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Executive Summary

The Universal Periodic Review (UPR) is a newly-introduced initiative for Boutokaan Inaomataia ao Mauriia Binabinaine Association (BIMBA) that was supported by its national and regional partners. It is intended and regarded as a mechanism to ensure that the protection of human rights for people of diverse sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) is encouraged and supported at a national level in Kiribati and at the global level through the United Nations Human Rights Council. As such, the content of this submission is based on the perspectives of BIMBA as a civil society organization (CSO) with an emphasis on working with SOGIESC-related challenges and issues in Kiribati, particularly the recommendations stated in the 2nd Cycle of UPR. This submission is intended to convey the challenges and constraints faced by members of the lesbian, gay, bisexual and transgender (LGBT) community in Kiribati; and briefly explain how the recommendations made can further advance the work of BIMBA as a CSO working closely with LGBT people in Kiribati.

Acknowledgement

The submission of this UPR was made possible with the official assistance and support of the national coordinator of UPR submissions in Kiribati i.e., Ministry of Justice (MoJ), specifically the officers and advisors such as, Ms Save Redfern, Ms Henty Pine and Mr Amberoti Nikora who have been instrumental in ensuring that BIMBA is included in the national working group sessions for the UPR in Kiribati.

It would also be ideal to commend the continued partnership of the HIV Program Unit of the Ministry of Health and Medical Services (MHMS) that has been a national ally of Boutokaan Inaomataia ao Mauriia Binabinaine Association (BIMBA) since its establishment in 2016 through HIV Outreach Programs to key populations. Additionally, it goes without saying that the leadership of BIMBA's current Executive Committee has contributed immensely to the development and dissemination of this report or submission, particularly the endorsement and support of the Current President Ms Kouratoka Betero.

Moreover, BIMA would like to extend its sincerest acknowledgement and appreciation to some of the regional champions of the Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) in the Pacific, who are currently engaged with the Pacific Sexual and Gender Diversity Network (PSGDN) and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) Oceania/World which BIMBA is affiliated to; for their island-flavoured technical advices and supports to BIMBA. These include Mr Isikeli Vulavou of Fiji, Ms Joey Mataele of the Kingdom of Tonga, Ms Vaito'a Toelupe of Samoa, Ms Ymania Brown of Samoa and Ms Phylesha Brown-Acton of Niue.

The successful completion of this report would have been impossible without your continued and ongoing support to BIMBA and its members.

"KAM BATI N RABWA"

1. Introduction

The islands of Kiribati are distributed into 3 major groups which are Gilbert, Lines and Phoenix comprised of 33 small islands which are scattered along the equator and international date line. Based on a recent census in Kiribati, the population of the small island nation has reached 110,110 people by 2015 and more than half of this population currently reside in the capital island of Betio and South Tarawa (National Statistics Office, 2016).

Kiribati was once part of the colonies of Great Britain until its independence in 1979 which essentially means that in 2019, Kiribati would be celebrating its 40th Independence Anniversary for being an independent republic. However, with colonization comes the introduction and implementation of colonial laws and one of these is the legal provisions that criminalizes homosexuality (Penal Code; 1977; Godwin, 2010; Mendos, 2019). This essentially means that in Kiribati, it is currently illegal for men to have sex with other men and likewise for transgender women to have sex with men in the context of Kiribati or in other words consensual relationship between people of the same sex is criminalized. Nevertheless, there are current policies in place that had ensured the removal of discrimination based on SOGIESC in Kiribati such as the Employment and Industrial Relations Code 2015 (Mendos, 2019).

2. Background Information

The terms Lesbian, Gay, Bisexual and Transgender (LGBT) are quite foreign to Kiribati's context but have been widely accepted recently. Likewise, there are currently established and recognized terms for people of diverse SOGIESC in the country. For instance, the word "binabinaine" basically means men who are very feminine and/or the very last women (direct translation) and this is a recognized term to describe men who have sex with men (MSM) or gay, bisexual men and transgender women. On the other hand, the word "binabinamwane" implies to women who are very masculine and/or the very last men (direct translation) and this is also well-accepted term to describe lesbian, bisexual women and transgender men. As mentioned earlier this report will mainly focus on the lens of BIMBA focusing on the binabinaine members and as such, the contents of the report and submission could be restricted to the perspective of "binabinaine" rather than "binabinamwane".

2.1 Binabinaine in the Kiribati Community

The existence of "binabinaine" and in the Kiribati community was not properly documented until recently when researches on human rights and health related to LGBT individual and SOGIESC were conducted in the country. However, binabinaine are essential parts of the Kiribati community and had contributed within their individual families as helpers and supporters in communal living which in terms of binabinaine refers to cooking, cleaning and washing of clothes to name a few though, some are very talented in entertaining particularly in contemporary Pacific Islands dances and other forms of entertainments. Additionally, there are also a number of binabinaine currently working within the public and private sectors of the country who are bread-winners in their families hence contribute financially to their communities. Last but not the least, there are students or members of the youth community who identify as binabinaine in primary, secondary and tertiary levels most of whom are not out yet or,

still in the closet if you will, due to the stigma and discrimination against them based on their diverse SOGIESC.

The visibility of the binabinaine community in Kiribati has significantly increased since the establishment of BIMBA as a civil society organization (CSO) under the Ministry of Women, Youth and Social Affairs (MWYSA) in late 2016. The formal recognition was made possible through BIMBA's affiliation to the Pacific Sexual and Gender Diversity Network (PSGDN) in 2015 in the form of technical advice and support. To date, BIMBA has established national and regional affiliations and networks with the Pacific Islands Regional Multi-Country Coordinating Mechanism (PIRMCCM) for Kiribati, MHMS, MoJ and likewise PSGDN and ILGA.

2.2 Researches and Studies on Binabinaine

There are some desktop and national consultation researches done in Kiribati focusing on BIMBA which include legislative review as well as data collection from binabinaine. One of these recent studies focused on behavioural mapping of vulnerable or key populations Kiribati which included binabinaine, and it established that there is a great need of understanding sexual orientation and gender identity (SOGI) pertaining to MSM and trans communities (UNDP, 2015). The study also argued that it is important to include the LGBT communities in the decision-making processes for the advocacy and awareness programmes on SOGIESC.

2. Rationale of the Submission

The primary purpose of the preparation and submission of this report is to provide feedback from BIMBA as CSO working with SOGI-related matters particularly those that had been raised in the 2nd Cycle of the UPR and therefore would include the following;

- Provide updates on the implementation done by Kiribati based on the recommendations pertaining to SOGI and those that relate to SOGI
- Share the position of BIMBA as a SOGI-oriented CSO in Kiribati based on the recommendations pertaining to SOGI and those that relate to SOGI and how it can assist
- Outline the key priorities of BIMBA's strategic plans that are in line with the recommendations pertaining to SOGI and those that relate to SOGI

3. Review of the Recommendations from 2nd Cycle

This part of the report will contain some of the reflections and feedback that are based entirely on BIMBA's view as a CSO on the recommendations stipulated in the 2nd Cycle that are either noted or supported by the Government of Kiribati (GoK). The numbering of the 2nd Cycle in this report are based on the sequence of the tabulated recommendations in the Annex i.e., 1 – 100 and therefore numbers indicated in this section corresponds to those in *Table 1.1* of the Annex.

3.1 Recommendations on SOGI

The recommendations made by Kiribati that relates directly to SOGI include Recommendations 41, 69 and 71 according to an unofficial numbering done for the tabulated recommendations, these are clearly shaded in yellow in *Table 1.1* of the Annex.

3.1.1 Recommendation 41

The recommendation was noted by the GoK and it said, "introduce legislation to satisfy its commitment on equality and non-discrimination, including as it pertains to same sex relations", which is significant to binabinaine in Kiribati.

As of July 2019, BIMBA is not aware or made aware of any legal reform plans or initiatives pertaining to the protection of rights of people with diverse SOGIESC from stigma, discrimination and prejudice in the country, which are poorly documented or reported. However, the MoJ was officially established in 2017 and BIMBA has been in collaboration and communication with its Human Rights Division pertaining to matters relating to SOGIESC one of which include UPR submission by CSOs as well as the SOGIESC Sensitization Workshop organized by BIMBA for its members and stakeholders towards the end of June this year.

Additionally, a collaboration with MoJ and other relevant stakeholders in Kiribati would be significant to provide data needed to document incidences of violation of human rights to people that can further support the establishment of policies and laws that protects binabinaine in same sex relations from being abused, discriminated and violated due to their SOGI.

3.1.2 Recommendation 69 & 71

The recommendations 69 (according to the numbering in this report) urged the GoK to "decriminalize homosexuality and sign the joint declaration of the United Nations General Assembly of 18 December 2008 regarding human rights, sexual orientation and gender identity" AND recommendation 71 required the GoK to "decriminalize consensual sexual relations between adults of the same sex". In the context of BIMBA, these recommendations are closely related considering their significant impacts to the binabinaine communities.

According to the Penal Code of Kiribati, there are legal provision to criminalize homosexuality or rather the existence of the binabinaine community in the country whereas buggery is reflected in *Section 153* with a penalty of 14 years, attempted buggery in *Section 154* with a penalty of 7 years and gross indecency in *Section 155* with a penalty of 5 years (Mendos, 2019). Mendos (2019) also stated that there is no known records of imprisonment of binabinaine in the country as an enforcement of these laws and these had been widely acknowledged by members of BIMBA. However, the existence of such provisions could become the legal basis or ground for homophobic people in the community to verbally, physically and mentally abuse binabinaine based on SOGIESC hence does not provide an enabling environment where binabinaine are given the dignity, recognition and respect they truly deserve as members of the local communities in Kiribati. To binabinaine in Kiribati, such laws criminalize their self-determination and self-awareness of their sexual orientation and gender identity/expression and

therefore violate the very essence of their human right(s) in the country. Unfortunately, there has been no mention of any legal reform pertaining to this by the GoK or BIMBA has not been made aware of any programs in-country that are associated with the decriminalization of homosexuality in Kiribati.

Furthermore, it is important to note that the establishment of BIMBA to protect human rights and safeguard the health of binabinaine does not necessarily include the support for same-sex or gay marriage which is currently irrelevant to the context of BIMBA in Kiribati because there are more pressing and urgent challenges that binabinaine face in the country. As such, this needs to be differentiated from BIMBA's urgent support for the Recommendations 69 & 71 so as to not confuse same-sex marriage support with the decriminalization of homosexuality.

3.2 Other Recommendations Associated with SOGI

Additionally, there are other recommendations in the previous cycle that were supported by the Government of Kiribati (shaded in blue in the Annex of *Table 1.1*) that indicate cross-cutting challenges and issues faced by the general public in Kiribati that does not specifically affect binabinaine but is relevant to the well-being of the LGBT community.

3.2.2 Recommendation 45

The recommendation was supported by GoK, and it directly relates to members of BIMBA or binabinaine that are transwomen who should be considered as women based on SOGI. At the moment, binabinaine or the transgender women are still widely considered as cross-dressing women and are rarely acknowledged or given the privilege accorded to cis women. However, marginalization and gender-based violence is one of the current challenges faced by members of BIMBA though this does not necessarily refer to them. This is why BIMBA would like to kindly recommend that GoK consider working on policies and provisions for gender recognition of binabinaine or the transgender women as women.

3.2.3 Recommendation 75

This certain recommendation was supported by GoK in the previous cycle of UPR and is relevant binabinaine as the most vulnerable members of the community when it comes to adverse impact of climate changes. Kiribati is highly vulnerable to climate change and this implies that binabinaine in Kiribati are at the forefront of some the impacts such as, coastal erosion, seawater intrusion, increased frequencies of droughts/heavy rains and depleted marine resources to name a few. However, the most recent and relevant development pertaining to this in Kiribati, is the consultation on the review of the National Disaster Act 1993 to which BIMBA was invited as one of the high-level stakeholders, earlier this year. The consultation has been inclusive of LGBT and SOGIESC as part of the language used in the Act so it is expected that binabinaine are included and considered in activities and plans that relates to impacts of climate change associated with the said Act.

Based on this, BIMBA would like to request that GoK continue its current engagement and support for SOGI-oriented CSO to be part of the decision-making processes in regards to climate change and other disaster risk management mechanisms in the country.

4. Recommended Action

As an outcome of this review on the 2nd Cycle Recommendations, BIMBA would like to request the support of the United Nations Human Rights Commission to further emphasize the following recommendations to the GoK;

- ✓ Partner and collaborate with Kiribati-based public and private sectors and NGOs working with binabinaine, when attempting to address issues pertaining to discrimination, stigma and violence that are based on SOGIESC.
- ✓ Provide support to national study to document and analyze the violation of human rights to the binabinaine and the general LGBT community in Kiribati.
- ✓ Provide support needed to create collaboration and partnership between SOGI-oriented CSO and relevant stakeholders within Kiribati i.e., public and private sectors as well as NGOs.
- ✓ Create, develop and implement legal provisions that protects the rights of binabinaine or the LGBT community in Kiribati from discrimination, stigma and violence that are based on SOGIESC.
- ✓ Provide support needed for the advocacy, awareness and campaigns organized in Kiribati for the sensitization of the local communities on SOGIESC.
- ✓ Decriminalize consensual sex and/or homosexuality amongst MSM, binabinaine and the wider LGBT community.
- ✓ Create, develop and implement national policies and plans for the recognition of gender of binabinaine or transgender women or and binabinamwane or transgender men, that include sensitization on the use of proper pronouns of "she" and "he" to law enforcers and the local media to name a few.
- ✓ Ensure the inclusion of binabinaine or LGBT or SOGIESC in legal provisions and other related policies and plans that would ensure the protection of rights and safeguard of health for the binabinaine community or BIMBA members.
- ✓ Continue working with vulnerable communities on climate change and ensure the inclusion of binabinaine in the design and delivery of policies and plans that affect vulnerable communities in regards to climate change.

5. Concluding Remarks

The recognition of BIMBA by the MHMS, MoJ and just recently the Office of te Beretitenti (OB) through the division responsible for disaster risk management could provide a reliable foundation for collaborative work towards SOGI-related recommendations. However, based on the 2nd cycle recommendations tabulated in this report, there is a need for GoK to consider supporting and implementing the recommended actions pertaining to SOGIESC in the country. As a newly-established CSO, BIMBA has yet to ensure that its principles and missions are well disseminated and understood by members of the communities in Kiribati particularly those involved in the decision-making levels though this can be done through capacity-building and sensitization programs. Nevertheless, the implementation of the recommendations made in the 2nd Cycle of the UPR could pave the way forward

in providing an enabling environment for binabinaine and the LGBT community in general, that is free from discrimination, hatred and violence that are based on SOGIEC.

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