

KIRIBATI

NGO submission to the United Nations Universal Periodic Review.
The eighth session of the Universal Periodic Review Working Group, May 2010.
Submission of the Kiribati Women Activists Network (K-WAN).

Introduction.

1. The Kiribati Women Activists Network (K-WAN) is a non-profit, non-government women's group and a member of the Kiribati Association of Non-Government Organisations (KANGO). Since its formation on the 30th November 2007, K-WAN has been the only women's group working to promote the human rights of the women of Kiribati. K-WAN's current membership consists of 16 women with extensive professional expertise. It is open to all women of Kiribati nationality. In this submission, K-WAN highlights the current major human right issues that woman in Kiribati face. K-WAN has also proposed recommendations listed under the individual issues. It also invites proposals from the International and regional community and assistance to the Kiribati government in the implementation of these recommendations.

Ratification of International human rights conventions and reporting obligation pursuant to the conventions that Kiribati is a party to.

2. Kiribati has ratified neither the International Covenant on Civil and Political Rights (ICCPR) nor the International Covenant on Economic, Social and Cultural Rights (ICESCR).
3. While Kiribati is a State Party to the Convention on the Elimination of all forms of Discrimination Against Women [1], the initial report was due in 2005 and the first periodic report is due this year, 2009. Preparation of the CEDAW State Report is under way but there has been a substantial delay in the submission of this report. Ratification of CEDAW occurred in 2004 after efficient lobbying by *Aia Maea Ainen Kiribati* (AMAK), a federation of women's groups. After that, nothing was done to promote awareness of the role of NGOs in preparing CEDAW reports. So, in 2008, K-WAN, as a member of KANGO, provided information on the role of the NGOs and the importance of submitting a CEDAW Shadow report. Early in 2009, KANGO commenced work on a shadow report, excluding AMAK because it is not a member of KANGO and is a quasi-government organization.

Recommendation: K-WAN urge the government to consider the ratification of ICCPR, ICESCR and the Protocol of the CRC on sale of children, child prostitution and pornography.

Recommendation: K-WAN urge the government as a matter of priority to complete the CEDAW State Report and submit it in 2010.

Recommendation: K-WAN urge the government to consider partnership with the NGOs to effect punctual reporting pursuant to CEDAW.

Constitutional provisions against discrimination on the basis of sex and gender.

4. The *Constitution of Kiribati* contains provisions guaranteeing some fundamental rights and freedoms of the individual regardless of sex. However, the general provision prohibiting discrimination does not include sex or gender as discriminatory grounds. This means that the supreme law of Kiribati, and

in turn other laws that are subordinate to it, allow discrimination against women. In the preamble of the *Constitution of Kiribati*, custom and traditions are highly regarded, rendering the patriarchal system in which women are subordinate to men acceptable and lawful. The *Laws of Kiribati Act 1989* enhanced this by providing that in the absence of legislation, customary practices become the law.

Recommendation: K-WAN urge the government as a matter of priority to amend the Constitution to include sex and gender as prohibited grounds of discrimination.

Recommendation: K-WAN urge the government to consider subsequent amendments of all legislation that is discriminatory in effect to women.

Women's participation in decision-making at all levels.

5. Some slight diversity in social structures remains between the northern and southern islands [2] but the commonality of the structure is that men are decision-makers in the village and family. The role and status of women varies between the urban and rural areas. Women on the outer islands are predominantly involved in domestic duties such as cooking, washing, cleaning and babysitting. Men head the family and make decisions. By virtue of this role in their families, they are decision-makers in the village as well, depending on their maturity and status in the village. At the local council level, the local government structure in Kiribati, women's participation is limited. At the parliament level, there has been an increase in women members, but they are still a small minority.

Recommendation: K-WAN urge the government to promote and support participation of women in decision-making at the family and village level.

Recommendation: K-WAN urge the government to explore ways to promote women's participation in parliament and at local council levels and to implement the findings as a matter of priority.

Women's rights to employment and property ownership

Employment

6. The *Employment Ordinance* as amended provides that women shall not be employed between 6pm and 6am with exceptions for nursing, hotel or guesthouse, pharmacists and senior management jobs. Otherwise, women can only work between the restricted hours in emergency situations. Women are prohibited from being employed in manual labor jobs and mining. Although the *Employment (Amendment) Act 2008* prohibits discrimination on the ground of sex, the existing restrictions on the hours of work and exclusions from certain types of work are clearly discriminatory to women. Maternity leave consists of 12 weeks leave (6 weeks before giving birth and 6 weeks after). During this confinement period, pursuant to the Ordinance, there will be a salary deduction (women to receive not less than 25% of their normal salary). However, pursuant to the National Conditions of Service, (an instrument providing the employment conditions of civil servants) women can only receive full salary during two maternity leaves. Leaves after this can be taken without pay. Although the *Employment Ordinance* takes precedence, the NCS is regarded as a fundamental instrument and this creates a discrepancy in the two governing instruments. There has been an increase in participation of women in the public workforce and in professional and senior posts within the government. However the bulk of women's employment is in the private and non-cash sectors. These

sectors are not regulated by the same or similar formal conditions. In this sector, maternity or compassionate leave, pay and working hours or days are dictated by the owners or managers.

Recommendation: K-WAN urge the government to amend and improve the *Employment Ordinance* to allow women the right to work in any job they are qualified to work in.

Recommendation: K-WAN urge the government to amend the *Employment Ordinance* and align the NCS to grant maternity leave with full salary payment in acknowledgement of women's physical and biological difference with men.

Recommendation: K-WAN urge the government to consider as a matter of priority imposing measures to address the informal and private sector's women employment conditions.

Property ownership

7. The 2 major types of property ownership in Kiribati are land and money. Women's rights to inherit land and/or money are determined by their status as spouse, issue or next-of-kin.
8. The Native Lands Ordinance states that land is generally passed on to the issue or next-of-kin of the deceased, to the exclusion of the widow. This law is based on custom where women generally do not have the same rights to land ownership as men. The custom varies slightly in the different islands of Kiribati but the commonality is that women as spouses only get land as gifts for nursing the deceased husband where the issue or next-of-kin neglected him. Where land is otherwise given as a gift then this must be approved by the majority of the issue or next-of-kin. Further, when women do inherit as issue, they do not get the same quantity or quality of lands as their brothers. The brothers are often given the best and largest portions. The *Provident Fund (Amendment) Act 2008* and the *Workmen's Compensation Ordinance* provide that dependants are entitled to the provident fund or compensation of a deceased. Although women as spouses are included in this definition, the apportionment of these funds is at the discretion of the court. Given that the predominant accepted custom discriminates against women as spouses, there is a risk of them receiving an unfair share. This risk is greater when a woman remarries as she is then regarded as attached to her new husband's family.
9. In the case of the *In the Matter of the Distribution of the Monetary Estate of Tenamo Mouta Ex Parte Temaia Tiaoti Mackenzie* [3], the High Court defined the next-of-kin to be the children of the deceased, or, if the deceased is issueless, his brothers and sisters. Spouses are therefore not beneficiaries of the monetary estate of the deceased.

Recommendation: K-WAN urge the government to consider amendment of the Natives Lands Ordinance to stop discrimination against women by providing for a fair distribution of land between men and women as spouses, issue and next-of-kin.

Recommendation: K-WAN urge the government to consider amendment of the discretionary powers of the court to prevent the discriminatory apportionment of a provident fund or compensation.

Protection of women from domestic violence

10. In 2008, the Kiribati Family Health and Support Study, [4] a study on violence against women and children, was conducted in Kiribati. The result of this study shows that in Kiribati 68% of women are

experiencing or have experienced domestic violence. Launching the report, the President of Kiribati, Honourable Anote Tong, stated that the country should do something to address the problem. There is no special legislation to address domestic violence and cases are often treated as any other offences that warrant prosecution pursuant to the *Penal Code of Kiribati*. The Social Welfare division of the Ministry of Internal and Social Affairs and the Family and Sexual Unit of the Kiribati Police Services are the only government institutions that are specialized in dealing with domestic violence cases. However, it was also found in the study that women generally refused to report or share their problem with formal authorities. Therefore the two authorities are not the effective solutions. The only existing crisis centre is run and managed by an order of catholic sisters, Our Lady of the Sacred Heart. The centre is a shelter for women who suffer from domestic violence and their children. The sustainability of this non-government, non-profit and efficient centre depends on the availability of funds for maintenance and provisions for the victims.

Recommendation: K-WAN urge the government to implement the recommendations of the Kiribati Family Health and Support Study.

Recommendation: K-WAN urge the government to consider enacting specific domestic violence offences to respond to the special circumstances of domestic violence, which are not sufficiently catered for under the existing Penal Code.

Recommendation: K-WAN urges the government to consider establishing more counselling centres for couples and shelters for victims of domestic violence.

Alternatively, K-WAN urge the government to consider partnership with the crisis centre and other relevant NGO organizations in providing a sustainable shelter and service for victims of domestic violence.

Women's rights and climate change

11. Kiribati is among the states most vulnerable to climate change, the predicted impacts of which includes sea level rise, coastal erosion, droughts, desalination of water and coral bleaching. The consequence of these impacts will be severe for the Kiribati communities that depend highly on fish, water from the underground lenses and agriculture for their livelihood. The impacts of climate change pose a fundamental threat to the rights to development, enjoyment of economic, social and cultural rights, rights to adequate food, housing, adequate standard of living and improvement of living conditions and the highest attainable standard of physical and mental health. The government continuously raises at the International level Kiribati's concern that when the situation comes to its worst, the people would have no choice but to be relocated. This outcome would threaten property ownership, cultural rights and identity.
12. Women and children would be most vulnerable to climate change when the sources of their livelihood are depleted and their rights are under threat. This is because they have limited adaptive capacities due to prevailing social inequalities and ascribed roles. As primary care-givers, women may see their responsibilities increase as the family's health is affected by the diseases caused as impacts of climate change, such as water borne diseases. This would lead to effects on the women's own health.

Recommendation: K-WAN urge the government to continue lobbying and seeking support from the International community to consider the problem of small island states and Kiribati in particular.

Recommendation: K-WAN urges the government to adhere to the minimum human rights standards provided under CEDAW in the implementation, mitigation and adaptation of national responses to climate change.

The need for a human rights commission

13. Kiribati has no UN-recognised human rights commission because it lacks the resources and capacity to establish and maintain one. The court is the only mechanism that entertains any human rights concerns but this can only be done once a formal case has been filed. Kiribati's constraints in the establishment and operation of a human rights commission are similar to those faced by other small island states in the Pacific region. These constraints prevent the establishment of an agency that is most vital for the promotion and addressing of human rights issues. Addressing human rights would be more effective if there were a collective approach and strategy in the Pacific region towards establishing a regional human rights commission. This regional human rights commission should have a mandate to promote and defend human rights set up under the Pacific Plan, closely tied to the Pacific Islands Forum Secretariat (PIFS) which administers and monitors the Pacific Plan. It should consist of professionals who are qualified and knowledgeable in the general and particular human right issues in the different Pacific islands.

14. The establishment of a Pacific Regional Human Rights Commission (PRHRC) would be a great challenge initially but the long term benefits would offset this challenge. It could start with a simple mechanism and develop to a fully fledged commission as it evolves.

Recommendation: K-WAN urges the government to support the establishment of a Pacific Regional Human Rights Commission to address human rights issues in Kiribati and the region and to consider lobbying and entering into partnership with other Pacific Islands States to support the establishment of the commission.

Recommendation: K-WAN urges the government to consider the advantages of having a regional human rights commission which is less costly and less subject to domestic influence yet efficient and more sustainable than a domestic commission.

Notes.

[1] Kiribati ratified CEDAW on the 17th March 2004.

[2] Commonwealth Secretariat (CS), Kiribati Society, 2007.

[3] Kiribati High Court Lands Review, 2000.

[4] The study is on gender-based violence and child abuse and is funded by UNFPA and AusAID.