

Kiribati



CEDAW Legislative Compliance Review

Legislative Compliance of Kiribati

4.1 Overview

This Chapter examines and assesses Kiribati's legislative compliance with CEDAW. Kiribati ratified CEDAW on 17 March 2004, obliging it to work towards the modification of its constitution and legislation to accord with the provisions of CEDAW. However, it is recognised that Kiribati is at the beginning of its compliance process and that legislative compliance will be achieved through gradual and incremental change. The assessment of Kiribati's compliance is based on the indicators identified in Chapter One and should be read in conjunction with the commentary on each indicator included in that Chapter. In sum, Kiribati has achieved full compliance with 26 indicators, partial compliance with 29 indicators and no compliance in relation to the remaining 58 indicators. The next section provides a brief synopsis of the findings of the review. Following the synopsis is a series of tables, each related to an article of CEDAW, and each containing the relevant indicators, the level of compliance achieved by Kiribati (i.e. yes, no or partial compliance), the relevant legislation and finally, where required, a brief commentary explaining how the legislation does or does not meet the indicator.

It should be noted that the Kiribati legislative review was conducted using all materials available at the time, and that although every effort was made to obtain the most recent and up-to-date legal material, it is possible that there will be errors or omissions.

4.2 Synopsis of Findings

1. Article 1 (which defines discrimination) in conjunction with Article 2 requires States Parties to guarantee a range of fundamental rights and freedoms in their constitutions including substantive equality and freedom from discrimination on grounds of sex, marital status, sexual orientation, HIV status and disability. The Constitution of Kiribati guarantees the rights and freedoms of citizens in most of the areas required by CEDAW. However, whilst the Constitution guarantees men and women equality *before* the law, it does not guarantee equal benefits or outcomes as required by CEDAW. The rights and freedoms guaranteed are also subject to the rights and freedoms of others and the public interest. The Constitution of Kiribati contains an anti-discrimination clause but it does not include sex as a protected ground. This means discrimination against women is lawful in Kiribati and consequently, domestic laws which discriminate against women, although non-complaint with CEDAW, are not in breach of the Constitution.
2. Articles 2 and 3 together mandate the establishment by legislation of national bodies and machinery to monitor the implementation of law and policy to foster the advancement of women. Kiribati, to date has not instituted such a mechanism.
3. Article 2 condemns discrimination against women in all its forms and obligates States Parties to eliminate discrimination against women without delay. General Recommendation 19 issued by the CEDAW Committee makes explicit that the definition of discrimination includes gender violence and recommends that 'sanctions, penalties and compensation' be introduced in relation to gender based violence. Sexual assault is a form of gender violence as it is overwhelmingly perpetrated against girls and women, and therefore must be prevented and remedied, as far as possible, through

- legislative means. Kiribati has legislated against sexual assault. The sexual assault laws, however, provide inadequate protection for the range of sexual violations perpetrated against girls and women. All sexual offences require penile penetration, (except indecent assault which only attracts an inadequate maximum 5 year sentence). The requirement of penile penetration for most sexual offences excludes many of the ways in which women are sexually violated, and is not compliant with CEDAW. Violations perpetrated against girls under 15 are punished more seriously in Kiribati, whilst the violation of an older girl is treated less seriously, again in non-compliance. Thus, the penalty for the 'defilement' of a girl aged under 13 is life imprisonment whilst defilement against a girl aged between 13 and 15 is 5 years. Although an assault against a young girl may have more serious consequences, particularly if perpetrated by a person in a position of trust, the vast disparity between the sentences appears unjustified and perpetuates an erroneous assumption that it is less serious and harmful to assault a 'more mature' girl.
4. Incest is a gendered crime since it is primarily perpetrated against women and girls by men in the context of unequal power relations. Criminalising all parties to an incestuous sexual encounter is contrary to CEDAW and may dissuade a victim of an incestuous sexual assault from reporting it in fear of being charged with an offence. In Kiribati, in non-compliance with CEDAW, incest is an offence for a girl aged 15 years or above attracting a penalty of 7 years. It is also an offence for a 'native' to have sexual intercourse with a 'collateral' (i.e., a relative who is no more removed than one cousin) which also has a penalty of a 7 year sentence.
 5. The admission of the prior sexual history of a victim in order to establish that she consented to the sexual act in question is a common law rule which perpetuates the myth that a victim's previous sexual relationship with either the accused or others makes it more likely she consented, and is contrary to the principles of CEDAW. In the prosecution of sexual offences and in compliance with CEDAW, Kiribati has legislated against the use of prior sexual conduct in most circumstances unless it is relevant to the reliability of the complainant's evidence. Corroboration (independent evidence such as that of a witness that connects the accused person with the crime) is a common law rule that requires a judge to advise the jury that it is dangerous to convict the accused on uncorroborated evidence. Kiribati, in compliance with CEDAW, has legislated against the necessity for corroboration in sexual offence prosecutions. Proof of resistance is a common law rule which requires victims to establish that they physically resisted the perpetrator otherwise consent may be inferred. It is discriminatory because physical resistance may be an unrealistic expectation of a victim against a strong or armed perpetrator, and does not take into account that fear and power imbalances may immobilise the victim. Kiribati, however, has *not* legislated against the requirement for proof of resistance by the victim in non-compliance with CEDAW.
 6. Although there is generally no defence in sexual assault prosecutions in Kiribati for the accused to claim that he did not know the girl was not of legal age, there is an exception in relation to a charge of defilement of a girl between the ages of 13 to 15. This places the onus on the minor to establish her age rather than the perpetrator to ascertain age, and is non-compliant with CEDAW. Consent is

available as a defence for rape and indecent assault but not for defilement or indecent assault on a girl under 15. This means in effect that the defence *is* available in relation to sexual assaults including rape on girls over 15 and this is non-compliant with CEDAW which stipulates 18 as the age of adulthood.

7. Minimum sentences and mandatory prosecution ensure that sexual violence against women is treated seriously. Kiribati, however, does not have mandatory prosecution or minimum sentences for sexual assault offences. In addition, the legislation specifically provides for customary law to affect criminal sentencing which may reduce a sentence further if there has been forgiveness. Bail, which should not be granted if there is any risk to a sexual assault victim, is available as a matter of entitlement unless the charge is murder.
8. Although General Recommendation 19 (which concerns violence against women) identifies domestic violence as a form of discrimination that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men, Kiribati has not yet incorporated domestic violence offences into its criminal laws. This is required for compliance with CEDAW.
9. Infanticide refers to the killing of a child by its mother (in contrast to abortion which refers to the destruction of a foetus). Full compliance with CEDAW requires that an offence of infanticide replaces a charge of murder or manslaughter and has a reduced sentence recognising the societal pressures that lead women to kill their children. Women who do so should not be held accountable to charges of murder or manslaughter. An offence of infanticide is contained in the Kiribati criminal law legislation but it reduces a charge of murder to manslaughter, rather than replacing both murder and manslaughter with a separate offence and a corresponding less severe penalty. Further, the definition of infanticide is restricted to the effects of lactation and birthing. Such a view of the causes of infanticide has been largely discredited by research, which instead has linked such killings to post-natal depression caused in large part, by the social pressures of raising children.
10. Article 4 requires that special measures provisions be introduced into national constitutions and legislation. Kiribati has not incorporated special measures provisions into its constitution, nor enacted legislation for the advancement of women. The lack of special measures is detrimental for women because they are an equality measure with real potential to redress historical discrimination and achieve substantive equality for women.
11. Article 5 requires States Parties to abolish or modify customary practices that discriminate against women. In Kiribati, the Constitution gives constitutional status to customary law. Legislation has also been introduced permitting the observance of customary law in a range of situations including criminal law, family law and land law, all of which have gendered impacts on women. The status given to customary law coupled with the absence of anti-discrimination provisions and other protective provisions in the Constitution leaves women in Kiribati with no legal recourse against custom that discriminates against them on the basis of sex/gender.
12. Article 6 requires States Parties to suppress all forms of trafficking in women and the exploitation of women in prostitution and

Articles 2 and 11 require the elimination of discrimination against women in employment. Cumulatively, these articles mandate both the protection of sex workers from exploitation whilst also affording them the rights and protections of other workers. The act of soliciting is not an offence in Kiribati for female sex workers, (although it is for males) which complies with CEDAW. However, Kiribati criminalises the aiding and abetting of sex work and the operation of organised premises. Experience and research shows that organised premises rather than street work is safer for sex workers. Legalising brothels and implementing work conditions and safeguards that are present in other workplaces (such as regulated standards of occupational safety, standard rates of pay, parental leave, sick leave) would therefore provide greater safety for sex workers and the community. Although Kiribati has adopted a rigorous approach to the exploitation of girls under 13 with a penalty of life imprisonment, its approach to girls over 13 and women who have been forced into sex work without their consent or trafficked to other locations, both within the country or abroad, attracts a penalty of only 2 years and is insufficient to comply with CEDAW's mandate.

13. Article 7 obligates States Parties to take all appropriate measures to eliminate discrimination in women's political and public lives. Universal suffrage and equal legal rights to political representation for women has been achieved in Kiribati. However, Kiribati which currently only has 3 female members of parliament out of a total of 42 seats, has not introduced special measures such as quotas to ensure higher numbers of women enter parliament and participate in the governance of their countries.
14. Article 8 requires States Parties to ensure that women have equal opportunities to represent their governments at the international level. Although there is no legal barrier preventing women from representing their governments in Kiribati, the low numbers of women who do so necessitates the introduction of quotas to raise participation.
15. Article 9 requires States Parties to eliminate discrimination in the areas of nationality, citizenship and domicile. Discriminatory provisions exist in Kiribati's nationality and citizenship laws. For example, if a Kiribati woman renounces her citizenship after marriage to a non-national (in order to gain citizenship of her husband's country) she can only regain her citizenship in Kiribati upon evidence of the breakdown of her marriage. Although this is intended to protect women and enable their return to Kiribati if the marriage relationship ends, it makes a woman's return contingent on her marriage rather than her own autonomy and choice. The provision does not apply to men, presumably based on the stereotyped assumption that men will not join their non-national wives in another country. Further, a male applicant for citizenship in Kiribati may request that his wife and child also be granted citizenship. There is, however, no corresponding provision that allows a woman to request citizenship of her husband and child in her application and women are therefore, again discriminated against by existing citizenship laws. Although women have equal rights to obtain a passport upon citizenship, they are discriminated against if they marry a non-Kiribati citizen as they are not permitted to include their husbands or their children in their passports. Kiribati men, however, who marry non-Kiribati women *can* include their wives and children in their passports.

16. Article 10 obligates States Parties to ensure women have equal rights and opportunities in education. The provision of compulsory education is essential to ensure girls are equally prioritised and not discriminated against in early education. Kiribati has introduced compulsory schooling at both the primary and secondary levels. However, since females do not participate equally in tertiary education in Kiribati, full compliance with Article 10 requires the government to adopt special measures for the advancement of women in education which it has not yet done. A prohibition on the expulsion of pregnant students which is required for compliance with CEDAW so as to ensure that girls are not discriminated against by educational institutions due to their pregnant status, does not exist, in non-compliance with CEDAW.
17. Article 11 obligates States Parties to eliminate discrimination in employment. Women in Kiribati have many of the same rights in employment as men. However, there are a number of aspects of employment law in Kiribati which discriminate against women and do not comply with CEDAW, including the absence of anti-discrimination provisions in the employment legislation and the restriction of women's employment choices by banning them from night work and working in mines. Such protectionist provisions interfere with women's autonomy and place unreasonable restrictions on their right to choose professions and employment.
18. In the area of maternity leave, the public service sector in Kiribati offers more generous allowances than the minimum standards granted in the private sector. Although neither sector fully meets the standards of 14 weeks paid maternity leave recommended by CEDAW and the International Labour Organisation (the ILO recommends a period of 14 weeks maternity leave and CEDAW recommends that this period be paid) the public service comes close with female civil servants entitled to 12 weeks of maternity leave on full pay, but only for their first 2 children. The private sector, however, only provides for 12 weeks leave on not less than 25% of the female worker's wage. Finally, protection from dismissal ends upon the expiry of the approved maternity leave period, leaving women in precarious positions in relation to job security if they require (or choose) to take further leave.
19. Whilst the legislation creates a general duty on employers to provide 'safe' working conditions, Kiribati has not introduced any specific health protection for pregnant workers. Breastfeeding mothers are provided with breaks of half an hour duration twice daily. However, these conditions are insufficient to enable breastfeeding mothers to balance the needs of young children with the demands of work. Similarly, the absence of any state or employer funded childcare facilities in Kiribati is likely to accentuate the difficulties nursing mothers face in the workplace.
20. The CEDAW Committee in General Recommendations 12 and 19 has identified sexual harassment in the workplace as a form of discrimination against women. General Recommendation 19 defines sexual harassment as unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. Such actions can be humiliating for the recipient and are discriminatory when they create a

- hostile work environment. Protection from sexual harassment is absent in Kiribati and there is no scope for a remedy under the criminal code as permitted in the Solomon Islands; or in human rights legislation as available in Fiji; or in public sector legislation as provided in Papua New Guinea.
21. Article 12 requires States Parties to ensure that women have access to health care services including those related to family planning. Abortion is criminalised in Kiribati with a severe penalty of life imprisonment and although abortion can be lawfully carried out to save a mother's life, women do not have access to safe abortion facilities as of right. The failure to decriminalise abortion and to provide safe accessible facilities for women who require abortions endangers their health and that of any child born subsequent to a failed abortion since research indicates that when a mother dies (including as a result of unsafe abortion) the chance of survival of all surviving children under 5 is significantly reduced.
 22. Article 13(b) of CEDAW provides that women should be afforded equal rights to bank loans, mortgages and other forms of financial credit free from discrimination. Although there is no legislative barrier to women in Kiribati from accessing such services, discrimination continues to hinder women from obtaining credit and loans to purchase property or businesses, thus interfering with their autonomy and ability to earn a livelihood. Article 13(c) of CEDAW requires that women have an equal right to participate in recreational activities, sports and all aspects of cultural life and there are no legislative barriers in Kiribati preventing women from doing so.
 23. Article 14 obligates States Parties to put in place measures to ensure the equality of rural women. Rural women often play a significant role in the economic survival of their families and communities although they are frequently disadvantaged in areas such as land ownership, health, education and housing to name a few. The achievement of substantive equality for rural women and compliance with CEDAW requires temporary special measures provisions to be incorporated into both the Constitution and legislation. Kiribati, however, has not yet done so.
 24. Article 15 requires States Parties to guarantee women equality before the law and equal rights to participate in all aspects of civil life. Kiribati expressly guarantees women equality before the law and there are no legal barriers to women's participation in court and tribunal processes, nor are women denied the right to conclude contracts and administer property.
 25. Article 16 obligates States Parties to remove discrimination in family and personal laws including marriage, separation, divorce, maintenance, child custody, property division, paternity and inheritance.
 26. The CEDAW Committee in General Recommendation 21 has nominated 18 as the minimum age of marriage for both males and females. Kiribati is in full compliance with CEDAW as it mandates an equal marriageable age for males and females of 18, it requires the registration of all marriages and it also requires the consent of *both* parents in the marriage of minors. However, whilst bigamy is a criminal offence, this law is not applicable to a customary marriage which is not deemed a valid previous marriage.
 27. Fault based divorces, which require proof of a matrimonial offence such as desertion or

- habitual rape, place women in the difficult position of having to provide evidence of situations that may be humiliating, embarrassing, or that may interfere with their dignity and privacy. Women also face discrimination in proving fault, particularly cruelty and adultery if they choose not to be witnesses or they do not wish to attend court proceedings. Divorce in Kiribati is based on fault based criteria (including adultery, desertion and cruelty) and is therefore not compliant with CEDAW.
28. The CEDAW Committee in General Recommendation 19(23) (which deals with violence against women, in relation to Articles 16 and 5 of CEDAW) states that a lack of economic independence or an inability to gain custody of their children upon separation forces many women to stay in violent or difficult relationships. Kiribati *does* provide for maintenance orders during separation and after divorce for both children and spouses. Further, Kiribati legislation provides for maintenance for 'any person' and therefore potentially includes both women in de facto heterosexual relationships, and women in same-sex relationships, although to date no such same-sex recognition has occurred. Further, the children of unmarried women are specifically and separately provided for in the Land Code with discretionary criteria. However, the basis on which maintenance is provided is left largely to the discretion of the court with the broad criteria of 'the age of the person for whose benefit the application is made and the personal circumstances of every person'. The standards recommended by CEDAW, i.e., the needs and means of both parties, the financial commitments of both parties to themselves and others, their respective capacities to earn and the needs of any children for whom maintenance is sought, are unlikely to be prioritised.
 29. In General Recommendation 21, which deals with equality in family relations, the CEDAW Committee states that the division of marital property should include recognition of non-financial contributions during a marriage such as raising children, caring for elderly relatives, and discharging household duties. However, Kiribati provides no legislative provision for the division of property after separation and divorce and therefore any determination is left to custom which may discriminate against women.
 30. The best interests of the child as the paramount consideration is universally accepted as the principle on which custody determinations should be based, according to Article 16(f) of CEDAW. Although Kiribati has adopted the recommended standard of the best interests of the child as the paramount consideration in custody disputes after separation and divorce, an unmarried mother automatically loses custody of her child at the age of two years to the father (provided he admits paternity and wishes to have the custody of the child). The latter situation although intended to protect the inheritance rights of the children of unmarried parents may not represent the best interests of the child, and discriminates against mothers.
 31. In General Recommendation 21, the CEDAW Committee states that the right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence. Women in Kiribati do not enjoy equality in relation to the ownership, administration, enjoyment and disposition of property since patrilineal inheritance is given legislative status thereby giving men control of many aspects of land and property.
 32. Article 16 requires that inheritance laws should apply equally to males and females. The Gilbert and Phoenix Islands Land Code

governs inheritance law, specifying different rules for different islands based on custom. Generally, succession is along patrilineal lines and in a number of instances, sons are favoured over daughters in relation to both land and important resource rights such as fishponds.

33. A series of tables detailing Kiribati's compliance with CEDAW is provided in the

following pages. Each table relates to an article of CEDAW and contains the applicable indicator(s), the level of compliance achieved, the relevant legislation and finally where required, a brief commentary explaining how Kiribati's legislation does or does not meet the indicator.

Kiribati: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental rights and freedoms to men and women equally including in the political, economic, social, cultural, civil or any other field?	Partial	<i>Constitution of Kiribati 1979 s 3 - 15.</i> Right to life, personal liberty, freedom of conscience, freedom of expression, freedom of assembly and association, movement, freedom from discrimination protection from slavery, forced labour, inhuman treatment, deprivation of property, privacy of home and other property, protection of law. But <i>s 3.</i> Rights subject to respect for the rights and freedoms of others and the public interest.	The rights protected include most of those required by CEDAW and are afforded equally to men and women. There is therefore substantial compliance with this indicator but <ul style="list-style-type: none"> • Substantive equality is not a guaranteed right. • The right to the highest standard of physical and mental health attainable is not a guaranteed right. • All rights are subject to the public interest.
1.2 Is there a constitutional guarantee of substantive equality between men and women?	No		There is no express guarantee of substantive equality for women.
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	No		Although there is a anti-discrimination clause it applies only to race, place of origin, political opinions, colour or creed.
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	No		
1.5 Does the Constitution contain an anti-discrimination clause on the ground of sexual orientation?	No		
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	No		
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.8 Does the breadth of the anti-discrimination clause encompass direct and indirect discrimination?	No		<i>Constitution of Kiribati 1979 s 15(1)</i> . Although no law shall be discriminatory either of itself or its <i>effect</i> (encompassing indirect discrimination) the failure to extend the clause to sex or other grounds recommended by CEDAW means there is no compliance with this indicator.
1.9 Does the anti-discrimination clause bind public authorities and institutions?	No		<i>Constitution of Kiribati 1979 s 15(1)</i> . Although no law shall be discriminatory and (2) No person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority the failure to provide anti-discrimination protection on the grounds of sex or other grounds recommended by CEDAW means there is no compliance with this indicator.
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	No		<i>Constitution of Kiribati 1979 s 17(2)(b)</i> . Although the court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 15 (inclusive) of this Constitution, since the anti-discrimination clause does not protect any of the grounds recommended by CEDAW, there is no compliance with this indicator.
1.12 Are there specific domestic violence offences in criminal law legislation (Penal Code)?	No	<i>Penal Code [Cap 67] 1965</i> <ul style="list-style-type: none"> • s 237. Common assault - 6 months imprisonment. • s 114. Assault causing bodily harm - 5 years imprisonment. 	These provisions which do not embrace the complexity of domestic violence and low penalties mean they are an ineffective protection for women in domestic violence situations.
1.13 Is stalking a criminal offence?	No		
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	No		
1.15 Is there mandatory prosecution for domestic violence offences?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Partial	<p>Penal Code [Cap 67] 1965.</p> <ul style="list-style-type: none"> • s 129. Rape - life imprisonment. • s 130. Attempted rape - 7 years imprisonment. • s 133(1) Indecent assault - 5 years imprisonment. • s 133(3). Intending to insult the modesty makes sound, gesture or exhibits object - 1 year imprisonment. • s 134(1). Defilement of girl under 13 - life imprisonment. • s 134(2). Attempt to defile girl under 13 - 2 years imprisonment. • s 135. Defilement of girl between 13 and 15 - 5 years imprisonment. <p>Note <i>Laws of Kiribati Act 1989, Schedule 1, s 3(a)-(e)</i>. Customary law may be taken into account in a criminal case to ascertain the state of mind of a person; deciding the reasonableness of an act, default, omission or excuse by a person whether to convict.</p>	<p>The sexual assault offences in the Penal Code whilst providing some protection for women from sexual violence are not compliant with this indicator because:</p> <ul style="list-style-type: none"> • Although the rape and defilement of a girl under 13 is treated seriously, the low penalty for defilement of a girl aged between 13 and 15 implies that a sexual assault is not as serious if the girl is older. This is discriminatory. • The categories of offences do not cover the range of violations experienced by women and are not graded according to the seriousness of sexual violations experienced by women. For example, if there is no penile penetration the only offence is indecent assault which carries a low sentence of 5 years. • Customary law may operate to reduce the sentence.
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	No	<p>Penal Code [Cap 67] 1965. s 161. Sexual intercourse does not require the actual emission of seed but is complete upon proof of penetration.</p>	<p>Penetration is confined to penile penetration and does not include the range of ways that women can be sexually violated.</p>

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.18 Is there an offence of incest for girls and women? If there is an offence of incest, for girls and women, then there is no compliance with this indicator.	No	<p><i>Penal Code [Cap 67] 1965,</i></p> <ul style="list-style-type: none"> • s 156(5). Offence for any female 15 or above who with consent permits her grandfather, father, brother or son to have sexual intercourse - 7 years imprisonment. • s 158(1). Offence for any native to have sexual intercourse with any collateral by blood or adoption up to and including second degree of cousinship - 5 years imprisonment. (2) Does not apply to unions between first and second cousins who are families of high chiefs. 	<p>There is an offence of incest in the Code which means that women and girls over 15 can be charged with an offence. Therefore there is no compliance with this indicator. These offences are discriminatory because:</p> <ul style="list-style-type: none"> • No girl under 18 should be charged with any sexual offence and consent should be irrelevant. • An offence of incest against women and girls fails to recognise the power imbalance between girls and women and male relatives. Incest is typically perpetrated by men against girls and women in non-consensual and coercive circumstances.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	No	<p><i>Penal Code [Cap 67] 1965.</i> The terms insulting the modesty, defilement and indecency are used throughout the sexual assault offences.</p>	<p>These terms impart an understanding of women and girls as 'damaged' by the offences rather than reflecting the invasion of personal integrity that sexual assault involves.</p>
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	Partial	<p><i>Penal Code [Cap 67] 1965, s 128.</i> It is not consent if obtained by force, threats or intimidation, by fear of bodily harm, or false representations.</p>	<p>Although a range of coercive situations are defined, they do not encompass the full range of circumstances in which women do not give free consent. In particular threats to third parties should be included. The list should be specifically non-exhaustive.</p>

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN
ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.21 Is there a legislative prohibition on use of prior sexual conduct to establish consent?	Partial	<p><i>Evidence Act 2003,</i></p> <ul style="list-style-type: none"> • s 14 A. The court shall forbid any question as to and shall not receive evidence of the general reputation of the complainant with respect to chastity. • s 14 B (a). Can only be cross-examined as to her sexual activities other than with the accused by leave of court; and (b). No evidence shall be admitted as to the sexual activities of the complainant other than with the accused. • s 14 C(a). The court shall not grant leave under Rule B unless evidence has substantial relevance to facts in issue. • s 14 D. Evidence that establishes the fact that the complainant was accustomed to engage in sexual activities other than with the accused shall not be regarded (a) as having a substantial relevance to the facts in issue or (b) as being a proper matter for cross-examination unless likely to question reliability of complainant's evidence. 	<p>This provision is substantially compliant with the indicator but:</p> <ul style="list-style-type: none"> • The court retains a discretion to allow cross examination on prior sexual conduct (although only if it questions the reliability of the complainant's evidence). • Cross examination on the complainant's sexual activity with the accused is not excluded by this section.
1.22 Is there a legislative prohibition on requirement for corroboration?	Partial	<p><i>Evidence Act 2003,</i></p> <ul style="list-style-type: none"> • s 11(1). It is not necessary that evidence on which a party relies be corroborated. But • s 11(3)(a). It is not necessary that the judge warn the finder of facts that it is dangerous to act on uncorroborated evidence or give a warning to the same or similar effect; or • s 11(3)(b). Give a direction relating to the absence of corroboration. 	<p>This provision removes any requirement for corroboration and although 'it is not necessary' for the judge to warn the jury that it is dangerous to convict without corroboration, the provision does <i>not</i> prohibit the judge from doing so.</p>
1.23 Is there a legislative prohibition on a requirement to provide proof of resistance?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age. If there is no defence of honest and reasonable belief, then there is full compliance with this indicator.	Partial	<i>Penal Code [Cap 67] 1965, s 160.</i> It is no defence in most of the sexual offences that the accused person did not know or believed the girl was not of legal age. Except <i>s 135.</i> Defilement of girl between 13-15 it is a sufficient defence if accused had reasonable cause to believe 15 years or over.	To be compliant with this indicator, there should be no defence available to the perpetrator of 'honest and reasonable belief that the victim is of legal age'. Whilst there is no defence in most offences the defence in relation to the defilement of girls between 13-15 places the onus on the minor to reveal her age rather than on the perpetrator to ascertain her age. This is discriminatory
1.25 Is a defence of consent unavailable in relation to a victim under 18?	Partial	<i>Penal Code [Cap 67] 1965.</i> Consent is no defence to following offences. <ul style="list-style-type: none"> • <i>s 133(2).</i> Indecent assault on girl under 15. • <i>s 134(3).</i> Defilement of girl under 13. • <i>s 135(1)(a).</i> Defilement of girl between 13 - 15. 	Full compliance with the indicator requires that consent is not a defence in relation to any girl under 18.
1.26 Is there an exemption from prosecution for marital rape? If there is no such exemption then there is full compliance with the indicator.	Yes		To be compliant with this indicator, men should not be exempted from being prosecuted for marital rape. If the Penal Code contains a law which protects men from being charged with marital rape, then there is no compliance with this indicator. The Penal Code does <i>not</i> exempt husbands from prosecution for marital rape and Kiribati is therefore in full compliance with this indicator and with CEDAW.
1.27 Is there mandatory prosecution for sexual offences?	No		

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.28 Is bail unavailable for sexual offences if risk to victim?	No	<i>Criminal Procedure Code [Cap 17] 1963, s 106(1)</i> . Bail is granted at the discretion of the Court but there is a presumption it will be granted unless detention is for murder or treason.	There is no legislative protection for victims of sexual assault if they are at risk of further assault.
1.29 Are there minimum sentences for sexual offences?	No	<ul style="list-style-type: none"> • <i>Penal Code [Cap 67] 1965, s 25</i>. A person liable to imprisonment for life may be sentenced for any shorter term. • <i>Laws of Kiribati Act 1989, Schedule 1, s 3(a)-(e)</i>. Customary law may be taken into account in a criminal case in determining the penalty. 	Both these provisions affect sexual assault convictions and may operate to reduce a sentence.
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No	<i>Laws of Kiribati Act 1989 Schedule 1, s 3(a)-(e)</i> . Customary law may be taken into account in a criminal case to in determining the penalty	The legislation specifically <i>provides</i> for customary law to affect criminal sentencing in non-compliance with CEDAW.
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	No		
1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	Partial	<i>Penal Code [Cap17] 1966, s 199</i> . Where a woman by any wilful act or omission causes the death of her child under the age of twelve months, when her mind was disturbed because she had not fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, a charge of murder shall be replaced by manslaughter.	A charge of infanticide should be a replacement offence for both murder and manslaughter with a low penalty to recognise the societal pressures that might lead a mother to kill her child.
1.33 Does the definition of infanticide include environmental and social stresses?	No	As above.	Research suggests that women who kill their children do so because of the environmental and social stresses of raising children. Basing infanticide on the perceived hormonal and biological weaknesses that women suffer during childbirth and lactation has been discredited and does not comply with this indicator.

ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women rights?	No		
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	No		

ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	No		
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, disability and HIV status?	No		

ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
<p>5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?</p>	No	<p><i>Magistrates Courts Act [Cap 52] 1978, s 42(2)</i>. Magistrates Court can observe and enforce local law or custom not repugnant to natural justice, equity and good conscience and not incompatible directly or by necessary implication any ordinance or other law.</p> <p><i>Laws of Kiribati Act 1989</i></p> <ul style="list-style-type: none"> • s 4. (2)(b). In addition to the Constitution, the laws of Kiribati comprise customary law. • s 6(3)(b). Customary law prevails over common law. • Schedule 1. s 2. Customary law shall be recognised and enforced by, and may be pleaded in, all courts except if results, in injustice or contrary to the public interest. • Schedule 1. s 3(a)-(e). Customary law may be taken into account in a criminal case to ascertain the state of mind of a person, deciding the reasonableness of an act, default, omission or excuse by a person whether to convict, determining the penalty. • Schedule 4 (a)-(l). Customary law may be applied in a case concerning native land any sea or lagoon area, inland waters or foreshore or reef, or in or on the seabed, including rights of navigation or fishing, inheritance, defamation; adoption; rights of married persons arising out of their marriage or on the termination of their marriage by nullity, divorce or death, the right of a member of a family to support by other members of that family, or the right to the custody or guardianship of infants, the duty or member of a community to contribute, whether by labour, money or in kind, to projects for the welfare of that community. 	<p>The legislation expressly gives legal status to customary law in a range of situations including criminal law, family law and land law. The absence of an express constitutional provision that designates equality law as taking precedence over custom coupled with the absence of anti-discrimination provisions leaves Kiribati women with no legal recourse against discriminatory custom.</p>

ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	Yes		
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	No	<p><i>Penal Code [Cap 17] 1966,</i></p> <ul style="list-style-type: none"> • s 145. (1)(a). Every male person who knowingly lives wholly or in part on the earnings of prostitution - 2 years imprisonment and fine. • s 146. Every woman who is proved to have, for the purposes of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding, abetting or compelling her prostitution with any other person, or generally – 2 years imprisonment and fine. • s 148. (1)(a) Any person who keeps or manages or acts or assists in the management of a brothel – 2 years imprisonment and fine. 	Criminalising those who aid and abet prostitution does not assist women who work in this field to carry out their work in a non-exploitative and protected environment.
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Partial	<p><i>Penal Code [Cap 17] 1966,</i></p> <ul style="list-style-type: none"> • s 136(1) (a)-(d). An offence to procure any girl or woman under the age of 18 years, to have unlawful sexual intercourse - 2 years imprisonment. <p>(2) Consent no defence.</p> <p>But s 136(b). Corroboration required.</p> <ul style="list-style-type: none"> • s 138. Any person who, being the owner or occupier of premises, induces or knowingly suffers any girl under the age of 13 years as a prostitute on premises - life imprisonment. But defence reasonable cause to believe and did in fact believe that the girl was of or above the age of 13 years imprisonment. • s 139. Any person who, being the owner or occupier of premises, induces or knowingly suffers any girl of or above the age of 13 years and under the age of 15 years as a prostitute on premises - 2 years imprisonment. But defence reasonable cause to believe and did in fact believe that the girl was of or above the age of 15 years imprisonment. • s 140. (1) Any person who detains any woman or girl against her will for prostitution (a) in or upon any premises or (b) in a brothel - 2 years imprisonment. 	<p>These provisions afford provide some protection for women and girls procured against their will, however, they are not fully compliant with the indicator because:</p> <ul style="list-style-type: none"> • The requirement for corroboration is discriminatory because there will often be no witnesses when women are procured against their will. • The defence of reasonable belief the girl was above 13 or 15 depending on the charge places the onus on a minor to reveal her age rather than on the perpetrator to ascertain the age.

ARTICLE 6: EXPLOITATION OF WOMEN			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		Sex workers should be entitled to all the rights and protections of other workers.
6.5 Is the trafficking of women prohibited?	Partial	<p><i>Penal Code [Cap 17] 1966,</i></p> <ul style="list-style-type: none"> • s 136(c). Offence to procure or attempts to procure any woman or girl to leave the Islands, with intent that she may become an inmate of or frequent a brothel elsewhere - 2 years imprisonment. <p>(2) Consent no defence.</p> <p>But</p> <ul style="list-style-type: none"> • s 136(b). Corroboration required. 	<p>Although providing some protection from trafficking for women and girls procured, this offence is not fully compliant with the indicator because:</p> <ul style="list-style-type: none"> • The requirement for corroboration is discriminatory because there will often be no witnesses when women or girls are trafficked. • The penalty is too low to provide an effective deterrent.
6.6 Is sex tourism prohibited?	No		

ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	<ul style="list-style-type: none"> • <i>Election of Beretenti Act 1979, s 4(1)</i>. Every person registered as an elector for a ward is entitled to vote to elect the Beretenti (Executive President). • <i>Elections Ordinance 1977 [Cap 29B], s 8(1)</i>. If entitled to vote under s 64 of the Constitution can vote at election of the Maneaba ni Maungatabu (Parliament). 	
7.2 Is there equal eligibility for political representation?	Yes	<i>Constitution of Kiribati 1979 s 55</i> . A person shall be qualified to be elected as an elected member of the Maneaba ni Maungatabu if: (a) he is a citizen of Kiribati; and (b) he has attained the age of 21 years.	
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Despite equal eligibility to enter parliament only 3 women have held or currently hold any of the 42 seats in the Kiribati parliament. Quotas, which have raised numbers of women in parliament in other countries, may assist in achieving substantive equality in this area.
7.4 Do women have an equal right to participate in NGOs?	Yes		There is no legal barrier to participation.
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women without political interference?	Yes	<i>Incorporated Societies Act 2002, s 3(1)</i> . Any society not for pecuniary gain can register and become incorporated under this Act.	

ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have an equal opportunity to represent government at international level and participate in the work of international organisations?	Partial	There are no legal barriers to representing the government at international level and participating in the work of international organisations.	Few women represent their national governments at the international level and the introduction of a quota system into legislation would ensure full compliance with this indicator.

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	No	<p>Citizenship Act 1979. [Cap 8A].</p> <ul style="list-style-type: none"> • s 7(3). Male applicant for citizenship by naturalisation can request his wife and child to become citizens. • s 10(1)(2). A woman who loses her citizenship because of marriage can regain her citizenship only if her marriage breaks down. 	<p>These provisions although ostensibly aimed at protecting women are discriminatory. Neither provision applies equally to men and women.</p> <ul style="list-style-type: none"> • The first enables a man to include his wife and child in his application for citizenship for naturalisation but does not enable a woman to include her husband and child. • The second (not available to men) presumes that men who marry non-nationals will not leave to take up citizenship in their wife's country. The provision also takes away a woman's autonomy to choose citizenship (and domicile) making it contingent upon marriage breakdown.

ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.2 Does marriage to an alien or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage there is full compliance with this indicator.	Yes		To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. The legislation does <i>not</i> alter the nationality of female citizens upon marriage and therefore there is full compliance with this indicator and with CEDAW.
9.3 Do both spouses have equal rights to residency, citizenship and employment when married to a non-national?	No	<p>Constitution of Kiribati 1979.</p> <ul style="list-style-type: none"> • s 22. Every woman who, having been married to a person who becomes, a citizen of Kiribati automatically or by registration, on the grounds of that marriage and who possesses that status on the day prior to Independence Day, shall become a citizen of Kiribati on Independence Day. • s 26. 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. 	These provisions are discriminatory because they apply only to non-national women who marry or have married Kiribati men but do not apply to non-national men who marry or have married Kiribati women.
9.4 Do both spouses have an equal right to determine the nationality of children	Partial	<ul style="list-style-type: none"> • <i>Births, Deaths and Marriages (Amendment) Act 1997, s 22A.</i> Any child with either or both parents I-Kiribati born outside Kiribati may be registered. <p>But note</p> <ul style="list-style-type: none"> • <i>Citizenship Act [Cap 8A] 1979.</i> See above 9.1. s 7(3). If male applicant for citizenship by naturalisation requests his wife and child to become citizens they will. 	This provision does not enable a female applicant to include her children on her application for citizenship by naturalisation.
9.5 Do women have an equal right to obtain a passport?	Partial	<ul style="list-style-type: none"> • <i>Passport Act [Cap 66A] 1979, s 7.</i> Once a citizen, equal right to obtain a passport. • <i>Passport Act Regulations 1980, s 4(1).</i> The particulars of the wife of a passport holder and children may be in the (male) holder's passport. 	Although women have an equal right to obtain a passport once they are a Kiribati citizen, they are discriminated against if they marry a non-Kiribati citizen. Women cannot include their husband's and children in their passport.

ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Do women and girls have equal access to education?	Yes	In the formal law males and females have equal access to education.	
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		Education is formally available equally to females and males. However, girls and women continue to access education in lower numbers than boys and men and therefore full compliance with CEDAW requires special measures to ensure the achievement of substantive equality.
10.3 Is there compulsory primary education for girls and boys?	Yes	<i>Compulsory Education Order 1979</i> made pursuant to s 29(1) of the <i>Education Act [Cap 29] 1976, s 2</i> . Parent of every child of 6 shall secure the regular education of such child at a registered non govt or govt school. Fine of \$5 plus \$ 1 per day thereafter.	
10.4 Is there compulsory secondary education for girls and boys?	Yes	<i>Compulsory Education Order 1979</i> made pursuant to s 29(1) of the <i>Education Act [Cap 29] 1976, s 2</i> . Parent of every child of 6 shall secure the regular education of such child at a registered non-govt or govt school. Fine of \$5 plus \$ 1 per day thereafter.	
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in employment legislation on the ground of sex, marital status, disability, pregnancy, sexual orientation and HIV status with sanctions?	No		
11.2 Are there special measures provisions for the advancement of women in employment?	No		
11.3 Do women enjoy equal conditions of work including leave, superannuation and Workers Compensation?	Partial	<ul style="list-style-type: none"> • Workmen's Compensation Ordinance 1949 [Cap 102] s 2(1). Excludes casual, outworkers, and members of employee's family. • Employment Act [Cap 30] 1965. Employee excludes domestic servant employed in the domestic services of any private dwelling house. • Employment (Housing Standards) Regulations 1967. The regulations set the standards for housing provided to workers and their family. Family, however, is limited to wife and children excluding the possibility of a woman worker and her family. • National Provident Fund Act [Cap 78A] 1977, s 26(2). If beneficiary under 18 payment administered by Chief Lands Office unless a widow (not widower). 	<p>The exclusion of domestic workers, outworkers, part time workers and casual workers from the protections provided in the various labour related legislation are likely to exclude women disproportionately since these are the capacities in which women are typically employed.</p> <p>Although this provision benefits women it perpetuates an erroneous view of women as the wives of workers rather than as workers themselves.</p>
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	No		
11.5 Does the definition of sexual harassment encompass the breadth of unwanted behaviours?	No		
11.6 Does the legislation contain an equal pay provision?	No		
11.7 Does the legislation contain pay equity provisions?	No		
11.8 Does the legislation provide for an equal retirement age?	Partial	Compulsory Retirement Act 1996, s 5 . Equal retirement age in the public service.	Although an equal retirement age is guaranteed in the public service, there are however, no similar provision protects other workers.

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment, then there is full compliance with this indicator.	No	<p>Employment Act [Cap 30] 1966</p> <ul style="list-style-type: none"> • s 77. (a)-(h). Women shall not be employed during the night in any undertaking, except with raw materials subject to rapid deterioration, emergency, responsible management, nursing and of caring for the sick, or other health or welfare work; theatre, hotel or guest house, or with a bar, restaurant or club, registered pharmacist; specifically declared by the Minister by order to be work upon which women may so be employed. • s 79. (1) No woman shall be employed on underground work in any mine except (a) positions of management with no manual work; or (b) in health or welfare services. • s 79. The Minister may by order from time to time suspend the prohibition of the employment of women during the night when in case of serious emergency the public interest so demands. 	To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. These protectionist provisions discriminate against women by restricting their choice of employment.
11.10 Does the legislation provide for health protection during pregnancy?	Partial	<p>Employment Act [Cap 30] 1966, s 107(1). The employer shall provide for all workers such medical attention and treatment with medicines of good quality, first-aid equipment and appliances for the transportation of sick or injured workers as may be required by the Commissioner or Health Officer.</p>	Although there is a general duty to provide medical care there is no particular responsibility on employers to provide health protection for pregnant workers.

ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	Partial	<i>Employment Act [Cap 30] 1966, s 80(1)</i> . On production of a medical certificate 6 weeks before and 6 weeks after confinement on not less than 25% of wages. Not permitted to work during the 6 weeks following confinement. Public Service. Female civil servants are entitled to 12 weeks maternity leave on full pay for two children.	<ul style="list-style-type: none"> The Employment Act does not meet the standards recommended by CEDAW and the ILO and does not realistically allow women to manage both their childcare responsibilities and their employment. The maternity leave provisions in the public service are close to full compliance however limiting maternity leave to two children restricts women's autonomy to choose how many children they have and is discriminatory
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	Partial	<i>Employment Act [Cap 30] 1966, s 81</i> . No employer shall give notice of dismissal to a woman employee who is absent during allowable maternity leave or who remains absent as a result of illness arising out of pregnancy or confinement certified by a medical practitioner rendering her unfit for work until absence totals 12 weeks.	Although women are protected from dismissal during approved leave no opportunity is given to women to spend a longer period of time caring for young children without the loss of their job. Provision for extended unpaid leave should be provided to enable women to have the choice to spend longer with their children if they wish.
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	Partial	<i>Employment Act [Cap 30] 1966, s 80(3)</i> . Half an hour twice a day during working hours for nursing.	The provision of two half hour breaks in the absence of childcare facilities is unlikely to enable women to retain their jobs whilst nursing young children.

ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	No	<p>Penal Code [Cap 67] 1965.</p> <ul style="list-style-type: none"> • s 150. Any person who, with intent to procure the miscarriage of a woman, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind - 10 years. • s 151. Any woman who, being with child, with intent to procure her own miscarriage, unlawfully administers to herself any poison or other noxious thing, or uses any force of any kind - life imprisonment. • s 152. Any person who unlawfully supplies to or procures for any person anything whatever, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of a woman - 5 years. 	<p>These provisions are discriminatory to women because:</p> <ul style="list-style-type: none"> • The criminalisation of abortion denies women access to safe medical facilities and encourages the use of unsafe methods and facilities. • They restrict women's autonomy and right to choose if and when they have children. • The serious penalty for women who procure their own abortion (life imprisonment) fails to account for the reasons why women may choose to abort.

ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes		Kiribati does not have a social security system.
13.2 Do women have equal right to receive bank loans, mortgages and financial credit?	Yes		There is no legal barrier to obtaining bank loans, mortgages and financial credit. It should be noted that despite the absence of formal barriers, women may experience indirect discrimination in obtaining credit and loans.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		There is no legal barrier to equal participation in recreational activities, sports and cultural life.

ARTICLE 14: RURAL WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	No		Many women in Kiribati live in rural communities and it is crucial that Kiribati incorporates special measures into either the national constitution or legislation to advance substantive equality.

ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	No		
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes		There is no legal barrier to the capacity of women to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		There is no legal barrier to participate in courts and tribunals.
15.4 Do women (regardless of marital status) have an equal right to conclude contracts and administer property?	Yes		There is no legal barrier to the capacity of women to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	No	<i>Wills Ordinance [Cap 101] 1966</i> . No barrier to appointing women as administrator of estates. But <i>Gilbert and Phoenix Islands Land Code 1956</i> made pursuant to the <i>Native Lands Ordinance [Cap 61] 1957</i> . In the islands of Marakei, Tarawa, Maiama, Kuria, Aranuka, Abemama, Nonouti, Tabiteueae, Onotoa s 11(i)(a) . If an owner has more than one spouse the eldest son of the first spouse will be the administrator or if there is no son by the first spouse but only daughters then the eldest daughter.	These provisions favour sons and are discriminatory.
15.6 Is there legislation that nullifies all contracts and instruments that limit women's legal capacity?	No		There is no specific legislation that has this effect.
15.7 Do women have an equal right to choose their residence and domicile?	Yes		

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee entry into marriage with full and free consent?	Partial	<i>Native Divorce Ordinance [Cap 60] 1948, s 4.</i> A petition for divorce can succeed on the ground that the marriage was induced by duress or mistake.	This provision enables divorce if a marriage was induced by duress. It falls short of nullifying the marriage and therefore also falls short of full compliance with this indicator.
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	Partial	<i>Native Divorce Ordinance [Cap 60] 1948, s 4.</i> A petition for divorce can succeed on the ground that the marriage was induced by duress or mistake.	Allows for divorce but does not automatically nullify the marriage.
16.3 Is there an equal minimum age of 18 for marriage?	Yes	<i>Marriage (Amendment) Act 2000.</i> A marriage solemnised between persons either of whom is under the age of 18 shall be void.	The legislation provides an equal minimum age of 18 in full compliance with the indicator.
16.4 Is there a legislative prohibition on child marriage?	Yes	<i>Marriage Ordinance [Cap 54] 1968, s 5.</i> A marriage solemnised between persons either of whom is under the age of 18 shall be void.	
16.5 Does the legislation require registration of marriage in official registry?	Yes	<ul style="list-style-type: none"> • <i>Births, Deaths and Marriages Registration Ordinance [Cap 5] 1968, s 33.</i> Registrar-General must accept, keep in safe custody, and maintain the registration of marriages. • <i>Marriage Ordinance [Cap 54] 1968, s 17.</i> The registrar shall enter the particulars of the certificate of marriage in a register to be kept for that purpose. 	
16.6 Does the legislation prohibit bigamy?	Partial	<i>Penal Code 1966 [Cap 67], s 163(1).</i> Bigamy is a criminal offence - 7 years. However <i>s 163(2)</i> Customary marriage not deemed a valid previous marriage.	Although bigamy is a criminal offence it does not apply to customary marriages, in effect, making bigamy lawful if recognised within customary law. Bigamy is discriminatory to women and therefore custom that protects its practice is also discriminatory.
16.7 Do women have an equal right to choose a family name?	Yes		There is no legal barrier preventing women from choosing a family name.
16.8 Is the consent of both parents equal in marriage of minors?	Yes	<i>Marriage (Amendment) Act 2002, s 7. (1).</i> When either party to an intended marriage, is under 21 years of age, the written consent of both the father and mother is required.	

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.9 Are both spouses equal in ownership, acquisition, management, administration, enjoyment and disposition of property?	No	<p><i>Laws of Kiribati Act 1989,</i></p> <ul style="list-style-type: none"> • Schedule 4 (a)-(l). Customary law may be applied in a case concerning native land any sea or lagoon area, inland waters or foreshore or reef, or in or on the seabed. • Schedule 1. s 2. Customary law shall be recognised and enforced by, and may be pleaded in, all courts except if results, in injustice or contrary to the public interest. <p><i>Magistrates Courts Act [Cap 52] 1978, ss 75-76.</i> Claims to customary land are determined at first instance by a specially constituted magistrates court.</p> <p><i>Gilbert and Phoenix Islands Land Code</i> made pursuant to the <i>Native Lands Ordinance</i> codifies inheritance in Kiribati along paternal lines.</p>	Customary law, where women are discriminated against in terms of ownership and access to land use continues to be the basis of land ownership. In particular, inheritance laws favour paternal lines and therefore, women are not equal in the ownership or the disposition of property.
16.10 Does the legislation provide for a maintenance and custody order during separation based on need?	Partial	<p><i>Maintenance (Miscellaneous Provisions) Ordinance [Cap 53] 1921.</i></p> <ul style="list-style-type: none"> • s 3(1). A court may make a declaration a person is liable to maintain another person where satisfied that 'legal or customary obligation' to do so. (2) Before making a maintenance declaration the court shall make a full enquiry into all the circumstances and in particular shall take into consideration (a) the age of the person for whose benefit the application is made; and (b) the personal circumstances of every person concerned in the application. • s 4(1). If defendant wilfully neglects to provide reasonable maintenance for the applicant as declared in s 3 court shall have regard to all the circumstances and in particular to the resources of the defendant and may order (a) reasonable payment (b) provision of such shelter and care as the court may direct; <p><i>Laws of Kiribati Act 1989 Schedule 4 (a)-(l).</i> Customary law may be applied in a case concerning the right of a member of a family to support by other members of that family.</p>	Although the legislation does provide for maintenance during separation it does not fully comply with the indicator because: <ul style="list-style-type: none"> • Must be a customary or legal obligation but this is not defined. • Assessment is not based on criteria such as respective earning capacity and means, needs of both parties and other commitments. The absence of such criteria to guide judicial discretion leaves women without a guarantee of maintenance based on need. • Customary law may be used to determine the award and this may not favour women and children.
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.12 Does the legislation provide an order for restitution of conjugal rights? If there is no such order in the legislation then there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not empower the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for orders for restitution of conjugal rights (which are discriminatory as they take away a woman's autonomy to choose when and with whom she has sexual relations) and therefore is in full compliance with this indicator and with CEDAW.
16.13 Does the legislation provide for no-fault divorce?	No	<i>Native Divorce Ordinance 1948 [Cap 60] s 4.</i> A petition for divorce may be presented on the grounds of adultery; desertion, cruelty; wilful refusal to consummate, unsound mind and continuously under care and treatment for previous 5 years, recurrent fits of epilepsy; venereal disease, duress or mistake, within the prohibited degrees of consanguinity, or if the temperaments of the parties are incompatible.	Fault based criteria for divorce disadvantages women who are more likely to be in untenable situations and have difficulty establishing cruelty or adultery.
16.14 Is there a duty on the court to promote reconciliation? If the legislation does not contain such a duty, then there is full compliance with this indicator.	Yes		To be compliant with this indicator, there should not be a duty on the court to promote reconciliation between estranged spouses. Such a duty is discriminatory and non-compliant with CEDAW because it removes women's choices or reduces their autonomy to choose to leave a relationship. The legislation does <i>not</i> place a duty on the court to promote legislation and therefore is in full compliance with the indicator and with CEDAW.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contribution; future needs and future earning capacity calculated?	No		There is no provision for property settlement in the legislation in non-compliance with CEDAW.
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Partial	See 16.10	The criteria of the age of the person for whose benefit the application is made; and the personal circumstances of every person concerned in the application does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties and the children.
16.17 Does the legislation provide for maintenance for woman based on commitments, income, earning capacity, assets?	Partial	See 16.10	See above 16.10
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	Partial	<p><i>Custody of Children Ordinance 1974 [Cap 21] 1974 , s 3.</i></p> <ul style="list-style-type: none"> • s (1) Court may make an order regarding (a) the custody of any child; and (b) the right of access to the child of his mother or father, as the court thinks fit having regard to the welfare of the child and to the conduct and wishes of the mother and father. • s (3) In exercising jurisdiction under this section the court shall regard the welfare of the child as the first and paramount consideration • s (5) This section is subject to the Native Lands Ordinance. <p><i>Gilbert and Phoenix Islands Land Code made pursuant to the Native Lands Ordinance [Cap 61] 1957</i></p> <ul style="list-style-type: none"> • s 65(2). If father accepts child at age 2 will reside with father. • s 65(ii). If father does not accept child but court is satisfied he is the father the court may order child resides with mother. <p><i>Laws of Kiribati Act 1989 Schedule 4 (a)-(1).</i> Customary law may be applied in a case concerning the right to custody of children.</p>	<p>The <i>Custody of Children Ordinance</i> makes the welfare of the child paramount, which is in full conformity with this indicator. However:</p> <ul style="list-style-type: none"> • The reference to conduct implies fault is a factor which is discriminatory and should not be relevant. • The Ordinance is subject to the <i>Native Lands Ordinance</i> which contains discriminatory provisions when the parents are unmarried favouring paternal, custody.

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.19 Does the legislation provide damages for adultery? If there is no provision for damages then there is full compliance with this indicator.	Yes		To be complaint with this indicator, the legislation should not provide damages for adultery. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy. The legislation does <i>not</i> provide a right to damages for adultery and therefore is in full compliance with the indicator and with CEDAW.
16.20 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Partial	<i>Laws of Kiribati Act 1989, Schedule 4 (a)-(l).</i> Customary law may be applied in a case concerning the right to the guardianship of infants.	
16.21 Does the legislation recognise de facto rights (including same-sex couples) on the same basis as marriage?	Partial	<i>Maintenance (Miscellaneous Provisions) Ordinance [Cap 53] 1921, s 3(1).</i> A court may make a declaration a person is liable to maintain another person where satisfied that 'legal or customary obligation' to do so.	De facto relationships are not expressly excluded by the legislation however same sex relationships are yet to be recognised.
16.22 Does the legislation provide an order for establishing parentage?	Yes	<i>Gilbert and Phoenix Islands Land Code made pursuant to the Native Lands Ordinance 1957 [Cap 61], s 65(1)</i> The Court may inquire into the paternity of a child born to a single woman.	
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by father to unmarried mother?	No		
16.24 Does the legislation provide child support payable for children born outside of marriage?	Partial	<i>Gilbert and Phoenix Islands Land Code made pursuant to the Native Lands Ordinance [Cap 61] 1957</i> <ul style="list-style-type: none"> • s 65(2). If father accepts child at age 2 will reside with father and inherit land and property on same basis as legitimate children • s 65(ii). If father does not accept child but court is satisfied he is the father the court may order child resides with mother and transfer to the child any portion of the property for the maintenance or support of the child OR • s 65(iii). Order maintenance up to \$2 per month or foodstuffs until 21. 	The criteria afforded to the court under the Native Ordinance to determine child support is discretionary in relation to land and, if there is no land, then monetary assistance of no more than \$2 or foodstuffs may be awarded. However, the level of support should be based on the needs of the child and the respective financial resources and capacities of the two parents.

ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.25 Does the legislation provide for equal inheritance laws?	No	<p><i>Laws of Kiribati Act 1989, Schedule 4 (a)-(l).</i> Customary law may be applied in a case concerning inheritance.</p> <p><i>Gilbert and Phoenix Islands Land Code made pursuant to the Native Lands Ordinance 1957 [Cap 61].</i></p> <p>Nikunua, Arorae</p> <ul style="list-style-type: none"> • s 3(iii). An owner has complete authority over the disposal of any land received as a reward for work, or which he has bought, or which he has received in exchange for a canoe or any unreturnable gift land. If he dies issueless and he has no brothers and sisters and is intestate then the lands will be distributed to his paternal next-of-kin. <p>Beru, Nikumaroros</p> <ul style="list-style-type: none"> • s 11(i)(c). If an owner has several spouses the eldest son of the owner will receive the best land and it is immaterial whether he is by the first spouse or any other spouse. • s 11(ii). In the distribution of an estate between the sons and daughters of an owner the shares of the eldest son shall exceed that of his brothers, and the share of sons shall exceed the shares of daughters. <p>Makin, Butaritari, Tamana, Arorae</p> <ul style="list-style-type: none"> • s 11(ii). All children of an owner will receive equal shares. Sons will receive more than daughters. • s 11(iii). A daughter will receive fishponds or fishtraps if there are no sons of the owner, or if the parent or her brother so decide. If there are many fishponds and fishtraps, and the parent has made no will concerning them, the court may direct that a daughter will receive a share but only if the sons have received their shares. <p>Marakei</p> <ul style="list-style-type: none"> • s 11(v)(a). Women will not receive shares in the distribution of an issueless estate. 	<p>These provisions are discriminatory.</p> <ul style="list-style-type: none"> • They advantage the children of first spouses over second spouses and give more to the eldest son than to daughters. • They favour paternal lines and sons over daughters in some circumstances.
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law when relevant?	No		

