

# Government and Civil Society Cooperation to Protect Refugee Rights and Development

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Distinguished colleagues from government, university, NGOs, and students;

The Republic of Korea (South Korea) is a fitting host for this meeting on refugee rights, given the example it has shown by ratifying the 1951 United Nations Convention Relating to the Status of Refugees (the 1951 Refugee Convention) in 1992 and for enacting its amended Refugee Act just last month.

In today's global village, people are constantly leaving their homes in search of new opportunities. In public debates, however, the distinction between refugees and other people on the move is often blurred. It is important to remember that refugees have a distinct legal status. Refugees are people who have been forced to leave their country because their lives are in danger. Migrants and other groups on the move make a conscious decision for economic and other reasons. Refugees do not have this choice. Refugees are *forced* to leave and need international protection.

This is why 147 countries across the world have signed the 1951 Refugee Convention and thus have granted refugees a unique legal status. It is shameful that Asia remains the *largest refugee hosting* region with the *fewest* signatories; large populations of refugees are hosted by neighbouring states that have not even ratified the Refugee Convention. The extent to which Korea's asylum policy is an example of good practice will no doubt be among the subjects for extensive analysis, dialogue, and debate throughout this week.

There are an estimated sixteen million refugees in the world today and 80% of them are hosted by states in the Global South, where the Gross Domestic Product (GDP) per capita of most countries is below 3,000 US dollars. South Korea's GDP per capita is 32,000 US dollars!

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Author expresses thanks to organizers and audience of the International Conference for the Protection and Promotion of Rights of Refugees, which was organized by the National Human Rights Commission of Korea, Human Asia and the Korea University's Graduate School of International Studies, and was held in Seoul, Korea on August 21, 2012.

This conference is happening at a time of major refugee crises around the world; 800,000 refugees fled their countries in 2011. There are wars or major military upheavals in Afghanistan and in eastern Democratic Republic of Congo; there is continued insecurity in Iraq, Mali, and in the Rakhine and Kachin states in Myanmar; also in Somalia, Sudan and South Sudan, and perhaps most alarmingly, in Syria—all producing very large numbers of refugees in neighbouring countries and much farther afield.

For example, South Sudan, the world's newest state, is racked by ethnic conflicts *and* renewed fighting with Sudan; thousands of its citizens have had to flee *yet again*. In the Americas, Colombia has produced three quarters of a million refugees; the largest refugee crisis in the Western Hemisphere and the seventh largest refugee population in the world. As staggering as these statistics are, Colombian refugees remain largely invisible and the world seems to have given up on finding any viable answer to their plight.

There are then the situations throughout the Middle East and North Africa, where for decades thousands of refugees who found work without having to apply for status, are now caught up by war or the so-called Arab Spring. I recently visited Choucha camp in southern Tunisia where 3,000 of those refugees who escaped Libya remain trapped. And what about the Iraqis that Syria was hosting when civil war erupted? On Sunday, July 22, 2012, I was on the phone with a Palestinian, who was once hosted by Iraq, from the outskirts of Damascus. He reported that 100 Iraqi refugees were hiding in a school and another 200 were hiding in a Mosque fifteen metres away, with a battle (that I could hear on my phone) going on around them.

Building “visa-walls” by states to protect them from unwanted migration have resulted in a horrific number of asylum seekers perishing in the Mediterranean Sea—but not only there. They are drowning in the seas separating Indonesia from Australia and New Zealand, and in the Red Sea and the Gulf of Aden.

These walls are not metaphorical. Greece is building a six-mile-long and 13-foot-tall barbed-wire-topped fence along its border with Turkey. It will be equipped with a network of night-vision cameras providing live feed to a new command centre; this project will cost a cash-strapped Greece about 5.5 million euros. Israel is similarly securing its border with Egypt. In fact, today it is nearly impossible for any refugee anywhere to find refuge without using a smuggler.

Then there are those refugees who continue to flee persecution from dictatorships. While not suggesting that Africa is the only continent prone to oppressive governance, it is telling that South Africa, which received the largest number of refugees last year, received them from 23 of the 47 African States. Already in 2008 the number of refugees fleeing *Eritrea* alone *surpassed that of Iraq* that year and the Eritrean exodus continues.

The numbers of people forced to seek asylum on the grounds of religious persecution all around the world is increasing, as are those seeking protection

because of their sexual orientation. I would guess that of all professions, there are a greater percentage of journalists who have become refugees than any other profession. As Reporters Without Borders (RWB) puts it: “Never has freedom of information been so closely associated with democracy. Never have journalists, through their reporting, vexed the enemies of freedom so much. Never have acts of censorship and physical attacks on journalists seemed so numerous” (Karlekar 2012).

Another disturbing trend identified by Freedom House in recent years is the decline in media freedom in a number of well-established democracies. As a result of status downgrades in a number of previously Free countries over the past few years—including Hungary, South Africa, and South Korea—the proportion of the global population that enjoys a fully Free press has fallen to its lowest level in over a decade. Currently, only 14.5% of the world’s people—or roughly one in six—live in countries where coverage of political news is robust, the safety of journalists is guaranteed, state intrusion in media affairs is minimal, and the press is not subject to onerous legal or economic pressures. Overall, of the 197 countries and territories assessed during 2011, including the new country of South Sudan, a total of 66 (33.5%) were rated Free, 72 (36.5%) were rated Partly Free, and 59 (30%) were rated Not Free (Karlekar 2012).

And may I call attention to deportations of failed asylum seekers? Because of the absence of legal aid or competent legal assistance, the widespread introduction of so-called safe country lists or fast-track procedures, and the entrenchment of the culture of disbelief among decision-makers, there has been an exponential increase in the deportation of genuine refugees.

It is not surprising that their home states view such deportees as traitors because of what they may have said during their asylum interviews (Ramos 2011; Lyodu 2010). One such Congolese was told by state officials: “[...] You went to a foreign country. You went and said that we don’t respect human rights here [...] that you were ill-treated [...]. And for *having said that over there, here, on principle, we have to arrest you*. Because there, you betrayed our country, you betrayed our government.”

Sudan regards anyone having entered Israel as guilty of treason; and yet Israel continues to deport Sudanese. Everywhere, when failed asylum seekers are deported, the accompanying police routinely hand the deportees over to security officials on arrival; then each failed asylum seeker must account for his deportation. In some cases, like that of Jimmy Mubenga in the United Kingdom (UK) (BBC 2012), deportees are killed in the process of deportation itself by private security “escorts” before ever reaching their destination.

The lobbying efforts of non-governmental organizations (NGOs) in Europe have succeeded in stopping some deportations. But, as the May issue of Fahamu Refugee Legal Aid Newsletter reported, the process seemed not to work when civil society organizations condemned the deportation by South Korea of an

asylum seeker from Uzbekistan only four hours after his asylum claim had been denied (Fahamu Refugee Legal Aid Newsletter 2012). The Asia Pacific Refugee Rights Network cited a 2010 Human Rights Watch report that records grave violations of human rights, including torture of prisoners in Uzbekistan. In the same issue, the Fahamu Refugee Legal Aid Newsletter reported on a Mexican woman deported from Canada, only to be killed in Mexico one month after her deportation.

In July 2012, (over a weekend), I was asked for help to try to ensure the safe arrival in Ethiopia of an Eritrean woman who was a failed asylum seeker in the UK. She had been recognized as a refugee in the Sudan since she was thirteen years old. She spent her adult life as a domestic servant in the Gulf. (The Sudanese government used to be very generous about issuing Convention Travel Documents, a right enshrined in the 1951 Refugee Convention.) Her employers managed to get her an Ethiopian passport to enable them to utilize her services when they travelled to the UK. During one of their visits to the UK, she broke her leg and they had abandoned her on the streets of London. Having been found by an NGO and assisted in applying for asylum, the UK Border Agency rejected her claim. Now 61 years old, she was facing deportation to Ethiopia, a country she had never known, where she did not speak the language, and had no one to receive her. I am happy to report that the NGOs lobbying for her case were successful in getting her deportation cancelled.

Neither the deporting governments nor the United Nations High Commissioner for Refugees (UNHCR) takes any responsibility for the fate of such people. There are many obstacles in monitoring this phenomenon, but given the wide margin for error in Refugee Status Determination (RSD) adjudication, it is essential that some means of protecting these people is found. In the UK, when researchers monitored the outcomes of deportations of Zimbabweans, they convinced the government to reverse its policy, at least for a while.

A Hong Kong lawyer, Mark Daly (2009), uses *only* the Convention Against Torture (CAT) and is saving refugees who have been rejected by UNHCR from *refoulement*. UNHCR is the decision-maker in Hong Kong; China did not extend its ratification of the 1951 Refugee Convention when it resumed control. The Republic of Korea has ratified the CAT and included reference to it in Article 3 of its new Refugee Act; perhaps if lawyers had used CAT as the *first point* in their legal arguments, might they have convinced decision-makers in the failed Uzbekistan case? Did the asylum seeker even have legal assistance?

Deportation leads to the subject of the thousands of refugees and failed asylum seekers languishing in detention, too poor to pay the deportation costs; *many states simply lock them up, throwing away the proverbial key*. As representatives of the International Detention Coalition are present, I am sure that we will hear much more about the desperate situations of these refugees around the world. I will say, however, that it was gratifying to read Article 6 of

your new Refugee Act and see that strict limits on detention of asylum seekers had been introduced; but I was a little confused about how an asylum seeker was to obtain and fill out a form on arrival to present to the immigration officer, and more than a little worried about the powers given the Minister of Justice to reject such a person before the seven-day deadline. *It is before refugees make their first claim for asylum that they need legal assistance.* Can you imagine, were you a refugee, how you would know that you had to link your personal experiences of persecution to one of the five grounds in the Refugee Convention?

South Korea is a country with its own bitter experiences of occupation, war, and flight (Lloyd 1999). Most parts of your country were heavily damaged during the Korean War. About one million civilians were killed, and property damage was estimated at more than one billion US dollars at a time when Korea was just recovering from Japanese occupation and the Second World War.

Such a history should find every Korean citizen, government official, and judge very *empathetic* to the need of others for sanctuary; *why is this sadly so seldom the case?* For example, Israel, despite being a nation of refugees, today is systematically detaining and forcibly returning African refugees. Only some 600 Darfurians are to be given asylum and that only because American Jews put overwhelming pressure on the Israelis to recognize them as genocide survivors (Kaplan 2012).

During the years of the Korean War (1950-53), I was newly married and living in California. My contact with that war and refugees was through one Korean, Hung Ku Pak, whom our family invited to live with us. More importantly, these were also the years of the enactment of the 1950 Statute that established the Office of UNHCR, and of the 1951 Refugee Convention, the first human rights convention of its kind. But, as probably was the case with most Americans, we were completely ignorant of refugee law and unconcerned with Hung Ku Pak's refugee status; he was just someone with a problem. He went on to earn a Ph.D. in sociology. It is regrettable, now that I am here in his country for the first time, that we lost touch over the years.

In terms of the 1951 Refugee Convention and asylum *practice*, it is worth mentioning India's stance during the Korean War. At the end of the Korean War, India played a dynamic role in providing freedom of choice to the prisoners of the Korean War (Kim 2009). A dispute had arisen over the repatriation of prisoners of war. There were some 15,000 Chinese and 8,000 North Korean prisoners who refused to return to their Communist-controlled home countries. Some North Korean captives also refused to return home. By late April 1952, the truce talks were firmly deadlocked over voluntary repatriation, while fighting continued along the battle line. On October 8, the UN Command adjourned the truce talks; it said they would only resume when the Communists were ready to settle the one remaining issue—voluntary repatriation.

India, where a large number of the prisoners were being held, was called

upon to take up the responsibility for the prisoners' repatriation. Largely because it was as a nonaligned country, India had won the confidence of both the parties that it could be expected to act impartially. India, taking considerable risks to its neutral position, insisted the prisoners be given freedom of choice. About 88 ex-prisoners were brought to India after the armistice. Five of them were repatriated later to North Korea and two to China while 55 were sent to Brazil, eleven to Argentina and nine to Mexico; the rest remained in India (Kim 2009).

Although still not a signatory to the 1951 Refugee Convention, India was respecting the Convention's foundation stone, *non-refoulement*, and the principle that any and all repatriations should be voluntary. I was pleased to read that in 2010, South Korea guaranteed asylum seekers' protection against deportation during the asylum process—now Article 3 in your new Refugee Act (Kim 2012).

Today, refugees fleeing the regime to your immediate north continue as a running sore. While this exodus poses particular problems for your government, it was reassuring to see in February this year, 2013—three days after a demonstration on their behalf—your parliament passed a resolution demanding that China stop the repatriation of North Korean refugees, and calling on the UN and other bodies to put pressure on Beijing to follow international law (Salmon 2012). This reaction suggests that Koreans have managed to attain the beginnings of a healthy relationship between government and civil society.

According to UNHCR's 2011 statistics, there are 54 countries each producing 10,000 or more refugees, but there is a total of 163 countries from which refugees fled. There are two points that I would like to make based on these facts. First, there are no states in the world so free of oppressive elements where an individual would not be justified in claiming a well-founded fear of persecution on the grounds of race, religion, nationality, and membership in a social group or political opinion. In short, there is no safe country. Every person asking for asylum, no matter from where they originate, should have access to a fair refugee status determination procedure. In 2010, there were 2,866 United States citizens who made just such a claim in nineteen countries—most fled to Canada. In 2011, the number increased to 3,778! Even Sweden produces refugees: 25 of its citizens found refuge in Canada, the United States, Germany, Lebanon, Australia, and the Netherlands. Of the 413 people who fled South Korea in 2010, most were granted refugee status in Germany, Canada, and the United States.

My second point is related to the first. Argentina, which accepted 3,361 refugees, received the majority from 28 states in Africa. Given the global trajectory of refugee movements, despite its location on the map, perhaps we should not be surprised that South Korea received refugees from 29 countries, 17 of whom were from Africa. Table 1 drawn from UNHCR latest statistics, shows the number and nationalities of refugees that arrived in South Korea in 2011.

Everywhere that states are deciding refugee claims, law firms and NGOs are providing legal assistance, or academics are researching refugee issues, all

**Table 1.** Origins of Refugees and People in Refugee-like Situations Residing in the Republic of Korea, 2011

Country	Number of Refugee
Afghanistan	9
Algeria	4
Angola	2
Bangladesh	50
Cameroon	8
China	21
Côte d'Ivoire	18
Democratic Republic of the Congo	37
Egypt	2
Eritrea	1
Ethiopia	28
Ghana	5
Iran (Islamic Republic of)	15
Iraq	6
Kenya	2
Kyrgyzstan	2
Liberia	2
Myanmar	128
Nepal	4
Niger	1
Nigeria	4
Pakistan	14
Russian Federation	5
Rwanda	2
Somalia	3
Sri Lanka	2
Sudan	1
Uganda	18
Uzbekistan	7

Source: UNHCR. 2012. *UNHCR Global Trends 2011*. Geneva: UNHCR. <http://www.unhcr.org/4fd6f87f9.html> (Refugee Population → Refugees and people in refugee-like situations → Residing in → World → Ref. and ref.-like sit. residing in → Rep. of Korea; Periodicity: Year, Applied Time Period: from 2011 to 2011).

are likely to be assisting people of the same nationalities, so why are we not combining our resources and working together?

What are the resources that are needed for a country like South Korea, or any country, to adequately address this complicated, multi-dimensional challenge? In establishing a system for receiving refugees in any country, introducing legislation is just the first step. Adequately responding to the needs of refugees and the society's support to them will require research and teaching in every discipline and area of study, from psychology, linguistics, anthropology, medicine, politics, law and so on.



First, there is the issue of communication. How does Korea meet the requirements of its new Refugee Act which specifies in Article 14: “When a refugee status applicant cannot fully express him/herself in Korean, the Minister of Justice shall provide an interpreter, who meets the qualifications as determined by the Presidential Decree, to interpret during the course of interviews.” Most of the countries represented in table 1 are themselves multi-lingual. Then there is the need for research on country of origin conditions that is used by legal aid providers to support a refugee’s claim (or by governments to dispute it). There are many sources of such information, and there are also, around the world, many academics prepared to use their research experience to provide expert testimony for the court. However, most decision makers, lawyers and judges, will probably require such evidence to be translated into Korean. These are just a few tasks for which one would almost automatically look to civil society to undertake—finding and training interpreters; researching country of origin conditions. There are many more tasks to be taken up by universities and NGOs.

Article 12 of the Korean Refugee Act gives refugees the right to the services of an attorney. Refugee law is the most complicated area of law, but few lawyers have access to formal training in this field. There has been a response from civil society in setting up NGOs that are involved in providing legal aid, in responding to the material and psychological needs of refugees, and in lobbying for refugees, but these activities need to be grounded in independent academic research and teaching. I hope that universities throughout this region are rising to this challenge and sharing their resources.

In 1982, when I began the Refugee Studies Centre at Oxford, there were only a handful of universities or centers that studied migration and none of them included the study of refugees. Today there are many migration study centers! In Europe alone there are said to be more than 3,000 post-graduate students studying migration each year; sadly only a few of them offer courses devoted solely to the study of refugees as defined in the 1951 Refugee Convention, or consider in their research what is unique to the refugee experience (Patnya 2012). After all, refugees are not *just* migrants. As Secretary-General Ban Ki-moon (2007) has remarked:

Let us recall what sets these families, children and elderly apart from others on the move around the globe. The difference is that they cannot go home. As humankind enjoys unprecedented mobility, with more people than ever before changing countries and even continents in pursuit of better opportunities, let us remember that not everyone who leaves home does so by choice. Refugees do not leave their homes and villages willingly, but are forced to do so by conflict or persecution.

In many cases, Mr. Ban said, “they are fleeing for their very lives, trying to find safety, protection and a way to meet their most basic needs.” Leaving home,



he added, has meant “traumatic experiences of uncertainty, deprivation and intolerance.”

Refugees represent a human rights issue *par excellence*. The way refugees are treated by a particular society is a yardstick by which the observance of human rights generally can be measured. Efforts to improve respect for refugees’ rights can be an entry point for improving the human rights situation for the population as a whole. Any investment in promoting the rights of refugees is an investment in a more just society.

Eleanor Roosevelt was the primary author of the Universal Declaration of Human Rights some 64 years ago; this is the document that effectively brings us together. The Declaration speaks to the rights to safe shelter, education, health care, and gainful employment. And it enshrines rights that we here have taken as a charter for our work.

Article 13 provides that “Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country.” And Article 14 states that “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

Eleanor Roosevelt (1948) has been quoted as saying: “In each generation and in each country there must be a continuation of the struggle [to preserve human rights], and steps forward must be taken—to stand still is to retreat.”

## References

- Ban, Ki-moon. 2007. “International Solidarity Crucial to Meeting Urgent Humanitarian Needs of Refugees, Others Forcibly Displaced.” Message for World Refugee Day on June 20, SG/SM11050 OBV/635 REF/1188, Washington, DC: United Nations. <http://www.un.org/News/Press/docs/2007/sgsm11050.doc.htm> (accessed July 27, 2012).
- BBC. 2012. “Jimmy Mubenga Deportation Death: No Charges Brought.” *BBC News*, July 17. <http://www.bbc.co.uk/news/uk-england-london-18867692> (accessed July 27, 2012).
- Daly, Mark. 2009. “Refugee Law in Hong Kong: Building the Legal Infrastructure.” *Hong Kong Lawyer* (September): 14-30.
- Fahamu Refugee Legal Aid. 2012. “Uzbek Asylum Seeker Deported from South Korea.” *Fahamu Refugee Legal Aid Newsletter*, May 1. <http://frlan.tumblr.com/post/22195766619/deportation-news> (accessed July 27, 2012).
- Gardner, Lloyd C. 1999. “The Korean War: One of the Bloodiest Wars in History.” *IBM World Book*. <http://www.laughtergenealogy.com/bin/histprof/misc/korea.html> (accessed July 27, 2012).
- Human Rights Watch. 2010. “Uzbekistan.” *World Report*. <http://www.hrw.org/world-report-2010/uzbekistan> (accessed July 27, 2012).
- Kaplan, Michael. 2012. “From ‘Save Darfur’ to Expel Darfur: A Zionist Flip-Flop on

- Sudanese Refugees." *Mondoweiss*, June 19. <http://mondoweiss.net/2012/06/from-save-darfur-to-expel-darfur-a-zionist-flip-flop-on-sudanese-refugees.html> (accessed July 28, 2012).
- Karlekar, Karin Deutsch. 2012. "Threats to Worldwide Media Freedom." Tom Lantos Human Rights Commission Hearing on Threats to Worldwide Media Freedom, Freedom House, July 25. <http://www.freedomhouse.org/article/threats-worldwide-media-freedom> (accessed July 27, 2012).
- Kim, Chanwahn. 2009. "The Role of India on the Prisoners of the Korean War." Presented at the International Conference on Genocide, Truth and Justice, Dhaka, Bangladesh, July 30-31.
- Kim, Chulhyo. 2012. "A Step Forwards to Refugee Protection? South Korea's New Refugee Act." *Oxford Monitor of Forced Migration* 2 (1): 8-11.
- Lyodu, Bernadette. 2010. "Uganda: The Silent Practice of Deportations." *Pambazuka News*, May 6. <http://pambazuka.org/en/category/features/64236> (accessed July 27, 2012).
- Patnya, Agata. 2012. "Is Migration Studies Failing to Defend Migrant Rights?" *Opendemocracy*, July 30. <http://www.opendemocracy.net/5050/agata-patnya/is-migration-studies-failing-to-defend-migrant-rights> (accessed August 20, 2012).
- Ramos, Catherine. 2011. "Unsafe Return: Refoulement of Congolese Asylum Seekers." *Justice First*, November 24. <http://pambazuka.org/en/category/features/64236> (accessed July 27, 2012).
- Roosevelt, Eleanor. 1948. "The Struggle for Human Rights." Presented in Paris, France, September 28. <http://etc.usf.edu/lit2go/185/civil-rights-and-conflict-in-the-united-states-selected-speeches/4853/the-struggle-for-human-rights-paris-france-september-28-1948/> (accessed July 27, 2012).
- Salmon, David. 2012. "South Korea Passes Resolution on North Korea Refugees." *BBC News*, February 28. <http://www.bbc.co.uk/news/world-asia-17187469> (accessed July 28, 2012).

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