

KIRIBATI PILON COUNTRY REPORT 2017

Presented by the Office of the Attorney-General (OAG)

1. Significant court decisions

The case of *Tekanene v Honorable AG Tabane and Secretary to Cabinet Tiira Miscellaneous Application No 75/2016* is based on a dispute between the former Solicitor-General (now Secretary to the Ministry of Justice) and the former Attorney-General and former Secretary to Cabinet on whether the respondents could revoke and overrule the decisions and actions of the applicant while he was officer in charge (OIC). In this application, the merit of the dispute was not a concern by the respondents but rather the question of whether they could be sued in their personal capacity considering that their decision to revoke the applicant's decision while he was OIC was done while they were in their official capacity as Attorney-General and Secretary to Cabinet. At the time of the application, both respondents have left their offices. The High Court ruled that it is not relevant that the respondents are no longer in office and that the claim against them in their official capacity continues against the office and their successors. If the respondents personally broke the law while they hold offices, they could also be sued in their personal capacity. As to whether the OAG could represent the respondents in their personal capacity; it was ruled that OAG as a matter of practice, usually represent the government therefore the respondents in their personal capacity should engage their own counsel.

This case helps clarify the difference of 'official and personal capacity' and assist in highlighting the portfolio of OAG as a government legal representative.

2. Significant legal reform

One of the priorities highlighted in the OAG's Strategic Plan is the strengthening and modernisation of the laws of Kiribati. Most of these laws were enacted during the colonial periods and no longer reflects the current context and needs of the jurisdiction. OAG planned to establish a specialised Drafting division to be tasked to review current laws and focus on legislative drafting. By next year, such a division should be established but for now, drafting of bills, regulations and byelaws are distributed among the lawyers of the civil and criminal division.

Since the last PILON meeting in 2016, OAG has worked on 16 Bills. 7 of these Bills were Private members Bills of which, 2 were accepted by government and passed, 1 was rejected, 4 were withdrawn during their first reading stage upon the agreement that the government should take on full legislative reviews on all the proposed Bills and table new Bills in the upcoming Parliament sessions. 9 of the Bills are government Bills, 6 of which have become Acts (the Maritime Act of 2017, Fisheries Amendment Act 2017, Seabed Minerals Act of 2017, Early Childhood Care and Education Act of 2017, Kiribati Audit Act of 2017 and the Traffic Act of 2017) and 2 have just passed their first reading (Penal Code Amendment Bill of 2017 and the Finance Bill 2017). OAG expects to have at least 5 more government Bills in the upcoming session (November or December) this year. OAG has also worked on various Regulations and Bye Laws this year.

3. PILON strategic priorities

(a) Cybercrime

Cybercrime is still a grey area in Kiribati. The main legislation that provides for such a crime is the Communication (Amendment) Act 2017 but a plan for development of a national implementation plan for enforcement and training on cybercrime is on top of OAG's to-do list in partnership with the Kiribati Police and other relevant stakeholders.

(b) Environmental Crime and Corruption

The Leaders Code of Conduct Act of 2016 sets up a Leadership Commission to hear and decide on complaints against leaders. This is the main legislation to address corruption practices such as bribery, conflicts of interests, improper use of public property and assets and nepotism by leaders. As the Act was just assented in January this year, the actual enforcement of the Act awaits the recruitment of members of the commission and the logistics of establishing such office to complete. In the meantime, a select committee was set up by parliament in May 2016 to receive complaints, interrogate and making conclusions and reports on corruption practices by leaders. This year, the committee completed its first reports on 10 complaints and tabled the reports during Parliament's

session in August 2017. More complaints are under review with reports expected to be tabled in the near future. In addition to this, the government has set up a taskforce to develop a National Anti-Corruption Strategy to set targets and goals to combat corruption practices within the next 10-15 years. This will serve as a blueprint and policy for dealing with corruption practices, not just against leaders but everyone holding government offices in Kiribati.

(c) Sexual and Gender-Based Violence

OAG continues to be part of the Sexual and Gender-based Violence taskforce endeavours to combat sexual and gender-based violence. Although the taskforce is led by a different organisation, the Ministry for Women, Youth and Social Affairs (MWYSA), OAG took part in a lot of public awareness and training programs to government officials, NGOs and communities. The implementation of Te Rau N te Mweenga Act 2014 is one of the key activities of OAG's criminal division.

To complete the operation of Te Rau N te Mweenga Act 2014 (Family Peace Act), the Penal Code Amendment Bill 2017 passed the first reading in Parliament session of August 2017. This Bill aims to modernise the provisions of rape and indecent assaults by expanding and clarifying definitions of penetration and other related provisions. This Act was developed based on best practice legislations comparable in the Pacific Jurisdiction taking into account evolving legal jurisprudence. Initially, a provision on marital rape was included but eventually withdrawn for further consultation with the church and communities because there is still a lot of hesitation for inclusion of such a provision in the Bill. The Bill will pass second reading in the upcoming Parliament (November or December 2017) and it will better address the issue of rape, indecent assault, defilement of young children and the problem of gender-based violence and child abuse in Kiribati.

4. Significant issues affecting the law and justice sector, and options to address these issues

OAG is grateful for the opportunity for further training and continuing legal education (CLE) opportunities that have been offered to build the capacity of its officers. One of these opportunities is the Professional Diploma in Legislative Drafting (PDL) to which OAG continues to encourage and support its staff to undertake. This year 1 junior staff will complete the program early October with funding for tuition by Commonwealth and funding for the compulsory workshop component of the program, by the local Government.

OAG highlighted a need for full funding and more opportunities for other officers who are yet to undertake their PDL in the near future.

OAG also highlighted the need for continuous programs of capacity building and CLE to maintain and develop the capacity of its officers. In-house trainings and internal programs are part of OAG's strategic plan but the realisation of these is not without financial, technical and even timing constraints.

5. Technical legal assistance

OAG is grateful for the workshops and trainings availed from various organisations. This year alone, OAG has send its officers to the following workshops and trainings;

☞ The Pacific Legal Policy Champions Program sponsored by the Attorney-General Department of Australia (AGD), held in Canberra in March. 1 senior officer from OAG attended.

☞ The Legal Reasoning Training sponsored by the AGD, held in Canberra in April. 1 senior officer from OAG attended.

☞ The Regional Training Workshop on anti-corruption investigations and prosecutions sponsored by the UN Pacific Regional Anti-Corruption Project (UN-PRAC II), held in Fiji in June. 2 senior officers from OAG and 1 Police officer attended. (1 of the Senior officers from OAG was locally funded).

☞ The Regional Prosecutors and MCS Advisors Training sponsored by FFA, held in the Solomon Islands in June. 2 officers from OAG and 1 from the Ministry of Fisheries and Marine Resources Development (MFMRD) attended. (the senior officer from OAG was locally funded).

☞ The Legal training on Law and Cancer sponsored by the Australian Department of Foreign Affairs and Trade held in Melbourne in June. 2 junior officers from OAG attended.

☞ The Banking Regulatory Reform workshop sponsored by the Pacific Financial Technical Assistance Centre, held in Guam in July. 2 senior officers from OAG attended (1 was locally funded).

☞ The Human Rights Policy Development Training sponsored by the National Human Rights Commission of Korea under the Korea International Cooperation Agency (KOICA), held in Seoul Korea in July. 1 junior officer from OAG and a Human rights officer from the Ministry of Justice (MOJ) attended.

☞ The Legislative Drafters Technical Forum organised and sponsored by the Forum Secretariat, AGD and Commonwealth, held in Tonga in August. 1 junior officer from OAG and 1 senior officer from the office of the people's lawyer (OPL) attended.

☞ The PDL (mentioned earlier) sponsored by the Commonwealth and partially by the local government. 1 junior officer attended.

☞ The PILON litigation skills program organised and sponsored by the NZ Crown Law office, NZ Law Society and the NZ Ministry of Foreign Affairs and Trade will be held in Samoa in November. 1 junior officer from OAG and 1 officer from the OPL will attend.

6. Contact information for key law and justice agencies

Agency	Key responsibilities	Contact person and position	Phone number and email
Ministry of Justice G.P.O. Box 62, Bairiki, Tarawa, Kiribati	Administration of Justice	Mr Birimwaka Tekanene Secretary	Tel:75021242 Email: biri@legal.gov.ki or justice@legal.gov.ki
Office of the Attorney- General P.O.Box. 62,	Provision of State civil litigation and criminal	Mrs Tetiro Maate Semilota Attorney-General	Tel:75021242

Bairiki, Tarawa, Kiribati	prosecution. Principal legal adviser to Government.		Email: attorney-general@legal.gov.ki or office@legal.gov.ki
Office of the People's lawyer P.O.Box 461, Betio, Tarawa, Kiribati	Provision of legal aid services to community members	Mr Raweita. Beniata Officer in Charge	Tel:26312 Email: raweita@opl.org.ki or oplkiribati@opl.org.ki
Judiciary Kiribati P.O.Box 501, Betio,Tarawa, Kiribati	Provision of judiciary services	Sr Bernadette Mee Eberi fdns Chief Registrar	Tel:26007 Email: cr@kiribatijudiciary.gov.ki or info@kiribatijudiciary.gov.ki
Maneaba ni Maungatabu P.O.Box 52, Ambo, Tarawa, Kiribati	Kiribati House of Parliament (law making body)	Mr George Mackenzie Parliamentary Counsel	Tel:74021880 Email: counsel@parliament.gov.ki or enquiry@parliament.gov.ki
Kiribati Police Service P.O.Box 497, Betio, Tarawa, Kiribati	Law enforcement	Mr Ioeru.Tokantetaake Commissioner of Police	Tel:26187 Email: enquiry@police.gov.ki

