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Refugee Protection under Bilateral Treaties: Double Standards in Refugee Treatment or a Potential Form of Inter-Regional Burden- Sharing?

(Case Study of Ex-Detainees from
Guantanamo Seeking Asylum in Central
Asia)

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Overview

- General overview: Guantanamo detainees and geography of their resettlement/relocation
- Legal status of Guantanamo ex-detainees in Kazakhstan
- Implications and prospects for inter-regional burden-sharing

Guantanamo Detainees

- Since 2002: 779 detainees
- 2009: US President Obama's order to close the Guantanamo detention centre – 242 detainees to be dealt with
- **Problem:** not all cleared for release could be returned to CoO due to:
 - Internal armed conflict (e.g. Yemen, Tunisia)
 - Reasonable risk of persecution for having been detained in Guantanamo (e.g. detainees of Uyghur ethnicity from China)
 - Risk of ex-detainees' joining militant groups against the US (e.g. due to radicalisation while in detention)
 - Statelessness as a ground for non-admission by countries of origin
- June 2016: 79 remain, 29 are cleared for release

Where were Guantanamo ex-detainees resettled/relocated?



- **Total:** 92 detainees resettled from Guantanamo in 24 countries
- **Note:** participation of non-parties of the 1951 RC: UAE, Oman, Qatar, Cape Verde, Palau

Legal Status of Ex-detainees

- Dec 2014: arrival of ex-detainees in Kazakhstan (KAZ): 3 nationals of Yemen and 2 of Tunisia
- Officially declared **as refugees** by KAZ Ministry of Foreign Affairs
- Kazakhstan:
 - member of the 1951 Refugee Convention and all universal human rights treaties;
 - has national refugee law and RSD procedures;
 - the text of the law and by-laws is compliant with international standards, BUT refugee protection may fail in practice

Legal Status of Ex-detainees

KAZ Refugee Law	Refugee Protection for Guantanamo Ex-Detainees in Practice
1. No extended refugee definition : no status for applicants without individualised risk of persecution from armed conflict zones	1. Refugee status was granted on the basis of extended refugee definition
2. No prima facie refugee status , RSD is mandatory for all applicants	2. Prima facie status was granted
3. Right to free movement in the territory and choice of settlement location	3. Denied: settled in a location with predominantly non-Muslim population; allegedly no right to visit other cities and travel abroad
4. Right to family reunification	4. Denied
5. Access to education, social assistance, and employment	5. Assistance by Red Crescent Society of Kazakhstan: language classes, financial assistance, housing. No legal grounds for permanent residence

What can be implied?

- **Relevant to the case:**
 - Double treatment standards: the officially declared 'refugee' status of ex-detainees is not compatible with the national legislation and international standards
 - **Cannot be regarded as a good example** of inter-regional cooperation and burden-sharing for both legal and moral reasons

Wider implications and prospects

- Inter-regional cooperation on relocation of **people with protection needs** is possible not only in theory but in practice
- **Self-interest** as an essential ground for compliance with international refugee law: how to make cooperation and solidarity a self-interest of individual states?
- **Privately negotiated asylum under bilateral treaties** - a new form of cooperation?
- **Bilateral treaties** may offer greater protection to refugees if properly drafted and implemented – can add control by state-parties and complaint mechanism not available under the 1951 RC Convention
- 1951 RC standards can be incorporated in bilateral treaties with non-member states (cf INCOTERMS in international contract law)
- The possibility for **expanding protection space in Kazakhstan and Central Asia** should be further explored. Potential factors for research: **positive examples of integration** of forcibly displaced peoples during the Soviet regime, **geopolitical** situation, socio-economic and political **constraints**, etc.