

# Inhuman sentencing of children in Kiribati

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## Introduction

There is no death penalty in Kiribati, but child offenders may lawfully be sentenced to corporal punishment and life imprisonment.

The main laws relevant to the issue are the Penal Code 1965, the Criminal Procedure Code 1963, the Magistrates Court Act 1978 and the Laws of Kiribati Act 1989. There is no specific legislation on juvenile justice. The minimum age of criminal responsibility is 10.<sup>1</sup> Children aged 16 and 17 are regarded as adults.<sup>2</sup>

## Legality of inhuman sentencing

### *Death penalty*

Capital punishment is unlawful in Kiribati.

### *Corporal punishment*

Corporal punishment is not available as a sentence in the Penal Code or the Criminal Procedure Code. However, the Magistrates Court Act states that in lieu of any other sentence the court may order a male child (under 14) to be caned up to six strokes or a male young person (aged 14-16) to be caned up to 12 strokes, to be administered in a prison by the Superintendent of Prisons or other officer, in the presence of a magistrate.<sup>3</sup> It is also possible that the Larceny Act 1916 is still in force,<sup>4</sup> which provides for males convicted under the Act – especially boys under 16 – to be privately whipped in addition to other punishment.<sup>5</sup>

Corporal punishment may also be ordered by Island Councils for criminal offences and other misdeeds as part of traditional village justice.<sup>6</sup> Customary law may be taken into account in determining the penalty to be imposed on a guilty party,<sup>7</sup> and the Penal Code prohibits cruelty to children but confirms “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”.<sup>8</sup>

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<sup>1</sup> Penal Code, article 14

<sup>2</sup> 7 December 2005, CRC/C/KIR/1, *Initial report to the Committee on the Rights of the Child*, para. 176

<sup>3</sup> Article 26(8)

<sup>4</sup> See [www.paclii.org/ki/legis/ki-uk\\_act/](http://www.paclii.org/ki/legis/ki-uk_act/) and [www.paclii.org/ki/sources.html](http://www.paclii.org/ki/sources.html), accessed 2 January 2011

<sup>5</sup> Articles 2, 16, 17, 23, 29, 33, 34 and 37

<sup>6</sup> U.S. Bureau of Democracy, Human Rights and Labor (2010), *2009 Human Rights Reports: Kiribati*, [www.state.gov/g/drl/rls/hrrpt/2009/eap/135994.htm](http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135994.htm), accessed 3 January 2011); see also reports for 2008, 2007, 2006 and previous years

<sup>7</sup> Laws of Kiribati Act, article 5, and Schedule 1, article 3

<sup>8</sup> Article 226

## ***Life imprisonment***

Life imprisonment is specified in the Penal Code as the punishment for a large number of offences, including murder, piracy, treason, mutiny, genocide, rape, incest, manslaughter, causing grievous harm, embezzlement, robbery, burglary, arson and forgery.<sup>9</sup> No limitations are stated in relation to persons under 18. The Code states that a person liable to imprisonment for life or any other period may be sentenced to a shorter term, with the exception of the offences of treason, instigating invasion, piracy and murder, for which life imprisonment is mandatory.<sup>10</sup>

## **Inhuman sentencing in practice**

We have no official information on the sentencing of child offenders to corporal punishment or life imprisonment.

Under examination by the Committee on the Rights of the Child in 2006, the Government stated that although corporal punishment is available to magistrates as a sentencing option it is very rarely used.<sup>11</sup> The Government also confirmed that when a juvenile is convicted of murder the court has no choice but to impose a life sentence.<sup>12</sup>

## **Progress towards prohibition and elimination**

### ***Law reform needed***

All legal provisions authorising corporal punishment for persons under 18 at the time of the offence should be repealed, and explicit prohibition should be enacted for these sentences and sentences of life imprisonment for all persons under 18 at the time of the offence.

### ***Law reforms under way***

The Government has acknowledged the need to amend legislation in relation to judicial corporal punishment.<sup>13</sup> In 2006, UNICEF Pacific completed a review of national laws aimed at identifying conflicts with Kiribati's obligations under the Convention on the Rights of the Child (CRC) and the Government identified the need for legislation on children's rights as a priority issue.<sup>14</sup> As at 2010, efforts were being made to harmonise domestic legislation with the CRC and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): the Attorney-General's Office is overseeing a Child Protection Legislative Reform project with UNICEF, and the

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<sup>9</sup> See articles 47, 48, 49, 50, 52, 55, 57, 62, 63, 129, 134, 138, 151, 156, 192, 208, 214, 216, 217, 218, 219, 255, 260, 278, 286, 287, 292, 312, 319, 329, 330, 335, 345, etc

<sup>10</sup> Penal Code, article 25

<sup>11</sup> CRC/C/SR.1166, para. 46

<sup>12</sup> CRC/C/SR.1168, para. 39

<sup>13</sup> CRC/C/SR.1166, para. 46

<sup>14</sup> 24 August 2006, CRC/C/KIR/Q/1/Add.1, *Written replies by the Government of Kiribati concerning the list of issues (CRC/C/KIR/Q/1) received by the Committee on the Rights of the Child relating to the consideration of the initial report of Kiribati (CRC/C/KIR/1)*

“Changing Laws: Protecting Women and Family” project aims to achieve legislative compliance with CEDAW.<sup>15</sup>

### *National campaigns*

We are not aware of any national campaigns on the issue.

## **National and international law conflicting with inhuman sentencing**

### *The Constitution*

The following provisions in the Constitution 1979 are relevant to the issue:

Article 2 (Constitution is supreme law):

2. This Constitution is the supreme law of Kiribati and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.

Article 3 (Fundamental rights and freedom of the individual):

3. Whereas every person in Kiribati is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others or the public interest, to each and all of the following, namely-

(a) life, liberty, security of the person and the protection of the law; ...

the provision of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations on that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

Article 5 (Protection of right to personal liberty):

5. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say-

...

(b) in execution of the sentence or order of a court, whether established for Kiribati or some other country, in respect of a criminal offence of which he has been convicted;

...

(g) in the case of a person who has not attained the age of eighteen years, under the order of the court or with the consent of his parent or guardian, for the purpose of his education or welfare....

Article 7 (Protection from inhuman treatment)

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<sup>15</sup> 22 February 2010, A/HRC/WG.6/8/KIR/1, *National report submitted to the Universal Periodic Review: Kiribati*, paras. 20 and 42; see also 17 June 2010, A/HRC/15/3, *Report of the Working Group on the Universal Periodic Review: Kiribati* para. 12, and 30 September 2010, A/HRC/15/3/Add.1, *Report of the Working Group on the Universal Periodic Review: Kiribati, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, para. 4

7. (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) 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 authorizes the infliction of any description of punishment that was lawful in Kiribati immediately before the coming into operation of this Constitution.

### ***International human rights treaties***

Kiribati has acceded only to the Convention on the Rights of the Child (in 1995) and the Convention on the Elimination of All Forms of Discrimination Against Women (in 2004).

### **Status of treaties**

Treaties are only applicable when relevant legislation has been enacted by Parliament. The Government has stated that adopting the CRC into domestic law “is basically a formality”,<sup>16</sup> and that courts are able to take account of the CRC in interpreting ambiguities in domestic legislation but also that, as at 2006, the CRC had not been invoked in the courts.<sup>17</sup>

There is some relevant case law, though there has been no detailed discussion of international treaty obligations in the courts:

In *Republic v Iaokiri* (2004)<sup>18</sup> the court stated: “With regard to the Convention on the Rights of the Child in order that it forms a part of the Laws of Kiribati, that Convention (Articles) must first of all be given the force of law in Kiribati by means of an Act of the Maneaba ni Maungatabu. I am not aware that necessary legal process has yet been carried out by the Maneaba ni Maungatabu.”

In *Republic v Rineta* (2006)<sup>19</sup> the court briefly mentioned the need under the CRC to consider the offender’s best interests, as well as considering the seriousness of the offence in sentencing a 17 year old convicted of larceny.

In *Republic v Timiti* (1998),<sup>20</sup> a case of alleged rape involving adults, the court stated: “Section 15 of the Constitution, which affords protection from discrimination, ought to be read as including discrimination on the ground of sex even though it does not say that, so the argument goes. Also, when interpreting the law on the point, I ought to follow the principles formulated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and certain other international instruments.”

## **Recommendations from human rights treaty monitoring bodies**

### ***Committee on the Rights of the Child***

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<sup>16</sup> 7 December 2005, CRC/C/KIR/1, *Initial report to the Committee on the Rights of the Child*, para. 32

<sup>17</sup> 24 August 2006, CRC/C/KIR/Q/1/Add.1, *Written replies by the Government of Kiribati concerning the list of issues (CRC/C/KIR/Q/1) received by the Committee on the Rights of the Child relating to the consideration of the initial report of Kiribati (CRC/C/KIR/1)*

<sup>18</sup> *Republic v Iaokiri* [2004] KIH 142; Criminal Case 25 of 2004 (16 June 2004)

<sup>19</sup> *Republic v Rineta* - Sentence [2006] KIH 127; 43-06 (20 November 2006)

<sup>20</sup> *Republic v Timiti* [1998] KIH 1; HCCrC 43.97 (6 August 1998)

(29 September 2006, CRC/C/KIR/CO/1, Concluding observations on initial report, paras. 34, 35, 64 and 65)

“The Committee is concerned that corporal punishment is not explicitly prohibited, and is still widely practiced in the home and schools and used as a disciplinary measure in alternative care settings. The Committee is also concerned that under article 226 of the Penal Code, ‘reasonable punishment’ is permitted in penal institutions and by order of Island Councils.

“The Committee recommends that, taking into account its general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the State party:

- a) amend all relevant legislation, in particular article 226 of the Penal Code to ensure that corporal punishment is explicitly prohibited in the family, schools, penal institutions, alternative care settings and as a traditional form of sentencing; and
- b) take effective measures, including through public awareness campaigns involving children and traditional leaders, to promote positive, participatory and non-violent forms of discipline as an alternative to corporal punishment at all levels of society, and to effectively implement the law prohibiting corporal punishment.

“The Committee is concerned that there is no specific legislation on juvenile justice. It is also concerned at the serious practical shortcomings of the juvenile justice system and the inconsistencies that exist between various domestic laws and regulations. The Committee is further concerned that persons between 16 and 18 years of age are detained with adults. The lack of adequate alternatives for pre-trial and other forms of detention and of guarantees for due process, and the poor living conditions faced by children detained in police stations or prisons are also issues of concern.

“The Committee urges the State party to ensure the full implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention and other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Havana Rules), taking into account the recommendations adopted by the Committee on its day of general discussion on juvenile justice held on 13 November 1995 (CRC/C/46, paras. 203-238). In particular, the Committee recommends that the State party:

- a) developing specific and appropriate legislation on juvenile justice;
- b) ensure that due process is guaranteed, including the hearing by a judge before deprivation of liberty is carried out;
- c) develop and implement alternatives to pre-trial and other forms of detention in order to ensure that deprivation of liberty is really a measure of last resort for the shortest time possible, and when detained, ensure that persons under 18 are not detained with adults....”

## **Universal Periodic Review**

Kiribati was examined under the Universal Periodic Review process in 2010. Recommendations were made to prohibit corporal punishment, including as a judicial sentence, and to ensure full

implementation of juvenile justice standards.<sup>21</sup> The Government accepted the general recommendation concerning juvenile justice standards and stated that it is prepared to consider the recommendations on corporal punishment.<sup>22</sup>

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<sup>21</sup> 17 June 2010, A/HRC/15/3, *Report of the Working Group on the Universal Periodic Review: Kiribati*, paras. 66.21, 66.66, 66.67 and 66.69

<sup>22</sup> 30 September 2010, A/HRC/15/3/Add.1, *Report of the Working Group on the Universal Periodic Review: Kiribati, Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, paras. 27, 75, 76 and 78