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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016[*],[**],[***]

Communication submitted by:	Ioane Teitiota (represented by counsel, Michael J. Kidd)
Alleged victim:	The author
State party:	New Zealand
Date of communication:	15 September 2015 (initial submission)
Document reference:	Decision taken pursuant to former rule 97 of the Committee's rules of procedure, transmitted to the State party on 16 February 2016 (not issued in document form)
Date of adoption of Views:	24 October 2019
Subject matter:	Deportation to the Republic of Kiribati
Procedural issues:	Admissibility – manifestly ill-founded; admissibility – victim status
Substantive issue:	Right to life
Article of the Covenant:	6 (1)
Articles of the Optional Protocol:	1 and 2

[*] Adopted by the Committee at its 127th session (14 October – 8 November 2019).

[**] The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Christopher Arif Bulkan, Ahmed Amin Fathalla, Shuichi Furuya, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Hernán Quezada Cabrera, Vasilka Sancin, José Manuel Santos Pais, Yuval Shany, Hélène Tigroudja, Andreas Zimmermann and Gentian Zyberi.

[***] Individual opinions by Committee members Duncan Laki Muhumuza and Vasilka Sancin (dissenting) are annexed to the present Views.

1.1 The author of the communication is Ioane Teitiota, a national of the Republic of Kiribati born in the 1970s. His application for refugee status in New Zealand was rejected. He claims that the State party violated his right to life under the Covenant, by removing him to Kiribati in September 2015. The Optional Protocol entered into force for the State party on 26 August 1989. The author is represented by counsel.

1.2 On 16 February 2016, pursuant to rule 92 of its rules of procedure, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to request the State party to refrain from removing the author to the Republic of Kiribati while the communication was under consideration by the Committee.

Factual background

2.1 The author claims that the effects of climate change and sea level rise forced him to migrate from the island of Tarawa in the Republic of Kiribati to New Zealand. The situation in Tarawa has become increasingly unstable and precarious due to sea level rise caused by global warming. Fresh water has become scarce because of saltwater contamination and overcrowding on Tarawa. Attempts to combat sea level rise have largely been ineffective. Inhabitable land on Tarawa has eroded, resulting in a housing crisis and land disputes that have caused numerous fatalities. Kiribati has thus become an untenable and violent environment for the author and his family.

2.2 The author has sought asylum in New Zealand, but the Immigration and Protection Tribunal issued a negative decision concerning his claim for asylum. Still, the Tribunal did not exclude the possibility that environmental degradation could "create pathways into the Refugee Convention or protected person jurisdiction." The Court of Appeal and the Supreme Court each denied the author's subsequent appeals concerning the same matter.

2.3 In its decision of 25 June 2013, the Immigration and Protection Tribunal first examined in detail the 2007 National Adaptation Programme of Action filed by the Republic of Kiribati under the United Nations Framework Convention on Climate Change. As described by the Tribunal, the National Adaptation Programme of Action stated that the great majority of the population had subsistence livelihoods that were heavily dependent on environmental resources. The Programme of Action described a range of issues that had arisen from the existing and projected effects of climate change-related events and processes. Among the effects of climate change, coastal erosion and accretion were most likely to affect housing, land and property. In South Tarawa, 60 sea walls were in place by 2005. However, storm surges and high spring tides had caused flooding of residential areas, forcing some to relocate. Attempts were being made to diversify crop production, for example, through the production of cash crops. Most nutritious crops were available and could be prepared into long-term preserved food. However, the health of the population had generally deteriorated, as indicated by vitamin A deficiencies, malnutrition, fish poisoning, and other ailments reflecting the situation of food insecurity.

2.4 The Tribunal next considered the expert testimony of John Corcoran, a doctoral candidate researching climate change in Kiribati at the University of

Waikato in New Zealand. Mr. Corcoran, a national of the Republic of Kiribati, characterized the country as a society in crisis owing to climate change and population pressure. The islands constituting the country rose no more than three meters above sea level. Soils were generally poor and infertile. Unemployment was high. The population of South Tarawa had increased from 1,641 in 1947 to 50,000 in 2010. In Tarawa and certain other islands of Kiribati, the scarcity of land engendered social tensions. Violent fights often broke out and sometimes led to injuries and deaths. Rapid population growth and urbanization in South Tarawa had compromised the supply of fresh water. No island in Kiribati had surface fresh water. As a result of the increase in population, the rate of water extraction from the freshwater lens exceeded the rate of its replenishment through the percolation of rainwater. Waste contamination from Tarawa had contributed to pollution of the freshwater lens, rendering some of the five underground water reserves unfit for the supply of fresh drinking water. Increasingly intense storms occurred, submerging the land in certain places on South Tarawa and rendering it uninhabitable. This often occurred three or four times a month. Rising sea levels caused more regular and frequent breaches of sea walls, which were in any case not high enough to prevent saltwater intrusion over the land during high tides. Household wells in high-density housing areas could not be used as a water supply due to increasing contamination, and rainwater catchment systems were only available in homes constructed of permanent materials. Thus, approximately 60 per cent of the population of South Tarawa obtained fresh water exclusively from rationed supplies provided by the public utilities board. Trash washed onto the beach posed health hazards for local landowners. According to Mr. Corcoran, the Government of the Republic of Kiribati was taking some steps to address this. It had a Programme of Action in place to help communities adapt to climate change.[1]

2.5 Next, the Tribunal examined the testimony given by the author during the appeal hearing. According to the Tribunal's description of the testimony, the author was born on an islet situated north of Tarawa, a journey of several days away by boat. He completed secondary school and obtained employment for a trading company, which ended in the mid-1990s when the company folded. He had not been able to find work since then. In 2002, the author and his wife moved in with his wife's family in a traditionally-constructed dwelling in a village in Tarawa. The dwelling was situated on ground level and had electricity and water but no sewage services. Beginning in the late 1990s, life progressively became more insecure on Tarawa because of sea level rise. Tarawa became overcrowded due to the influx of residents from outlying islands, because most government services, including those of the main hospital, were provided on Tarawa. As villages became overcrowded, tensions arose. Also beginning in the late 1990s, Tarawa suffered significant amounts of coastal erosion during high tides. The land surface regularly flooded, and land could be submerged up to knee-deep during king tides. Transportation was affected, since the main causeway separating north and south Tarawa was often flooded. The situation caused significant hardship for the author and other inhabitants of Tarawa. The wells on which they depended

[1] Mr. Corcoran's written report was provided with the author's comments. Entitled "Evidence of climate change impacts in Kiribati," it includes photographs depicting, inter alia, flooding of homes after high tides, land with limited vegetation, a breached sea wall, and trash washed onto a beach.

became salinized. Salt water was deposited on the ground, resulting in the destruction of crops. The land was stripped of vegetation in many places, and crops were difficult to grow. The author's family relied largely on subsistence fishing and agriculture. The sea wall in front of the author's in-laws' home was often damaged and required constant repair. The author and his wife left the Republic of Kiribati for New Zealand because they wished to have children, and had received information from news sources that there would be no future for life in their country. The author accepted that his experiences were common to people throughout the Republic of Kiribati. He believed that the country's Government was powerless to stop the sea level rise. Internal relocation was not possible. The author's parents lived on Tarawa but faced similar environmental and population pressures.

2.6 The Tribunal also considered the oral testimony of the author's wife. According to the Tribunal, she testified that she was born in the late 1970s on Arorae Island, in the south of the Republic of Kiribati. In 2000, her family moved to Tarawa. She married the author in 2002. Her parents' house there was situated on the edge of a sea wall. The house and land were not owned by her parents but belonged to a neighbor. Since her arrival in New Zealand, the neighbor had passed away, and his children had been demanding that her family vacate the house. Her family was supported financially by one of her brothers, who had obtained employment in South Tarawa. If the family were obligated to vacate the house, they would have to travel back to Arorae Island and settle on a small plot of land. She was concerned for the family's health and well-being. The land was eroding due to the effects of sea level rise. The drinking water was contaminated with salt. Crops were dying, as were the coconut trees. She had heard stories of children getting diarrhea and even dying because of the poor quality of the drinking water. Land was becoming very overcrowded, and houses were close together, which led to the spread of disease.

2.7 The Tribunal also considered many supporting documents submitted by the author, including several scholarly articles written by United Nations entities and experts. The Tribunal analyzed whether the author could qualify as a refugee or a protected person under the Refugee Convention, the Convention against Torture, or the Covenant. It found the author entirely credible. It noted that the carrying capacity of the land on the Tarawa atoll had been negatively impacted by the effects of population growth, urbanization, and limited infrastructure development, particularly in relation to sanitation. These impacts had been exacerbated by both sudden-onset environmental events, such as storms, and slow-onset processes, such as sea level rise. The Tribunal noted that the author had been unemployed for several years before arriving in New Zealand, and had relied on subsistence agriculture and fishing, while receiving financial support from his wife's brother. The Tribunal noted the author's statement that he did not wish to return to the Republic of Kiribati because of the difficulties he and his family faced there, due to the combined pressures of overpopulation and sea level rise. The house they were living in on South Tarawa was no longer available to them on a long-term basis. Although the couple's families had land on other islands, they would face similar environmental pressures there, and the land available was of limited size and was occupied by other family members.

2.8 After a lengthy analysis of international human rights standards, the Tribunal considered that "while in many cases the effects of environmental change and natural disasters will not bring affected persons within the scope of the Refugee Convention, no hard and fast rules or presumptions of non-applicability exist. Care must be taken to examine the particular features of the case." After further examination, the Tribunal concluded that the author did not objectively face a real risk of being persecuted if returned to Kiribati. He had not been subjected to any land dispute in the past and there was no evidence that he faced a real chance of suffering serious physical harm from violence linked to housing/land/property disputes in the future. He would be able to find land to provide accommodation for himself and his family.[2] Moreover, there was no evidence to support his contention that he was unable to grow food or obtain potable water. There was no evidence that he had no access to potable water, or that the environmental conditions that he faced or would face on return were so perilous that his life would be jeopardized. For these reasons, he was not a "refugee" as defined by the Refugee Convention.

2.9 Regarding the Covenant, the Tribunal noted that the right to life must be interpreted broadly, in keeping with the Committee's general comment No. 6 (1982) on article 6. The Tribunal cited academic commentary stating that under article 6, an arbitrary deprivation of life involves an interference that is: (a) not prescribed by law; (b) not proportional to the ends sought; and (c) not necessary in the particular circumstances of the case.[3] On this basis, the Tribunal accepted that the right to life involves a positive obligation of the state to fulfil this right by taking programmatic steps to provide for the basic necessities for life. However, the author could not point to any act or omission by the Government of Kiribati that might indicate a risk that he would be arbitrarily deprived of his life within the scope of article 6 of the Covenant. The Tribunal considered that the Government of Kiribati was active on the international stage concerning the threats of climate change, as demonstrated by the 2007 Programme of Action. Moreover, the author could not establish that there was a sufficient degree of risk to his life, or that of his family, at the relevant time. Quoting the Committee's jurisprudence in *Aalbersberg et al. v. the Netherlands* (CCPR/C/87/D/1440/2005), the Tribunal stated that under the Optional Protocol, the risk of a violation of the Covenant must be "imminent." This means that the risk to life must be, at least, likely to occur. No evidence was provided to establish such imminence. The Tribunal accepted that, given the greater predictability of the climate system, the risk to the author and his family from sea level rise and other natural disasters could, in a broad sense, be regarded as more imminent than the risk posed to the life of the complainants in *Aalbersberg et al v. the Netherlands*. However, the risk to the author and his family still fell well short of the threshold required to establish substantial grounds for believing that they would be in danger of arbitrary deprivation of life within the scope of article 6 of the Covenant. This risk remained firmly in the realm of conjecture or surmise.

[2] The Tribunal noted that the father of the author's wife was negotiating with the new owner of the land where the author had been living, and that an arrangement had been made to give the father time to relocate his family to their home island in the south. The Tribunal considered that while the author would need to share the available land with other members of his kin group, it would provide him and his family with access to sufficient resources to sustain themselves to an adequate level.

[3] The Tribunal cited, inter alia, Manfred Nowak, *The U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kiehl, NP Engel, 2005), p. 128-29.

There was no evidence establishing that his situation in the Republic of Kiribati would be so precarious that his or his family's life would be in danger. The Tribunal noted the testimony of the author's wife that she feared her young children could drown in a tidal event or storm surge. However, no evidence had been provided to establish that deaths from such events were occurring with such regularity as to raise the prospect of death occurring to the author or his family members to a level rising beyond conjecture and surmise, let alone a risk that could be characterized as an arbitrary deprivation of life. Accordingly, there were not substantial grounds for believing that the author or any of his family members would be in danger of a violation of their rights under article 6 of the Covenant. The Tribunal also found that there was not a substantial risk that the author's rights under article 7 of the Covenant would be violated by his removal.

2.10 The author also provided a copy of the decision of the Supreme Court, which denied the author's appeal of the decision of the Tribunal on 20 July 2015. The Court considered, inter alia, that while the Republic of Kiribati undoubtedly faced challenges, the author would not, if returned there, face serious harm. Moreover, there was no evidence that the Government of the Republic of Kiribati was failing to take steps to protect its citizens from the effects of environmental degradation to the extent that it could. The Supreme Court was also not persuaded that there was any risk that a substantial miscarriage of justice had occurred. Nevertheless, the Court did not rule out the possibility that environmental degradation resulting from climate change or other natural disasters could "create a pathway into the Refugee Convention or other protected person jurisdiction."

The complaint

3. The author claims that by removing him to Kiribati, New Zealand violated his right to life under the Covenant. Sea level rise in Kiribati has resulted in: (a) the scarcity of habitable space, which has in turn caused violent land disputes that endanger the author's life; and (b) environmental degradation, including saltwater contamination of the freshwater supply.

State party's observations on admissibility

4.1 In its observations dated 18 April 2016, the State party provides additional facts relating to the communication. In 2007, the author and his wife arrived in New Zealand. They had three children there, though none of the children are entitled to citizenship in New Zealand. The family remained in New Zealand without authorization after their residence permits had expired on 3 October 2010.

4.2 On 24 May 2012, with the assistance of legal counsel, the author filed a claim for recognition as a refugee and/or protected person. Under domestic law, Refugee and Protection Officers issue first instance decisions on such claims. Under the Immigration Act 2009, a person must be recognized as a refugee if she or he is a refugee within the meaning of the Refugee Convention. A person must be recognized as a protected person under the Covenant if there are substantial grounds for believing that the person would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand. Arbitrary deprivation of life has the same meaning under the Immigration Act 2009 as it does under the Covenant.

The State party's decision makers have regard to the jurisprudence of the Committee. On 24 August 2012, the author's claim was denied by a Refugee and Protection Officer.

4.3 The Immigration and Protection Tribunal conducts *de novo* examination of appeals relating to claims for recognition as a refugee and/or a protected person. On 25 June 2013, the Tribunal denied the author's appeal of the negative decision of the Refugee and Protection Officer. On 26 November 2013, the High Court denied the author's application for leave to appeal the decision of the Tribunal. On 8 May 2014, the Court of Appeal denied the author's application for leave to appeal the decision of the High Court. On 20 July 2015, the Supreme Court denied the author's application for leave to appeal the decision of the Court of Appeal. All of the author's applications and appeals were made with the assistance of legal counsel.

4.4 On 15 September 2015, the author was detained and was served with a deportation order. On 16 September 2015, an immigration officer interviewed the author, in the presence of his counsel and with the assistance of an interpreter. The author completed a 28-page Record of Personal Circumstances form, which the immigration officer then evaluated through a cancellation assessment. Under domestic law, an immigration officer must perform a cancellation assessment if the individual concerned provides information concerning his or her personal circumstances, and the information is relevant to the State party's international obligations. The immigration officer assessing the author's case did not consider that his removal order should be cancelled. On 22 September 2015, the Minister of Immigration denied the author's request to cancel his removal. On 23 September 2015, the author was removed to Kiribati, and his family left shortly thereafter. They have not returned to New Zealand.

4.5 The State party considers that the communication is inadmissible because the author's implied claim under article 6 (1) of the Covenant is not sufficiently substantiated to establish a *prima facie* case. This is because, firstly, there is no evidence of actual or imminent harm to the author. In its decision on *Beydon et al. v. France* (CCPR/C/85/D/1400/2005), the Committee found that for a person to claim to be a victim of a violation of a Covenant right, she or he "must show either that an act or an omission of a State party has already adversely affected his or her enjoyment of such right, or that such effect is imminent." The Committee considered that the authors had failed to substantiate, for the purpose of admissibility, the alleged violation of their rights under the Covenant. In the present case, there is no evidence that the author faced an imminent risk of being arbitrarily deprived of his life when he was removed to Kiribati. Moreover, there is no evidence that the author faces such a risk. There is also no evidence that his situation is materially different from that of all other persons in Kiribati. The domestic authorities 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. The authorities considered, however, that the author and his family had not established such a pathway.

4.6 Secondly, the author's evidence contradicts his claim. His communication consists of two brief letters, and he appears to rely on the evidence that he presented to the Immigration and Protection Tribunal, as well as the decisions of the domestic authorities. The Tribunal considered a

substantial amount of information and evidence from both the author and an expert concerning the effects of climate change and sea level rise on the people and geography of Kiribati. The Tribunal accepted the evidence, including the author's evidence, in its entirety. However, it found that there was no evidence that the author had faced or faced a real risk of suffering serious physical harm from violence linked to housing, land or property disputes. The Tribunal also found that there was no evidence to support the author's claim that he was unable to grow subsistence crops or obtain potable water in Kiribati. The author had claimed that it was difficult, not impossible, to grow crops as a result of saltwater intrusion onto the land. The Tribunal considered that there was no evidence establishing that the environmental conditions the author faced or was likely to face upon return to Kiribati were so parlous that his life would be jeopardized, or that he and his family would be unable to resume their prior subsistence life with dignity. The Tribunal accepted that States have positive duties to protect life from risks arising from known natural hazards, and that failure to do so may constitute an omission that falls afoul of article 6 (1) of the Covenant. However, the author could not point to any such act or omission by the Government of Kiribati that might indicate a risk that he would be arbitrarily deprived of his life within the scope of article 6 (1) of the Covenant; and he could not establish that there was at that time a sufficient degree of risk to his life or that of his family. The Tribunal concluded that the risk to the author from climate change fell well short of the threshold required to establish a substantial ground for believing that he and his family would be in danger of arbitrary deprivation of life within the scope of article 6 of the Covenant. In the Tribunal's words, the risk remained "firmly in the realm of conjecture or surmise." According to the Committee's jurisprudence, it is generally for the courts of States parties to the Covenant to evaluate facts and evidence in a particular case.

4.7 The communication is also insufficiently substantiated because the author has not submitted any further evidence in addition to the evidence that has already been considered by the domestic authorities. The Immigration and Protection Tribunal accepted the evidence presented by the author. The Court of Appeal considered that the Tribunal's decision was well-structured, carefully reasoned and comprehensive. The High Court noted that in order for the author's application for leave to appeal to be granted, the author would have to present a seriously arguable case that the Tribunal's factual findings were incorrect, and that this would be difficult to meet this requirement because the Tribunal had not challenged the author's evidence. The domestic courts confirmed that the author had not established that he would suffer a violation of article 6 of the Covenant by returning to Kiribati, and that the Tribunal's findings were therefore justified.

Author's comments on the State party's observations on admissibility

5. In his comments dated 25 July 2016, the author maintains that due to the lack of clean drinking water, he and his family have had "reasonably bad health issues" since returning to Kiribati in September 2015. One of the author's children suffered from a serious case of blood poisoning, which caused boils all over his body. The author and his family are also unable to grow crops. Before the Supreme Court of New Zealand issued its decision on the author's case in 2015, the author had provided to the Court new information, namely, the Fifth Assessment Report of the Intergovernmental

Panel on Climate Change. The Report indicated that Kiribati would face serious survival issues if the increase in global temperatures and sea level continued.

State party's observations on the merits

6.1 In its observations dated 16 August 2016, the State party considers that the communication is without merit, for the reasons it previously stated. The State party acknowledges that the right to life is the supreme right under the Covenant from which no derogation is permitted, and should not be interpreted narrowly. States parties are required to adopt positive measures to protect the right to life. However, the complainant has not provided evidence to substantiate his claim that he faces actual or imminent harm. In its jurisprudence, the Committee has found inadmissible claims based on hypothetical violations of Covenant rights that might occur in the future.[4] The Committee has also found inadmissible claims where the author lacks victim status due to a failure to demonstrate that either an act or omission of a State party has already adversely affected his or her enjoyment of the right in question, or that such effect is imminent.[5] In addition, the Committee found unsubstantiated the *non-refoulement* claim of an author who presented general allegations of a risk of arbitrary arrest and detention that could ultimately lead to torture and death, but who acknowledged that he had not experienced any direct threat to his life.[6]

6.2 In addition to reiterating its previous arguments, the State party considers that there is no evidence that the authors now face an imminent risk of being arbitrarily deprived of life following their return to Kiribati. The communication does not present a situation analogous to the facts of *Lewenhoff et al. v. Uruguay.*[7] In that case, the Committee determined that because further clarification of the case depended on information exclusively in the hands of the State party, the author's allegations were substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.

Author's comments on the State party's observations on the merits

7.1 The author presented further comments on 29 December 2016. He claims that during the 2015 United Nations Climate Change Conference (COP 21), the State party endorsed the findings of the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.[8] The Report describes a rise in sea level of at least 0.7 meters for developing countries in the Pacific Ocean, and the resulting loss of rainfall and incursion of salt water into underground freshwater lenses and aquifers. Thus, it appears that the State party has opened the door to accepting the legal concept of a climate change refugee in cases where an individual faces a risk of serious harm. For

[4] The State party cites *V.M.R.B. v. Canada* (CCPR/C/33/D/236/1987), para. 6.3.

[5] The State party cites *Beydon v. France* (CCPR/C/85/D/1400/2005), para. 4.3.

[6] The State party cites *Lan v. Australia* (CCPR/C/107/D/1957/2010), para. 8.4. For the purpose of comparison, the State party also cites *Young-kwan Kim et al. v. Republic of Korea* (CCPR/C/112/D/2179/2012), in which the Committee considered the authors' claims to be sufficiently substantiated and therefore admissible.

[7] *Lewenhoff et al. v. Uruguay* (CCPR/C/OP/1 at 109 (1985)), para. 13.3.

[8] The author provides a copy of a document issued by Climate & Development Knowledge Network, entitled "The IPCC's Fifth Assessment Report: What's in it for Small Island Developing States?"

climate change refugees, the risk of serious harm arises from environmental factors indirectly caused by humans, rather than from violent acts.

7.2 The author faces an intermediate risk of serious harm in Kiribati, which is losing land mass and can be expected to survive as a country for 10 to 15 more years. The author appealed the decision of the Immigration and Protection Tribunal because he disagreed with the Tribunal's determination as to the timeframe within which serious harm to the author would occur. The author states that the expert report he provided to the Immigration and Protection Tribunal confirms his claims.

7.3 The author's life, along with the lives of his wife and children, will be at risk as the effects of climate change worsen. The evidence and compelling photographs provided by the climate change expert, John Corcoran, were largely ignored by the domestic authorities.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not currently being examined under another procedure of international investigation or settlement.

8.3 Noting that the State party has not contested the author's argument that he exhausted all available domestic remedies, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the communication.

8.4 The Committee notes the State party's argument that the communication is inadmissible under article 2 of the Optional Protocol because the author has not sufficiently substantiated his claim that when he was removed to Kiribati, he faced an imminent risk of being arbitrarily deprived of his life. The Committee recalls its jurisprudence stating that a person can only claim to be a victim in the sense of article 1 of the Optional Protocol if he or she is actually affected.[9] It is a matter of degree how concretely this requirement should be taken. However, any person claiming to be a victim of a violation of a right protected under the Covenant must demonstrate either that a State party has, by act or omission, already impaired the exercise of his right or that such impairment is imminent, basing his arguments for example on legislation in force or on a judicial or administrative decision or practice.[10] If the law or practice has not already been concretely applied to the detriment of that individual, it must in any event be applicable in such a way that the alleged victim's risk of being affected is more than a theoretical possibility.[11] Individuals claiming to be victims of a violation by a State party of article 6 of the Covenant must

[9] See, inter alia, *Rabbae v. the Netherlands* (CCPR/C/117/D/2124/2011), para. 9.5.

[10] See, inter alia, *Rabbae v. the Netherlands* (CCPR/C/117/D/2124/2011), para. 9.5; *Picq v. France* (CCPR/C/94/D/1632/2007), para. 6.3; *E.W. et al. v. the Netherlands* (CCPR/C/47/D/429/1990), para. 6.4; *Aalbersberg et al. v. the Netherlands* (CCPR/C/87/D/1440/2005), para. 6.3.

[11] See *Aumeeruddy-Cziffra v. Mauritius* (CCPR/C/OP/1 at 67 (1984)), para. 9.2.

demonstrate that the State party's actions 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.[12]

8.5 The Committee notes, however, that the author's communication sought to prevent his imminent deportation from New Zealand to Kiribati. Accordingly, the question before the Committee is not whether he was, at the time of submission, a victim of a past violation of the Covenant, but rather whether he has substantiated the claim that he faced upon deportation a real risk of irreparable harm to his right to life. The Committee considers that in the context of attaining victim status in cases of deportation or extradition, the requirement of imminence primarily attaches to the decision to remove the individual, whereas the imminence of any anticipated harm in the receiving state influences the assessment of the real risk faced by the individual. The Committee notes in this connection that the author's claims relating to conditions on Tarawa at the time of his removal do 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.

8.6 Based on the information the author presented to the domestic authorities and in his communication, the Committee considers that the author sufficiently demonstrated, for the purpose of admissibility, that due to the impact of climate change and associated sea level rise on the habitability of the Republic of Kiribati and on the security situation in the islands, he faced as a result of the State party's decision to remove him to the Republic of Kiribati a real risk of impairment to his right to life under article 6 of the Covenant. Accordingly, the Committee considers that articles 1 and 2 of the Optional Protocol do not constitute an obstacle to the admissibility of the communication. The Committee therefore proceeds to examine the communication on its merits.

Consideration of the merits

9.1 The Committee has considered the communication in the light of all the information made available to it by the parties, as provided for under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that by removing him to the Republic of Kiribati, the State party subjected him to a risk to his life in violation of article 6 of the Covenant, and that the State party's authorities did not properly assess the risk inherent in his removal.

9.3 The Committee recalls paragraph 12 of its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as that contemplated by articles 6 and 7 of the Covenant. The Committee has also indicated that the risk must be personal, that it cannot derive merely from the general conditions in the receiving State, except in the

[12] See, inter alia, *Aalbersberg et al. v. the Netherlands* (CCPR/C/87/D/1440/2005), para. 6.3; *Bordes and Temeharo v. France* (CCPR/C/57/D/645/1995), para. 5.5.

most extreme cases,[13] and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.[14] The obligation not to extradite, deport or otherwise transfer pursuant to article 6 of the Covenant may be 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.[15] Thus, States parties must allow all asylum seekers claiming a real risk of a violation of their right to life in the State of origin access to refugee or other individualized or group status determination procedures that could offer them protection against *refoulement*.[16] Thus, all relevant facts and circumstances must be considered, including the general human rights situation in the author's country of origin.[17] The Committee recalls that it is generally for the organs of States parties to examine the facts and evidence of the case in order to determine whether such a risk exists, unless it can be established that this assessment was clearly arbitrary or amounted to a manifest error or a denial of justice.[18]

9.4 The Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures. The Committee also recalls its general comment No. 36, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death.[19] The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life.[20] States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life.[21] Furthermore, the Committee recalls that 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.[22]

9.5 The Committee also observes that it, in addition to regional human rights tribunals, have established that environmental degradation can compromise effective enjoyment of the right to life,[23] and that severe

[13] General comment No. 36 (2018) on article 6 of the Covenant on the right to life (CCPR/C/GC/36), para. 30.

[14] See, inter alia, *B.D.K. v. Canada* (CCPR/C/125/D/3041/2017), para. 7.3; and *K v. Denmark* (CCPR/C/114/D/2393/2014), para. 7.3.

[15] General comment No. 36 (CCPR/C/GC/36), para. 31.

[16] General comment No. 36 (CCPR/C/GC/36), para. 31.

[17] See, inter alia, *X v. Sweden* (CCPR/C/103/D/1833/2008), para. 5.18.

[18] See, inter alia, *M.M. v. Denmark* (CCPR/C/125/D/2345/2014), para. 8.4; *B.D.K. v. Canada* (CCPR/C/125/D/3041/2017), para. 7.3; see also Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32) (2007).

[19] General comment No. 36 (CCPR/C/GC/36), para. 3; see *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.3.

[20] See *Toussaint v. Canada* (CCPR/C/123/D/2348/2014), para. 11.3; *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.5.

[21] See, inter alia, *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.3.

[22] General comment No. 36 (CCPR/C/GC/36), para. 62.

[23] *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.4 ; Inter-American Court of Human Rights, *Advisory opinion OC-23/17* of 15 November 2017 on the environment and human rights, series A, No. 23, para. 47; *Kawas Fernández v. Honduras*, judgment of 3 April 2009, series C, No. 196, para. 148. See also African Commission on Human and People's Rights, general comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (article 4), para. 3 (States' responsibilities to protect life "extend to preventive steps to preserve and protect the natural

environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life.[24]

9.6 In the present case, the Committee recalls that it must assess whether there was clear arbitrariness, error or injustice in the evaluation by the State party's authorities of the author's claim that when he was removed to the Republic of Kiribati he faced a real risk of a threat to his right to life under article 6 of the Covenant. The Committee observes that the State party thoroughly considered and accepted the author's statements and evidence as credible, and that it examined his claim for protection separately under both the Refugee Convention and the Covenant. The Committee notes that in their decisions, the Immigration and Protection Tribunal and the Supreme Court both allowed for the possibility that the effects of climate change or other natural disasters could provide a basis for protection. Although the Immigration and Protection Tribunal found the author to be entirely credible, and accepted the evidence he presented, the Tribunal considered that the evidence the author provided did not establish that he faced a risk of an imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati. In particular, the Tribunal found that there was no 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; or (f) the Government of Kiribati had failed to take programmatic steps to provide for the basic necessities of life, in order to meet its positive obligation to fulfill the author's right to life. The Tribunal observed that the Government of Kiribati had taken steps to address the effects of climate change, according to the 2007 National Adaptation Programme of Action submitted by Kiribati under the United Nations Framework Convention on Climate Change.

9.7 In assessing whether the State party's authorities provided the author with an adequate and individualized assessment of the risk of a threat to his right to life, the Committee first notes the author's claim that the increasing scarcity of habitable land on Tarawa has led to violent land disputes that have produced fatalities. In this connection, the Committee considers that a general situation of violence is only of sufficient intensity to create a real risk of irreparable harm under articles 6 or 7 of the Covenant in the most extreme cases, where there is a real risk of harm simply by virtue of an individual being exposed to such violence on return,[25] or where the individual in question is in a particularly vulnerable situation.[26] In assessing the author's

environment, and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies.") See also European Court of Human Rights, application Nos. 54414/13 and 54264/15, *Cordella and Others v. Italy*, judgment of 24 January 2019, para. 157 (serious environmental harm may affect individuals' well-being and deprive them of the enjoyment of their domicile, so as to compromise their right to private life).

[24] See European Court of Human Rights, *M. Özel and others v. Turkey*, judgment of 17 November 2015, paras. 170, 171 and 200; *Budayeva and others v. Russia*, judgment of 20 March 2008, paras. 128–130, 133 and 159; *Öneryildiz v. Turkey*, judgment of 30 November 2004, paras. 71, 89, 90 and 118.

[25] Cf., European Court of Human Rights, *Sufi and Elmi v. United Kingdom*, application Nos. 8319/07 and 11449/07, judgment of 28 June 2011, paras. 218, 241.

[26] See *Jasin v. Denmark* (CCPR/C/114/D/2360/2014), paras. 8.8, 8.9; *Warsame v. Canada* (CCPR/C/102/D/1959/2010), para. 8.3.

circumstances, the Committee notes the absence of a situation of general conflict in the Republic of Kiribati. It observes that the author refers to sporadic incidents of violence between land claimants that have led to an unspecified number of casualties, and notes the author's statement before the domestic authorities that he had never been involved in such a land dispute. The Committee also notes the Tribunal's statement that the author appeared to accept that he was alleging not a risk of harm specific to him, but rather a general risk faced by all individuals in Kiribati. The Committee further notes the absence of information from the author about whether protection from the State would suffice to address the risk of harm from non-state actors who engage in acts of violence during land disputes. While the Committee does not dispute the evidence proffered by the author, it considers that the author has not demonstrated clear arbitrariness or error in the domestic authorities' assessment as to whether he faced a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of violent acts resulting from overcrowding or private land disputes in Kiribati.

9.8 The Committee also notes the author's claims before the domestic authorities that he would be seriously harmed by the lack of access to potable water on Tarawa, as fresh water lenses had been depleted due to saltwater contamination produced by sea level rise. In this regard, the Committee notes that according to the report and testimony of the climate change researcher John Corcoran, 60 per cent of the residents of South Tarawa obtained fresh water from rationed supplies provided by the public utilities board. The Committee notes the findings of the domestic authorities that there was no evidence that the author would lack access to potable water in the Republic of Kiribati. While recognizing the hardship that may be caused by water rationing, the Committee notes that the author has not provided sufficient information indicating 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.

9.9 The Committee further notes the author's claim before the domestic authorities that his right to life had been violated because he had been deprived of his means of subsistence, as his crops had been destroyed due to salt deposits on the ground. The Committee observes the finding of the domestic authorities that, while the author stated that it was difficult to grow crops, it was not impossible. The Committee recognizes that in certain places, the lack of alternatives to subsistence livelihoods may place individuals at a heightened risk of vulnerability to the adverse effects of climate change. However, the Committee notes the lack of information provided by the author on alternative sources of employment and on the availability of financial assistance to meet basic humanitarian needs in the Republic of Kiribati. The Committee further notes the Tribunal's observation that most nutritious crops remained available in the Republic of Kiribati. The information made available to the Committee does not indicate that when the author's removal occurred, there was a real and reasonably foreseeable risk that he would be exposed to a situation of indigence, deprivation of food, and extreme precarity that could threaten his right to life, including his right to a life with dignity. The Committee therefore considers that the author has not established that the

assessment of the domestic authorities was clearly arbitrary or erroneous in this regard, or amounted to a denial of justice.

9.10 Finally, the Committee notes the author's assertion that he faces a risk to his right to life because of overpopulation and frequent and increasingly intense flooding and breaches of sea walls. The Committee also notes the author's argument that the State party's courts erred in determining the timeframe within which serious harm to the author would occur in the Republic of Kiribati, and did not give sufficient weight to the expert testimony of the climate change researcher. The Committee notes that in his comments submitted in 2016, the author asserted that the Republic of Kiribati would become uninhabitable within 10 to 15 years.

9.11 The Committee takes note of the observation of the Immigration and Protection Tribunal that climate change-induced harm can occur through sudden-onset events and slow-onset processes. Reports indicate that sudden-onset events are discrete occurrences that have an immediate and obvious impact over a period of hours or days, while slow-onset effects may have a gradual, adverse impact on livelihoods and resources over a period of months to years. Both sudden-onset events (such as intense storms and flooding) and slow-onset processes (such as sea level rise, salinization, and land degradation) can propel cross-border movement of individuals seeking protection from climate change-related harm.[27] The Committee is of the view 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 articles 6 or 7 of the Covenant, thereby triggering the *non-refoulement* obligations of sending states. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.

9.12 In the present case, the Committee accepts the author's claim that sea level rise is likely to render the Republic of Kiribati uninhabitable. However, it notes that the timeframe of 10 to 15 years, as suggested by the author, could allow for intervening acts by the Republic of Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population. The Committee notes that the State party's authorities thoroughly examined this issue and found that the Republic of Kiribati was taking adaptive measures to reduce existing vulnerabilities and build resilience to climate change-related harms. Based on the information made available to it, the Committee is not in a position to conclude that the assessment of the domestic authorities that the measures by taken by the Republic of Kiribati would suffice to protect the author's right to life under article 6 of the Covenant was clearly arbitrary or erroneous in this regard, or amounted to a denial of justice.

9.13 In the light of these findings, the Committee considers that the State party's courts provided the author with an individualized assessment of his need for protection and took note of all of the elements provided by the author when evaluating the risk he faced when the State party removed him to the Republic of Kiribati in 2015, including the prevailing conditions in Kiribati, the foreseen risks to the author and the other inhabitants of the islands, the

[27] See Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195), para. 18 (h), (i), (l).

time left for the Kiribati authorities and the international community to intervene and the efforts already underway to address the very serious situation of the islands. The Committee considers that while the author disagrees with the factual conclusions of the State party, the information made available to it does not demonstrate that the conduct of the judicial proceedings in the author's case was clearly arbitrary or amounted to a manifest error or denial of justice, or that the courts otherwise violated their obligation of independence and impartiality.

9.14 Without prejudice to the continuing responsibility of the State party 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, the Committee is not in a position to hold that the author's rights under article 6 of the Covenant were violated upon his deportation to the Republic of Kiribati in 2015.

10. The Human Rights Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not permit it to conclude that the author's removal to the Republic of Kiribati violated his rights under article 6 (1) of the Covenant.

Annex 1

Individual opinion of Committee member Vasilka Sancin (dissenting)

1. I regret that I cannot join the majority in finding that the Committee is not in a position to conclude that the State Party's assessment that the measures taken by the Republic of Kiribati would suffice to protect the author's right to life under article 6 of the Covenant was clearly arbitrary or manifestly erroneous, or amounted to a denial of justice (paras. 9.12 and 9.13), particularly since, in my opinion, the State Party failed to present evidence of proper assessment of author's and his dependent children's access to safe drinking water in Kiribati.

2. The author argued, among others, that by removing him and his family to Kiribati, New Zealand violated Article 6(1) of the Covenant, because they have no access to safe drinking water, which poses an imminent threat to their lives. Evidence, uncontested by the State Party, can be found in paras. 2.4, 2.6 and 5 of the views.

3. The State Party to the contrary concluded that there is no evidence to support author's contention that he was unable to obtain potable water and that there is no evidence that he had no access to potable water (para. 2.8). My concern arises from the fact that the notion of 'potable water' should not be equated with 'safe drinking water'. Water can be designated as potable, while containing microorganisms dangerous for health, particularly for children (all three of the author's dependent children were born in New Zealand and were thus never exposed to water conditions in Kiribati).

4. The Committee (para. 9.6) repeats the State Party's argument that although the Tribunal found the author to be entirely credible, and accepted the presented evidence, it considered as unestablished that he faced a risk of an imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati. In particular, the Tribunal found that there was no evidence that: … (c) he would be unable to grow food or access potable water; … or (f) the Government of Kiribati had failed to take programmatic steps to provide for the basic necessities of life, in order to meet its positive obligation to fulfill the author's right to life. These conclusions were based on the fact that the Government of Kiribati had taken steps to address the effects of climate change, according to the 2007 National Adaptation Programme of Action. In para. 9.8, the Committee, while recognizing the hardship that may be caused by water rationing, concludes that the author has not provided sufficient information indicating 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.

5. However, expert reports, inter alia, the United Nations Special Rapporteur on the human right to safe drinking water and sanitation, Ms.

Catarina de Albuquerque, after her mission to Kiribati from 25 July 20121, warned that in Kiribati, the National Development Strategy 2003-2007 and the National Development Plan 2008-2011 contain policies and goals of direct relevance to the water, but that the 2008 National Water Resources Policy and a 2010 National Sanitation Policy's priorities set for the first 3 years have yet to be implemented. In these circumstances, it is my opinion that it falls on the State Party, not the author, to demonstrate that the author and his family would in fact enjoy access to safe drinking (or even potable) water in Kiribati, to comply with its positive duty to protect life from risks arising from known natural hazards.

6. Considering all of the above, I am not persuaded that the author's claim concerning the lack of access to safe drinking water is not substantiated for finding that the State Party's assessment of author's and his family situation was clearly arbitrary or manifestly erroneous. This is why, in the circumstances of the present case, I disagree with the Committee's conclusion that the facts before it do not permit it to conclude that the author's removal to Kiribati violated his rights under article 6 (1) of the Covenant.

[1] https://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12389&LangID=E (accessed 12 December 2019).

Annex 2

Individual opinion of Committee member Duncan Laki Muhumuza (dissenting)

1. Upon carefully examining the facts of the instant communication, I am of the considered view that the author presents a case that reveals a violation and consequently, it should be admissible. The facts before the Committee re-emphasise the need to employ a human-sensitive approach to human rights issues. Accordingly, I disagree with the position reached by the rest of the Committee. The State Party placed an unreasonable burden of proof on the author to establish the real risk and danger of arbitrary deprivation of life – within the scope of Article 6 of the Covenant. The conditions of life laid out

by the author – resulting from climate change in the Republic of Kiribati, are significantly grave, and pose a real, personal and reasonably foreseeable risk of a threat to his life under Article 6(1) of the Convention. Moreover, the Committee needs to handle critical and significantly irreversible issues of climate change, with the approach that seeks to uphold the sanctity of human life.

2. The author presents the evidence, which is not disputed by neither the State Party, nor the rest of the Committee, that sea level rise in Kiribati has resulted in: the scarcity of habitable space causing life endangering violent land disputes; severe environmental degradation resulting in contamination of water supply, and the destruction of food crops; yet the author's family relied largely on subsistence agriculture and fishing. Since removal to Kiribati, the author and his family have been unable to grow crops. Furthermore, the land in Tarawa (the home village of the author and his family) has reportedly gotten significantly flooded; with land being submerged up-to knee deep in king tides. Moreover, beyond stories of children getting diarrhoea and dying because of the poor quality of drinking water, the author and his family on return to Kiribati, have had bad health issues – with one of his children suffering from a serious case of blood poisoning, causing boils all over the body.

3. Whereas the risk to a person expelled or otherwise removed, must be personal – not deriving from general conditions, except in extreme cases, the threshold should not be too high and unreasonable. Even as the jurisprudence of the Committee emphasises a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists; it has been critical to consider all relevant facts and circumstances, including the general human rights situation in the author's country of origin.[2] As a necessary corollary to the high threshold, the Committee has been careful to counterbalance a potentially unreachable standard, with the need to consider all relevant facts and circumstances, which comprise *among other conditions* – the grave situation in the author's country.

4. It is the Committee's position that the right to life includes the right of individuals to enjoy a life with dignity, free from acts or omissions that are expected to cause unnatural or premature death.[3] It is also the Committee's position that environmental degradation and climate change constitute extremely serious threats to the ability of both present and future generations to enjoy the right to life.[4] In recognition of this reality, States have been obligated to preserve the environment and protect it against harm, pollution and climate change.[5]

5. In my view, the author faces a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of the conditions in Kiribati. The considerable difficulty in accessing fresh water because of the environmental conditions, should be enough to reach the threshold of risk, without being a complete lack of fresh water. There is evident significant difficulty to grow

[2] B.D.K. v. Canada (CCPR/C/125/D/3041/2017), para. 7.3; K. v. Denmark (CCPR/C/114/D/2393/2014), para. 7.3.

[3] General Comment No. 36 (CCPR/C/GC/36), para. 3.

[4] General Comment No. 36 (CCPR/C/GC/36), para. 62.

[5] Ibid.

crops. Moreover, even if deaths are not occurring with regularity on account of the conditions (as articulated by the Tribunal), it should not mean that the threshold has not been reached.[6] It would indeed be counterintuitive to the protection of life, to wait for deaths to be very frequent and considerable; in order to consider the threshold of risk as met. It is the standard upheld in this Committee, that threats to life can be a violation of the right, even if they do not result in the loss of life.[7] It is should be sufficient that the child of the author has already suffered significant health hazards on account of the environmental conditions. It is enough that the author and his family are already facing significant difficulty in growing crops and resorting to the life of subsistence agriculture on which they were largely dependent. Considering the author's situation and his family, balanced with all the facts and circumstances of the situation in the author's country of origin, reveals a livelihood short of the dignity that the Convention seeks to protect.

6. Lastly, while it is laudable that Kiribati is taking adaptive measures to reduce the existing vulnerabilities and address the evils of climate change, it is clear that the situation of life continues to be inconsistent with the standards of dignity for the author, as required under the Covenant. The fact that this is a reality for many others in the country, does not make it any more dignified for the persons living in such conditions. New Zealand's action is more like forcing a drowning person back into a sinking vessel, with the "justification" that after all there are other voyagers on board. Even as Kiribati does what it takes to address the conditions; for as long as they remain dire, the life and dignity of persons remains at risk.

[6] See, p. 5, of the Committee's decision, para. 2.9.

[7] See p. 11 of the Committee's decision, para. 9.4.