

# The Rights of Non-Citizens

## I. Introduction

### *Who is a Non-Citizen?*

According to Merriam Webster's Collegiate Dictionary, "a citizen is a member of a state to whom he or she owes allegiance and is entitled to its protection." Hence, from this definition, it is implicit that a non-citizen is someone who is not a member of a state nor owes allegiance to the state he or she currently resides.

A better definition is provided by Article 1 of the [UN Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live \(1985\)](#). A non-citizen is defined as

"any individual who is not a national of a State in which he or she is present."

There are certain inalienable rights (outlined in the [Universal Declaration on Human Rights of 1948](#)) to which all humans, regardless of citizenship or nationality, are entitled in principal. These rights, established by the [Declaration of Non-Nationals \(1985\)](#), comprise the basis for this study guide.

## II. Key Terms: Definitions and Significance

**Asylum** – Legal protection from human rights violations constituting persecution, committed by the government of a person's own country. It is provided by another country to a person who is not a citizen but who flees to that country to escape persecution (refugee).

*Significance* – Under Article 14 of the [Universal Declaration of Human Rights](#), everyone has the right to seek and enjoy asylum. This provision does not mean that everyone has the right to be granted asylum, but only the right to apply for it.

**Deportation** – Deportation occurs when a nation removes and sends a non-citizen (alien) back to the country from which he or she came.

*Significance* – Article 13 of the [International Covenant on the Civil and Political Rights](#) recognizes the rights of all aliens lawfully in the territory of a state party to be expelled from the state only pursuant to a decision reached in accordance with law (including fair procedure) except where national security is an issue.

**Detention** – The exercise of physical restraint upon an individual depriving him or her of liberty and holding him or her in government custody for reasons other than to face criminal charges.

*Significance* – According to Article 9 of the [International Covenant on the Civil and Political Rights](#), 1) everyone has the right to liberty and security of person; No one shall be subjected to arbitrary arrest or detention, 2) anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power

and shall be entitled to trial within a reasonable time or to release and 3) anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court.

**Discrimination** – Is treating people differently because of their race, religion, ethnic group, color, creed, political opinion, or other status or characteristic, when there is no legal justification for doing so.

*Significance* – Some distinction between adults and children, citizens and non-citizens, men and women may be made by society, but only so long as there exists, in human rights law terms, a “reasonable and objective justification” for such discrimination; there must be no alternative measure that could be contrary with human dignity and human rights.

**Undocumented Non-citizen** – A person who is in a country in which he or she is not a citizen, without any legal right or permission to be present, and can be removed by that country. (Other terms have been used, including “illegal alien,” “undocumented worker,” “undocumented migrant.”)

*Significance* – The [International Covenant on the Civil and Political Rights](#) Article 2.1 recognizes certain civil and political rights in “all individuals within its territory and subject to its jurisdiction”, including illegal aliens. It states further that everyone can exercise all human rights “without distinction of any kind, such as race, colour, birth or other status.”

**Migrant Worker** – A person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state of which he or she is not a national. ([International Convention on the Protection of All Migrant Workers and Their Families 1990](#))

*Significance* – While migrant workers and the families have sought employment and better living conditions in other states for centuries, it was not until the post-World War II period that the demands for workers to meet the needs of industrial recovery led to migrations of workers to the industrial centers. Though many industrial states have been parties to [International Labor Organization \(ILO\)](#) conventions on migration for employment, non-national workers have often been subjected to broader violations of human rights.

**Nationality** – The quality or character that arises from the fact of a person’s belonging to a nation or state. Nationality determines the political status of the individual, especially with reference to allegiance.

*Significance* – According to Article 24 of the [International Covenant on the Civil and Political Rights](#), every child has the right to acquire a nationality.

**Refugee** – A person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality, and is unable to or, owing to such fear, is unwilling to avail himself or herself of the protection of that country or return there because there is fear of persecution.” ([United Nations Convention Relating to the Status of Refugees 1951](#) and [Protocol 1967](#))

*Significance* – Under the international human rights principle of non-refoulement, a state cannot deport an alien in any manner to a border of a territory where his or her life or

freedom would be threatened on account of his or her race, religion, nationality, membership in particular social group, or political opinion. ([Convention Relating to the Status of Refugees 1951](#) and [Protocol 1967](#))

### III. Rights at Stake

In 1985, the United Nations proclaimed the [Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live](#). The Declaration was designed to ensure that the fundamental human rights provided in the International Covenants on Human Rights would also be guaranteed to non-citizens. The Covenants are legally binding documents, which require each state that has ratified them to protect certain human rights for all individuals within its territory and subject to its jurisdiction. The Declaration serves as a guide for states as they design and implement laws to protect human rights.

Articles 5 – 10 of the [Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live](#) sets out the rights of non-citizens (referred to as “aliens” in the Declaration):

**• *Aliens must receive the same treatment as nationals of the country in which they live with regard to the following rights:***

The right to life and security of the person, including freedom from arbitrary arrest or detention

Protection against arbitrary or unlawful interference with privacy, family, home or correspondence

Equality before the courts, including the free assistance of an interpreter

The right to choose a spouse, to marry, and to found a family

Freedom of thought, opinion, conscience and religion

The right to retain language, culture and tradition

The right to transfer money abroad

**• *The following rights must be granted to aliens so long as they do not interfere with national security, public safety, public order, public health or morals or the rights and freedoms of others:***

The right to leave the country

The right to freedom of expression

The right to peaceful assembly

The right to own property individually or in association with others

Liberty of movement and freedom to choose their place of residence within the borders of the country

The right of spouse and minor or dependent children to join a lawful alien, as provided by national law

• ***Aliens lawfully residing in the country must be granted the following rights so long as they observe the country's laws and respect the customs and traditions of the people:***

The right to safe and healthy working conditions, fair wages, and equal pay for equal work

The right to join trade unions

The right to social services, health care, education, and social security

• ***The following additional rights of aliens are particularly enumerated in the Declaration:***

Protection from torture or cruel, inhuman, or degrading punishment

Freedom from being subjected to medical or scientific experimentation without the alien's free consent

Protection against arbitrary or unlawful expulsion from the country

The right to defend oneself from expulsion, except where compelling reasons of national security require otherwise

Protection from being arbitrarily deprived of lawfully acquired assets

The right to communicate at any time with the consulate or diplomatic mission of the country of which he or she is a national

### ***Key assistance agencies***

The following organizations play key roles in assisting and protecting non-citizens worldwide:

### **[United Nations Committee on the Elimination of Racial Discrimination](#)**

The Committee on the Elimination of Racial Discrimination (CERD) was created in 1965 to monitor and review the actions of states in fulfilling their obligations to the [International Convention on the Elimination of All Forms of Racial Discrimination](#). The Convention was designed to eliminate discrimination perpetrated by governments on the basis of race, color, descent, and national or ethnic origin. States that are parties to the Convention submit reports to the Committee every four years detailing actions they have taken to comply with the Convention. In addition, individuals and groups who believe that they have been victims of discrimination by a state party may communicate their complaints directly to the Committee, which will debate the matter and make recommendations to all parties involved.

## **IV. International Instruments of Protection**

### *United Nations Treaties and Instruments*

#### [The Universal Declaration of Human Rights](#) (1948)

This document defines the fundamental rights of all people -- regardless of legal status. Article 14(1) states that “everyone has the right to seek and to enjoy in other countries asylum from persecution.” Article 15 stipulates, “everyone has the right to a nationality” and that “no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”

#### [International Covenant on Civil and Political Rights](#) (1976)

Every nation who has ratified the Covenant has agreed to grant “all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (article 2.1). The rights mentioned above include the right to fair procedure, freedom of expression, and protection from tyranny and injustice. This Covenant further prohibits the expulsion of lawful aliens from a nation without fair procedures, except when national security does not permit. The alien must also be provided with representation.

#### [Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live](#) (1985)

Establishes the rights of legitimate aliens to “security”, “privacy”, “to be equal before the courts”, “to choose a spouse, to marry”, “freedom of thought”, “the right to leave the country”, and the right to be joined by a spouse and dependent children (article 5). Also, the Declaration makes clear that aliens have the right to a safe working environment (article 8).

#### [Convention Relating to the Status of Stateless Persons](#) (1960)

Establishes a state’s obligation to “facilitate the assimilation and naturalization of stateless persons” (article 32) as well as a stateless person’s right to the basic freedoms listed above.

#### [World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance](#) (2001)

Adopted on September 8, 2001, in Durban South Africa. Acknowledges that immigrants have been denied asylum and human rights by racist agendas in many nations and calls for states to ensure that the laws and policies relating to all immigrants are in accordance with the Universal Declaration of Human Rights.

#### [Convention on the Elimination of All Forms of Racial Discrimination](#) (1969)

This Convention calls for an end to all forms of discrimination, including prejudice against aliens seeking asylum or citizenship, as stated above.

### [International Convention on the Protection of All Migrant Workers and Their Families](#) (1990)

Clarifies the wide-ranging freedoms due to those migrant workers who are legally employed in a country other than their own, including: freedom of expression (article 12), protection from discrimination (article 7), and the right to procedurally fair process (article 16.7). The treaty allows for states to limit the employment options of migrant workers (articles 51, 52) and to take action against migrant workers considered ‘irregular’—those whose presence is not sanctioned by the state in question.

### [Migration for Employment \(ILO 97\)](#) 1952

This treaty stipulates that each member state will “facilitate the departure, journey, and reception of migrants for employment”(article 4). Upon arrival migrant workers are entitled to help finding employment (article 2), medical care (article 5), and to be treated no different than a legal citizen in regards to protection from discrimination, social security, housing, and right to be collect a salary (article 6).

### [Protocol against the Smuggling of Migrants by Land, Sea, and Air](#) (2001)

Condemns the practice of smuggling migrants and makes clear that the migrants in question are to be immune from criminal charges (article 5) and to be swiftly and humanely returned to their country of origin (article 18). Provisions for the education of citizens about the harms of smuggling (article 15) and for preventing further smuggling by addressing the legal and socio-economic causes of smuggling migrants (article 15) are also established.

### [Discrimination \(Employment and Occupation\)](#) (1960)

Calls for foreign nationals to be free from discrimination when seeking employment.

## **V. Regional and National Instruments of Protection**

### *Europe*

#### [Amsterdam Treaty Amending the Treaty on the European Union and the Treaties Establishing the European Communities](#) (1999)

The Amsterdam treaty went into force on May 1, 1999. The treaty expanded on details of immigration and asylum which had been initially discussed in the treaty of Maastricht. Under the Treaty of Amsterdam, the European Council must adopt the following defining measures within five years since the treaty went into force: each member state is responsible for examining an asylum claim and must set minimum standards on the reception of asylum seekers, minimum standards on the qualification of third country nationals as refugees and beneficiaries of subsidiary protection, minimum standards on procedures for granting and withdrawing refugee status, and minimum standards for giving temporary protection.

#### [Common European Asylum System](#) (ECRE)

ECRE was developed at the Tampere European Council of 1999. ECRE is based on the full and inclusive application of the Refugee Convention and Protocol. In addition, the EU agreed

on a Charter of Fundamental Rights at the European Council in December 2000, which included a right to asylum. ECRE made representations to the drafting body on the content of this right to ensure that it applies to both EU citizens and third country nationals.

### *The Americas and Africa*

#### [American Convention on Human Rights](#) (O.A.S.)

Grants citizenship to a person born in a given nation if he or she has no other nationality (article 20). Protects the rights of aliens from being deported to countries where the alien's well being is threatened due to "race, nationality, religion, social status, or political opinions" (article 22.6,8.).

#### [Council of the League of Arab States](#)

Declares "no citizen shall be arbitrarily deprived of his original nationality, nor shall his right to acquire another nationality be denied without a legally valid reason"(article 24). The right to seek political asylum (article 23) is also established.