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## Case Note: The Lack of Teeth in *Teitiota*: Exploring the Limits of the Groundbreaking U.N. Human Rights Committee Case

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## CASE NOTE

Elena Papadakos\*

# THE LACK OF TEETH IN *TEITIOTA*: EXPLORING THE LIMITS OF THE GROUNDBREAKING U.N. HUMAN RIGHTS COMMITTEE CASE

## INTRODUCTION

In 2015, New Zealand deported a Kiribati man who sought asylum on the basis of climate change conditions in his home country. That man—Ioane Teitiota—argued that rising sea levels in his country led to violent land disputes as well as environmental degradation. According to a joint report by the World Health Organization and the United Nations (UN), Kiribati is “one of the world’s most vulnerable nations to climate change.”<sup>1</sup> After New Zealand failed to recognize his claim, Mr. Teitiota filed a complaint with the UN Human Rights Committee, arguing that New Zealand had violated his right to life under Article 6 of the 1966 International Covenant on Civil and Political Rights. While the Committee ultimately determined that New Zealand had not violated the “right to life” provision, the Committee explained that a state *could* violate international law if it returns an individual to a country where their life is at risk due to climate change.

This Case Note examines the UN Human Rights Committee’s groundbreaking decision and explores its precedential significance as well as its limitations. Part I provides historical context regarding the 1966 International Covenant on Civil and Political Rights, including the role the UN Human Rights Committee plays in upholding and interpreting the Covenant’s purpose. Part II examines Article 6 of the Covenant, which contains the key “right to life” provision within that treaty. Part III recounts the factual and procedural background of the *Ioane Teitiota* case. Part IV explores the rationale for the Committee’s decision. Finally, Part V focuses on the practical problems the Committee’s decision raises and questions the ruling’s significance in international law.

### I. The 1966 International Covenant on Civil and Political Rights (ICCPR) and the Human Rights Committee

In 1966, the UN General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR)—a major human rights treaty.<sup>2</sup> This treaty was

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1. World Health Org., Climate and Health Country Profile – 2017: Kiribati 1 (2017).

2. International Covenant on Civil and Political Rights art. 2, Dec. 16, 1966, S. Treaty Doc. 95-20, 999 U.N.T.S. 171 [hereinafter ICCPR].

entered into force on March 23, 1976.<sup>3</sup> As one of the main sources of international law, treaties create rules and obligations that govern state conduct.<sup>4</sup> A treaty becomes formally binding through the process of signature, ratification and entry into force.<sup>5</sup> Typically, a nation state (“state”) only becomes a party to and bound by a treaty once ratification has occurred, in accordance with whatever potential ratification requirements exist in the state’s national law.<sup>6</sup> Thus, it is not uncommon for a state to sign a treaty but not ratify it immediately or at all, given the possible political differences between state representatives at an international convention and the governing body back home who must consent to be bound by the agreement. For example, the U.S. did not ratify the ICCPR until 1992—twenty-six years after the ICCPR was first adopted and sixteen years after it officially had entered into force.<sup>7</sup> In the U.S., Article II of the Constitution requires that two-thirds of the Senate consent to ratification before an international agreement can become binding and the “supreme law of the land.”<sup>8</sup>

As of 2023, 173 countries have ratified the ICCPR.<sup>9</sup> States that have ratified the treaty are required to “respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized . . .” in the Covenant.<sup>10</sup> Examples of these guarantees include: the right to life, liberty, and religious freedom, as well as freedom from torture, slavery, and arbitrary detention.<sup>11</sup> States are also required to adopt or enact legislative measures to “give effect to the rights recognized” in the treaty.<sup>12</sup> Additionally, Article 2 requires that states must provide remedies to “any person whose rights or freedoms . . . are violated.”<sup>13</sup>

The ICCPR created the Human Rights Committee (“Committee”), a body comprised of eighteen independent human rights experts, to monitor the implementation of the treaty through three mechanisms.<sup>14</sup> First, the Committee

3. *Id.*

4. Statute of the International Court of Justice art. 38, June 26, 1945, 59 Stat. 1055, 1060 [hereinafter ICJ Statute]; *see also* JEFFREY L. DUNHOFF ET AL., INTERNATIONAL LAW: NORMS, ACTORS, PROCESS: A PROBLEM-ORIENTED APPROACH 34 (5th ed. 2020).

5. Initially, a nation state’s signature on a treaty does not create a binding obligation on the party. Rather, it expresses a state’s acceptance of the treaty text and serves as an indication of likely ratification. *Id.* at 37.

6. *Id.*

7. Entry into force is the final step in the treaty process, whereby the agreement officially creates binding, “international obligations according to its terms.” RESTATEMENT (FOURTH) OF FOREIGN RELATIONS LAW § 304 (AM. L. INST. 2018).

8. The Supremacy Clause of the U.S. Constitution states that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.” RESTATEMENT (FOURTH) OF FOREIGN RELATIONS LAW § 303 (AM. L. INST. 2018).

9. *United Nations Human Rights Treaty Bodies*, U.N. TREATY BODY DATABASE, <https://perma.cc/YW2W-AW9E> (last visited Apr. 14, 2023).

10. ICCPR, *supra* note 2, art. 2.

11. *Id.* at arts. 6, 7, 8, 9, 18.

12. *Id.* at art. 2.

13. *Id.*

14. *Membership Human rights Committee*, U.N., <https://perma.cc/CT42-KEXB> (last visited Apr. 14, 2023).

reviews reports submitted by state parties.<sup>15</sup> In general, states report on how they are implementing the political and civil rights expressed in the Covenant and respond to any issues the Committee has raised to the state party.<sup>16</sup>

Second, the Committee monitors the implementation of the ICCPR through the issuance of “general comments” that interpret various treaty provisions.<sup>17</sup> These general comments are directed to all state parties and are meant to provide guidance on the scope and meaning of specific articles.<sup>18</sup> General comments help state parties ensure they are correctly interpreting and adhering to the provisions of the ICCPR.<sup>19</sup>

Third, the Committee assesses either individual or state complaints against state parties.<sup>20</sup> These complaints relate to treaty violations or failure of the state to fulfill its obligations under the Covenant.<sup>21</sup> However, before the Committee reviews an individual complaint on the merits, the Committee must first determine that two key admissibility requirements are met.<sup>22</sup> These two requirements—outlined in the First Optional Protocol—are mainly procedural in nature.

First, for an individual to submit a claim, the state must be a party to both the Covenant and the First Optional Protocol. The First Optional Protocol is a secondary treaty to the ICCPR which established the mechanism that allows the Committee to hear individual complaints against a state.<sup>23</sup> A state that has ratified the ICCPR, as well as the First Optional Protocol, “recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant.”<sup>24</sup>

Importantly, a state that has ratified the ICCPR does not have to ratify the First Optional Protocol and many states have refrained from doing so. This is because once a state has ratified the First Optional Protocol, any individual subject to the jurisdiction of that state can submit a complaint for the Committee’s consideration.<sup>25</sup> As of 2023, 117 parties—out of 173—have signed the first Optional Protocol. The U.S. has neither signed nor ratified the First Optional Protocol; thus no individual subject to U.S. jurisdiction can lodge a complaint with the Committee alleging the U.S. has violated their rights as set forth in the Covenant.<sup>26</sup>

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15. U.N. Off. High Comm’r for Hum. Rts, Civil and Political Rights: The Human Rights Committee Fact Sheet 14 (2005) [hereinafter H.R.C. Fact Sheet].

16. *Id.* at 10.

17. *Id.* at 15.

18. *Id.* at 27.

19. *Id.*

20. *Id.* at 15.

21. *Id.*

22. U.N. Off. High Comm’r for Hum. Rts, Civil and Political Rights: Individual Complaint Procedures under the United Nations Human Rights Treaties Fact Sheet 7-9 (No. 7, Rev. 2, 2013), [hereinafter Individual Complaint Procedures Fact Sheet].

23. H.R.C. Fact Sheet, *supra* note 15 at 10, 25.

24. Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 302 [hereinafter Optional Protocol].

25. *Background to the International Covenant on Civil and Political Rights and Optional Protocols*, U.N., <https://perma.cc/G886-VSK6> (last visited Feb. 19, 2023).

26. *Optional Protocol to the International Covenant on Civil and Political Rights*, U.N. TREATY COLLECTION, <https://perma.cc/87CW-9HMN> (last visited Apr. 11, 2023).

Second, Article 2 of the First Optional Protocol prescribes that individuals subject to a state party's jurisdiction must have "exhausted all available domestic remedies" before submitting a written claim to the Committee.<sup>27</sup> Importantly, Article 5 prevents the Committee from reviewing any claim that is "being examined under another procedure of international investigation or settlement."<sup>28</sup> Together, these requirements (1) ensure that the Committee does not review state actions if the state has not recognized the authority of the Committee, and (2) guarantee that the Committee does not review a claim prematurely or act at the same time as another international body.

Once the Committee determines that the admissibility requirements are met for a complaint, they will review the merits of the complaint to determine whether a violation has occurred.<sup>29</sup> If the Committee decides the case in favor of the complainant, the state party must provide the complainant with an effective remedy.<sup>30</sup> However, there are no enforcement mechanisms in place to guarantee the state provides such a remedy.

Moreover, Committee rulings are not considered formally binding. In general, the primary sources of international law are restricted to treaties, international custom, and general principles of law.<sup>31</sup> Judicial decisions, in general, are merely a "subsidiary means for the determination of rules of law."<sup>32</sup> While some judicial decisions, such as International Court of Justice rulings, can have binding power on the parties in a dispute,<sup>33</sup> Committee decisions, which are decided by a panel of human rights experts rather than judges, have less authority. Instead, Committee decisions are only considered "authoritative interpretations" of the ICCPR.<sup>34</sup> In these authoritative interpretations, the Committee provides the offending state with recommendations or "follow-up procedures" to address the violation.<sup>35</sup> If the offending state refuses to address the violation, there is no legal consequence for the state because the Committee lacks substantive enforcement mechanisms, such as sanctions.<sup>36</sup> However, as with any type of treaty violation, states run the risk of being "named and shamed" by other members in the international legal community.<sup>37</sup> Because Committee decisions are merely authoritative interpretations, much of the binding power of the ICCPR on state parties derives from the requirement that states submit reports to the Committee detailing their implementation efforts.

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27. Optional Protocol, *supra* note 24, at art. 2.

28. *Id.* at art. 5.

29. Individual Complaint Procedures Fact Sheet, *supra* note 22, at 14.

30. ICCPR, *supra* note 2, art. 2.

31. ICJ Statute, *supra* note 4, art. 38(1).

32. *Id.*

33. *Id.* at art. 59.

34. ICCPR, *supra* note 2, art. 2.

35. Individual Complaint Procedures Fact Sheet, *supra* note 22, at 11.

36. Henry J. Steiner, *Individual claims in a world of massive violations: What role for the Human Rights Committee?*, in *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING* 15, 37 (Philip Alston & James Crawford, eds., 2000).

37. Daniel W. Hill Jr., *Estimating the Effects of Human Rights Treaties on State Behavior*, 72 J. POL. 1161, 1162 (2010).

## II. The “Right to Life” Provision

Article 6 of the ICCPR, also known as the “right to life” provision, has been described as the “supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies that threaten the life of the nation.”<sup>38</sup> Article 6 states that “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>39</sup>

In essence, the text of Article 6 creates a duty for states to enact laws protecting individuals’ right to life and imposes a prohibition on the arbitrary deprivation of life. While most provisions under Article 6 are related to restricting the use of the death penalty, the Committee has clarified that the right to life should not be interpreted narrowly. Specifically, Article 6 guarantees that individuals “be free from acts and omissions intended or expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.”<sup>40</sup> In practice, this means that state parties must enact laws or take other measures to protect life “from all reasonably foreseeable threats, including from threats emanating from private persons and entities.”<sup>41</sup> The Committee has identified numerous situations which pose “reasonable foreseeable threats” to life and thus require that states proactively address through legislation or other measures. For example, states must take action to prevent criminal violence and protect individuals, like journalists, “in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence.”<sup>42</sup>

State parties also have an obligation to address the “general conditions in society that may give rise to direct threats to life.”<sup>43</sup> These general conditions include: high rates of crime, extreme poverty, environmental degradation and the “prevalence of life-threatening diseases.”<sup>44</sup> While states have a duty to address the general conditions that give rise to direct threats of life, an individual claiming a violation under the Covenant must show that their life is at risk.<sup>45</sup> Specifically, the risk “must be personal in nature and cannot derive merely from the general conditions in the . . . [s]tate.”<sup>46</sup> Thus, even though states are obligated to address threats to life rising from general conditions in society, they are shielded from individuals bringing human rights violations against them unless they are particular to the individual or rise to the level of “extreme” general conditions. The Committee has further interpreted Article 6 to create a duty that states “refrain from deporting, extraditing, or otherwise transferring individuals to countries in which there are substantial grounds for

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38. U.N. CCPR, U.N. Doc. CCPR/C/GC/36, ¶ 2 (Sept. 3, 2019).

39. ICCPR *supra* note 2, art. 6 § 1.

40. U.N. Doc. CCPR/C/GC/36, *supra* note 38, at ¶ 3. The Committee has also indicated that the “the obligation not to extradite, deport or otherwise transfer . . . is broader than the scope of the principle of non-refoulement under international refugee law, since it may also require the protection of aliens not entitled to refugee status.” *Id.*

41. *Id.* at ¶ 18.

42. *Id.* at ¶ 23.

43. *Id.* at ¶ 26.

44. *Id.*

45. *Id.* at ¶ 30.

46. *Id.*

believing that a real risk exists that they would be deprived of their life.”<sup>47</sup> A state would violate Article 6 if, for example, they removed a person from a country that does not have capital punishment to a country where the individual may face the death penalty.<sup>48</sup> Similarly, a country should not deport an individual to “an extremely violent country in which he or she had never lived, had no social or family contacts and could not speak the local language.”<sup>49</sup> Thus, the obligation not to deport, extradite, or transfer an individual pursuant to Article 6 has historically been interpreted to prevent a state from sending an individual to a country where their life is at risk by another entity, people or persons.<sup>50</sup>

### III. Factual and Procedural Background of *Ioane Teitiota*

In 2007, Ioane Teitioa (“Teitioa”), a Kiribati national, moved to New Zealand with his wife.<sup>51</sup> After their residency permits expired in 2010, Teitiota and his family remained in New Zealand without authorization and ultimately filed a claim for refugee status in 2012.<sup>52</sup> Teitiota sought asylum due to the effects of climate change in his home country.<sup>53</sup> Specifically, Teitiota argued that sea level rise in Kiribai had led to overcrowding and violent land disputes as well as environmental degradation.<sup>54</sup> He also argued that saltwater contamination in Kiribati has led to water scarcity issues.<sup>55</sup>

After his refugee status was denied, he appealed the decision in 2013 to the New Zealand Immigration and Protection Tribunal (“Tribunal”) who once again denied his refugee status.<sup>56</sup>

Through its examination of the evidence, the Tribunal ultimately determined that Teitiota and his family did not face “a risk of imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati.”<sup>57</sup> Both the Court of Appeal and the Supreme Court in New Zealand affirmed the Tribunal’s decision.<sup>58</sup> Two years later, in 2015, New Zealand officially deported Teitiota to Kiribati.<sup>59</sup>

Soon thereafter, Teitiota filed a complaint with the UN Human Rights Committee, arguing that New Zealand had subjected him to a risk of his life in violation of Article 6 by removing him to Kiribati.<sup>60</sup> Specifically, Teitiota claimed that deportation exposed him to the following life-threatening conditions caused by climate change: violent land disputes, scarcity of water, being deprived of his means

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47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Teitiota v. New Zealand*, (CCPR/C/127/D/2728/2016), para 4.1 [hereinafter *Teitiota*].

52. *Id.* at 5.

53. *Id.* at 2.

54. *Id.*

55. *Id.* at 5.

56. *Id.* at 2.

57. *Id.* at 10.

58. *Id.* at 2.

59. *Id.* at 6.

60. *See id.* at 1, 5.

of subsistence due to crop failure, overpopulation and increased flooding.<sup>61</sup> Additionally, he argued that the New Zealand authorities had not properly examined the risk to his life in deporting him.<sup>62</sup> Consequently, he claimed, New Zealand violated Article 6 and should not have removed him and his family back to Kiribati.

#### IV. The UN Human Rights Committee's Expansion of the "Right to Life" Provision

Historically, a state's obligation not to deport, extradite, or transfer an individual pursuant to Article 6 has been reaffirmed in cases where an individual's life is at risk by another person or persons.<sup>63</sup> Here, the Committee was charged with reviewing whether there was "clear arbitrariness, error or injustice" in New Zealand's assessment of whether Teitiota "faced a real risk of threat to his right to life" when determining whether to deport him or not.<sup>64</sup> In evaluating whether New Zealand had incorrectly assessed Teitiota's claim that deportation posed a risk to his life, the Committee re-examined the evidence on the record to determine if the climate change conditions that Teitiota had identified subjected him to a potential deprivation of his life. In essence, this required the Committee to answer an issue of first impression: whether a state's obligation not to deport, extradite, or transfer an individual extended to situations in which an individual's life was at risk due to climate change conditions. This inquiry was noteworthy because prior Committee decisions resulted from risks caused by other entities or private persons, not by climate induced factors. This was the first case brought before the Committee where a claimant argued that climate change was a life-threatening situation that might result in loss of his life.

In determining whether climate change could produce a real risk to an individual's life, the Committee reiterated several principles to help guide its decision. First, the Committee emphasized that an individual's "inherent right to life" under Article 6 must be interpreted broadly.<sup>65</sup> Secondly, states have a duty to protect their inhabitants from foreseeable, life-threatening situations.<sup>66</sup> Additionally, the Committee reiterated the language of its general comments and stated that environmental degradation and climate change "constitutes some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life."<sup>67</sup>

While reaffirming the principles that guide the Article 6 analysis, the Committee adopted the reasoning of another human rights tribunal, the European Court of Human Rights, and stated for the first time that "severe environmental degradation can . . . lead to a violation of the right to life."<sup>68</sup> In other words, a state can violate the ICCPR by failing to protect an individual from severe environmental

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61. *Id.* at 2.

62. *Id.* at 9.

63. *See generally id.* at 10.

64. *Id.*

65. *Id.* at 9.

66. *Id.*

67. *Id.*

68. *Id.* at 10.



degradation, if that degradation threatens an individual's right to enjoy a life with dignity or results in unnatural or premature death. This groundbreaking declaration immediately expanded the scope of the Article 6 protections and essentially created a new obligation for state parties to meet. Previously, the protections guaranteed by the right to life provision were limited to only foreseeable threats from entities or persons. Now, that protection has been extended to include climate change conditions that similarly can lead to a deprivation of life.

Despite this expansion of Article 6, the Committee narrowed its application by reaffirming two critical requirements that claimants must meet to show that a state party subjected them to a risk to their life in violation of the Covenant. First, the Committee emphasized that the risk to life must be personal in nature and cannot result solely from the "general conditions" in a state, except in the most extreme cases.<sup>69</sup> The decision in *Teitioa* is particularly illustrative of these limitations because the Committee found that Teitiotia did not face a real, personal and reasonably foreseeable risk of a threat to his life based on the climate conditions in Kiribati and New Zealand therefore did not violate his right to life by deporting him.<sup>70</sup>

The Committee based its decision on four factors. First, Teitiotia failed to show that the violent acts resulting from private land disputes created a real, personal, and reasonably foreseeable risk of threat to his life because the harm alleged was a general risk faced by all Kiribati inhabitants and was not specific to Teitiotia himself.<sup>71</sup> The Committee emphasized that a risk to life does not result from general conditions of violence except in extreme cases, where the risk exists "simply by virtue of an individual being exposed to such violence on return," or "where the individual in question is in a particularly vulnerable situation."<sup>72</sup> In this case, Teitiotia alleged that land disputes caused a general situation of violence in Kiribati, and this general situation of violence caused a risk to his life. However, the Committee reviewed the evidence and found that no general situation of violence existed in Kiribati because the land disputes were sporadic and resulted in "unspecified number of casualties."<sup>73</sup> Even if such a situation of general violence existed, Teitiotia did not allege that he personally would be exposed to this violence on return, or that he was in a particularly vulnerable situation. Thus, Teitiotia failed to show that land disputes caused a real risk of harm to his life.

The second reason Teitiotia's claim failed was because he did not provide concrete, substantive evidence to support his argument that he would be harmed by the lack of access to potable water.<sup>74</sup> Teitiotia failed to show that "the supply of fresh water is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death."<sup>75</sup> Even though Teitiotia provided evidence of water

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69. *Id.*

70. *Id.* at 12.

71. *Id.* at 11.

72. *Id.* at 10.

73. *Id.*

74. *Id.*

75. *Id.*

rationing due to saltwater contamination of freshwater lenses, this evidence did not prove that his life was at risk.<sup>76</sup>

The third factor the Committee based its decision on was Teitiota failed to show that he would be deprived of his means of subsistence due to crop failure. While the evidence made clear that while it was difficult to grow crops in Kiribati, it was not impossible.<sup>77</sup> Additionally, nutritious foods remained available.<sup>78</sup> Moreover, Teitiota did not provide evidence that other sources of employment or financial assistance were unavailable to him.<sup>79</sup> Thus, the fact that Teitiota's crops had failed due to salt deposits from rising sea levels was not enough to show that "he would be exposed to a situation of indigence, deprivation of food and extreme precarity that could threaten his right to life."<sup>80</sup> Despite this finding, the Committee recognized that there could be situations where "the lack of alternatives to subsistence livelihoods may place individuals at a heightened risk of vulnerability to the adverse effects of climate change," but did not provide concrete examples of what those situations would look like.<sup>81</sup>

The fourth and final factor that the Committee based its decision on was Teitiota's failure to demonstrate that overpopulation and "frequent and increasingly intense flooding and breaching of sea walls" posed a risk to his life. The Committee provided two reasons. First, even though the Committee accepted Teitiota's claim that sea level rise is likely to render Kiribati inhabitable in ten to fifteen years, the Committee explained that this timeframe allows for "intervening acts" by the Kiribati government and the international community to take "affirmative measures to protect, and where necessary, relocate its population."<sup>82</sup> Second, the Committee found it relevant that Kiribati was already taking measures to protect its citizens against climate change harms. While the Committee conceded that "the risk of an entire country becoming submerged under water" is an extreme risk, they reasoned that the timeframe for intervening acts, coupled with the adaptive measures the Kiribati was already implementing, were sufficient to protect Teitiota's right to life.<sup>83</sup> In summary, because Teitiota failed to show that violent land disputes, access to potable water, crop failure, and sea rise would pose a real threat to his life, the Committee held that New Zealand had not violated Teitiota's rights under Article 6 of the Covenant.<sup>84</sup>

Even though the Committee did not decide in favor of Teitiota, its decision is still noteworthy. Specifically, the Committee explicitly stated that "without robust national and international efforts, the effects of climate change in receiving states may expose individuals to a violation of their rights" under the right to life provision,

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76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 12.

84. *Id.*

“thereby triggering the non-refoulement obligations of sending states.”<sup>85</sup> Two parts of the Committee’s statement deserve a deeper analysis.

First, under the principles of international law and the 1951 Refugee Convention, the concept of “non-refoulement” (i.e., nonremoval) generally refers to the idea that a refugee should not be returned to a country where their life or freedom are at serious risk.<sup>86</sup> Thus, when the Committee references “the obligation of sending states” in its *Teitiota* decision, they are referring to a state’s duty—under the Refugee Convention—to not deport a refugee to a territory where their life is at risk. Now, a life can be at risk due to environmental degradation. Consequently, this decision implies that a state cannot deport a refugee back to a country where their life is threatened by climate change.

Second, the Committee’s statement suggests that the either the presence or lack of state and international action against climate-change risk in a specific location is a critical factor in determining whether an individual’s right to life under Article 6 could be violated. Here, the Committee found that New Zealand had adequately reviewed the adaptive measures that Kiribati was taking “to reduce existing vulnerabilities and build resilience to climate-change related harms.”<sup>87</sup> Put simply, New Zealand made an assessment that the Kiribati government was taking sufficient steps to address climate change, and these steps were enough to protect Teitiota’s right to life under Article 6. Because Teitiota had not provided concrete evidence to show he faced a real and personal threat to his life, and because his home government was implementing adequate measures to address the general risks, New Zealand had no duty grant Teitiota and his family asylum.

## V. The Lack of Real Teeth in *Teitiota*

While the Committee’s decision in *Teitiota* provided a new avenue for ICCPR claimants to argue right to life violations under Article 6, it is unlikely that this ruling will have far-reaching consequences to international and human rights law for three reasons. First, the *Teitiota* decision is not binding law. Second, the Committee’s threshold requirements for establishing a threat to life exists based on climate change conditions is too high for most claimants to meet.

Third, the Committee failed to provide sufficient, concrete examples of when general conditions in a country would create extreme risks. Relatedly, the Committee did not explain when climate change conditions would pose a threat to life even when the receiving state is taking robust efforts to address the risk.

First, Committee decisions are secondary sources of international law and treated as persuasive authority only.<sup>88</sup> Moreover, the ICCPR lacks an enforcement mechanism to ensure that states offenders provide claimants with a remedy. Thus, while committee decisions are highly authoritative and can impact state practice, the *Teitiota* decision is only an aspirational advisory opinion. It is aspirational because the decision acknowledges that the effects of climate change will threaten the lives

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85. *Id.*

86. Restatement (Third) of Foreign Relations Law § 711 (Am. L Inst. 1987).

87. *Teitiota*, *supra* note 51, at 11.

88. *UN Human Rights Treaty Bodies*, INT’L JUST. RES. CTR., <https://perma.cc/W25X-AJRZ>. (last visited Apr. 14, 2023).

of many people and advises states to evaluate these threats when determining whether to grant refugee status to asylum-seekers. Because Committee decisions are considered highly authoritative, states who have ratified the First Optional Protocol may have already integrated, or at the very least considered, how this new interpretation of Article 6 will affect their own asylum decisions. Still, because the *Teitiota* decision is not binding, there is no real requirement that they do so. On the other hand, if states ignore the implications of the *Teitiota* decision, they risk increasing the likelihood that individuals will submit claims against them to the Committee and expose themselves to potential right to life violations. Some legal commentators have argued that the real effect of this decision is political in nature, and that it will encourage the development of new policies that address climate change.<sup>89</sup> While some states may indeed take the opportunity to either enact climate change adaptation plans or consider how to best prepare for mass climate migration, there remains no requirement under the ICCPR or the *Teitiota* decision that states do so.

Second, *Teitiota* will likely not have far-reaching consequences because it will be challenging for claimants to show that climate change conditions pose a real, personal, and reasonably foreseeable risk to their life. Because the risk cannot derive merely from the general conditions in a state, except in the most extreme cases, claimants will have to show that the threat is more personal and concrete. However, most climate-change conditions that pose a risk to human life are general in nature and constitute a risk that all inhabitants of a particular area face. *Teitiota* is illuminating in this respect because the claimant failed to establish that the risk to his life was real and personalized even though the Kiribati islands are likely to be uninhabitable within the next ten to fifteen years.<sup>90</sup> This stark reality was not enough to establish a real, personal and foreseeable risk to his life. As a result, it seems probable that claimants will struggle to demonstrate a risk to their life that is not derived from general conditions in a state.

Barring this, asylum-seekers would have to wait until the general conditions of the state had become so extreme as to overtake the personal and concrete risk threshold. However, this is an impracticable solution for those facing impending environmental degradation, who may want to leave before the worst arrives.<sup>91</sup> In his dissent, Committee member Duncan Laki Muhumuza recognized this legal paradox, when he argued that “it would indeed be counter-intuitive to the protection of life to wait for deaths to be very frequent and considerable in number in order to consider the threshold of risk as met.”<sup>92</sup> Muhumuza found that *Teitiota* provided sufficient evidence to establish that his life was at risk by the lack of fresh water and difficulty

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89. Jane McAdam, *Protecting People Displaced by the Impacts of Climate Change: The UN Human Rights Committee and the Principle of Non-refoulement*, 114 AM. J. INT'L L. 708, 710 (2020); see also Benedikt Behlert, *A significant opening: On the HRC's groundbreaking first ruling in the case of a 'climate refugee'*, VOLKERRECHTSBLOG (Jan. 30, 2020), <https://perma.cc/5URT-74NZ>.

90. *Teitiota*, *supra*, note 51, at 11–12.

91. Jane McAdam, *supra* note 89, at 720.

92. *Teitiota*, *supra*, note 51, at Annex 2 (Muhumiza, D., dissenting).

of growing crops.<sup>93</sup> Muhumuza further reasoned that a claimant should not have to wait until there is a “complete lack of water” before reaching the threshold of risk.<sup>94</sup>

Moreover, the Committee agreed with the New Zealand authorities that Teiota’s life was not at risk even while acknowledging that the Kiribati islands may be underwater in the next ten to fifteen years and “an entire country becoming submerged under water [sic] is . . . an extreme risk.”<sup>95</sup> At present, the Committee recognized that the timeframe allows for “intervening acts” and “affirmative measures” to protect and relocate the population, but at what point in the timeline does the general conditions of the state become extreme? While conceding that a country underwater is an extreme circumstance, the Committee failed to provide any guidance as to when precisely an individual’s life would be at risk from this certain outcome. The practical result of this error is that individuals concerned about inevitable, life-threatening danger must return to their country and wait for the risk to become either more personal or the conditions to become extreme. While the Committee explained why Teitiota’s personal harm claims failed, they provided no guidance as to how to determine when the situation in Kiribati would become extreme, except by acknowledging that a completely uninhabitable island would constitute such a case. The likely result is that very few claimants will meet the real and concrete injury threshold. Ambiguity over the precise moment a general condition becomes “extreme” will remain until the Committee hears further cases. Even then, the Committee’s decisions will remain only advisory. Those future decisions, like *Teitiota*, will likely not affect real change.

Lastly, even though the Committee established a higher bar for claimants to reach in the short-term, their ruling ignores the long-term reality that climate change conditions in the future *will* pose a real, personal, and reasonably foreseeable risk to many people’s lives. For example, if the Kiribati islands are underwater in the next ten to fifteen years, then all inhabitants of those islands will face a foreseeable risk of threat to their life that is real, personal, and presumably the conditions will be so severe as to constitute an extreme case. In that scenario, do states risk violating Article 6 of the ICCPR if they deny asylum to all those who seek refuge? Will this decision demand that states increase the number of refugees they admit? Does forcing people to wait for justice until their country is gone constitute living a life of dignity? Even if the answer to these questions is yes, it’s possible that any potential state violations would not result in serious ramifications given the ICCPR’s specific lack of enforcement mechanisms and the limitations of international law in general.

While the *Teitiota* decision left many unanswered questions, the Committee did provide a blueprint of sorts for other individuals to bring potentially more successful claims. Teitiota failed to show climate change conditions in Kiribati posed a real threat to his life because his claims were more general in nature, and he did not face a personal, imminent threat to his life. However, other claimants may be able to demonstrate, hard as it may be, that climate change conditions do pose a personal, imminent risk to their life. In fact, one legal scholar identified such a scenario and outlined a fact pattern that would meet the Committee’s high threshold

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93. *Id.* at 13.

94. *Id.*

95. *Teitiota*, *supra*, note 51, at 11.

requirements.<sup>96</sup> Indeed, it's possible that the *Teitiota* ruling will lead to successful claims brought by individuals who can show personal risk that does not derive merely from the general conditions of the state, but this will still be an uphill battle for most.

What will be infinitely harder to prove, based on the lack of direction from the Committee, is when a general condition of a state has become so extreme as to trigger a violation of Article 6. This challenge is especially difficult to overcome in the context of slow-onset events, identified by the Committee to include sea level rise, salinization, and land degradation.<sup>97</sup> While the Committee acknowledged that a country underwater would constitute such an extreme, general condition, they must clarify, either through general comments or through additional claims review, where the tipping point is. At what point does a sinking country become an extreme condition? Surely it is not when the country is already underwater. Should there be an earlier cut-off point, that allows citizens of a doomed state to seek shelter elsewhere? The Committee failed to consider this question, perhaps because there are no easy answers.

The challenge of identifying when the general conditions in a country can become extreme raises the question of whether a human rights tribunal is the proper body to answer such scientific inquiries in the first place. Committee member Muhumuza raised this very concern in his dissent, when he asked if the Committee, as a quasi-judicial institution, should be the institution to provide answers to these complex refugee claims.<sup>98</sup> While the Committee is well positioned to examine individual claims grounded in a real and imminent threat to life, it is likely unrealistic to expect that they are the institution to answer questions of much larger significance, such as when an entire country of citizens has the right to seek asylum elsewhere due to climate change conditions in their country. Even if the Committee clarifies their position on when a general condition can transform into an extreme circumstance that implicates Article 6, their reasoning is not binding. That said, such future elaboration by the Committee may be tremendously useful to some other body or group of people who are better positioned to handle these complicated and critical climate questions.

Given the scale of this issue, a larger international body is better equipped to answer questions related to mass asylum claims based on extreme climate change conditions than the Committee. Not only will a larger body incorporate the views of more stakeholders, but a different institution may also be able to create a stricter legal scheme with real consequences. Thus, a new international convention that specifically addresses the plight of climate refugees will require states to grapple with these realities by creating new legal pathways for asylum seekers such as *Teitiota*. That said, such an outcome requires that the international legal community agree on these very complex and politically challenging issues. The recent history of climate change conventions demonstrates how difficult it is for states to reach

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96. Lucia Rose, *The World After Teitiota: What the HRC Decision Means for the Future of Climate Migration*, 12 SAN DIEGO J. CLIMATE & ENERGY L. 41, 58 (2021).

97. *Teitiota*, *supra*, note 51, at 11.

98. Duncan Muhumuza Laki, *The Case of Ioane Teitiota v. New Zealand at the Human Rights Committee: A Common Sense approach*, 115 AM. SOC'Y INT'L L. PROC. 161, 163 (2021).

consensus on these matters. But even if some common ground were to be identified—such as recognizing that states should plan to accept more asylum seekers from Pacific Island countries like Kiribati—a resolution would likely offer greater positive change than any new Committee decision. Such an agreement could be restricted to allowing more refugees from Pacific Island states facing extreme and impending sea level rise. A decision like this from the larger international community, rather than the Committee, would prevent millions of individuals from unnecessarily suffering the effects of climate change that are certain to come.

### CONCLUSION

While flawed, the UN Committee's opinion in *Ioane Teitiota v. New Zealand* is still a groundbreaking case that expands the concept of Article 6 in the ICCPR by declaring that severe environmental degradation can lead to a violation of the right to life. The expansion of the right to life is both timely and forward-thinking as we enter an age where climate change is bound to result in environmental disasters that threaten our collective livelihoods. Despite this exciting expansion for some, *Teitiota's* impact is likely to be limited for three main reasons. First, *Teitiota's* power is limited because Human Rights Committee decisions are persuasive authority and are not binding. Secondly, it is possible that few claimants in the short-term will be able to demonstrate that climate change conditions pose a real, personal and foreseeable risk to their lives that do not result from the general conditions in their state. Third, the decision also ignores that long-term reality that climate conditions will result in extreme cases and fails to propose a framework that will respond to right to life concerns on a larger scale. Thus, while *Teitiota* represents a progressive interpretation of the right to life provision in the ICCPR, its influence will be stymied by the practical limitations inherent in international law and the questions left unanswered in the decision.