

## Chapter 14

### Claiming Citizenship:

#### Rights Claiming and Recognition for North Koreans Entering South Korea

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#### Introduction

When and how does citizenship matter? How are citizenship and its attendant rights reflected, refracted, and challenged when citizens migrate or cross the borders of their country of citizenship? Current conceptions of citizenship focus mostly on membership and rights contestation *within* the political community, but citizens in a globalized world are often reminded of their nationality or citizenship most acutely when they are outside or at the border of their country of citizenship. Korea, with its globally dispersed diasporic population, is no exception to this insight.

This chapter probes what border-crossing tells us about the linkage between citizenship and rights claiming by examining the experiences of North Koreans who seek to resettle in South Korea (the Republic of Korea, ROK).<sup>2</sup> The chapter focuses on these individuals because scholars and journalists often describe them as being granted “automatic citizenship” in the South, with the implication that their struggles for recognition and the rights attendant on citizen status are minimal, particularly in comparison to other groups, such as the Korean-Chinese or non-Koreans examined

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<sup>1</sup> The author thanks Yujin Julia Jung, Yu Bin Kim, and Myunghee Lee for research assistance; Wendy Hunter, Aram Hur, Celeste Arrington, and Patricia Goedde for their encouragement and feedback; and the Laboratory Program for Korean Studies of the ROK Ministry of Education and the Korean Studies Promotion Service of the Academy of Korean Studies for financial support (AKS-2016-LAB-2250001). All errors remain my own.

<sup>2</sup> Different groups use different terms—in English and Korean—to describe North Koreans who leave the DPRK. The most common terms in English are defector, refugee, migrant, or resettler; in Korean, *saetomin*, *talbukja*, or *bukhanitaljumin*. The choice of terminology in both languages can carry political, causal, even moral connotations. This chapter uses migrant to describe North Koreans during the migration process, and resettler afterward, without intended political or normative connotation.

by Chung (Chapter 13). As I demonstrate, however, “automatic citizenship” is inaccurate. North Koreans must exhibit considerable agency to claim their citizenship status, and when they arrive at the border or point of entry into the ROK, their rights are heavily circumscribed and contingent on state recognition. The chapter substantiates this argument by drawing on qualitative analysis of narratives of migration and resettlement written and published by North Korean migrants,<sup>3</sup> as well as evidence from immigration court proceedings, ROK citizenship curricula, interviews with officials and migrants, and participant observation in South Korea and North Korean refugee communities in the United States.<sup>4</sup>

The chapter proceeds in two main sections. The first outlines the relationship between citizenship and rights claiming, centered on the idea that citizenship confers the “right to have rights.” It then uses this linkage to identify a puzzle in the ROK state’s treatment of North Koreans: the state that claims North Korean citizens as its own, in legal and communitarian terms, does not automatically and fully recognize claims to that citizenship when they are made by North Koreans seeking to enter South Korea for resettlement. The second major section of the chapter illustrates this argument through a focused examination of the screening that North Korean migrants experience upon entering ROK territory, excavating the ways in which the rights of citizenship, having been claimed, are conditionally and incompletely conferred. The chapter concludes by offering some reflections on the implications of this revised understanding for contemporary theories of citizenship, in Korea and beyond.

## **Claiming Citizenship and Claiming Rights**

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<sup>3</sup> This chapter focuses specifically on citizenship and rights-claiming at the moment of border-crossing. For an overview of the North Korean migrant narratives employed in this chapter, and of the politics of citizenship claiming and recognition/denial across the entire migration and resettlement process, see Greitens 2021.

<sup>4</sup> Project approved by the University of Missouri Institutional Review Board (Projects #2004769, #2002674).

Citizenship is a central concept in the study of political life, but also a contested, multivalent term. It connotes membership in a political community and invokes rights (and obligations) such as welfare provision, participation, or protection (Marshall 1964; Leary 2000). In autocracies, it outlines relational expectations between state and citizens; in democracies, citizenship is a status that, mutually recognized, confers “the right to have rights” (Benhabib 2001; Tilly 2006; Distelhorst and Fu 2019; Mann 1987; Perry 2008; Pinto 2012; Yashar 2013). Scholarly work on democratic citizenship often treats it as either a “formal bundle of rights” secured via “contractual promises” between individual and polity (a liberal contractual concept, grounded in law and policy), or an affective “state of democratic belonging or inclusion” (an identity-based communitarian concept) (Conover et al 1991; Sassen 2003; Bosniak 2006; Yashar 2005, 2013; Sobel 2016).

Debates over citizenship as formal legal status versus affective state of belonging matter greatly in contexts like the Korean peninsula. Patterns of colonialism, state formation, regime transition, and migration have generated ethnic-affinitive communities that span formal international borders, forcing states and individuals to grapple with and revise the meaning of membership, inclusion, and incorporation under circumstances where legal state boundaries and identity-based communities are not territorially aligned (S. Kim 2014; J. Kim 2016; Soysal 1994; Brubaker 1998; Ekiert and Kubik 1999; Flynn 2007; Colton 2000; Pop-Eleches and Tucker 2017; Herbst 1989; Michalopoulos and Papaioannou 2016; Hong Liu & van Dongen 2016; Gamlen et al 2017). In these contexts, citizenship is a contestation about not just who is included and how inclusion occurs, but also the “who and how” of exclusion; it is a politics of rights denial alongside rights conferral (Brubaker 1992; Brubaker 2004; Gleen 2004; Isaac 2011). As Erin Chung

documents, outcomes of such contestation around visa categories creates hierarchies of rights among migrants.

For these reasons, much is at stake in the decisions about who gets to make determinations of citizenship. Individuals cannot claim the rights accorded to citizenship unless they can get the state to recognize their standing as citizens in the first place. Although other chapters in this volume reveal that rights-claims themselves are not limited to citizens, North Koreans have a much stronger basis upon which to contest and claim rights once they have gotten South Korea's state and society to recognize them as citizens. Moreover, empirical research has found that citizenship is correlated with higher levels of national identification and increased political and civic engagement, as compared to non-citizen permanent residents (Bloemraad 2018, 10). Thus, if an individual's citizenship is unclear or debated, the first claim they must make is to citizen standing; only then can they claim other forms of citizen rights and access the mechanisms and institutional channels discussed in part II.

The sections that follow trace the process that is initiated by North Korean claims to citizenship in the Republic of Korea. It focuses on one particular point in these individuals' journey toward resettlement in South Korea: the period when, upon entering ROK territory, they are debriefed and questioned by a security team composed of military, police, and National Intelligence Service personnel. Before that, North Koreans have typically awaited transfer from a third-country, where they have varied forms of contact with ROK personnel and undergo a preliminary investigation.<sup>5</sup> After the screening stage, they are transferred to Hanawon, the resettlement facility south of Seoul that was established in the late 1990s to prepare North Korean

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<sup>5</sup> The ROK's overseas preliminary investigation, outlined in the Protection and Resettlement Act, is usually done by MOFA, but can involve an inter-agency Coordinating Council with representatives from the Ministries of Justice and Unification, NIS, and National Police Agency. Yonhap 2014a.

resettlers for their new lives in the South. The screening period, which can last several months, provides an in-depth illustration of how citizens experience rights claiming under conditions of what Longo (2018) calls a “deep border,” where the processes of border-crossing and state control over citizens’ physical movement extend beyond and within the state, both temporally and physically.

The chapter’s analysis focuses specifically on how North Korean migrants make claims to citizenship when they enter South Korea, and how the ROK state and its agents either recognize or deny those claims. This way of approaching citizenship and rights claiming focuses on state practice and citizen experience of that practice (see also Chapter 7, Arrington), rather than on formal policy or legal status -- but the practices examined are, in essence, appeals to obtain formal citizen status, meaning that citizenship as practice and citizenship as status are closely linked (Isin 2009). The framework draws on and extends a literature that defines citizenship not (just) as legal, regulatory, or bureaucratic policy, but also explores it as a concept that is “experienced, negotiated, and enacted in everyday life,” and constituted through state-citizen interaction (Nyers 2007).

Citizenship as claims-making is a useful and appropriate approach for several key reasons (Bloemraad 2018). As an approach, this method acknowledges the state’s distinctive power to “determine borders and terms of membership” (Choo 2016, 4) -- including, in this case, the power to physically control the terms and rights of membership at a territorial border -- but does not lose sight of citizens’ agency to navigate and sometimes challenge that power (on citizen agency vs. state power, see Conover et al 1991; Turner 1990; Bloemraad 2004; d’Entreves 2006; Korteweg 2006).<sup>6</sup> It unpacks the processes and standards by which the South Korean state evaluates a

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<sup>6</sup> S. Kim (2014: 9) frames inter-Korean border-crossers in terms of “emotional citizenship” precisely to engage “diverse modes of relationship that an individual enters into with a wide range of communities, which may include but are not necessarily equated to the state.”

claimant, revealing the normative dimensions of a state's ideals of (legitimate) citizenship and what factors can trouble or threaten those ideals. It leads readers to examine variations in citizenship acquisition, such as those that exist across individuals and over time, and elucidates how citizenship matters by showing the rights that are available before recognition of citizen status, and afterward. Finally, it provides new avenues of potential inquiry into the constitution of citizenship among migrants, asking us to speculate on how these initial rights claiming interactions shape North Koreans' sense of what it means to be a citizen, and what kind of citizen he/she is, and can become.

To assess the process of claims-making and state response, the chapter employs structured narrative analysis based on memoirs published by North Korean resettlers in English and Korean.<sup>7</sup> This approach allows subjects to tell stories in ways that reveal what aspects of an experience, choice, or interaction are important to them, while identifying recurring themes that illustrate core concepts. In this case, the contingency and incompleteness of rights that varies with an individual's citizen standing. The narratives that I analyze are from the post-1990 period, when famine and social dislocation prompted increased out-migration from North Korea. This means that unlike the Cold War's elite defectors, the escapees whose narratives the chapter examines were not recruited by the South Korean state. Instead, they had to pursue and appeal for resettlement, often against difficult odds and repeated threat of arrest, violation, and repatriation.<sup>8</sup> This context makes claims-making and its "relational process of recognition" an important tool for understanding the interactions between the South Korean state and North Korean migrants who claim citizenship and its attendant rights.

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<sup>7</sup> The chapter does not examine fiction, poetry, or other non-memoir writing. On narrative analysis, see Patterson and Monroe 1998; Miles and Huberman 1994; Polkinghorne 1995; J.H. Kim 2016; McCormack 2004.

<sup>8</sup> Chung (2008) separates North Koreans into six cohorts; this chapter focuses on cohorts 4-6.

## **The Puzzle: North Koreans as “Automatic” Citizens**

North Koreans have strong claims to South Korean citizenship on both constitutional-legal and ethnic-communitarian grounds. In legal terms, the ROK Constitution operates in tandem with the Nationality Act to define North Koreans as ROK citizens. Article 3 of the ROK Constitution defines the territory of the Republic of Korea to include “the Korean peninsula and its adjacent islands,” meaning that it explicitly includes not just the current boundaries of South Korea, but the entirety of North Korea as well. Article 2 of the 2010 Nationality Act, meanwhile, argues that South Korea extends citizenship at birth to anyone whose parents are ROK nationals, or who were born in the Republic of Korea (if parentage is unknown).<sup>9</sup> As a result, academic and media discourse, as well as interviews with ROK officials, typically describe North Koreans as having “automatic citizenship” based on ROK law.<sup>10</sup>

Legally defining individuals from North Korea as ROK citizens creates several expectations for state practice, including at the border of the national territory. It confers specific rights on individuals, and responsibilities upon the state—among them the right to free entry. Article 12(4) of the International Covenant on Civil and Political Rights, to which South Korea acceded in 1990, specifies the right to enter the country of one’s citizenship.<sup>11</sup> Under criminal law, South Korean citizens are also accorded specific rights of due process, including limits on the length of time they can be detained for investigation; the right to remain silent; and the right to counsel.

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<sup>9</sup> ROK *Nationality Act [Gukjeokbeop]*, Act No. 16851 (2010/2019).

<sup>10</sup> Author’s interviews with three officials at the Ministry of Unification/Institute for Unification Education, July 2013, May 2014, and May 2016.

<sup>11</sup> *International Covenant on Civil and Political Rights* (1966/76), <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

There is some inherent tension between the rights accorded in the Constitution and provisions in both the Constitution and National Security Law which specify that rights can be limited when necessary for national security.<sup>12</sup> For example, Article 37(2) of the ROK Constitution stipulates that “The freedoms and rights of citizens may be restricted by law only when necessary for national security, the maintenance of law and order, or for public welfare. Even when such restriction is imposed, no essential aspect of the freedom or right shall be violated.” Recognizing individuals from North Korea as ROK citizens, therefore, involves a grey area in which rights and duties are less clear than those specified in the Constitution or elsewhere in South Korean law due to national security concerns vis-à-vis North Korea; it does not, however, call into question the essential claim that North Koreans are ROK citizens.

North Koreans also meet typical communitarian standards for political membership, in which ethnicity plays a central role (Yashar 2005, 44). Ethnic nationalism figures predominantly in studies of Korean history and citizenship: both states on the peninsula, North and South, lay claim to a singular Korean community defined by blood (*minjok*) (Miyoshi-Jager 2006; Grzelczyk 2014). In the South Korean case, the state’s sense of ethnic community extends beyond the peninsula and is embodied in the legal frameworks that set out the terms of diasporic citizenship; in Joppke’s terms, South Korea “selects by origin” when offering ethnic Koreans preferential basis for citizenship (Joppke 2005; Park and Chang 2005; Kim 2013). Even the recent scholarship on ROK incorporation of non-Koreans who migrate to and reside in South Korea (including marriage migrants, guest workers, multicultural families, and others) provides an implicit affirmation of

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<sup>12</sup> ROK National Security Law (*Gukgaboanbeop*), Act No. 13722 (1947/2016).



ethnicity's long-standing centrality to Korea's sense of political community (Shin 2006; Sohn and Lee 2012; Choo 2016; N. Kim 2016; Campbell 2016; Hundt et al 2018).<sup>13</sup>

This does not mean that all ethnic Koreans have equal claim to membership; Chung (Chapter 13) and other scholars have documented and probed the structure of South Korea's "hierarchical nationhood," where incorporation of co-ethnic migrants varies by class, gender, and other dimensions (Moon 2005; Song 2013; Choi 2014; Choo 2006). Within this hierarchy, however, North Koreans are often classified as relatively privileged—scholars note that their "automatic citizenship" is not extended to other groups like Soviet Koreans or *Chosonjok* (ethnic Koreans with PRC nationality).<sup>14</sup> Indeed, in 2014, the Ministry of Unification explicitly ruled out applying the multiculturalism (*damunhwa ju-ui*) framework that has been used for other cases of immigrant incorporation, citing North Korean resettlers' special ethnic and constitutional status.<sup>15</sup> North Koreans are therefore not "outside the state, but inside the people" (Shain and Barth 2003, 469). At least in theory, they seem to reside within *both* state and people.

The communitarian conception of rights is especially important to North Koreans, who at the time of their entry into South Korea often have relatively low familiarity with liberal conceptions of rights and citizenship, and stronger understanding of and identification with ethnic nationalist conceptions of belonging and political membership (Nasr 2014). In fact, the word that South Korea uses for "democratic citizen," *minju shimin*, is not used in North Korea. Both North and South use *minjok* to refer to Koreans as an ethnic people, while DPRK residents use *inmin* (Chinese cognate *renmin*) for public/collective reference, and comrade/friend (*dongmu*, or Sino-

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<sup>13</sup> This literature treats citizenship in varying ways, from formal rights to informal communal inclusion to affective commitment.

<sup>14</sup> For various perspectives on this idea, see Kim 2010; Lee and Chien 2017; Hur 2018; Denney et al. 2019. For survey data, see S. Kim et al. 2008; K. Chung et al. 2011; B. Kim et al 2011; Seol and Skrenty 2014.

<sup>15</sup> The Ministry of Unification argued that although [North Koreans] have lived in a different culture, "it is difficult to regard them as multicultural families" and they "need to be essentially distinguished." Ministry of Unification [MOU] 2014: 6; MOU 2013, 2015, 2018.

Korean *dongji*) interpersonally. The ROK constitution refers to *gukmin* (nationals) and *ingan* (human beings); other rhetoric uses *gongmin* (public/collective “the people”), while Hanawon uses *shimin* (originally “city-dweller, as “citizen” is in English).<sup>16</sup> North Koreans tend to emphasize communal membership based on Koreanness—ethnicity, language, and family—in part because the communitarian identification socialized in North Korea remains important to North Koreans after resettlement in the South (Hur 2020).

Both contractual and communitarian theories of citizenship, then, uphold the idea that North Koreans are “automatic” citizens of the Republic of Korea. The phrase “automatic citizenship” may imply relatively little contestation over granting North Koreans either the legal standing or the rights-in-practice that come with national membership. The section that follows, however, challenges that perception by probing the experiences of rights claiming and recognition that occur at the crossing of the border into ROK territory.

### **Suspended Citizens: North Koreans at the ROK Border**

Upon arrival on South Korean soil, North Koreans are met by security teams composed of agents from the National Intelligence Service (NIS), military, and police, and are detained for screening at an interrogation and protection center (Yonhap 2014a, 2014b). Information found in the extraterritorial investigation conducted before an individual’s arrival in the ROK can lengthen or expedite screening, and the length of the screening process has also varied legally over the past two decades. It is currently a maximum of 90 days, but migrant narratives describe a wide range of experiences: one recounts an intense week plus another six months; another says “about a

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<sup>16</sup> Interview with Hanawon instructor, Seoul, July 2014; Cho and Kim 2011. For an examination of the valences of these terms through their Chinese cognates, including a reflection on the term’s statist origins, see Guo 2014.

month”; a third, who entered as a minor, describes just 24 hours (Kang 2001, 220-222; D.H. Shin 2012, 159; Kim 2015, 295-299).

Time in a group dormitory is typically followed by an individual investigation in solitary confinement. During their investigation, individuals claiming resettlement are asked to draw a map of their hometown in the North and asked detailed questions about their background and journey (often repeatedly, to identify inconsistencies and to ensure that they are not Korean-Chinese falsely claiming to be North Koreans). Most describe interrogation as intense, though some taper toward cordiality as investigators gain confidence in interviewees’ truthfulness.

Although this stage of resettlement has received relatively little scholarly attention, narrative evidence demonstrates that government recognition of ROK citizenship remains incomplete throughout the screening period. The state typically explains its procedures by reference to the security threat that North Korea poses, particularly in terms of terrorism, espionage, and infiltration of the ROK’s territory. Screening is conducted by the NIS, the descendant organization of the Korea Central Intelligence Agency, which managed domestic and foreign intelligence (including counterintelligence and counter-infiltration) throughout the ROK’s military-authoritarian period (1961-87) (Greitens 2016). The screening’s stated purpose is to identify two groups: spies or infiltrators sent by the DPRK, and ethnically Korean PRC citizens who are not entitled to ROK citizenship (*Chosonjok*; *Chaoxianzu* in Mandarin) (Kim 1993).

The government has changed the screening process a number of times, and some of these changes have incrementally expanded the rights available to individuals undergoing the screening process. When the Joint Interrogation Center was opened in 2008, rights provided to full ROK citizens were circumscribed or withheld for North Koreans during interrogation, including freedom of movement, the right to have counsel, and the right to remain silent. Privacy rights were

also minimal, with cameras often placed inside rooms to monitor detained individuals and searches relatively unrestricted. Thus, at minimum the ROK's procedures have involved, and still involve today, an absence of rights that are typically accorded to citizens.

Many attempts at improvements in screening procedures and policies have been focused on remedying claims of mistreatment or violations of specific rights that have come to public and policymakers' attention. Following claims of mistreatment and scrutiny from advocacy groups, the center ended the use of closed-door interrogations and announced plans to hire female attorneys -- a notable measure given that the defector population has been 70% or more female for years (Yonhap 2014a, 2014b). In 2014, the Joint Interrogation Center was renamed the Defector Protection Center and announced other initiatives -- such as the naming of a female attorney as a human rights officer (*ingwon bohogwan*) and human rights training for NIS employees -- with the intent of communicating more benign and rights-conscious objectives on the part of the state.<sup>17</sup> Finally, the length of the screening has been adjusted several times: pre-2010, screening lengths were unspecified; from 2010-18 screenings were supposed to be no longer than 180 days; in 2018, the time allotted was reduced to 90 days, so that screened individuals do not remain in limbo for long periods of time (Yonhap 2014; MOU 2018).

The screening produces an assessment of each individual's background, and depending on that assessment, the South Korean state can withhold or grant citizenship and its attendant rights of entry and protection. As many North Koreans do not bring documentation proving their identity on the journey to South Korea, especially if they transit through countries known to repatriate defectors, they must prove upon arrival in the ROK that they originated from North Korea, rather than being *Chosonjok*. Theorists note that the need to prove one's identity -- in this case, one's

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<sup>17</sup> Yonhap 2014b. In 2019, two ROK military intelligence personnel were accused of raping a North Korean defector, after the woman had left Hanawon (H.E. Kim 2019).

identity as a person of DPRK origin rather than an ethnically Korean PRC citizen -- raises thorny questions about democratic citizenship. Needing to prove that one is who one claims to be strips citizens of natural rights prior to the state's confirmation of that proof, which "inverts government by consent of the people into a regime of citizens' praying for privileges to be granted by permission of the government" (Sobel 2016, 8). Interestingly, scholars particularly highlight the risk that uncoupling territory from jurisdiction, as has occurred on Korea's divided peninsula where the state claims much more territory than it actually administers, will lead to the disaggregation of rights and the withdrawal of protections to which citizens should be entitled (Benhabib 2005; Glover 2011). This is, indeed, the outcome faced by North Koreans, whose citizenship and rights of entry and protection are held in abeyance until the territorial/jurisdictional discrepancy is resolved and citizen identity is established.

Several narratives written by defectors who have resettled in the ROK articulate their discomfort with this requirement from South Korea. One recalls asking, "If I don't have my identification papers, will I be denied asylum? I'm speaking Korean right now. Is that not proof enough that I'm one of you? If we don't have our papers, do we all have to die like [my friend]?" (Jang 2014, 305). The passage articulates unfairness and outrage that the narrator's protection and safety depend on someone else's determination of his citizen status. In this sense, while they are undergoing screening, North Koreans suffer from what scholars have termed "undocumented citizenship" or "evidentiary statelessness," which Wendy Hunter defines as "nationals who lack the official papers necessary to be recognized as full citizens in their countries" (Hunter 2019; see also Lawrence and Stevens 2017).

As Hunter and others note, proof of nationality is the "beginning of an individual's relationship to the state... [and] the precondition for broader citizenship rights" (Hunter 2019, 3).

Undocumented citizenship – the lack of papers to prove citizenship, as opposed to true legal statelessness -- often results more from bureaucratic and administrative hurdles than from the state's legal determination, and according to the World Bank may apply to as many as 1.1 billion people worldwide (World Bank 2017). Much as Arrington (Chapter 7) emphasizes the effects of procedural rules on claimants' perceptions of the claims-making process, Bronwen Manby argues:

The rules for proof of the facts on the basis of which nationality is claimed and for issuing documents that show a person is recognized as a national, are, in practice, often as important as the provisions of the law on the conditions that must be established. If there are onerous requirements or costs attached to proof of entitlement to nationality, then the fact that a person actually fulfils the conditions laid down in law may be irrelevant (Manby 2017, 116; originally quoted in Hunter 2019, 17).

The screening process for North Koreans to effectively claim their ROK citizenship is one such example of this phenomenon. Although in the case of North Koreans entering the ROK this condition is intended to be temporary, it nevertheless places a clear burden on the individual to prove identity and leaves them in a condition of undocumented citizenship until such identity can be established. The ROK's reduction of time-in-interrogation suggests that they recognize a problem in the process, but does not fully resolve the onus placed on the individual to prove their identity to the state's satisfaction in order to exit the condition of evidentiary statelessness.

The screening process generates several other departures from standard rights accorded to citizens, even citizens detained for investigation because they are suspected of having committed a crime. Two particularly notable ones involve the right to remain silent and the length of detention. South Korea's criminal procedure law places limits on the length time allowed for investigation and prosecutorial review before a decision on indictment must be made; typically, that period

cannot be longer than 30 days.<sup>18</sup> By contrast, the screening of North Koreans is prescribed to be a maximum of 90 days, even if the individuals in screening are not accused of any crime (MOU 2018). Perhaps more importantly, North Koreans seeking entry and resettlement in South Korea do not -- effectively -- have the right to remain silent if they wish to pass through the screening. There is no way to prove their North Korean identity and demonstrate that they intend to resettle in South Korea rather than commit espionage without answering investigators' questions.

From the perspective of North Koreans seeking entry and resettlement, the stakes of this stage of the process are high. An individual suspected of being a spy rather than a legitimate resettler is likely to face trial and imprisonment. Potentially even more dangerous, a Korean-Chinese individual who the authorities decide has misrepresented him/herself as North Korean can be deported to China. North Korean migrants are aware that this places them in a twofold jeopardy: if they are sent back to China, PRC authorities may conduct their own investigation, and if they determine that an individual did in fact come from North Korea originally, the PRC authorities could repatriate that individual again, to the DPRK itself.<sup>19</sup>

Moreover, in November 2019, the South Korean government itself chose to repatriate two North Korean fishermen directly back to the DPRK. The men were suspected of killing 16 of their fellow crew members on a fishing boat, initially returning to port in North Korea, and then fleeing into South Korean waters. The Ministry of Unification said that it could not trust their "intention of defection," and, calling them "serious criminals," decided not to grant them citizenship and resettlement, and instead repatriate them to North Korea via Panmunjom (BBC, 2019). This case added evidence against the argument that North Koreans who arrive in the South are automatically granted citizenship, entry, and residency.

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<sup>18</sup> ROK Criminal Procedure Act [*Hyeongsasosongbeop*], Act No. 15257 (2019).

<sup>19</sup> Author's interview, Seoul, May 2014.

Prior to November 2019, whether the ROK would actually deny citizenship to a North Korean claimant was unclear. The North Korean Refugees Protection and Settlement Support Act, updated most recently in early 2019, specifies conditions under which North Korean claims to protection/support may be withheld, denied, or revoked by the Republic of Korea.<sup>20</sup> Articles 9 and 27, for example, list offenses including drug trafficking (common along the DPRK-PRC border), murder, terrorism, intentional provision of “false information contrary to the interests of the State,” and attempts to return to the DPRK. Article 9 also contains a provision, rarely applied, in which extended third-country residence can render one ineligible; the provision has been infrequently applied, and when it has been, it typically means that an individual would be granted citizenship but not resettlement benefits (Wolman 2014).<sup>21</sup>

In the past, however, the ROK government had provided inconsistent information with respect to its legal position on whether individuals found to be problematic in screening could be denied citizenship status and entry rights altogether. Most of the information we have on this question comes from cases where North Koreans sought asylum in third countries; representatives of the South Korean government submitted information to the foreign courts which was then cited in the court rulings. But the answers provided by the ROK have not been entirely clear or consistent. In 2010-2011, for example, the ROK stated to Canadian and UK courts that the ROK government could deny nationality on Article 9 grounds.<sup>22</sup> Around the same time, however, it told an Australian court that citizenship was both “automatically and immediately granted” for “genuine North Koreans,” but simultaneously that citizenship procedures were “more difficult” in Article 9

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<sup>20</sup> ROK North Korean Refugees Protection and Settlement Support Act [*Bukhanitaljuminbeop*], Act No. 16223 (2019).

<sup>21</sup> Government of the United Kingdom, *KK and Others* (Nationality: North Korea), Korea CG, UKUT 92 (2011), <https://tribunalsdecisions.service.gov.uk/utiac/37601>, p. 19.

<sup>22</sup> Government of Canada, *Kim v Canada*, 2010 FC 720, 30 June 2010, para 15; Government of the United Kingdom 2011: para 15.



cases.<sup>23</sup> In 2015, a UK court found that DPRK spies are prosecuted by the ROK, but not repatriated; the fact that failing the protection procedure did not condemn individuals to repatriation was an important consideration for the court ruling that individuals of North Korean origin were ineligible to claim asylum status in the United Kingdom. During this decade, the (non-Korean) courts that examined this question generally concluded that Article 9 provided grounds for withholding the resettlement benefits that came with effective activation of one's citizenship, rather than denying or nullifying the claim to citizenship altogether.<sup>24</sup>

Even if an applicant proved North Korean identity, and entry/resettlement was granted, the state did reserve the right to withhold provision of specific protections and support benefits (Choe 2017). This was a fairly common outcome: as of 2019, there were approximately 280 “non-protected” North Koreans resettled in South Korea (around 1.5%), around three-quarters of whom had been denied because they applied after staying in South Korea for more than the year prescribed by law. To address this issue, in 2019, the deadline for application was extended to three years (Lee 2019). Until early 2017, children born in third countries to a North Korean parent, though usually admitted to the ROK, were also ineligible for financial support; in 2016, this included 1,317 of 2,517 DPRK-heritage refugee youth (52%) (UniKorea Blog, 2017). Thus, the courts had evidentiary grounds upon which to conclude that individuals who failed the screening were denied support benefits, but not citizen status itself or the right to entry that it invoked.

The 2019 repatriation case makes this distinction much more questionable. Use of the murder provision in Article 9, plus the state's judgment about the “intentions of defection” -- over the apparent statements of the claimants themselves -- provided justification for the ROK to deny

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<sup>23</sup> See esp. para 79, Government of Australia, *RRT Case No. 1001549*, [2010] RRTA 843, 21 September 2010, available at: [https://www.refworld.org/cases,AUS\\_RRT,4cbf29cc2.html](https://www.refworld.org/cases,AUS_RRT,4cbf29cc2.html) [accessed 23 May 2020]

<sup>24</sup> Government of the United Kingdom, *GP and Others* (South Korean citizenship), Korea CG, UKUT 391 (2014), <https://tribunalsdecisions.service.gov.uk/utiac/2014-ukut-391>, pp. 2, 21-23, 28, 66.

not just resettlement and protection benefits, but the right to entry altogether. The decision prompted strong criticism from a range of rights groups in South Korea, which claimed that the repatriation violated the UN Convention Against Torture's provision prohibiting refoulement, as well as South Korea's own statutes that guarantee citizens the right to due process and the provision of legal counsel.<sup>25</sup>

The narratives of resettled North Koreans also consistently and clearly interpret the screening as a process in which the state has discretion to grant or withhold citizenship, with the risk that an individual could be refused entry to South Korea. One said, "I was not yet a South Korean citizen; to become one, I had to go through the screening process" (S.Y. Kim 2000, 99). Several describe hearing that their right of entry is conditional on "passing," and that they can be deported if they fail (Park 2015, 209). Guards at the screening center warned one group that "physical fighting was a criminal offense and would hinder progress toward South Korean citizenship" (H. Lee 2015, 199, 203). One North Korean migrant describes "the last test, a test to decide my future," adding, "*if I passed, I would be eligible for South Korean citizenship*" (E. Kim 2015, 173-175).<sup>26</sup> Narratives describe this stage with varied emotions: excitement, relief, exhaustion, terror, anxiety, nervousness, confidence (Kim 2009, 157; J. Kim 2015, 269-299; Kang 2001, 222). Interview evidence reveals similar understandings: citizenship is not "automatic" or taken-for-granted, and resettlement in South Korea is likely, not guaranteed.<sup>27</sup> Many North Korean migrants perceive the state's overall security rationale as legitimate, but object to specific

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<sup>25</sup> "Joint Statement on Deportation of Two North Korean Fishermen by 20 Human Rights and Civil Society Organizations for North Korean Human Rights," 13 February 2020, <https://en.tjwg.org/2020/02/13/joint-statement-on-deportation-of-two-north-korean-fishermen-by-20-human-rights-and-civil-society-organizations-for-north-korean-human-rights/> [Accessed 20 May 2020].

<sup>26</sup> She also recounts her belief that if she and her mother had been Korean Workers' Party members, "the interrogators would have been suspicious that we were spies sent by the north."

<sup>27</sup> Interviews with two North Korean-born individuals, Seoul, May 2016.

procedures; a few women have described the process as dehumanizing.<sup>28</sup> The overwhelming majority, however, perceive it as a test that they can either pass or fail.

Throughout screening, therefore, North Koreans possess formal juridical citizenship, but the state's legal framework and administrative requirements for the entry process render citizenship recognition, in practice, incomplete. At the moment of border-crossing, North Koreans' success in claiming citizen status is fundamentally contingent on resolving the state's concerns, and the state bears limited obligations to confer full citizen rights until these purported citizens have satisfactorily addressed its questions. This leads North Koreans to view their citizenship -- understandably -- as contingent and insecure, rather than guaranteed and co-equal, and to perceive their citizenship status as potentially inferior from the moment they enter ROK society.<sup>29</sup>

## **Conclusion**

How do individuals with claims to citizenship and citizen rights experience the process of claiming those rights in a world increasingly characterized by cross-border movement and globalization? This chapter seeks to shed light on this question by examining the experiences of North Koreans who seek to claim their South Korean citizenship and settle in South Korea. Although these individuals have strong legal and communitarian claims to citizen standing, their purported "automatic citizenship" does not mean that it is easy to effectively claim those rights upon arrival in South Korea. Drawing on a mix of South Korean legal and policy documents and narratives from North Koreans who have come to South Korea, this chapter demonstrates that the

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<sup>28</sup> On security justification, see E. Kim 2015:166. On dehumanizing procedures, see the comment from Jin-hee Park, quoted in Bell 2013: 241; Park 2015: 208-11; Choi 2007: 207-8.

<sup>29</sup> While a full examination of North Korean resettlers' perceptions of citizenship and their rights-claiming activities after they leave screening and enter the ROK is beyond the scope of the chapter, evidence cumulatively suggests that North Korean resettlers continue to perceive their citizenship as contingent on both internal hierarchies and the state's geopolitical interests after re-entry. On this point, see Greitens 2021.

rights claims of North Koreans are heavily circumscribed and conditional when they arrive at the border or point of entry into the ROK. The state requires that North Koreans, through the government-administered screening process, both prove their identities and establish a lack of (certain) criminal history in order to effectively claim citizen status -- the starting point that they need to claim other rights that citizens normally negotiate and practice.

The chapter, therefore, sheds light on a number of the larger questions engaged in this volume and raises questions that should be considered in future research. First, the account offered above provides a window into the ways in which marginalized citizens frame, claim, and negotiate rights, at a moment when the state possesses a high capacity to deny the recognition that would effectively confer those rights. Foreign workers, who depend on the state's recognition of their visa status, are in similarly disadvantaged positions vis-à-vis the state in claims-making (see Chapter 13, Chung). Second, the chapter elucidates the gap between formal legal recognition of rights and state practices required to instantiate those rights in the lives of citizens. In doing so, it sheds light on the latent ideals of citizenship as the concept is framed and implemented by the ROK state. It highlights that both criminal and politically threatening behavior can lead the state to not recognize an individual as a full citizen. Finally, the chapter provides new avenues of potential inquiry into the constitution of citizenship and rights claiming among North Korean defectors after resettlement. Given the finding that citizenship acquisition shapes political identification and engagement in other contexts (Bloemraad 2018), future studies should consider whether the rights claiming and recognition interactions that occur during North Koreans' migration and resettlement screening shape their subsequent sense of what it means, as an ROK citizen, to claim the rights that they are legally afforded.

More broadly, for comparative research on citizenship and migration, the chapter sheds light on how citizens navigate rights claiming in the context of “deep” and securitized borders. In Korea, state construction of borders and of border-crossing procedure renders the claiming of citizen status an extended, incremental, and often arduous task even for those who are legally and theoretically privileged to have that status -- an important observation at a moment when questions of global migration, citizenship, and border security figure prominently in media coverage and policy discussions across the world.

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