

THE FACTS: IMMIGRATION AND HUMAN RIGHTS



INTERNATIONAL HUMAN RIGHTS PROTECT EVERYONE.

Human rights apply to everyone, whether they are immigrants or not. Human rights are the “rights that one has because one is human.”¹ These international ethical standards uphold the minimum requirements so that individuals and communities everywhere can live in dignity and realize their potential. Human rights can neither be taken away, nor are they based on status or official recognition. As one scholar has noted “[t]he human rights identified and protected in international human rights treaties derive from human dignity, and human dignity does not turn on the type of passport or visa a person holds.”²

INTERNATIONAL TREATIES ADDRESS THE RIGHTS OF IMMIGRANTS AND REFUGEES.

Nations, including the United States,³ have signed several international human rights instruments that address, either directly or indirectly, issues relating to non-citizens. Some of these instruments are legally binding documents for signatory nations. International instruments that protect the rights of non-citizens, migrants, refugees, and asylum-seekers include:⁴

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention Relating to the Status of Refugees 1951
- Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live
- Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Rights of the Child
- Convention Related to the Status of Stateless Persons
- World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance
- Protocol Against the Smuggling of Migrants by Land, Sea and Air
- International Convention on the Protection of All Migrant Workers and Their Families
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

NON-CITIZENS HAVE SPECIFIC RIGHTS AND PROTECTIONS.

Non-citizens leave their familiar surroundings, their culture, or their families to provide a safer, more prosperous future for their children, yet they face significant risks of human rights abuses. As United Nations Secretary-General Kofi Annan has said, “[t]here is abundant evidence that migrants, and in particular migrant women and unaccompanied children, are often denied access to health and education; subjected to physical, psychological, and sexual abuse; prevented from reuniting with their families, and detained and deported in conditions that violate international human rights standards and make them vulnerable to networks of smuggling and trafficking in persons.”⁵ Discrimination towards migrants often worsens such abuses. Because of their vulnerability, non-citizens are protected by some additional rights and international human rights instruments.

- Non-citizens **must** receive the same treatment as nationals in:
 - The right to life and security of person, including freedom from arbitrary arrest or detention
 - Protection against arbitrary or unlawful interference with privacy, family, home or correspondence
 - Equality before the courts
 - The right to choose a spouse, to marry, and to establish 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 non-citizens **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

- Governments shall, to the extent of available resources, protect the rights of **everyone** to:
 - Work
 - Just and favorable working conditions
 - Establish trade unions
 - Social security
 - Adequate standard of living
 - Highest attainable standard of health
 - Education
 - Participation in cultural life

A REFUGEE OR ASYLUM-SEEKER REQUIRES EXTRA PROTECTION.

Refugees and asylum seekers are persons who have been forced to flee their home countries because of highly dangerous situations, such as wars, dictatorships, and even genocides. They have fled persecution based on race, religion, nationality, membership in a particular social group, or political opinion.⁶ A refugee applies for protection while outside the United States, while an asylee first comes to the United States and then applies for protection.⁷ According to a recent report by the Office of the United Nations High Commissioner for Refugees (UNHCR), there were 8.4 million refugees at the end of 2005 and 668,000 asylum seekers worldwide in 2005.⁸

One legal scholar wrote that “[p]ersecuted, generally homeless, and by definition unable to turn to their own governments for protection, refugees are utterly dependant on the good will of the people and the governments of foreign lands.”⁹ Department of Homeland Security Secretary Michael Chertoff recently described refugees as “**the world’s most vulnerable people**,”¹⁰ emphasizing that the “**United States is deeply committed to protecting and assisting refugees**” as a vital component of the goal of securing our homeland.¹¹

LAWS PREVENT DEPORTATION TO A SITE OF PROBABLE PERSECUTION.

Under the international human rights principle of **non-refoulement**, a country cannot deport a non-citizen 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 a particular social group, or political opinion.¹² Article 3 of the Convention Against Torture applies this principle to victims of torture, prohibiting governments from returning anyone to a country where he or she is at risk of torture.¹³



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SOURCES FOR “IMMIGRATION AND HUMAN RIGHTS ”

¹ Jack Donnelly, *Universal Human Rights in Theory and Practice* 7 (2nd 2002).

² David Cole, *The Idea of Humanity: Human Rights and Immigrants' Rights*, 37 COLUM. HUMAN RIGHTS L.REV. 627, 629 (2006).

³ For a list of U.S. signatures and ratifications of human rights treaties see <http://www1.umn.edu/humanrts/research/ratification-USA.html>.

⁴ These documents can be accessed from the University of Minnesota Human Rights Library, available at:

<http://www1.umn.edu/humanrts/treaties.htm>.

⁵ Statement by UN Secretary-General Kofi Annan's on International Migrants Day, Press Release SG/SM/8563 OBV/320 (18 December 2002) available at: <http://www.un.org/News/Press/docs/2002/SGSM8563.doc.htm>.

⁶ 1951 Convention Relating to the Status of Refugees (and amended by 1976 Refugee Protocol), Article 1, available at:

http://www.unhcr.ch/html/menu3/b/o_c_ref.htm.

⁷ Facts on Refugees and Asylees, available at: <http://www.energyofanation.org/2f999ab3-09b9-4de4-83f9-2a83d6379d51.html?NodeId>.

⁸ 2005 Global Refugee Trends: Statistical Overview of Populations of Refugees, Asylum-seekers, Internally Displaced Persons, Stateless Persons, and Other Persons of Concern to UNHCR, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=4486ceb12>.

⁹ Stephen P. Legomsky, *Immigration and Refugee Law and Policy* 915 (4th 2005).

¹⁰ Statement by Homeland Security Secretary Michael Chertoff in Commemoration of World Refugee Day (6 June 2006) available at: <http://www.dhs.gov/dhspublic/display?theme=43&content=5700>.

¹¹ Id.

¹² 1951 Convention Relating to the Status of Refugees, Article 33, available at: http://www.unhcr.ch/html/menu3/b/o_c_ref.htm.

¹³ 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 3, available at: <http://www.ohchr.org/english/law/cat.htm>.