

The Rights of Non-Citizens

Introduction

Who is a Non-Citizen?

In the human rights arena the most common definition for a non-citizen is:

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

This definition comes from 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 *national* may or may not be a citizen depending on the constitutional requirements of each state for citizenship and for entitlements to full civil, political, and legal rights.

Thus all citizens are nationals though not all nationals are citizens. This definition is broad enough to adjust for fact that each state's constitutional provisions for membership is slightly different.

However, there are certain inalienable rights (outlined in the Universal Declaration on Human Rights 1948) that all humans, regardless of citizenship or nationality, are entitled to. These rights are specifically dictated by the Declaration of Non-Nationals (1985).

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.

Under Article 14 of the UNHR, everyone has the right to seek and enjoy asylum. This 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 across the border to the country from which he or she came.

Article 13 of the International Covenant on the Civil and Political Rights (ICCPR) recognizes the right of all aliens lawfully in the territory of a state party to be expelled from the state only in pursuance to a decision reached in accordance with law and, except where national security reasons to a decision reached otherwise, to be allowed the right to submit reasons to the government against their expulsion and have their cases heard by a competent government authority, with legal representation.

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.

According to Article 9 of the ICCPR, 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.

Though 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 taken that would not be inconsistent with human dignity and human rights. All discrimination must comply with basic human rights.

Illegal Aliens – A person who is in a country in which he or she is not a citizen and in which he or she has no legal right or permission to be, and who can be removed by that country.

The ICCPR 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 the human rights in the ICCPR “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)

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 thriving industrial centers. Though many industrial states were signatories to International Labor Organization (ILO) conventions on migration for employment, non-national workers were often 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.

According to Article 24 of the ICCPR, 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)

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)

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 for in the International Covenants on Human Rights would be guaranteed to non-citizens.

Declarations verses Covenants

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.

Declaration are not legally binding; however, they serve as guides for states as they design and implement laws to protect human rights.

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