

1 Introduction

The *Constitution* sets out numerous fundamental rights and freedoms that are guaranteed to all persons in Kiribati. This chapter focuses on the particular rights which have bearing on the criminal law.

It is the responsibility of all Judges and Magistrates to ensure that these rights are respected in the administration of justice.

Some of the rights particularly important to your role as a Magistrate are:

- the right to personal liberty;
- protection from inhuman treatment;
- protection from deprivation of property;
- protection for privacy of home and other property; and
- right to secure protection of law: *ss5, 7, 8, 9 and 10 Constitution*.

2 Right to Personal Liberty

No person in Kiribati may be deprived of his or her personal liberty, except:

- as a result of his or her unfitness to plead to a criminal charge;
- in execution of the sentence or order of a Court in Kiribati or some other country in respect of a conviction for a criminal offence;
- in execution of a Court order punishing him or her for contempt of Court;
- in execution of a Court order made to secure the fulfilment of that person's obligations under the law;
- for the purposes of bringing the person before a Court in execution of a Court order;
- upon reasonable suspicion of the person having committed or being about to commit a criminal offence under the law of Kiribati;
- in the case of a person under 18 years, with the consent of a parent or guardian or under Court order for the purpose of his or her education or welfare;
- for preventing the spread of infectious or contagious disease;
- for the purpose of treatment or protection of the community in the case of a person who is reasonably suspected of being of unsound mind, addicted to alcohol or drugs or is a vagrant;

Chapter 4

Judicial Conduct

1 Chief Justice's Guidelines for Judicial Conduct

In 2002 the Chief Justice circulated Guidelines for Judicial Conduct, as seen below. They should be followed at all times:

Published by the Chief Justice for the guidance of judicial officers and for the information of lawyers and the people of Kiribati.

A Code of Conduct for Judicial Officers in Kiribati,
being the Judges and Commissioner of the High Court,
the Chief Registrar,
Single Magistrates and Magistrates

1. The prime duty of a judicial officer is to present before the public an image of justice
2. A judicial officer must be a person of integrity and act accordingly.
3. A judicial officer administers justice to all without prejudice or favour.
4. A judicial officer executes official duties objectively, competently and with dignity, courtesy and self control.
5. A judicial officer acts at all times both in an official and private capacity in a manner which upholds and promotes the good name, dignity and esteem of the office of judicial officer and the administration of justice. In particular a judicial officer shall be punctual and be in court on time, mindful of the formal courtesies, careful to preserve the dignity of the Court, while maintaining equal respect towards all litigants as well as their lawyers.
6. A judicial officer obeys the laws of the land.
7. A judicial officer does not accept any gift, favour or benefit of whatsoever nature which may possibly influence him or her in the execution of official duties or create the possible impression that this is the case.
8. A judicial officer refrains from acting in an official capacity, especially sitting in court, in any matter wherein he or she has a direct or indirect interest.
9. A judicial officer does not discuss any confidential information which has come to his or her knowledge in an official capacity, except in so far as it is necessary in the execution of duty.
10. A judicial officer executes official duties diligently, thoroughly and speedily. A judicial officer should not long delay in delivering judgment.

11. A judicial officer maintains good order in court and requires dignified conduct from litigants, witnesses, court staff, lawyers and the public.
12. A judicial officer shall report unprofessional conduct on the part of lawyers or prosecutors to the Chief Justice.
13. A judicial officer shall refrain from public support for any political party or grouping.
14. A judicial officer shall not act to the detriment of the discipline or the efficiency of the administration of justice.
15. In judicial work, and in his relations with others a judicial officer should act always for the maintenance of harmony. Disagreement with the opinion of any other judicial officer whether of equal or inferior status, should be expressed in terms of courtesy and restraint.

July 2002, Chief Justice

2 Ethical Principles

Upon appointment as a Magistrate you have sworn the following oath:

“I,....., do swear by Almighty God that I will well and truly serve the Independent and Sovereign Republic of Kiribati as a judicial officer, and will do right to all manner of people after the laws and usages of Kiribati, without fear or favour, affection or ill will. So help me God.”: *s5 Oaths Ordinance*.

The Oath can be divided into parts to illustrate a number of well-established ethical principles of judicial conduct.

2.1 “Well and Truly Serve”

Diligence

You should be diligent in the performance of your judicial duties. This means you should:

- devote yourself to your judicial duties, including presiding in Court, making decisions and carrying out other tasks essential to the Court’s operation;
- bring to each a case a high level of competence and preparation; and
- take steps to enhance your knowledge and skills necessary for your role.

Serving diligently also requires you to deliver decisions to the best of your ability, but also with regard to avoiding any unnecessary delay. To ensure this, you should:

- be familiar with common offences, the extent of your jurisdiction and Court procedures; and
- prepare as much as possible before sitting in Court.

2.2 “Do Right”

Integrity

You should conduct yourself with the utmost integrity to sustain and enhance public confidence in the judiciary.

This means you should:

- make every effort to ensure that your personal and public conduct is above reproach;
- not engage in conduct incompatible with the discharge of your role; and
- encourage and support your judicial colleagues to observe the same high standards.

2.3 “All Manner of People”

Equality

You should conduct yourself and proceedings before you so as to ensure equality according to the law.

This means you should:

- carry out your duties with appropriate consideration for all persons (for example, parties, witnesses, Court personnel and judicial colleagues) without discrimination;
- strive to be aware of and understand differences arising from, for example, gender, race, religious conviction, culture, ethnic background;
- avoid membership in any organisation that you know currently practices any form of discrimination that contravenes the law;
- in the course of proceedings before you, disassociate yourself from and disapprove of clearly irrelevant comments or conduct by Court staff, counsel, or any other person subject to your direction. Improper conduct can include sexist, racist, or discriminatory language or actions which are prohibited by law.

2.4 “After the Laws and Usages of Kiribati”

Lawfulness

You must always act within the authority of the law. This means you should:

- not take into account irrelevant considerations when making decisions. Your decisions should only be influenced by legally relevant considerations;
- not abdicate your discretionary powers to another. **You** must make the decision;
- defend the constitutionally guaranteed rights of the people of Kiribati.

2.5 “Without Fear or Favour, Affection or Ill Will”

Judicial Independence

An independent Judiciary is indispensable to justice under the law. You should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

You must:

- exercise your judicial functions independently and free from irrelevant influence;
- reject any attempts to influence your decisions outside of the Court;
- uphold arrangements and safeguards to ensure judicial independence;
- promote high standards of judicial conduct.

Impartiality

Justice requires you not only to be impartial, but also to **appear** to be impartial in your decision making.

Impartiality requires you to refrain from hearing cases in which you have a personal involvement, either through the parties involved or through the subject of the case.

To ensure impartiality, you should:

- not allow your decisions to be affected by:
bias or prejudice; or
personal or business relationships or interests;
- as much as reasonably possible, conduct your personal and business affairs so as to minimise the occasions where it will be necessary to disqualify yourself from hearing cases.

Impartiality touches on several different aspects of your conduct.

1. Judicial Demeanour

At all times you should maintain firm control of Court processes and ensure all people in the Court are treated with courtesy and respect.

2. Civic and Charitable Activity

You are free to participate in civic, charitable and religious activities, subject to the following considerations:

- Avoid any activity or association that could interfere with the performance of your judicial duties or could reflect on your impartiality.
- Do not use your judicial office to advance the causes of others.
- Avoid involvement in causes or groups likely to be involved in litigation.
- Do not give legal advice.

3. Political Activity

You should refrain from conduct which, in the mind of a reasonable, fair-minded and informed person, would undermine confidence in your impartiality with respect to matters that could come before the Courts.

Specifically, you should refrain from:

- membership in political parties and political fundraising;
- attendance at political gatherings;
- contributing to political parties or campaigns;
- taking part publicly in controversial political discussions except in respect of matters directly affecting the operation of the Courts, the independence of the judiciary or fundamental aspects of the administration of justice.

4. Conflict of Interest

In any case in which you believe you will be unable to act impartially, you must disqualify yourself.

It is impossible to list with certainty each situation where you should disqualify yourself but, as a general rule, you should never hear a case where close family members or friends are parties, witnesses or have an interest in the outcome.

For more distant family or friends, you should ask yourself whether your relationship with the person is one that could lead to bias, or that a reasonable, fair-minded and informed person would have a suspicion of bias. If so, you should disqualify yourself.

For example, you should not sit in a case involving a very distant relative if you have a very close relationship with that person.

You must also not preside over any case where you may have or appear to have preconceived or pronounced views relating to:

- issues;
- witnesses; or
- parties.

For example, if you witness an accident, do not preside over any case arising out of that accident as you may prefer your own memory over that of the evidence lawfully presented in Court.

Disqualifying yourself is **not** appropriate if:

- the matter giving rise to the perception of a possibility of conflict is trifling or would not support a plausible argument in favour of disqualification;
- no other Magistrates are available to deal with the case; or
- because of urgent circumstances, failure to act could lead to a miscarriage of justice.

If you must disqualify yourself, procedures are in place for your replacement so that the case can be heard in accordance with the law and without the possibility of real or perceived bias. See *s11 Magistrates' Courts Ordinance*.

Alternatively, if it appears impossible to hear a case in the jurisdiction because too many Magistrates must disqualify themselves, report the matter to the Chief Justice.

3 Conduct in Court

3.1 Preparing for a Case

Ensure you have studied and understood the files you will be dealing with.

Have the relevant legislation at hand.

Criminal Jurisdiction

- Consider the offences – make sure you know what elements must be proved.
- Be prepared for interlocutory applications that may arise in the course of proceedings.
- Be prepared to deliver rulings at short notice.

Civil Jurisdiction

- Study the file, affidavits, etc.
- Identify the issues in dispute and the relief sought.

3.2 Principle that Affected Parties have the Right to be Heard

It is a well established principle of natural justice, evolved from the common law, that parties and the people affected by a decision should have a full and fair opportunity to be heard before the decision is made.

This principle focuses on the *procedural* steps implemented by the Court. The purpose of the principle is to ensure that you consider all relevant information before making a decision.

To give effect to this principle, you have to consider what has to be done to allow a person to be heard. This extends to:

- allowing the person sufficient notice to prepare his or her case;
- allowing sufficient time to enable the person to collect evidence to support his or her case;
- allowing sufficient time to enable the person to collect evidence to be able to rebut or contradict the other party's submissions.

Note that a person may be heard, but the view they have expressed need not prevail. You are entitled to reject it for what might be a good reason. The relevance and weight of their submissions are to be determined by you.

There are three aspects to the principle of being heard:

Prior Notice

- You should be satisfied that adequate notice has been given, as prescribed by law.
- If the accused or respondent does not take any steps or appear at the hearing, you will need some evidence that the documents have been served before proceeding with the hearing.
- You will need proof of service of the warrant or summons.
- Notice must be sufficient to allow the person to prepare their case. Where you are not satisfied that a party has been given sufficient notice for this, adjourn the matter to allow them more time.

Fair Hearing

- The way the hearing is managed and the way witnesses are examined is extremely important for ensuring that the parties have the opportunity to be heard.
- The general rule is that you should hear all sides of a matter. This includes allowing a party the opportunity to hear, contradict and correct unfavourable material, and allowing further time to deal with any new and relevant issues that arise.
- The principle always requires you to ensure you have all the relevant facts and materials before deciding a case.

Relevant Material Disclosed to Parties

Generally, all relevant material should be disclosed to the parties. Those likely to be affected by a decision must have the opportunity to deal with any unfavourable material that you propose to take into account.

Before a hearing is concluded, you should ask yourself, “*has each party had a fair opportunity to state his or her case?*”

3.3 Courtroom Conduct

You should exhibit a high standard of conduct in Court so as to reinforce public confidence in the judiciary:

- Be punctual, sit at the time appointed, do not be late.
- Be courteous and patient.
- Be dignified.
- Be humble:
If a mistake is made you should apologise - there is no place on the Bench for arrogance.
- Continually remind yourself that a party is not simply a name on a piece of paper:
The parties are looking to the Court to see justice is administered objectively, fairly, diligently, impartially, and with unquestionable integrity.
- Never make fun of a party or witness.
A matter which may seem minor to you, may be very important to a party or witness.
- Show appropriate concern for distressed parties and witnesses.

- Never state an opinion from the Bench that criticises features of the law:
Your duty is to uphold and administer the law, not to criticise it.
If you believe that amendments should be made, discuss the matter with the Chief Justice.
- Never say anything or display conduct that would indicate you have already made your decision before all parties have been heard.
- Do not discuss the case or any aspect of it outside of the judiciary.

3.4 Maintaining the Dignity of the Court

Ensure that all people appearing before the Court treat it with respect by:

- keeping order in Court;
- being polite and respectful and expecting the same from all people in Court.

Deal effectively with unruly accused persons, parties, witnesses and spectators by:

- being decisive and firm;
- dealing promptly with interruptions or rudeness;
- clearing the Court or adjourning if necessary.

3.5 Communication in Court

Speaking

- Use simple language without jargon.
- Make sure you know what you want to say before you say it.
- Avoid a patronising and/or unduly harsh tone.
- Generally, do not interrupt counsel or witnesses.
- Always express yourself simply, clearly and audibly. It is important that:
the party examined and every other party understands what is happening in the Court and why it is happening;
the Court Clerk is able to hear what is being said for accurate records; and
the public in the Court are able to hear what is being said.

Actively Listening

- Be attentive and be seen to be attentive in Court.
- Take accurate notes.
- Maintain eye contact with the speaker.

Questioning

You may ask a witness questions to clear up ambiguities in the evidence, but do not conduct the case for the parties. Each party should have the opportunity to re-examine the witness after your questions, and if necessary, the parties should be given an adjournment to prepare for the re-examination: *s133 Criminal Procedure Code*.

Criminal Cases

You have a wide-ranging power to ask questions but should you use it sparingly as the criminal justice system is based on an adversarial procedure, which requires the prosecution to prove the case. Your role is not to conduct the case for the parties, but to listen and determine.

You should generally not ask questions while the prosecution or defence are presenting their case, examining, cross-examining or re-examining witnesses.

You may ask questions at the conclusion of cross-examination or re-examination, but only to attempt to clarify any ambiguities appearing from the evidence. If you do this, you should offer both sides the chance to ask any further questions of the witness, limited to the topic you have raised.

Never ask questions to plug a gap in the evidence.

Civil

You may ask questions. If parties are unrepresented, you might do this to indicate what is needed to satisfy you and clarify what they are saying.

Be careful to be neutral when asking questions. Your questions must not show bias to either side.

Avoid interrupting during submissions. If possible, wait until the party has finished their submissions.

Dealing with Parties who do not Understand

You may frequently be confronted with unrepresented accused persons and parties who do not appear to understand what the proceedings are about.

It is your responsibility to ensure that the accused understands:

- the criminal charges faced (criminal) or matters in issue (civil); and
- the procedures of the Court.

When dealing with unrepresented accused persons, you should explain to them:

- the nature of the charge;
- the legal implications of the allegations, including the possibility of a prison term if he or she is convicted;
- that legal representation is available;
- that he or she has an obligation to put his or her case.

4 Actions Against Magistrates

As a Magistrate, you are protected from civil actions for any act you do or order in the discharge of your judicial duty, whether the act was within your jurisdiction or not, if you were acting on a good faith belief that you had the jurisdiction to do the act: *s14 Magistrates' Courts Act*.

5 Working with the Court Clerk

The Court Clerk is a vital member of the Court system and should be treated with respect and dignity. By working together with the clerk and honestly discussing issues that do arise, you will be a better Magistrate and you will help make justice in Kiribati stronger.

While the clerk is under your immediate direction while in Court, they also have a responsibility to obey the rules issued to them by the Chief Registrar and Chief Justice.

Sometimes a clerk will interrupt you to correct a problem in Court, or give you advice about law or procedure. This is not a sign of disrespect but is simply the clerk doing his or her job. Always carefully consider the clerk's advice even if you do not agree.

5.1 Duties of the Clerk

Some of the most important duties are:

- to keep accurate minutes of all proceedings in the Court and to record minutes of all evidence, judgment, convictions and orders of the Court;
- to fill all summonses, warrants, orders, convictions, recognisances, writs of execution, and other documents and to submit these for signing to you;
- to attend all sittings of the Magistrates' Court;
- to take all fees, fines, penalties, and other money paid or deposited in respect of proceedings and to keep records of these transactions;
- to translate legislation and other materials into I-Kiribati; and
- to perform other duties as assigned by the Chief Justice: *s12(2) Magistrates' Courts Act*.

These are only some of the many duties which a clerk is required to perform. For further reference, see the Appendix B: Clerks' Handbook.

There are also many things a clerk cannot do. Most importantly, the clerk must not decide or even suggest any decision in a case. Deciding guilt or innocence and the sentence on conviction are matters only you may decide. The clerk may only explain the law and offer advice.

6 Sitting in Panels

Sitting in panels of three Magistrates for criminal matters presents its own difficulties. At times you may not agree with the other Magistrates on a particular point or on the whole decision.

In order to maintain the dignity of the Court, you should always do your best to present a unified front. The following advice will assist:

- Although you may not be the Presiding Magistrate, you still have an equal role in the decision. It is not the Presiding Magistrate alone who is responsible for the decision.
- If you are the Presiding Magistrate, encourage the other Magistrates to be actively involved in the decision. They must be attentive and engaged in the case.
- If you are sitting as a Magistrate, pass your questions to the Presiding Magistrate to ask, or wait until your turn to ask questions.
- Do not argue in public. If necessary, adjourn the case so that all the Magistrates can discuss any disagreements in private.

- When drafting a judgment, do so in private. Failing unanimous agreement, the decision is of the majority: *s8 Magistrates' Courts Act*. Once the judgment is drafted, it is final and there should be no arguing when it is presented.
- Refer to procedure in Chapter 13 Sentencing to avoid disagreements on sentence.