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The Rights of Refugee and Migrant Children: International Law and National Implementation

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Abstract

International child migration is one of the most important humanitarian and legal challenges of the contemporary international system, as refugee and migrant children face multidimensional vulnerabilities due to conflict, instability, economic pressures, and forced displacement. Although the international legal system has established broad standards for the protection of children, the practical implementation of these rights is not uniform at the national level. The purpose of this study is to analyze the international legal framework for the rights of refugee and migrant children and assess their national implementation, to clarify the gap between international law and national practice. This study was conducted through a legal-analytical and thematic analysis, in which international conventions, theoretical literature, and examples of national implementation, particularly the case of Afghanistan, were evaluated. The findings demonstrate that international law unequivocally affirms the rights to life, education, identity, protection, and asylum; however, the level of practical implementation depends on factors such as political will, security policies, administrative capacity, economic resources, and citizenship policies. In addition, anti-migrant social attitudes have a direct impact on the effectiveness of legal protection. The study concludes that the problem lies not in the absence of legal standards, but in structural limitations in implementation. Therefore, effective protection of the rights of refugee children requires practical coordination between international standards and national policies.

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Introduction

In the contemporary international system, international child migration is one of the most serious and complex human rights issues. Every year, wars, political instability, economic poverty, climate change and humanitarian disasters force millions of children to flee their countries and seek refuge in other areas for safety, education and survival. These children not only face the dangers of migration, but the special vulnerability of childhood further complicates their situation. For this reason, the rights of refugee and migrant children have a special place on the agenda of international legal systems.

The international system, in particular the United Nations, has established fundamental instruments and obligations to protect the rights of children. The Convention on the Rights of the Child (CRC) and the Convention Relating to the Status of Refugees (1951) are clear examples of this effort, in which refugee children are recognized as deserving of special protection. In addition, the United Nations High Commissioner for Refugees (UNHCR), in coordination with States, provides policies and guidelines for the protection, registration, education and resettlement of refugee children.

Despite the relatively broad and advanced international legal framework, practical realities show a significant gap between commitments and implementation. Many States, despite having ratified international conventions, fail to ensure the full

implementation of the rights of refugee children due to national legislation, administrative capacity, and political will and security policies. In some countries, detention of children, limited access to education, denial of citizenship and separation from family members are problems that are considered to be violations of international obligations. This situation raises the issue of a practical gap between international law and national policies.

The main problem of this study focuses on this point: if international legal instruments set clear standards for the protection of refugee children, why are there serious shortcomings in implementation at the national level? Is the problem in the text of the law or in the implementation mechanism? And to what extent do political, economic and social factors affect the implementation of these rights?

The objectives of the study are as follows: First, to analyze and assess the international legal framework for refugee and migrant children; Second, to assess the implementation of these rights from the perspective of national laws and policies; Third, to identify the legal and political factors that contribute to the gap between international commitments and national practice; And fourth, to provide practical and legal recommendations for effective implementation. Overall, this study seeks to examine the legal status of refugee children not only as recipients of humanitarian assistance, but also as rights-holders in light of international commitments and national obligations.

The issue of children's rights in migration and migration-related migration has been extensively studied in the international human rights literature. Research shows that refugee children face particular vulnerabilities and are entitled to special protection under international conventions (Bhabha, 2014; Lawrence *et al.*, 2019)^[1, 7]. The Convention on the Rights of the Child (CRC, 1989) guarantees the rights to life, education, identity, protection and asylum, and establishes the principle of the "best interests of the child" as the basis for all decisions.

International legal studies have shown that the legal status of refugee children is not only based on international commitments but also on the quality of national implementation. Goodwin-Gill and McAdam (2021)^[3] argue that the international legal framework for refugees is broad and normative, but weak national implementation limits the effectiveness of these rights. According to Bhabha (2014)^[1], the differences between a child rights perspective and a welfare perspective play a significant role in the effectiveness of policymaking and practical implementation.

Regional studies, particularly on Afghanistan, show that protracted conflict, instability and economic constraints pose serious obstacles to the legal protection of refugee children. UNHCR (2022) and UNICEF (2022) reports indicate that restrictions on access to education, identity registration, citizenship and health services are important factors in the non-implementation of international standards. The literature analysis also shows that the gap between international law and national practice is a multidimensional phenomenon involving legal, political, economic and social factors.

In conclusion, previous writings have provided extensive evidence on the development of international standards, the limitations of national implementation, the importance of the best interests of the child and the impact of anti-migrant social ideologies. This analysis forms the basis of the current research and provides guidance for identifying the legal and practical aspects of the gap between international law and

national implementation.

Conceptual Framework

A clear conceptual and theoretical framework is essential for the academic study of the rights of migrant and refugee children, as the concepts of "child", "refugee" and "refugee child" are not just social or humanitarian terms, but have specific legal meanings that are defined under international law. Furthermore, the distinction between rights-based and welfare-based approaches to child protection has profound implications for policy-making and the nature of legal obligations. Therefore, this section provides an analytical review of the key concepts, theoretical perspectives and international legal instruments.

The most explicit definition of a child in the international legal system is provided in the Convention on the Rights of the Child, which defines a child as a human being below the age of eighteen years unless, under national law, majority is attained earlier (CRC, 1989). This definition sets an international standard and forms the basis for the legal protection of children.

This legal definition is not only intended to determine age, but also to refer to the child's particular vulnerability, physical and mental development, and need for special protection. Therefore, international law does not assess children as adults, but rather imposes special obligations on States for their development, identity, and protection (Van Bueren, 1995)^[17].

The legal definition of a refugee is provided in the 1951 Refugee Convention. According to this definition, a refugee is someone who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country (Refugee Convention, 1951).

This definition has two important elements: First, forced displacement; Second, the lack of protection by the state. Accordingly, a refugee is not just a refugee, but a person who is considered to be entitled to international legal protection (Goodwin-Gill & McAdam, 2007)^[3].

Characteristics of Refugee Children

When both the legal statuses of child and refugee are combined, a complex legal and humanitarian situation arises. Refugee children face multiple vulnerabilities: Physical and mental frailty due to age, and Social and legal instability due to displacement. They are often deprived of education, health services, family unity and legal identity. In addition, they are at increased risk of exploitation, trafficking, neglect and detention (UNHCR, 2018). From the perspective of international law, the fundamental principle of refugee child protection is the "best interests of the child," and all legal and administrative decisions must be based on this principle (CRC, 1989).

There are two main theoretical perspectives on child protection: a) Welfare Approach considers children as beneficiaries or vulnerable beings who should be protected. In this perspective, the state provides services based on moral or humanitarian considerations, but these services are not always considered a legal obligation. b) Rights-Based Approach, children are considered individuals with full rights, and states are obliged by international law to guarantee their rights. This perspective recognizes the child as a right-

holder, not a requester (Freeman, 2007). The contemporary international legal system, in particular the International Convention on the Rights of the Child, supports the rights-based approach, because it defines the legal responsibilities of states, not just moral obligations.

The international legal framework for the protection of refugee children is based on two core instruments: The Convention on the Rights of the Child (1989) guarantees the rights to life, education, health, identity, protection and non-discrimination and considers the best interests of the child to be a fundamental principle. The Convention Relating to the Status of Refugees (1951) provides a legal framework for the definition, protection, non-refoulement and fundamental rights of refugees. The combined implementation of these two instruments ensures special legal protection for refugee children. The most important implementing agency in the international refugee protection system is UNHCR. It monitors the implementation of international legal standards, provides technical assistance to States, regulates the registration and protection of refugees, and develops policies addressing the specific needs of refugee children (UNHCR, 2022). This organization is considered an important mechanism for coordination between international legal obligations and national implementation.

International Legal Framework

The international legal framework for the rights of refugees and migrant children is the result of the interaction of the general international human rights system and specific migration legal instruments. This framework obliges States to guarantee the rights of the child to survival, development, dignity and protection, regardless of the child's nationality, migration status or legal status. International standards are developed and implemented under the auspices of international institutions, in particular the United Nations, UNHCR and UNICEF, which play a key role in policy-making, monitoring and advocacy. The international legal system has defined specific rights and state obligations for migrant children based on the International Convention on the Rights of the Child (1989) and the Convention Relating to the Status of Refugees (1951). The main components of these rights are analyzed below.

The right to life of a child is a fundamental principle of international human rights. The Convention on the Rights of the Child obliges states to take all necessary measures to ensure the survival and development of the child (CRC, 1989, Art. 6). This obligation is not limited to the protection of physical life, but also includes the provision of health services, a safe environment and basic necessities. The right to life is particularly important for refugee children, as they face a high risk of death due to conflict, dangerous migration routes, human trafficking and border restrictions. Under international law, policies that prevent rescue or return a child to danger constitute a violation of the right to life (Goodwin-Gill & McAdam, 2021) [1].

Education is a fundamental right of a child for social integration, psychological stability and future opportunities. The Convention on the Rights of the Child obliges states to make primary education accessible to all children (CRC, 1989, Art. 28). This principle also applies to refugee children, regardless of their migration status. International legal analysis shows that education is not just about physical access, but also about quality, non-discrimination and continuity of learning. Lack of documentation, language

barriers and economic pressures are structural factors that undermine the realization of the right to education, and States have an obligation to take positive measures to overcome these obstacles (UNESCO, 2019) [10].

The right to identity is the foundation of a child's legal existence. The Convention on the Rights of the Child guarantees birth registration, a name, nationality and the preservation of family relations (CRC, 1989, Arts. 7–8). Refugee children are often at risk of lack of documentation and statelessness. From the perspective of international law, statelessness prevents access to several fundamental rights, such as education, health and legal protection. Therefore, States are obliged to prevent the loss of nationality and to protect the legal identity of the child (UNHCR, 2014).

The right to identity is the foundation of a child's legal existence. The Convention on the Rights of the Child guarantees birth registration, a name, a nationality and the preservation of family relations (CRC, 1989, Arts. 7–8). Refugee children are often at risk of being undocumented and stateless. Under international law, statelessness prevents access to several fundamental rights, such as education, health and legal protection. Therefore, States are obliged to prevent the loss of nationality and to protect the child's legal identity (UNHCR, 2014).

Refugee children are at high risk of exploitation, forced labour, sexual abuse and recruitment into armed conflict. International legal instruments oblige States to prevent all forms of physical or mental violence against children (CRC, 1989, Art. 19). In international legal analysis, the obligation to protect has three dimensions: prevention, protection and accountability. Border detention centres and informal settlements are places that require specific legal protection mechanisms, as these environments are considered to be high-risk environments for children (UNICEF, 2021).

The right to seek asylum is a central principle of international refugee law. The Convention Relating to the Status of Refugees (1951) guarantees the principle of non-refoulement, according to which no asylum seeker, in particular a child, may be returned to a place where his or her life or freedom would be at risk (Refugee Convention, 1951, Art. 33). International legal standards in children's cases give priority to the principle of "the best interests of the child", i.e. the child's safety and well-being should be the primary consideration, rather than migration control (CRC, 1989, Art. 3).

The principle of non-discrimination is a general foundation of international human rights law. The Convention on the Rights of the Child obliges states to implement all rights without distinction as to nationality, race, language or migration status (CRC, 1989, Art. 2). Legal analysis shows that non-discrimination is not only about not making distinctions, but also about taking active steps to correct structural inequalities. This is because refugee children need additional protection due to their particular vulnerability (Bhabha, 2014) [1].

National Implementation

The existence of international standards on the rights of refugee and migrant children does not guarantee their practical implementation. The impact of international law largely depends on the national legislation, administrative capacity and political will of States. Therefore, assessing national implementation is important to show the extent to which international obligations are being implemented in

practice (Shirzay *et al.* 2025)^[4]. In developed countries, there are generally specific legal and administrative mechanisms for refugee children, such as special asylum procedures, educational guarantees and social support. However, strict border control policies, detention centres and administrative delays prevent the full implementation of international standards (Bhabha, 2014; Tarahkil, & Akhtar, 2026)^[1, 9]. In regional and developing countries, the challenges are often resource constraints, weak registration systems and chronic instability, which limit the legal protection of refugee children. This situation reflects the practical gap between international commitments and national capacity (UNHCR, 2022).

Afghanistan is a country facing serious challenges in the legal protection of refugee children due to protracted conflict, instability, and widespread displacement. Despite the adoption of international principles, several key challenges are observed in terms of national implementation: Afghanistan has general laws on child protection, but a specific and comprehensive legal framework for refugee and displaced children is limited. There are provisions on asylum and citizenship, but their practical implementation is inconsistent (ICRC, 2021). Administrative capacity is limited, registration systems are incomplete, and monitoring mechanisms are weak. International organizations, especially UNHCR, have an important supporting role, but national institutions do not have full capacity (UNHCR, 2023). Many refugee and displaced children remain outside the school system. Economic poverty, lack of documentation and geographical restrictions pose serious obstacles to the realization of the right to education (UNICEF, 2022). Birth registration is weak, making the process of establishing identity and acquiring citizenship difficult. This situation increases the risk of statelessness and limits access to other rights, such as education and health (UNHCR, 2014). Citizenship acquisition processes are complex and lengthy, and many children face a lack of legal recognition, which reduces their level of legal protection (Manby, 2018)^[8]. Although prolonged detention of children is not an official policy, displaced children live in informal camps, where health, education and protection facilities are limited (IDMC, 2023).

Materials and Methods

This study analyzes the gap between the international legal framework and national implementation of the rights of refugees and migrant children in a scientific and normative manner. The choice of methodology was based on the purpose of the study, the subjective and analytical nature of the analysis, and the results obtained. The study has a qualitative-legal analytical design, which aims to examine the gaps, problems, and legal gaps between international law and national implementation. This design is based on the analysis of legal documents, national regulations, international reports, and existing literature, and has enabled the extraction of conclusions through thematic analysis.

The research material is divided into three main sections. First, international documents and conventions, such as the Convention on the Rights of the Child (CRC, 1989) and the Convention Relating to the Status of Refugees (1951), set out the basic principles and obligations for the protection of migrant children. Second, national laws and implementing documents, in particular the Afghan Child Protection Law, national regulations on citizenship and asylum, and related

services of educational, health, and security institutions. Third, literature and reports, such as reports and academic articles from international organizations (UNHCR, UNICEF, ICRC, UNESCO), provide a broad basis for international legal analysis.

Data collection was conducted through secondary sources, as legal analysis and national implementation assessment are conducted in this way effectively and standardized. The data collection process allows for thematic recording and analysis through the study of international conventions, national laws and policies, international reports, and literature.

Data analysis was conducted through a combination of thematic analysis and comparative legal analysis. Thematic analysis included the gap between legal identity and practical protection, the dual identity of the child and the refugee, the impact of state-centered security policies, the importance of identity and documentation, and the structural constraints of national implementation. The comparative analysis compared international principles and national implementation (especially the case of Afghanistan) and analyzed the gap between international standards and national policies. Through this analysis, the relationship between the effectiveness of international law, national constraints, and practical obstacles was clarified.

The limitations of the study are also considered. First, the study relies only on secondary data, which has limited field data. Second, national implementation is analyzed specifically for the example of Afghanistan, which may not be fully generalizable to the situation in other countries. Third, there are also limitations in the availability and freshness of reports and documents during the data analysis. Overall, this study examined the gap between the international legal framework and national implementation through a qualitative-legal analytical method. The selection of materials was based on international conventions, national laws, international reports, and academic literature, and the data analysis was conducted using a subjective and comparative legal method. The results provide a normative and analytical perspective on the effectiveness of international law, national constraints, and practical implementation gaps.

Result

This section is structured based on the integration of the conceptual and analytical findings of the Supporting Article, the analysis of the international legal framework, and the assessment of national implementation. The aim of the analysis was to show to what extent international legal standards are implemented in the real lives of refugee children and to answer the main research question. Based on the literature and other legal analyses, five main thematic categories emerged:

1. **The gap between legal recognition and substantive protection:** The literature shows that refugee children have been recognized as persons with rights, but states often frame practical policies based on border security and national interests, rather than on the rights of the child. This represents a fundamental gap between international commitments and actual practice.
2. **The dual identity of “child” and “refugee”:** Analysis shows that refugee children are neither just migrants nor

just children; rather, the combined effects of both situations multiply their vulnerability. At the policy level, this shared identity is often overlooked, leading to weak protection.

3. The dominance of state-centered security policies: In contemporary international politics, states prioritize border control over the best interests of the child. This tendency manifests itself in the form of detention, restricted education, and limited legal access.

4. The fundamental importance of identity and documentation: Birth registration, citizenship, and legal recognition form the foundation for the realization of all other rights. Wherever identity is unknown, education, health, and legal protection are also limited.

5. Structural constraints to national implementation: Resource constraints, weak administrative systems, and political instability hinder the implementation of international obligations, especially in conflict-affected countries such as Afghanistan.

Table 1: Comparative results of national implementation

Indicator	Developed Countries	Regional Countries	Afghanistan
Legal Framework	Advanced	Limited	Relatively present
Implementation Mechanism	Strong	Moderate	Weak
Educational Access	Relatively high	Irregular	Limited
Identity Registration	Systematic	Incomplete	Weak
Citizenship	Legal procedures exist	Complex	Difficult
Camps	Official monitoring	Limited resources	Informal

According to the analysis, the international system—particularly the United Nations—has established comprehensive norms for the rights of refugee children, but the level of effectiveness depends on three factors: 1. Political will, 2. Administrative capacity, 3. Economic resources, Wherever these three factors are weak, rights remain enshrined in law.

Based on the thematic analysis and comparative assessment, the answer to the research question can be summarized as follows: International law broadly guarantees the rights of refugee children in theory and law, but these rights are not realized equally in practice due to uneven national implementation.

Table 2: Summary of Thematic and Comparative Findings on Refugee Children’s Rights

No.	Key Dimension	Summary
1	International Standards	Strong international norms and legal principles exist to protect refugee children’s rights.
2	Legal Framework	Comprehensive legal frameworks are formally established at the international level.
3	Implementation	Application of these rights is uneven and inconsistent across countries.
4	National Mechanisms	Domestic institutional and enforcement mechanisms are often weak or ineffective.
5	Political Priorities	National political interests and policy choices frequently hinder full implementation.
6	Overall Conclusion	The core problem is not the absence of legal protections, but the gap between legal commitments and practical implementation.

So the real problem is not the lack of law, but the implementation gap.

The following table provides a comparison between international legal principles and practical realities:

Table 3: Analytical assessment of the implementation of international law

International Legal Principle	Legal Guarantee	Practical Situation	Analytical Assessment
Right to Life	International conventions guarantee survival	Dangerous migration routes, armed conflicts	Partial implementation
Education	Non-discriminatory access guaranteed	Documentation, language, and poverty create barriers	Limited implementation
Identity	Birth registration and citizenship	Weak registration systems	Significant gap
Protection from Violence	State obliged to prevent and protect	Camps and trafficking pose high risks	Inadequate protection
Asylum	Principle of non-refoulement	Border restrictions	Political limitations
Non-Discrimination	Legal equality	Practical disparities	Structural discrimination

All the conclusions reveal three fundamental truths: 1. Refugee children are recognized as having full rights under international law. 2. States do not fully implement these rights due to security policies. 3. Effective protection of rights requires coordination of international standards and national implementation.

Discussion

The results of this study show that the international legal system has established broad and normative standards for the protection of refugees and migrant children, but the level of practical implementation varies significantly between countries. This finding confirms the existence of a deep

structural gap between international law and national practice. Although international institutions such as the United Nations and UNHCR play an important role in setting and supporting standards, the actual realization of rights largely depends on the domestic policies and capacities of states. The following is an analytical analysis of the results to identify the main factors behind this gap.

Political Factors: The results show that the most important determinant of the implementation of international law is the political will of the state. Most states ratify international conventions, but in practical policy, they prioritize national interests. The issue of migration often becomes a sensitive issue of domestic politics, as it is linked to national identity, resources and security. For this reason, the principle of the best interests of the child is often subject to political calculations. This finding shows that international legal obligations are not sufficient on their own; political commitment is a prerequisite for implementation. Wherever political will is weak, international standards remain only in legal texts.

Security-Oriented Policies: Thematic analysis shows that a state-oriented security perspective prevails over a child-oriented perspective. Border controls, immigration restrictions and detention policies often overshadow the needs of children. The results show that states are taking measures to control refugee flows that are contrary to the spirit of international legal principles, in particular the principle of non-refoulement and the principle of the best interests of the child. This situation shows that security policies are a significant obstacle to the implementation of the human nature of international law.

Administrative Weakness: The results show that weak administrative capacity is a major factor in the non-implementation of international standards, especially in conflict-affected and low-income countries. Incomplete registration systems, weak monitoring mechanisms and limited service institutions hinder the implementation of legal obligations. For example, in Afghanistan, the limited birth registration, the lack of education services and the lack of a well-organized protection system show that legal principles cannot be effective without administrative capacity. This finding demonstrates that the implementation of international law is not only a legal issue, but also requires administrative capacity.

Economic Constraints: Economic resources are a fundamental condition for legal implementation. According to the results, countries with limited financial resources for public services are unable to establish comprehensive systems of education, health and social protection for refugee children. Economic constraints have a dual impact: 1. Direct reduction of services; 2. Increased political opposition, as host communities are concerned about the distribution of resources. Economic vulnerability is therefore a major structural obstacle to the implementation of international obligations.

Citizenship Policies: The issue of identity and citizenship is a fundamental condition for the realization of all rights, according to the results. Children who do not have formal citizenship or legal recognition are excluded from education,

health, and legal protection systems. Many states have restrictive citizenship laws or weak birth registration, which increases the risk of statelessness. This finding shows that citizenship policies are directly related to the spirit of international law; the more limited access to citizenship is, the more limited the implementation of international rights is.

Anti-Refugee Sentiment: An important social finding of the results is that public opinion plays a significant role in shaping policies. In societies where migrants are perceived as an economic burden or a security threat, governments tend to implement restrictive immigration policies. Anti-migrant sentiments lead to discriminatory treatment, limited access, and cumbersome legal processes. This situation shows that the implementation of international law is not just a legal or administrative issue, but also has a social and cultural dimension. The results of this study collectively demonstrate that the international legal framework is normatively strong, but the structural environment for implementation is weak. Political calculations, security priorities, economic constraints, and social pressures reduce the practical impact of international law. The problem is not in the definition of rights; the problem is in the context of implementation. This interpretation is consistent with a broad view of international law studies, according to which international law is not effective until it is integrated with national policies, institutional capacity, and social support systems.

The gap between international law and national practice is a multidimensional phenomenon in which legal, political, economic and social factors interact. Unless States fundamentally integrate a child-rights perspective alongside security and political priorities, international standards will not have their full practical impact. Therefore, three conditions are essential for the effective protection of the rights of refugee children: 1. strong political commitment; 2. strong institutional and economic capacity; 3. a climate of social acceptance. In the absence of these three, international law remains normative but not enforceable.

Conclusion

This study analytically examined the relationship between the international legal framework for the rights of refugee and migrant children and their national implementation. The findings revealed that the international system—particularly the United Nations and related legal instruments—has developed a relatively comprehensive and advanced legal framework for refugee children, guaranteeing the rights to life, education, identity, protection, and asylum. Normatively, international law is based on a child-rights perspective and considers refugee children as full human beings with rights.

However, the main conclusion of the study is that the strength of legal standards is not commensurate with the level of their practical implementation. Based on national experiences and case studies, it was revealed that the gap between international law and national practice is a fundamental and multidimensional reality. Political priorities, security policies, institutional weaknesses, economic constraints, restrictive citizenship regimes, and anti-migrant social attitudes are important factors that limit the implementation of international obligations.

The study concludes that the problem is not a lack of legal principles, but rather a structural lack of implementation. International standards exist, but their effectiveness depends

on the political will, administrative capacity and social support of States. Therefore, effective protection of the rights of refugee children cannot be guaranteed by the ratification of international conventions alone, but requires a profound reform of national policies, institutions and practical mechanisms. Finally, the study emphasizes that international standards and national implementation must be coordinated to truly realize the rights of refugee children. Until the principle of the best interests of the child is at the heart of States' migration and security policies, international law will have normative value but will not have full practical impact.

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