Beyond Teitiota: Exploring Aotearoa New Zealand's Engagement with the International Court of Justice Advisory Opinion

The International Court of Justice (ICJ) Advisory Opinion on the Obligations of States in respect of Climate Change presents a huge opportunity for the protection of the environment and the fight against climate change. Aotearoa New Zealand has long been an avid protector of human rights and the environment, including through the development of rights of nature and the identification of the Whanganui River as a legal person.[1] However, the decision of the Supreme Court and confirmation of the United Nations (UN) Human Rights Committee (HRCttee) to repatriate Ioane Teitiota, the "first climate refugee",[2] to Kiribati, represents a notable tightening of its evolving jurisprudence related to the climate protection under human rights law.[3] The following discussion will consider this precedent to explore the potential political and legal consequences of the ICJ Advisory Opinion (AO) for Aotearoa New Zealand and to ultimately argue that despite the *Teitiota* decision, the AO could open new legal and political pathways for climate justice in the region, especially through reinterpretation of State obligations under human rights and environmental law.

Aotearoa New Zealand generally is a State committed to mitigating climate change and presents a largely "green image". They are active in implementing policies to reduce greenhouse gas emissions and have recently released their second emissions reduction plan to meet their 2050 net zero target.[4] As a leader in the Pacific, they will continue to play a major role given the growing regional activism and the importance of climate justice for Pacific Small Island States.

Furthermore, the relationship to the Māori Indigenous culture in Aotearoa New Zealand presents an added layer of legal, political, and social complexity that contributes to climate and environmental protection. In particular, the Treaty of Waitangi and Waitangi Tribunal, as the founding document of Aotearoa New Zealand and the permanent inquiry tribunal into the treatment of the Māori people respectively, provide fundamental treaty and judicial-based protections.[5] Accordingly, the New Zealand Government has committed to incorporating *mātauranga* Māori (knowledge) into environmental policy, which includes the notion of *kaitiakitanga* (guardianship) of the land, which would extend to a climate context.[6]

Against this background, the ICJ AO represents a pivotal development in international law, emphasising the need for States to recognise and respond to the multifaceted human rights impacts of climate-induced environmental harm. This contrasts sharply with earlier New

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[1] Klaus Bosselmann and Timothy Williams, *'The River as a Legal Person: The case of the Whanganui River in New Zealand'* (Heinrich-Böll-Stiftung, 29 January 2025) https://www.boell.de/en/2025/01/29/river-legal-person-case-whanganui-river-new-zealand accessed 9 June 2025.

[2] Tim McDonald, *"The man who would be the first climate change refugee"* (BBC News, 5 November 2015) https://www.bbc.com/news/world-asia-34674374 accessed 9 June 2025.

[3] *Teitiota v New Zealand* (2015) UN Human Rights Committee, Communication No 2728/2016, UN Doc CCPR/C/127/D/2728/2016 (7 January 2020).

[4] Ministry for the Environment, *'Emissions reductions'* (Environment.govt.nz, December 2024) https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/emissions-reductions/ accessed 9 June 2025.

[5] *"The Treaty in brief"* (NZ History, Ministry for Culture and Heritage, 6 February 1840, published 8 January 2015) https://nzhistory.govt.nz/politics/treaty/the-treaty-in-brief accessed 9 June 2025.

[6] Ministry for the Environment, *'Mātauranga Māori and the Ministry'* (Environment.govt.nz, last updated 27 September 2023) https://environment.govt.nz/te-ao-maori/matauranga-maori-and-the-ministry/ accessed 9 June 2025. en.wikipedia.org+15environment.govt.nz+15environment.govt.nz+15

Zealand jurisprudence, such as *Teitiota v. New Zealand*, which, despite being one of the first international human rights cases to consider climate change as a potential trigger for refugee protection, ultimately exemplified the restrictive legal interpretations that have constrained effective protection. Ioane Teitiota, from Kiribati, claimed that being returned from Aotearoa New Zealand would expose him to life-threatening conditions due to the severe effects of climate change Kiribati was facing.[7] The HRCttee recognised that climate-induced harm could, in principle, violate the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR), but ultimately found that the evidence provided by Aotearoa New Zealand was sufficient in proving that risk was not yet imminent, and rejected the claim.[8] Not only did the New Zealand courts reject the claim that Teitiota constituted a "refugee", taking a narrow interpretation of the Refugee Convention, but they also found that they did not adequately show personal suffering.

This has been heavily criticised, including by members of the HRCttee themselves, likening the forcing a drowning person back into a sinking vessel with the justification that there are other voyagers on board.[9] The AO accordingly opens new legal pathways to transcend these limitations by articulating broader State obligations grounded in human rights and environmental law, offering a foundation for more expansive protection of climate-affected individuals in Aotearoa New Zealand.

Legal and Policy Analysis

Aotearoa New Zealand's Written Statement, Comments and Reply in the AO include specific emphasis on climate treaties and the duty of cooperation. Whilst they do acknowledge the notion of State responsibility and human rights considerations, their Statement suggests a rather cautionary and conservative approach, mirroring that that was developed in *Teitiota*. Ultimately, Aotearoa New Zealand's submission reflects a position that, while supportive of international cooperation on climate change, emphasises the primacy of existing climate treaties and expresses caution about extending obligations through broader interpretations of international law, including human rights.[10]

Aotearoa New Zealand's restates its position acknowledging that while climate change is capable of interfering with the enjoyment of a wide range of human rights, it does not submit that international human rights law imposes a generalised obligation to mitigate climate change through emissions reductions and removals,[11] echoing similar arguments that were made in *Teitiota*. The Written Statement indicates a reluctance from Aotearoa New Zealand to give the right to a clean and healthy environment customary law status and is indicative of Aotearoa New Zealand's seemingly conservative approach.[12]

Depending on the outcome of the AO, the ICJ may reinterpret or expand customary international law on environmental protection and human rights to establish a new understanding of risk, time, and foreseeability for climate change, its effects and the various obligations thus imposed on States. This would cause a change in legal approach to climate cases in Aotearoa New Zealand and require them to take more concrete action by way of

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[7] *Teitiota v. New Zealand* (n 3).

[8] Ibid.

[9] *Teitiota v New Zealand* (2015) UN Human Rights Committee, Communication No 2728/2016, UN Doc CCPR/C/127/D/2728/2016 (7 January 2020) [Dissenting Opinion of Committee Member Duncan Laki Muhumuza].

[10] *Written statement of New Zealand* (ICJ Advisory Opinion Request, *Obligations of States in respect of Climate Change*, 22 March 2024) Doc No 187-20240322-WRI-37-00-EN §30.

[11] Ibid 39.

[12] Ibid §114.

protecting people against the effects of climate change, including through a more liberal approach to the recognition of climate refugees.

That said, the Written Statement, Comments and Reply from New Zealand as submitted to the ICJ do still indicate a heightened commitment to mitigating against climate change in soft law and policy spaces, reiterating the calls from Small Island States in the Pacific and reflecting Aotearoa New Zealand's role as a leader in the Oceania region.[13] This suggests that politically, Aotearoa New Zealand might start to take more ambitious domestic climate action, engage in legal reforms to recognise climate displacement and broader environmental rights and take greater regional solidarity with Pacific States. Small Island States have renewed calls to Aotearoa New Zealand to take a leadership role among Pacific Island nations, especially if the AO supports the legal vulnerability of Small Island States to climate-induced harm.[14] This could translate into increased climate finance, capacity building, or migration pathways for climate-displaced persons, aligning with Aotearoa New Zealand's soft power ambitions, but requiring policy and legal reframing away from the conservative approach taken in *Teitiota*.

The ICJ AO could also lead to increasing support for Māori claims and environmental justice. If the AO affirms a human right to a healthy environment in particular or duties to protect vulnerable populations, it could strengthen legal and political arguments by Māori communities around climate justice, land rights, and intergenerational equity.[15] This could also echo the notion of *kaitiakitanga,* potentially leading to more inclusive climate governance, recognising more expansive Treaty of Waitangi obligations in environmental decision-making.

Finally, the ICJ AO may provide a new avenue for strategic use in Aotearoa New Zealand in both litigation and policy. For example, litigants and NGOs could invoke the advisory opinions in strategic litigation to challenge insufficient mitigation, protect those facing climate-induced migration, and to better uphold the values of the Treaty of Waitangi. Furthermore, the AO could strengthen legal actions against government policies like permitting fossil fuel projects or weak emissions targets, similar to previous domestic case law in *Thompson v. Minister for Climate Change* or *Smith .v Fonterra*.[16]

Claims under the New Zealand Bill of Rights Act 1990, particularly rights to life and health,[17] may be strategically reinforced by interpreting climate inaction as a breach of those rights through an international lens. The AO could lead to a reframing of arguments under the Bill of Rights, allowing for a more progressive approach to climate-related claims. This ultimately links to the broader shift in global climate jurisprudence towards more concrete understandings of the relationship between climate change and human rights, for example,

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[13] *Written statement of New Zealand* (n 10).

[14] Secretariat of the Pacific Regional Environment Programme (SPREP), *'Pacific Small Islands Developing States call for accelerated global efforts to address climate change'* (30 May 2024) https://www.sprep.org/news/pacific-small-islands-developing-states-call-for-accelerated-global-efforts-to-address-climate-change accessed 9 June 2025.

[15] M Parsons and RP Crease, 'Indigenous Climate Justice in Aotearoa New Zealand: The Dangers of (Mis)Recognition within Climate Policymaking' (2024) *Inland Waters* 1 https://doi.org/10.1080/20442041.2024.2354141 accessed 9 June 2025.

[16] Vernon Rive, 'Climate Change and Human Rights: How a Landmark Legal Victory in Europe Could Affect NZ' (2024) *The Conversation* https://theconversation.com/climate-change-and-human-rights-how-a-landmark-legal-victory-in-europe-could-affect-nz-227664 accessed 9 June 2025.

[17] New Zealand Bill of Rights Act 1990, ss 8 (right to life), 11 (right not to be subjected to medical treatment without consent).

through the *Torres Strait Islanders case*,[18] *Neubauer v. Germany*,[19] and *Verein KlimaSeniorinnen Schweiz v. Switzerland*.[20]

Reflections and Conclusion

It is interesting to see how Aotearoa New Zealand, as a developed State with a generally perceived commitment to climate change, has responded to the AO. The notable lack of mention of Māori considerations in their Written Comments is interesting given its commitment to *kaitiakitanga* in Aotearoa New Zealand. In general, Aotearoa New Zealand has demonstrated a conservative approach to the AO, reflecting a similar approach that was exercised before in *Teitiota*. However, New Zealand remains strongly committed to international law, and one can hope that these AO may help to shift this back in the right direction.

As a young person from Aotearoa New Zealand, it is exciting to see such an important AO taking effect, to hopefully provide a transformative impact in relation to climate change and related policies. Aotearoa New Zealand is a small State, sometimes forgotten over its cousin Australia, but is one of the largest emitters in the region. Its indigenous cultural ties to other Pacific Island States and their People arguably present a further moral obligation beyond typical lines. An engagement with intergenerational justice beyond the Aotearoa New Zealand context and to the wider Oceania region is necessary.

It is hopeful to see States like Aotearoa New Zealand engage in these issues and provide further action on their national commitments. Following the *Teitiota* decision, Aotearoa New Zealand has moved away from climate activism in the legal and policy space, but the AO provides a space where it can take leadership by actively supporting its fellow Pacific Island States and voicing concrete support for climate action backed by international law. Aotearoa New Zealand, as a State with some of the youngest lawmakers and politicians, is well placed to hear and act on such voices. Youth advocacy continues to hold a strong space in policy, and hopefully, the backing of international legal opinions will help further shape more just and courageous State responses that protect those most affected by climate change.

Ultimately, the HRCttee decision in *Teitiota v. New Zealand* indicated Aotearoa's New Zealand's growing conservatism when it comes to issues related to climate change. Despite its long-standing commitments to green environmental policies and engagement with Indigenous knowledge and obligations, Aotearoa New Zealand has demonstrated a conservative approach to the AO, particularly in regards to the effect of climate change on human rights and the consequent obligations on States. The AO could thus implement more concrete obligations on Aotearoa New Zealand, providing an influential means of encouraging legal and policy change to better approach climate change in the Pacific, which is already so vulnerable to the effects of climate change. On the foundations of powerful youth and indigenous advocacy in Aotearoa New Zealand, hopefully, this will provide meaningful change and action to make the climate safe for current and all future generations in Aotearoa New Zealand and beyond.

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[18] *Torres Strait Islanders v Australia* (UN Human Rights Committee, Communication No 2728/2016, 7 January 2020).

[19] *Neubauer and Others v Germany* (Federal Constitutional Court, 24 March 2021) BVerfG 1 BvR 2656/18.

[20] *Verein KlimaSeniorinnen Schweiz v Switzerland* (2021) App No 53678/20 (ECtHR, 14 January 2021).

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