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Kiribati

Submission to the UN Universal Periodic Review

**Eighth session of the UPR Working Group of the
Human Rights Council**

May 2010



Executive summary

In this submission, Amnesty International provides information under sections B, C and D, as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*.¹

In section B, Amnesty International raises concerns over citizenship laws and right to a nationality, gender discrimination and the status of international human rights treaties.

In section C, we describe concerns related to economic and social rights in informal settlements and to violence against women.

In section D, Amnesty International makes a number of recommendations for action by the government in the areas of concern listed.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

Citizenship and right to a nationality

1. Citizenship laws in Kiribati are discriminatory against women. The Citizenship Act 1979 (Cap 8A) allows a man who applies for citizenship by naturalisation to include his wife and children in his application. The Act, however, does not allow for a woman applying for citizenship by naturalisation to include her husband and their children. Another discriminatory provision in the Citizenship Act (section 10(1)(2)) provides that a woman who marries a foreigner, moves to another country with her husband and becomes a citizen of that country, can only regain her Kiribati citizenship if her marriage breaks down and she moves back to Kiribati. However, an iKiribati² man who marries a foreigner, moves to another country and becomes a citizen of that country can regain his Kiribati citizenship at any time (and not only if his marriage breaks down).
2. Constitutional provisions of citizenship (sections 22 and 26) do not provide automatic citizenship to foreign men who marry iKiribati women. On the other hand, the foreign wives of iKiribati men have automatic citizenship rights.

Gender discrimination

3. Section 3 of the Kiribati Constitution lists the prohibited grounds of discrimination, including 'sex'. Despite this, unequal or discriminatory treatment of women and girls still occur in almost all aspects of economic, social and cultural life. Moreover, contrary to the Constitution, a number of legislative provisions still discriminate against women and girls in Kiribati. The discriminatory provisions exist in laws that cover a wide range of areas, including family law, sexual offences, domestic violence, property and inheritance laws. The fact that the Constitution gives constitutional status to customary law often allows for more discrimination against women, in particular due to cultural norms and traditional views inherent in which is a perception about the inferior status and role of women in traditional Kiribati society. Women are hardly, if ever, allowed to speak in the *Maneabas* (traditional meeting houses), nor are they treated equally in the distribution of land or resources and or in the decision-making in the family.
4. In a dispute over custody of a child, the Custody of Children Ordinance 1974 (21) rightly states that the welfare of the child is the paramount consideration for the courts (s 3). However, custodial rights of a putative³ father of an ex-nuptial⁴ child are dealt with under the Native Lands Ordinance and this discriminates against a woman's right to custody of her child. Under this provision, in an affiliation proceeding⁵ where a man does not deny paternity of an ex-nuptial child, he will have automatic custodial rights of the child once the child is two years old. Consequently, women would rather not file for an

² Indigenous to Kiribati.

³ The man who is being sued by the mother as the alleged father of the child.

⁴ Child born outside of marriage.

affiliation case and thus forgo the necessary financial assistance (maintenance) to avoid losing their child. There have been many cases where women have decided against asking for financial assistance from the father in order to keep the child. This is a highly discriminatory provision which has a negative impact on the welfare of ex-nuptial children.

5. Land inheritance laws are also discriminatory and patrilineal inheritance has been accorded legislative status, giving men control of aspects of land and property, in that more land is given to the sons than the daughters.
6. Kiribati's obligations under the Convention on the Elimination of All Forms of Discrimination against Women, which it acceded to in 2004, underlines the need to amend the Constitution and legislation to ensure that discrimination on the ground of sex or gender is prohibited.

International human rights instruments

7. The government has acceded to the Convention on the Rights of the Child and the Convention on the Elimination of all forms of Discrimination against Women. However, it has not ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The position of the Kiribati courts on the applicability of international human rights treaties is that these treaties are only applicable once they have been legislated by Parliament.

C. Promotion and protection of human rights on the ground

Accessibility of Land on Tarawa

8. A lack of economic and employment opportunities in the outer islands, the impact of rising sea levels and salination of water sources in the outlying islands and inadequate access to land, has created overcrowding in the settlements around Tarawa Atoll, especially in Betio. The overcrowding and poor living conditions in Betio increases the vulnerability and marginalisation of those who are moving there from the outer islands. People living in these informal settlements often lack adequate housing and access to health care, sanitation and clean water.
9. Overcrowding has led to poor sanitation, inadequate housing facilities, water shortages, exposure to acute skin diseases and health problems. More effective planning guidelines and legislative processes need to be undertaken in consultation with the relevant stakeholders to inform the government on how best to address the issue of accessibility to land, overcrowding, informal settlements and the protection of human rights.

Violence against women

10. Violence against women continues to be highly prevalent in Kiribati and there are many instances of violence against women and girls, including sexual violence, not being reported because of social and cultural pressures from family members. Furthermore, there is no provision for mandatory prosecution for domestic violence offences.
11. Like many other countries in the Pacific Islands, Kiribati does not have specific legislation related to gender-based violence. Current laws on violence are inadequate, with no current specific domestic violence offences in the criminal law legislation. The Penal Code (Cap 67) 1968 allows for any person who assaults his wife, partner or any other family member to be prosecuted under common assault (section 237) which carries a maximum sentence of six months' imprisonment, or assault causing bodily

⁵ Court proceeding to determine who is the father of a child and therefore who has a legal obligation to provide financial assistance for a child. Normally happens in cases where children are born outside of a marriage.

harm which carries a maximum sentence of five years' imprisonment. There are also no laws to protect women who are victims of domestic violence in a situation where they are living in a house situated on their husband's family land.

12. The Laws of Kiribati Act Schedule 1 s 3(a)-(e) provide that customary law may be taken into account in a criminal case in determining the penalty for an offence. This provision allows customary law of seeking forgiveness to affect criminal sentencing of an offender, thereby reducing the deterrent factor of tougher penalties. In many instances, this allows the offender in a sexual assault case to escape punishment.
13. Whilst Amnesty International is encouraged by the capacity-building for police in cooperation with the Pacific Prevention of Domestic Violence (PPDV) Programme and other Pacific regional initiatives, domestic violence training should be mainstreamed within the police service and more awareness raising activities conducted in the communities.

D. Recommendations for action by the State under review

Amnesty International calls on the government:

Citizenship and Right to a Nationality

- To amend the citizenship section of the Constitution as well as the Citizenship Act to ensure equal citizenship rights for Kiribati women and their families.

Gender Discrimination

- To amend the Constitution of Kiribati to include the words "sex" or "gender" as prohibited grounds of discrimination;
- To review all relevant laws which discriminate or impact negatively on women;
- To amend laws and change policies and practices which either expressly discriminate against or perpetuate the discrimination and marginalisation of women.

International human rights standards

- To accede to the Convention on the Rights of Persons with Disabilities, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, and to enact laws through Parliament to reflect the provisions of these standards, as well as other human rights treaties to which Kiribati is a party, in domestic laws;
- To report on its obligations under the Convention on the Elimination of All forms of Discrimination Against Women;
- To legislate the principles of these treaties so that they are applicable in the courts.

Accessibility of Land on Tarawa

- To consult with relevant stakeholders and civil society on how to effectively address issues of human rights in informal settlements;
- To promote and protect the rights of people currently living in the informal settlements to accessing adequate health services, water and sanitation.

Violence against women

- To immediately undertake to enact appropriate legislation to address domestic violence after adequate consultation with relevant stakeholders;

- To ensure that there is a mandatory policy or provision within the law for the prosecution of domestic violence;
- To ensure that training on the prevention of domestic violence is mainstreamed within the training programme of the police service and to implement greater awareness programmes;
- To equip the police with the relevant tools to effectively deal with domestic and sexual violence against women.