

A FRAMEWORK FOR THE FUTURE OF CLIMATE REFUGEES

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As global temperatures rise due to climate change, nations around the world are seeing an increase in refugees.¹ Resources are becoming more scarce, and ocean levels are rising, causing people to flee their homes, especially those from small island nations.² It is forecasted that 143 million people will be displaced by climate change by 2050.³ Many people leaving their homes seek asylum in other countries, but are having difficulty as there are no internationally agreed-upon standards for climate refugees.⁴ However, the Human Rights Committee of the United Nations has begun its review of the matter by hearing a climate refugee case and has outlined factors for countries to consider when reviewing a person's asylum application as a climate refugee.⁵ These include resource scarcity, violence due to resource scarcity that the applicant has experienced, and time left of habitability in the applicant's country of origin.⁶ This piece analyzes the Committee's communication No. 2728/2016, which indicated what factors a climate refugee applicant might use to make her claim for asylum. It first provides background on the Human Rights Committee and the treaty that created it, the International Covenant on Civil and Political Rights (ICCPR).

Adopted on December 16, 1966, the ICCPR outlined the rights inherent to every person.⁷ As affirmed by 173 of the 193 countries within the U.N., signatories commit that all people have a right to life, liberty, and privacy,

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1. See Rebecca Lindsey & LuAnn Dahlman, *Climate Change: Global Temperature*, CLIMATE.GOV (Jan. 16, 2020), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-temperature>; Patrick Scott, *Are refugee numbers the highest ever?*, UNHCR BLOGS (Aug. 14, 2018), <https://www.unhcr.org/blogs/statistics-refugee-numbers-highest-ever>.

2. See John Podesta, *The climate crisis, migration and refugees*, BROOKINGS GLOB. ECON. & DEV. 1, 2 (2019).

3. *Id.* at 3.

4. Tim McDonnell, *The Refugees the World Barely Pays Attention to*, NPR (June 20, 2018, 11:25 AM), <https://www.npr.org/sections/goatsandsoda/2018/06/20/621782275/the-refugees-that-the-world-barely-pays-attention-to?t=1581834861353>.

5. See HUM. RTS. COMMITTEE, Views Adopted by the Committee Under Article 5(4) of the Optional Protocol, concerning communication No. 2728/2016, at 2, U.N. DOC. CCPR/C/127/D/2728/2016 (Jan. 7, 2020) [hereinafter *Views Adopted by the Committee Under Article 5(4)*].

6. *Id.*

7. Christian Tomuschat, *International Covenant on Civil and Political Rights*, U.N. LIBR. OF INT'L L. 1, 1 (2008), https://legal.un.org/avl/pdf/ha/iccpr/iccpr_e.pdf.

among many others.⁸ However, these rights would be meaningless if there was no enforcement mechanism for violations of these rights. Nations that signed the treaty could choose to be bound by the treaty's enforcement mechanism by ratifying Optional Protocol One of the ICCPR. Protocol One creates a mechanism to receive complaints from nationals of signatory countries who believe their rights under the ICCPR have been violated.⁹ These complaints are adjudicated by the Human Rights Committee, which was established by Article 28 of the ICCPR.¹⁰

The Human Rights Committee is comprised of eighteen individual expert members recognized for their work in human rights and high moral character by their home country.¹¹ States that have ratified the ICCPR may nominate a member from their state to the Committee, and the U.N. General Assembly then votes on those nominees.¹² Members meet three times per year for about one month at a time.¹³ When the members meet, they review each complaint sent to the Committee by individuals from states party to the Optional Protocol, and they accept those complaints that meet the requirements of Article 5 of the Optional Protocol.¹⁴ When individuals feel that their rights under the ICCPR have been violated by a state that has ratified Optional Protocol One, they fill out a form found on the U.N.'s website and mail or email it to the complaint procedure unit of the Office of the United Nations High Commissioner for Human Rights.¹⁵ When the Human Rights Committee accepts a complaint, it makes the petitioner's member state aware that the case is being reviewed and that the state should submit facts for the case.¹⁶ If the state does not respond, then the petitioner's facts are usually

8. See International Covenant on Civil and Political Rights arts. 1, 9, 17, Dec. 16, 1966, 999 U.N.T.S. 171 S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967); *Human Rights*, U. N. TREATY COLLECTION (Apr. 14, 2020), https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg_no=IV-4&src=IND.

9. See Optional Protocol to the International Covenant on Civil and Political Rights 1, 999 U.N.T.S. 171 S. Treaty Doc. 95-20, 6 I.L.M. 368 (1976).

10. International Covenant on Civil and Political Rights art. 28, Dec. 16, 1966, 999 U.N.T.S. 171 S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967).

11. *Human Rights Committee*, OFF. OF THE HIGH COMMISSIONER FOR HUM. RTS., <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/Membership.aspx> (last visited Apr. 1, 2020).

12. OFF. OF THE HIGH COMM'R FOR HUM. RTS., Civil and Political Rights: The Human Rights Committee, Fact Sheet No. 15, 12 (2005).

13. *Id.* at 14.

14. "2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual." International Covenant on Civil and Political Rights art. 5, Dec. 16, 1966, 999 U.N.T.S. 171 S. Treaty Doc. 95-20, 6 I.L.M. 368 (1967).

15. *Human Rights Council Complaint Procedure*, OFF. OF THE HIGH COMMISSIONER FOR HUM. RTS., <https://www.ohchr.org/en/hrbodies/hrc/complaintprocedure/pages/hrccomplaintprocedureindex.aspx> (last visited Apr. 1, 2020).

16. OFF. OF THE HIGH COMMISSIONER FOR HUM. RTS., *supra* note 12, at 26.

considered to be true.¹⁷ If the state does respond, then the state's facts tend to be considered to be true unless the petitioner's facts rebut them with evidence.¹⁸ When the Human Rights Committee completes its review, it reaches a non-binding verdict and suggests a remedy.¹⁹

On February 16, 2016, the Committee reviewed a petition for asylum due to climate change made by Ioane Teitiota of the Republic of Kiribati.²⁰ While the petitioner ultimately did not win his case, the Committee revealed for the first time how climate refugee cases could be won in the future. The petitioner, Ioane Teitiota, was a national of the Republic of Kiribati who was denied refugee status in New Zealand in 2015.²¹ The Republic of Kiribati is facing a crisis due to climate change.²² It is made up of twenty inhabited islands in the Pacific Islands, with 124,100 residents facing a scarcity of resources due to climate change.²³ In ten to fifteen years, the Republic of Kiribati will likely be uninhabitable.²⁴ Mr. Teitiota applied for refugee status in New Zealand under its Immigration Act of 2009, stating that he would be subject to the "arbitrary deprivation of life or cruel treatment if deported from New Zealand back to the Republic of Kiribati."²⁵ Since he had already arrived in New Zealand, he would be deported back to Kiribati if his petition was denied. His petition was ultimately denied by New Zealand's Immigration and Protection Tribunal because the tribunal found no actual or imminent harm would occur if he were to be deported.²⁶

After New Zealand denied Mr. Teitiota's case, he petitioned the Human Rights Committee, claiming that his ordered deportation would violate his ICCPR Article 6 right to life.²⁷ To support his petition, he pointed to the conditions that citizens of Kiribati face.²⁸ In 2015, unemployment was around forty-three percent. Violent fights were breaking out around the island due to a scarcity of resources, and the rate of water consumption was outpacing the rate of water replenishment.²⁹ He felt that internal relocation in the nation was not possible as the problems were country-wide.³⁰

The Committee, after a careful analysis of the facts from both the petitioner and the state, concluded that there was no "clear arbitrariness, error or

17. *Id.*

18. *Id.*

19. *Id.* at 27.

20. *Views Adopted by the Committee Under Article 5(4)*, *supra* note 5.

21. *Id.*

22. Matthieu Rytz & Anote Tong, *Our Island is Disappearing but the President Refuses to Act*, WASH. POST (Oct. 24, 2018), <https://www.washingtonpost.com/news/worldpost/wp/2018/10/24/kiribati/>.

23. Sophie Foster & Barrie Macdonald, *Kiribati*, ENCYCLOPÆDIA BRITANNICA (2019), <https://www.britannica.com/place/Kiribati#ref53987>.

24. *Views Adopted by the Committee Under Article 5(4)*, *supra* note 5, at 12.

25. *Id.* at 4.

26. *Id.*

27. *Id.* at 5.

28. *Id.*

29. *Id.* at 2-3.

30. *Views Adopted by the Committee Under Article 5(4)*, *supra* note 5, at 3.

injustice” in the evaluation by that state.³¹ Its decision was grounded in the fact that it did not believe that Mr. Teitiota showed actual or imminent harm resulting from deportation.³² The Committee found that environmental degradation can affect the enjoyment of life and thus violate the right to life.³³ Yet, while all the facts that Mr. Teitiota provided were true, the Committee found that the conditions that were affecting the island were not affecting him as an individual in a specific enough way.³⁴

The Committee listed the situations which led it to find no Article 6 violations, due to a lack of evidence that:

- (a) the author had been in any land dispute in the past, or faced a real chance of being physically harmed in such a dispute in the future;
- (b) he would be unable to find land to provide accommodation for himself and his family;
- (c) he would be unable to grow food or access potable water;
- (d) he would face life-threatening environmental conditions;
- (e) his situation was materially different from that of every other resident of Kiribati.³⁵

These five considerations can be synthesized into three general factors that the Committee weighed in this case. First, it looked at the level of resources that are available to the population of the country.³⁶ In this case, The Republic of Kiribati was rationing water to sixty percent of its population.³⁷ For a climate refugee claim, resources must be “inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right.”³⁸ The Committee further took into consideration whether there was violence resulting from a resource shortage.³⁹ Only if the violence in the country would create actual or imminent harm to the petitioner will the Committee weigh this factor as part of the petitioner’s claim.⁴⁰ Sporadic violence around the country due to resource shortage is not enough.⁴¹ The final factor that the Committee weighed is how much time the country in question has left before it becomes uninhabitable.⁴² The Committee agreed that in ten to fifteen years, the Republic of Kiribati would be uninhabitable, but it found that this time-frame would allow the government of Kiribati enough time to intervene in the matter or relocate its people.⁴³

31. *Id.* at 10.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Views Adopted by the Committee Under Article 5(4)*, *supra* note 5, at 11.

37. *Id.*

38. *Id.*

39. *Id.* at 10.

40. *Id.* at 11.

41. *Id.*

42. *Views Adopted by the Committee Under Article 5(4)*, *supra* note 5, at 12.

43. *Id.*

While the Committee's decisions are non-binding, it seems that states may need to weigh these factors as they process refugees in the future who are fleeing dire climate-related circumstances. States should consider refugees' access to resources, the violence they have experienced due to such a lack of resources, and the amount of time their land will be inhabitable. These are all factors that a more complex foundation can be built upon, and Mr. Teitiota's case is an initial step in the long journey for climate refugees.