

PANAMA'S LEGAL OBLIGATION TO RELOCATE THE GUNA PEOPLE: INTERNATIONAL LAW AND CLIMATE CHANGE IN GARDI SUGDUB

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Abstract

The accelerating impacts of climate change are displacing vulnerable communities worldwide, raising urgent questions of state responsibility and human rights. This note examines Panama's legal obligation to implement a planned relocation of the Guna people from the island of Gardi Sugdub, which faces imminent uninhabitability due to rising sea levels. Grounded in international human rights law—including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Paris Agreement, and the United Nations Declaration on the Rights of Indigenous Peoples—this analysis contends that Panama must act to prevent further harm by ensuring a relocation process that upholds the rights to life, health, housing, and cultural integrity. The note further explores Panama's constitutional obligations toward indigenous communities and assesses comparative jurisprudence and state practices, including Fiji's model for rights-based climate relocation. It concludes that Panama's inaction not only risks violating binding legal commitments but also undermines the dignity and self-determination of the Guna people. A rights-centered relocation, developed in collaboration with affected communities and supported by international

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cooperation, offers Panama a critical opportunity to lead in climate adaptation policy across the Americas.

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I. INTRODUCTION

The inevitable impacts of climate change and global warming are drastically changing the world that we live in today. In 2023, global average

sea level set a record new high of four inches above 1993 levels.¹ The rise in sea level has severely impacted coastal communities across the world and has displaced many people from their land.

Gardi Sugdub is a tiny island in the Guna Yala province of Panama with a high point of just one meter above sea level.² With nearly 1,300 people on an island the size of five soccer fields, the overcrowding of the island coupled with the projected sea level rise has impacted the Guna people's livelihood.³ Although planned relocation is a measure of last resort, the Guna people have expressed a strong desire to relocate.⁴

After a decade of empty promises and inaction, the Panamanian government must enact a planned relocation policy and relocate the people of Gardi Sugdub that minimizes the threats posed to human rights, because Panama has international human rights obligations, the government of Panama has a duty to safeguard indigenous people's rights, and a planned relocation would mitigate the risk of displacement and the need for the Guna people to flee to another country as refugees. With such policy implementation, Panama, with the support of the international community, can become the first in the Americas to set the standard for climate adaptations.

This note will begin with a background of Gardi Sugdub and the impacts of climate change that have led for the Guna people to want a planned relocation. Further, the note will discuss the various international treaties and covenants that strongly suggest that states must relocate those who are severely impacted by climate change in order to not be in violation of the rights outlined in these agreements. The note will then go into an additional obligation that Panama has to its indigenous peoples through its own constitution as well as another international covenant specifically dealing with the rights of indigenous peoples. Lastly, the note will discuss recent cases that have come across the UN Human Rights Committee that deal with Article 6 violations under the International Covenant on Civil and Political

1. Rebecca Lindsey, *Climate Change: Global Sea Level*, NAT'L OCEANIC & ATMOSPHERIC ADMINISTRATION (Aug. 22, 2023), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level#:~:text=In%202022%2C%20global%20average%20sea,per%20year%20from%202006%E2%80%932015>.

2. See ERICA BOWER, HUM. RTS. WATCH, THE SEA IS EATING THE LAND BELOW OUR HOMES: INDIGENOUS COMMUNITY FACING LACK OF SPACE AND RISING SEAS PLANS RELOCATION, 1, 18 (2023), <https://www.hrw.org/report/2023/07/31/sea-eating-land-below-our-homes/indigenous-community-facing-lack-space-and-rising>.

3. *Id.*

4. *Id.* at 12.

Rights to establish that forced displacement and migration would not be the ideal situation for the people of Gardi Sugdub.

II. BACKGROUND

A. *Brief History of Gardi Sugdub and Where They Stand Today*

Carti Sugtupu, also known as Gardi Sugdub, or Crab Island, is one of the 365 islands of the San Blas Archipelago located on the Caribbean Sea along the northeastern coast of Panama.⁵ Gardi Sugdub is the home of the Guna Indigenous people. Over one hundred years ago, the Guna people fled the mainland to Gardi Sugdub to escape the Spanish colonizers and mosquito-borne illnesses and have stayed living there ever since then.⁶ Today, what used to be a place of refuge for the Guna people and a place to preserve their culture and traditions, is now a place of fear and destruction due to the threats of climate change and the rise of sea level.

Gardi Sugdub is currently only a little over three feet above sea level.⁷ Given that the land is overcrowded, there is no space to expand or go anywhere aside from the mainland.⁸ The rise in sea level along with the erratic weather such as storms and flooding have disrupted the daily lives of the Guna people—housing, water, health and education have all been impacted,⁹ which as we will see below, are fundamental human rights that must be protected and provided for the people. The Human Rights Watch issued a report in July 2023 wherein they comprehensively lay out the issues that Gardi Sugdub faces and the gaps that exist within the government's actions thus far as well as some recommendations as to what the Panamanian government can do to better attack this issue.¹⁰

The report states that back in 2010, the Guna people have come to the realization and accepted the fact that the only “real, sustainable solution” is to relocate to the mainland.¹¹ The advocacy from the Guna people, along with the support of NGOs, led the Panamanian government to finally commit to build three hundred new homes at the relocation site.¹² The issue now is that the government to date has not completed this project and no one has moved

5. *San Blas Islands: Panama's Caribbean Jewel*, LATIN AM. & CARIBBEAN GEOGRAPHIC (Aug. 29, 2024), <https://lacgeo.com/san-blas-islands-guna-yala-panama>.

6. See HUM. RTS. WATCH, *supra* note 2, at 1.

7. *Id.* at 18.

8. *Id.*

9. *Id.* at 1.

10. See generally *id.*

11. *Id.* at 1.

12. *Id.* at 1, 29.

to this day. The Guna people were given a date of September 25, 2023, which was later delayed to February 29, 2024.¹³

Frustration continues to build among the community as the new site still lacks “water, sewage, and trash management, and a health center”¹⁴ with no plans to effectively meet the needs of the people. Additionally, although a hospital was being built, the project was abandoned, and the building is deteriorating.¹⁵ Further, a school (which was supposed to be ready in 2014) is “still unusable, because it lacks water, a sewage system, and sufficient teachers.”¹⁶ There has been no explanation with respect to the delays and not only are the basic needs of human life not being met in Gardi Sugdub, but those needs are not ready to be met at the relocation site with no solidified plans in place to remedy these issues.

B. What is a Planned Relocation?

According to the “Guidance on Planned Relocation” published by the Brookings Institute and the United Nations Refugee Agency, a common definition of planned relocation is defined as:

A planned process in which persons or groups of persons move or are assisted to move away from their homes or places of temporary residence, are settled in a new location, *and* provided with the conditions for rebuilding their lives. Planned Relocation is carried out under the authority of the State, takes place within national borders, and is undertaken to protect people from risks and impacts related to disasters and environmental change, including the effects of climate change. Such Planned Relocation may be carried out at the individual, household, and/or community levels.¹⁷

Although planned relocation is a measure that should be considered as a last resort, a planned relocation is considered as an adaptation strategy to the effects of climate change.¹⁸ The United Nations noted this at their Framework Convention Climate Change meeting in Cancun in 2010, where it was stated that¹⁹ “enhanced action and international cooperation on planned relocation

13. *Id.*

14. *See id.* at 1.

15. *Id.*

16. *Id.*

17. Brookings Inst., Geo. Univ. Sch. Foreign Serv. Inst. St. Int’l Migration, & UNHCR, UN Refugee Agency, *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation*, UNHCR, Oct. 7, 2015, at 5, <https://www.unhcr.org/media/planned-relocation-guidance-october-2015>.

18. *Id.* at 4, 11.

19. *See* Cancun Climate Change Conference, *Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010*, U.N. Doc. FCCC/CP/2010/7/Add.1 (Mar. 15, 2011), <https://unfccc.int/documents/6527>.

[is] one of three types of human mobility [that] should be considered within climate change adaptation measures.”²⁰ There has been a greater focus on migration and displacement, but a planned relocation can also work. The largest concern is that a planned relocation, if not done correctly, can violate fundamental human rights and this could be due to the fact that there is a lack of guidance on how to create such a policy.²¹ We are able to see the high risk of these concerns firsthand with Panama and the Guna people in that the basic needs at the new site are not being met. It is important to note that a planned relocation does not only place an obligation on the domestic state but also on the international community—this is a joint effort to take on such a task, but it is the state’s responsibility to prioritize and protect the human rights of its people.

III. PANAMA HAS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

An emerging principle of international law strongly suggests that the victims of climate change should enjoy a right of relocation or amelioration of what they are suffering. Through several important international covenants and treaties along with the opinion of the Inter-American Court, there is an implicit obligation for states to mitigate the effects of climate change through a planned relocation. As a party to the (A) International Covenant on Economic, Social and Cultural Rights,²² (B) Paris Agreement,²³ (C) International Covenant on Civil and Political Rights,²⁴ (D) Universal Declaration of Human Rights,²⁵ (E) United Nations Framework Convention

20. See BROOKINGS INSTITUTE ET AL., *supra* note 17, at 4.

21. *Id.*

22. The International Covenant of Economic, Social and Cultural Rights essentially builds on the rights set forth in the Universal Declaration of Human Rights and aims to protect economic, social and cultural rights including the right to equality between men and women, the right to work, and the right to education. See International Covenant of Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, adopted Jan. 3, 1976, 993 U.N.T.S. 3 [hereinafter ICESCR].

23. The Paris Agreement was adopted to prevent the increase of greenhouse gas emissions, global temperature, and “to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs” of those that are vulnerable to the adverse effects of climate change. See Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, 3156 U.N.T.S. 79, T.I.A.S. No. 16-1104 [hereinafter Paris Agreement].

24. The International Covenant on Civil and Political Rights was adopted by the UN General Assembly and is a human rights treaty that lays out the protections for civil and political rights. See International Covenant on Civil and Political Rights, 993 U.N.T.S. 3; S. Exec. Doc. D, 95-2 (1978), S. Treaty Doc. No. 95-19, 6 I.L.M. 350 (1967) [hereinafter ICCPR].

25. The Universal Declaration of Human Rights sets forth the fundamental human rights that are to be universally protected and has been used as a basis for many other international treaties and conventions as well as state laws. See G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) [hereinafter Universal Decl. of Hum. Rts.].

on Climate Change;²⁶ and (F) the Inter-American Human Rights System,²⁷ Panama must abide by the rules and regulations outlined in these agreements and authoritative bodies. Moreover, Article 4 of the Panama Constitution states that Panama abides by the rules of international law.²⁸

These international agreements have the underlying notion that the parties must take steps not only individually as stated, but international cooperation and assistance is also required to ensure that “the full realization” of human rights is fulfilled.²⁹ Although it may be argued that Panama cannot single-handedly mitigate the issues raised in Gardi Sugdub and that this requires the assistance of other states and international organizations, this does not justify Panama’s inaction with respect to the planned relocation of Gardi Sugdub. The Guna people have expressed that a planned relocation is what they want, and they have been cooperative with the Panamanian government.³⁰ It is the government that is failing its people by delaying the date of the relocation as well as the lack of progress with the promises that they have made to the Guna people in the past.

A. *International Covenant on Economic, Social and Cultural Rights*

The International Covenant on Economic, Social and Cultural Rights (“ICESCR”) was adopted by the United Nations General Assembly on December 16, 1966.³¹ The ICESCR essentially builds on the rights set forth in the Universal Declaration of Human Rights and aims to protect economic, social, and cultural rights including the right to equality between men and women, right to work, and the right to education.³²

Many of the rights set forth in the ICESCR are disrupted by the effects that climate change has been having in Gardi Sugdub such as the right to

26. The United Nations Framework Convention on Climate Change is an international treaty that provides a framework to combat climate change through limiting global temperature increases but also coping with the impacts of climate change. *See* United Nations Framework Convention on Climate Change, May 8, 1992, signed June 12, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107.

27. The Inter-American System is a regional human rights system that is in place to protect the human rights of the members of the Organization of American States which is comprised of thirty-five independent countries. *See Inter-American Human Rights System*, INT’L JUST. RES. CTR., <https://ijrcenter.org/regional/inter-american-system/>.

28. CONSTITUCIÓN POLÍTICA DE PANAMÁ [Constitution], art. 4 (Pan.) [hereinafter *Constitution of Panama*].

29. *See* ICESCR, *supra* note 22, at art. 2, 6, 12, 13, and 15.

30. *See* HUM. RTS. WATCH, *supra* note 2, at 18.

31. *See* ICESCR, *supra* note 22.

32. *See id.* at Preamble (recognizing that the Universal Declaration of Human Rights is the foundation for the concepts expanded upon in the ICESCR, like Articles 3 (equal rights of men and women), 6 (right to work), and 13 (right to education)); *Id.* at art. 3, 6, 13.

health, food, water, sanitation, and education.³³ Article 12 sets forth the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”³⁴ Article 13 sets forth the right to education and most importantly, Article 11 lays out the right to an adequate standard of living which includes adequate food, clothing, housing and the continuous improvement of living conditions.³⁵ Further, the parties are to “take appropriate steps to ensure the realization of this right.”³⁶ These fundamental human rights must be protected at all costs and it starts with each individual state providing for their own people. Although climate change is not specifically addressed within the ICESCR, it is largely implied that if there was any threat to the rights set forth in the ICESCR, if nothing was done by the state in question, then this could lead to a violation of the state’s obligations. Climate change is here to stay and will only continue to rapidly impact our globe. Coastal communities are among the most vulnerable and those states must take mitigation measures to protect its people and safeguard their human rights. Panama signed the ICESCR on July 27, 1976,³⁷ which means that Panama cannot do anything that undercuts this treaty.

The implementation and enforcement of the ICESCR is overseen by the UN Committee on Economic, Social and Cultural Rights which comprises of eighteen independent experts.³⁸ This committee released a statement in October 2018, in which they reiterate that “a failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach”³⁹ of the parties’ obligation to “respect, protect and fulfill all human rights for all.”⁴⁰

33. See HUM. RTS. WATCH, *supra* note 2, at 51; see generally ICESCR, *supra* note 22.

34. ICESCR, *supra* note 22, at art. 12.

35. *Id.* at art. 11, 13.

36. *Id.* at art. 11.

37. *Id.*

38. U.N. Human Rights Office, *Introduction to the Committee: Committee on Economic, Social and Cultural Rights (CESCR)*, U.N., <https://www.ohchr.org/en/treaty-bodies/cescr/introduction-committee>.

39. U.N. Human Rights Office, Econ. & Soc. Council, Comm. on Economic, Social and Cultural Rights, *Climate Change and the International Covenant on Economic, Social and Cultural Rights*, Statement submitted by the Committee on Economic, Social and Cultural Rights, ¶ 6, U.N. Doc. E/C.12/2018/1* (2018), <https://www.ohchr.org/en/statements/2018/10/committee-releases-statement-climate-change-and-covenant>.

40. *Id.* (citing a quote that is referencing the ICESCR); see ICESCR, *supra* note 22.

B. Paris Agreement

Panama has also adopted the Paris Agreement which recognizes that adaptation to climate change is a global challenge and is key “to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs” of those that are vulnerable to the adverse effects of climate change.⁴¹ The Paris Agreement is legally binding and was adopted at the UN Climate Change Conference in Paris in 2015.⁴² Although its overarching goal is to prevent the increase of greenhouse gas emissions and the global temperature, the underlying notion is that this binding agreement brought the nations collectively to confront the impacts of climate change and how they can adapt to these effects.⁴³

Article 7 of the Paris Agreement goes into depth with respect to the adaptation and mitigation obligations that the parties to the agreement have and a standard is set as to what an adaptation action should look like:

Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.⁴⁴

There is international recognition that highlights the importance of transparency and a holistic approach when implementing an action for adaptation. This is a recurring theme throughout these international treaties, covenants, and soft laws. There is an emphasis on the burden that states have to protect indigenous people against the effects of climate change and to essentially involve as many people as possible when creating these plans and policies. This will be seen more clearly in the discussion under the United Nations Declaration on the Rights of Indigenous Peoples and the right of free, prior, and informed consent.

41. Paris Agreement, *supra* note 23, at art. 7 ¶ 2. Article 7 states, “Parties recognize that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.” *Id.*

42. *See id.*

43. *Id.*

44. *See id.* at art. 7 ¶ 5.

C. *International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights (the “ICCPR”) was adopted by the United Nations General Assembly on December 16, 1966, and came into force on March 23, 1976.⁴⁵ The ICCPR is a human rights treaty that lays out the protections for civil and political rights.⁴⁶ Panama signed the ICCPR in 1976 and ratified it in 1977.⁴⁷ Articles 1 and 6 are two articles under the ICCPR that strongly support the notion that States must be able to relocate its people when necessary, such as the case of Gardi Sugdub.

Article 1 states, “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁴⁸ This right of self-determination applies to all peoples regardless of race, color, sex, religion, language, or nationality.⁴⁹ Given the fundamental right of self-determination, the Guna people are entitled to be able to move as they see fit. As we have already seen above, although a planned relocation is not an ideal measure to take, the Guna people realized that this is the only way that they would be able to survive. The environmental degradation is too far gone, and the sea levels will only continue to rise. The government of Panama should be supporting the Guna people because a planned relocation is necessary for the Guna’s economic, social, and cultural development.

Further, Article 6 of the ICCPR states, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”⁵⁰ The right to life set forth in Article 6 is quite broad and per the Committee’s General Comment No. 36, the right to life is a fundamental right that is a prerequisite for the enjoyment of all other human rights.⁵¹ The right to life is seen as a backbone to all other human rights and therefore, the right to life should not be interpreted narrowly. Paragraph 3 of General Comment No. 36 widens its interpretation in a way that “it concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.”⁵² Relating this to Gardi Sugdub, the

45. See ICCPR, *supra* note 24.

46. See *id.*

47. See *id.*

48. *Id.* at art. 1 ¶ 1.

49. *Id.* at art. 2 ¶ 1.

50. *Id.* at art. 6 ¶ 1.

51. Human Rights Committee (HRC), General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018) [hereinafter General Comment No. 36].

52. *Id.* ¶ 3.

government of Panama is not the one causing the environmental degradation and the negative impact that it is having on the Guna people. It can be argued that the lack of action on behalf of the government of Panama is an omission which could lead to unnatural or premature death. If the government of Panama continues to delay the date that the relocation site will be ready for move-in, the Guna people will continue to be exposed to danger. The sea level is set to continue rising and the negative impacts on the community will only continue to be aggravated. The situation is already severe enough that the Guna people's chances of survival are at risk, and this may be deemed as a violation of the right to life.

Additionally, the Committee provides under Paragraph 26 of the General Comment No. 36 that the States duty to protect life implies that a State "should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity."⁵³ The Committee provides further clarification as to what these "general conditions" can consist of such as "degradation of the environment, deprivation of indigenous peoples' lands, territories and resources, the prevalence of life-threatening diseases" to name a few.⁵⁴ This cannot be any clearer that the duty lies on the State to take action to not only mitigate but to alleviate the threats to life that its people may encounter such as the negative impacts of climate change.⁵⁵ The government of Panama is well aware and has acknowledged the issues that Gardi Sugdub has, and this is shown through their promises to the Guna people. The fact that they have already started building the new relocation site does not take away their responsibility to get this project done in a timely manner. Even then, there are still many issues that have been overlooked and not addressed by the government of Panama such as the lack of water, sewage, and trash management at the new relocation site.⁵⁶

Moreover, the Committee identifies that environmental degradation and climate change are "some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life."⁵⁷ Although these statements are not made directly in the ICCPR itself, the general comments provided by the Committee (which are the ones who enforce the ICCPR) provide clarification and specificity as to the intent of the drafters

53. *Id.* ¶ 26.

54. *Id.*

55. *See id.*

56. HUM. RTS. WATCH, *supra* note 2, at 1.

57. General Comment No. 36, *supra* note 51, ¶ 62.

with respect to certain articles of the ICCPR.⁵⁸ These comments within General Comment No. 36 provide direct support of the underlying notion that States should provide its people with a planned relocation when it is being asked for by the people and when the threat to their right to life is severe such as seen here with Gardi Sugdub—due to the negative impacts of climate change and environmental degradation.

D. Universal Declaration of Human Rights

The Universal Declaration of Human Rights (“UDHR”) was proclaimed by the United Nations General Assembly on December 10, 1948.⁵⁹ The UDHR sets forth the fundamental human rights that are to be universally protected and has been used as a basis for many other international treaties and conventions as well as state laws.⁶⁰ Although the UDHR does not go into the specificity of referring to climate change, environmental degradation, or the right to a planned relocation, the UDHR has two articles that lay the foundation that encompasses all of these things. With a broader interpretation of Articles 3 and 25, Panama would potentially be in violation of these articles.

Article 3 states that “everyone has the right to life, liberty and security of person.”⁶¹ This notion of the right to life goes in conjunction with Article 25 which sets forth the right to a standard of living.⁶² The right to a standard of living must be “adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”⁶³ These articles make it clear that, at the bare minimum, there is a standard of living that should be held by all member states.⁶⁴ Panama is required to uphold these standards that provide for adequate health, food, and housing and this is a common standard of achievement for all.⁶⁵

58. See *UN Human Rights Committee Clarifies, Expands Guidance on Right to Life*, INT’L JUST. RES. CTR. (Nov. 10, 2018), <https://ijrcenter.org/2018/11/20/un-human-rights-committee-clarifies-expands-guidance-on-right-to-life/>.

59. Universal Decl. of Hum. Rts., *supra* note 25.

60. See *id.* at preamble.

61. *Id.* at art. 3.

62. See *id.* at art. 25.

63. *Id.* Article 25 states that, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” *Id.*

64. Universal Decl. of Hum. Rts., *supra* note 25.

65. See *id.*

Despite the lack of the use of keywords such as “climate change,” there is no distinction as to what does and does not qualify as things that could lead to a violation of these rights. The severe impacts of climate change, as seen in Gardi Sugdub due to the rise in sea level, can lead to a state not protecting people’s right to life and right to a standard of living that meets the standards set forth in Article 25.⁶⁶ If people do not have adequate health, food, and housing, then this could threaten their right to life. People can get severely ill or die due to their vulnerability to diseases or to more natural disasters due to environmental degradation. There is a strong notion that member states must protect these rights and in order to prevent these rights from being threatened,⁶⁷ action must be taken whether through preventative measures or through immediate action to resolve any potential or current issues that arise.

E. United Nations Framework Convention on Climate Change

The United Nations Framework Convention on Climate Change (“UNFCCC”) is an international treaty that was created in 1992.⁶⁸ The UNFCCC provides a framework to combat climate change through limiting global temperature increases but also coping with the impacts of climate change.⁶⁹ Importantly, it establishes that climate change and its adverse effects are a shared concern among all of humankind.⁷⁰

Throughout the UNFCCC, there are multiple instances where there is acknowledgement that parties should take precautionary measures to prevent or minimize the causes of climate change and to mitigate its adverse effects.⁷¹ Further, the parties are to take all of this into account when creating their social, economic and environmental policies and actions.⁷² This strongly suggests that countries like Panama that have low-lying coastal areas should develop planned relocation policies for if and when they need to be used due to the adverse effects of climate change. Low-lying coastal areas are recognized as one of the more vulnerable communities to the impacts of climate change due to the rise in sea levels.⁷³ Even though Panama currently does not have a planned relocation policy in place, the government should be

66. *Id.* at art. 25.

67. *See generally* *Universal Declaration of Human Rights*, AMNESTY INT’L, <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>.

68. *See* United Nations Framework Convention on Climate Change, *adopted* May 9, 1992, S. Treaty Doc. No. 102-38, 1771 U.N.T.S. 107.

69. *See id.*

70. *See id.*

71. *See id.* at art. 3 ¶ 3.

72. *See id.* at art. 4 ¶ 1(f).

73. *See id.* at art. 4 ¶ 8(b).

developing one in conjunction with their planned relocation of Gardi Sugdub. Once Gardi Sugdub is able to be successfully relocated, this will just be the start for many more communities in Panama's low-lying coastal areas to be relocated at some point in the near future.

F. Inter-American System and Inter-American Court of Human Rights

Panama is also a member of the Organization of American States ("OAS") which is comprised of thirty-five independent countries.⁷⁴ The Inter-American System is regional human rights system that is in place to protect the human rights of the members of the OAS.⁷⁵ Under the Inter-American System, the Inter-American Court of Human Rights is the judicial body that not only hears cases that are brought against members of the OAS, but the Court may also issue advisory opinions on issues related to the American Convention on Human Rights at the request of a member.⁷⁶

On November 15, 2017, the Court issued an advisory opinion at the request of Colombia interpreting Articles 4 and 5 of the American Convention on Human Rights.⁷⁷ An advisory opinion is solely an opinion from the Court interpreting the law and it is nonbinding,⁷⁸ these opinions do offer guidance as to how its member states should act.⁷⁹ It is universally known that the negative impacts of climate change are affecting human rights. In this advisory opinion, the State of Colombia posed several questions to the Court and the most important one being:

Should we interpret, and to what extent, the provisions establishing the obligation to respect and ensure the rights and freedoms set out in Articles 4 and 5 of the Pact, as to give rise to the obligation of States parties to the Pact to respect the provisions of international environmental law which seek to prevent environmental damage that could limit or make impossible the effective enjoyment of the rights to life and to personal integrity?⁸⁰

The Court found that the right to a healthy environment is a human right, and the states have three obligations: (i) to prevent environmental damages;

74. *Inter-American Human Rights System*, *supra* note 27.

75. *Id.*

76. *Id.*

77. The Environment and Human Rights (Arts. 4 (1) and 5(1) in Relation to Arts 1(1) and 2 of the American Conventions on Human Rights), Advisory Opinion OC-23/17, ¶¶ 1 and 37, Inter-Am. Ct. H.R. (Nov. 15, 2017) [hereinafter *The Environment and Human Rights*].

78. See generally Inter-Am. Ct. H.R., *What are the Advisory Opinions?*, INTER-AM. CT. H.R., https://www.corteidh.or.cr/que_son_las_opiniones_consultivas.cfm?lang=en.

79. See *id.*

80. The Environment and Human Rights, *supra* note 77, ¶ 3(III).

(ii) to cooperate with other states; and (iii) to provide information, justice and public participation.⁸¹

Once again, we see the notion that the obligation of a planned relocation cannot just rest solely upon the one individual state. There needs to be support and cooperation with and from the international community. Further, states must give their citizens the opportunity to publicly participate in the decision-making process and policies that are being created and that affect them and their environment directly.⁸² It is the state's responsibility to identify these environmental issues by conducting environmental impact studies and then from there, create contingency plans to mitigate further risk of environmental damage, issue regulations to prevent damage, and take action to take care of the damage that has already occurred.⁸³ This advisory opinion lays out the foundation for how states need to approach this issue of climate change and how to go about adapting to these changes.

Therefore, according to Panama's international obligations set forth above through the various international agreements, covenants, and soft law, a planned relocation must at a minimum restore or improve the standard of living of the Guna people. The same underlying themes of mitigation, cooperation with states and the international community, and the idea of continuously improving the standard of living of its people through adequate health, housing, food, water, and education, are evident throughout all these international bodies of authority. These emerging principles of international law strongly suggests that the victims of climate change have a right to amelioration of what they have suffered and when necessary, a planned relocation should take place in order to give them the quality of life that they are owed.

IV. THE PANAMANIAN GOVERNMENT HAS A DUTY TO SAFEGUARD INDIGENOUS PEOPLE'S RIGHTS

Panama has additional legal obligations around safeguarding the rights of its indigenous people. The constitution of Panama spells out the collective rights of indigenous peoples which are in line with human rights standards set forth in the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP").⁸⁴ Indigenous peoples are already among the most

81. *See id.* ¶ 106.

82. *See id.* ¶ 168.

83. *See id.* ¶ 174.

84. *See* James Amaya (Report of the Special Rapporteur on the Rights of Indigenous Peoples: Addendum), *Rep. on the Status of Indigenous Peoples' Rts. in Panama*, U.N. Doc. A/HRC 27/52, at 5, 8 (2014).

impacted by climate change; thus, it is imperative that the planned relocation policy not further harm the Guna people.

A. *Panama's Constitution*

Given that in September 1938, Panama officially recognized the San Blas islands as a *comarca*—a territorial subdivision of the state—the Guna Indigenous people are essentially an autonomous, self-governing society.⁸⁵ The Panama Constitution is interlaced with protections for its indigenous communities, for example Article 127 of the constitution guarantees “the reservation of necessary lands and collective ownership thereof” to indigenous communities “to ensure their economic and social well-being.”⁸⁶ There is no doubt that the Guna Yala province belongs to the Guna people, but the issues arises when this very land is not equipped to provide the Guna people with their basic needs. The land they are currently on does not provide them with adequate food and access to clean water. The overcrowding of the land does not allow them to have proper housing. About fifteen to twenty people are enclosed in each home due to the lack of space on the island.⁸⁷ The current living conditions are in direct violation of the rights set forth in Panama's constitution and does not even, at best, ensure the Guna people's economic and social well-being.

Additionally, the Panama Constitution sets forth specific obligations to Panama's indigenous groups with respect to providing for adequate food,⁸⁸ a quality education,⁸⁹ and the preservation of the culture of indigenous groups to ensure “active participation in public life.”⁹⁰ There is an overlap between the human rights obligations that are provided under international law and the obligations that Panama has taken on domestically through its own constitution. The fact that adequate food, economic, social well-being, and

85. HUM. RTS. WATCH, *supra* note 2, at 13, 49 (first citing Creation of Comarca, Ley 2 de 1938 (art. 1) (1938) (Pan.); and then citing Ley 99 de 1998 (art. 1-3) (1998) (Pan.)).

86. Constitution of Panama, *supra* note 28, at art. 127.

87. HUM. RTS. WATCH, *supra* note 2, at 21-22.

88. See Constitution of Panama, *supra* note 28, at art. 124. Article 124 of Panama's Constitution states that, “The State shall give special attention to indigenous farming communities, with the purpose of promoting their economic, social and political participation in the national life.” *Id.*

89. See *id.* at art. 108. Article 108 of Panama's Constitution states that, “The State shall develop programs of education and promotion for indigenous groups which possess their own cultural mores, in order to ensure their active participation in public life.” *Id.*

90. See *id.* at art. 90. Article 90 of Panama's Constitution states that, “The State recognizes and respects the ethnic identity of national indigenous communities, and shall establish programs to develop the material, social and spiritual values of each of their cultures. It shall establish an institution for the study, preservation and publication of these cultures and their languages, and for promotion of full development of said human groups.” *Id.*

quality education are consistently being referred to continues to prove the importance of these fundamental human rights that every state should be required to provide for its people. The added factor here is that Panama has taken on these basic human rights obligations and has made a further commitment to its indigenous groups. Once again, we see that the current living conditions of the Guna people in Gardi Sugdub are not up to par at the bare minimum required by international and domestic law.

B. United Nations Declaration on the Rights of Indigenous Peoples

Further, Panama is a member of the United Nations and the adoption of UNDRIP provides for additional guidance on the “inherent rights of indigenous peoples” deriving from “their rights to their lands, territories and resources.”⁹¹ UNDRIP was adopted by the General Assembly on September 13, 2007.⁹² Importantly, UNDRIP is not a treaty, but rather a resolution that was adopted by the UN General Assembly, meaning that this does not create an international obligation to member states.⁹³ Although UNDRIP is not legally binding, the General Assembly has made these recommendations as a “standard of achievement” and the resolution still “retains strength and authority since [it] reflect[s] the opinion or general will” of member states on indigenous peoples.⁹⁴ This can be referred to as soft law and when combined with the aforementioned texts we have seen above, UNDRIP holds a stronger sense of authority as the same underlying themes of providing a minimum standard of living is the same throughout.⁹⁵

First and foremost, it is important to recognize that indigenous groups of people have the right to the same fundamental human rights and freedoms that are outlined in the United Nations charter as well as in the international covenants discussed above.⁹⁶ Indigenous people are seen as equals to any other person and should not be deprived of any rights thereof.⁹⁷ Furthermore,

91. G.A. Res. 61/295 Declaration on the Rights of Indigenous Peoples (UNDRIP), at 2 (Sept. 13, 2007) [hereinafter UNDRIP].

92. *Id.* at 1.

93. *Id.* at art. 46, ¶¶ 1, 2.

94. *The Practical Guide to Humanitarian Law*, MEDECINS SANS FRONTIERES, <https://guide-humanitarian-law.org/content/article/3/soft-law/#:~:text=Though%20they%20are%20not%20a,can%20make%20it%20legally%20binding>.

95. *Id.*

96. Article 1 of the UNDRIP states that, “Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law.” UNDRIP, *supra* note 91, at art. 1.

97. *Id.* at art. 2. Article 2 of the UNDRIP states that, “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of

the underlying notion in UNDRIP is that the rights set forth in the resolution are “the minimum standards for the survival” of indigenous peoples across the world.⁹⁸ These rights such as the right to education, health, adequate housing, and equality are the bare minimum. It is implied that states should be going above and beyond these standards and providing more for indigenous peoples. Currently, Panama is not even meeting these “bare minimum” requirements for survival. Panama is in direct violation of these rights and the government is not taking the appropriate measures to achieve the ends of what UNDRIP was made for.⁹⁹ Although Panama may not be directly contributing or causing the disruption in the Guna people’s lives, by not having a sense of urgency and taking immediate action to relocate the Guna people out of Gardi Sugdub, Panama is not recognizing the basic needs of these people.

The Guna people have expressed their desire for relocation and the rights set forth in UNDRIP are in line with their right to improve their standard of living to one that at least gives them what they need—food, water, housing, health, and education.¹⁰⁰ The Guna people are currently deprived of being able to develop themselves fully and there is an entitlement to amelioration, at the least, of what they are suffering.¹⁰¹ UNDRIP recognizes this right to improvement and development of indigenous peoples and the Guna people themselves can determine what priorities exist within their community and how to go about developing their own health, housing, and economic and social programs.¹⁰² Since the Guna people have already determined that relocation is their priority, then Panama should stand by them and provide

discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.” *Id.*

98. *Id.* at art. 43. Article 43 states that, “The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.” *Id.*

99. *See generally id.* at art. 38. Article 38 states that, “States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.” *Id.*

100. *See id.* at art. 21. Article 21 states that, “Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.” *Id.*

101. *See id.* at art. 20, ¶ 2. Article 20 states that, “Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.” *Id.*

102. *Id.* at art. 23. Article 23 states that, “Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.” *Id.*

them with the necessary assistance to relocate them to the new site in timely manner.

Articles 5 and 10 of the UNDRIP specifically dictate the indigenous peoples' right to free, prior and informed consent before any relocation takes place.¹⁰³ Although it is Article 10 that specifically refers to the right to free, prior and informed consent with respect to relocation, Article 5 goes towards the notion of being able to fully participate in the "political, economic, social, and cultural life of the State."¹⁰⁴

The principle of free, prior, and informed consent is an underlying notion that is impliedly woven into the international treaties, as seen in Section III. The principle is closely linked to the right to self-determination which is affirmed in Article I of the covenants of International Human Rights.¹⁰⁵ According to a document published by the United Nations Human Rights Office of the High Commissioner ("OHCHR"), *free* implies that there is "no coercion, intimidation or manipulation."¹⁰⁶ *Prior* implies that consent is to be sought in advance and before anything is authorized or activities begin to move forward.¹⁰⁷ The definition of *informed* is commonly viewed as follows as set forth by the OHCHR:

Informed implies that information is provided that covers a range of aspects, including the nature, size, pace, reversibility and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail. This process may include the option of withholding consent. Consultation and participation are crucial components of a *consent* process.¹⁰⁸

103. See *id.* at art. 5, 10. Article 5 states that, "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State"; Article 10 states that, "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return." *Id.*

104. *Id.* at art. 5.

105. *Free, Prior and Informed Consent of Indigenous Peoples*, U.N. HUM. RTS. OFF. OF THE HIGH COMM'R (Sept. 2013), <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>.

106. *Id.*

107. *Id.*

108. *Id.*

There is little to no doubt that the Guna people should be involved in each and every stage of the relocation process, including decisions about site selection and development. As discussed in Section II, the Guna people realized back in 2010 that relocation to the mainland was necessary in order to preserve their community and their livelihood.¹⁰⁹ The Guna people have worked with the Panamanian government to set this plan into motion and, although they have been involved in some discussions, the Guna people have not received any explanation as to why there is a delay with this project.¹¹⁰ By this time, the Guna people should have already been moved into their new home on the mainland in “La Barriada” or now named, “Isperyala.”¹¹¹ They have received a new date of February 29, 2024, and despite this new date, there is a lack of trust and hope from the Guna people in the government. The Guna people are still questioning, ‘Will the new site actually be ready for relocation in three months from now?’ The answer remains unknown due to the government’s lack of communication with the Guna people, although there is speculation that the government is misusing the funds received for this project and allocating them to other infrastructural projects in Panama.¹¹²

Moreover, the new site, although incomplete, still presents many challenges to the Guna people and their livelihood. Notably, the new homes that are being built are not made in a way that caters to the needs of the Guna people.¹¹³ The Guna peoples mostly sleep in hammocks and these new homes do not have places for them attach them.¹¹⁴ Additionally, the Guna people have large families and these units can only fit up to four or five people.¹¹⁵ On a larger scale, the homes are not being built with Panama’s extreme weather it periodically faces in mind.¹¹⁶ The new site demonstrated visible signs of “flooding, erosion and small landslides.”¹¹⁷ These risks will still exist once the Guna people move in, and yet nothing is being done to mitigate these challenges. The sinking issue is eliminated with the new site on the mainland, but that does not make a difference when the community and their homes will still be vulnerable and susceptible to being buried.

109. See HUM. RTS. WATCH, *supra* note 2, at 1.

110. *Id.* at 2.

111. *Id.* at 15.

112. See Beatriz Felipe Perez & Alexandra Tomaselli, *Indigenous Peoples and Climate-Induced Relocation in Latin America and the Caribbean: Managed Retreat as a Tool or a Threat?* 11 J. ENV’T STUD. SCI. 352, 357 (2021) (showing a history of the Panamanian government misusing funds).

113. HUM. RTS. WATCH, *supra* note 2, at 34.

114. *Id.*

115. *Id.*

116. See *id.* at 26, 27, 36.

117. *Id.* at 36.

Thus, in light of the additional legal obligations that Panama has towards its indigenous peoples through its own constitution and UNDRIP, the Guna people must be involved in all the stages of the relocation process. All the gaps that still exist with the new relocation site should be discussed with the Guna people so that they can work together not only with the Panamanian government to discuss potential solutions but also with the international community. Indigenous peoples have the right to financial and technical assistance from the international community specifically for the ability to be able to enjoy the rights set forth in UNDRIP.¹¹⁸ This process of a planned relocation is not a one-man show, and the Guna people alone do not have the resources to acquire everything that they need. Panama and the international community must come together and acknowledge that this implied obligation to relocate the people of Gardi Sugdub is not only a domestic political one, but also an international obligation.

V. A PLANNED RELOCATION WOULD MITIGATE THE RISK OF ABRUPT, FORCED DISPLACEMENT

A. *Migration and Displacement*

Although a planned relocation does not come along risk free, a planned relocation would mitigate the larger risk of abrupt, forced displacement of people. If communities were to be displaced, this would require them to leave their homes and try to migrate on their own and find another place to call home. Migrating to another country is very high risk as the best chances for them to stay in that country legally would be to come in as refugees. The issue in this approach lies in that there are not sufficient cases internationally wherein people claim status as environmental refugees. The standard is quite high to successfully reach this status and recent cases have leaned towards a more conservative approach in whether those claiming refuge due to climate change would rise to the level to grant them status as environmental refugees. This pathway is not as secure as what a planned relocation would provide to the community at risk.

Furthermore, the migration of indigenous peoples comes at a higher cost. If indigenous peoples move to another country, they would be losing their complete sense of community and culture in that the new country would most likely not be able to provide them with the same resources and lifestyle that they are accustomed to. By looking at *Teitiota v. The Chief Executive of the*

118. UNDRIP, *supra* note 91, at art. 39. Article 39 states, "Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration." *Id.*

Ministry of Business, Innovation and Employment,¹¹⁹ along with *Caceres et al. v. Paraguay*,¹²⁰ one can further understand the views of the UN Human Rights Committee when deciding cases that involve a violation of the right to life under the ICCPR and specifically those about climate change and environmental degradation.

1. *Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment* (“*Teitiota*”)

Teitiota is a landmark UN case that went up to the Supreme Court of New Zealand and then brought by the applicant to the UN Human Rights Committee against the government of New Zealand.¹²¹ At each stage of the court proceedings, the case was denied.¹²² In the original claim by Mr. Teitiota at the Immigration and Protection Tribunal of New Zealand, the Tribunal found that he could not bring himself into the country legally through the Refugee Convention or New Zealand’s protected person jurisdiction on the grounds that his homeland, Kiribati, was suffering the effects of climate change.¹²³

Mr. Teitiota and his wife fled Kiribati in 2007 and went to New Zealand and remained in the country three years after their residency permits had expired.¹²⁴ After Mr. Teitiota was arrested after a traffic stop, he applied for refugee status/protected person status under the Immigration Act of 2009 on the grounds that climate change was causing an increase in the sea levels in Kiribati (his homeland).¹²⁵ The rise in sea level, similar to that of Gardi Sugdub, would continue to impact the environment up to the point where the citizens of Kiribati would be forced to leave their islands.¹²⁶

Mr. Teitiota’s application was denied,¹²⁷ and then he appealed to the Immigration and Protection Tribunal.¹²⁸ The Tribunal dismissed his appeal

119. See *Teitiota v. Chief Executive of the Ministry of Business Innovation and Employment* [2015] NZSC 107 (N.Z.).

120. See UNHRC, Comm. No. 2751/2016, *Caceres et al. v. Paraguay*, UN Doc. CCPR/C/126/D/2751/2016.

121. *Teitiota*, [2015] NZSC 107.

122. *Id.* at [6].

123. *Id.* at [5].

124. *Id.* at [4].

125. *Id.* at [5].

126. The sea level of the islands of Kiribati had been rising steadily which led to some environmental degradation. *Id.*

127. *Id.* at [6].

128. *Id.* “The Immigration and Protection Tribunal hears and determines appeals concerning decisions about residence class visas, decisions about the recognition of a person as a refugee or protected person, liability for deportation, decisions to stop recognizing a person as a refugee or protected person, and decisions to cancel the recognition of a New Zealand citizen as a refugee or

“holding that [Mr. Teitiota] was neither a refugee within the meaning of the Refugee Convention nor a protected person within the meaning of the ICCPR.”¹²⁹ Mr. Teitiota then appealed to the Supreme Court and the Court of Appeal¹³⁰ identifying six questions of law but both appeals were denied finding that these questions of law were insufficient to justify the grant of leave.¹³¹ Some of the main issues that he brought up before the Supreme Court in this case were: (i) whether an “environmental refugee” qualifies for protection under the Refugee Convention; (ii) whether there is a broader interpretation of “refugee” in the Immigration Act;¹³² and (iii) whether the ICCPR includes a right of subsistence.¹³³ The Supreme Court denied the appeal on the grounds that Mr. Teitiota does not face “serious harm” if he returned to Kiribati and there was no proof that the government of Kiribati was failing to protect its citizens from the effects of climate change.¹³⁴ It is important to note that all three courts of New Zealand made it clear that their decision to deny the appeal here does not rule out the possibility for an “environmental refugee” to have a pathway through the Refugee Convention.¹³⁵

On February 16, 2016, the UN Human Rights Committee (the “Committee”) reached a decision on this case and affirmed the New Zealand courts finding that Mr. Teitiota’s right to life was not violated by New

protected person.” Ministry of Justice, *Immigration & Protection Tribunal*, MINISTRY OF JUSTICE, <https://www.justice.govt.nz/tribunals/immigration/immigration-and-protection/> (last updated July 22, 2024).

129. See *Teitiota v. Chief Executive of the Ministry of Business Innovation and Employment* [2015] NZSC 107 at [6] (N.Z.).

130. *Id.* at [6]–[7]. The High Court is New Zealand’s only court of general jurisdiction which means there are no limits on the cases the High Court can hear and the Court of Appeal is New Zealand’s intermediate appeal court. It hears appeals from civil and criminal cases heard in the High Court, appeals from criminal jury trials in the District Courts, and leave applications where a second appeal is to be taken. See Ministry of Justice, *High Court*, MINISTRY OF JUSTICE, <https://www.justice.govt.nz/courts/court-of-appeal/> (last updated Jan. 8, 2025).

131. *Teitiota*, [2015] NZSC 107 at [6].

132. *Id.* at [11b]. Section 129 of the Immigration Act of 2009 sets forth the test to determine whether one is a refugee. A person is a refugee if they meet the following requirements: “A person must be recognized as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention” and “A person who has been recognized as a refugee under subsection (1) cannot be deported from New Zealand except in the circumstances set out in section 164(3).” Immigration Act 2009, s 129 (N.Z.).

133. *Teitiota*, [2015] NZSC 107 at [11b]. The right of subsistence is a human right that ensures that each person has secure access to clean water, adequate food and shelter and basic healthcare, which are all necessary to survival. See Charles Jones, *The Human Right to Subsistence*, 30 J. APPLIED PHIL. 57, 61 (2013).

134. *Teitiota*, [2015] NZSC 107 at [12].

135. *Id.* at [13].

Zealand under Article 6 of the ICCPR.¹³⁶ The Committee went through some important points about the current international law surrounding the right to life outlined in Article 6 of the ICCPR.¹³⁷ Paragraph 12 of the Committee's general comment No. 31 (2004) refers to the States' obligations not to "remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm."¹³⁸ The Committee places an emphasis on the fact that there is a high threshold to establish that a risk of irreparable harm exists and the risk itself must be personal and cannot be solely based on the general conditions of the State they are fleeing from.¹³⁹

Furthermore, specifically with respect to the right to life, the Committee refers to general comment No. 36 (2018), which states that the right to life "extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life."¹⁴⁰ It has been established that climate change has been identified as one of the most serious threats for people's right to life and environmental degradation may lead to a violation of this right.¹⁴¹ The Committee analyzes Mr. Teitiota's supporting arguments for the violation of his right to life such as the overpopulation and frequent flooding, the lack of access to potable water and his deprivation of subsistence because of the destruction of his crops due to an increase in saltwater contamination due to the rise in sea level.¹⁴² In each instance, the Committee found that Mr. Teitiota lacked to provide sufficient evidence with respect to each of his arguments "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."¹⁴³ For example, there was a lack of evidence to indicate that a supply of fresh water was inaccessible.¹⁴⁴ With respect to his crops, although Mr. Teitiota stated it was now more difficult to grow his crops, the Committee found that it was not an impossible task on top of there being a lack of evidence on alternate sources of employment and financial assistance.¹⁴⁵

136. See UNHRC, Comm. No. 2728/2016, *Teitiota v. Chief Executive of the Ministry of Business Innovation and Employment*, ¶ 10, UN Doc. CCPR/C/127/D/2728/2016.

137. *Id.* ¶ 2.9.

138. *Id.* ¶ 9.3.

139. *Id.*

140. *Id.* ¶ 9.4.

141. *Id.*

142. *Id.* ¶¶ 2.5-2.7.

143. *Id.* ¶ 9.8.

144. *Id.*

145. *Id.* ¶ 9.9.

Due to Kiribati taking adaptive measures to mitigate the effects of climate change along with the lack of sufficient evidence to support an imminent risk of irreparable harm to Mr. Teitiota, the Committee did not find a violation under Article 6 of the ICCPR.¹⁴⁶ The Committee did note that with no national or international efforts, “the effects of climate change may expose individuals to a violation of their rights under Article 6 of the ICCPR, thereby triggering the non-refoulement obligations of sending States.”¹⁴⁷

In light of the decision of the Committee in this specific case and the adoption of this view was on October 24, 2019, there is a high threshold to meet in order to potentially be considered as an “environmental refugee” in a different State. The Committee did acknowledge that there could be potential success in making this claim in the future, but the outlook does not look very promising. There would be no guarantee that the people of Gardi Sugdub, if they were forcefully displaced and required to seek refuge in another State, would be able to stay lawfully and gain status as a refugee due to the effects of climate change. The level of uncertainty is a lot higher than that of a planned relocation and can be observed by analyzing states that have already successfully relocated entire communities due to the same reasons that the people of Gardi Sugdub are seeking to relocate—a rise in sea level.

2. *Caceres et al. v. Paraguay*

Caceres et al. v. Paraguay is another case regarding the right to life that was brought to the Committee against Paraguay.¹⁴⁸ The Committee reached a decision and adopted its views on July 25, 2019.¹⁴⁹ The authors of the claim state that it is Paraguay’s lack of authorization and oversight over the agribusinesses in Colonia Yerutí that have led to the continued use of fumigation of crops with toxic agrochemicals.¹⁵⁰ These toxic agrochemicals have contaminated the water of the nearby streams and caused the death of many fish and farm animals, the loss of fruit bearing trees, and crop damage.¹⁵¹ In turn, this eventually led to the death of Mr. Portillo Caceres, who had a farm next to these larger agribusinesses, along with the hospitalization of 22 other inhabitants of Colonia Yerutí, who experienced similar physical symptoms of vomiting, diarrhea and fever.¹⁵²

146. *Id.* ¶¶ 9.6, 9.12.

147. *Id.* ¶ 9.11.

148. *See Caceres, supra* note 120, at 1.

149. *Id.*

150. *Id.* ¶¶ 2.3, 2.4.

151. *Id.* ¶ 2.5.

152. *Id.* ¶¶ 2.7, 2.8.

After inspection of two soybean producers located next to the authors' farms, it was noted by the Ministry of Environment "that they did not maintain a buffer zone, did not hold an environmental permit and were applying toxic agrochemicals without an agrochemical certificate or the services of a technical adviser."¹⁵³ The District Court had ordered the National Plant and Seed Quality and Health Service to oversee and make sure the agribusinesses were following the policies but no steps were taken to enforce this order and fumigation had continued to take place with no environmental protection measures in place.¹⁵⁴

The Committee has made it clear once again just like in *Teitiotia* that a narrow interpretation of the right to life does not convey the right in its entirety and that is the States' obligation to be able to protect this right for all.¹⁵⁵ States must take all "appropriate measures" possible to address any potential or existing threats to the right to life.¹⁵⁶ Although environmental protections are not specifically outlined in the ICCPR, the Committee reiterates that severe environmental degradation may lead to a violation of the right to life.¹⁵⁷

Due to the Committee's broader interpretation of Article 6 of the ICCPR, the Committee found that Paraguay was in violation of Article 6 of the ICCPR.¹⁵⁸ The heavy spraying of toxic agrochemicals posed a reasonably foreseeable threat to the authors' lives given that this led to the contamination of "the rivers in which the authors fish, the well water they drink and the fruit trees, crops and farm animals that are their source of food."¹⁵⁹ Further, Paraguay has failed to provide an alternate explanation for the hospitalization and death of Mr. Caceres and an autopsy was never conducted.¹⁶⁰ Further, the Committee noted that for five years before this case, multiple government authorities were aware of the fumigations that were occurring and the impact it was having on the community, but no action was ever taken.¹⁶¹ The State was aware and acknowledged their responsibility to oversee the agribusinesses and therefore, the Committee deemed the State of Paraguay to be in violation of Article 6 of the ICCPR.¹⁶²

153. *Id.* ¶ 2.12.

154. *Id.* ¶¶ 2.22, 2.23.

155. *Id.* ¶ 7.3.

156. *Id.*

157. *Id.* ¶ 7.4.

158. *Id.* ¶ 7.5.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

3. Findings

Teitiota and *Caceres* allow us to see the views that the Committee held on claims that involved a violation of Article 6 due to environmental degradation. In *Teitiota*, the Committee did not find an Article 6 violation¹⁶³ whereas in *Caceres*, the Committee did find an Article 6 violation.¹⁶⁴ Although both these cases are different in that *Teitiota* was about a climate refugee case and *Caceres* was about an agribusiness using toxic agrochemicals, both these cases shine a light as to what the standard is to show that a state has violated Article 6 for the party bringing the suit. The standard is quite high, and the harm must be “imminent” and there must be sufficient evidence to show that the State acted or did not act in a way that led to the negative effects to its citizens. These cases allow us to see that if the people of Gardi Sugdub are forcefully displaced and need to migrate to another country, their chances at being able to claim status as “environmental refugees” may not be as high as one would think. The risk of being removed would be great and therefore, a planned relocation would provide for better security and protections of its people.

B. Case Study: Fiji's Low-Lying Coastal Villages

Planned relocations are not unheard of, and Fiji has relocated an entire village of 140 people and has also had a partial relocation of a village.¹⁶⁵ This case study will demonstrate what a planned relocation looks like in practice for a group of indigenous people. In 2014, the Vunidogoloa village relocated from its coastal village to a higher site within their land that had less environmental risks.¹⁶⁶ Vunidogoloa was a village that experienced flooding, erosion, saltwater intrusion and seawall failures.¹⁶⁷ Due to the environmental risks and the failed efforts to be able to mitigate these issues themselves such as building seawalls, the residents approached the Fijian government in 2006 asking for financial support to relocate.¹⁶⁸

Although there were site leveling problems at the new proposed site, a second site was selected in 2011 that was only two kilometers inland from

163. *Teitiota v. Chief Executive of the Ministry of Business Innovation and Employment* [2015] NZSC 107 at [12] (N.Z.).

164. *Caceres*, *supra* note 120, ¶ 7.5.

165. Celia McMichael et al., *Planned Relocation and Everyday Agency in Low-Lying Coastal Villages in Fiji*, 185(3) GEOGRAPHICAL J. 325, 329 (2019) [hereinafter McMichael, *Planned Relocation*].

166. *Id.*

167. *Id.*

168. *Id.*

their old village.¹⁶⁹ Along with the resources received by the government (several ministries were involved) and international partners, the community members were able to contribute labor, building materials and funds gained through logging ancestral land.¹⁷⁰ It is important to note that the villagers were greatly involved in the planning process such as designing the new layout of the new site as well as advocating for the preservation of their culture and way of life.¹⁷¹ Their involvement can be seen reflected in the fact that the new location had “four fishponds, pineapple plantations, a copra drier, and farms” in order to mirror the same agricultural conditions that the villagers were used to.¹⁷² This is a part of their culture and a planned relocation requires the preservation of the culture.

The planned relocation of the Vunidogoloa village demonstrated the importance of the involvement of multiple actors in order to successfully go through this process. The “multi-scalar engagement includ[ed] individuals, households, communities, village heads, Provincial Councils, the Office of the Prime Minister, government ministries (e.g., Ministry of Rural and Maritime Development, Ministry of Economy, Ministry of iTaukei Affairs), Republic of Fiji Military Forces, and international donors and agencies.”¹⁷³ By getting as many actors involved, the Vunidogoloa village was able to gain momentum on a national and global level.¹⁷⁴

Even though the villagers are currently still waiting for a second phase to complete infrastructure works, there has already been a significant improvement in their standard of living.¹⁷⁵ A five-year case study that was conducted in Vunidogoloa revealed that the villagers now have access to fertile soil and farmland which in turn allows for food security, as well as income due to the development of cash crop plantations.¹⁷⁶ Although their access to fresh seafood is not as rich since they are no longer near the coast,¹⁷⁷ the benefits outweigh the loss in this situation. In turn, there has also been a noticeable increase in their overall health which it is in part due to clean water and improved sanitation services.¹⁷⁸ All houses now have “a shower, a

169. *Id.*

170. See Celia McMichael & Teresia Powell, *Planned Relocation and Health: A Case Study from Fiji*, 18(8) INT’L J. ENV’T RSCH. & PUB. HEALTH (SPECIAL ISSUE) 1, 3 (2021) [hereinafter McMichael, *Case Study from Fiji*].

171. See McMichael, *Planned Relocation*, *supra* note 165, at 332.

172. *Id.* at 329.

173. *Id.* at 331.

174. *Id.*

175. *Id.* at 329; see McMichael, *Case Study from Fiji*, *supra* note 170, at 3, 5 (see Table 1).

176. McMichael, *Case Study from Fiji*, *supra* note 170, at 7.

177. See *id.*

178. See *id.* at 11.

flushing toilet, and a sink with piped water for washing hands and dishes.”¹⁷⁹ A local nurse reported that there is now a significant reduction in skin and eye infections and conditions as everyone is now washing their hands and faces with clean water.¹⁸⁰

Moreover, in 2018, the Fijian government issued planned relocation guidelines which provide guiding principles and procedures for all stakeholders that “ensure access to basic human rights including the right to water, food, health, work, education and a clean and healthy environment.”¹⁸¹ Developing some type of framework for planned relocations in Fiji was imperative, because in 2017, the Fijian government identified 830 vulnerable communities that would require relocation due to the impacts of climate change.¹⁸² Out of those 830 communities, forty-eight were marked as “urgent.”¹⁸³

The environmental risks posed by climate change are here to stay and just how Fiji developed guidelines for how to handle future relocations, Panama should take the same precautions given that many of their coastal communities are also in the same position as those in Gardi Sugdub. It is only a matter of time before those communities start to ask for a planned relocation. There is no need to wait for an issue to exacerbate or to rise to the level of urgency where immediate action is needed. The Panamanian government is aware of the impacted communities, and it is time to create a planned relocation policy with the input of community members that safeguards the fundamental human rights outlined in their own constitution as well as the various international treaties and soft law. By doing so, Panama could set precedent in the Americas on how to deal with the impacts of climate change of its many coastal regions.

VI. CONCLUSION

To ensure the proper relocation of the Guna people, Panama must abide by its international law obligations. Additionally, Panama must safeguard its additional legal obligations for indigenous peoples by honoring their right to free, prior and informed consent in every aspect of the relocation process. Furthermore, although Panama would be the first in the Americas to have a planned relocation, Panama can look to Fiji as a prime example of how to proceed, doing this could prevent the migration and displacement that would

179. *Id.* at 9.

180. *Id.*

181. *Id.* at 2.

182. See McMichael, *Planned Relocation*, *supra* note 165, at 326.

183. *Id.*

otherwise occur without a planned relocation. If Panama, the Guna people, and the international community work together, they have the opportunity to implement a planned relocation policy that protects human rights and provides the Guna people with an improved standard of living.