

Global Campaign for Equal Nationality Rights and Institute on Statelessness and Inclusion

Joint Submission to the Human Rights Council at the 35th Session of the Universal
Periodic Review

Kiribati

Introduction

1. The Global Campaign for Equal Nationality Rights and the Institute on Statelessness and Inclusion (ISI) make this joint submission to the Universal Periodic Review (UPR) in relation to gender discrimination in the nationality law of Kiribati.
2. The Global Campaign for Equal Nationality Rights¹ mobilizes international action for the removal of gender discriminatory provisions from all nationality laws through its coalition of national and international organizations and activists.
3. The Institute on Statelessness and Inclusion² is an independent non-profit organization dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global center committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 40 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 34th UPR Sessions.
4. This submission focuses on:
 - I. The right of women to confer nationality on children and spouses, without discrimination on the basis of sex;
 - II. Human rights violations resulting from gender discrimination in the nationality law of Kiribati.
5. This Submission draws on experience with research, advocacy, and awareness raising of the co-submitting organizations and their partners.

¹ For more information about the Global Campaign, see www.equalnationalityrights.org.

² For more information, see www.institutesi.org. For more information on the Institute's UPR advocacy, see <http://institutesi.org/projects/human-rights-advocacy>.

The Universal Periodic Review of Kiribati under the First and Second Cycles

6. Kiribati was first subjected to the Universal Periodic Review on 3 May 2010, at Session 8 of the First Cycle, and subsequently on 19 January 2015, at Session 21 of the Second Cycle of the UPR. During the first review's interactive dialogue, Norway expressed concern regarding women's equality in law and practice, and made a recommendation to amend legislation, including the citizenship law, to uphold gender equality. Kiribati determined that it would consider this recommendation. Several States encouraged Kiribati to take steps to address discrimination against women and to fully implement the Convention on the Elimination of All Forms of Discrimination against Women, with the government accepting recommendations related to CEDAW implementation³:

| Recommendation | 7. Response by Kiribati |
|---|-------------------------|
| 66.12. Guarantee that its laws and policies are in conformity with the Convention on the Elimination of All Forms of Discrimination against Women, and take measures to combat practices that perpetuate discrimination against women and their marginalization, particularly with regard to their inheritance and citizenship, and adopt specific legislation properly penalizing domestic violence and promoting the participation of women in political life (France); | 'Consider' |
| 66.14. Take the measures necessary to bring its national legislations into conformity with its international obligations under the CEDAW and the CRC (Algeria); | 'Accepted' |
| 66.41. Amend its Constitution so as to expand the prohibited grounds of discrimination to include not only gender, but also sexual orientation, disability, health status and economic status (Netherlands); | 'Consider' |
| 66.52. Review and amend all relevant legislation, including family law, inheritance law and domestic nationality and citizenship law, and the application thereof, in order to ensure equality between the sexes and compliance with the CEDAW (Norway); | 'Consider' |

8. During the 2015 Second Cycle UPR, Kiribati accepted a recommendation by Argentina to strengthen measures to achieve gender equality, including women's ability to confer nationality

³ See the report of the Working Group Universal Periodic Review: Kiribati, 17 June 2010: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/144/81/PDF/G1014481.pdf?OpenElement>

on children born abroad. This and other most relevant recommendations under the 2015 UPR include:⁴

| Recommendation | Response by the Kiribati |
|---|--------------------------|
| 84.31. Amend its Constitution to include sex, gender and disability as grounds for non-discrimination (Israel); | 'Consider' |
| 84.40. Establish an inter-institutional coordination mechanism to promote gender equality and the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (Mexico); | 'Accepted' |
| 84.48. Take all measures necessary to eliminate discrimination against women in all areas, including access to land and employment, as well as economic and political participation (Namibia); | 'Consider' |
| 84.54. Adopt legislation prohibiting all forms of discrimination of individuals, based on race, colour of the skin, religion, national or ethnic origin, disability, aesthetic aspect, gender, sexual identity or orientation (Uruguay); | 'Consider' |
| 84.55. Strengthen the measures aimed at guaranteeing gender equality, in particular with regard to the transfer of Kiribati nationality to the children of Kiribati women born abroad, in compliance with article 9, paragraph 2, of the Convention on the Elimination of All Forms of Discrimination against Women (Argentina); | 'Accepted' |

Kiribati's international obligations

9. Kiribati is a State Party to several international treaties that enshrine gender-equal nationality rights. The right to a nationality and non-discrimination on the basis of sex is reinforced by a variety of these instruments, including the Convention on the Elimination of all forms of Discrimination Against Women (Article 2, 9) and the Convention on the Rights of the Child (CRC, Article 2, 7).
10. Kiribati is also a party to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

⁴ See the Report of the Working Group on the Universal Periodic Review: Kiribati, 13 April 2015, at Session 21, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/12/PDF/G1507612.pdf?OpenElement>

Kiribati's national legal framework

11. According to the Constitution of Kiribati, a child born in Kiribati to a I-Kiribati woman or man is a Kiribati citizen. However, according to section 25 of the Constitution, only children born abroad to an I-Kiribati man can become a citizen:

“Every person born outside Kiribati after the day prior to Independence Day shall become a citizen of Kiribati at the date of his birth if at that date his father is, or would but for his death have been, a citizen of Kiribati.”

This situation amounts to discrimination on the basis of the parent's gender.

12. The Citizenship Act 1979 also discriminates against women by requiring the father or husband to be the applicant for the naturalization of his child or wife.
13. I-Kiribati women are also denied the right to confer their nationality on non-national spouses, a right that is reserved for men in Article 26 of the Constitution:

“Any woman who after the day prior to Independence Day marries a person who is or becomes a citizen of Kiribati shall be entitled, upon making application in such manner as may be prescribed, to be registered as a citizen of Kiribati.

Women's nationality rights

14. By denying women the equal right to confer nationality on children born outside country, the equal ability to naturalize themselves and their children, and the equal right to confer nationality on a spouse, the Constitution and Citizenship Act violate women's nationality rights and international human rights standards, including Article 9 of the CEDAW. According to Article 9:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

15. Though Kiribati has yet to complete its first CEDAW review, the government acknowledged the discriminatory nature of its Constitution and Citizenship Act vis a vis nationality rights in its most recent report to the CEDAW Committee:

“74. The rights of people of I-Kiribati descent to citizenship is covered under Chapter III of the Constitution. Section 26 states that any foreign woman who marries a Kiribati citizen shall have the right to Kiribati citizenship. However, there is no mention of foreign men marrying Kiribati nationals. This discriminates Kiribati women since their husbands are not

allowed to become Kiribati citizens, so they may be forced to leave their home country and to reside with their spouse in their country. Section 21 of the Constitution provides the circumstances by which persons of Kiribati descent born outside Kiribati can become a citizen if his father is a citizen. The interpretation of 'a person of I-Kiribati descent' in section 29 includes only fathers and not mothers '...neither he, his father nor his father's father ...' This means that any child of an I-Kiribati woman and foreign father does not qualify as a person of I-Kiribati descent and needs to go through the procedures of the Citizenship Commission to gain Kiribati citizenship and passport. 75. The Citizenship Act 1979 also limits citizenship by naturalization by any child or wife by requiring that the father or husband be the applicant for their citizenship.... Women citizens who marry a non-Kiribati citizen cannot include their children in their passport.

75. Several attempts have been made to change the discriminatory provisions in the Constitution. The most recent national constitutional review, a proposal by AMAK to have this provision changed and give foreign males marrying Kiribati women a right to citizenship was not accepted by most who attended the review."

The right of every child to acquire and retain a nationality

16. The gender discrimination in the nationality law of Kiribati results in violations of every child's right to acquire and retain a nationality.
17. Kiribati's nationality law therefore does not comply with CRC Articles 7 and 8, when read in accordance with the principle to not discriminate (Article 2) and the principle of the best interests of the child (Article 3). Articles 7 and 8 set out as follows:

Article 7

- 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*
- 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

Article 8

- 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*
 - 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.*
18. Under Kiribati law, contrary to these provisions, the ability of a child born abroad to acquire the nationality of their parent is dependent upon the parent's gender. The denial of the child's right to a nationality due to discrimination against their parent on grounds of sex is a violation of the CRC. In addition, I-Kiribati women's inability to confer nationality on a non-national spouse threatens a child's right to know and be cared for by his or her parents. For example, when foreign

men are denied access to their spouses' nationality, they may be forced to live away from their children due to challenges in acquiring residency permits and obstacles to employment. Alternatively, a father may have to take any children away from the mother and back to his home country for a number of reasons, including if his employment and social status in his wife's country is insecure because of his nationality status.

The human rights impact of gender discrimination in the nationality law

19. Gender discrimination in nationality laws can result in significant violations of the rights of women,⁵ men, and children, including: statelessness; lack of access to public education, healthcare and other services; threatened family unity; increased risk of gender-based violence (GBV); unemployment and poverty; social alienation; and psychological damage. Gender discrimination in nationality laws also contributes to women's unequal status on society and within the family.⁶
20. By undermining women's status as equal citizens and their equality within the family, gender discrimination in the nationality law of Kiribati also contributes to a primary root cause of GBV. Given the alarming rates of GBV in the country and the government's commitment to combating GBV, nationality law reform to uphold gender equality should be prioritized as part of efforts to comprehensively address GBV.

Recommendations

21. Drawing on the information provided in this submission, we urge member states recommend that Kiribati:
 - I. Reform gender-discriminatory provisions in the Constitution and Citizenship Act 1979 to enshrine citizen's equal ability to confer nationality on children and spouses without discrimination on the basis of sex.

⁵ See Global Campaign for Equal Nationality Rights-UNHCR "CEDAW Quick Reference Guide," available at: <http://equalnationalityrights.org/reports/document/1229-cedaw-nationality-laws-guide>

⁶ Ibid.