



## Analysis of the views of the United Nations Human Rights Committee on the *Ioane Teitiota v. New Zealand* case International Organization for Migration (IOM)

### Contents

1. Statement from the International Organization for Migration (IOM) on the implications of the Nations Human Right Committee decision.....	1
2. Brief legal analysis of the decision.....	2
Annex I: Internal documents.....	5

#### 1. Statement from the International Organization for Migration (IOM) on the implications of the United Nations Human Right Committee decision

The International Organization for Migration (IOM) took great interest in the views adopted by the United Nations (UN) Human Rights Committee (CCPR) in the case of Ioane Teitiota, a Kiribati national who claimed the effects of climate change and sea level rise forced him to migrate to New Zealand. The Committee’s decision is significant as it recognizes the adverse impacts climate change has on contemporary migration.

For the first time, the Committee recognized that States shall refrain from sending people back to situations in which the impacts of climate change in the country of origin pose a risk to their life with dignity. However, the Committee’s decision also confirmed that the threshold needed to apply this principle is particularly high. This threshold was not met in the case of the Kiribati national, despite the hardships the claimant had to face.

In IOM’s views, the Committee’s conclusions underscore the urgency for States to open new regular migration pathways and provide temporary and longer-term forms of protection to people who would face life-threatening climate risks in case of return to their country of origin. The decision also highlights that the affected States need the support of the international community to address the immense challenges posed by climate change.



In that respect, the implementation of the Global Compact for Safe, Orderly and Regular Migration represents an opportunity for States to adopt a coordinated approach to address these challenges. In addition, States also have the obligation to mitigate and adapt to climate change under the Paris Agreement, and to respect the human rights of everyone under their jurisdiction, including migrants. These various international frameworks can help States define a solid course of action to address climate migration. The Committee's decision therefore reminds us that the obligations and commitments contained in those frameworks are interconnected and can contribute to bridge existing protection gaps.

In light of the growing importance of climate migration as a global issue, IOM calls for action on two fronts to support States and migrants impacted by the adverse impacts of climate change. On the one hand, the international community should support States vulnerable to climate change to invest in climate action to avert, minimize and address the negative impacts of climate change that contribute to displacement. Climate action should aim, in particular, at increasing people's resilience and reducing their exposure to risk with a view to minimize displacement. On the other hand, it is also important to encourage the development of innovative migration options, including using existing legal pathways for migration and developing new migration pathways for people severely affected by climate change impacts.

## 2. Brief legal analysis of the Committee's views

1. On 24 October 2019, the Human Rights Committee adopted its views on the case *Ioane Teitiota v. New Zealand*. The views were published on 7 January 2020 and received extensive media attention.
2. The case was brought before the Committee by Ioane Teitiota, a Kiribati national who migrated to New Zealand in 2007. Mr. Teitiota's residence permit expired in 2010, and he and his family remained irregularly in New Zealand. In 2013, to prevent his removal, Mr. Teitiota filed an asylum application based on the dire conditions he faced in his country of origin because of the severe impacts of climate change. The application was rejected by the New Zealand authorities and the rejection decision was upheld by the domestic courts.
3. In September 2015, after his removal to Kiribati, Mr. Teitiota brought his case before the Human Rights Committee arguing that his deportation to his country of origin by the New Zealand's authorities had violated his right to life, under article 6 of the International Covenant on Civil and Political Rights (ICCPR). Such a violation was substantiated based on the impacts of sea-level rise in Kiribati, which created a scarcity of habitable lands, resulting in violent land disputes and environmental degradation, including saltwater contamination of the freshwater supply.



4. The Committee reviewed the analysis of the facts and evidence from the national courts and did not find it manifestly erroneous or arbitrary (para. 9.3). Therefore, in line with the decision of the national courts, it concluded that the claimant removal to Kiribati did not violate his right to life.

5. Although the claim of Mr. Teitiota was rejected, the significance of the case lies in the fact that, for the first time, the Committee recognized the application of the principle of *non-refoulement* to situations where the impacts of climate change are so severe that they risk infringing upon a person's right to life with dignity, under article 6, or the prohibition of inhumane and degrading treatment, under article 7 of the ICCPR (para. 9.11).

6. In line with the extensive interpretation that the Committee had provided to the right to life in its recent General Comment on article 6,<sup>1</sup> in the present case, it recognized that such a right imposes positive obligations to States aimed at ensuring that people can enjoy a *life with dignity* (para. 9.4, emphasis added).<sup>2</sup> Moreover, it underlined that people's right to life can be seriously threatened by climate change.<sup>3</sup>

7. Nevertheless, the Committee also recalled that the threshold to apply the principle of non-refoulement in case of a real risk to the right to life is high. This is even more true when the risk stems from general conditions in countries of origin, as opposed to threats deriving from personal circumstances (para 9.3).

8. To determine whether this high threshold was met in the case of *Teitiota v. New Zealand*, the Committee analyzed three sets of circumstances:

a. Violent land disputes. The disputes led to an unspecified number of fatalities. However, it was also noted that Mr. Teitiota was never involved in such disputes;

b. Limited access to potable water: despite the water rationing, the Committee considered that the situation was not serious enough to create a risk to the claimant's health to the point that his life would be threatened;

c. Lack of sufficient crops: In the views of the Committee, the alleged difficulties in growing crops did not expose the claimant to a situation of indigence, deprivation of food and extreme precarity that could threaten his right to life with dignity.

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<sup>1</sup> General comment No. 36 (CCPR/C/GC/36).

<sup>2</sup> Ibid, para. 3.

<sup>3</sup> Idem.



9. The Committee also observed that, for the principle of *non-refoulement* to apply to migrants, the risks observed in the countries of origin or of return do not need to have already resulted in an actual loss of life. Moreover, in the Committee's views, it is not necessary to wait until a country is submerged under water to consider that the conditions of life in such a country have become incompatible with the right to life with dignity (para. 9.11).

The decision of rejection leaves little scope to clarify the criteria for the determination of the threshold for the application of the principle of *non-refoulement*. However, it is clear from the Committee's reasoning that such a threshold is placed somewhere between conditions that have already resulted in widespread loss of life and situations where the impacts on human health are already visible or where people live in extreme precarious conditions.

10. This reasoning of the Committee seems fully in line with States commitments outlined in the Global Compact for Safe, Orderly and Regular Migration (GCM). Objective 5 of the GCM invites States to develop new migration pathways for people compelled to leave their countries due to disasters, environmental degradation and the adverse impacts of climate change.<sup>4</sup> The Committee's decision recalls that such a recommendation may become a legal obligation, in cases when preventing the person from entering or from staying in the country would constitute a violation of the principle of *non-refoulement*. The discretionary forms of protection that many States have in their legislation (i.e. protection-based protection based on humanitarian or compassionate grounds) should not be considered as discretionary anymore if the threshold for the application of the principle of non-refoulement is met.

11. Finally, the Committee's decision is particularly interesting because of its analysis of States' responsibilities to address the adverse impacts of climate change, in line with the United Nations Framework Convention on Climate Change<sup>5</sup> (*inter alia*, Preamble and article 4) and the Paris Agreement<sup>6</sup> (for instance, in relation adaptation efforts, article 7.6). The Committee calls for robust national and international efforts to prevent situations where climate change impacts would trigger the application of the principle of *non-refoulement*. It also recognizes that Kiribati, the country of origin of the claimant, needs the assistance of the international community to uphold its obligation to protect people from the impacts of climate change, including by relocating its population if necessary.

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<sup>4</sup> Para. 21 (g) and (h).

<sup>5</sup> United Nations Framework Convention on Climate Change Agreement (adopted 12 December 2015, entered into force 4 November 2016) 1771 UNTS 107. See, *inter alia*, Preamble and article 4.

<sup>6</sup> Paris Agreement, UN Doc. FCCC/CP/2015/L.9 (adopted 12 December 2015, entered into force 4 November 2016). In relation to mitigation efforts, article 4.5; in relation to adaptation efforts, article 7.6; in relation to loss and damage, article 8.3 and 8.4; in relation to financing, article 9; in relation to technology transfer, article 10.6.



## Annex I: Internal documents

### - The Environmental Migration Portal

#### o [Human Rights-Based approaches to MECC](#)

##### ▪ IOM Contributions to Human Rights and Climate Change

- [IOM comments and observations on the International Law Commission Draft articles on the protection of persons in the event of disasters with commentaries, 68th session](#) of the International Law Commission, January 2016.
- [Protection of persons in the event of disasters. Comments and observations received from Governments and international organizations, A/CN.4/696, 68th session](#) of the International Law Commission, 14 March 2016.
- The final [Text of the Draft Articles with commentaries submitted to the UN General Assembly for adoption in the form of a Convention](#), in Yearbook of the International Law Commission, 2016, vol. II, Part Two (with the new definition of disaster referring to mass displacement as suggested by IOM).
- [GFMD 2016 Roundtable 3.1 Background Paper Migrants in Situations of Crises: Conflict, climate change and natural disasters EN | FR | ES](#).
- [Climate change, cross-border displacement and human rights: is there a protection gap and will COP21 help close it?](#), event jointly organized by the Universal Rights Group and the Geneva Environment Network, October 2015.

##### ▪ IOM Submissions to the Human Rights Council

- [IOM Statement](#) at the Human Rights Council Intersessional Panel Discussion on human rights, climate change, migrants and persons displaced across international borders, 6 October 2017.
- [Expert meeting on Climate Change and Human Rights, Panel presentations and dialogue on human rights, migration, and displacement related to the adverse impacts of climate change](#). Ms. Dina Ionesco, Head, Migration, Environment and Climate Change Division, International Organization for Migration, 6-7 October 2016.



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The UN Migration Agency

- [Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health](#), A/HRC/32/23, 6 May 2016.
  - Relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health, [Informal summary of inputs received, A/HRC/31/CRP.4](#), 26 February 2016.
  - [IOM Submission for OHCHR's Study on the Relationship between Climate Change and the Enjoyment of the Right to Health](#), 31 October 2015.
  - IOM Statement at the 'Full-day discussion on human rights and climate change' held during the 29<sup>th</sup> session of the Human Rights Council, 6 March 2015, [Summary Report, A/HRC/29/19](#), 1 May 2015.
- **The Atlas of Environmental Migration** (2017)
    - [Governance and policy responses](#) (Pp. 106-111)
  - **MECC Training Manual** (2016)
    - [MODULE 5: Legal Perspectives](#)
      - Existing standards relevant to environmental migrants (pp. 207-220)
      - Regional frameworks (pp. 230-235)
      - The way forward (pp. 239-242)

### **External:**

- **Human Rights Committee**

*Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016. (January 7, 2020). Available at: <https://www.refworld.org/cases,HRC,5e26f7134.html>

- **OHCHR**



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“ Historic UN Human Rights case opens door to climate change asylum claims”. (January 21, 2020).

Available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25482&LangID=E>.

International Covenant on Civil and Political Rights. (1996). Available at:

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

- **UNHCR**

“ UN Human Rights Committee decision on climate change is a wake-up call, according to UNHCR”.

(January 24, 2020). Available at: <https://www.unhcr.org/news/briefing/2020/1/5e2ab8ae4/un-human-rights-committee-decision-climate-change-wake-up-call-according.html>.

**News articles:**

- Lyons, K. “Climate refugees can't be returned home, says landmark UN human rights ruling”. (January 20, 2020). The Guardian. Available at: <https://www.theguardian.com/world/2020/jan/20/climate-refugees-cant-be-returned-home-says-landmark-un-human-rights-ruling>.
- McAdam, J. “Climate refugees cannot be forced back home”. (January 20, 2020). The Sydney Morning Herald. Available at: <https://www.smh.com.au/environment/climate-change/climate-refugees-cannot-be-forced-back-home-20200119-p53sp4.html>.
- Wilson, D. “UN can tell states to start accepting ‘climate change refugees’ but more nations will simply build walls, like Trump”. (January 20, 2020). RT. Available at: <https://www.rt.com/op-ed/478716-un-migration-kiribati-climate-refugees/>.