Climate refugees can't be returned home, says landmark UN human rights ruling

Experts say judgment is ‘tipping point’ that opens the door to climate crisis claims for protection

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The UN decision relates to the case of Ioane Teitiota, who lived on South Tarawa atoll in Kiribati, one of the most vulnerable nations to climate-related sea level rise. Photograph: Dmitry Malov/Alamy

It is unlawful for governments to return people to countries where their lives might be threatened by the climate crisis, a landmark ruling by the United Nations human rights committee has found.

The judgment – which is the first of its kind – represents a legal “tipping point” and a moment that “opens the doorway” to future protection
claims for people whose lives and wellbeing have been threatened due to global heating, experts say.

Tens of millions of people are expected to be displaced by global heating in the next decade.

The judgment relates to the case of Ioane Teitiota, a man from the Pacific nation of Kiribati, which is considered one of the countries most threatened by rising sea levels. He applied for protection in New Zealand in 2013, claiming his and his family’s lives were at risk.

The committee heard evidence of overcrowding on the island of South Tarawa, where Teitiota lived, saying that the population there had increased from 1,641 in 1947 to 50,000 in 2010 due to sea level rising leading to other islands becoming uninhabitable, which had led to violence and social tensions.

He also spoke of the lack of fresh water and difficulty growing crops due to salinity of the water table causing serious health issues for his family. He said that as Kiribati was predicted to be uninhabitable in 10 to 15 years, his life was endangered by remaining there.

The New Zealand courts rejected Teitiota’s claim for protection. The UN human rights committee upheld New Zealand’s decision on the grounds that while “sea level rise is likely to render the republic of Kiribati uninhabitable ... the timeframe of 10 to 15 years, as suggested by
[Teitiota], 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”.

However experts say the committee’s ruling opens the way for other claims based on the threat to life posed by the climate crisis. The committee ruled that “the effects of climate change in receiving states may expose individuals to a violation of their rights ... thereby triggering the non-refoulement obligations of sending states”.

“On a personal level for Ioane and his family it is bad news, because obviously it’s decided that his claim that his right to life was threatened in Kiribati wasn’t strong enough,” said Kate Schuetze, Pacific researcher for Amnesty International. “But they said it wasn’t strong enough based on his personal circumstances and the evidence they put before the court and then they made some very strong statements clarifying the roles and responsibilities of states to say ... there would be a trigger of international responsibility for other governments not to return people to places where their life is at risk because of climate-induced changes.”

While the judgment is not formally binding on countries, it points to legal obligations that countries have under international law.

“What’s really important here, and why it’s quite a landmark case, is that the committee recognised that without robust action on climate at some point in the future it could well be that governments will, under international human rights law, be prohibited from sending people to places where their life is at risk or where they would face inhuman or degrading treatment,” said Prof Jane McAdam, director of the Kaldor centre for international refugee law at the University of New South Wales.

“Even though in this particular case there was no violation found, it effectively put governments on notice.

“There have been cases brought in Australia and New Zealand since the mid-1990s about environmental harm and climate change and to date they’ve all been unsuccessful ... But now we’ve got a very clear, legal authoritative statement now that it’s almost like: watch this space.”

Schuetze said there were roughly a dozen cases in the New Zealand court
system similar to Teitiota’s, with people, mostly from Tuvalu and Kiribati, claiming the impacts of the climate crisis affected their right to life.

“The Pacific Islands will be the canary in the coalmines for climate-induced migrants,” said Schuetze.

“The message in this case is clear: Pacific Island states don’t need to be underwater before triggering those human rights obligations ... I think we will see those cases start to emerge.”

Two of the 18 members of the committee issued dissenting opinions on the case, saying they did not agree with the conclusion that New Zealand was justified in removing Teitiota to Kiribati, with one writing that just because “deaths are not occurring with regularity on account of the conditions ... it should not mean that the threshold had been reached”.

“The fact that this [difficulty growing crops and accessing safe drinking water] 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.”
Kiribati is one of the most isolated countries in the world. As you fly in to the main island of South Tarawa, located less than 100 kms from the equator, a precariously thin strip of sand and green materialises out of the ocean.

On one side, a narrow reef offers some protection to the inhabitants and their land – at low tide, at least. On the other side, a shallow lagoon reaches kilometres out to sea. The 33 islands of Kiribati – pronounced “Kiribass” – are extremely shallow; the highest point on many of the islands such as South Tarawa is just a couple of metres above sea level. Looking out of the aeroplane window, there is no depth to the scene – sea dissolves seamlessly into sky, a paint palette of every blue...
Pictured above: The island of South Tarawa; children playing chicken with the passing boats on the Nippon causeway that joins Betio with the rest of South Tarawa. All photographs by Mike Bowers.
Kiribati is estimated to have a population of just over 100,000, with more than half making their home on South Tarawa. There’s only one road on the island and everything travels along it: schoolchildren, hospital patients, food, water, workers, taxis, minibuses, private cars, and motor scooters.

When I was last here four years ago the road was in a very poor state – a reflection of the country’s perilous economic position. Potholes and washaways were common, and the speed bumps were severe enough to rip out the front end of your car unless great care was taken.

Australia provided just under 30% of the A$77m (US$60.4m) cost of the Kiribati Road Rehabilitation Project. It was the largest economic infrastructure investment in the country since the second world war, and has made a substantial difference to the quality of life on South Tarawa. However, Kiribati is facing greater challenges which infrastructure alone
cannot repair.

Pictured above: Betio, at the southern end of Tarawa; the main land-fill site on South Tarawa.
Pictured above: Some houses on the lagoon side around the village of Eita have been isolated by salt water from sea incursions and storm surges.

Climate change is a huge concern. Rising ocean waters are threatening to shrink Kiribati’s land area, increase storm damage, destroy its crop-growing lands and ultimately displace its people long before the islands are submerged.

Lack of fresh water is an immediate problem. Fresh water lies under the atolls and islands of Kiribati in what are known as a “water lenses”. Fresh water, which is less dense, floats on top of the denser salt water in a convex shape giving the sources their name. However, king tides and sea incursions are polluting the once-reliable sources and ruining the taro plant pits, known as babai pits, which depend on them.

Claire Anterea, one of the co-ordinators of Kirican, the Kiribati Climate Action Network, says she fears the “extraordinary impact on our islands”.

Having yesterday witnessed the effects of sea incursions on vegetable growth on the island of Abaiang, she says: “It has just moved me into tears. Like, oh my God, this is very serious. [The sea] is two or three metres from the babai pit [where taro plants are grown].
“I feel hopeless in one way that our people are suffering, but I also have the hope within our people that they will try to find a way to adapt.”

Pictured above: Claire Anterea fishes off the island of Abaiang; salt water from the sea incursions into the plant-growing areas of Tebungenako village has rendered the soil unable to sustain even coconut trees; a local football match played at the main stadium in Bairiki, South Tarawa, on a flooded pitch.
Pictured above: Maria Tekaie stands beside a fallen coconut tree where the sea has washed away the village of Tebontebike on the southern end of Abaiang.

At the southern end of Abaiang in the village of Tebontebike, Maria
Tekaie leans against an uprooted coconut tree that used to be 100 metres from the shore. The village had to be moved recently, as did the babai pits, due to the incursion of the sea.

The 65-year-old expects to have to move again: “My children are worried and have started to talk about where else they can go. This is the only piece of land for us and they love it here,” she said.

“I just want the world to know, and my request to them is that we need help to protect our land because if we try to build something like a seawall the waves are stronger and we don’t know what option that we have. We just need help from you.”

Eighty minutes north along the bumping and tortuous dirt road is the village of Tebunginako. It’s the most graphic example of sea inundation. Toroua Beree, 63, says: “I moved away from this village because they don’t have any more life on this piece of land.

“I talk about life because before this land was full of banana, babai, coconut trees, so many coconut trees, so many trees we get food from, but now how can those trees continue to live when you don’t have fresh water to give them? This is community land and so everybody has a right to live on it but now it seems like the sea has taken that away.”
Pictured above: A village resident of Tebuginako, Abaiang island, looking out from the village ‘maneaba’ or meeting house; a fisherman waits for the tide to turn on the Anderson causeway; children from the village of Nanikai on South Tarawa performing acrobatics on the beach.
Pictured above: John Kaboa at his Tebero Te Rau Bungalow resort on the island of Abaiang.
John Kaboa, 28, and his wife, Tinaai, run the Tebero Te Rau bungalow resort on Abaiang. Their optimism is typical of the spirit and entrepreneurship that runs hand in hand with fear and despair.

The accommodation sits on stilts over the water and the resort is powered with solar panels and a small, portable generator. Kaboa grows enough vegetables and fruit – such as cabbages, egg plants, papaya, pumpkin, watermelon, longbean, sweet pepper, taro, giant swamtaro and coconut tree – to supply his kitchen. He also buys local produce from farmers on the island in preference to buying imported products. And he has become involved in production of copra, the dried kernel of coconut which is used to extract oil for cooking, hair oils, shampoo, margarine and deterrents.

Kaboa says he is hoping “to get enough money so that I can support my family to move to other countries if Kiribati will covered by the seawater. But I still really love my paradise country.”

Elsewhere, I meet a Swiss man who is growing vegetables hydroponically in PVC pipes. Each pipe has been elevated on racks to keep the plants safely away from the crabs who are a constant menace to crops grown in the ground.
Pictured above: Tinaai Teava, John Kaboa’s wife; copra – the dried kernel of coconut which is used to extract oil for cooking, hair oils, shampoo, margarine and detergents; Kaboa in his giant swamp taro pit, known as a ‘babai pit’; experimental hydroponic vegetable growing on the island of Abaiang.
In March 2016 Taneti Maamau became the new president of the Republic of Kiribati. The elections swept away 12 years of BTK (Boutokaan Te Koaua) party rule along with the outgoing president Anote Tong, who had spent many of those years on the world stage raising awareness of the problems his low-lying island nation was facing due to climate change.

The new government is more inward focussed. Its long-term project is Kiribati Vision 20 (KV20), which looks ahead 20 years. The plan is to plough revenue generated by fishing licences and tourism back into the Kiribati economy to reduce unemployment, raise education standards and reduce poverty. Kiribati earned A$197.8m in 2015 from the sale of fishing licences, up from A$29.5m in 2009.

The new government has also doubled the price of copra to A$2 per kilo. This made the average sack of copra worth about A$200 – a large sum on Kiribati. The idea of this initiative is to entice people to travel back to their outer island homes and take pressure off the heavily populated South Tarawa. It seems to have had an immediate effect.

But opposition MPs believe the doubling of the copra price will mean
that people sacrifice their healthy subsistence lifestyle in favour of the more profitable copra production. They also worry that the government’s dedication to domestic progress will be futile given Kiribati’s future will ultimately be determined on the global stage.

Pictured above: A man fishes off the main wharf at Betio; Joseph Iteba shows the fish that he caught to feed his family at Betio.
Tong, the former president, sits on the seawall that protects his house. His extended family live all around him.

His public speeches have tracked his emotions regarding the fortunes of the I-Kiribati people from frustration to anger to a sense of futility. He says he grieves for what is happening to his country.

“Climate change for most if not all of the countries in the Pacific is a survival issue,” he says. “If we do not address the climate change challenge, all of our efforts in trying to achieve economic survival, economic viability all will come to nought.

“[Since leaving office] I’m at home, I’m seeing my grandchildren grow up, and the question that is always on my mind [is]: ‘What’s going to happen to my grandchildren in 20, 30, 40, 50 years time?’”

I ask him: will the residents of Kiribati become climate refugees? “I think we have no excuse, we have more than enough time to deal with it,” he says.

Following the Paris agreement on climate change – and despite the withdrawal of the US under Donald Trump – Tong feels there is now
momentum for addressing the challenge. However, he notes that capping global temperature increases at “two degrees or 1.5 degrees does not mean a great deal for countries like Kiribati for whom the projected sea level rise will continue to be disastrous”.

Tong hopes Australia and New Zealand will support Kiribati’s cause at the United Nations’ framework convention on climate change in Germany next month. “If Australia and New Zealand are not there, it really puts into question the meaning of any relationship [we have] with Australia and New Zealand.”

Pictured above: A fisherman returns home at dusk on his traditional wooden outrigger near the village of Ambo on South Tarawa.

Unfortunately, in Australia climate change has been used as a political punchline. In 2015, the Australian immigration minister Peter Dutton made a joke about rising sea levels in Kiribati to the then prime minister Tony Abbott. After Abbott complained that the Pacific Islands Forum in Papua New Guinea ran later, Dutton said: “Time doesn’t mean anything when you’re, you know, about to have water lapping at your door.”

During my conversation with Tong, I purposefully re-use those words and a brief flash of anger crosses over his normally peaceful face. He
replies: “Well, actually, it does come into the door ... it’s not funny to the person being hurt.”

His sentiments are echoed by many of the residents of Kiribati, including Anterea. “I think you are too comfortable in your own country,” she says. “Just come to Kiribati and see with your own two eyes what we are suffering from.”

This story has been corrected. Previously it stated that the highest point in Kiribati is just two metres above sea level; it now states that the highest point on many of the islands such as South Tarawa is just a couple of metres above sea level.