



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Initial report submitted by Kiribati under
article 19 of the Convention, due in 2020***

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* The present document is being issued without formal editing.



Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CTI	Convention against Torture Initiative
DSA	Disability Support Allowance
HDI	Human Development Index
HRSD	Human Rights and Social Development
ICCPR	International Convention on Civil and Political Rights
ICRC	International Committee of the Red Cross
KNHRTF	Kiribati National Human Rights Taskforce
KNMHP	Kiribati National Mental Health Policy
KPS	Kiribati Police Service
KSPEC	Kiribati Safe Practice Effective Communication
KV20	Kiribati Vision 20 years
MELAD	Ministry of Environment, Lands and Agricultural Development
MFAI	Ministry of Foreign Affairs and Immigration
MFED	Ministry of Finance and Economic Development
MHMS	Ministry of Health and Medical Services
MnM	Maneaba ni Maungatabu (House of Parliament)
MOJ	Ministry of Justice
MP	Member of Parliament
MWYSSA	Ministry of Women Youth Sports and Social Welfare
NEPO	National Economic Planning Office
NGO	Non-Government Organisations
NMIRF	National Mechanism for Implementation, Reporting and Follow-up
OAG	Office of Attorney General
OHCHR	Office of High Commissioner of Human Rights
RERF	Revenue Equalization Reserve Fund
SCA	Senior Citizen Allowance
SDG	Sustainable Development Goal's
SFU	Support Fund for Unemployment
SOP	Standard Operating Procedure
SPC	Pacific Community
UNCAT	United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UPR	Universal Periodic Review

Part one

General information

Introduction

1. The Government of the Republic of Kiribati welcomes the opportunity to submit this report to the Committee Against Torture (CAT) to outline national measures and procedures that are consistent with the obligations committed by Kiribati pursuant to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) (hereinafter “the Convention”) and outline inherent gaps in accordance with Article 19 including the implementation of the UNCAT.¹ Ratifying and implementing human rights treaties are foundational steps towards achieving our Sustainable Development Goals, particularly SDG 16, which promote peaceful and inclusive societies, access to justice for all and effective, accountable and inclusive institutions at all levels.² UNCAT therein contains the basis for the consolidation of a fair and effective administration of justice, and preventing violence and abuse in all its forms. The process of implementation of UNCAT has helped Kiribati improve access to justice including among the most vulnerable in society, and develop good practices in policing, prison management and law enforcement in general. Therefore, the UNCAT provisions and the SDGs laid the foundations for the Government of Kiribati long term development blueprint known as the Kiribati 20-Year vision 2016–2036 (KV20).³ This holistic approach ensures that we are not only complying with international human rights standards but also advancing toward achieving our national development goals.

Country profile and development

2. Kiribati comprises of 33 islands dispersed over approximately 3.5 million square kilometres of ocean. Kiribati consists of three island groups: The Gilbert group in the west, the Phoenix Group in the centre and the Northern and South Line islands in the eastern part of the country. The Kiribati people are Micronesians with medium stature, straight hair and brown skin. The language they speak is Gilbertese (or te taetae ni Kiribati), English, which is the official language, is also widely spoken, especially on the capital Tarawa.

3. I-Kiribati way of life is very much influenced by their environment of low-lying coral islands scattered in the Central Pacific. Traditionally, Kiribati society is predominantly patriarchal with defined gender roles. While cultural practices, norms and values are generally homogeneous and shared throughout the country, the culture in Kiribati is complex and diverse with each island having their unique tradition. For instance, chiefly system was relatively common in the northern and central islands whereas in the other islands the maneaba system is common. This culture is the foundation of the I-Kiribati existence and has served Kiribati well over centuries.

4. Recognizing the rights of peoples to education, and consistent with SDG 4, the government of Kiribati provides compulsory and free primary and junior secondary schools to all its citizens. The government of Kiribati passed an Education Act in 2013 with a provision that states the compulsory education age for all children in Kiribati, which is 6 to 15 years old. The Act also provides a section that prohibits corporal punishments in schools, pregnant girls are also allowed to continue their study.

5. Recognizing that access to decent health care is a basic human right, and cognizant of the Kiribati’s commitment SDG 3 and the Human Capital Pillar of the KV20, health services are free of charge to all I-Kiribati and working foreigners living in Kiribati. The Ministry of Health and Medical Services (MHMS) operates hospital services, public health services and nursing services from four main hospitals. Two of the hospitals are on South Tarawa and two on the outer islands with in North Tabiteuea Island, which serves the Southern Islands group and one on Kiritimati Island which serves the Line and Phoenix Islands groups. A referral

¹ <https://treaties.un.org> (ratified 22nd July, 2019).

² <https://cti2024.org/region/pacific/>.

³ <https://cti2024.org/region/pacific/>.

scheme is available for the transfer of patients from the outer islands; even from the hospitals in North Tabiteuea or Kiritimati, to the central hospital on South Tarawa. There is also an overseas referral scheme for patients requiring specialized assistance that the central hospital cannot provide. Cases for overseas referral are reviewed and decided upon by the Medical Referral Board.

6. Kiribati further recognises commitments to reduce poverty (SDG 1), enhance food security (SDG 2), and reducing inequalities (SDG 10) and has initiated a number of social protection programs to improve livelihoods of marginalised communities and uplift societies. Support Fund for Unemployment (SFU) is granted by Government to her citizens with the monthly rate of \$50.00 within the age group of 18–59 years. The purpose of this fund is to support Kiribati citizens who are not employed. Further there is also a Senior Citizen Allowance (SCA) with the rate of \$200.00 per month within the age of 60 years upwards. This fund is to support the livelihood of respected senior citizens. Additional Social Protection Scheme include a Disability Support Allowance (DSA) of \$50, \$60, \$70, \$80 issued to eligible citizens with disabilities after medical assessments. This allowance will be available from the onset of their disability, whether it is present at birth or developed later in life. The DSA recipients, if eligible, may also receive the SFU or SCA and vice-versa.

Legal framework for promotion and protection of basic human rights

7. There are number of mechanisms within the country to serve the basic rights of the people, that are already in place or in practice and are in line with the provisions of the Convention. This includes, inter alia, measures such as citizens' rights to access to justice, rights of prisoners for medical care, the separation of gender in prisons as practice in the system, and so forth.⁴

8. Chapter II of the Constitution provides the fundamental rights and freedoms of the individuals regardless of their race, origin, political opinion, colour, creed, or sex. These rights are only subject to the rights and freedoms of others and for public interest. The Constitution provides further for the protection of right to life; right to personal liberty; protection from slavery and forced labour; protection from inhuman treatment; protection from deprivation of property; protection for privacy of home and other property; protection of freedom of conscience; protection of freedom of expression; protection of freedom of assembly and association; protection of freedom of movement; protection from discrimination on the grounds of race, place of origin, political opinions, colour or creed.

9. Kiribati established the Kiribati National Advisory Committee on Children after the ratification of the CRC in 1995 and the Kiribati CEDAW Advisory Committee after the ratification of the CEDAW in 2004. These committees work in collaboration with each other but oversee the implementation and monitoring of compliance with the CRC and CEDAW respectively. Sometimes in 2010, the committees were incorporated into the KNHRTF which became a national body established to implement and monitor all Human Rights Conventions or instruments required of Kiribati. In line with this development, the Human Rights Division was established under MWYSSA in 2015 which then moved to MOJ in 2016 when such Ministry was established to centralise the justice portfolio. Parts of the recommendations and observations from the 3 UPR cycles, the CEDAW and the CRC reports is for Kiribati to establish an independent national human rights institution, but the KNHRTF is the closest to such body that Kiribati could manage and afford financially and technically in honour of its obligations to protect Human Rights.

Political and legal context

Constitution

10. By virtue of the Kiribati Independence Order 1979, Kiribati attained independence as a Republic on the 12th of July 1979. The Order made provision for a Constitution for Kiribati to come into effect on that day. The Constitution, therefore, is the supreme law of the country,

⁴ <http://www.moj.gov.ki>.

which provide the guiding framework of Kiribati including provision for the Legislature, the Executive Government and the Head of State, the Judiciary and the Public Service. The Constitution also contains provisions relating to citizenship of Kiribati, the special status of Banaba⁵ and the Banabans,⁶ and fundamental rights and freedoms of the individual.

11. Individual rights and freedoms are guaranteed under the Constitution. The rights protected are the rights to life and liberty, freedom of conscience, expression, association, movement and protection of the law.

12. In the event of dissolution of the legislature on a vote of no confidence, the Constitution provides for an interim council of state, composed of the Chief Justice, the Speaker of Parliament and the Chairperson of the Public Service Commission.

Head of State

13. Kiribati has a democratic parliamentary system of government with a unicameral parliament. The executive branch consists of the Beretitenti (President), Vice Beretitenti and the Cabinet (Ministers). The Beretitenti is the head of government and head of state. Under the Constitution, the Beretitenti, is elected nationally, members of the cabinet are appointed by the Beretitenti from amongst the members of Parliament. The Speaker although not a member of Parliament and is elected by the members. The term of the President to hold office is limited to three, four-year terms. The House of Parliament locally and officially referred to as the Maneaba Ni Maungatabu; has 45 seats; 44 elected by popular vote and one nominated by the Banaban council to represent the Banaban on Rabi Island. Members of the Parliament serve four-year terms.

Government system

14. The Constitution and Chapter II in particular guarantees the protection of the people by the law and equality of everyone before the law. Among some of these protections include, a person charged with an offence should be given fair hearing within reasonable time by an independent and impartial court of law. Such person charged with an offence is presumed innocent until proven guilty. The person should also be informed in the language they understand well and should be given adequate time to defend himself. Pursuant to these provisions, Kiribati is committed to the rule of law and administration of justice therefore affords protection to those who take refuge under the law.

15. The Judiciary is the branch of the government which interprets and applies the laws of the country. In addition to the Constitution, the Laws of Kiribati recognizes customary law whether written or unwritten and the courts take into account such customs in considering specific matters in criminal and civil proceedings.

Local government

16. The Local Government Act 1984 (amended up to 2019), empowers the Minister of Internal Affairs; with advice of the Cabinet, to establish by warrant Island councils to be local governments on the islands or towns designated as council areas of authority. Currently, there are 23 islands and 3 towns designated each with an Island council as the local government. The Act provides the functions and powers of the councils, headed by a Mayor. Members of the Island councils are elected from different designated wards or villages every 4 years.

17. Traditional leadership on the outer islands is provided by the 'Botaki n Unimwane' (the Council of Old Men[elders]) who discuss in a traditional setting, matters relating to their

⁵ An Island in Kiribati that was annexed by the British and mined for phosphate by the British Phosphate Company during the colonial periods which caused the relocation of its residents to Rabi Island in Fiji. These residents continued to live in Fiji but have special representative in the Kiribati Parliament.

⁶ Residents (or their descendants now) and landowners of Banaba island.

island. The Botaki n Unimwane provides a second layer of leadership on the island in their role as traditional leaders and has a seat in the Island council's meetings or sittings and participate in the decision-making process of the council.

18. Despite the differences in establishment and components of the Island council and the Botaki n Unimwane; it is evident that there is mutual respect and cooperation between these governing bodies with custom and tradition being very influential in their relationship. Any clashes between these bodies are often mediated and hardly formally sanctioned, by the central government, the executive branch of government. This is reflective of the relationship between the two bodies and in turn the regard of such relationship by the central government.

Courts

19. Kiribati has a Court of Appeal, High Court and Magistrates' Courts. The Court of Appeal and the High Court are established under the Constitution. The Magistrates' Court is also provided for under the Constitution by implication of the Constitutional power of the High Court to established subordinate courts, however the Magistrates' Courts are specifically set up under the Magistrates' Court Ordinance Cap 52 (amended up to 2000). Kiribati also has a Privy Council provided under the Constitution which is a special court and the highest level of court for matters stated under Chapter III and IX of the Constitution only.

20. Appointments of the Chief Justice and Judges is provided under the Constitution. Section 81(1) provides for the appointment of a Chief Justice by the Beretitenti upon the advice of the Cabinet sitting with the Public Service Commission. Subsection (2) provides for the appointment of other Judges with the advice of the Chief Justice sitting with the Commission. Section 84 allows the Beretitenti to appoint Commissioners with the advice of the Chief Justice sitting with the Commission; where Commissioners are needed when Judge(s) are insufficient in numbers. Section 91 provides for the appointment of Judges of the Court of Appeal but with the existing Chief Justice being one and the others, to be appointed as Judges in the same way as appointment of other Judges under section 81(2) but with shorter tenure as they are only required for sittings of the Court of Appeal. This appointment is again the power of the Beretitenti with advice of the Chief Justice sitting with the Commission.

21. The Court of Appeal Act 1980 sets out the general jurisdictions of the Court of Appeal to hear appeals on questions of law only, but the jurisdiction is also stated under the Constitution, The High Court hear appeals from the Magistrates' Court and the Constitution provides the jurisdiction of this court such as interpretation and determination of constitutional rights and redress. but cases may also be referred to the High Court by Statutes therefore such court has unlimited original jurisdiction. The Magistrates' Court is the lower or subordinate court with jurisdiction to hear cases as stipulated under the Magistrates' Court Ordinance as amended. Overall, the court system is based on English Common law.

22. The Privy Council has the sole jurisdiction to hear appeals from any High Court decision involving the interpretation of the Constitution where application to the High Court was made on the basis of contravention of the rights of any Banaban or of the Rabi Council under Chapter III or IX of the Constitution.

23. Generally, any violation of human rights provided for by the Constitution and any other Statutes can be addressed in the courts. The example of such Statutes that provides for protection of rights against due process is the Criminal Procedure Code Cap 17 (amended up to 2005).

Process of preparing the report

24. The KNHRTF being the national body to implement and monitor the implementation of human rights conventions and instruments; led the preparation of this State Initial Report under the chairmanship of the Secretary of MOJ and the secretarial support of the Human Rights Division. Currently, the membership of KNHRTF is made up of senior representatives from many relevant Government ministries and departments who all contribute to the

correction of information and the drafting of this Initial report as they did for past due reports and will continue to do so for any upcoming reports, for examples UPR, CEDAW, CRC and CRPD reports.

25. The KNHRTF has permanent members who could be deputised by alternative members. The members are further grouped as general and core members. The core members act as a technical working group and may be convened to work on any technical matters that the KNHRTF needs to address. For example, to assist the Secretariat in the compilation, drafting or reviewing of reports, documents or statements that may be required before submission to and/or endorsement by the KNHRTF. Apart from the secretariat, the core members are representatives from MOJ; MFAI, MWYSSA, and OAG.⁷ Additional members can be added to this core members group, upon agreement by the Chairperson, depending on specific matters required for any particular convention report such as for this UNCAT initial report; the members of the core group extends to representatives from the Police Service, Prisons, and the Mental Health Services. The remaining members are general members and will participate in the validation and/or endorsement of the work of the core members. NGOs may attend as observers and advisors if required by the taskforce.

26. The KNHRTF meets regularly to review the report during the drafting process. Data collection phase is often difficult. Further verification is constantly needed across all three treaty reports and oftentimes no response from the relevant stakeholders delayed the process. For this UNCAT initial report, the core members have met two times since January 2021, and the full KNHRTF have met three times.

27. The report is not required to be tabled before the Maneaba Ni Maungatabu (MnM) or submitted for review by any or all the members of the Maneaba Ni Maungatabu. The only protocol required is to have the report submitted to Cabinet consisting of the Beretitenti and Ministers; for their perusal and/or endorsement before submission to the Committee Against Torture (CAT).

28. The KNHRTF needs financial as well as technical assistance to support ongoing operations and meetings, including data collection and assessment. The needs have always been posing challenges in the work of the KNHRTF and therefore support from development partners is strongly and continuously welcomed.

General legal framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited

29. Chapter II of the Constitution sets out the provisions for the protection of fundamental rights and freedoms of the individuals. Section 3 sets out the general fundamental rights and freedoms of the individual and states the qualification as subject to the rights and freedoms of the others and the public interest. Section 4–15 sets out the specific rights and freedoms as follows:

- The right of life (section 4).
- The right to personal liberty (5).
- Freedom from slavery and forced labor (section 6).
- Freedom from inhuman treatment (section 7).
- Freedom from deprivation of property (section 8).
- The right to privacy of home and other property (section 9).
- The right to the protection of the law (section 10).
- Freedom of conscience (section 11).
- Freedom of expression (section 12).
- Freedom of assembly and association (section 13).

⁷ Ibid.

- Freedom of movement (section 14).
- Freedom from discrimination on grounds of race, place of origin, political opinions, color or creed (section 15).

30. Significant limitations are imposed on the scope of these rights and freedoms in the interest of others or the public interest or during a public emergency. Section 16 of the Constitution provides that in the event of war or the period during which a proclamation of public emergency is in force; the rights to personal liberty (section 5), freedom from slavery or labour particularly forced labour (section 6(2)), right to privacy of home or property (section 9), freedom of conscience (section 11), freedom of expression (section 12), freedom of assembly and association (section 13), freedom of movement (section 14) or freedom from discrimination (section 15); may be suspended and contravention against such will not be unconstitutional.

31. Jurisdiction to enforce the fundamental rights and freedoms is vested in the High Court.

32. Chapter II, section 6(1) provides the protection from slavery or servitude and subsection (2) provides the protection from forced labour. However subsection (3) it is not forced labour if that labour is imposed as a sentence or court order, it is required from a lawful detainee in order to keep the place of detention hygienic or to maintain it even if it is not part of the sentence or court order, it is required as part of one's duty as member of the disciplined forces, it is reasonably and justifiably required in the event of public emergencies and it is reasonably required as part of one's communal or civic duties.

33. Section 7(1) of the Constitution provides the protection from torture and inhuman or degrading punishment or treatment however, subsection (2) limits this protection by stating that lawful punishments or penalties imposed under Statutes are not contravention.

34. Section 16(1) of the Constitution defines 'public emergency' as a period during which Kiribati is at war or any other situations proclaimed to be a public emergency for example, in 2020, the government issued an Order of Public Emergency to prepare for and manage the impact of Novel Corona Virus 2019. Subsection (5) states that the rights and freedoms to personal liberty; protection from forced labour; privacy of home and property; freedom of conscience, expression, assembly and association; freedom of movement; protection from discrimination; may be suspended, restricted or limited pursuant to any law or regulation enacted in relation to a public emergency. Example of this is the Covid-19 Preparedness and Response Regulations 2020 which imposes partial lockdown and orders quarantine until the end of the public emergency.

35. The Constitution is silent on the status of the Convention within the Kiribati legal system. As common in most common law countries, the Kiribati legal system is dualistic and require that Conventions be domesticated first in order to be applicable as a law in Kiribati.

36. Except for the provisions of the Constitution, there are no other laws that make specific reference to torture and inhumane treatment, hence "non-derogability" is not specifically addressed in any Acts of Kiribati. Further, the Constitution also provides that nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of section 7, a protection from inhuman treatment, if that law provides for the lawful treatment as part of a lawful punishment.

37. Ratification of the Convention by Kiribati is recent and the fact that most of the Ordinances or Acts of Kiribati are backdated is part of the reasons why torture, cruel, inhuman or degrading treatment or punishment is not sufficiently covered and there is significant lack of data or report on such activities/offences in Kiribati. Factors such as lack of understanding and public awareness on the Convention and lack of capacity when it comes to the implementation of it; also contributes to the gaps.

38. Kiribati has in place, a Prison Standing Orders concerning the treatment, training and privilege of prisoners. However, the Standing Order is not well versed with the UNCAT obligations, needing reviewing.

Part two

Information in relation to each substantive article of the Convention

Article 1

Definition of torture

39. There is no specific definition of torture in the Constitution or any Statutes of Kiribati. However, section 7 of the Constitution provides the protection from inhuman treatment. Subsection (1) states that “No person shall be subjected to torture or to inhuman or degrading punishment or other treatment”. Subsection (2) states that “Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Kiribati immediately before the coming into operation of this Constitution.”

40. There are certain offences in Kiribati that criminalizes torture or ill-treatment against specific vulnerable groups. Section 45 of the Mental Treatment Ordinance Cap 56, criminalises “ill-treatment of patients” and states that “If the medical officer in charge or any officer, nurse, attendant, servant or other person employed in the mental health wing, strike, wound, ill-treat or wilfully neglect any patient therein, he shall be liable on summary conviction to a fine of \$100 or to imprisonment for 6 months.” However, the ordinance is up for repeal and an upcoming Te Meeria Bill will be ready by 2024.

41. There are offences involving causing bodily harm or grievous bodily harm meeting elements of torture. Section 4 of the Penal Code provides for the definition of grievous harm as “any harm which amounts to a maiming or dangerous harm, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense”; and defines harm as “any bodily hurt, disease or disorder whether permanent or temporary”.

42. Part X of the Penal Code provides for offences of corruption and the abuse of office. Section 90 (1) particularly states that any person employed in the public service commits a felony if he/she and does or directs to be done, any arbitrary act prejudicial to the rights of another. This abuse of office is punishable with imprisonment for 3 years.

43. Part XVI of the Penal Code as amended by the Penal Code (Amendment) and the Criminal Procedure Code (Amendment) Act 2017, provides for offences against morality. Any person who has unlawful sexual intercourse with another person is guilty of a felony and is liable to imprisonment for life (section 129), any person who assaults another person with intent to have unlawful sexual intercourse with that other person is liable to imprisonment for 7 years (section 129(3), attempts to have unlawful sexual intercourse with another person is punishable with imprisonment for 7 years (section 130) and abduction of a woman with the intent to marry or have sexual intercourse with her is punishable with imprisonment also for 7 years (section 131). Further, indecently assaulting any person is liable for imprisonment of 7 years (section 133), sexual intercourse with a person under 13 years is punishable with life imprisonment (section 134(1), attempts to have sexual intercourse with a person under 13 years is punishable with imprisonment for 12 years (section 134(2), indecent assaults of a person under 13 years is punishable with imprisonment for 12 years (section 134(3), doing indecent behaviour in the presence of a person under 13 years or engaging such person in indecent behaviour is punishable with imprisonment for 7 years (section 134(4) and consent or belief that the person is over 13 years is not a defence in such offences (section 134(5). If the person is over 13 years but under 15 years, the perpetrator who engage such young person in sexual intercourse will be liable to imprisonment for life (section 135(1), or if the perpetrator attempts to engage such young person in sexual intercourse, he/she will be liable to imprisonment for 10 years (section 135(2), or if the perpetrator indecently assaults such young person, he/she will be liable to imprisonment for 5 years however, defence may be granted if the accused is no more than 2 years than the young person and such young person wished to consent to the act (section

135(6) or if the accused took reasonable steps to determine the age of the young person and believed that such young person was 15 years and over and such young person wished to consent to the act (section 135(7)).

44. Part XX of the Penal Code sets out the offences of murder and manslaughter. Murder (section 193) and manslaughter (section 192) are both punishable with life imprisonment. Further, section 200 defines the term or element of ‘causing death’ as inflicting bodily harm on another in consequence of which that other person undergoes medical treatment which causes his/her death; inflicting bodily injury on another which would not have caused the death of such other person if he/she had submitted to medical care or observed precautions, by actual or threatened violence, a person causes another person to perform an act which causes his/her death, by act or omission, a person hastened the death of another person suffering from any disease or injury which would have caused his/her death, by act or omission which would not have caused the death of another person unless it was accompanied by the act or omission of that other person who was killed. Although these acts or omissions are not the immediate or whole cause of the death, they shall be deemed as the causes of death by a person of another. In addition, section 193 states that “any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder...” and section 194 provides that the killing of a person during the commission of other offences shall not amount to murder unless done with the malice aforethought required for the crime of murder.

45. Part XXII of the Penal Code sets out the offences connected to murder. Section 208 states that attempts to cause the death of another person or omission to do any duty to prevent the death or endangering of life of another, is punishable with life imprisonment. Section 209 states that any person who act as accessory to murder is liable to imprisonment for 7 years. Section 211 states that conspiracy to murder is punishable with imprisonment for 10 years.

46. Part XXIII of the Penal Code sets out offences related to endangering life and health. These offences are; acts intended to cause grievous harm which includes acts intended to maim, disfigure or disable a person which is punishable with life imprisonment (section 218); grievous harm to another person, punishable with imprisonment for 7 years (section 220), maliciously administering poison to another with intent to harm that other person, punishable with imprisonment for 14 years (section 222); unlawful wounding (section 223) and unlawful poisoning (section 224), both punishable with imprisonment for 5 years; and failure to provide necessaries of life without lawful excuse, by a person who was charged with a duty to provide such necessaries of life to another person and that failure is likely to endanger the life or health or likely to cause permanent injuries to that other person. This is punishable with imprisonment for 3 years (section 225). Section 203 states that a person has a charge of another person who is unable by reason of age, sickness or unsoundness of mind, detention or any other cause; whether by contract, imposed by law or arises by reason of any conduct or act. Section 204 states that it is the duty of the head of a family of a child under 18 years of age who is a member of the household; to provide such child with the necessaries of life and to perform such duty whether the child is helpless or not. Further in section 205, a person who is master or mistress is under a contract to provide food, clothing or lodging to people under the age of 18 years, under his or her service.

47. Section 226 of the Penal Code as amended by section 56 of the Children Youth People Family Welfare Act 2013 provides for the offence of “cruelty to children”. Section 226(1) of the Code states that “If any person who has attained the age of 18 years and has the custody, charge or care of any child or young person under that age, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight or hearing, or limb or organ of the body, and any mental derangement), that person shall be guilty of a misdemeanour, and shall be liable to imprisonment for 5 years”. Subsection (2) as amended by the 2013 Act states that a parent or person legally liable to maintain a child or young person, must provide adequate food, clothing, medical aid or lodging for such child or young person; failure of which is to be regarded as neglect in a manner likely to cause injury to the health of such child or young person. Further in subsection (2), neglect in a manner likely to cause injury to the health of an infant of under 3 years includes suffocation of such infant by any person of 18 years and

over, if that such person was in bed with the infant while under the influence of drink. Further in subsection (3), “A person may be convicted of an offence ... (a) notwithstanding that actual suffering or injury to health, or the likelihood of actual suffering or injury to health, was obviated by the action of another person; (b) notwithstanding the death of the child or young person in question”. However, subsection (4) states that “Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person, having the lawful control of a child or young person to administer reasonable punishment to him.”

48. Part XXV of the Penal Code states the offences of assault. Assaulting a person is a misdemeanor punishable with imprisonment for 6 months (section 237), assaulting another person occasioning actual bodily harm on that person is punishable with imprisonment for 5 years (section 238), and assaulting any person with intent to commit a felony, is punishable with imprisonment for 2 years (section 240).

49. Part XXVI of the Penal Code states the offences against liberty. Kidnapping and abduction is defined as conveying any person beyond the boundary limits of Kiribati without the consent of that person or another person who has the legal authority to give consent for the person taken and inducing a person by force or any deceitful means, to go from one place to another (section 241). The punishments for kidnapping (section 242) and for kidnapping or abduction with intent to confine the person (section 243), is imprisonment for 7 years. Kidnapping or abduction of a person in order to subject him/her to grievous harm, slavery, unnatural lust of any person, or knowing that the person as result of the kidnapping or abduction will be subject to such treatments, is punishable with imprisonment for 10 years (section 244) and concealing or keeping in confinement any kidnapped or abducted person is punishable the same as kidnapping or abducting such any person (section 245).

50. Other legislations relevant to this Convention include the Education Act 2013, which prohibits corporal punishment in schools; the Te Rau n te Mwenga Act 2014 widely known as the Family Peace Act, which criminalises domestic violence; and the Juvenile Justice Act 2015, which ensures the protection of children in conflict with the law keeping them out of prisons and setting standards for the youth justice system.

Article 2

Prevention of torture

51. The KPS Standing Order & Procedure (SOP) 2006 spells out the measures taken by the police with regards to arresting and detaining people. Also, it instructs police officers to respect the right of those arrested especially the right to speak with their family member, to have a lawyer, medical examination, etc.

52. Prison Ordinance Cap 76, (amended up to 2019) reveals all effective measure to prevent torture and punish perpetrators of torture in Prison. These provisions provide procedure and punishment applicable to officers who do not carry out their duty effectively, especially when they strike or bully any person in their custody (Section 23 (1) (x)). The Ordinance is up for repeal and an upcoming Correctional Services Bill will be ready by 2024.

53. The Police Service Act 2008 (amended in 2015) spell out the progressive nature of penalties to police officers involved in any disciplinary and criminal cases. Although there is no specific procedure for police brutality or torture, the investigation into these cases will follow the normal procedure ending in the court of law.

54. The Police Powers and Duties Act 2008 (amended in 2019) provides the protection of suspects detained in police custody. The detention period must be reasonable and not be more than 24 hours or 72 hours if the detention or arrest was done after close of business on a Friday. The questioning period may not be more than 4 hours and if the detention is for 6 hours or more; the suspect must be provided with enough food and drink. Further, the suspect is given a right to make phone calls or contact to a friend, relative or a lawyer and he/she must be brought to court within a reasonable time possible.

55. As stated earlier in this report, except for the provisions of the Constitution, there are no other laws that make specific reference to torture and inhumane treatment, hence “non-derogability” is not specifically addressed in any Acts of Kiribati. Section 16 (5) of the

Constitution specifically sets out a number of rights that can be restricted in periods of “public emergency” provided it is “reasonably justifiable”. The List does not include the right of protection from inhuman treatment or torture provided under section 7. This suggests that the prohibition against torture cannot be derogated from at any time, including during periods of public emergency. However, section 7(2) states that any inhuman or torture treatments provided under any law before the enactment of the Constitution are or were lawful.

56. There is no express defence of superior orders. Generally, all actions of a subordinate are subject to his/her superior. There are no records on any circumstances where a subordinate is permitted to oppose an order to commit acts of torture.

57. There are existing unreported cases of whether the position of public authorities with respect to the concept of “due obedience” as a criminal law defence having any impact on the effective implementation of invoking superior orders.

58. As stated earlier in this report, section 41(1)(d)(i) of the Police Service Act 2008 provides that a police officer or special constable will be sanctioned for a breach of discipline when “disobeying a lawful direction or order made by a superior officer.” The law does not define “lawful direction or order” and provides no rules in relation to an unlawful order.

59. Section 11 of the Prisons Ordinance Cap 76 provides that subordinate officers shall obey all lawful directions received from senior officers. Section 23(1)(ii) further provides that it shall be a disciplinary offence for any subordinate officer to wilfully disobey “any lawful command.” The law does not provide the definition of “lawful command.” Further, Section 23(3) clarifies that nothing under Section 23 should be taken as excusing such officer from being prosecuted for any offence under ordinary law.

Article 3

Non-refoulement

60. The Extradition Act 2003 provides for the surrender or extradition of persons from Kiribati to other states if the person committed an ‘extradition offence’ which is stated as an offence committed in the requesting state which is punishable at the maximum with death or imprisonment for more than 1 year and if it were committed in Kiribati, the same maximum punishment applies (section 5). Objection to the extradition is allowed under section 6 the Act even if the offence is an extradition offence. The objections are that the offences are ‘political offences’ both in Kiribati and in the requesting state; the grounds of prosecution of the required person or when tried and/or punished, he/she will be prejudiced, based on race, religion, nationality, political opinions, sex and status; final judgment had been given in Kiribati or other states (not the requesting state) and the required person has been given immunity or has been pardoned or acquitted in Kiribati or requesting state.

61. Extradition procedures for the transfer of people from Kiribati to Pacific Island countries that are members of the Pacific Island Forum like Kiribati, Commonwealth countries, countries that has extradition treaties with Kiribati and any other countries (comity countries) are stated under the Extradition Act. Except for extradition to other Pacific Island countries, generally, the Minister of Foreign Affairs is the authority to grant extradition by issuing a surrender warrant for the extradition, expulsion, removal or refoulement of the wanted person. The Magistrates’ Court has jurisdiction in the extradition process as it may receive requests from requesting states for the provisional arrest of the wanted person and rule on whether he/she should be in custody pending the decision of the Minister on whether to consider the extradition request or not and power to arrest such person pending the further decision on the grant of the surrender or not. The decision of the Magistrates’ Court is subject to appeal by the High Court.

62. The Magistrates’ Courts has the power to issue surrender warrants of persons requesting from other Pacific Island countries (part 4 Extradition Act 2003). The decision may be appealed at this High Court. For other countries, the Minister is the authority to grant the surrender. There is no provision in terms of the review of the decision of the Minister to surrender a person.

63. Section 19(2)(h) of the Extradition Act specifically provides that the order to surrender a person to a requesting country may be refused by the Minister if the person has been, or may be, subjected in the requesting country to torture or cruel, inhumane or degrading treatment or punishment. However, section 19(4) states that the Minister must not refuse to surrender a person because he/she may be subjected to torture or cruel, inhumane or degrading treatment or punishment if the requesting country and Kiribati have ratified the UNCAT or the International Covenant on Civil and Political Rights.

64. There are no records of any request to Kiribati for handing over of persons to be subjected to torture or cruel, inhuman or degrading treatment or punishment at the requesting states. There is also no record of states which have history or evidence of exercising consistent gross, flagrant or mass violations of human rights; requesting persons to be surrendered by Kiribati for the purposes of the Act.

65. There is no information available on cases relevant to article 3 and the criteria used in those decisions, as well as any training provided to officials dealing with the expulsion, return or extradition of foreigners. Support from development partners to provide specific and general training to build capacity of national authorities in these areas, is highly regarded and welcomed.

Article 4

Torture as a criminal offence

66. Once the accused is found guilty of torture, the penalties to be imposed in line with the criminal law and given a proper sentence to reflect the seriousness of the offence committed. With the lack of specific provision regarding torture as a specific offence, there are other criminal offences under the Penal Code such as serious assaults or even murder that can be regarded as torture.

67. There are no judgements relevant to the implementation of article 4.

68. There is no specific legislation in place on disciplinary measures during the investigation of an alleged case of torture to be taken against law enforcement officers responsible for acts of torture, except the normal measures in criminal investigation under the Penal Code.

69. For instance, the Police Service Act 2008 spell out the progressive nature of penalties to police officers involved in any disciplinary and criminal cases. Although there is no specific procedure for police brutality or torture, the investigation into these cases will follow the normal procedure ending in the court of law.

70. The Court has the power to decide on the severity of the case. The degree or gravity of a sentences imposed is based on the aggravating factors of the cases. The Police receives reports or complaints of crimes and then carry out the criminal investigations. The Attorney-General will review the investigation report and advice on whether to prosecute or not. In the events of insufficiency of evidence, the Attorney-General would either instruct further investigation or closure of the case for lack of evidence, depending on the circumstances of the investigation reported by the Police.

Article 5

Jurisdiction

71. The High Court has an unlimited jurisdiction, however, there is no information available on cases or any measures taken to establish jurisdiction when the victim is a national of the State if that State considers it appropriate or when exercising universal jurisdiction over alleged offenders present in Kiribati.

72. Section 5 (1) of the Penal Code sets out the territorial application of the Code to: offences done within the territorial limits of Kiribati (Section 5(1)(a), Penal Code), meaning those that are done on, under or above: land within the seaward limits of the territorial waters of Kiribati; internal waters of Kiribati, archipelagic waters of Kiribati; territorial waters of

Kiribati (Section 5(2)(a)–(d)); and any offences committed outside those limits that is declared by this Code or any other law to constitute an offence (Section 5(1)(b)).

73. Under Section 6 of the Penal Code, the commission of offences partly within and partly beyond the jurisdiction is tried and punished in the same manner as if the act had been done wholly within the jurisdiction, so long as it amounts to an offence under the Code.

74. Section 6A(1) of the Criminal Law and Procedure (Patriation) Act 1991 provides for the exercise of extraterritorial criminal jurisdiction over offences committed on aircraft or ship, when these are committed outside the territorial limits of Kiribati and they would constitute an offence if done within those limits: while on board a Kiribati aircraft while in flight (Section 6A(1)(a)); on a Kiribati ship (Section 6A(1)(b)); or if employed at the time on a Kiribati ship and the act is done on shore or on board a ship that is not a Kiribati ship but is in the same port as the ship on which he is employed (Section 6A(1)(c)).

75. Section 6B further provides for the exercise of criminal jurisdiction over offences committed by a citizen of Kiribati employed in the service of Kiribati who, “when acting or purporting to act in the course of his employment,” commits any act outside of Kiribati which, if done in Kiribati, would constitute an offence.

Article 6

Arrest and detention of persons accused of acts of torture

76. There is no information available on the measures taken to establish jurisdiction in cases where the alleged offender is present in the territory of the reporting State and the latter does not extradite him/her to a State with jurisdiction over the offence in question.

77. There are no specific provisions as far as offences referred to in Article 6 are concerned but generally the provisions of the Penal Code can be used to some extent.

78. The right of nationals and foreigners to consular assistances follows procedures in the Diplomatic Privileges & Immunities Act 1983.

79. High Court holds jurisdiction over matters concerning warrant while the Police Service has the authority over custody and detention. There are no available cases in which the above domestic provisions were applied.

Article 7

Extradite or prosecute

80. There are no specific measures in place for offences relating to torture, but there are measures in existing laws that spell out procedures and measures to be taken prior, during and after criminal proceedings. Section 10 of the Constitution provides:

“(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence –

- i. shall be presumed to be innocent until he is proved or has pleaded guilty;
- ii. shall be informed as soon as reasonably practicable, in detail and in a language that he understands, of the nature of the offence charged;
- iii. shall be given adequate time and facilities for the preparation of his defence;
- iv. shall be permitted to defend himself before the courts in person or, at his own expense, by a representative of his own choice;
- v. shall be afforded facilities to examine in person or by his representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf

before the court on the same conditions as those applying to witnesses called by the prosecution; and

vi. shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.”

81. Section 71 of the Criminal Procedure Code provides that “the Attorney General may appoint any advocate or police officer to be a public prosecutor either generally or for the purposes of a particular case.”

82. Under section 73, if the proceedings have been initiated by a police officer, they may appear before a magistrates’ court and conduct the prosecution, even if they are not the officer who made the complaint or charge. Under section 74, police officers conducting a prosecution under section 73, and every public prosecutor, shall remain subject to the express directions of the Attorney-General.

83. Section 75 provides that “any person conducting a prosecution may do so personally or by an advocate” and section 72 provides that public prosecutors has the power to conduct prosecution in any court directly or without requirement of written authority whereas advocates conducting prosecutions by instruction of private persons; such advocate shall conduct the prosecution under the instruction of the public prosecutor. Further section 71 which provides that the Attorney-General has the power to appoint an advocate or police officer to be public prosecutor and section 74 on direction of the Attorney-General over public prosecutors; shows that generally prosecution is the within the authority and power of the Attorney-General. There is no report of any private prosecution conducted and in practice, apart from the Police, Environment Enforcement officers have been given the directives by the Attorney-General to conduct prosecutions of environmental offences.

84. Under section 90 (2) of the Penal Code, prosecution for the crime of abuse of office cannot be instituted without the sanction of the Attorney General.

85. Kiribati enacted the Mutual Assistance in Criminal Matters Act in 2003 to regulate and facilitate the taking and sharing of evidence, production of documents, assistance in investigations, etc., with other countries. Section 5 provides that the Act does not limit the provision or obtaining of international assistance in criminal matters beyond the assistance expressly provided for under the Act. Under Section 11, it further specifically provides for the Attorney General’s power to refuse a request for assistance where the provision of the assistance may result in the death penalty being imposed on a person.

86. There are no records of cases or examples of practical implementation of the measures referred to above.

Article 8

Extraditable offences

87. The Extradition Act 2003 provides for the surrender or extradition of persons from Kiribati to other states if the person committed an ‘extradition offence’ which is stated as an offence committed in the requesting state which is punishable at the maximum with death or imprisonment for more than 1 year and if it were committed in Kiribati, the same maximum punishment applies (section 5).

88. Section 19(2)(h) provides that “the Minister for Foreign Affairs may refuse to order that the person be surrendered if the person has been, or may be, subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment.” However, section 19(4) provides that the ground for refusal to surrender the wanted person as stated under section 19(2)(h) is not applicable if both the requesting country and Kiribati have ratified UNCAT or the International Covenant on Civil and Political Rights (ICCPR).

89. Additionally, Section 36(2)(d) provides that a person should not be extradited if the magistrate considers that “the prison conditions in the requesting country are not substantially equivalent to the minimum standards for imprisonment in Kiribati, and pursuant to Section 40(2) extradition may be reasonably delayed if “it would have been a danger to the person’s life, or prejudicial to the person’s health, to surrender the person.”

90. The Extradition Act provides 3 types of countries of which extradition is applicable: 1. Commonwealth Countries; 2. Pacific Island Countries; and 3. Treaty Countries. Specific treatment for each type are provided in the Act. Treaty countries tabulated in the Act include: Argentina, Luxemburg, Belgium, Mexico, Bosnia and Herzegovina, Monaco, Chile, Nicaragua, Columbia, Norway, Croatia, Panama, Cuba, Paraguay, Denmark, Peru, Ecuador, Portugal, Federal Republic of Yugoslavia, Rumania, Former Yugoslav Republic of Macedonia, San Marino, Frances, Slovenia, Greece, Spain, Guatemala, Sweden, Haiti, Switzerland, Hungary, Thailand, Iceland, United States of America, Italy, Uruguay, Liberia.

91. There are no available cases where the requesting state granted the extradition of persons alleged to have committed any of the offences referred to above.

Article 9

Mutual legal assistance

92. The Mutual Assistance in Criminal Matters Act 2003 provide for the assistance on all criminal matters. It regulates and facilitates the taking and sharing of evidence, production of documents, assistance in investigations, etc., with other countries.

93. Section 5 provides that the Act does not limit the provision or obtaining of international assistance in criminal matters beyond the assistance expressly provided for under the Act. Under Section 11, it further specifically provides for the Attorney-General’s power to refuse a request for assistance where the provision of the assistance may result in the death penalty being imposed on a person. Except matters of which are “Political offence” in nature. Section 10 specifically provides that an offence that is constituted by conduct of a kind referred to in Article 1 of the Convention is not considered a political offence.

94. There are no available cases involving the offence of torture in which mutual assistance was requested by or from the country.

Article 10

Education and information

95. The MOJ has conducted two trainings (the first one in late 2020 and second phase in early 2021) focusing on UNCAT reporting with the KNHRTF, with financial and technical support from Human Rights & Social Development Division of SPC and OHCHR Pacific Regional Office. Kiribati also participated and presented its work on implementation, reporting and follow-up to UNCAT at an online workshop organized by the Commonwealth and CTI in May 2021. KNHRTF also organized, with financial and technical support from OHCHR Pacific Regional Office and Human Rights & Social Development Division of SPC, a validation workshop in March 2023, which included education and training for task force members on the provisions of the Convention, as well as treaty reporting training.

96. Due to lack of training facilities in Correctional Department including human resourcing in this area, the office is relying on technical support on training from internal/external partners. There is a recent program on basic human rights training which was conducted 2–3times a year. Unfortunately, there is no training that has been conducted specifically on torture. Financial support from development partners to provide facilities and specific training to build capacity of national authorities in these areas, is highly regarded and welcomed.

97. Te Meeria ward (Mental Ward) has in place the Kiribati Safe Practice Effective Communication (KSPEC) training package which focuses on both techniques such as;

(a) Breakaway techniques which are designed to dis-engage rather than engage during difficult periods of time;

(b) Restraint techniques which promote pain-free and encourages prone-free intervention. This course is a four-day training and was done by trainers working at Te Meeria. Hence, this training roll out has been carried to all Te Meeria Staff, Emergency nurses at Tungaru Central Hospital, Betio Hospital and representatives from the Police on Tarawa.

98. There is no specific training to medical personnel to be able to detect physical and psychological marks of torture. However, Medical staff will only detect if during a mental status examination of a patient they visibly detect marks of torture on patients and the responses of patient when mentally stable releases information of torture by medical staff in the institution. Financial support from development partners to provide specific training to build capacity of national authorities in these areas, is highly regarded and welcomed.

99. The KSPEC training is carried out 2 times a year. In the beginning of the year to new recruits and at the end of the year as a refresher training. It all depends on available funds from the Ministry. There are plans to roll out the training to health workers in the outer island Police officers and Correctional services officers being front liners when dealing with a mental health patient.

Article 11

Treatment of persons deprived of their liberty

100. The Prison Standing Orders in Section 6 lays out general principles as guidelines for the treatment of prisoners:

(a) The particulars of all prisoners received into prison will be entered accurately and without delay in the registers designed for that purpose;

(b) The sentence or sentences imposed by court law will be carried out;

(c) Prisoners will be kept under appropriate guard at all times unless otherwise ordered by the Superintendent of Prison;

(d) There will be no deviation from the prescribed scale for the issue of rations clothing and equipment except by specific instructions;

(e) All prisoners to the best extent possible will be employed at useful labour during the prescribed labour hours;

(f) Accommodation and other buildings occupied and used by prisoners will be of good standard and maintained in the highest state of cleanliness. Equipment will be well maintained, serviceable and clean;

(g) No prisoner will be granted any privilege other than those prescribed by regulations or authorized in order;

(h) The segregation of prisoners by class will be observed as far as circumstances permit. As an aid to more effective treatment prisoners will be classified in accordance with their criminal and personnel history and with consideration for individual characteristics and needs, of the aims of classification will be to ensure that a prisoner is held in the lowest degree of security consistent with safe custody and the community interest. With this in mind, all assigned classification will be periodically reviewed;

(i) Prisoners' records will be carefully and accurately maintained and kept up to date. The records will include assessments of conduct, industry and altitude and the comment of supervising officers;

(j) Discipline will be firm, fair and consistent. Prison routine will be no more restrictive than is necessary to ensure safe custody, effective control and a well-ordered community life. In awarding punishment loss of remission should be recognized to be a most severe form of punishment and should be carefully considered;

(k) Whilst safe custody, impartial treatments and the due execution of the sentences of the courts remain the basic responsibilities of the prison service, the training and social re-education of the prisoners must not be neglected. Every effort will be made to improve the attitudes and personnel skills of all prisoners, including those apparently incorrigible, to enlarge their self-respect to imbue them with a sense of responsibility to the community.

101. These are measures requiring prompt notification of and access to lawyers, doctors, family members under Section 6 of the Prisons Standing Orders:

(a) Legal adviser may visit prisoners at any reasonable time and for such periods necessary, such visits will be within the sight of a supervising officer but not within his hearing. The visits will be entered in the register but will not count against the prisoner's entitlements to visits from relatives or friends;

(b) Prisoners who are seriously ill in a hospital may be allowed to receive visits without restriction as to frequency and duration. If the medical officer advises that the prisoner should be visited the officer in charge of prison will ensure that relatives are informed without delay.

102. Police Officers must uphold the basic human rights of all people regardless of gender, colour, religious beliefs and nationality.

103. The upcoming Meeria Bill will provide:

(a) To promote and fulfil the aims and objectives of the Kiribati National Mental Health Policy (KNMHP) determined from time to time;

(b) To respect, protect and promote the human rights of persons with mental health conditions and psychological disabilities, guarantee equality before the law and promote compliance with the Convention on the Rights of Persons with Disabilities, including allowance for supported decision making in their mental health care and protection from cruel, inhuman and degrading treatment;

(c) To facilitate quality mental health care, support and treatment of persons with mental health conditions within families and in the community on a voluntary basis;

(d) To ensure people who have a mental health condition are provided the best possible restriction of their freedom; and with the least possible interference with their rights; and with respect for their dignity;

(e) To facilitate care for a person with a mental health condition that is consistent as far as possible with the wills and preferences of that individuals;

(f) To support families and communities where they are providing care of a person with a mental health condition;

(g) To encourage families, carers and communities to accept their responsibilities in providing the best care and support for persons with mental health conditions;

(h) To promote the recovery and rehabilitation of persons with mental health conditions and their ability to participate on an equal basis at all levels of society;

(i) To ensure the integration of mental health care into general health care at all levels of the health care system and that all persons with mental health conditions receive high quality care of equal standards to general health patients;

(j) To ensure that there are adequate human resources to meet the multidisciplinary workforce needs of Te Meeria Department, appropriate facilities available and a satisfactory budget allocation to meet the objectives of the Act;

(k) To assist and encourage non-government organizations and other agencies to support facilitation of the traditional, cultural and religious values of Kiribati;

(l) To provide access to pharmaceuticals and other treatment options for mental health conditions based on internationally accepted standards;

(m) To promote a positive change in attitude towards mental health conditions through effective mental health promotion activities that increase the knowledge and understanding of Mental Health among I-Kiribati;

(n) To support research into the prevention and treatment of mental health conditions;

(o) To promote and support a high-quality standard of training for all Police and Correctional Services Officers who are responsible for the care and custody of persons with mental health conditions;

(p) To support the transition of care in involuntary care settings to allow for the reduction of the use of seclusion and restraint and to meet policy objectives of reducing this use to zero in the future.

104. The International Committee of the Red Cross (ICRC) have made some observations in 2017 during their visit to the Prisons on Tarawa, and another visit in 2018 by a representative of the Red Cross Council based in Fiji. The purpose of the visits was to inspect and see how well was the treatment and well-being of prisoners in terms of: (i) how cleanliness and hygiene is observed in Prison; (ii) how was Prisoners food and ration; (ii) how fairly and humane was the treatment to them.

105. After the 2 visits, the following recommendation were made:

(a) Prison dormitories were in poor conditions, limited ventilation systems, and overcrowded. A need for newer standardized dormitories required;

(b) Implement a prisoner classification and assessment system in all the prisons according to cohorts of prisoners. (The term “Cohort” in Prison is generally related to the classification of groups of prisoners as a result of the assessment made to them and segregated as followed; adults, juveniles, sentenced and remand, criminal offenders and civil prisoners, it also takes into account, the clarifications in accordance to their behaviour or the risks they pose to staff or other prisoners and even their health and more importantly, the determination of suitable types of rehabilitation programs to undergo);

(c) Across the whole prison system: as a matter of priority, provide a more nutritious diet, including fresh foods and vegetables.

106. The Prisons department is progressively implementing the above recommendations as shown by the following activities:

(a) In 2019, the Prisons has developed and submitted to National Economic Planning Office (NEPO) a project document in regard to the construction of a more well-ventilated dormitories. In the project document, the overcrowding problem plus the classification system were also considered;

(b) This recommendation awaits the completion of recommendation 1. At present, we have very limited facilities to implement the separation of group of prisoners. However, the upcoming Youth Justice Bill 2021 will address the separation of youth people from adults;

(c) Recommendation 3: The prison has had developed a work systems and processes that place more personal responsibility on prisoners to produce food through gardening.

Article 12

Prompt and impartial investigation

107. Section 2 of the Criminal Procedure Code defines “preliminary investigation” or “preliminary inquiry” as an “investigation of or an inquiry into a criminal charge held by a magistrates’ court with a view to the committal of the accused person for trial before the High Court.”

108. In addition, section 216 of the Criminal Procedure Code stipulates that the Magistrates’ Court must consider during an inquiry whether the case has sufficient evidence to commit

the person to trial by the High Court. The person must be discharged if there is insufficient evidence.

109. The Kiribati Police Service (KPS) has a competent force in the investigation of disciplinary and criminal matters. However, none is specialized on investigation of torture or cruel, inhuman or degrading treatment of people. These cases can be treated by police officers, if reported as crime against person for example, assault or assault causing bodily harm, etc. As part of police investigation, a medical report should be provided by the medical practitioner who conducts a thorough examination of the person. Though the KPS has its forensic experts, the skills and expertise cannot fully utilize due to lack of facilities. As per the Police Service Act the perpetrator must be suspended and wait for the completion of the investigation to ensure they would not interfere with the investigation.

110. There is no available information on the results of cases of prosecution and punishment relevant to article 12 of this Convention.

Article 13

Right of victim to complaint to competent authorities

111. The Professional Standard Unit of KPS investigates cases against police officers who are involved in the case provided that the Police station where the accused police officer works cannot conduct the investigation due to conflict of interest or other reasons. Police prosecutors through the Attorney-General's assistance are capable of prosecuting a wide variety of criminal cases triable at the Magistrate Court.

112. Section 76 (3) of the Code provides for complaints to be brought orally or in writing, signed by both the complainant and the magistrate. Section 76(5) the Criminal Procedure Code stipulates that criminal proceedings can be instituted by bringing a complaint or bringing a person arrested without a warrant before a magistrate. Under section 77 of the Code, upon receiving a complaint, the High Court or Magistrates' Court may issue either a summons or a warrant to compel the attendance of the accused person before the High Court.

113. Under section 60(3) of the Police Service Act 2008, the Police Commissioner "must keep a written record of all written complaints made about the conduct of a police officer, and the action taken in relation to the complaint." Furthermore, section 61 imposes a duty on police officers to report, as soon as is practicable, if the police officer knows, or suspects on reasonable grounds, that another police officer has committed an offence.

114. Under Section 67(6) of the Prisons Ordinance, prisoners can make complaints to visiting justices. The visiting justice has the right to inspect books and records relating to the management and discipline of the prison, visit every part of the prison, inspect and test the quality of the food of prisoners and ascertain whether all applicable regulations are adhered to (Section 67(5)). Upon hearing a complaint, the visiting justice "shall make such recommendations thereon as may be necessary to the Superintendent of Prisons" (Section 67 (6)).

115. Under Regulation 49(13) of the Prison Regulations, the officer in charge or other prison officer deputed by him shall "ensure that prisoners having a complaint or request are heard, a redress any legitimate grievance, or take such steps as may be necessary to effect a remedy". Regulation 49(14) provides for officers in charge to "enter in a book, to be called the Prisoners' Complaint Book, all complaints, requests and any action taken thereon".

Article 14

Right of the victim to redress

116. Section 5(4) of the Constitution provides for the right to compensation of persons unlawfully arrested or detained.

117. Section 17(1) of the Constitution provides for the right of persons to apply to the High Court for redress when alleging a breach of any of the provisions of Sections 3 to 16 of the Constitution (thus including Section 7 containing the prohibition against torture) in relation

to them or other detained persons. Section 17(2) provides that the High Court may decline the exercise of its powers if “it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under other provisions of this Constitution or under any other law.”

118. Rule 2 of the Magistrates’ Courts (Civil Claims in Criminal Proceedings) Rules as amended defines a “civil claim” as “any civil action taken in a magistrates’ court for compensation or damages, not exceeding \$10,000, arising out of or resulting from an act or acts done by another person or persons which person or persons have been charged before the same magistrates’ court for a criminal offence or offences in respect of such act or acts.” Rule 4 (1) provides for civil claims arising out of a charge pending before a court, which has not yet been tried, to be heard by a magistrates’ court at the same time as the criminal offence upon which it is founded. Rule 8 (3) further provides that “it is immaterial to the finding of the court, either for or against the civil claimant or the civil defendant or to the award of compensation or damages or to the order of the return of the thing claimed, or to the award of costs or fees, that the civil defendant has been acquitted or convicted of the criminal charge out of which the civil claim arose.”

119. Rehabilitation or counselling programmes that exist in the country for victims of torture normally are the ones provided by the Social Welfare Division under MWYSSA together with other NGOs that are also providing protection for women and children, who have gone through abuse and torture as a result of domestic violence.

120. Beside the above programmes, Kiribati legislation does not appear to provide for any other forms of redress, such as restitution, rehabilitation, satisfaction, or guarantees of non-repetition relevant to article 14 of this Convention.

Article 15

Value of statements taken under torture

121. Section 12(1)(b) of the Evidence Act 2003 states that reliability of evidence may be affected by factors such as age, ill health (whether physical/mental) or injury. Section 113 of the Police Powers and Duties Act 2008 states the general rule against the questioning of suspect conducted to obtain confession by force or promise, section 119 imposes the duty on the police not to conduct the questioning of suspect who is with impaired capacity and sections 123 to 124 provides for the procedure to caution suspects of their rights to remain silent. Apart from these provisions, there is no specific provision that deals with evidence obtained under torture per se nor any provision for the exclusionary rule in line with article 15 of the Convention.

122. However, courts have interpreted and applied the exclusionary rule in practice as can be seen in the High Court in the case of *Republic v. Mouata* [2001] KIH 4. The Court in this case ruled as inadmissible a statement delivered by the accused, who had been detained in police custody, given that “there was a deliberate attempt made by the investigating officer in this case to hold the accused in such circumstances and in such condition whereby his will would be overborne and that he would crack and give a confession and that conduct on the part of the investigating officer is completely inexcusable.” The Court considered the conditions of detention of the accused when assessing the voluntariness of the confession, who had his clothes removed and who was kept in his underwear for five days in detention, which the Court qualified as being “degrading.”

Article 16

Obligation to prohibit acts of cruel, inhuman or degrading treatment or punishment

123. Due to lack of facilities, segregation of prisoners according to their cohorts is not possible. There are however, separate facilities for male and female inmates. The rest are mixed together as follows; remand prisoners with convicted ones; juveniles with adults; civil prisoners with others.

124. Section 11 of the Juvenile Justice Act provides for the restriction on punishment of children and young persons:

“(1) No child shall be sentenced to imprisonment or be committed to prison in default of payment of a fine, or costs.

(2) No young person shall be sentenced to imprisonment if he or she can be suitably dealt with in any other way specified in Section 15.

(3) A young person sentenced to imprisonment shall not, so far as is practicable, be allowed to associate with prisoners not being children or young persons.”

125. Section 21(1) of the Prisons Ordinance provides for the obligation of prison officers to ensure that every prisoner is medically examined upon admission and discharge. Additionally, inmates are allowed visits to the hospital, wearing their uniforms and accompanied by officers on duty.

126. The Mental Treatment Ordinance under Section 4 provides that a Visiting Committee shall be established. Accompanying Mental Health Wing Management Regulations provide for a number of safety measures to be applied in mental health facilities, such as: physical examination of patients on admission (Rule 16), separation of male and female patients (Rule 17), the provision of clothing suitable for their requirements (Rule 18) and for a prohibition to strike patients, placing in seclusion those who are refractory (Rule 27).

Part three

Conclusion

127. Implementation of the Convention requires regional and international partners to assist Kiribati to develop capacity. Funding is one of the challenges to the full implementation of the Convention as it requires visitation to the outer islands for key stakeholders training. The continuing challenges with the absence of effective laws, structures and institutional capacity have also affected human rights reporting in Kiribati, resulting in significant delays in the submission of reports under various Conventions.

128. In order to promote compliance with the standards set out in the Convention, strong policies and independent investigative bodies are set in place for those who believe they have been victims of abuse.

129. Kiribati is committed in its efforts to ensure that appropriate guidelines on the use of force are respectively prohibited against torture and other forms of abuse by law enforcement and correctional officers are observed in practice. Further, Kiribati at every level is committed and is guided by the law as well as by policy, to protect individual's life, liberty and physical integrity and to make necessary reforms of the relevant policies, practices and institutions in order to assure compliance with the convention.

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