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Climate Displacement, Algorithmic
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Accountability**

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Recommended Citation

Tanishq Srivastava, *Evolving Paradigms and Enforcement Imperatives in Contemporary International Human Rights Law: A Critical Analysis of Climate Displacement, Algorithmic Governance, and Transnational Corporate Accountability*, 5 IJHRLR 706-713 (2026).

Available at www.ijhrlr.in/current-issues/.

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Evolving Paradigms and Enforcement Imperatives in Contemporary International Human Rights Law: A Critical Analysis of Climate Displacement, Algorithmic Governance, and Transnational Corporate Accountability

ABSTRACT

*International Human Rights Law (IHRL) faces unprecedented structural challenges in the twenty-first century. Built upon post-WWII multilateral frameworks primarily designed to constrain traditional state action within defined territorial borders, the current regime struggles to address dispersed, non-state, and cross-border harms. This paper critically examines three key vectors disrupting conventional human rights enforcement: (1) the legal implications of anthropogenic climate change and climate-induced displacement; (2) the erosion of fundamental liberties by algorithmic governance, artificial intelligence, and automated decision-making; and (3) the jurisdictional and procedural barriers to holding multinational corporations accountable for extraterritorial violations. By analyzing recent jurisprudential developments – including the landmark European Court of Human Rights ruling in Verein Klima Seniorinnen Schweiz v. Switzerland (2024) and emerging regulatory instruments like the EU Corporate Sustainability Due Diligence Directive (CSDDD) – this study highlights the tension between *lex lata* (the law as it exists) and *lex ferenda* (the law as it ought to be). The paper concludes by proposing structural reforms aimed at fortifying enforcement mechanisms, expanding extraterritorial obligations (*erga omnes*), and adapting foundational doctrines to address cross-border human rights threats.*

KEYWORDS

International Human Rights Law, Climate Litigation, KlimaSeniorinnen, Algorithmic Bias, Corporate Due Diligence, Extraterritorial Obligations, Jus Cogens.

INTRODUCTION

The modern system of International Human Rights Law (IHRL), formalized through the Universal Declaration of Human Rights (UDHR) in 1948 and given binding legal effect via the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on

Economic, Social and Cultural Rights (ICESCR) in 1966, was founded on distinct socio-political paradigm. That framework assumed that the primary violator of individual rights was the sovereign nation-state operating within its own geographical boundaries, and that the primary duty-bearer was that same state acting through institutional organs.

In the contemporary era, this territorial state-centric framework faces significant challenges. Today's major threats to human dignity and individual rights often transcend national borders, originate from non-state actors, or manifest through decentralized technology. The accelerating climate crisis threatens fundamental rights to life, health, and private life. Algorithmic systems used in law enforcement, border control, and social benefits distribution can automate systemic discrimination. Meanwhile, multinational corporate entities often operate across fragmented legal jurisdictions, creating enforcement gaps that leave victims without effective remedies.

This paper examines how international human rights instruments and judicial bodies adapt to these structural shifts. It evaluates three key challenges testing the limits of IHRL: environmental degradation and climate displacement, the expansion of automated governance, and corporate impunity across jurisdictions.

1. ANTHROPOGENIC CLIMATE CHANGE AND THE JURISPRUDENCE OF ENVIRONMENTAL HUMAN RIGHTS

1.1 The Judicial Recognition of Climate Harms as Human Rights Violations

For decades, environmental degradation was treated primarily as a subject of public international environmental law – governed by treaties such as the 1992 Rio Declaration and the 2015 Paris Agreement – rather than a justiciable human rights issue. However, because international environmental law often lacks direct individual enforcement mechanisms, litigants have increasingly turned to international human rights adjudicative bodies. A major shift occurred in April 2024, when the Grand Chamber of the European Court of Human Rights (ECHR) delivered its ruling in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*. The Court ruled that Article 8 of the European Convention on Human Rights (ECHR) – which guarantees the right to respect for private and family life – encompasses a positive obligation on states to provide effective protection from the severe adverse effects of climate change on human life, health, and well-being. The Court found that Switzerland had failed to meet its positive obligations by failing to implement adequate domestic regulatory frameworks and greenhouse gas (GHG) mitigation targets.

The KlimaSeniorinnen ruling established critical legal precedents

- **Standing for Associations:** Recognizing that individual victims face significant procedural hurdles establishing direct causation for climate-related harms, the Court recognized the standing (*locus standi*) of civil society associations acting on behalf of affected individuals.
- **Positive Obligations and Carbon Budgets:** The Court tied state compliance under Article 8 ECHR directly to quantifying national carbon budgets and taking timely, consistent action to reduce GHG emissions.

1.2 Extraterritoriality and Climate-Induced Displacement

A major legal friction point in IHRL involves the obligation of states toward "climate refugees"—individuals displaced across international borders due to sudden or slow-onset environmental disasters. Under the 1951 Convention Relating to the Status of Refugees, a refugee is defined narrowly as a person fleeing persecution based on race, religion, nationality, political opinion, or membership in a particular social group. Consequently, environmentally displaced persons fall outside classic refugee status.

Human rights law has begun filling this protective void through the principle of non-refoulement under Article 6 (Right to Life) and Article 7 (Prohibition of Torture or Cruel, Inhuman, or Degrading Treatment) of the ICCPR. In *Teitiota v. New Zealand* (2020), the UN Human Rights Committee recognized that individuals fleeing the effects of climate change could trigger non-refoulement obligations if the impacts in their country of origin pose an imminent threat to life. While the Committee ultimately dismissed *Teitiota's* claim on the facts (finding the threat was not imminent enough), it established a clear normative principle: sending individuals back to states where climate change poses an imminent risk to their survival violates international law.

2. ALGORITHMIC GOVERNANCE, ARTIFICIAL INTELLIGENCE, AND THE DIGITAL RIGHTS FRONTIER

2.1 Surveillance, Biometric Data, and Due Process

The rapid integration of Artificial Intelligence (AI), automated decision-making systems (ADMS), and high-risk biometric surveillance by state agencies presents unprecedented risks to civil and political rights guaranteed under Articles 9 (Liberty and Security of Person), 14 (Fair Trial), and 17 (Privacy) of the ICCPR.

Algorithmic Risks to Core ICCPR Guarantees

- **ICCPR Article 17 (Right to Privacy):** Mass facial recognition, predictive surveillance, and biometric profiling without explicit statutory safeguards.
- **ICCPR Article 14 (Due Process & Fair Trial):** "Black-box" machine learning algorithms used in bail, criminal sentencing, and welfare distribution.
- **ICCPR Article 2 & 26 (Non-Discrimination):** Proxy-discrimination resulting from historically biased training datasets in automated systems.

When public institutions deploy opaque algorithms for predictive policing, credit scoring, or welfare eligibility, they risk replacing administrative discretion with unreviewable automated processes:

1. **The "Black Box" Problem:** Traditional due process relies on reasoned administrative decisions that can be challenged through judicial review. Machine learning models, particularly deep neural networks, often operate as "black boxes" whose internal rationale cannot be explained in human-intelligible terms. This opacity infringes upon an individual's right to challenge decisions affecting their fundamental rights.
2. **Automated Discrimination:** Algorithmic systems trained on historical data often replicate and amplify institutional biases. For example, risk-assessment algorithms used in criminal justice sentencing frequently assign higher recidivism risk scores to racial minorities, violating the principles of non-discrimination enshrined in Article 2 and Article 26 of the ICCPR.

2.2 Emergent Regulatory Responses: Hard Law vs. Soft Law

To counter these risks, international bodies are shifting from non-binding ethics guidelines to enforceable legal frameworks. The European Union's Artificial Intelligence Act (2024) represents a notable attempt to operationalize a riskbased approach to AI regulation:

Prohibited AI Practices: Bans systems that pose clear risks to human safety and fundamental rights, including cognitive behavioral manipulation, untargeted scraping of facial images, and social scoring by governments.

High-Risk Classifications: Imposes strict transparency, risk mitigation, and human oversight obligations on AI systems deployed in critical domains such as law enforcement, migration control, and judicial administration. However, international law still lacks a universally binding treaty on AI and human rights. Soft law instruments – such as the UNESCO Recommendation on the Ethics of Artificial Intelligence –

lack binding enforcement mechanisms, leaving individuals in many jurisdictions vulnerable to state and corporate digital overreach.

3. TRANSNATIONAL CORPORATE ACCOUNTABILITY AND JURISDICTIONAL DEFICITS

3.1 The Failure of Voluntary Frameworks and the Turn to Binding Statutes

For decades, corporate activity in developing countries—including natural resource extraction, land grabs, and labor exploitation—has operated in legal jurisdictional vacuums. Parent corporations headquartered in high-income nations frequently avoid legal responsibility for violations committed by foreign subsidiaries through the doctrine of legal personality and the "corporate veil."

The 2011 UN Guiding Principles on Business and Human Rights (UNGPs) established the "Protect, Respect, and Remedy" framework. While the UNGPs established a global benchmark, their reliance on voluntary corporate compliance proved insufficient to prevent systemic abuses. This reliance on voluntary measures led to mandatory legislative frameworks, such as the European Union's Corporate Sustainability Due Diligence Directive (CSDDD), adopted in 2024. The CSDDD marks a shift from soft-law expectations to hard-law obligations:

Mandatory Human Rights Due Diligence: Requires large companies operating in the EU market to conduct risk based human rights and environmental due diligence across their global operations and supply chains.

Civil Liability: Allows victims of human rights violations committed anywhere in a corporate supply chain to bring civil litigation against parent companies in European courts, overcoming traditional jurisdictional barriers.

3.2 Forum Non-Conveniens and Piercing the Corporate Veil

Historically, when victims from developing countries filed claims against multinational companies in the home courts of those companies, corporate defendants relied on procedural doctrines like forum non conveniens (arguing that a foreign court is a more appropriate forum) to dismiss the cases. Recent judicial developments indicate a gradual shift in domestic court jurisprudence:

Vedanta Resources Plc v. Lungowe (2019)

UK Supreme Court

Held that a parent company domiciled in the UK could owe a common law duty of care to foreign citizens affected by the operations of its foreign subsidiary, based on published corporate responsibility policies.

Four Nigerian Farmers v. Shell (2021)

Dutch Court of Appeal

Ruled that Shell's parent company owed a duty of care to mitigate oil spills in the Niger Delta, holding the parent entity jointly liable with its foreign subsidiary

These decisions suggest an evolving recognition that multinational corporations operate as single economic units, and that corporate structures cannot be used to shield parent companies from human rights duties under customary international law.

4. INSTITUTIONAL FRAGILITIES AND SYSTEMIC PROPOSALS FOR REFORM

4.1 Structural Vulnerabilities in Human Rights Machinery

Despite theoretical advances in international human rights jurisprudence, the global enforcement architecture faces ongoing structural challenges:

State Sovereignty vs. Jus Cogens Obligations: The international legal order rests on the consent of sovereign states. States can opt out of treaty enforcement mechanisms through reservations, declarations, or outright withdrawal, insulating themselves from mandatory oversight.

Politicization of Monitoring Organs: The United Nations Human Rights Council (UNHRC) faces ongoing criticism for selective focus and geopolitical bias, as member states often prioritize political alliances over human rights protections during Universal Periodic Reviews (UPR).

Enforcement Capacity of Regional Courts: While bodies such as the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACHR) issue legally binding judgments, compliance relies on national governments. States routinely delay or refuse implementation of decisions that clash with domestic political interests.

4.2 Reforms for Future Human Rights Governance

To maintain relevance and authority, the international human rights legal architecture requires structural updates:

Expanding Universal Jurisdiction for Gross Violations: Universal

jurisdiction should be consistently extended beyond grave breaches of international humanitarian law (such as war crimes and genocide) to encompass corporate complicity in severe, systematic environmental destruction (ecocide) and gross labor abuses.

Reforming Treaty Body Enforcement: UN treaty bodies (e.g., the Human Rights Committee) should be granted authority to issue enforceable binding rulings rather than non-binding "Views," supported by dedicated institutional compliance mechanisms.

Recognizing Collective and Planetary Rights: International law must transition from a purely anthropocentric model toward frameworks that recognize collective rights, future generations, and interdependent ecological systems (as seen in UN General Assembly Resolution 76/300 on the right to a clean, healthy, and sustainable environment).

CONCLUSION

International Human Rights Law stands at a pivotal junction. The foundational treaties drafted in the mid-twentieth century established vital normative guarantees for individual liberty and human dignity. However, modern global dynamics—characterized by rapid environmental changes, automated technological governance, and transnational corporate power—test the limits of territorial state-based enforcement mechanisms.

Reforming the human rights regime does not require discarding its foundational instruments; rather, it requires expanding their application. Landmark rulings such as *KlimaSeniorinnen v. Switzerland* and binding regulatory updates like the EU CSDDD show that courts and legislatures can adapt existing rights frameworks to confront transnational threats. By extending *erga omnes* obligations, enforcing mandatory extraterritorial due diligence, and reforming international oversight bodies, the international community can ensure that human rights law remains an effective framework for protecting human dignity in a complex, interconnected world.