UNHCR
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Republic of Kiribati

I. BACKGROUND INFORMATION

The Republic of Kiribati (hereinafter Kiribati) is not a State party to the *1951 Convention relating to the Status of Refugees* or the *1967 Protocol relating to the Status of Refugees* (together, the Refugee Convention). Kiribati is a State party to both the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) and the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*).

Kiribati acceded to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) on 22 July 2019, the *Convention on the Elimination of All Forms of Discrimination against Women* on 17 March 2004, the *Convention on the Rights of the Child* (CRC) on 11 December 1995 and the *Convention on the Rights of Persons with Disabilities* on 27 September 2013.

Kiribati comprises 32 low-lying atolls and the island of Banaba, which are highly vulnerable to sea level rise due to climate change. Kiribati is also susceptible to natural disasters, the rates and severity of which have been, and are, exacerbated by climate change, as well as other climate change impacts. Consequently, this increases the risks of displacement in Kiribati and across the Pacific region more generally.

To date, considering the small number of individual cases, the situation of asylum-seekers, refugees, stateless persons and internally displaced persons have not yet been prominent concerns in Kiribati. UNHCR does not have knowledge of any currently identified asylum-seekers present in Kiribati in 2024.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Linked to 3rd cycle UPR recommendation no. 80.45: "Intensify efforts to secure support and assistance from the international community in pursuing its climate change adaptation and mitigation plans (Vanuatu)"

UNHCR welcomes Kiribati's sustained efforts to seek support from, and cooperate with, members of the international community including States, multilateral entities and UN agencies, to address climate change impacts, and prevent and respond to issues of climate-related displacement. Alongside other Pacific Island nations, Kiribati has served as a prominent voice in multilateral fora, such as the United Nations General Assembly, the United Nations Climate Change Conference and the Pacific Islands Forum, to galvanize action on climate change and related matters of displacement at the domestic, regional and global levels. Kiribati has helped to ensure that climate change is a key issue on the global agenda, with a particular focus on the manner and extent of its impacts on the Pacific region.

Kiribati has partnered with a range of UN agencies to strengthen its resilience to climate change impacts, with the aim of enhancing community well-being and preventing the displacement (both internal and cross-border) of I-Kiribati people from their homes. These

initiatives include projects with the World Bank to support climate adaptation measures in Kiribati's outer islands and the United Nations Development Programme on food security in the context of climate change,[1] and work with the World Health Organization to safeguard the health of communities affected by climate change.[2] UNHCR also recognizes Kiribati's close collaboration with the United Nations Office for Disaster Risk Reduction to implement, and report against,[3] the Sendai Framework for Disaster Risk Reduction, a key instrument to reduce disaster risks and consequent displacement, including disasters induced by climate change. Kiribati has also secured funding, capacity building and programmatic assistance from States such as Australia, New Zealand and the United States of America to prepare, respond and attenuate against climate change risks across its territory.

UNHCR is of the view that Kiribati's engagement with the international community is vital towards its plans to mitigate and adapt to the impacts of climate change and disasters. This engagement builds on Kiribati's pre-existing efforts to address climate change and related matters of displacement, including its adoption of the *Kiribati Climate Change Policy* and assists its ongoing efforts to respond to these pressing issues. In sum, due to these proactive collaborations, Kiribati will be better placed to prevent displacement from occurring, provide effective protection interventions for displaced people where required, and safeguard the lives and livelihoods of those displaced.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Preventing and Reducing Risks of Statelessness

Linked to 3rd cycle UPR recommendation no. 80.96[4]

Kiribati is the only State in the Pacific that is party to both the *1954 Convention* and *1961 Convention*. UNHCR commends Kiribati's commitment to meets its international obligations as a signatory to both Statelessness Conventions.[5] By 2021, Kiribati had made significant and positive advances towards the elimination of gender discrimination in its nationality laws, as the last Pacific country to retain such provisions. These efforts unfortunately stalled in the context of the Covid-19 Pandemic. UNHCR strongly recommends for these measures to be promptly reignited and remains ready to support. The strengthened implementation of both Statelessness Conventions at the national level would serve to provide the legal foundations for addressing the causes and consequences of statelessness and to ensure the full enjoyment of human rights.[6] Kiribati's efforts would also serve as a positive example for other States in the Pacific region to follow. This would equally ensure respect for similar protections extended to stateless persons in other human rights treaties to which Kiribati is a State party.

[1] World Bank Group, *$20m Climate Adaption Support for Kiribati's Outer Islands*, 15 May 2022; United Nations Development Programme, *Kiribati: Enhancing National Food Security in the Context of Climate Change*.
[2] World Health Organization, *Countering the Climate Crisis in Kiribati*, 8 March 2024.
[3] Government of Kiribati and UNDRR, *Sendai Framework for Disaster Risk Reduction: Midterm Review Report by the Republic of Kiribati*, 2023.
[4] UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Kiribati,* A/HRC/44/15, 23 March 2020, p. 17, para 80.96.
[5] During the Global Summit on Gender Equality in Nationality Laws, held on 13 June 2023, the Secretary of Kiribati's Ministry of Women, Youth and Social Affairs, Maryanne Namakin, affirmed Kiribati's commitment to achieve gender equality in their nationality laws.
[6] UNHCR, *The Statelessness Conventions Campaign: Why States Should Accede to the 1954 and 1961 Statelessness Conventions*, December 2010.

UNHCR acknowledges Kiribati's existing legislative provisions which contribute to the prevention of statelessness. These include:

a) Kiribati's nationality law granting citizenship at birth to any person born in Kiribati after July 11 1979, under the *jus soli* principle, unless the person becomes a citizen of another country at birth.[7] Under this provision there are limited exceptions, including where the child's father has immunity from suit and legal process as an envoy of a foreign sovereign power or is a citizen of a country at war with Kiribati, and the birth occurs in a place under occupation of such country.[8]
b) Kiribati's nationality law does not include any provision that allows for the loss or withdrawal of citizenship for individuals residing abroad, nor does it permit the loss or withdrawal of citizenship where a spouse or registered partner loses their citizenship.

However, there remain a number of notable gaps in Kiribati's legal framework which should be addressed to uphold the fundamental right to a nationality and Kiribati's responsibilities to prevent and reduce cases of statelessness. These gaps include:

a) Under the *Constitution of Kiribati 1979*, individuals of I-Kiribati descent (those with an ancestor born in Kiribati before 1900)[9] may apply for citizenship by registration.[10] However, under Kiribati's citizenship laws children born outside Kiribati to I-Kiribati women married to a non-national of Kiribati cannot acquire Kiribati citizenship.[11]
b) In Kiribati, children born on the territory without I-Kiribati descent are granted citizenship by birth if they do not qualify for any other nationality.[12] However, safeguards to provide the right of citizenship to foundlings is not explicitly provided.
c) A person of non-I-Kiribati descent who acquires citizenship through naturalization or adoption can have their Kiribati citizenship revoked if they are found to have breached allegiance to Kiribati, voluntarily obtained the nationality of another country, or if the Minister considers it is necessary for the public good.[13] These provisions do not provide safeguards, such as review of the Minister's decision by a court to prevent statelessness.
d) Kiribati citizenship can be renounced during the process of acquiring a new nationality without any safeguards or assurance provided before formally acquiring the new nationality.[14]

Moreover, the risks of statelessness are increased when people are on the move, including during displacement situations in the context of climate change and disasters.[15] Kiribati is highly vulnerable to environmental impacts such as sea-level rise and susceptible to natural disasters. UNHCR recognises that the adverse effects of climate change and disasters have diverse consequences for States and societies, as well as the well-being and enjoyment of human rights by individuals.

Climate change can exacerbate the vulnerabilities of stateless persons who as non-citizens risk the loss of livelihoods and exclusion from disaster relief, health care and governmental

[7] *Constitution of Kiribati 1979*, s 25(1).
[8] As above, s 25 1(a)-(b).
[9] As above, s 29 (1)(a).
[10] As above, s 23.
[11] As above, s 25.
[12] As above, s 25(1).
[13] *Citizenship Act 1979*, s 8A(2).
[14] As above, 9(2)(b)
[15] UNHCR, *Statelessness and Climate Change*, October 2021.

climate change mitigation and adaptation plans. The reform of Kiribati's laws addressing statelessness can also be a risk mitigation measure to address long-term climate change impacts by ensuring people at risk of statelessness have access to nationality.

Recommendations
UNHCR recommends that the Government of Kiribati:

a) Introduce additional safeguards to prevent statelessness, including for children born abroad to I-Kiribati women in line with international commitments to eliminate statelessness and ensure non-discrimination in nationality laws.
b) Adopt a definition of statelessness in Kiribati's citizenship laws.
c) Include at-risk stateless populations in climate-related measures such as national preparedness plans and policies designed to mitigate, respond to, and adapt to climate change.

Issue 2: <u>Capacity-building and technical assistance</u>

Linked to 3rd cycle UPR recommendation no. 80.25[16]

UNHCR stands willing to provide capacity-building support and technical assistance to the Government of Kiribati regarding the key areas of its mandate, namely statelessness, and asylum and refugee protection matters. This includes technical and operational support regarding Kiribati's commitments to prevent and reduce statelessness, and on the treatment of persons in need of international protection. UNHCR is available to assist in revising national citizenship laws and drafting national refugee legislation.

Moreover, UNHCR can provide capacity development to relevant Government officials to integrate international standards and best practices on statelessness and refugee protection matters into policy and operational procedures. UNHCR can provide mentoring support to immigration and border control officials, police and detention or prison officials, the judiciary, and any other relevant stakeholders on fundamental principles for the protection of stateless persons, asylum-seekers and refugees.

Recommendations
UNHCR recommends that the Government of Kiribati:

a) Consider revising national citizenship legislation, drafting national refugee legislation, and incorporation of international standards that relate to asylum seekers, refugees and stateless persons into law, policy and operational procedures, and count on UNHCR's technical and operational support in the process.
b) Undertake capacity building efforts with relevant Government and non-Government officials on statelessness and refugee protection matters, with technical support of UNHCR.

<u>Additional protection challenges</u>

Issue 3: <u>Accession to the 1951 Convention and the protection of asylum-seekers and refugees</u>

Kiribati has not yet become a State party to the *1951 Convention*. In general, accession to the *1951 Convention* greatly facilitates UNHCR's exercise of its mandate to provide international protection to refugees, including mobilizing international support to address refugee situations that may arise in any country. It is necessary to broaden the base of State

[16] UN Human Rights Council, Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: Kiribati,* A/HRC/44/15, 23 March 2020, p. 12, para 80.25.

support for these refugee instruments, ensuring that the protection provided to refugees is more universal in scope and the burdens and responsibilities of governments are equitably distributed and consistently applied.

Notwithstanding the relatively small number of cases, and competing domestic priorities, accession to the *1951 Convention*, and development of a national legal framework would provide a clearer basis for the Government of Kiribati to provide refugees with international protection, and an established mechanism that enables the appropriate engagements of relevant international organisations such as UNHCR and the International Organization for Migration.

Moreover, UNHCR has concerns about the absence of key procedural safeguards ensuring the protection of persons from *refoulement* in Kiribati's principal immigration legislation, the *Immigration Act 2019*. The principle of *non-refoulement* is the cornerstone of international refugee protection and enshrined in key international human rights legal instruments. It is also a norm of international customary law, binding all States irrespective of whether they are State parties to relevant international legal instruments.

UNHCR notes that positive reference in Kiribati's *Immigration Procedures* is made to upholding the principle of *non-refoulement* throughout the Refugee Status Determination (RSD) process and granting visitor visas to regularise stay during that process.[17] However, Kiribati's *Immigration Act 2019* omits this essential obligation and instead generally renders any non-citizen who has entered or remained in Kiribati without a valid visa liable to removal from the country, including asylum-seekers and refugees.[18] UNHCR considers that this fundamental principle should be formalized in the *Immigration Act 2019* to best ensure it has primary legal force, and it is consistently and harmoniously applied within Kiribati's wider immigration legal framework. The principle should be clearly articulated in line with international law and standards that provide for its broad application including asylum-seekers,[19] refugees and others in need of international protection.

While UNHCR believes that formal accession to the *1951 Convention* provides States with the optimal framework within which national laws and regulations can be developed, it also recognizes that this is not a prerequisite to Kiribati taking further steps to develop effective, balanced and credible national systems for refugee protection.

Recommendations

UNHCR recommends that the Government of Kiribati:

a) Accede to the *1951 Convention relating to the Status of Refuges* and its *1967 Protocol*.
b) Enact laws and policies that explicitly prohibit *refoulement* of asylum-seekers while their claims for protection are being assessed, and for recognized refugees.
c) Establish national laws and regulations that will govern the treatment of asylum-seekers and refugees, in line with the *1951 Convention relating to the Status of Refuges*.

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[17] See Sections C, L and O of the *Immigration Procedures*.
[18] See parts III and V of the *Immigration Act 2019*.
[19] Asylum-seekers includes those with a fear of harm of returning to their country of origin, those who have expressed an intent to seek asylum, as well as those undergoing the RSD process (including the appeals process) pending final determination of their asylum claims.