

Views adopted by the Human Rights Committee concerning communication No. 2728/2016

Ioane Teitiota v New Zealand

In January 2020 the Human Rights Committee published its Views in a case against New Zealand brought (NZ) by a Kiribati man who claimed that the impacts of climate change would threaten his right to life (article 6) if NZ deported him back to Kiribati, in violation of the International Covenant on Civil and Political Rights (ICCPR).

Mr Ioane Teitiota, the author of the communication, claimed that the effects of climate change, including rising sea levels and salination of water sources, forced him to migrate from Kiribati to NZ where he subsequently claimed asylum. His claim for asylum was rejected by the NZ Courts and he was deported to Kiribati in 2015.

Mr Teitiota contended that his removal to Kiribati subjected him to a risk to his life in violation of article 6 of the ICCPR. He presented evidence that rising sea levels had led to land inhabitability and scarcity and that together with increasing population, this led to violent land disputes, placing his life in danger. He also claimed that rising sea levels had caused environmental degradation, contaminated fresh water supplies and harmed food crops, depriving him of his means of subsistence.

On admissibility, the Committee discussed whether the author could be considered a ‘victim’ for the purposes of article 1 of the Optional Protocol. It noted that a victim must demonstrate that the State has impaired the author’s right or that the impairment is ‘imminent’, meaning that the victim’s risk of being affected is more than a theoretical possibility. Further, for a claim under article 6 (right to life) the victim must show that the State’s in/action resulted in a violation of their right to life, ‘specific to the individuals, or presented an existing or imminent threat to their enjoyment of this right’ (para 8.4). The Committee stated that in deportation cases, the question of imminence attaches to the decision to remove Mr Teitiota, whereas the imminence of any anticipated harm in Kiribati influences the assessment of the real risk faced by the individual. The Committee found the communication admissible on the basis that the conditions in Kiribati at the time of the author’s removal did ‘*not concern a hypothetical future harm, but a real predicament caused by lack of potable water and employment possibilities, and a threat of serious violence caused by land disputes*’ (para 8.5).

In considering the merits of the petition, the Committee noted States’ duties to adopt positive measures to protect the right to life and referred to the paragraph of the General Comment 36 regarding environmental degradation and climate change. It also noted that regional human rights tribunals have established that environmental degradation can impair or violate the right to life.

The Committee said it must assess whether there is clear arbitrariness, error or injustice in the evaluation by NZ of Mr Teitiota’s claim that when he was removed to Kiribati he faced a real risk of a threat to his right to life (art 6). The Committee assessed each of the author’s claims, all of which were linked to the impacts of climate change: the risk of violence due to over-crowding and land scarcity; lack of access to potable water due to salination of water sources; inability to grow crops and deprivation of a means of subsistence; the risk of flooding and breaching of seawalls such that Kiribati would be uninhabitable within 10 to 15

years. In each case the Committee found that the NZ Tribunal had not acted arbitrarily or in manifest error or denial of justice.

In relation to Mr Teitiota's claim that he would be seriously harmed by a lack of access to potable water, the Committee highlighted research that showed a majority of residents on the island get their water from rationed supplies provided by the public utilities board. Whilst recognising the difficulties inherent in water rationing, the Committee concluded that the author had not sufficiently demonstrated that he would not be able to access fresh water in a manner that impaired his right to enjoy a life with dignity.

The Committee's discussion of the effects of climate change in Kiribati were particularly interesting. The Committee accepted the author's claim that due to the effects of climate change, Kiribati would become uninhabitable within 10 to 15 years, and in a clear signal to future deportation cases relating to the effects of climate change, it said:

'without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering *non-refoulement* obligations of sending states' (para 9.11).

However, the Committee reasoned that Kiribati is taking adaptive measures and the timeframe of 10-15 years allowed sufficient time for Kiribati, with international assistance, to '*take affirmative measures to protect and, where necessary, relocate its population.*' Interestingly, the Committee does not mention mitigation measures or political and diplomatic efforts to press other countries to take urgent mitigation measures.

In concluding that the deportation of Mr Teitiota, did not amount to a violation of his right to life, the Committee stressed that its view should not affect the responsibility of NZ to '*take into account in future deportation cases the situation at the time in the Republic of Kiribati and new and updated data on the effects of climate change and rising sea-levels thereupon*' (para 9.14).

The decision of the Committee is notable also for the dissenting opinions of two members of the Committee. The Slovenian member, Ms Vasilka Sancin, took issue with the Committee's view that the author had not provided sufficient information to indicate that he would have insufficient access to safe water in Kiribati. Noting expert warnings that several national policies relating to safe water had yet to be implemented, Ms Sancin argued that under such conditions the burden must fall on the State Party, not the author, to demonstrate that they would have access to safe drinking water in a manner compatible with the positive duty to protect life.

In the second dissenting opinion, the Ugandan member, Mr Duncan Laki Muhumuza, noted that the effects of climate change on conditions of life in Kiribati were sufficiently grave and posed a real, personal and reasonably foreseeable risk of a threat to Mr Teitiota's life. Whilst agreeing with the majority that the risk to an individual threatened with removal must be personal and derive from general conditions only in extreme cases, he considered it critical that this threshold is not too high and that individual assessments of risk also take into account the general human rights situation in an author's country. In Mr Muhumuza's view difficulties accessing water and growing crops are sufficient to meet the necessary legal threshold, and the rights of individuals such as Mr Teitiota are not affected by the fact that

many others are similarly affected by the effects of climate change. In this regard, he considered NZ's action to be akin to *'forcing a drowning person back into a sinking vessel, with the "justification" that after all there are other voyagers on board.'*

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