

KIRIBATI PILON COUNTRY REPORT 2018

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

COUNTRY REPORT WRITTEN SUBMISSION

1. Major Law and justice sector achievements

OAG has just formally developed a Legal Drafting Division earlier this year in addition to other existed ones – Criminal and Civil Division. The division is occupied by three lawyers whom they were transferred from the Civil Division. Their main roles are to review, update and draft the laws in which these roles before are normally shared amongst the Civil and Criminal lawyers. Though they only have three of them, there have been increased of the new laws been drafted and or amended this year.

In the Judiciary Sector, the High Court Judiciary has just recruited a newly High Court Judge, Honorable Judge David Lambourne who was a former Solicitor General at OAG. The new Judge received his new appointment and started commencing his duty in July this year. The Honorable Judge mostly deals with criminal matters while the Chief Justice handles civil cases. Though the Honorable Judge had just started his term this mid-year, there is a great swift of all criminal matters being handled and most of them have been disposed of while others awaiting their hearing dates.

2. Significant court decisions

The Republic v Atanaera Bwaibwa KIHC 32 Criminal Case 25/2018.

The case involves sexual intercourse of a girl of 13 years old. The accused took the victim from her sleeping place to the beach and had sexual intercourse with her. This is one of the case being pushed and speeded up from the Kiribati Women and Children Centre. It is also the first case being prosecuted under significant amendments were introduced by the *Penal Code (Amendment) and Criminal Procedure Code (Amendment) Act 2018*. The offence is known as defilement under the *Principle Act*, however the *amending Act* replaced this offence with sexual intercourse with a girl under the age of 15 years old. Defilement is no longer exist. The penalty of this offence under this amendment has also dramatically increased to life imprisonment, in which this was used to be 5 year's imprisonment. The prosecution has progressed with admirable rapidity. Though the victim could not be consent under the law, the *Amending Act* provides 3 available defenses for the accused to satisfy in order to be acquitted from the charge: "the accused must took reasonable steps to determine the age of the other person; and honestly believed on reasonable grounds that the other person was 15 years old or older; and the other person is a willing participant in the sexual intercourse." The trial proceeded to hear all witnesses from both side. At the end of the trial, the accused failed to prove these defences and therefore convicted on the charge.

3. Significant Law reforms

Since the last PILON meeting 2017, OAG has worked on 11 Bills which have been passed and become Acts.

i) Kiribati Medicine Act

The Act is to protect public health by providing for the establishment of the medicines and therapeutic committee and for the effective regulation of medicines in Kiribati to ensure their quality, safety and efficacy.

ii) Kava Act 2018

This a *new Act* introduced to address the social, economic and health problems associated with drinking kava and also the protection of certain categories of person known as under age persons from involving with kava drinking in particular female underage. The Act aims to regulate the use of Kava as a drink by member of the public in the Kava Bar because of the negative social, economic and health problem. It also creates an offence for any businesses selling and supplying Kava to underage Kava drink.

iii) Local Government (Amendment) Act 2018

The Act aims to respond to the current loopholes of the law to align with the recent development in the operation and management of Councils.

iv) Occupational health and Safety (Amendment) 2018

This Act is enacted to assist the Ministry responsible for labor in providing a clear and sufficient enforcement mechanisms for the implementation of OHS in the workplace.

v) Religious Bodies Registration Act 2018

This Act is made to make provision for the registration of religious bodies and the trustees of religious bodies and for matters connected therewith.

vi) Public Legal Services 2018

This *Act* was made to give the Public Legal Service (formally known as Office of the Peoples' Lawyer) their legal status following its separation from the Judiciary. It primarily aims is to *Copyright Act 2018*

The *Act* provides for the protection of copyright works, including the right to control the use and distribution of artistic and literary works and also to protect the moral and economic interests' authors relating to their works, by recognizing exclusive authors' right and providing for just and reasonable conditions of lawful use of authors' works and regulated them. The Act enacted in conformity with the requirement and obligations of the Government under Berne Convention to protect, in as effective and uniform manner as possible the rights of authors in their literary works.

vii) *Kiribati Tourism Act*

This Act aims to promote the natural, scenic, cultural, and historical and recreation attraction of Kiribati in way that will provide substantial net economic return to the people and to the extent feasible, equitable distribution of economic and social benefit in the country. It also helps to promote accommodation establishments and tourism enterprises in Kiribati and any other connected purposes.

viii) *Foreign Investment Act*

The Act intended to ensure the promotion of sustainable economic development and growth through the mobilization and attraction of foreign and domestic investment in a way to boost the economic development, reduce unemployment, accelerate growth and diversity the economic; to provide reservation of certain economic sectors and business activities to certain categories of investors, to provide for dispute resolution mechanisms involving investment; and to provide for incidental matters.

ix) *Public Highway Authority 2018*

This Act is enacted to establish the authority to oversee the operation of the public highway in Kiribati. The structure, its members, their functions and powers and the procedural matters on how it operates to achieve their objective are also stated in the Act.

x) *Penal Code Amendment Act 2018.*

The Act amended the *principle Act* to modernise the rape offences, incest offences and related provisions to comprehensively criminalise conduct using a clear and fair approach. The provision of this Act have been developed in accordance with the best practice in comparable Pacific Jurisdictions, and take into account evolving legal jurisprudence. It also complements the operation of *Te Rau N Te Mweenga Act 2014* which includes a broad definition of sexual assault that form part of the domestic violence offence.

xi) *High Court Judges (Salaries and Allowances) Act 2018.*

This Act is enacted to provide for the prescribed number of judges of the High Court in pursuance to the Constitution requirement, with their salaries and allowances to ensure to allow for the independence and impartial of the Judiciary.

4. PILON strategic priorities

a) Cybercrime

Cybercrime is one of the current issues in the modern context of evolving technology and will become a major concern in the coming years. In Kiribati, the *Communication Act 2013* and its subsequent *amendment of 2017* is the only legislation that provides for such an offence, however further improvement and gap analysis on this law and other relevant laws had been undergoing with the assistant from the Australian Attorney-General's Department. The overall outcome on the gap analysis had been sent to the OAG for consideration for further actions to take.

This year, there have been no cybercrime cases been reported to the police for investigation, hence no prosecution of such kind of cases. The Government has also set up a taskforce a few years back for the development of national implementation plan and enforcement. The taskforce was mainly occupied from officials of the Ministry of Communication, Kiribati Police Service and OAG, however this taskforce has been idle this year.

(b) Environmental Crime and Corruption

The Leaders Code of Conduct Act 2016 set up a Leadership Commission to expect, receive and decide on complaints against leaders. This is the main legislation that deals with corruption practices such as bribery, conflicts of interest, improper use of public property and assets and nepotism. There are 4 members of the Leadership Commission who had been appointed by the President earlier this year including their Secretary. The Commission is now operating under the *Leaders Code Act 2016*. Their primary function are to expect and receive complaint against leaders, to investigate alleged violations of the Code, to demand and require the evidence of witnesses (written/oral) to be given on oath or affirmation, to summon any person to give and provide evidence or produce relevant documents in his/her possession, to report on outcome of all investigations, public awareness on matters related to the Code, to provide a report on its investigation, findings and recommendation to the Office of the President, to provide copies of the report to the Commissioner of Police in events where findings involve criminal activities as well as to Attorney General's office for review and prosecutions, to accord the leader under investigation the right to be heard and to produce evidence, and to expect require annual Statement of Interest from a leader – a brief written statement of a leader's assets and liabilities in and outside Kiribati, and that of his or her immediate family members. This year the Commission had received more than 10 complaints from the public and those cases are still pending the process of investigation.

While the Commission was just operated this year, there are still challenges been identified and proposed to Office of the President for consideration. One of the major challenges is the lack of expertise personnel acquiring the capacity to lead the investigation on different areas and the lack of legal background people to advise and guide the leadership on their activities.

In addition to this, the government has set up a taskforce to develop a National Anti-Corruption Strategy Plan 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

Sexual and Gender-Based Violence has been addressed under *Te Rau N Te Mweenga Act 2014*. The implementation of this Act is one of the key activities of OAG's Criminal Division. The Criminal Division continues to be part of Sexual and Gender-Based Violence and Safenet taskforce, endeavors to curb sexual and gender-based violence. They have been taking part a lot in public awareness and trainings to police officers – (mainly investigators and police prosecutors), NGO's and communities. Many domestic violence offences have been reported and prosecuted under this new law. Though the police prosecutors normally prosecute these types of cases, OAG's Criminal Division have been involving a lot in mentoring police prosecutors from times to times.

The *Penal Code (Amendment) and Criminal Procedure Code (Amendment Act 2017)* which was came into force this year has been one of the priority activities for implementation of *Te Rau N Te Mweenga Act* for requiring consistency with other related laws. Under this new amendment, the offences of rape and defilement are no longer exist, and the definition of sexual intercourse has been significantly broadened to a wider extent. Penalties for several offences have been dramatically increased. Since the enactment of this law, there is one case that have been prosecuted for the offence of defilement, with many more are yet to be listed for hearing.

In addition to that, Kiribati Woman and Children Support Center was officially opened earlier this year to provide free confidentially counselling for women and children, legal information, case management, community awareness and other services. The underline goal of this Center is to better support women and children who are effected by violence by providing quality services while ensuring women and children feel safe and confident to come to seek support. The Center has been developed with support from the Kiribati Family Association and funded by the Australian Government's aid program's Pacific Women Shaping Pacific Development initiative, and funding for technical support by the UN Women and the Fiji Women's Crisis Centre. The establishment of this Center has shown a great commitment and strong collaboration across many government, non-government, civil society, developments and other partners in reducing gender-based violence and child abuse.

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

Capacity building through continuing legal education is one of the priority area of the OAG which continues to be encouraged and supported to its lawyers. Pilon Advanced Litigation Skills Programme is one of the opportunities to which OAG continues to encourage its staff to undertake. In November this year, there will be one lawyer from the OAG and one from the People's Lawyers Office who will attend this program in Wellington, New Zealand with funding

assistance from the NZ Crown Law Office, NZ Law Society and the NZ Ministry of Foreign Affairs and Trade.

Another opportunities which have been continued to encourage is the Professional Development in Legal Drafting. This year, one lawyer is currently undertaking the program and will complete by early October with funding for tuition fee by Commonwealth and funding for the compulsory workshop component of the program, by the Kiribati Government.

5. Significant initiatives/projects involving the member country and its law and justice sector

OAG through its Criminal Division is very grateful to receive the upcoming IAP/Commonwealth Secretariat Capacity Building Exchange Program. The program is to be conducted in Kiribati sometimes end of this year or early next year. It is supposed to be carried out earlier this year in July however, due to the delay in finalizing some required documents and logistic arrangement within timeframe, this had caused the changed schedule of the program. The program will be hosted in Kiribati. The OAG's Criminal Division will be organizing the program as well as a focal and logistic division. The facilitator is a Senior Prosecutor appointed from the CDPP Australia and he would be coming to deliver the training on relevant crime types in the area of cybercrime, money laundering, and proceeds of crime, fraud and corruption cases. He will spend three weeks in Kiribati and will have the opportunity to visit law enforcement entities especially Leadership Commission, Police Prosecution Unit, Investigation Division, FIU, OAG Criminal Division and Prosecutions, Police Stations and other related institutions.

6. Technical legal assistance

OAG has had the opportunity to avail themselves from various meetings, workshops and trainings which has been provided and invited for them to attend. This year, OAG has send its officers to the following meetings/workshops/conference/trainings:

- ✚ 1st Meeting of the Heads of Central Authorities in the Commonwealth and CNCP sponsored by the Commonwealth Secretariat, held at Marlborough House, London, United Kingdom. It was attended by 1 Senior Officer from OAG.
- ✚ International Safeguards Outreach Event for Asia Pacific Islands sponsored by United States Department of Energy/National Nuclear Security Administration, held at Jakarta Indonesia. It was attended by 1 lawyer from OAG.
- ✚ Asian Pacific Money-Laundering Group Annual Meeting and Forum Technical Assistance and Training, hosted by the local government of Nepal, Kathmandu. It was attended by 2 Senior Officers from OAG.
- ✚ Inangural Regional International Arbitration Conference, sponsored by ADB held at Nadi Fiji. 2 legal officers from the OAG attended the conference.
- ✚ Joint-IDLO-SCBD Capacity building Programme on Establishing Measures to Implement the Nagoya Protocol, sponsored by SPREP, at Nadi, Fiji and attended by 1 legal officers from the OAG.

- ✚ Workshop on Mutually Agreed Terms and Abs Contracts, sponsored by SPREP, at Nadi, Fiji and was attended by 1 legal officer from OAG.
- ✚ International Law and Its Application sponsored by Singapore Cooperation Programme (SCP), at Singapore and was attended by 1 lawyer from OAG.
- ✚ PDLT sponsored by Commonwealth and partially by local government – 1 lawyer is currently doing the program.
- ✚ PILON Advance Litigation Program (mention earlier) organized and sponsored by the NZ Crown Office, NZ Society and the NZ Ministry of Foreign Affairs and Trade and will be held in Wellington, New Zealand. 1 lawyer from OAG and one lawyer from OPL will attend.
- ✚ High Seas Limit and Allocation Workshop, sponsored by ComSec and attended by 1 legal officer from OAG and one fisheries officer from the Ministry of Fisheries and Marine Resources Development.
- ✚ Regional Prosecutors and Fisheries Observers Workshop funded by FFA, hosted in Honiara, Solomon Island, and was attended by 1 legal officer from OAG.
- ✚ Pacific Regional Deep Sea Mining Workshop, funded by FFA, hosted in Nadi and was attended by 1 legal officer from OAG.
- ✚ Arms Trade Treaty, 4th Conference of the States Parties, funded by the European Union while reception was hosted in Tokyo, Japan. 1 legal officer attended from OAG.
- ✚ Drafting Conference, sponsored by Commonwealth Secretariat and local government. 1 legal officer from OAG attended.
- ✚ Legislating for Climate Smart Disaster Management in the Pacific partly sponsored by Pacific Island Forum Secretariat and the local Government. 1 legal officer from OAG attended.

7. Contact information for key law and justice agencies

Agencies	Key Responsibilities	Contact person and position	Contact details/ phone and email
Ministry of Justice, P.O.Box 62, Bairiki, Tarawa, Kiribati	Administration of Justice	Birimwaaka Tekanene - Secretary	Tel: 75021 Email: biri@legal.gov.ki
Office of the Attorney-General, P.O.Box 62, Bairiki, Tarawa	Provision of principle State legal adviser, civil and Criminal Prosecutions.	Mrs Tetiro Maate Semilota – Attorney-General	Tel: 75021342 Email: attorney-general@legal.gov.ki
Director of Public Prosecutions,	Provision of handling and	Ms Pauline Beiatau, Director of Public Prosecutions; c/o	Email: pauline@legal.gov.ki

P.O.Box 62, Bairiki Tarawa, Kiribati	prosecuting criminal cases.	Office of the Attorney-General	
Office of the People's lawyer, P.O.Box 461, Betio, Tarawa, Kiribati	Provision of legal aid services to community members	Mr Raweita Beniata Acting Deputy People's lawyer	Tel: 26312 Email: raweita@opl.org.ki
Judiciary Kiribati, P.O.Box 501, Betio, Tarawa Kiribati	Provision of judiciary services	Sr Bernadette Mee Eberi, Chief Registrar	Te: 55126007 Email: cr@kiribatijudiciary.gov.ki
Maneaba ni Maungatabu, P.O.Box 52, Ambo, Tarawa, Kiribati	Kiribati House of Parliament (lawmaking body)	Mr George Mackenzie – Parliamentary Counsel	Tel: 74021880 Email: counsel@parliament.gov.ki
Kiribati Police Service, P.O.Box 497, Betio, Tarawa, Kiribati.	Law enforcement	Mr Iloeru Tokantetaake – Commissioner of Police	Tel: 26187 Email: compol@police.gov.ki