

LAWS OF KIRIBATI ACT 1989

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THE REPUBLIC OF KIRIBATI
(No. 10 of 1989)

I assent,

N. Tabai
Beretitenti.
23/10/1989

AN ACT TO DECLARE WHAT CONSTITUTES THE LAWS OF
KIRIBATI; AND FOR CONNECTED PURPOSES

Commencement:
1989

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

Short title

1. This Act may be cited as the Laws of Kiribati Act 1989.

Commencement

2. This Act shall come into force on such date as the Minister may by notice appoint.

Interpretation

3. In this Act, unless the context otherwise requires -

"applied law" means a law of any of the kinds described in section 7;

"common law of Kiribati" means the common law as described in section 6;

"customary law" has the meaning assigned by section 5.

Laws of Kiribati

4. - (1) The Constitution is the supreme law of Kiribati and the other laws comprising the Laws of Kiribati have effect subject to its provisions.

(2) In addition to the Constitution, the Laws of Kiribati comprise -

- (a) every Ordinance and every Act and all subsidiary legislation made thereunder;
- (b) customary law;
- (c) the common law of Kiribati;
- (d) every applied law.

Customary law

5. - (1) Customary law comprises the customs and usages, existing from time to time, of the natives of Kiribati.

(2) Subject to section 4(1), customary law shall have effect as part of the law of Kiribati, except to the extent that it is inconsistent with an enactment or an applied law published under section 11.

Schedule 1

(3) Schedule 1 has effect with respect to the determination and recognition of customary law.

Common law of Kiribati

6. - (1) Subject to this section, the common law of Kiribati comprises the rules comprised in the common law, including the doctrines of equity, of England (in this section referred to as "the inherited rules"), as applied in the circumstances pertaining, from time to time in Kiribati.

(2) In ascertaining for the purposes of subsection (1) the inherited rules -

(a) the effect of any law of England, enacted or made after 1 January 1961, on those rules shall be disregarded, save in so far as the law had or has effect as part of the law of Kiribati; and

(b) any such rule that is inapplicable or inappropriate in the circumstances pertaining, from time to time, in Kiribati shall be disregarded.

(3) Subject to section 4(1), the common law of Kiribati shall have effect as part of the law of Kiribati, save in so far as -

(a) it is inconsistent with an enactment or an applied law; or

(b) in its application to any particular matter it is inconsistent with customary law in respect of that matter.

(4) In every court the rules of the common law and the doctrines of equity included in the inherited rules and comprised in the common law of Kiribati shall be administered concurrently; but in the event of a conflict between those rules and doctrines with reference to the same matter, the doctrines of equity shall prevail.

Applied laws

7. - (1) The applied laws comprise such -

(a) enactments of the Parliament of the United Kingdom or of any predecessor Parliament (including statutes

of general application in force in England on 1 January 1961);

- (b) Orders of Her Majesty in Council;
- (c) subsidiary legislation made under any of those enactments or Orders in Council;

as have or has effect as part of the law of Kiribati.

(2) For the purpose of its application as part of the law of Kiribati, but without prejudice to the Constitution (Laws Adaptation) Order 1980, an applied law shall be construed with such -

- (a) changes as to names, titles, offices, persons, institutions, localities, moneys and penalties; and
- (b) other formal and non-substantial changes,

as are necessary -

- (i) to adapt it to the provisions of the Constitution;
- (ii) to make it applicable to the circumstances of Kiribati.

Adaptation
of applied
law

8.-(1) The Attorney-General may, by regulation, make such adaptations to an applied law, for the purpose of preparing its transcription under section 9, as are necessary or expedient for -

- (a) producing consistency between that law and the Constitution, any enactment or customary law; or
- (b) making it applicable to the circumstances of Kiribati;

and, in particular, may -

- (i) make such changes as to names, titles, offices, persons, institutions and localities as are necessary to so adapt the applied law;
- (ii) substitute for references in the applied law references to the equivalent provisions in an enactment where that is necessary to make the applied law constitute with the enactment; and
- (iii) vary financial references, including penalties, in the applied law so as to take account of changes in currency,

but sums of money expressed in the applied law in the currency of the United Kingdom, when varied so as to be expressed in the currency of Kiribati, shall be converted at the rate that £1 is deemed to be equivalent to \$2.

(2) The power under subsection (1) shall not be exercised in relation to a transcription of an applied law published under section 11.

(3) Regulations made under subsection (1) shall come into effect on the date of publication under section 11 of the transcription of the applied law to which they relate.

Powers of Attorney-General in relation to applied laws

9. - (1) The Attorney General may cause to be prepared a transcription of an applied law incorporating -

- (a) changes such as are referred to in section 7(2);
- (b) any adaptations made to the applied law by regulations made under section 8; and

Schedule 2

(c) changes or modifications effected by the exercise of any of the powers set out in the Schedule 2.

(2) The power under subsection (1) shall not be exercised in relation to a transcription of an applied law published under section 11.

Presentation of applied law to Maneaba ni Maungatabu

10. - (1) The Speaker shall present to the Maneaba ni Maungatabu -

- (a) the transcription of an applied law prepared under section 9; and
- (b) any regulations made by the Attorney-General under section 8 for the purpose of preparing that transcription;
- (c) a memorandum giving particulars of the adaptations, changes and modifications incorporated in that transcription;

but no presentation may be made unless, not less than 30 working days before the day on which it is to be made, the transcription, regulations and memorandum have been published in the manner directed in each case by the Speaker.

(2) Immediately upon the publication under subsection (1) of a transcription, regulations and memorandum, copies shall be sent by the Clerk to the Maneaba ni Maungatabu to each Member of the Maneaba ni Maungatabu.

(3) Subject to subsection (4), the Maneaba ni Maungatabu may, in the session in which the transcription of the applied law is presented under subsection (1), on a motion of not less than 2 clear days' notice, by resolution -

(a) make an adaptation, change or modification (certified by the Attorney-General as one which could have been made under section 7(2), 8(1) or 9(1)(c) and Schedule (2) to the transcription; or

(b) reject the transcription, on a ground referred to in subsection (5).

(4) Where the Maneaba ni Maungatabu refers a transcription of an applied law to a select committee for its consideration, notice of a motion for a resolution under subsection (3) may not be given in relation to that transcription until the select committee has reported thereon to the Maneaba ni Maungatabu.

(5) The grounds on which the Maneaba ni Maungatabu may reject a transcription of an applied law are -

(a) that all or any of the adaptations, changes or modifications incorporated in the transcription are not adaptations, changes or modifications which may be so incorporated under section 7(2), 8(1) or 9(1)(c) and Schedule 2; or

(b) that the applied law conflicts with customary law.

Publication of
transcription
of applied law

11. - (1) Where a transcription of an applied law has been presented under section 10 and has not been rejected in the session of the Maneaba ni Maungatabu in which it was presented, the Beretitenti shall direct that the transcription of the applied law be published.

(2) A transcription published under this section shall incorporate any adaptations, changes or modifications made under section 10(3)(a).

(3) A transcription of an applied law published under this section shall have incorporated in it a certificate of the Beretitenti to the effect that the transcription is so published.

(4) Publication of transcriptions of applied laws shall be by exhibition at the Public Office of the Beretitenti.

(5) Transcriptions of applied laws published under this section shall be numbered serially in the chronological order of their publication without reference to the year

in which they are so published; and any such applied law may be cited by reference to the number assigned to its transcription.

Effect of
publication of
transcription
of applied law

12. With effect from the date of publication under section 11 of a transcription of an applied law -

- (a) that transcription shall have effect as part of the law of Kiribati and any other version shall cease so to have effect;
- (b) any subsidiary legislation made under that applied law that is not or has not been published under section 11 on or before that date as a transcription of an applied law shall cease to have effect as part of the law of Kiribati;
- (c) references in any enactment to the applied law, or to provisions of the applied law, shall be construed as references to that transcription, or to the equivalent provisions of that transcription, as the case may be;
- (d) unless the context otherwise requires, the Interpretation and General Clauses Ordinance applies for the purpose of interpreting, and in relation to, that transcription, as it applies for the purpose of interpreting, and in relation to, an Act.

Cap. 46

Judicial
precedent

13. - (1) Every court is bound to follow any decision of the Judicial Committee on a question of law if given (whether before or after the commencement of this Act) in relation to an appeal from Kiribati; but if otherwise given, such a decision is of persuasive authority only.
- (2) A court is not bound by any decision on a question of law of a court constituted for a country other than Kiribati.
- (3) A court is bound by any decision on a question of law of a court which is a superior court in relation to it.
- (4) The Court of Appeal or the High Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears right to do so.
- (5) In this section -
- "Judicial Committee" has the meaning assigned by section 132(1) of the Constitution.

"Superior court", in relation to another court, means a court which has jurisdiction to determine appeals from, or to review, decisions of the other court, but does not include the Judicial Committee.

Repeals and amendments Cap. 46

14. - (1) The Interpretation and General Clauses Ordinance is amended in section 3(1) by -

(a) the deletion of the definition of "common law" and the substitution of the following definition -

"common law" means the common law of Kiribati as described in section 6 of the Laws of Kiribati Act 1989;"

(b) the deletion of the definition of "statute of general application" and the substitution of the following definition -

"statute of general application" means a statute of general application referred to in section 7(1)(a) of the Laws of Kiribati Act 1989;"

Cap. 52

(2) The Magistrates' Court Ordinance is amended by the repeal of section 42.

No. 2 of 1984

(3) The Local Government Act 1984 is amended -

(a) in section 50(4) by inserting at the end the following proviso -

"Further provided that nothing in the Laws of Kiribati Act 1989 affects any power of a council to amend customary law when making bye-laws.";

(b) in section 123 by inserting at the end the following proviso -

"Provided that nothing in the laws of Kiribati Act 1989 affects any power of the Minister to amend customary law when making regulations."

Cap.67

(4) The Penal Code is amended in section 17 by the deletion of the word "English".

(5) The Western Pacific (Courts) Order in Council 1961 of the United Kingdom, to the extent that it is part of the law of Kiribati, is amended by the repeal of section 15.

(6) Without prejudice to sections 7 and 12, the repeals made by subsections (2) and (5) do not affect the operation in Kiribati of statutes of general application that were in force immediately before the commencement of this Act by virtue of the provisions thereby repealed.

SCHEDULE 1

(sec.5(3))

THE DETERMINATION AND RECOGNITION OF CUSTOMARY LAW

Proof of custom

1.-(1) Questions of -

- (a) the existence and nature of customary law in relation to a matter; and
- (b) the application of customary law in, or relevance to, any particular circumstances,

shall be determined as questions of law, and, accordingly, any such question may be raised by the court itself, notwithstanding that the question has not otherwise been raised.

(2) If, in any proceedings, after having -

- (a) considered such submissions thereon as may be made ~~by or on behalf of the parties; and~~
- (b) consulted such reported cases, legal text books or other similar sources, as may be appropriate,

a court entertains any doubt on any question referred to in sub-paragraph (1), the court shall proceed to inquire into the question in accordance with sub-paragraphs (3) to (5), and, if necessary, it may adjourn the proceedings to enable such an inquiry to take place.

(3) The inquiry shall -

- (a) be held as part of the proceedings; and
- (b) subject to sub-paragraph (4), be conducted in such manner as the court considers expedient.

(4) In considering the question in doubt, the court -

- (a) is not bound to observe strict legal procedure or apply technical rules of evidence;
- (b) may, of its own motion, call such evidence or require the opinions of such persons as it thinks fit;
- (c) shall -

- (i) admit and consider such evidence as is available (including hearsay evidence and expressions of opinion); and
- (ii) otherwise inform itself as it thinks fit;
- (d) shall consider such submissions on the question as may be made by or on behalf of the parties;

but this sub-paragraph does not limit in any way the discretion of the court in obtaining evidence or information itself on the question.

(5) For the purposes of the decision on a question referred to in sub-paragraph (1), a court may -

- (a) consult to the extent that is appropriate -
 - (i) reported cases;
 - (ii) books, treatises, works of reference or official reports (whether published or not);
 - (iii) statements made by local government councils (whether published or not);
- (b) accept any matter or thing stated in such sources as evidence on the question.

(6) Notwithstanding sub-paragraph (1), where appeal is made from a decision of a court, the court that hears the appeal may consider afresh a question referred to in that sub-paragraph that arises in the appeal.

Recognition of custom

2. Subject to this Schedule, customary law shall be recognised and enforced by, and may be pleaded in, all courts except so far as in a particular case or in a particular context its recognition or enforcement would result, in the opinion of the court, in injustice or would not be in the public interest.

Criminal cases

3. Subject to this Act and to any other enactment, customary law may be taken into account in a criminal case only for the purpose of -

- (a) ascertaining the existence or otherwise of a state of mind of a person; or

- (b) deciding the reasonableness or otherwise of an act, default or omission by a person; or
- (c) deciding the reasonableness or otherwise of an excuse; or
- (d) deciding, in accordance with any other enactment, whether to proceed to the conviction of a guilty party; or
- (e) determining the penalty (if any) to be imposed on a guilty party.

or where the court thinks that by not taking the customary law into account injustice will or may be done to a person.

Civil cases

4. Subject to this Act and to any other enactment, customary law may be applied in a case other than a criminal case in relation to -

- (a) the ownership by custom of or of rights in, over or in connection with native land (within the meaning assigned by the Native Lands Ordinance); or -

Cap. 61

- (i) any thing in or on native land; or
- (ii) the produce of native land;

or the determination of, or rights in relation to, the boundaries to native land or rights in connection with the transfer of title to native land; or

- (b) rights in respect of the possession or utilisation of native land, including rights of hunting or gathering on, or taking minerals from, native land; or
- (c) the ownership by custom of rights in, over or in connection with any sea or lagoon area, inland waters or foreshore or reef, or in or on the seabed, including rights of navigation or fishing;
- (d) the ownership by custom of water, or of rights in, over or to water; or
- (e) the administration, devolution or partition of native land or of rights in, over or in connection with native land, whether -
 - (i) on the death or the birth or the adoption of a person; or
 - (ii) on the happening of a certain event; or

- (f) defamation; or
 - (g) the legitimacy, legitimation or adoption of children; or
 - (h) the rights of married persons arising out of their marriage or on the termination of their marriage by nullity, divorce or death, the right of a member of a family to support by other members of that family, or the right to the custody or guardianship of infants; or
 - (i) the duty of members of a community to contribute, whether by labour, money or in kind, to projects for the welfare of that community; or
 - (j) a transaction that -
 - (i) the parties intended should be; or
 - (ii) justice requires should be,regulated wholly or partly by customary law and not by any other law; or
 - (k) ~~the reasonableness or otherwise of an act, default or omission by a person; or~~
 - (l) the existence of a state of mind of a person; or
- where the court thinks that by not taking the customary law into account injustice will or may be done to a person.

Customary law in relation to family matters, etc.

5. Notwithstanding anything in the common law, customary law shall be applied in deciding questions in connection with the matters specified in paragraph 4(g) and (h).

Conflict of customary law

6.-(1) Subject to this paragraph, and to any other enactment, where -

- (a) in a matter before a court a question arises as to which of two or more rules of customary law should prevail;
and
- (b) the court is not satisfied on the evidence before it as to the question,

the court shall consider all the circumstances and may adopt those rules that it is satisfied the justice of the case requires.

(2) Where a court is not satisfied as to which of two or more rules of customary law applies, or should under sub-paragraph (1) be applied, to or in relation to a matter, the court may apply, with the necessary modification as nearly as may be, the rules of the common law.

(3) The principles set out in sub-paragraphs (1) and (2) may be varied or departed from by a court in any particular case to such extent as the justice of the case requires.

Savings

7. Nothing in this Schedule affects the operation of Part VI of the Magistrates' Courts Ordinance or the Native Lands Ordinance or the Kiribati Lands Code.

Cap. 52
Cap. 61

SCHEDULE 2


(sec.9(1)(c))

POWERS OF ATTORNEY-GENERAL IN RELATION TO APPLIED LAWS

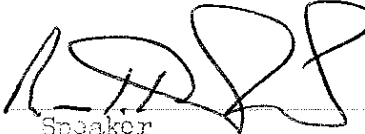
The Attorney-General has power to -

- (a) make such changes as are necessary or expedient for the purpose of securing uniformity of expression in an applied law;
- (b) consolidate^(f) into 1 applied law any 2 or more applied laws, making such alterations as are thereby rendered necessary or expedient;
- (c) alter the order of sections in any applied law;
- (d) renumber the sections in any applied law in all cases where it may be necessary or expedient to do so;
- (e) alter the form or arrangement of any section, by transferring words, by combining it in whole or in part with another section or other sections or by dividing it into 2 or more subsections or paragraphs;
- (f) delete the enactment provision in an applied law;
- (g) provide a long title or a short title to any applied law that may require it or to alter a long title or short title of any applied law;
- (h) supply or alter tables of contents, chronological tables and notes;
- (i) correct grammatical, typographical and similar errors in an applied law, and for that purpose to make verbal additions, omissions, or alterations not affecting the meaning of an applied law;
- (j) correct cross references;
- (k) make such amendments as are necessary to resolve ambiguities, remove doubts or improve the form and manner in which the applied law is stated; and
- (h) generally, do all such things relating to form and manner of expression as appear to him to be necessary to improving the applied law in its application to Eritritia and for compatibility with the form and manner of expression used in other enactments.

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 21st December, 1989 and is found by me to be a true and correctly printed copy of the said Bill.



Clerk to the Maneaba ni
Maungatabu

I certify that the above Act, was on the 21st December, 1989 passed by the Maneaba ni Maungatabu on a certificate of urgency under section 68(3)(a) of the Constitution.


Speaker

Published by exhibition -

- (a) at the Public Office of the Berotitenti this
23rd day of February 1990.


Secretary to the Cabinet

- (b) at the Maneaba ni Maungatabu this 23rd
day of February, 1990.


Clerk to the Maneaba ni
Maungatabu

LAWS OF KIRIBATI ACT 1989

EXPLANATORY MEMORANDUM

The principal purposes of the Laws of Kiribati Act 1989 are, first, to declare authoritatively what constitute the laws of Kiribati and the relationship between those laws and, secondly, to provide a procedure under which legislation inherited from the United Kingdom may be patriated, that is, transcribed as legislation of Kiribati.

Section 4 repeats the provision in the Constitution (section 2) that the Constitution is the supreme law of Kiribati and that all other law is subordinate to it. In addition, the Laws of Kiribati are stated to comprise -

- (a) Ordinances and Acts enacted in Kiribati, and all subsidiary legislation made under them;
- (b) customary law, being the custom and usages of the indigenous people of Kiribati, except where they are not consistent with enacted legislation (section 5). Procedures for the determination and recognition of customary law in legal proceedings are provided in Schedule 1;
- (c) the common law of Kiribati (which derives from the common law, including the doctrines of equity, of England - section 6), except where it is not consistent with enacted legislation or customary law - section 6(3);
- (d) applied legislation - that is, written laws of stated kinds inherited from the United Kingdom that have effect as part of the law of Kiribati - section 7.

These provisions that effect in place of the rules that hitherto had force - ie; section 15 of the Western Pacific (Courts) Order in Council 1961 and section 42 of the Magistrates' Courts Ordinance, Cap. 52, both of which are repealed - section 14.

A procedure for transcribing inherited legislation into Kiribati provisions is set out in sections 8 - 12. This will be used in cases where the inherited legislation requires little adaptation, whether in substance or in form, in order to be re-stated as a Kiribati statute. (Those inherited provisions which require major adaptation will be patriated through the process of re-enactment).

The Attorney-General is given powers to make necessary adaptations by regulations for purposes of the transcription process, in order to bring the inherited law into conformity with the existing law of Kiribati (section 8). The inherited legislation, with any such adaptations, may then be transcribed into the form of a Kiribati statute. For that purpose the Attorney-General is also given law revision powers to make presentational changes (section 9 and Schedule 2).

The transcription (with any regulations making adaptations and an explanatory memorandum) must be presented to the Maneaba ni Maungatabu, in the same way as a Bill (section 10(1)-(2)). But as the transcription relates to legislation that is already the law of Kiribati, the Maneaba may reject a transcription only where it incorporates adaptations beyond the powers conferred on the Attorney-General or specifically where the legislation conflicts with customary law (section 10(4)-(5)). Where, for example, a matter may have been overlooked in making required adaptations, the Maneaba may authorise the necessary adaptations to be made in the inherited legislation (section 10(3)).

Transcriptions that are not rejected by the Maneaba must then be published on the authority of the Beretitenti, using a similar procedure to that used for legislation (Interpretation and General Clauses Ordinance, Cap. 46, section 17) - section 11(1-4)). Special rules for numbering and citation are provided (section 11(5)). Once published, the transcription replaces the legislation originally inherited and to all intents it will operate in the same way as an enactment made in Kiribati (section 12).

Section 13 determines the principal rules whereby judgements in decided court cases become binding judicial precedents. A Kiribati court is bound by the decisions in similar cases given by any court that is superior to it. It is not bound to follow decisions of courts of other countries (eg: of England), except those of the Judicial Committee of the Privy Council on appeals from Kiribati. The Court of Appeal and the High Court may depart from their own previous decisions where they think it right to do so.

Section 14 makes a number of consequential amendments and repeals to other laws.

Schedule 1 lays down a procedure to be followed in determining when and how customary law may have effect in Kiribati (paragraph 1) and how conflicts between different customs are to be resolved (paragraph 6). General rules stating when, and to what extent, customary law may operate in Kiribati are contained in paragraphs 2 - 5. These rules operate subject to the provisions of written enactments dealing with a particular subject matter. Existing written law giving effect to custom (eg: the Native Lands Ordinance) is unaffected by these provisions - paragraph 7.

Michael N. Takabwebwe
Attorney General
31 August 1989

LEGAL REPORT

I hereby certify that in my opinion none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act.

Michael N. Takabwebwe
Attorney General