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**The Role of International Human Rights Law in Shaping National Immigration Policies**



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## The Role of International Human Rights Law in Shaping National Immigration Policies



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### Abstract

**Purpose:** The main objective of this study was to explore the role of international human rights in shaping national immigration policies.

**Methodology:** The study adopted a desktop research methodology. Desk research refers to secondary data or that which can be collected without fieldwork. Desk research is basically involved in collecting data from existing resources hence it is often considered a low cost technique as compared to field research, as the main cost is involved in executive's time, telephone charges and directories. Thus, the study relied on already published studies, reports and statistics. This secondary data was easily accessed through the online journals and library.

**Findings:** The findings revealed that there exists a contextual and methodological gap relating to the role of international human rights in shaping national immigration policies. Preliminary empirical review revealed that international human rights law plays a pivotal role in influencing the development and implementation of national immigration policies. Secondly, the extent to which international human rights law impacts national immigration policies varies across countries and regions. Factors such as domestic political considerations, security concerns, and economic interests often interact with human rights norms, leading to a spectrum of policy outcomes. Moreover, the role of international institutions and mechanisms, including regional human rights bodies and international courts, cannot be understated. These institutions contribute to the enforcement of international human rights law and provide avenues for individuals and organizations to challenge states' immigration policies that violate human rights standards.

**Unique Contribution to Theory, Practice and Policy:** The Constructivism theory, Rationale Choice theory and the Institutionalism theory may be used to anchor future studies on international human rights laws. The study made the following recommendations: firstly, the enhancement of awareness and education, strengthening accountability mechanisms, promotion of regional cooperation, capacity building, and research and monitoring. The role of international human rights law in shaping national immigration policies is a dynamic and evolving area that requires continued attention and commitment from the global community. By recognizing the fundamental importance of human rights in immigration policies and implementing the recommendations outlined above, nations can strive for more just and humane immigration systems that protect the rights and dignity of all individuals, regardless of their immigration status.

**Keywords:** *International Human Rights Law, National Immigration Policies, Human Rights Norms, Immigration Regulations, Legal Frameworks*

## 1.0 INTRODUCTION

National immigration policies refer to the set of laws, regulations, and practices established by a country to manage the entry, stay, and rights of foreign nationals within its borders. These policies vary widely from one nation to another and can be influenced by a complex interplay of political, economic, social, and security factors. Immigration policies typically address issues such as visa issuance, refugee and asylum procedures, family reunification, employment-based immigration, and deportation. They play a crucial role in shaping a country's demographic composition, economic workforce, and overall social fabric. In the United States, immigration policies have undergone significant changes over the years, reflecting both domestic priorities and international developments. For instance, the Immigration and Nationality Act of 1965 (Hart-Celler Act) shifted the U.S. immigration system from one based largely on nationality to one emphasizing family reunification and employment-based preferences. This legislative change resulted in a more diverse immigrant population. According to the Pew Research Center (Passel & Cohn, 2019), in 2017, the U.S. immigrant population reached a record high of 44.4 million, making immigrants 13.7% of the total population.

Subsequent policy changes, such as the Immigration Reform and Control Act of 1986 (IRCA), aimed to address undocumented immigration. However, unauthorized immigration remains a significant issue. Orrenius and Zavodny (2015) analyzed the impact of IRCA and found that it led to a decrease in the number of undocumented Mexican immigrants living in the United States, while the number of legal Mexican immigrants increased. Nonetheless, the issue of undocumented immigration continues to be a contentious topic in U.S. politics.

More recent policies, such as the Deferred Action for Childhood Arrivals (DACA) program, have granted temporary legal status to undocumented immigrants who arrived in the U.S. as children. A study by Hipsman and Meissner (2019) in the Migration Policy Institute examined the demographic characteristics of DACA recipients. They found that as of 2017, approximately 700,000 individuals were enrolled in the DACA program, with many pursuing education and employment opportunities in the United States. National immigration policies are dynamic and multifaceted, reflecting a nation's values, interests, and changing demographics. In the United States, immigration policies have evolved over time, leading to a diverse immigrant population. While some policies, like DACA, have aimed to provide opportunities for certain undocumented immigrants, issues related to unauthorized immigration remain a challenge. Research on immigration policies and their effects is crucial for informed policymaking and addressing the complex issues surrounding immigration.

National immigration policies are often shaped by a nation's historical, economic, social, and political context and may evolve over time in response to changing circumstances. In the United Kingdom (UK), immigration policies have undergone significant transformations, with notable trends in recent years. One key trend in UK immigration policy has been the pursuit of a more selective and skills-based approach. The UK government introduced a points-based immigration system in December 2020, prioritizing individuals with specific skills, qualifications, and job offers. According to data from the UK's Office for National Statistics (ONS), there was a significant decline in the number of EU nationals coming to the UK for work-related reasons after Brexit, with a decrease of 35% from September 2020 to September 2021 (ONS, 2021).

Another noteworthy aspect of UK immigration policy is the emphasis on family reunification. The government aims to reunite families by allowing British citizens and settled persons to sponsor close family members for visas. For example, the "Spouse Visa" allows married partners to join their British or settled spouses in the UK. In 2019, the ONS reported that family-related immigration remained one of the largest categories, comprising 44% of all immigration to the UK (ONS, 2019). Additionally, the UK has taken steps to address refugee and asylum-related matters. The government participates in international agreements such as the Refugee Convention and has established the "Vulnerable Persons



Resettlement Scheme" to provide protection for refugees. In 2020, the UK granted asylum or protection to over 20,000 individuals, according to data from the Home Office (Home Office, 2021).

However, UK immigration policies have also faced criticism, particularly regarding their perceived lack of flexibility and inclusivity. Some argue that the policies create barriers for asylum seekers and refugees and may contribute to social exclusion. For instance, a 2018 report by the British Red Cross pointed out concerns about the "hostile environment" policy, which aimed to make it more challenging for undocumented immigrants to access services like healthcare and housing (British Red Cross, 2018). UK national immigration policies have evolved to reflect changing priorities, such as skills-based selection, family reunification, and refugee protection. While these policies aim to address specific needs and challenges, they have also faced criticism for their perceived harshness and potential negative impacts on vulnerable populations. These trends and debates continue to shape the complex landscape of UK immigration policies.

National immigration policies vary significantly from one nation to another and are influenced by a complex interplay of political, economic, social, and security factors. Japan, as an example, has a unique immigration policy framework characterized by stringent entry requirements and a preference for skilled workers. According to Arai and Thang (2018), Japan's immigration policies have been evolving over the years to address demographic challenges and labor market needs.

Japan's immigration policies have historically been restrictive, with a strong emphasis on preserving cultural and social homogeneity. However, in recent years, there has been a gradual shift towards a more open approach to immigration due to demographic issues such as an aging population and a declining workforce. Statistics from the Ministry of Justice in Japan reveal a notable increase in the number of foreign residents in the country. For example, in 2010, there were approximately 2.1 million foreign residents in Japan, which increased to around 3.4 million by 2020 (Ministry of Justice, 2020). This trend reflects Japan's recognition of the need to attract foreign talent and labor to sustain its economy.

Japan's immigration policies are primarily focused on attracting skilled workers and professionals. The country has introduced various visa categories to facilitate the entry of foreign nationals with specific skills and qualifications. For instance, the Specified Skilled Worker visa, introduced in 2019, allows foreign workers to fill labor shortages in certain industries. Additionally, the Highly Skilled Professional visa program aims to attract talented individuals in fields such as research, business, and academia (Arai & Thang, 2018). These policies reflect Japan's intention to address its labor needs while maintaining a selective approach to immigration.

Japan's immigration policies are also shaped by the government's desire to maintain security and social cohesion. Stringent background checks and strict eligibility criteria are applied to prospective immigrants. Japan has a relatively low refugee recognition rate compared to other developed countries, which is indicative of its cautious approach to asylum seekers (Arai & Thang, 2018). This policy reflects Japan's concerns about national security and its preference for controlled immigration.

Japan's national immigration policies have evolved over the years, responding to demographic challenges and labor market needs. While historically restrictive, Japan has introduced measures to attract skilled workers and professionals. The country's approach to immigration remains selective, with a focus on maintaining security and social cohesion. The statistics indicate a growing foreign population in Japan, which underscores the importance of immigration policies in addressing demographic and economic challenges.

Sub-Saharan African countries exhibit a diverse range of immigration policies due to their unique historical, economic, and geopolitical contexts. Sub-Saharan African countries generally fall into three categories regarding immigration policies: those with relatively open policies that encourage labor

migration, those with restrictive policies to protect domestic labor markets and security concerns, and countries with a mix of both. For example, South Africa has faced significant challenges in managing immigration due to its strong economy. Its immigration policies include issuing work permits to foreign nationals for specific job categories, with the aim of addressing labor shortages. In contrast, countries like Zimbabwe have implemented stricter immigration policies due to economic and security concerns, with measures such as visa restrictions and deportations (Smith, 2018).

Trends in immigration policies in Sub-Saharan Africa have been influenced by various factors, including economic growth, political stability, and regional dynamics. Countries like Ethiopia have experienced an increase in immigration due to economic development, leading to policies that attract foreign investment and skilled labor (Adepoju, 2016). Meanwhile, countries in conflict, such as South Sudan, have seen a displacement of their own citizens, which has implications for immigration and refugee policies (Grawert, 2018).

Regional organizations like the African Union (AU) and the Economic Community of West African States (ECOWAS) have also played a role in shaping immigration policies in Sub-Saharan Africa. For instance, ECOWAS has implemented a regional protocol that allows for the free movement of citizens within member states, influencing immigration policies to align with regional integration goals (Chuku, 2016). National immigration policies in Sub-Saharan Africa exhibit a wide range of approaches, influenced by economic, political, and regional factors. These policies can vary from relatively open approaches aimed at attracting foreign investment and skilled labor to restrictive measures aimed at protecting domestic labor markets and addressing security concerns. Trends in immigration are dynamic, with countries adapting their policies in response to changing circumstances, such as economic growth or conflict. Regional organizations like the AU and ECOWAS also play a role in shaping immigration policies to promote regional integration and cooperation.

International human rights law is a body of legal principles, treaties, conventions, and customary norms that establish the fundamental rights and freedoms to which all individuals are entitled, regardless of their nationality, race, gender, or other characteristics (United Nations, 1948). These rights include, but are not limited to, the right to life, liberty, and security of person, freedom from torture and discrimination, and the right to seek asylum from persecution (Universal Declaration of Human Rights, Article 3; United Nations, 1951). International human rights law forms the foundation for global efforts to protect and promote the dignity and well-being of individuals.

International human rights law has a significant impact on the formulation and implementation of national immigration policies. It serves as a framework that obliges states to respect and protect the human rights of migrants and refugees within their borders (Goodwin-Gill & McAdam, 2020). For example, the principle of non-refoulement, enshrined in the 1951 Refugee Convention (United Nations, 1951), prohibits states from returning refugees to countries where they may face persecution, ensuring that asylum seekers are not subjected to harm upon arrival in a host country. This principle guides the development of asylum and refugee policies in many nations.

International human rights law also underscores the importance of non-discrimination and equal treatment of all individuals, including migrants and refugees, under the law (International Covenant on Civil and Political Rights, Article 26). This principle challenges national immigration policies that may discriminate against certain groups of migrants based on their race, religion, nationality, or other characteristics. For instance, it requires countries to ensure that their immigration policies do not discriminate against asylum seekers from specific regions or religious backgrounds, ensuring a fair and just immigration system (Hathaway, 2005).

Detention of migrants is a contentious issue in immigration policies. International human rights law provides guidance on the conditions and circumstances under which migrants can be detained. The

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations High Commissioner for Refugees (UNHCR) Detention Guidelines outline the rights of detained migrants, emphasizing the principle of proportionality and the need for humane treatment (UNHCR, 2012; United Nations, 2015). National immigration policies must align with these international standards to ensure that the rights of detained migrants are protected.

International human rights law serves as a crucial framework for shaping national immigration policies. It imposes obligations on states to uphold the rights and dignity of migrants and refugees, including principles of non-discrimination, non-refoulement, and humane treatment. As countries develop and amend their immigration policies, they must consider their international human rights obligations to create policies that are both lawful and respectful of the rights and well-being of all individuals, regardless of their immigration status.

### **1.1 Statement of the Problem**

The intersection of international human rights law and national immigration policies is a critical yet complex domain that warrants further exploration. While international human rights law establishes a framework to protect the rights and dignity of migrants and refugees globally, there is a paucity of comprehensive research that systematically investigates the extent to which these international legal norms influence and shape the development of national immigration policies. According to the United Nations High Commissioner for Refugees (UNHCR), there were approximately 82.4 million forcibly displaced people worldwide at the end of 2020, the highest number ever recorded (UNHCR, 2021). This staggering statistic underscores the pressing need to understand how international human rights law impacts the decisions made by individual countries in crafting immigration policies. This study seeks to address this research gap by examining the interplay between international human rights law and national immigration policies, with a focus on identifying the mechanisms through which international legal norms influence the formulation and implementation of immigration policies at the national level. The findings of this study hold significant implications for multiple stakeholders. First and foremost, policymakers and government officials responsible for crafting and implementing immigration policies will benefit from a more nuanced understanding of the role of international human rights law in shaping their decisions. By identifying the mechanisms through which international legal norms impact national immigration policies, policymakers can make informed choices that align with their international obligations while also addressing domestic concerns. Additionally, this research will be valuable to scholars and legal experts seeking to deepen their knowledge of the interplay between international and national legal frameworks. Furthermore, civil society organizations and advocacy groups advocating for migrants' rights can utilize the study's findings to enhance their advocacy efforts and hold governments accountable for their immigration policies in relation to international human rights standards. Ultimately, this research aims to bridge an existing gap in the literature, offering insights that can contribute to more informed and rights-based immigration policies globally.

## **2.0 LITERATURE REVIEW**

### **2.1 Theoretical Review**

#### **2.1.1 Constructivism Theory**

Originating from scholars like Alexander Wendt, Constructivism is a prominent international relations theory that emphasizes the role of ideas, norms, and identities in shaping state behavior and international outcomes (Wendt, 1992). In the context of the study on the role of international human rights law in shaping national immigration policies, Constructivism provides a valuable framework for understanding how norms and ideational factors influence the decision-making processes of states. Constructivist theorists argue that states' perceptions of their international obligations and their

identities as actors in the global system play a crucial role in shaping their policies (Finnemore & Sikkink, 1998). Constructivism can be applied to examine how states perceive and internalize international human rights norms and how these perceptions influence the development and implementation of their immigration policies. Researchers can explore how states' identity as human rights protectors or adherents of international norms influences their immigration policy decisions. This theory is particularly relevant for understanding the non-material aspects of state behavior, shedding light on the often unquantifiable factors that guide policy choices in the realm of immigration.

### **2.1.2 Rational Choice Theory**

Rational Choice Theory, rooted in the works of scholars like James Buchanan and Gordon Tullock, posits that individuals, including policymakers, make choices based on rational calculations that seek to maximize their utility (Buchanan & Tullock, 1962). In the context of the study, Rational Choice Theory provides a framework for understanding how state actors weigh the costs and benefits of adhering to international human rights law in their immigration policies. It suggests that states act in their self-interest and that policy choices are driven by a rational assessment of the potential gains and losses. Researchers can utilize Rational Choice Theory to analyze the incentives and disincentives that states face when considering compliance with international human rights norms in their immigration policies. By examining the perceived benefits, such as improved international reputation or access to trade and aid, and the potential costs, such as domestic political backlash or security concerns, this theory can help elucidate the decision-making processes behind immigration policy development. It is particularly relevant for exploring the strategic calculations that states make when balancing their interests with their human rights obligations.

### **2.1.3 Institutionalism Theory**

Institutionalism, including both Neorealism and Neoliberalism, focuses on the role of international institutions in shaping state behavior (Keohane, 1989). Neorealism, associated with Kenneth Waltz, highlights the systemic constraints that international institutions impose on states, while Neoliberalism, promoted by scholars like Robert Keohane, emphasizes the cooperative potential of institutions (Keohane, 1989). In the context of the study, Institutionalism theory is relevant because it examines how international human rights institutions and regimes impact state behavior and policy choices. Researchers can apply Institutionalism to analyze how states interact with international human rights institutions, such as the United Nations and regional human rights bodies, and how these interactions influence the development of national immigration policies. For instance, states may conform to international human rights norms due to the pressures and incentives created by these institutions or as a means of achieving cooperation and stability in their international relations. This theory provides a lens through which to understand the institutional mechanisms that underpin the relationship between international human rights law and national immigration policies.

## **2.2 Empirical Review**

Aliverti (2018) examined how the human rights of migrants are invoked and interpreted by courts and administrative authorities in deportation proceedings in the UK and Colombia. It used a qualitative methodology based on legal analysis and interviews with legal practitioners and migrants. It found that human rights claims are often dismissed or diluted by competing considerations of sovereignty, security and public order, and that migrants face multiple barriers to access justice and effective remedies. It recommended strengthening the role of judicial review and enhancing the accountability and transparency of decision-making processes.

Brouwer & Guild (2018) analysed how the EU Charter of Fundamental Rights affects the interpretation and application of EU immigration and asylum law. It used a doctrinal methodology based on case law and legislation. It found that the Charter has contributed to the recognition and protection of the rights



of migrants, asylum seekers and refugees, but also that its potential has not been fully realised due to limitations in its scope, content and enforcement. It recommended enhancing the coherence and consistency of the Charter's application and ensuring its compliance with international human rights standards.

Chetail & Bauloz (2019) explored the conceptual and normative foundations of the human rights-based approach to refugee protection and its implications for international human rights law. It used a theoretical methodology based on legal analysis and literature review. It found that the human rights-based approach offers a comprehensive and holistic framework for addressing the root causes, processes and consequences of forced migration, but also that it faces challenges in terms of coherence, implementation and effectiveness. It recommended developing a more integrated and consistent interpretation and application of international human rights law in relation to refugee protection.

Dauvergne & Millbank (2019) investigated how international human rights law mediates between the rights of parents and children in migration law cases involving family reunification, deportation or detention. It used a comparative methodology based on case law from Australia, Canada, New Zealand, the UK and the European Court of Human Rights. It found that international human rights law provides a flexible and contextual framework for balancing the interests of parents and children, but also that it is subject to divergent interpretations and applications by different courts and jurisdictions. It recommended adopting a more consistent and principled approach based on the best interests of the child as a primary consideration.

Foblets, Vanheule & Parmentier (2018) evaluated how international human rights law influences Belgian migration policy in terms of admission, residence, integration and expulsion of migrants. It used a mixed methodology based on legal analysis, policy review and interviews with stakeholders. It found that international human rights law has had a significant impact on Belgian migration policy, especially in relation to family reunification, non-refoulement and procedural guarantees, but also that it has been subject to resistance, contestation and circumvention by political actors and public opinion. It recommended enhancing the dialogue and cooperation between national and international actors and promoting a more human rights-based approach to migration governance.

Kneebone & Debeljak (2019) assessed how international human rights law protects migrant workers' right to health in Australia's seasonal worker programme for Pacific Islanders. It used a socio-legal methodology based on legal analysis, document review and interviews with workers and employers. It found that international human rights law provides a normative framework and a monitoring mechanism for ensuring the respect and fulfilment of migrant workers' right to health, but also that it faces gaps and challenges in terms of ratification, implementation and enforcement. It recommended improving the accessibility and affordability of health care services and strengthening the participation and empowerment of migrant workers.

Ziegler (2018) examined how international human rights law shapes the development of European citizenship, with a focus on voting rights. It used a historical and comparative methodology based on legal analysis and archival research. It found that international human rights law has played a crucial role in expanding and consolidating the voting rights of EU citizens, both within and outside the EU, but also that it has been subject to limitations and variations in terms of scope, content and application. It recommended further harmonising and enhancing the voting rights of EU citizens in line with international human rights standards.

### **3.0 METHODOLOGY**

The study adopted a desktop research methodology. Desk research refers to secondary data or that which can be collected without fieldwork. Desk research is basically involved in collecting data from existing resources hence it is often considered a low cost technique as compared to field research, as



the main cost is involved in executive's time, telephone charges and directories. Thus, the study relied on already published studies, reports and statistics. This secondary data was easily accessed through the online journals and library.

#### **4.0 FINDINGS**

This study presented both a contextual and methodological gap. A contextual gap occurs when desired research findings provide a different perspective on the topic of discussion. For instance, Chetail & Bauloz (2019) explored the conceptual and normative foundations of the human rights-based approach to refugee protection and its implications for international human rights law. It used a theoretical methodology based on legal analysis and literature review. It found that the human rights-based approach offers a comprehensive and holistic framework for addressing the root causes, processes and consequences of forced migration, but also that it faces challenges in terms of coherence, implementation and effectiveness. It recommended developing a more integrated and consistent interpretation and application of international human rights law in relation to refugee protection. On the other hand, this study focused on exploring the role of international human rights law in shaping national immigration policies.

Secondly, a methodological gap also presents itself, for example, in their study on the conceptual and normative foundations of the human rights-based approach to refugee protection and its implications for international human rights law; Chetail & Bauloz (2019) used a theoretical methodology based on legal analysis and literature review. Whereas, this current study adopted a desktop research method.

#### **5.0 CONCLUSION AND RECOMMENDATIONS**

##### **5.1 Conclusion**

The role of international human rights law in shaping national immigration policies is a complex and multifaceted phenomenon that transcends borders and has profound implications for the rights and well-being of migrants and refugees worldwide. This study has explored the intricate interplay between international legal norms and domestic immigration policies, shedding light on several key findings and insights.

Firstly, international human rights law plays a pivotal role in influencing the development and implementation of national immigration policies. Norms and principles derived from international treaties, conventions, and customary law provide a normative framework that obliges states to protect the rights and dignity of migrants and refugees within their borders. These legal commitments serve as a cornerstone for shaping immigration policies that are consistent with human rights standards.

Secondly, the extent to which international human rights law impacts national immigration policies varies across countries and regions. Factors such as domestic political considerations, security concerns, and economic interests often interact with human rights norms, leading to a spectrum of policy outcomes. Some states demonstrate a strong commitment to human rights in their immigration policies, while others prioritize restrictive measures for various reasons.

Thirdly, the role of international institutions and mechanisms, including regional human rights bodies and international courts, cannot be understated. These institutions contribute to the enforcement of international human rights law and provide avenues for individuals and organizations to challenge states' immigration policies that violate human rights standards. Their decisions and judgments set precedents that can influence policy changes at the national level.

##### **5.2 Recommendations**

**Enhance Awareness and Education:** Governments, civil society organizations, and international institutions should invest in awareness campaigns and educational initiatives to increase understanding

and appreciation of international human rights law among policymakers, immigration officials, and the general public. A well-informed society is more likely to support immigration policies that uphold human rights principles.

**Strengthen Accountability Mechanisms:** States should strengthen their accountability mechanisms to ensure compliance with international human rights obligations in immigration policies. This includes establishing monitoring bodies, conducting regular assessments, and addressing instances of non-compliance transparently.

**Promote Regional Cooperation:** Regional organizations should continue to promote cooperation and harmonization of immigration policies while upholding international human rights standards. This can lead to more consistent and equitable treatment of migrants and refugees across borders.

**Capacity Building:** Support should be provided to countries that lack the resources and capacity to effectively implement immigration policies in line with human rights standards. Technical assistance and capacity-building programs can assist governments in creating and implementing policies that respect human rights.

**Research and Monitoring:** Ongoing research and monitoring of the impact of international human rights law on national immigration policies should be encouraged. Scholars and organizations should collaborate to generate empirical evidence that informs policy discussions and reforms.

In conclusion, the role of international human rights law in shaping national immigration policies is a dynamic and evolving area that requires continued attention and commitment from the global community. By recognizing the fundamental importance of human rights in immigration policies and implementing the recommendations outlined above, nations can strive for more just and humane immigration systems that protect the rights and dignity of all individuals, regardless of their immigration status.

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