



**THE REPUBLIC OF KIRIBATI**

**COUNTRY REPORT**

**26th MEETING OF THE PACIFIC ISLANDS LAW OFFICERS' NETWORK**

**(Rarotonga, Cook Islands, 5–10 December 2007)**

## Introduction

As the host for the 25th Pacific Islands Law Officers' Meeting in February this year, Kiribati is pleased to hand over the Chair to the Cook Islands. In the ten months since we were last together there have been a few developments, and we are glad to have the opportunity to report on them to our fellow law officers.

### 1. Government

There has only been one session of the Maneaba ni Maungatabu (parliament) this year. Of significance was the withdrawal of the *Leadership Code Bill* following rejection by the Maneaba of the necessary constitutional amendments (having failed to secure the necessary two-thirds majority).

Having reached the end of its four-year term, the Maneaba was dissolved on 9 June 2007. General elections were held in August, with four new seats being contested for the first time, having been created to accommodate population increases on those islands. The elections were relatively uneventful, and saw lawyers Natan Teewe (Brechtefeld) and Banuera Berina successful in securing re-election. Private lawyer Mantaia Kaongotao was unsuccessful in his bid for a seat. Only one election petition was filed, but it was withdrawn without going to trial.

The new parliament convened on 17 September to elect the Speaker and choose the candidates for the presidential election. These events gave rise to a legal challenge in the High Court (discussed in greater detail below).

The election for Beretitenti (president) on 17 October saw Anote Tong returned for a second term. His Cabinet has four new faces, and includes Natan Teewe as Minister for Finance and Economic Planning.

The Beretitenti announced a number of legal initiatives during the election campaign. The Leadership Code Bill and the consequential amendments to the *Constitution* are to be re-introduced. He proposed constitutional amendments to reduce presidential term-limits from three to two and to increase the number of Ministers. There are also plans to remove the statutory monopolies in the banking and insurance sectors.

### 2. Cases of interest

#### *Teburoro Tito v. Attorney-General*

This case concerned a challenge by leading opposition member of parliament (and former Beretitenti) Teburoro Tito to the legality of the government's maintenance of an overdraft facility with the Bank of Kiribati. It was argued that government

had acted illegally by failing to obtain parliamentary approval for the overdraft and by failing to make provision in the annual budget for the payment of interest.

At first instance the High Court found for the applicant and ruled that the actions of government were unlawful. In the process the Chief Justice held that certain provisions of the *Government Borrowing and Guarantee Ordinance* had been impliedly amended by the express provisions of the *Public Finance (Control and Audit) Ordinance* (it being a later enactment). It was also held that, despite an express provision in the *Constitution* to the effect that interest payments are statutory expenditure, provision needed to be made for such expenses in the annual appropriation by the Maneaba.

On appeal by the Attorney-General the Court of Appeal overturned the decision of the High Court and held that the government's actions were lawful in all respects. The Court held that: (a) there was no inconsistency between the two Ordinances, and there was therefore no implied repeal; (b) government borrowing required only the approval of Cabinet; (c) there was no statutory limit to the amount that government could borrow; and (d) payment of interest and other debt charges is statutory expenditure, which needed only to be reported to the Maneaba in the estimates and for which no appropriation is required.

*Dr Harry Tong v. Chief Justice and Speaker of the Maneaba ni Maungatabu*

Mentioned above, this case concerned an application for judicial review of the procedures adopted by the Maneaba for the election of the Speaker and the subsequent selection of candidates for the presidential election. The applicant (another prominent opposition member of parliament) claimed that the election of the Speaker (presided over by the Chief Justice) had not been conducted using a secret ballot, which was required by the Maneaba's Rules of Procedure (akin to Standing Orders). The applicant also complained that the process for selecting the presidential election candidates (presided over by the newly-elected Speaker) did not comply with the procedure prescribed by the *Election of Beretitenti Act*, in that the method of voting was not by secret ballot, and that certain candidates had been wrongly excluded from the third round of balloting.

The Attorney-General successfully applied to have the second component of the applicant's claim (that concerning the selection of the presidential election candidates) dismissed, on the ground that the Court's jurisdiction was excluded by section 38 of the *Constitution*. Any question as to whether the requirements of the law relating to presidential elections has been complied with is to be determined by the Chief Justice (in an administrative rather than a judicial capacity) and his decision could not be questioned in any Court. It should be

noted that the Chief Justice (having swapped hats) then went on to rule that there had been substantial compliance with the relevant laws and rejected the applicant's complaint in that regard.

As regards the Speaker's election, the Chief Justice's involvement as the presiding officer resulted in him excusing himself. An acting Judge was brought in from Australia to hear that aspect of the application. Williams AJ then dismissed the application, accepting the Attorney-General's objection to the hearing of the matter on the ground that compliance with parliamentary standing orders was a matter for parliament alone. The High Court therefore lacked jurisdiction to hear and determine the application. Appeals have been filed against the decisions of both the Chief Justice and Williams AJ, and these will be heard sometime in 2008.

### **3. Other matters of interest**

#### *The Kiribati Law Society*

As reported in February, the *Kiribati Law Society Act* 2006 has entered into force. At this stage we are expecting the Society's inaugural general meeting, to be convened by the Attorney-General, to take place in the near future. The private profession has continued to grow, with six lawyers now practising on their own account, including Michael Takabwe, formerly Attorney-General and Justice of the High Court.

#### *Sinking of the Sokalique*

For the past few years Kiribati has been operating an open shipping registry, whereby a vessel may be registered in Kiribati, despite there being no connection with the country. In August this year a Kiribati-flagged vessel, the *Ocean Jasper*, owned by a Marshall Islands company, with Turkish interests, and captained by a national of Azerbaijan, collided with a French fishing vessel, the *Sokalique*, in the English Channel. The *Sokalique* sank, with the loss of one life. The *Ocean Jasper* failed to stop and render assistance, as required by Kiribati law. The collision occurred in international waters and, under the Law of the Sea Convention, responsibility for prosecution for any offence occurring onboard the *Ocean Jasper* falls to Kiribati (as the flag-State). The French government has taken a keen interest in this case, with President Sarkozy attending the fisherman's funeral. Following negotiations at the highest levels, France and Kiribati have recently agreed that the trial of the captain of the *Ocean Jasper* should take place in France, but under Kiribati law (as much as is possible). There are serious matters of sovereignty at issue here and the decision for Kiribati and France to co-operate in this manner is, as far as we can tell, without precedent. We take the view that

those on board Kiribati-flagged vessels, wherever in the world they may be, should not think that they can act with impunity. This is a very complex matter, and there is still much to be sorted out, particularly as regards the application of Kiribati law in the French courts. We know that a number of Pacific island countries operate open registries, so this case will be of interest to many of you. We will hopefully be able to give you an update at the next PILON meeting.