

# **Chapter 1**

## **Constitutional and Court Framework**



## 1 The Constitutional Framework of Kiribati

### 1.1 The Constitution of the Republic of Kiribati

The *Constitution of Kiribati* was provided as part of the *Kiribati Independence Order* made on 12 July 1979. It outlines the basic structure of government in Kiribati, details the requirements of citizenship, and guarantees the rights and freedoms for individuals in Kiribati.

### 1.2 The Branches of Government

The *Constitution* provides for three branches of government: the Executive, Legislative and Judicial.

#### The Executive

Executive authority in Kiribati is exercised through the Cabinet: *s45 Constitution*. Through the Cabinet, the Executive is responsible for carrying out all government business.

Cabinet is composed of the Beretitenti, Kauoman-ni-Beritenti, appointed Ministers and the Attorney-General.

#### Beretitenti

The Beretitenti is President of Kiribati and serves as both the Head of State and Head of Government: *s30(2) Constitution*.

The Beretitenti is elected from the 3 or 4 candidates nominated by the Maneaba. The Beretitenti may only serve a maximum of three terms: *s32(5) Constitution*.

#### Powers of Beretitenti

In exercising any function of the office, the Beretitenti, unless otherwise provided, must act using his or her own judgement and need not follow the advice of any other person or authority: *s46(1) Constitution*.

Where the Beretitenti is required to exercise any function with the advice of another person or authority, he or she may once refer the matter back to the person or authority for reconsideration before acting: *s46(2) Constitution*.

The Beretitenti may withhold assent to a Bill from the Maneaba, if he or she is of the opinion that the Bill, if assented to, would be inconsistent with the *Constitution*. In certain instances, a Bill may be referred to the High Court for a ruling on whether it is consistent with the *Constitution*: *s66(3)(5)*.

### Prerogative of Mercy

The Beretitenti, acting in accordance with the advice of Cabinet, may:

- grant a pardon, with or without lawful conditions, to any person concerned in or convicted of any offence in Kiribati;
- grant a respite, either indefinitely or for a specified period, from the execution of any punishment for an offence to any person;
- substitute a less severe form of punishment for any punishment imposed on a person for any offence;
- remit the whole or part of any punishment, penalty or forfeiture otherwise due to the Government on account of any offence: *s50 Constitution*.

### Kauoman-ni-Beretitenti

The Kauoman-ni-Beretitenti serves as Vice-President of Kiribati. He or she is appointed by the Beretitenti from among the Ministers.

If the Beretitenti is removed from office by failure on a vote of confidence, the Council of State performs the functions of Beretitenti until the next election of a Beretitenti, following a general election. In all other cases of vacancy of the office of Beretitenti, the Kauoman-ni-Beretitenti assumes the office of Beretitenti: *s35 Constitution*.

Similarly, in cases of illness, accident or absence, the Kauoman-ni-Beretitenti may discharge the functions of the office of Beretitenti. For the specific requirements, see *s36 Constitution*.

Like all other Ministers, the Kauoman-ni-Beretitenti is responsible for such business of the Government (including administration of any Department) as assigned to him or her by the Beretitenti: *s47(1) Constitution*.

### Cabinet

The Cabinet consists of the Beretitenti, the Kauoman-ni-Beretitenti, not more than 10 other Ministers and the Attorney-General: *s40 Constitution* as amended by *s2 Constitution (Amendment) Act 1995*.

The Ministers are appointed by the Beretitenti from among the members of the Maneaba ni Maungatabu: *s41(1) Constitution*.

The Beretitenti summons Cabinet and must, as far as practicable, attend and preside at all meetings of Cabinet: *s48(1)(2) Constitution*. The Beretitenti also decides what business to consider at any Cabinet meeting: *s48(5) Constitution*.

### Attorney-General

The Attorney-General is part of Cabinet and acts as the principal legal advisor to the Government: *s42(1) Constitution*.

The Attorney-General is appointed and removed from office by the Beretitenti: *s42(2) Constitution*.

The Attorney-General has the power and discretion to:

- institute and undertake criminal proceedings before any Court in Kiribati against any individual;
- intervene in, take over and continue criminal proceedings that have been instituted or undertaken by any other person or authority; and
- discontinue any criminal proceedings instituted or undertaken by him or herself or any other person or authority, at any stage before judgment is delivered: *s42(4) Constitution*.

When exercising the above powers, the Attorney-General must follow his or her own discretion and must not be subject to the direction or control of any other person or authority: *s42(8) Constitution*.

The Attorney-General must also exercise all other functions conferred on the office by law: *s42(5) Constitution*.

Intervening in, taking over, continuing or discontinuing any criminal proceedings must be done by the Attorney-General him or herself. All other powers may be exercised by subordinates acting in accordance with the instructions of the Attorney-General: *s42(6) Constitution*.

### **The Legislature**

The Legislature in Kiribati is known as the Maneaba ni Maungatabu, consisting of a single chamber: *s52 Constitution*.

The role of the Maneaba is to pass laws, “for the peace, order and good government” of Kiribati.

The Maneaba consists of:

- 35 elected members;
- the member for the Banaban community under *s117 Constitution*; and
- if not an elected member, the Attorney-General as an ex officio member: *s53(1) Constitution*.

The *Constitution* details a number of rules regarding tenure of office, vacation of seat, membership, and elections. See *Chapter V Constitution*.

## **The Judiciary**

The Judiciary:

- interprets and applies the Maneaba's laws;
- creates and interprets case law;
- settles disputes of fact and law between individuals and between individuals and the State.

The Judiciary is composed of the Magistrates' Courts, the High Court, the Court of Appeal and, in limited instances, the Judicial Committee of the Privy Council.

## **2 The Court System**

### **2.1 General Characteristics of the Court System**

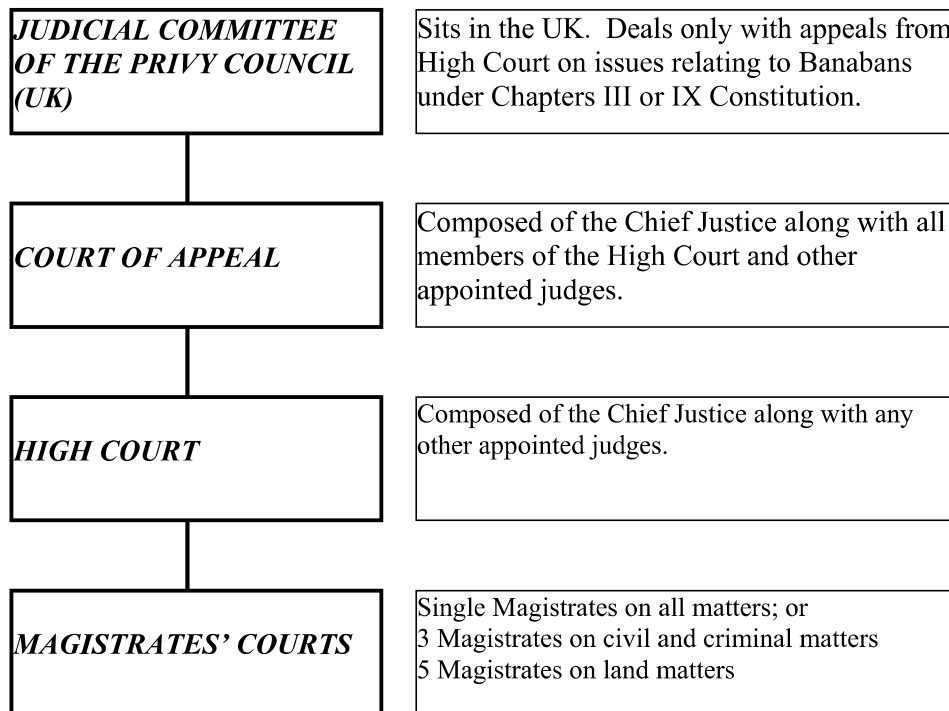
Kiribati has four types of Courts:

- the Judicial Committee of the Privy Council (only on issues involving Banaban rights under *Chapters III and IX Constitution*);
- the Court of Appeal;
- the High Court; and
- the Magistrates' Courts.

### **2.2 The Structure of the Kiribati Court System**

The diagram on the next page shows the structure of the Court system.

## Structure of the Court System



### 2.3 A Brief Description of the Courts

#### The Privy Council

The Privy Council has jurisdiction to hear appeals from the High Court on matters involving the constitutional rights of Banabans under *Chapter III* or *IX* of the *Constitution*.

#### The Court of Appeal

The Court of Appeal is a superior Court of record composed of:

- the Chief Justice;
- the other Judges of the High Court; and
- those who are appointed by the Beretitenti acting in accordance with the advice of the Chief Justice sitting with the Public Service Commission: *s90 Constitution*. Such people must be qualified under *s81(3) Constitution*.

The President of the Court of Appeal is appointed by the Beretitenti, acting with the advice of Cabinet after consultation with the Public Service Commission: *s91(3) Constitution*.

Although they are required to consult with others on such appointments, neither the Beretitenti nor the Cabinet need actually follow the advice given by those parties: *s139 Constitution*.

The President of the Court of Appeal may be the Chief Justice: *s91(7) Constitution*.

Any 3 Judges of the Court of Appeal may exercise all the powers of the Court. All judgments must be by majority: *s91(4)(5) Constitution*.

The Court of Appeal normally has one sitting each year, usually lasting a week so that the Court of Appeal can consider appeals from High Court decisions.

### Jurisdiction

The Court of Appeal hears all criminal and civil appeals from the High Court on questions of law. The Court of Appeal also hears all appeals from the High Court in land matters.

The Court of Appeal can also hear criminal appeals from the High Court not involving a question of law:

- with leave of the Court of Appeal; or
- on sentence, unless it is one fixed by law.

### **The High Court**

The High Court is a superior Court of record composed of the Chief Justice and a number of other Judges as may be prescribed: *s80 Constitution*.

The Chief Justice is appointed by the Beretitenti, acting with the advice of the Cabinet after consultation with the Public Service Commission. All other Judges of the High Court, if any, are appointed with the advice of the Chief Justice sitting with the Public Service Commission: *s81(1)(2) Constitution*.

Where not enough Judges are available for the High Court to sit, the Beretitenti, acting in accordance with the advice of the Chief Justice sitting with the Public Service Commission, may appoint a barrister or solicitor in Kiribati as a Commissioner of the High Court: *s84 Constitution*.

Subject to any limitations and conditions in the instrument of appointment, Commissioners of the High Court may perform:

- all or any of the functions of the High Court either generally or in respect of any particular case or class or cases; or
- such functions of a Judge of the High Court as it appears to the Commissioner are necessary to be performed without delay.



### Jurisdiction

The High Court has unlimited **original** jurisdiction in civil and criminal cases. This means that, as of right, it is capable of hearing all civil and criminal matters that the Magistrates' Court may hear.

The High Court also has **appellate** jurisdiction in civil, criminal and land cases coming from the Magistrates' Court: *s67(1) Magistrates' Courts Ordinance*.

The High Court also deals with cases stated and reviews from Magistrates' Courts: *s285(1) Criminal Procedure Code; s81(2) Magistrates' Courts Ordinance*.

### **Magistrates' Courts**

The Magistrates' Courts are established as Courts of summary jurisdiction, subordinate to the High Court: *s3(1) Magistrates' Courts Ordinance*.

Magistrates' Courts are Courts of record and returns of the records must be given as required by the *Ordinance* or by the Chief Justice: *ss3(4), 15 Magistrates' Courts Ordinance*.

The Minister by the Beretitenti appoints Magistrates on the recommendation of the Chief Justice, and declares who will be the presiding Magistrate and who will be the ordinary Magistrates: *s7(2) Magistrates' Courts Ordinance*.

In cases of vacancy due to the incapacity of a Magistrate, the Minister by the Beretitenti may, on the recommendation of the Chief Justice, appoint any person to be a temporary Magistrate to fill the vacancy: *s7(2) Magistrates' Courts Ordinance*.

### Jurisdiction

The Magistrates' Court deals with the majority of all civil and criminal matters, although the most serious crimes and civil suits take place in the High Court.

The Magistrates' Courts have original jurisdiction to deal with all land matters.

For detailed information on the jurisdiction of the Magistrates' Court, see Chapter 7 Jurisdiction.