

### **Inhuman sentencing of children in Kiribati**

Briefing for the 21st session of the Human Rights Council Universal Periodic Review. Submitted by the Child Rights International Network (CRIN) ([www.crin.org](http://www.crin.org)), June 2014.

### **Inhuman sentencing of child offenders in Kiribati**

1. Child offenders in Kiribati can be lawfully sentenced to corporal punishment and life imprisonment as a criminal penalty. Children can be held criminally responsible from the age of 10.<sup>1</sup>

### **Legality of inhuman sentencing**

#### ***Corporal punishment***

2. There is no provision in the Penal Code or Criminal Procedure Code authorising corporal punishment as a penalty for an offence. 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 to 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>2</sup> It is also possible that the Larceny Act 1916 is still in force,<sup>3</sup> which provides for males convicted under the Act, especially boys under 16, to be privately whipped in addition to other punishment.<sup>4</sup>

3. Article 226 of the Penal Code permits corporal punishment as a penalty under traditional sentencing by order of Island Councils.<sup>5</sup> As of August 2013, a special task force had been established under the Office of the Attorney General to draft a Juvenile Justice Bill which would reportedly address ending corporal punishment of children.<sup>6</sup>

#### ***Life imprisonment***

4. 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>7</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>8</sup>

### **Inhuman sentencing in practice**

5. We have been unable to locate any official information on the sentencing of child offenders to corporal punishment or life imprisonment.

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<sup>1</sup> Penal Code, Section 14(1). Available at: [http://www.paclii.org/ki/legis/consol\\_act/pc66/](http://www.paclii.org/ki/legis/consol_act/pc66/).

<sup>2</sup> Magistrates Court Act, Section 26(8).

<sup>3</sup> See e [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).

<sup>4</sup> Sections 2, 16, 17, 23, 29, 33, 34 and 37.

<sup>5</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), See also reports for 2008, 2007, 2006 and previous years.

<sup>6</sup> See Global Initiative to End all Corporal Punishment of Children, *Kiribati State Report*. Available at: <http://www.endcorporalpunishment.org/pages/frame.html>.

<sup>7</sup> See Penal Code, Sections 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>8</sup> Penal Code, Section 25.

6. In a study conducted by UNICEF and AusAid involving questionnaires, group activities and interviews with adults and children throughout Kiribati, 5 per cent of interviewees that worked in the justice sector and community chiefs said physical punishment was used.<sup>9</sup>

7. 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>10</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>11</sup>

### **International human rights mechanisms**

8. During the first cycle of the Universal Periodic review in 2010, Argentina, Chile and Slovenia recommended that the State abolish corporal punishment and Chile and Slovenia specifically called on the State to prohibit corporal punishment as a criminal penalty.<sup>12</sup>

9. In its 2006 Concluding Observations, the Committee on the Rights of the Child urged Kiribati to “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”.<sup>13</sup> The Committee also urged the State to develop specific and appropriate legislation on juvenile justice, including “to ensure that deprivation is really a measure of last resort for the shortest time possible”.<sup>14</sup>

### **The review of Kiribati by the members of the Human Rights Council**

10. In light of the clear international human rights consensus against the imposition of life imprisonment and corporal punishment on child offenders and the specific recommendations made to Kiribati by the UN Committee on the Rights of the Child and during the first cycle of the Universal Periodic Review, we hope that the members of the Human Rights Council will urge the government of Kiribati to:

- Explicitly prohibit sentences of corporal punishment and life imprisonment in Kiribati under all systems of justice and without exception to ensure full compliance with international standards.
- Raise the minimum age of criminal responsibility.
- Provide disaggregated data about sentences handed down to children by offence committed and date, as well as information about children in detention, including gender, age and length of time spent in pre-trial detention in each case.

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<sup>9</sup> UNICEF and AusAid (2009), *Protect me with love and care: A Baseline Report for creating a future free from violence, abuse and exploitation of girls and boys in Kiribati*, Suva: UNICEF Pacific.

<sup>10</sup> CRC/C/SR.1166, para. 46.

<sup>11</sup> CRC/C/SR.1168, para. 39.

<sup>12</sup> *Report of the Working Group on the Universal Periodic Review: Kiribati*, A/HRC/15/3, 17 June 2010.

<sup>13</sup> UN Committee on the Rights of the Child, *Concluding Observations on Kiribati's initial state report*, CRC/C/KIR/CO/1, 29 September 2006, paras. 34 and 35.

<sup>14</sup> UN Committee on the Rights of the Child, *Concluding Observations on Kiribati's initial state report*, CRC/C/KIR/CO/1, 29 September 2006, para. 65