

## Obligations under International Law of States Involved in the Repatriation of the 9 North Korean Teenage Escapees

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On 28 May 2013, nine North Korean teenage escapees (aged 15-23), who were detained and interrogated by Laotian authorities on 10th May were forcibly repatriated to Pyongyang via China, through close cooperative efforts between Laos and North Korea. These teenage defectors, many of whom were once ‘ggotjaebi’ (a term often used to describe orphans who steal, scavenge, and beg for a living), have expressed their intent to the Laotian immigration office, to go to South Korea. While the Laotian government normally sent North Korea escapees on to South Korea in the past, this time, the teenage defectors were forcibly repatriated to North Korea where they face a high possibility of torture and persecution.

The international community, not to mention the South Korean government, has expressed deep concern for the actions taken by the Laotian government. Antonio Guterres, the United Nations High Commissioner for Refugees (UNHCR), Marzuki Darusman, the UN Special Rapporteur on North Korean human rights issues, as well as the spokesperson for the Office of the High Commissioner for Refugees (OHCHR), have criticised that forcible repatriation violates the principle of *non-refoulement*, which has been established as an international customary law. They have also called on North Korea to grant the teenage defectors impunity and protection. International human rights NGOs such as Human Rights Watch and Amnesty International have also expressed similar concerns.

The Laotian government has claimed that it is difficult to say that they had requested political asylum, given their young age (between ages 14-18), but rather, that they are victims of human trafficking. Thus, they claim they have done their duty to execute the law against illegal activities based on Laotian domestic law. In addition, the spokesperson for the Chinese foreign ministry has claimed that the nine teenage defectors had been carrying proper travel documents such as passports and visas upon entering China, and thus had been allowed to pass through in accordance with China's immigration laws. China has reaffirmed its original position to address issues regarding North Korean escapees in accordance with 'domestic law, international law, and humanitarian principles.'

Then what could be said about China and Laos' actions from the perspective of international law? What international legal obligations does Laos have, and should these North Korean teenage escapees be treated as refugees? Can China, which unlike the past has merely played a supporting role, be free of any legal responsibilities?

### Laos' Obligations under International Law

Laos is not a party to the Convention relating to the Status of Refugees and therefore, is not directly bound by the principle of *non-refoulement* under Article 33 of the 1951 Refugee Convention.<sup>1)</sup> However, universal application of this principle can be argued, given that this principle has been a customary international law. In addition, Laos is a party to numerous international human rights treaties. For example, it is a party to the 1984 Convention against Torture,<sup>2)</sup> which stipulates the principle of *non-refoulement* under Article 3.<sup>3)</sup> Laos is also a party to most key human rights treaties, such as the 1966 International Covenant on Civil and Political Rights (ICCPR),<sup>4)</sup> and the 1989 Convention on the Rights of the Child.<sup>5)</sup>

When looking at the nature of punishment given to escapees who have been forcibly repatriated, the sentence given to those who have been in contact with foreigners or have accepted foreign religions or those who were caught in an attempt to go to South Korea, are harsher than those for other escapees. During the interrogation process, inhumane treatment such as torture is used, and there is a high chance that such returnees will receive the severest form of punishment, such as being detained in political prison camps. In the case of the nine teenage defectors, it can be assumed that they will face treatment that is more severe than any other escapees have ever faced. This is because they were caught carrying bibles in their bags, received the help of a South Korean missionary, and what is more, they have been

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- 1) Article 33(1) "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on accounts of his race, religion, nationality, membership of a particular social group or political opinion."
  - 2) Signed on September 21<sup>st</sup> 2010, ratified on September 26<sup>th</sup> 2012, and entered into force on October 26<sup>th</sup> 2012.
  - 3) Article 3(1) "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."
  - 4) Signed on December 7<sup>th</sup> 2000, ratified on September 25<sup>th</sup> 2009, and entered into force on December 25<sup>th</sup> 2009.
  - 5) Accessed on 8 May 1991, entered into force on 8 June 1991.

forcibly repatriated by the strong request of North Korea during their attempt to enter South Korea. Admittedly, the possibility that the nine teenage escapees will be used as political propaganda cannot be ruled out. However, even in this case, they are likely to be treated as political criminals once they are no longer needed. In sum, to expel, return or extradite the nine teenage defectors to a place where they are likely to face torture and persecution is a clear violation of the principle of *non-refoulement*, under Article 3 of the Convention against Torture, which Laos has been party to since 2012.

Moreover, although Article 7 of the ICCPR, in prohibiting torture, does not explicitly include the principle of *non-refoulement*, the Human Rights Committee has interpreted that the content of Article 7 includes the principle of *non-refoulement* related to torture and other ill-treatment in its General Comment.<sup>6)</sup> Therefore, Laos, which became a party to the Covenant in 2009, has violated Article 7 by repatriating the North Korean teenage defectors. In particular, unlike under the Refugee Convention, the principle of *non-refoulement* under the Convention against Torture and the ICCPR, is applied to all human beings regardless of their refugee status.

Regarding the question of whether a minor can express his/her intention to seek political asylum, or whether he/she could apply for refugee status, there is no age limit for these procedures, as the South Korean government has stated. According to the Convention on the Rights of the Child, to which Laos is a State party, “a child means every human being below the age of eighteen years” (Article 1). Article 22, Paragraph 1 stipulates that “States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall ..... receive appropriate protection and humanitarian assistance,” indicating that the qualification to apply for a refugee status is not limited to adults. The Convention also stipulates the best interests of the child (Article 3), and the Prohibition of Torture (Article 27); these provisions can be invoked in the case of the nine teenage escapees.

Lastly, the Laotian government claims that this was a case of human trafficking. However given that the teenage escapees were not ‘forcefully’ taken for economic profit but were assisted in entering a third country for humanitarian purposes, this is not a ‘human trafficking’ problem, which would be a clear violation of human rights law. Rather, this is a problem involving the smuggling of people, which is a violation of immigration laws. As the Laotian government claims, there is a definite need to punish those who illegally enter a State and violate domestic law. However, from the perspective of international law, denying their qualification to apply for refugee status, or forcefully repatriating them to a State where they may be persecuted or tortured, cannot be justified.<sup>7)</sup> Although smuggling should be punished through means such as fine, the principle of *non-refoulement* must be strictly kept even in these circumstances.<sup>8)</sup>

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6) Human Rights Committee (CCPR), General Comment 20 (Article 7) (1992), para. 9.

7) See Article 31 of the 1951 Convention Relating to the Status of Refugees.

8) Breaching international legal obligations for the reasons of domestic law cannot be justified. Article 27 of the 1969 Vienna Convention on the Law of Treaties (Laos became a party on 31 March 1998); Article 32 of the 2001 Draft Articles on Responsibility of States for Internationally Wrongful Acts of the UN International

## China's Obligations under International Law

On the other hand, China,<sup>9)</sup> a party to the Convention relating to the Status of Refugees, the Convention against Torture, the Convention on the Rights of the Child, and other international human rights treaties, has an obligation to apply the principle of *non-refoulement* on asylum-seekers such as North Korea escapees.<sup>10)</sup> That being said, if the Laotian government cooperated closely with the North Korean government in preparing the appropriate immigration documents prior to the escapees' departure from Laos, and the Chinese government allowed their passage through China without knowing the specific circumstances, then China cannot be subject to the same level of criticism as Laos.

However, the South Korean government has stated that it had requested through the Seoul-Beijing diplomatic channels that China block the repatriation of the teenage defectors to the North, on numerous occasions on the 27<sup>th</sup> and 28<sup>th</sup> of May. If this is true, then China, as a transit country, will face much criticism for what happened on its territory, as well as its failure to abide by the principle of *non-refoulement* under the Refugee Convention and the Convention against Torture, in good faith.

More fundamentally, China's 'blanket' repatriation policy gives no choice but for a large number of escapees, such as the nine teenage escapees, to risk their lives and cross the vast Chinese territory and travel to Southeast Asian countries. Therefore, as a responsible great power, China must reconsider its existing policies in a forward-looking manner.

## Policy Considerations

This issue could be resolved if North Korea were to grant the forcibly repatriated escapees an appropriate treatment that is in accordance with international standards. As a State party to the ICCPR and the UN Convention on the Rights of the Child, North Korea must abide by its legal obligations; grant its citizens the freedom of movement; and refrain from sentencing severe political punishments to the forcefully repatriated North Korea escapees. The UN Commission of Inquiry (COI) for North Korea, which will begin its activities on 1 July, is especially concerned with the operation of political prison camps and the abduction of foreigners. North Korea should bear in mind that the international community is intently awaiting on the fate of the nine teenage defectors; whether they will be tortured at a detention facility and sent to a political prison camp, or (although unlikely) whether one of the teenagers is the child of a woman abducted from Japan.

In order to persuade North Korea and restore and consolidate the assistance and cooperation of the neighbouring States, various official and non-official measures must be taken in a wise and harmonious manner. An excessively norm-based approach is likely to pose difficulties in negotiating with the other

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Law Commission.

9) China signed the ICCPR on 5 October 1998, but has not yet ratified it.

10) For details, refer to, Jung-hyun Cho, "China's Obligations under International Law to Protect North Korean Escapees," (Online Series CO 12-06, 2012.2.21).

party. Nonetheless, anticipated results can be achieved if a careful strategy is established based on the fundamentals of international law. South Korea must establish detailed responses, utilising bilateral negotiations and multilateral human rights mechanisms, based on a close evaluation of the international legal obligations and the responsibilities of Laos, China, and North Korea. Lastly, the ruling and opposition parties should actively work together to enact a North Korean Human Rights Act in order to provide the legal and institutional framework needed to efficiently carry out policies on North Korean escapees and North Korean human rights. © KINU 2013

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