

Human Rights Obligations of States in the Context of Climate Change

The Role of the Human Rights Committee



The Human Rights Committee (CCPR) is mandated to monitor the implementation of the International Covenant on Civil and Political Rights (ICCPR), which has been ratified by 173 States. By ratifying the ICCPR, States commit to respect and ensure, without discrimination, the rights to life, privacy, family, and home, the right to take part in public affairs and to freedom of expression and assembly, the freedom from cruel, inhuman, or degrading treatment, and the cultural rights of ethnic, religious, or linguistic minorities, among others.

The Committee has three main functions: the State reporting procedure, General Comments and Statements, and the Communica-

tions procedure (a quasi-judicial complaint mechanism). This note describes the work of the Committee on climate change under each of those functions.

General Comments and Statements

In 2018 the Human Rights Committee adopted a new General Comment No. 36 on the right to life, which includes an important paragraph regarding climate change. Paragraph 62 states, “Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.” Further, the General Com-

ment notes that “States parties are thus under a due diligence obligation to undertake reasonable positive measures, which do not impose on them disproportionate burdens, in response to reasonably foreseeable threats to life originating from private persons and entities, whose conduct is not attributable to the State.”

This is a significant advance in the Committee’s guidance regarding the interpretation of the right to life in the context of climate change and environmental degradation. We are already seeing advocates and victims referencing this General Comment to support their claims for States to address the climate impacts on their right to life.

State Reporting Procedure

For the CCPR, 2019 was the first year that it made recommendations to States on climate change. The CCPR made a climate recommendation to Cabo Verde and addressed climate in its Lists of Issues to three States (United States, Dominica, and Cabo Verde). For example, the Committee urged Cabo Verde to:

“as a small island state particularly vulnerable to climate change... step up efforts to develop mechanisms and systems to ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments, provide appropriate access to information on environmental hazards and implement the

precautionary approach to protect persons in the State Party, including the most vulnerable, from the negative impact of climate change and natural disasters...” (CCPR, Cabo Verde, 2019)

For each of these recommendations or questions, the Committee’s concerns on climate change related to the right to life. However, for Dominica, the Committee also referenced articles 17 (the right to privacy, family, and home) and 25 (the right to vote and take part in public affairs) of the ICCPR.

Communications Procedure

The CCPR has issued one decision regarding climate change in the context of deportation of a foreign

national (*Teitiota v New Zealand*, Communication No. 2728/2016). There is also one case on climate change that has been submitted to the Committee and is pending adjudication (Communication No. 3624/2019).

States’ non-refoulement obligations in the context of climate change - Decision

In January 2020, the CCPR adopted its decision in a case against New Zealand brought by a Kiribati man and his family who claimed that his right to life was violated when he was deported to Kiribati, since the impacts of climate change in Kiribati posed an imminent threat to their lives. The petitioner presented evidence in his claim for asylum in national courts, describing rising sea levels,



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coastal erosion, reduction in habitable land, salination of water supplies, lack of access to drinking water, reduced ability to grow food crops, and over-crowding and violent land disputes. The national Courts and the Committee accepted his claim that due to sea level rise, Kiribati would be uninhabitable in 10-15 years' time.

Whilst ultimately rejecting his petition, the Committee accepted that the impacts of climate change could expose people to violations of the right to life under the ICCPR and trigger State obligations not to deport people. Signaling that future cases might be decided differently as the impacts of climate change worsen, the Committee explicitly noted New Zealand's obligation in future deportation cases to consider new and updated data on the effects of climate change in Kiribati.

Two Committee members — Ms. Vasilka Sancin and Mr. Duncan

Laki Muhumuza — published notable dissenting opinions in the case, with the latter admonishing the actions of New Zealand as akin to “forcing a drowning person back into a sinking vessel, with the ‘justification’ that after all there are other voyagers on board.”

Communication against Australia by a group of Torres Strait Islanders - Pending

In May 2019, a group of Torres Strait Islanders lodged a complaint with the CCPR against Australia in relation to climate-induced rising seas, tidal surges, coastal erosion, and inundation of communities in the Torres Strait Islands in the north of Australia. The Islanders claim that Australia's failure to reduce emissions, combined with the absence of adequate climate adaptation measures, violates their fundamental human rights, including their rights to life and culture.

The petition describes the serious impacts of climate change on the island life of the Torres Strait Islanders, highlighting how climate change is threatening their homes, land, food sources, water sources, cultural sites, and practices. Ultimately, they claim, climate change will forcibly displace the Torres Strait Islanders to mainland Australia, away from their land and sea territories, to which their culture is inextricably linked. The Islanders are seeking remedies for the violations of their rights to life (article 6) and culture (article 27), occasioned by Australia's failure to effectively mitigate and adapt to climate change.

This case has been registered by the Committee and, after the exchange of documents by the parties, will be considered at a future session of the Committee. The average time for a decision in cases submitted to the CCPR is currently approximately four years.



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