

# BOFAXE

## A SIGNIFICANT OPENING (Part 1)

### On the HRC's groundbreaking first ruling in the case of a "climate refugee"

— The Human Rights Committee (HRC) has just added to the many important international legal developments of the young decade and [issued](#) its first ruling on the case of a "climate refugee", i.e. a person fleeing their home country because of the effects of climate change (see the full ruling [here](#), numbers in parentheses refer to the paragraphs of the ruling). This two-part Bofax analyses the groundbreaking ruling which increases the pressure on states to take action against climate change and explains its significance.

#### The Case

Ioane Teitiota, the author of communication No. 2728/2016 that led to the HRC's decision is a national of the Republic of Kiribati, a small island nation in the Pacific Ocean. As such, Kiribati is one of the nations [most affected](#) by climate change. In most parts, the islands of Kiribati rise less than two meters above sea-level. Rising sea levels have already led to many detrimental effects in the small island nation, including the contamination of drinking water and the erosion of inhabitable land. Some [go so far as to say](#) that the country is "facing annihilation".

The author and his family arrived in New Zealand in 2007. After their residence permits had expired in 2010, the author filed a claim for recognition as refugee on 24 May 2012. Three months later, his claim was denied in a first-instance decision rendered by a Refugee and Protection Officer. On 25 June 2013, the Immigration and Protection Tribunal which conducts *de novo* examinations of asylum claims denied the author an appeal. After a subsequent two-year fight in New Zealand's judicial system, Teitiota was detained and served with a deportation order. On 23 September 2015, the author was finally removed to Kiribati and has since not returned to New Zealand. In his communication to the HRC, the author claimed that New Zealand had violated his right to life enshrined in Article 6 of the [International Covenant on Civil and Political Rights](#) (ICCPR) by removing him to Kiribati.

#### The Parties' Arguments

The author argued that due to the adverse effects of climate change on the islands of Kiribati, previously inhabitable land had eroded, and in combination with a stark surge in population numbers, this had resulted in a housing crisis and violent land disputes "with numerous fatalities" (2.1). Moreover, the contamination of fresh water supplies and grounds created serious challenges to the author and his family's way of life. Due to the rising sea level caused by climate change substantial amounts of the available drinking water have become salinized which increasingly impedes access to drinking water, and it therefore becomes more and more difficult to grow crops. Finally, the author argued that the Republic of Kiribati was "powerless" to address the adverse effects of climate change effectively (2.5). He sought to substantiate his claims in interviews with the competent bodies, and with expert reports detailing the situation in Kiribati (2.4, 2.7).

Remarkably, New Zealand's legal defense conceded two arguably major points. First, the authorities found the author to be "entirely credible" and accepted the adverse effects of climate change on the living conditions in Kiribati (2.7). Secondly, they "emphasized that their conclusions should not be read to mean that environmental degradation resulting from climate change could never create a pathway into protected person jurisdiction" (4.5). In light of [recent finding regarding sea level rise](#) and New Zealand's geographical position, the fact that the State party explicitly recognized the possibility of future *non-refoulement* obligations towards "climate refugees" is quite significant.

However, with regard to the present case, New Zealand argued that the claim of the author was not "sufficiently substantiated to establish a *prima facie* case" (4.5). In the eyes of the State party, the evidence presented by the author was insufficient to prove his victim status under Article 1 of the First Additional Protocol to the ICCPR.

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