

# Brownback bill will not solve North Korea's problems

Proposals in the USA's Brownback bill to improve human rights in North Korea do not address the country's real needs. **Hazel Smith** reports.

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The US government's refusal to negotiate with North Korea until Pyongyang unilaterally gives up what it considers its only usable bargaining chip – its alleged nuclear weapons programme – is the foundation of the US proposal to resolve the Korean nuclear crisis.

The tough line emanating from the Bush administration is echoed and substantially supported in the US legislative branch. US Republican Senator Samuel Brownback, an influential neo-Conservative who chairs the Senate Subcommittee on East Asian and Pacific Affairs, and an international commentator on North Korean issues, introduced the North Korea Freedom Bill to Congress in November 2003.

Ostensibly designed to promote human rights, the centrepiece of the Brownback legislation is to allow virtually any North Korean the right to 'humanitarian parole' status, which could be converted into the right to reside in the USA, barring objections from the Department of Homeland Security on individual cases. The Bill also proposes encouraging non-governmental organisations (NGOs) to arrange the adoption of North Korean orphans by US families, and to clandestinely distribute radios into North Korea so citizens can listen to US broadcasts. NGOs will also be funded directly from US aid programmes to "provide assistance to natives or citizens of North Korea who are attempting to escape from North Korea".

Brownback is right to focus on human rights as an issue of legitimate international concern, and to link human rights to security, as the Pyongyang government does



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◆ Seven North Korean illegal immigrants sit in a detention centre in Yanbian, China. Many North Koreans are prepared to risk short term detention and repatriation to North Korea, and will return to China if economic necessity propels them to so.

**The preferred option is for 'regime change', possibly through the use of force, rather than cultivating a serious negotiating environment**

restrict rights to freedoms of assembly, movement and the expression of dissident political opinions. Without social, political, and economic transformation, the country and the region will court instability, and the present situation could encourage a regional arms race.

However, Brownback's proposals are not designed to offer practical support to the North Korean people nor to be actually implemented. More considered legislation would seek to de-escalate confrontation and to propose concrete measures for transformation – such as the creation of a

transparent multilateral institution designed to build new economic and legal institutions – and bring genuine positive change to North Koreans.

In contrast, the Brownback bill is further evidence of US policymakers' apparent inability to analyse the historical, cultural and political foundations of human rights violations in North Korea with a view to making informed recommendations for reform that might be achievable.

The option currently preferred is for 'regime change', possibly through the use of force, rather than cultivating a serious negotiating environment. Given the recent willingness of Western states to use human rights violations as a reason to intervene militarily in states, putting such violations into their correct context has a direct impact on the security agenda.

Clues to the bill's real import can be found in continuing high level pronouncements by Brownback's fellow neo-Conservative Republicans, such as John

Bolton, Undersecretary of State. Bolton was a senior official of the American Enterprise Institute (AEI), the influential Washington DC-based think-tank that has provided the foundation for much of the Bush administration's thinking on foreign policy. When asked by journalists what the Bush administration's policy was towards North Korea, Bolton replied that the aim was "the end of North Korea" - the title of a book written by an AEI colleague.

### Unrealistic proposals

As it stands, the proposals are mainly unworkable. Given that the central premise of the bill is that life is intolerable for all North Koreans, the logical outcome is that some 23 million people would be eligible for humanitarian parole status. However, mass emigration from North Korea is not anticipated.

What may be implemented is the funding of US and foreign NGOs, whose activities include helping some North Koreans break into Chinese embassies and consulates in order to bring high profile media attention to the plight of North Korean refugees in China. The unwelcome concomitants of this approach are that it will cause some friction with the Chinese government and cause a further crackdown on North Koreans who are illegally resident in China.

Of the other measures, North Korean legislation (as well as ancient, embedded and still strong societal norms that valorise Korean national and ethnic integrity and culture) will not permit Korean children to be shipped off to the USA for adoption. North Korea has no historical or current policy of offering up its children for foreign adoption, and this provision seems designed to offend the nation and people jealous of its Korean cultural identity. North Korea is not by any means anxious to see its children transformed into US citizens.

The idea of distributing radios also demonstrates a lack of awareness of the situation on the ground. Most North Koreans cannot afford either radios or batteries, and so the possession of a foreign radio would cause the individual to be directly suspected of illegal economic activities or unauthorised intercourse with foreigners - each of which would be subject to penalties. Furthermore, radio batteries are extremely difficult to obtain. Most likely the radios would be sold on the Chinese border by some of the thousands of private traders now operating in the new marketised North Korean economy. The money would be used to buy food and other necessities.

### Human rights, Pyongyang style

North Korea's legal, penal and juridical institutions are not original to the country, which was only founded as a separate state in 1948, nor were these institutions invented by Kim Il-sung. The current system has its roots in pre-colonial Korean institutions, militaristic Japanese direct rule (1910-45) and penal models derived from the ex-communist states, especially the former Soviet Union.

As in the Japanese colonial system and the former communist juridical systems, crimes that are judged to threaten the political status quo are judged severely. From the former Soviet Union and eastern bloc countries, North Korea derived a judicial system that legalised the conjoining of party and state so that any crime against the party was a crime against the state. Moreover, institutional practice was predicated on the predominance of the party over the individual. As in the former communist systems, party officials are present at every stage of the judicial process. It is literally inconceivable and in practice impossible for an individual to be considered a bearer of rights as against those of the state which is, effectively, the same body as the party.

From the Japanese, the North Koreans inherited the practice of neighbourhood self-surveillance that institutionalised community monitoring of potential infractions against state and societal norms. These community-based organisations had a degree of legitimacy in North Korea, in that they also provided socially accepted mechanisms for mobilisation of the population around state-building tasks - such as repairing roads, vaccination campaigns, and local militia and civil defence activities.

The repressive parts of the North Korean state include the various security forces that operate secretly and throughout the country, which has been variously estimated at 150,000 employees. In the wake of the famine that wracked the country in the mid-1990s, the government has not been able to sustain the reach and effectiveness of the security apparatus, mainly because it has not been able to provide regular income or food for these large numbers of officials.

There is also some evidence that, nearly 10 years into the progressive marketisation of economic relations, these officials are forming the basis of a new class of legal and illegal economic operators in North Korea. Security officials are educated, understand how the state operates (and where it does not), and have privileged access to contacts, transport, and

experience of clandestine operations. Among the illegal operations being facilitated for personal gain are customs evasion, smuggling of goods and the provision of assistance to those North Koreans illegally entering China for short to long stays, to obtain food, find work and in some cases to seek political refuge.

### Refugees and migrants

According to the Brownback bill, the number of North Korean refugees living in China is estimated to be between 100,000 and 300,000. In reality, the total is probably in the region of between 30,000 and 50,000 people. The total number of ethnic Koreans of Chinese nationality in the whole of Yanbian, the Korean-speaking prefecture into which most North Koreans migrate, is less than one million. If there were 300,000 North Koreans living in Yanbian, they would be highly visible. In the capital Yanji, they would outnumber local Koreans by two to one, and if they existed in such large numbers in the rural areas, they would be evident as they moved around looking for food and shelter. Their alternative would be starvation and/or freezing to death.

◆ Two North Korean peasant women push trolleys laden with their farm produce. Pyongyang has already engaged in an intensive study of economic transformation processes in China and Russia, and has demonstrated a willingness to look seriously at these examples.



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The living conditions of North Koreans illegally residing in China are shockingly poor. Many live in conditions of virtual indentured servitude to the local farmers who give them protection but only pay piecework wages for menial agricultural and forestry work. They have no access to health, education or social support. They cannot travel on the roads because they generally cannot afford transport, and the Chinese security services regularly stop vehicles to check identity papers. If found without authorisation to stay in China, they are sent back to North Korea.

Nevertheless, interview research suggests that North Korean refugees who do not wish to return home immediately overwhelmingly prefer to be allowed to stay in China, to live and work legally. Surveys also show that the dominant pattern of migration into China is of repeated short term movements into China by individuals to obtain food, goods and money in order to return to North Korea to help support their families. These North Koreans are not 'fleeing' their country, but are willing to risk short term detention or other penalties should they be repatriated against their will. Penalties for those deemed to be seeking food and basic goods are generally a few days or a few weeks in a detention centre, after which they are released. Many make their way back to China when economic need propels them to do so.

Those deemed to have been associating with foreign groups hostile to Pyongyang receive the most severe punishments and are the individuals most likely to fulfil the criteria for refugee status under international law – because they suffer a well-founded fear of persecution should they return to North Korea. However, China has so far refused to allow the UN High Commission for Refugees (UNHCR) to make assessments as to which North Koreans are at risk. As a result the UNHCR has recently announced that all North Koreans illegally resident in China must be considered an at risk group or as potentially 'mandate' refugees.

## The prison system

North Korea's prison ethos was founded on the colonial Japanese practice of 'thought rectification', which Japanese military-based colonial governors implemented increasingly severely throughout the period of direct rule in Korea. Prison was intended to punish but also to result in 're-education'.

Every North Korean adult citizen of non-pensionable age must work in order to obtain food, income and state benefits. The added twist to the prison system is that

## The international response

Various outside interlocutors have taken different approaches to the issue of human rights violations and refugee issues in North Korea. The USA has opted for a hard line under the Bush administration, preferring to demonise and threaten the North Korean state rather than attempt to negotiate or to offer practical assistance. In contrast, the EU and Switzerland have engaged in an incipient human rights 'dialogue' with Pyongyang and have funded training in human rights law and practice for North Korean officials. However, the European states lack political and economic leverage over the North Korean government, and the EU has foresworn its opportunity to have some economic leverage by declaring that nothing other than humanitarian assistance will be forthcoming until Pyongyang gives in to US demands.

The EU has hitched its political policies to the US wagon and repeats the US line of no negotiation without unilateral disarmament – albeit in a slightly more diplomatic manner – on its fairly regular visits to Pyongyang (most recently in December 2003). The North Koreans, who started out two or three years ago with unrealistically high hopes of the possibilities of economic assistance from EU governments and business, now realise that the EU has little to offer apart from continued humanitarian aid.

In Japan, public attention has been concentrated on the Japanese civilians abducted by North Korea in the 1970s and early 1980s. Following negotiations, five were repatriated to Japan in 2002; eight more were reported by Pyongyang to have died. The media focus on this issue has promoted a climate of domestic public opinion that for the most part now supports the Japanese government's decision to end humanitarian aid. Japan is compromised in its ability to take initiatives on Pyongyang's human rights abuses given the still unresolved 'comfort women' issue concerning the thousands of North and South Korean women forced into sexual slavery during the Second World War. Japan is also worried about counter claims about its human rights record on the 700,000 Koreans living in Japan.

Since the start of the remarkable reconciliation process initiated by former president Kim Dae-jung in 2000, South Korea has refrained from overt criticism of Pyongyang's human rights practices and instead engaged in the process of unilateral and practically unconditional economic and humanitarian transfers. The hope is that the gradual engagement of North Korean officials with the outside world will promote confidence-building that might eventually provide a basis for discussion and resolution of more outstanding political problems. China and Russia have taken the view of 'non-intervention' in North Korea's internal affairs – although both states have tried to persuade by example, demonstrating the advantages of economic reform to Kim Jong-il on his visits to both countries.

prisoners must work to obtain even food – exactly as must the rest of the population. Because the system is also meant to be a punishment and deterrent, prisoners are given the most arduous work – including mining and farming on difficult land, often in bitter mountainous regions. These occupations are hard enough for those born to poor mining communities and poor farming areas; for an uprooted urban dweller and in times of desperate economic and food deprivation for the whole country, the consequences of relocation to unfamiliar jobs, regions, climes and social isolation can be highly deleterious.

Furthermore, families of prisoners receiving long sentences may also be exiled with the accused to a remote area. This practice is not universal, but there is enough evidence to indicate that many of those convicted of crimes against the state were sent into internal exile, along with their families, in a practice that owed as much to ancient Korean penal customs as to 20th century Soviet communist innovation.

On the other hand, there is no evidence whatsoever to support the Brownback bill's claim that the North Korea government "oppresses its people and threatens them with imprisonment, starvation, and death",

in the sense of systematically using starvation as punishment. In fact, the evidence indicates the opposite. An internationally supervised nutrition survey conducted in late 2002 that examined over 80% of the population found that the nutritional status of children under seven, although still precarious, has substantially improved nationwide since the previous 1998 survey. This was an important indicator that international food aid and domestic food production had been fairly distributed in the intervening four years of economic crisis.

## Radical change required

For human rights policy to work, it must be recognised that such reforms will only take place if there are changes in the underlying state and governing institutions first – particularly the legal, juridical and policing systems. Changes of government policy to bring about human rights reform on their own will have to involve making the transformation from outdated communist-style institutions to alternatives based on transparency, equity, accountability and the separation of juridical institutions from institutions of government. The North



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◆ Chinese security personnel erect a police barrier around a German school in Beijing following an incident in which 15 North Koreans broke into it and claimed asylum in late 2002. Brownback's proposals include funding NGOs to assist such actions in order to bring high profile media attention to the plight of North Korean refugees in China.

Korean government will need international assistance to make these changes.

There are recent examples of such successful transformation of state institutions, such as in China. There are also indications that with the right diplomacy, North Korea can be edged in the right direction. In China, the impetus for increased political freedom was the acceptance by Chinese leaders that unless foreign economic operators could be guaranteed a recognisably modern legal framework in which the state would lose its right to interfere gratuitously in economic life, foreign investment would not come to China.

Pyongyang has already engaged in an intensive study of economic transformation processes in China and Russia, and has demonstrated a willingness to look seriously at these examples of economic change. After initial reservations, the government has now fully accepted that it can only revive and resuscitate its economy with the help of investment from liberal capitalist states, and/or international financial institutions such as the World Bank and the Asian Development Bank. This transformation in economic thinking provides a window of opportunity for foreign interlocutors to insist on economic institution building as part of a package of financial transfers. By promoting economic institutions based on transparency, accountability and the rule of law, foreign governments and institutions would thereby promote a process of institutional transformation that could bring political liberalisation in its wake.

**By introducing policy initiatives based on ostensibly humanitarian principles but designed to be rejected by Pyongyang, the US administration is able to avoid negotiation while appearing to act in good faith**

The next round of six-party talks on the issue, which includes China, Russia, Japan and South Korea, as well as the USA and North Korea, are now likely to take place in February, having been postponed in December and January. The six-party talks format could provide the fora for proposals to establish a multilateral institution to organise the transfer of financial assistance and to support a programme of economic institution building, legal and juridical systems and economic reconstruction. Pyongyang would maintain its jealously guarded sovereign prerogatives as a full and equal member of this new institution, while those states anxious to see concrete reforms would also have the ability to contribute to and to oversee the institutional change.

### Improving intelligence

Foreign analysts have access to enough good quality information about North Korea to allow sober analysis of the country's

aspirations and needs. There is valuable information contained in the thousands of reports collated over the past decade by hundreds of resident and non-resident foreign aid organisations. These organisations have developed increasingly sophisticated information, monitoring and evaluation systems for their programmes, which also have provided the unintended spin-off of opening up the North Korean society and economy to what has become an ongoing process of intensive and systematic scrutiny.

Information also comes from the tens of thousands of foreign visitors, including several thousand South Koreans who have visited the country as diplomats, business people, cultural and sports representatives, and several Western journalists who have had access to the country since 1995.

Furthermore, dozens of non governmental organisations from all over the world, particularly the USA, Japan and South Korea, have carried out hundreds of interviews and surveys with North Koreans living precarious existences as illegal migrants in China. Such information provides a solid foundation for strategies and policies that can assist North Koreans, and provide a solid foundation for more astute and nuanced security policies by external actors to create a more stable regional security environment.

By introducing policy initiatives based on ostensibly humanitarian principles but designed to be rejected by Pyongyang, combined with security demands that would in effect mean a voluntary dismantling of what North Korea considers is its only negotiating card, the US administration is able to avoid negotiation while appearing to act in good faith. Pyongyang's refusal to engage in what behind the scenes even US officials admit is tantamount to unilateral disarmament, is portrayed as yet more irrational intransigence from a rogue regime with which it is impossible to do business. Unfortunately, the idea that the use of coercion instead of persuasion, and rhetoric rather than reality, will bring security to the Korean Peninsula is mistaken. Instead, Brownback's proposals further threaten the basic freedoms of North Koreans by providing conservatives in the country an opportunity to restrict the openings to the West that have occurred since the late 1990s. ●

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