejection of North Korean politics and policies (Ko and Oh 2004). However, the

¹ Article 47 of the North Korean Criminal Code criminalizes those who seek asylum elsewhere: "A citizen of the Republic who defects to a foreign country or to the enemy in betrayal of the country and the people . . . shall be committed to a reform institution for not less than seven years. In cases where the person commits an extremely grave offence, he or she will be given the death penalty." As quoted in Nadia Milanova (*Lack of International Protection for North Korean Refugees*, Human Rights Without Frontiers, p. 3. Article 117 of the North Korean Criminal Code declares a citizen "who crosses the border without permission shall be punished by a sentence of three years or less labor re-education." Human Rights Watch, *The Invisible Exodus: North Koreans in the People's Republic of China* (2002) at 20.

connection between politics and defections weakened in the mid-1990s. Famine killed up to one million North Koreans – approximately three to five percent of the population (Haggard and Nolan 2008). During this humanitarian crisis, the word *nam-min* or 'refugee' (literally 'people in a dangerous situation') became the preferred term within South Korea and international organisations for those who fled (Ko et al 2004).

Buk-han-i-tal-ju-min, sae-teo-min, and tal-buk-ja: Post 2000

After 2000, cooling tensions and the onset of South Korea's 'Sunshine Policy'² (US State Department 2010) changed the emigration calculus once more. A more open North Korea gave some residents an awareness of life outside their borders and they sought resettlement, seeking freedom and economic opportunity. At the same time, South Korea shifted from a labor-exporting to a labor-importing economy. Acknowledging this broader shift, and accounting for the North Koreans' similarity to economic migrants as opposed to refugees or political asylees, the term 'North Korean migrant' or *buk-han-i-tal-ju-min* was popularized academically (North Korean Refugee Report 2006). It literally means 'North Korean residents who leave North Korea' and, as the current official South Korean legal term, it is commonly viewed amongst scholars as the most neutral descriptor. English-language publications may use 'North Korean escapee', potentially aligned with *buk-han-i-tal-ju-min*.

Concurrently, *sae-teo-min* or 'persons with new homes who live in hope' emerged as an alternative neutral term, since it lacked connotations of hunger, poverty, and oppression. Literally 'people on new ground', it is translated as 'new settlers'. However, according to some welfare service providers in Seoul, this term was perceived as appeasement to the North Korean government by downplaying the factors that motivated flight. Perhaps for this reason, several refugees and caseworkers I encountered opposed *sae-teo-min* (Interview with Moon). However, others countered that it was appropriate for newly-arrived North Koreans who were trying to assimilate into South Korean society (Interview with Goedde). Bureaucrats often 'fragment and make clear-cut labels...of the often complex mix of reasons why people migrate and migrate between labels' (Zetter 2007: 178). In 2008, controversy arose about what South Korea should call its North Korean population. According to the press, before 2005, the government used 'North Korean refugees' (*tal-buk-ja*). In 2005, MOU declined to use *tal-buk-ja* and initiated 'new settlers' or *sae-teo-min* along with the official legal term, *buk-han-i-tal-ju-min*, 'residents escaping from North Korea', reasoning that *tal-buk-ja* sounded negative. At this time, poverty forced many North Koreans into China, where they stayed before resettling in South Korea. Therefore the government tried to connote asylum-seeking and resettlement simultaneously. However, in November 2008 the MOU discontinued use of 'new settlers' and only used 'residents escaping from North Korea'. Some resident North Koreans filed a complaint, explaining that they had fled political oppression. In contrast, 'new settlers' implied that they had fled for survival, not political reasons. In

² The Sunshine Policy is named after Aesop's fable. The Sun and the Wind battled to make a man remove his coat. The Wind blew increasingly hard to no avail. The Sun won through gently beaming, convincing him to remove the coat. Similarly, South Korea encouraged North Korea to emerge from isolation through an official policy of engagement.

response, the MOU affirmed that the private sector could opt to use 'new settlers' (Naver News 2008).

Despite its perceived neutrality, the implications of 'North Korean migrants' may make it improper terminology. It is close to 'economic migrant', which is favored by China over 'refugee' (Ludden 2003). Indeed, this linguistic turn demonstrates how national interests often, sometimes intentionally, conflate 'refugee' and 'economic migrant'. China treats North Koreans as illegal immigrants and has deported thousands to North Korea (Ludden 2003). The country lacks refugee status determinations and presumes all North Korean flight is economically motivated (Brookings- Bern 2010). Deliberate avoidance of the term 'refugee' helps sustain China's relationship with North Korea as it linguistically minimizes North Korea's humanitarian abuses and China's potential obligations to the North Koreans in its territory.

Under international law, a 'migrant' is someone who can return to his or her country of origin. A migrant's relocation may not violate laws. Harm does not necessarily befall the family left behind, as it does when one leaves North Korea. In contrast, the term 'refugee' refers to someone unable to return to his or her homeland. Thus 'North Korean refugee' may more accurately describe the political realities of those leaving North Korea.

From a legal point of view, however, those who flee North Korea may not be 'refugees' at all. Under the Refugee Convention, refugees must have 'a well-founded fear of persecution' that compels flight, and must be unable to stay in or return to their home country (Article 1(A) 2). Yet under South Korean law, individuals who flee North Korea may actually be South Korean citizens. The Constitution of the Republic of Korea, the Nationality Act, and the Act on the Protection and Settlement Support of Residents Escaping from North Korea also reflect this proposition (Act on the Protection and Settlement Support of Residents Escaping from North Korea). Specifically, under South Korean law, North Korea is an illegitimate political entity. Article 3 of the Constitution defines South Korean boundaries as the 'Korean peninsula and its adjacent lands', (Constitution of the Republic of Korea) which include North Korean territory. This Article was enacted in 1948, amidst debates over which government legitimately ruled the peninsula.

Most countries now acknowledge North Korea's sovereignty. If invalidation was the intended result of these laws, they have failed. They may, however, have an inadvertent side effect affecting the legal status of those who flee and apply for asylum in countries besides South Korea. During asylum proceedings, some North Koreans have been declared South Korean nationals, disqualifying them from refugee protections because, legally, they may return 'home'⁵. Whatever the laws' intent, they may practically prevent the designation of those who flee as official refugees.

⁵ RRT Case No. 1001549, [2010] RRTA 843, Australia: Refugee Review Tribunal, at <http://www.unhcr.org/refworld/docid/4cbf29cc2.html>. RRT Case No. 0905614, [2009] RRTA 1009, Australia: Refugee Review Tribunal, at: <http://www.unhcr.org/refworld/docid/4b1cef832.html>. In re K-R-Y- and K-C-S-, 24 I&N Dec. 133 (BIA 2007), United States Board of Immigration Appeals, at <http://www.unhcr.org/refworld/docid/48abd589d.html>.

While South Korean laws allow many North Koreans to resettle without traditional asylum proceedings, South Korean government policies acknowledge the significance of naming someone a 'refugee.'" The clearest example is in MOFAT's policies. In 2008, it declared that 'refugee' was the official standard term: 'Even though a Korean word *tal-buk-ja* ("North Korean defector" in this account) was mostly translated as North Korean refugee, it was mixed with "defector" and "asylum seeker", said an officer in the Ministry (Kukinews 2008). Instead of looking at sovereignty, MOFAT looked at humanitarian weight - or, more cynically, public relations value:

MOFAT made a decision that "refugee" is more appropriate to describe the North Koreans in third countries than "defector" and "asylum seeker", since the word "refugee" has the implication that they are people who left their own country due to political and economical reasons and thus subjects to be protected [sic] (Kukinews 2008).

By appealing to the moral duty to name refugees, the South Korean government acknowledged the power in its declaration, even as domestic laws may prevent other countries from applying the same term to the realities of North Korea.

I worked with aid providers, most of whom sacrificed to leave North Korea, who also preferred *tal-buk-ja*. In English this means 'North Korean refugee' - literally, 'those who escape the North'. This acknowledges the underlying negative conditions in North Korea while avoiding potentially problematic political and legal implications of the direct use of 'refugee' alone. Interestingly, as MOFAT suggests, *tal-buk-ja*, may also incorporate aspects of 'refugee' and 'defector'. Because of this dual meaning, which encompasses human rights violations and the lack of political and economic freedom in North Korea, I favor *tal-buk-ja*. The literal meaning is close to 'North Korean escapee' preferred by Western academics and activists. However, unlike *buk-han-i-tal-ju-min*, it is more descriptive - it does not sanitize the humanitarian crisis and oppression of North Korea. Nor does it overemphasize victimhood. Unlike other labels, it does not risk 'artificially discriminating between people whose need for protection is paramount' (Zetter 2007: 180-181) and it does not privilege 'refugee' as a prized status instead of a right.

Conclusion – The importance of looking beyond the label

Because '[l]abels reveal the political in the apolitical', it is important to analyze the connotations of terms that describe those who flee North Korea (Zetter 2007: 172). Applying labels, especially for a conspicuous and defining characteristic (like being a North Korean in South Korea) may affect a person's sense of self and sense of belonging. It is more than rhetoric because each label implies a different political backdrop and personal motivation for flight. Labeling therefore is a double-edged sword, making not only a statement about the person who fled, but a judgement about the realities of life in North Korea. This can have wider implications, mediating national policies and practices along with social relations.

The effect of labeling refugees may 'at best nuance interpretation, at worst discriminate and detach claimants from the core attribute of being a refugee - international protection' (Zetter 2007: 189). Awareness of state agency in politicizing the label 'refugee' and of the 'fundamental distinctions and contradictions between how refugees perceive their label and how bureaucratic policies and practices

prescribe a label' (Zetter 2007: 189) may help governments refocus on protection as a fundamental right, regardless of the ascribed label.

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