Inter-Korean Dialogue: Is It Possible to Repatriate Murderers without Becoming a Traitor?

On 7 November 2019, South Korea handed over two DPRK citizens to North Korea for the first time. They requested political asylum but, back home, the two had been accused of mass murder. The first deportation (or extradition) of North Korean defectors, who expressed their desire to remain in the ROK, has become the subject of heated and politically charged debates within communities and among human rights advocates.

On 2 November 2019, the two key figures in this story (both approximately 20 years of age) entered the territorial waters of the Republic of Korea (which are part of the Sea of Japan) in a fishing vessel (its displacement tonnage is 17 tons), and said that they wished to defect to South Korea. During an investigation that followed, the two admitted to killing the captain who had mistreated them and 16 members of his crew. The details are truly shocking.

According to South Korean investigators, the defectors first beat the captain of the vessel to death along with another sailor, and then, under the pretext of relieving the watch, they called two more sailors onto the deck every 40 minutes, beat them to death with bats and threw their bodies overboard. Afterwards, the North Koreans attempted to return to shore but one of their accomplices was detained by local police in a port, and the other two members of the crew then decided to defect to South Korea.

On 7 November, the murderers were handed over to DPRK officials at the border crossing in Panmunjom. The plan is
to send the schooner, used by the deported, back to the DPRK too.

The South Korean government justified the decision to repatriate the DPRK citizens by the argument that the two had committed a violent felony and posed a serious threat to the safety of ROK citizens. As a result, the special law on the protection of defectors from the North did not apply to them. In addition, in accordance with international legislation, the criminals were not deemed to be defectors.

The public, the opposition and human rights organizations (including those from the West) were outraged by the deportation. First of all, the young men were sent back home within a matter of days. In fact, their story became widely publicized on the day they were repatriated. This raised questions about whether the authorities had sufficient time for the investigation, and about the reasons why the case lacked public exposure. After all South Korean media outlets enjoy reporting on crimes of this nature. Human rights advocates claim that the ROK officials have not conducted a thorough investigation or found out the real reason behind the defection, and that relevant procedures, in accordance with legislation, have not been followed at the time the fishermen were repatriated. However, the author thinks that South Korea’s forensic specialists must have found sufficient evidence to prove a violent crime had been committed (when examining the vessel) if the description of what had happened was indeed accurate.

Secondly, the deportation of the two North Korean fishermen back home was contrary to international law, as the possibility exists that they will be persecuted in the DPRK because of its extremely merciless legal system. In fact, Phil Robertson, Deputy Director of Human Rights Watch’s Asia division, was among those who made the above point. And the truth is that, in accordance with DPRK’s penal code, mass murder is punishable by death there.

Thirdly, the incident will have untoward consequences for inhabitants of the DPRK and defectors residing in South Korea and beyond. In other words, now an individual who has sought freedom may choose not to defect to the ROK.

Finally, the legality of their North Korean citizenship was questioned, thereby requiring that they be protected according to ROK’s law. Apparently, “the reasons for the deportation provided by the South Korean government fail to comply with every law that pertains to the essence of this issue” including the Constitution of the Republic of Korea, the North Korean Refugees Support Act and all prior verdicts issued by the Supreme Court of Korea. Moreover, the actions taken by the authorities may be defined as a crime against humanity in this case.

The aforementioned stance finds support in Article 3 of South Korea’s Constitution, which “stipulates that the territory of the Republic of Korea (South Korea) shall consist of the Korean peninsula and its adjacent islands,” also, in accordance with ROK’s National Security Act, the DPRK is not recognized as a political entity, i.e. it is an unlawful organization in control of the nation’s northern provinces.

Furthermore, Article 1 of North Korean Refugees Support Act states that “the purpose of this Act is to provide for matters relating to protection and support as necessary to help North Korean residents escaping from the area north of the Military Demarcation Line who desire to be protected by the Republic of Korea, as swiftly as possible to adapt themselves to, and settle down in, all spheres of their lives, including political, economic, social and cultural spheres.”

However, a defector may also be viewed “as a significant threat to national security” if he or she falls into the following categories: “international criminal offenders involved in aircraft hijacking, drug trafficking, terrorism or genocide”, as well as “offenders of nonpolitical and serious crimes, such as murder”, “suspects of disguised escape”, etc. Still, even if the two North Koreans “were deemed to be ineligible for protection, it simply means that their potential government benefits have been stripped away, and in no way does it serve as the basis to make a decision for deportation.”

What is more, based on Supreme Court’s decisions, all North Korean defectors in South Korea are considered to be citizens of South Korea. DPRK residents, irrespective of whether they are defectors or not, or whether they have escaped for political reasons or in order to survive, are automatically granted refugee status no matter what.

This means the assertion by the South Korean government that the two fishermen were not recognized as refugees under international law is incorrect. After all, “North Korean “refugees” are not legally defined as refugees under South Korean law and are legally considered as South Korean citizens.” DPRK citizens may actually “obtain refugee status in China and elsewhere but not in South Korea.”

Therefore, there is currently no legal basis that would allow the South Korean government to deport a South Korean citizen to North Korea. Doing so violates the Constitution and corresponding laws. And in the event of any
contradictions, the first priority is the protection of citizens from a totalitarian regime. And this particular case “should only lay the foundation for improved regulations, not the basis for forced deportation.” If the fishermen were to be charged with the crime of murder, they would be put on trial, in accordance with ROK’s laws.

Hence, it is not surprising that the opposition was outraged by the comment made by the Minister of Unification in which he essentially recognized North Korea as a political entity that criminals could be deported to. According to Minister of Unification Kim Yeon-chul, there is a divide between reality and official regulations. And in fact, the DPRK was deemed to have jurisdiction over this particular case.

Still, some journalists have referred to the decision as a “murderous choice” that would not have been made had it had the same effect on the President’s approval ratings as the economic situation in the nation or an internal political scandal. It is true that for the first time, South Korea has handed over two defectors to the DPRK and has publicized this very fact via all the official channels. Still, in this particular case, the evidence (provided by the North Korean side and by indirect sources) against the individuals accused of mass murder is overwhelming and simply cannot be ignored.

However, there is one more element that has shined a spotlight on this story. Back in the days, for the sake of a feel-good story about a quest for freedom, the ROK accepted any and every DPRK citizen. Later, a number of these famous and much hyped about career defectors turned out to have a proven criminal past. And we are not referring here to those individuals who became a part of a criminal network in China either by force or of their own volition, but the people who escaped prosecution by leaving the DPRK.

The case of Shin Dong-hyuk is one of the more striking examples. This key witness in a 2014 inquiry into human rights abuses of North Korea and an author of gut-wrenching biographies, in the end, turned out to be a liar and a rapist/ pedophile. After these revelations, even the Western author of Shin Dong-hyuk’s biography called him an unreliable story teller. In response to intense criticism that ensued, the former star of practically every large-scale anti-North Korean event dedicated to the protection of human rights left not only his public life of politics but even social networks of his own accord.

Lee Soon-ok, an author of equally well-known, eye-opening accounts, was not, as it turned out to be, a political prisoner but a criminal who had served time for fraud.

Ji Seong-ho was a member of a gang that stole coal and other goods from trains. In fact, he sustained the injury that made him the most famous handicapped defector from North Korea during one such heist. Other well-known defectors were also a part of teenage gangs, as for instance, An Hyuk.

The other side of the coin is that an unusually high percentage of violent crimes in the ROK involves North Korean defectors. It is more or less a well-known fact that these individuals are not model citizens, but far fewer people are aware of the aforementioned statistics. However, up until now, this subject has remained a taboo among South Korean media outlets. According to a 2019 report, three North Korean defectors were denied legal protection in the last 5 years because of their involvement in serious nonpolitical or transnational crimes. The Ministry of Unification’s report from 20 October 2019, “showed that a total of 137 North Korean refugees have been deemed ineligible for protection over the past five years” because of their criminal past. Still, none of these individuals have been deported.

Undoubtedly, the issue of criminals posing as political refugees is wide-spread in other regions, where it causes far more trouble than it does in the ROK. Hence, the author of this article will continue to attentively monitor how Moon Jae-in’s government will try and resolve this complex problem.

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