

CLIMATE JUSTICE

Climate Refugees and Human Rights

It is high time that climate refugees were incorporated within the refugee protection framework so that the rights of these people could be safeguarded more effectively.

NAZIA ZARIN ORNA

Environmental or climate refugees mean people forced to flee their homes and communities due to long term or sudden environmental calamities, such as drought, erosion, desertification, sea level rise, etc. As per the prediction of Institution for Economics and Peace, climate change and natural disasters are likely to displace 1.2 billion people globally by 2050. This is where comes in question the fate of climate refugees or asylees and the human rights obligations of the States with regard to them.

The principle of non-refoulement denotes that the asylum State should return no refugee or asylum-seeker to a State where they would face torture, cruel, inhumane, or degrading treatment or punishment, and other irreparable harm. This principle is enshrined clearly under Article 33 of the Refugee Convention 1951. However, this principle is not applicable to environmental and climate refugees as Article 1(A)(2) of the Convention does not incorporate persons who had to flee their habitats due to environmental hazards.

Since there is no explicit protection for environmental refugees rendered by the Refugee Convention, some other documents

and case developments can be an aid. For instance, the Organisation of African Unity (OAU) has included climate migrants within the ambit of their Convention. In terms of landmark cases, *Ioane Teitiota v New Zealand* (2020) comes out on top.

In this case, Ioane Teitiota and his family left their habitat of Kiribati for New Zealand, where they applied for refuge on the grounds of climate change. At first, the Immigration and Protection Tribunal in New Zealand rejected Teitiota's asylum claim as a climate change refugee and declared that they did not face an absolute risk of being persecuted if returned to Kiribati. Moreover, the High Court, Court of Appeal, and Supreme Court of New Zealand also denied the application of leave to appeal. Consequently, they were deported back to Kiribati.

Later, Teitiota took the case to the Human Rights Commission (HRC), alleging that New Zealand had violated his right to life under Article 6 of the International Covenant on Civil and Political Rights by forcibly returning him to Kiribati. Ultimately, the HRC found that Teitiota's deportation was not unlawful because he did not face immediate danger to his life in Kiribati. However, the HRC also enunciated that if climate change represents a serious, and immediate threat to life, it

has to be duly considered in deciding on refugees/asylees.

The HRC jurisprudence discussed above is particularly significant for Bangladesh, as it is one of the most vulnerable countries affected by climate change. A World Bank report on climate migration found that 4.1 million Bangladeshis were displaced in 2019 due to climate disasters and forecasts that 13.3 million could be displaced by 2050. Relevant to mention, in 2020 in France, a Bangladeshi migrant was recognised as the country's first climate refugee on grounds of his respiratory disease. The appeals court in Bordeaux found that the air pollution in Bangladesh will only exacerbate his condition.

There is no doubt that climate refugees are facing unimaginable sufferings because of rapid climate change. It is also now well-established that developed countries are the biggest contributors to climate change. Therefore, it is high time that climate refugees were incorporated within the refugee protection framework so that the rights of these people could be safeguarded more effectively.

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TECHNOLOGY AND HUMAN RIGHTS

Human Rights in the Age of Artificial Intelligence

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Despite its overwhelming presence across many aspects of our lives, there is no widely accepted definition of Artificial Intelligence (AI). Essentially, AI functions with the help of various computer learning programmes and associated processes dedicated to improving the ability of machines to function. In fact, the fundamental purpose of AI is to assist humans in doing works that require intelligence.

At present, AI is causing and contributing to significant breaches of privacy and data protection, since collation of personal information at a massive scale is increasing the potential of exploitation. Indeed, AI may facilitate the harvesting of personal data without adequate or informed consent. For instance, between 2013 and 2018, Cambridge Analytica collated personal data of up to 87 million Facebook users without their knowledge or consent for use in political advertising.

Consequently, there is now a growing tension between privacy's requirement to restrict flows of personal data on the one hand and economic and commercial arguments supporting the free flow of such data on the other. Hence, a balance needs to be struck between the right to privacy and the economic interest driven by or arising out of the use of AI.

AI may also adversely impact fairness and due process in decision-making. In making decisions, AI may segregate or segment people by reference to a wide range of factors and without considering whether such segregation or segmentation is appropriate in the particular case even if they are completely unrelated to the decision

in question. AI developers need to ensure that automated decision-making matches its human equivalent by developing the capacity to consider factors relevant to the individual's circumstances. Legal and technical communities should work together to find adequate ways of reducing possibilities of discrimination through algorithmic systems.

The use of AI for content curation and moderation on social media may affect the rights to freedom of expression and access to information. The use of facial recognition technology risks a serious impact on an array of civil rights. In the field of weapons for military use, AI risks undermining the right to life and the right to the integrity of the person if not closely circumscribed.

Human rights are inherent in all human beings, regardless of their race, sex, nationality, or any other status. The development of human rights law and evolution of its jurisprudence take time; technology, however, has a brisk pace. As such, human rights framework at times appears quite inadequate as a scheme for the ethical management of AI. Nonetheless, the existing human rights schema can form the basis for delimiting the appropriate scope of AI activities.

Human rights law requires governments and companies to provide a suitable right to remedy in case they breach their obligations and responsibilities. At all stages of design and deployment of AI, it must be clear as to who bears responsibility for its operation. Companies developing these technologies must proactively engage with academics, civil society actors, and representatives of community organisations. To fulfill their responsibility to respect human rights, they must implement a rigorous human rights due diligence framework governing the use of AI.

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BUSINESS AND HUMAN RIGHTS

SAFEGUARDING HUMAN RIGHTS from Business Conducts

States are obligated to ensure that business enterprises, too, refrain from engaging in any acts that can potentially have a detrimental effect on those rights.

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In today's world, business enterprises have the potential to positively impact millions of lives around the world. However, people's human rights may also be violated by their actions if the proper mechanisms are not in place. Currently, there is a steep rise of allegations that business enterprises frequently transgress an array of human rights, including labour rights, the right to health and safety at work, etc. Additionally, there is a growing concern regarding the rights to privacy and freedom of speech of employees in the private business sector.

However, international instruments relating to human rights strongly emphasise safeguarding citizens against abuses of their rights, even from those committed by third parties such as business enterprises. Particularly, the International Bill of Human Rights, which comprises of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights, established the United Nation's (UN) "respect, protect, fulfil" paradigm to prevent human rights violations by the ratifying states.

Important to note, international

human rights law framework was traditionally indifferent towards the subject of human rights violations by business enterprises, at least up until 2011. In 2011, the UN Human Rights Council adopted a new document called the "Guiding Principles on Business and

Human Rights" in response to flagrant human rights violations perpetrated by business conducts globally.

This instrument was primarily adopted to implement the UN "Respect, Protect, Remedy" framework as the principles are underpinned by the obligations of States to protect human rights, businesses to respect human rights, and victims' rights to get effective remedies. In fact, this is the

worldwide standard for preventing and dealing with the negative impacts that business enterprises pose through their business conducts.

As previously indicated, the States must protect their people against human rights violations perpetrated by any entity, including business entities. Although States are not accountable for non-State actors' violating human rights, they must nonetheless enact

first attempt to create a



domestic laws that effectively prevent, punish, and address such violations. Most significantly, the guiding principles place an independent responsibility on business enterprises to respect internationally recognised human rights and principles, such as those listed in the International Bill of Human Rights and the

If, however, business enterprises identify that they have negatively impacted human rights, they have to cooperate with domestic legal procedures of the State they are situated in, to provide an effective remedy (principle 22). Additionally, the principles require business enterprises to respect the applicable laws in case of human rights violations in all contexts (principle 23). Despite all these attempts, if any business enterprise causes human rights abuses through its business conduct, States have to take appropriate measures to provide effective remedies to those affected (principle 25).

The above-mentioned discussions provide us with a clear message that human rights, as enumerated in the International Bill of Human Rights are inalienable and even third parties, such as, business enterprises, have to respect these rights. States are obligated to ensure that business enterprises, too, refrain from engaging in any acts that can potentially have a detrimental effect on those rights. Until appropriate measures are taken domestically and globally to ensure compliance of business enterprises, human rights of people can never be fully protected.

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