

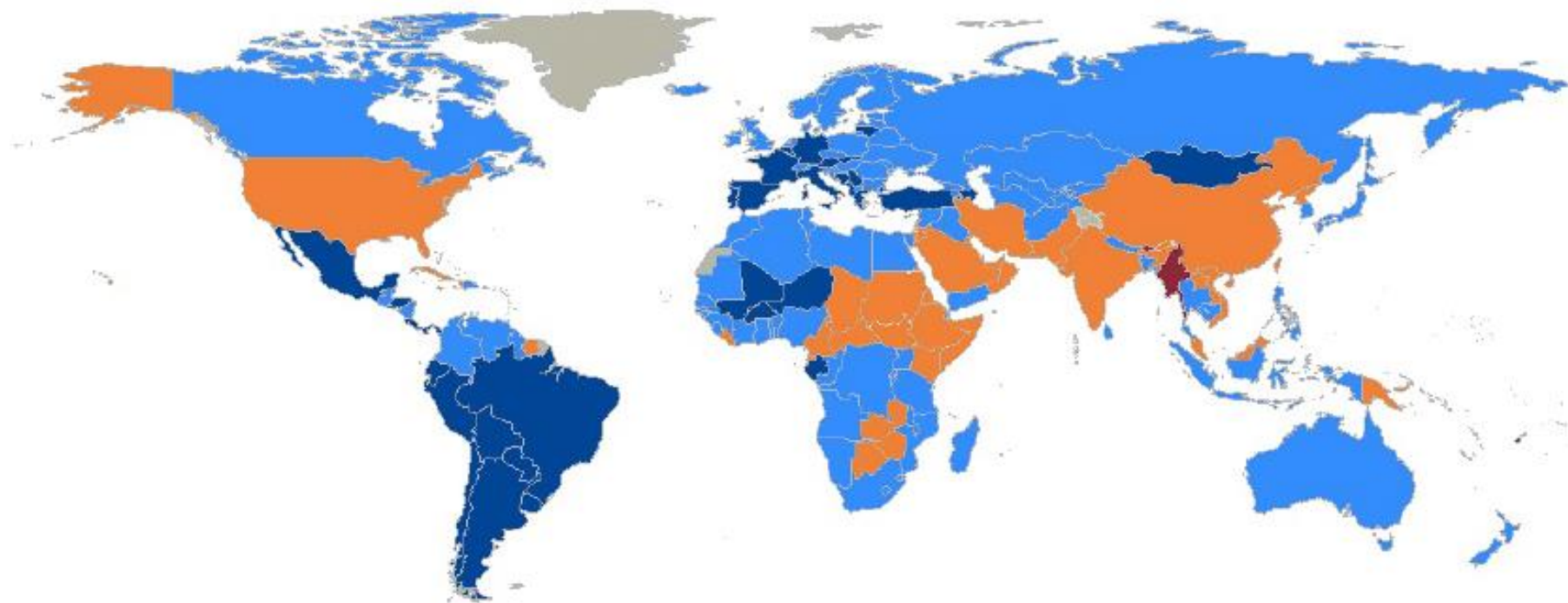
International Human Rights Protection

- **UN Charter Order**
- **UN Treaties**
- **ILO**
- **International Criminal Law (Special Tribunals and ICC)**
- **International Humanitarian Law (Geneva Conventions)**
- **1951 Refugee Convention**
- **Regional Conventions (ECHR, IACHR, OAS)**

“Core” UN Human Rights Norms

- International Declaration on Human Rights (IDHR)
- International Convention on Civil and Political Rights (ICCPR)
- International Convention on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of Race Discrimination (ICERD)
- International Convention Against Torture (CAT)
- International Convention on the Elimination of Discrimination Against Women (CEDAW)
- International Convention on the Rights of Persons with Disabilities (ICRPD)
- International Convention for Protection of All Persons From Forced Disappearance (ICPFD)
- International Convention on Protection of All Migrant Workers and Their Families (ICPMW)
- International Convention on Rights of the Child (ICRC)

Ratification of 18 International Human Rights Treaties



Status of Ratifications
■ 15-18 ■ 10-14 ■ 5-9 ■ 0-4

Definition and meta-data: <http://www.ohchr.org/Documents/Issues/HRIndicators/MetadataRatificationStatus.pdf>

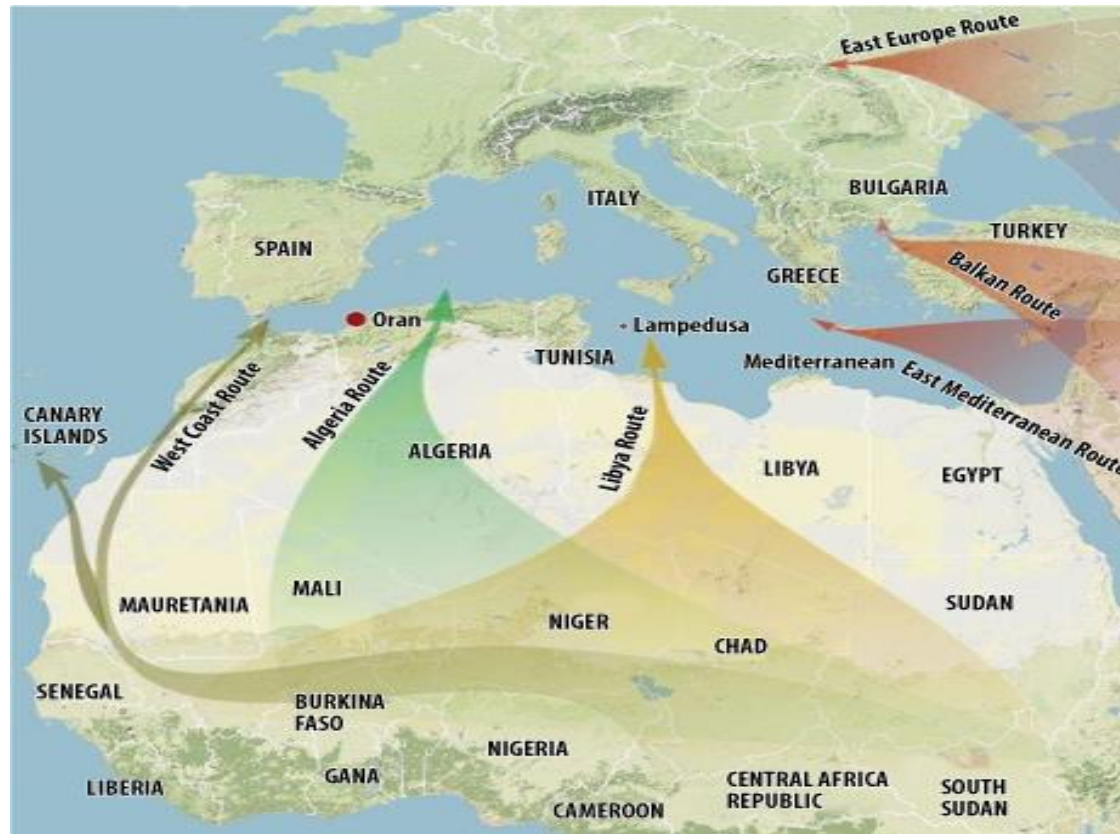
Status of Ratifications

Human Rights Instrument : (Date into force)	Ratification Status	Declaration
International Convention on the Elimination of All Forms of Racial Discrimination :1969	Signature: 1966, Ratification/Accession: 1994	✓
International Covenant on Civil and Political Rights :1976	Signature: 1977, Ratification/Accession: 1992	✓
Optional Protocol to the International Covenant on Civil and Political Rights :1976	Signature: NA, Ratification/Accession: NA	
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty :1991	Signature: NA, Ratification/Accession: NA	
International Covenant on Economic, Social and Cultural Rights :1976	Signature: 1977, Ratification/Accession: NA	
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights :2013	Signature: NA, Ratification/Accession: NA	
Convention on the Elimination of All Forms of Discrimination against Women :1981	Signature: 1980, Ratification/Accession: NA	
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women :2000	Signature: NA, Ratification/Accession: NA	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment :1987	Signature: 1988, Ratification/Accession: 1994	✓
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment :2006	Signature: NA, Ratification/Accession: NA	
Convention on the Rights of the Child :1990	Signature: 1995, Ratification/Accession: NA	
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict :2002	Signature: 2000, Ratification/Accession: 2002	✓
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography :2002	Signature: 2000, Ratification/Accession: 2002	✓
Optional Protocol to the Convention on the Rights of the Child on a communications procedure :1753	Signature: NA, Ratification/Accession: NA	
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families :2003	Signature: NA, Ratification/Accession: NA	
International Convention for the Protection of all Persons from Enforced Disappearance :2010	Signature: NA, Ratification/Accession: NA	
Convention on the Rights of Persons with Disabilities :2008	Signature: 2009, Ratification/Accession: NA	
Optional Protocol to the Convention on the Rights of Persons with Disabilities :2008	Signature: NA, Ratification/Accession: NA	

Positive Obligations to Protect Against Private Violence - Courts

- **Opuz v. Turkey** (ECtHR 2010) Violence is a violation of the right to be free from torture and inhuman treatment under ECHR Art 3 and Art 8 right to life; gender-based violence is a form of discrimination under ECHR.
- **González et. Al. v. México** (IACtHR 2009) The state is responsible for ineffective investigation and prosecution of private violence, which is a form of discrimination against women.

2015 Forced Migration – The Largest Humanitarian Disaster in Generations



1951 Geneva Convention Relating to the Status of Refugees



- Provides international framework for determining who is a refugee
- Purpose – to provide surrogacy protection in the absence of national protection

1951 Refugee Convention

Refugee: Defined as someone who is “outside the country of his nationality” and:

“...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 unable or, owing to such fear, is unwilling to avail himself of the protection of that country...”

Non-Refoulement



- Fundamental principle underlying the 1951 Refugee Convention – Article 33
- A state will not return a person to any territory where he or she is likely to face persecution, ill treatment or torture

Relationship Between Asylum and Refoulement

Asylum

- Positive Duty: Entails admission, residence, protection
- Fundamental aspect of Convention that underscores right of refugees under to seek protection even if their actions constitute a breach of domestic laws in the country of asylum.

Refoulement

- Negative Duty: Obligation to not compel a person to return to a country of persecution
- Does not require country provide individual with asylum
- Does not prohibit expelling person to a safe third country

Rights Accorded Refugees Under the Convention

- The Convention is a status and rights-based instrument underpinned by fundamental principles of non discrimination, non-penalization and non-refoulement
- Rights attach once a person meets the definition of refugee; no official validation needed
- Rights apply as soon as refugees come under state's de jure or defacto jurisdiction, such as on the high seas

Absolute Rights that Apply with No Qualification

- Non-refoulement
- Non-discrimination
- Access to courts
- Exemption from exceptional measures
- Education
- Same treatment as nationals with regard to rationing
- Cannot impose fiscal charges or taxes higher than those imposed on nationals
- Facilitate naturalization
- Sympathetic consideration to transfer of assets, safeguarding of property

Protection Against Detention

Refugee Convention

- No penalties for asylum seekers
- If necessary, must be humane, dignified, take into account special needs

ICCPR

- No arbitrary detention, must be legal and necessary in a democratic society

Convention on Rights of the Child

- Detention should be last resort, only when all else fails

UN Standard Minimum Rules for Treatment of Prisoners

- Refugees should be kept apart from regular criminal detainees



Right to Family

Refugee Convention - Recommendation B; Ensure unity of family

ICCPR Human Rights Committee

"Family" must be given broad interpretation

Convention on Rights of the Child

Child shall not be separated from parents
Appropriate assistance for refugee children

Family reunification in humane, expeditious manner with right to regular contact

CEDAW

Convention on Protection of Migrant Workers

Special provisions for families in foreign countries

Facilitate reunification of families



The legal definition of Refugee under U.S. law: [101\(a\)\(42\)](#)
[of the Immigration and Nationality Act \(INA\)](#).

Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, **and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution** on account of race, religion, nationality, membership in a particular social group, or political opinion...

The U.S. Asylum Process

- Protection given to persons already in the U.S. or at the border
- Asylees receive certain benefits
- Affirmative and Defensive Asylum
- Expedited Removal and Asylum Screenings



Special Areas of Concern

- Length of Time to Apply for Asylum
 - Length of Asylum Process
 - Increased Restrictions on Asylum – Asylum Ban, “Protection Protocols”, Matter of A-B; Muslim Ban
 - Lack of Legal Representation
 - Lack of International Accountability
- Increased Detention in Contravention of International Law
 - Family Separation
 - Reduction in Immigration Judges independence and Increase in Case Loads
 - Daily Policy and Legal Changes

