

## International Law and the Inhumanity of Repatriating North Korean Escapees

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Recently, as attention has been drawn to the issue of China's forcible repatriation of North Korean escapees, the UN Refugee Convention and the Convention against Torture have been quoted as the basis in international law for forbidding such repatriations. This author agrees that South Korea and the world should use these two conventions as the basis for continuously pressuring China to stop forcible repatriations. But aside from these two conventions, are there any other bases in international law for forbidding forcible repatriations? In particular, what provisions of international law can be used to support the argument that repatriating North Korean escapees must be forbidden on the grounds that it constitutes "inhumane" treatment? In this regard, I would like to discuss the precedents set by the Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights (ECHR).

UDHR Article 5 states that no one may be subjected to cruel, inhuman or degrading treatment or punishment. Most provisions of the UDHR are accepted as customary international law. In other words they are considered legally binding. The same provision appears in Article 7 of the International Covenant on Civil and Political Rights (ICCPR). However China is not a state party to the ICCPR.

In principle the treaty applies only to states which have acceded to or ratified it.

While UDHR Article 5 forbids the use of cruel, inhuman or degrading treatment or punishment against any person, it does not explicitly forbid expelling or repatriating people to other states where they may be in danger of facing inhuman treatment. In this regard we must consider the precedent established by related provisions of the ECHR and the European Court of Human Rights. ECHR Article 3 stipulates that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” Like UDHR Article 5, it does not explicitly forbid sending foreign nationals away to other states where they may face the danger of inhuman treatment. However the European Court of Human Rights has previously determined that in certain cases the expulsion of foreign nationals constitutes a violation of the ECHR. For example in 1997 the European Court of Human Rights handled the case of *D.* An AIDS patient, *D.* was receiving necessary life-saving treatment in the UK when faced with deportation on criminal charges. The European Court of Human Rights based its decision on the facts that *D.* was unable to receive treatment for AIDS, that the UK government had taken responsibility for *D.*'s treatment, that *D.* was dependent on treatment for survival, and that depriving *D.* of treatment would be fatal. The court concluded that in this exceptional case *D.*'s deportation would constitute inhuman treatment and thus violate ECHR Article 3.

The 2001 case of *Bensaid* resembled that of *D.* in that it involved the question of whether the deportation of a foreign national suffering from an illness constituted inhuman treatment. *Bensaid*, an Algerian national, was suffering from a psychological illness when his deportation was ordered by the UK government in 1997. In determining whether *Bensaid*'s deportation constituted inhuman treatment, the European Court of Human Rights noted that after deportation *Bensaid* would still be able to receive treatment, albeit not of the same high standard as what he had received in the UK. Ultimately the court decided that the circumstance of having to receive a lower standard of treatment than that available in the UK would not be a decisive factor in ruling the deportation a violation of ECHR Article 3. The key distinction between *Bensaid*'s case and that of *D.* was that *D.* would have had no treatment and no support from family if deported, whereas *Bensaid* would have been able to receive some degree of treatment.

The above precedents from the European Court of Human Rights show that even in cases of severe illness, deportation does not always constitute inhuman treatment, but in exceptional and severe cases like that of *D.*, deportation may

in fact be ruled an inhuman act. This is because, in the case of D., deportation would have directly led to death.

The situation of North Korean escapees in China who face forced repatriation can be considered much more serious even than the situation faced by D. If repatriated, not only will they be unable to receive treatment for physical or psychological wounds, but they will also face unspeakable human rights violations at the hands of People's Safety Agency officers, State Security agents, and guards and supervisors at North Korea's collection points, detention centers and correctional centers.

If repatriated, North Korean escapees are detained at collection points or detention centers for investigation and pre-trial before being incarcerated at correctional centers. According to testimony by defectors, severe human rights violations occur at these facilities in the form of beatings and harsh treatment. Harsh treatment often leads to injury and illness, and combined with the inadequate nutrition and health care at detention facilities, these conditions pose a continual threat to inmates' lives. For instance, regarding the conditions at collection points, one North Korean defector testified to witnessing a fellow detainee's death from malnutrition at a collection point in Chongjin in 2010. Another defector testified to witnessing an inmate's death from malnutrition at a collection point in Shinuiju on January 3<sup>rd</sup>, 2011, and further testified that the body was wrapped in a quilt and stored in a warehouse for two days before being autopsied by medical personnel and then buried. With regard to detention centers, a defector testified to seeing an inmate on the verge of death from malnutrition in January 2009 while detained at the Kim Hyeong Jik County Security Department Detention Center, and another defector testified to witnessing a fellow inmate's death from malnutrition in December 2009 while detained at the Security Department Detention Center in Hweryong, North Hamgyong Province. In addition, those who are arrested attempting to defect and those who manage to reach China but are arrested there and sent back are sometimes detained in political prison camps. One North Korean from the Dongmyeong District of Hweryong defected to China but was arrested and repatriated in 2010 after trying to enter the South Korean embassy and was incarcerated in 2011 at Hweryong's No. 22 Management Center, part of North Korea's network of political prison camps. Occasionally those who are repatriated are released after undergoing an investigation. However such cases must be considered exceptions. In sum, repatriating North Korean escapees back to North Korea where they face inhuman treatment and punishment constitutes a violation of the UDHR and an inhuman practice.