



KIRIBATI COUNTRY REPORT

31st MEETING OF THE PACIFIC ISLANDS LAW OFFICERS' NETWORK

29 – 31st November 2012

Kokopo, New Britain Province Papua New Guinea

Office of the Attorney-General

Bairiki, Tarawa, Kiribati

Introduction

This is the report for Kiribati to the 31st Pacific Islands Law Officers Network (PILON) Annual Meeting to be held in Kokopo, New Britain province, Papua New Guinea in 2012. The report highlights some of the activities of the Office of the Attorney-General and law sector since the last meeting in Auckland, New Zealand in 2011. Information on activities and cases can be provided upon request.

1. Outline of structure and governance of the Ministry of Justice (or equivalent) and relevant law and justice agencies

Office of the Attorney – General

The Office of Attorney General is responsible for all criminal, civil cases on behalf of the Government and principal legal advisor to the Government on all legal matters. This includes legislative drafting and policy-making, representation on regional and international issues affecting Kiribati.

The Office composition

The Office is comprised of:

- Honourable Attorney-General
- Solicitor-General
- Director of Public Prosecution
- Fisheries Legal Officer
- 1 Assistant Senior State Attorneys
- 7 State Attorneys
 - Supporting staff

Office of the People's Lawyer

Similar with the Legal Aid Office in other jurisdictions, the Office of the People's Lawyer was established to provide legal services to the public especially to those who cannot afford legal representation. It is administered by the Judiciary under the supervision of the Chief Justice and Court Registrar. So far there has yet to be a legislation governing this office.

The office is comprised of:

- 1 people's lawyer (occupied by mostly Australian Volunteer International and has yet to be localised)
- 1 deputy People's lawyer (vacant)
- 6 Assistant People's lawyers
- 3 Paralegals (assists the people's lawyer and handle most of the magistrate court work)

- supporting staff (including 2 interpreter)

2. Major law and justice sector achievements

On 13 January 2012, General election for Kiribati President was held. Anote Tong was successfully re-elected for another four year term. The voter turnout was 68%. This is his Excellency's third term, the maximum allowed under our constitution.

Courts

The Magistrate courts in 2012 are improving the gender equality of courts by appointing more female lay magistrates. The number of Female Lay Magistrates has increased from just 3 appointed last year to 19 female Lay Magistrates. While Male lay Magistrates still outnumber Female Lay Magistrates, the Judiciary is still recruiting more females to the post.

Parliament

Two amendments to the constitution was defeated in Parliament, the first amendment was by raised by a member of the opposition, seeking to include sex in the Constitutional provision (s15) forbidding discrimination of grounds of race, place of origin, political opinions, colour or creed. The second amendment was raised by the Government in regards to setting up a Ministry of Woman Affairs, in order to improve the rights of woman.

3. Significant court decisions

Kiribati Union of Teachers v Minister for Labour [2012] KIHC 1 && Kiribati Union of Teachers v Attorney-General Iro Minister for Labour [2012] KICA 4

The above case involved a strike undertaken by the Kiribati Union of Teachers in December 2009, the Minister of Labour had deemed that the negotiation process was not exhausted and therefore any strike was unlawful. The union persisted and undertook a strike on the 1st December to 4th of December. In the above case, the High Court found that negotiation process was not yet exhausted.

The Union appealed to the Court of Appeal and the Court of Appeal also held that the strike was unlawful

MP Dr Tetaua Taitai for Opposition Party v Hon. Toamat Iuta, Speaker of the Maneaba ni Maungatabu and Kirata Komwenga for Parliamentary Counsel [2011] KIHC 119/2011

The case involved the action of the Speaker of Parliament in refusing to accept a motion of no-confidence in the last sitting of the previous Parliament. The Applicants were seeking the following declaration that the Hon. Speaker had made an unlawful decision in not accepting a motion of no confidence as filed by the opposition leader contrary to the practices of past speakers of Kiribati and a declaration declaring that the Hon. Speaker had breached the Applicant's constitutional rights by not allowing him to put up their motion for discussion before the house of parliament

The court held that the Speaker was not bound by practices of previous speakers, however it held that the Speaker in wrongly interpreting rule 38(4) of the Rules of procedure resulting in the rejection of the applicant's motion of no confidence and thereby contravening the applicant's constitutional right to move the motion in the House.

MP Dr Tetaua Taitai for Opposition Party v Attorney-General iro Minister of Finance [2012] KIHIC 24/2011

Due to the timing of the dissolving of the previous parliament, the 2012 budget was not passed. Opposition Party were complaining to the Beretitenti that at the expiration of three months after the first time the Maneaba meets, the Minister has no constitutional not to mention legal authority to authorise payment of monies out of the consolidated fund. The Opposition was demanding that the Beretitenti write to the Speaker to summon the Maneaba so that the appropriation of funds could be legalised to avoid disruption of public service.

When the Beretitenti failed to agree to their concern, they then took up the matter to Court. A number of issues were considered including whether or not the Opposition Leader has a *loci standi* to take up the case as it is a constitutional one and of public nature. The court ruled that members of the Maneaba ni Maungatabu have been given the right through their constituency to take action on their behalf hence giving them (MP) the right to take up legal action on behalf of their people.

The other main issue is whether or not the warrant signed by the Minister is unconstitutional? - In considering the issue, the court finds that section 111 of the Constitution is a stand-alone provision. It a provision that provides for avenues where there is no appropriation owing to the dissolution of the Maneaba. The court found that section 111 allows the Minister to issue a warrant with an amount at a level not exceeding the level of these services in the previous financial year. The Court further finds that there is nothing in the section to limit the payment to three month only. All the requirement of section 111 had been complied with and therefore, the action is constitutional

In light of the above, the Court declared that the action of the Minister is constitutional and further ordered that all expenditures after the 25th of February 2012 are also lawful.

4. Significant legal reform

(a) Laws

There hasn't been any significant legal reform laws passed this year as yet; however the Children's Bill is going for first reading in the next Parliament meeting, along with a new Tobacco Control Bill and State-owned Enterprise Bill. We update PILON in our next year report.

(b) Reform activities.

The Domestic Violence Bill (Te Rau nte Mweenga Bill) is nearly completed, first draft is complete however further consultations with the public is required before it is introduced in parliament. It is envisioned that the Bill will be introduced in parliament in the parliament's first sitting in 2012. Also an Education reform is also nearing completion.

5. Summary of significant issues affecting the law and justice sector (including issues for discussion within PILON) and options to address these issues.

A number of issues have been identified that affect the development in the law and justice sector which require immediate attention. Within the Office of the Attorney-General there is a great need on capacity building both in Criminal and Civil and in particular the following

- Drafting;
- Cybercrime;
- Complicated Fraud cases

There is also a need to review our current laws in particular the outdated Ordinance. These laws were adopted in the 1970s and are not applicable or suitable to the current situation.

Similar issues have been identified by the Judiciary and the Office of the People's Lawyer but in general the following are identified as priority:

- Lack of training - more capacity building to lawyers of the People's Lawyer office and Magistrates;

6. Significant initiatives /projects involving the member country and its law and justice sector (e.g. hosting a workshop, conference, or program)

In December 2011, the High Court held its first ever National Judicial Conference for its magistrate judges. Magistrates were given training to further improve their judgement and human rights.

7. Reflect on how the issues outlined in the Country Report relate to the PILON 2012 Annual Meeting theme of 'Challenges and Strategies to Enhance Democratic Governance and the Rule of Law'.

Kiribati is committed to the idea of Democratic Governance and the Rule of Law. This is evident in the successful general election held towards the end of 2011 and the presidential election in early 2012. The court cases outlined in significant court decision shows that grieved parties can and have taken the Government to court over their rights.

Kiribati is committed to ensuring that the gender balance is reflected in the judicial bench, thereby enhancing Democratic Governance and the Rule of Law. Projects like the National Judicial Conference held in December will enhance the Judiciary capacity to enforce the rule of law.

The office of Attorney-General believes that further capacity training for both government lawyers and magistrate will greatly enhance their capacity in guarding the Rule of Law.

Attachment A: Summary of relevant training attended by officers

Date of training	Name of training	Where the training was held and what organisation hosted the training	Who attended the training (name of officer/s and agency)
4/06/12	ILO training –ITC	Italy	Solicitor General Birimaka Tekanene
19/07/12	Pacific Legislative drafters technical Meeting	Fiji	Solicitor General Birimaka Tekanene& Assistant Senior State Attorney Ereta Bruce
	PDLP	Fiji	State Attorney Monoo Mwetaaka

Attachment B: Summary of major regional meetings attended

Date of meeting	Name of meeting	Where the meeting was held	Who attended the meeting (name of officer/s and agency)
23/02/12	PICTA Meeting	Fiji	Assistant Senior State Attorney Ereta Bruce (OAG)
12/07/12	Pacific prosecutor	Solomon	State Attorney Taburuea Rubetaake
5/07/12	Delimitation of Marine Boundaries	Suva, Fiji	Hon Attorney- General Titabu Tabane
24/08/12	International Seabed Authority	Jamaica	Hon Attorney- General Titabu Tabane
	Fisheries Negotiation Meeting	Australia	Hon Attorney- General Titabu Tabane

Attachment C: Contact information for all law and justice agencies

Name of Agency	Contact person and position	Contact phone number and email
Office of Attorney General	<p>Titabu Tabane (Hon. Attorney General)</p> <p>Pauline Beiatau (Director of Public Prosecution)</p> <p>Birimaka Tekanene (Solicitor General)</p>	<p>titabu@legal.gov.ki</p> <p>pauline@legal.gov.ki</p> <p>biri@legal.gov.ki</p>
Judiciary and Office of People's lawyer	<p>Tetiro Semilota (Chief Registrar)</p> <p>Sr Benedette Eberi (Deputy Chief Registrar)</p> <p>Nancy Walker (People's lawyer)</p>	<p>Tetirosemilota@gmail.com</p> <p>Bernadettefdnsc@gmail.com</p> <p>Newaquarius7@gmail.com</p>
Law society of Kiribati	Michael Takabwebwe (President of Law Society)	michael.takabwebwe@gmail.com