



# KIRIBATI

## Introduction

**S**cattered over an ocean area of around three million square kilometres, Kiribati is comprised of 33 coral atolls and islands with a total land area of 811 square kilometres. The islands are divided into three groups – the Gilberts Group (17 islands), the Line Group (eight islands) and the Phoenix Group (eight islands). More than 80 percent of the national population is concentrated in the Gilberts Group. According to the 2005 census, Kiribati had a population of 92,533, and an annual growth rate of 1.8 percent per annum. Kiribati has a population of mainly young people with a median age of 20.7 years, which means that half of the population is younger than 21 years. More than one third (37 percent) are younger than 15 years, and only five percent are 60 years and older. South Tarawa, the national capital, is located in the Northern Gilberts Group and has a population of 40,311 in 2005, which is equivalent to just over 40 percent of the national population.

Kiribati gained its independence after some 87 years of British colonial rule, on 12 July 1979. The Constitution of Kiribati provides for a unicameral legislative assembly, *Maneaba ni Maungatabu*, which consisted of 45 members in 2008.<sup>1</sup> With the exception of two appointed members (the Attorney-General and the Representative of the Rabi Council of Leaders), all the remaining 43 members of the National Parliament were elected from each of the inhabited islands, which formed constituencies. Tarawa Atoll, the capital island, is made up of three constituencies – South Tarawa, Betio and North Tarawa.

The number of representatives from each constituency varies according to population size. Constituencies which have populations of between 1,500 and 5,000 return two representatives, and those with more than 5,000 are represented by three representatives. Those islands with populations of less than 1,500 return one representative. The Constitution also provides for the *Beretitenti* (President), who exercises executive authority and is popularly elected for a four-year term. The *Maneaba ni Maungatabu* nominates at least three, and no more than four, presidential candidates from among its members during its first meeting following the General Election. The *Beretitenti* has a dual role, concurrently as Head of Government and Head of State. The *Beretitenti* appoints not more than 10 Ministers from among members of the *Maneaba ni Maungatabu*.

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<sup>1</sup> Constitution of Kiribati.



## Section 1:

### Principle 1 – Respect for the Law and the System of Government

- i) Respect for and upholding of democratic processes and institutions, the rule of law and the independence of the judiciary and the legislature to:
  - a) Allow for the peaceful and lawful transfer of power; and

Kiribati has a strong democratic culture with free and fair elections held every four years. In its 29 years of independence, Kiribati has witnessed political power handed smoothly from one President and political party to another through fair and free elections. In the latest General and Presidential Elections in 2007, President Anote Tong and his *Boutokaan Te Koaua* (Pillar of Truth) Party was re-elected for a second four-year term.<sup>2</sup>

- b) Respect and promote the separation of powers by ensuring the financial autonomy of the judiciary and Parliament, and ensure that the judiciary and Parliament are free from unlawful interference by the executive.

The Constitution provides for the independence of the Judiciary (Chapter VI) and Parliament (Chapter V). Section 66(5)(6) provides for the High Court to also review proposed Bills for consistency with the Constitution. The annual budgets of the Judiciary and Parliament are appropriated and approved by the *Maneaba ni Maungatabu* in the same way as all agencies of Government. There had been no report or incidence of unlawful interference by the Executive in the affairs of either the Judiciary or *Maneaba ni Maungatabu* in 2008.

The doctrine of separation of powers was reaffirmed in *Tong v Chief Justice and Speaker of the Maneaba ni Maungatabu*, an application for a judicial review of the procedures adopted by the *Maneaba ni Maungatabu* for the election of the Speaker and subsequent selection of candidates for the presidential election.<sup>3</sup> The applicant, Harry Tong, a prominent Opposition Parliamentarian, claimed that the election of the Speaker had not been conducted by secret ballot as required by the *Maneaba ni Maungatabu's* Rules of Procedures. He also complained that the process of selecting presidential election candidates did not comply with the procedure prescribed by the *Election of Beretitenti Act*,<sup>4</sup> in that the method of voting was not by secret ballot, and that certain candidates were wrongly excluded from the third round of voting.

On the selection of presidential candidates, the High Court rejected the applicant's complaint and ruled that there had been substantial compliance with the relevant laws.<sup>5</sup> As regards the Speaker's election, the High Court dismissed the application and accepted the Attorney-General's objection to the hearing of the matter on the ground that compliance with parliamentary standing orders was a matter for Parliament alone, and the High Court lacked jurisdiction to hear and determine the application.

- ii) Upholding a just, fair and honest government through:
  - a) Respect for and enforcement of the decisions of the courts and independent tribunals;

There were no reported cases of court judgements being violated by the



<sup>2</sup>*Te Uekera* (South Tarawa), 2007.


<sup>3</sup>Attorney-General's Office, Kiribati, 'The Republic of Kiribati: Country Report' (Presented at the 26th meeting of the Pacific Islands Law Officers' Network, Rarotonga, Cook Islands, 5-10 December 2007)

<[http://www.pilonsec.org/www/pilon/rwpattach.nsf/VAP/\(756EDFD270AD704EF00C15CF396D61111\)-Kiribati+Country+Report+\(26th+PILON+Meeting\).PDF/\\$file/Kiribati+Country+Report+\(26th+PILON+Meeting\).PDF](http://www.pilonsec.org/www/pilon/rwpattach.nsf/VAP/(756EDFD270AD704EF00C15CF396D61111)-Kiribati+Country+Report+(26th+PILON+Meeting).PDF/$file/Kiribati+Country+Report+(26th+PILON+Meeting).PDF)> at 13 July 2008.

<sup>4</sup>*Election of Beretitenti Act (Cap 29A)* (Kiribati)

<sup>5</sup>Attorney-General's Office, see n 3.





Executive in 2008, despite the fact there were a number of civil cases in which the judgements went against Government. However, there were concerns that in some cases the Executive has not respected the decisions of the Court, especially when an order is made for payment of money by the Republic.

For example, in *The Republic v Hee Joong Yoon and Capt Sugun (2006)*, the High Court ordered that \$14,500 be paid directly to Hee Joong Yoon for his trouble and expense by reason of the charges, \$2,500 be paid directly to the counsel for Hee Joong Yoon on account of her costs, and \$500 be paid to the People's Lawyer on account of costs of counsel for Sugun Yun. The order was made pursuant to Section 154 of the *Criminal Procedure Code*,<sup>6</sup> as the Court ruled the case to be frivolous and vexatious.

Governments have always avoided complying with orders made under this Section. The Attorney-General has never asked the *Maneaba ni Maungatabu* to appropriate money from which payments could be made. Hence, whenever an order is made, the Attorney-General simply says there is no money to make payment.

In May 2008, and in response to a motion from the Opposition urging the *Beretitenti* to dismiss the Minister of Communications, Transport and Tourism Development for allegedly unlawfully influencing the purchase of *MV Mataraoi* from a local businessman by the Kiribati Shipping Services Limited, a Government-owned company, the *Beretitenti* set up a Commission of Inquiry to look into the matter. The Commission of Inquiry is an independent tribunal set up by the *Beretitenti* pursuant to his powers under the *Commissions of Inquiry Ordinance (Cap 10)*.<sup>7</sup> After the publication of the executive summary of the findings and recommendations of the Commission, it became clear that a number of the findings were critical of the way the *Beretitenti* and Cabinet handled the alleged unlawful conduct of the then Minister.<sup>8</sup> Two of the relevant findings which relate to the Executive were:

- The Commission established that the *Beretitenti* and Cabinet were aware of the Hon. Minister of Communication, Transport and Tourism Development's unlawful actions in pushing the purchase of *MV Mataraoi* and did not intervene until very late. Further, that Cabinet has failed to work collectively in providing prompt advice to the Hon. Minister
- The Commission agreed that the *Beretitenti* failed in guiding and controlling the Hon. Minister, and in taking decisive executive action to prevent the Board from finalizing the purchase of *MV Mataraoi* and the issue of the second payment by Kiribati Shipping Service Limited.<sup>9</sup>

The matter was brought up in the May 2009 sitting of the *Maneaba ni Maungatabu* in a motion asking the House to show its concern at the apparent inaction by the *Beretitenti* and Cabinet to intervene in the purchase until very late. When this occurred, Minister after Minister vehemently denied knowledge of the Minister's action and went further to discredit the Commission by suggesting that the Commission went beyond its terms of reference – 'to sacrifice Ministers on the cross'. Other Ministers claimed that its findings were pre-determined, and that there was a breach of the principles of natural justice by the failure of the Commission to call each and every Minister before claiming that Cabinet was aware of what the Minister for Communications was doing. It should be noted that the *Beretitenti* was called to testify before the Commission.

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<sup>6</sup>*Criminal Procedure Code* (Kiribati).

<sup>7</sup>*Commissions of Inquiry Ordinance (Cap 10)* (Kiribati).

<sup>8</sup>Commission of Inquiry into the Purchase of *MV Mataraoi*, Government of Kiribati, *Summary Findings and Recommendations* (2008).

<sup>9</sup>*Ibid.*



**b) Enforcement of lawful instructions and lawfully created policies;**

This section of the principles will be dealt together with the subject of compliance.

**c) Compliance with the letter and spirit of the laws, which are made for the benefit of the public;**

Part II of the Constitution of Kiribati empowers the *Maneaba ni Maungatabu* to make laws for the peace, order and good government of Kiribati. The laws come into operation on the publication of assent by the *Beretitenti*. Weak and slow enforcement and compliance with laws and lawfully created regulations and policies continues to be a problem. In 2008, the *Procurement Act 2002*,<sup>10</sup> or Government's failure to enforce it, became a subject of public interest when it was revealed in the May sitting of the *Maneaba ni Maungatabu* that not all government procurements went through the procedures and requirements of the Act. A motion urging Government to comply with the requirements of the *Procurement Act 2002*, and other laws was moved by a member of one of the Opposition parties, and was passed. In his response to the motion, the Minister of Finance supported the motion and undertook to ensure better compliance with the requirement of the Act and its procedures by his officers, Managers and Boards of Directors of statutory boards and Government-owned companies.

Most of the newspapers during the month of April 2008 carried the stories of the removal of the Board of Directors of the Government-owned Kiribati Shipping Services Limited by the Minister for Communications, Transport and Tourism Development. Apparently, the Directors objected to the purchase of *MV Mataraoi*, a ship owned by a local businessman and former MP for Nonouti.<sup>11</sup> *MV Mataraoi* has been inactive, floating idly for months at the Betio Port. A new Board of Directors was hastily appointed by the Minister to approve the purchase and the down-payment of \$70,000. The agreed price for the ship was \$500,000. A Commission of Inquiry set up by the *Beretitenti* on this matter found that the Management of the Kiribati Shipping Services Limited failed to comply with the provisions of the *Procurement Act 2002*. Moreover, the methods of payment were improper and wrong. Furthermore, it was found that the manner in which the Minister obtained signatures was forceful, abusive and corrupt, and that he should be held responsible.

The April/May 2008 sitting of the *Maneaba ni Maungatabu* debated the Report of the Public Accounts Committee on the Auditor-General's Report on the annual accounts of the Government of Kiribati for the year ended 31 December 2004. While this is a positive development in that the Auditor-General's Report had never been debated in the *Maneaba* before, it should be noted that the accounts were submitted almost two years late, despite the requirement of Section 39 of the *Public Finance (Control and Audit) Ordinance 1976 (Cap 79)*,<sup>12</sup> which provides for the full statements of accounts to be submitted within six months of the concluding year. The PAC Report highlighted some of the issues raised by the Auditor-General including:

- Failure to respond to audit queries. Section 48 of the *Public Finance (Control and Audit) (Amendment) Act 1993* continues to be violated by Government Accounting Officers, and 54 audit queries for the years 2003 and 2004 remain unanswered; and

<sup>10</sup>*Procurement Act 2002* (Kiribati).

<sup>11</sup>*The Kiribati Newstar* (South Tarawa), April 2008; *Te Mawi* (South Tarawa), April 2008; *Te Tarakai* (South Tarawa), April 2008; *Te Uekera* (South Tarawa), April 2008.

<sup>12</sup>*Public Finance (Control and Audit) Act* (Kiribati).



- Missing payment vouchers. As at 31 December 2004, the value of missing payment vouchers is \$5,575,901.83. What this means is that the Auditor-General is unable to verify that the amount of approximately \$5.6 million is a proper charge to Public Funds.
- d) **Disclosure of fraud, corruption and mal-administration, of which the leader has become aware;**

There is no specific legal provision that requires Leaders to disclose fraud, corruption and mal-administration which they become aware of, except for the general provision under the protection of freedom of expression by individuals in the Constitution.<sup>13</sup> But Part X of the *Penal Code (Cap 67)* lists the following under the heading, Corruption and Abuse of Office: official corruption (s.85), extortion by public officers (s.86), public officers receiving property to show favour (s.87), officers charged with the administration of property of a special character or with special duties (s.88), false claims by officials (s.89), abuse of office (s.90), false certificates by public officers (s.91), unauthorized administration of oaths (s.92), false assumption of authority (s.93), personating public officers (s.94), and threat of injury to persons employed in the public service (s.95).<sup>14</sup> Other misconducts by public officials such as embezzlement by clerks and servants (s.266), stealing and embezzlement by co-partners (s.252) and conversion (s.271) are also regarded as corrupt acts.

In early February 2009, the *Te Tarakai* newspaper broke the story of a major fraud in the Government-owned Kiribati Oil Company (KOIL) in which \$1.4 million was misappropriated by staff members over a period of four years from 2005.<sup>15</sup> The fraud involved the forging of cheques payable to the company with the alteration of the payee from 'KOIL' to 'Cash'. The incident led to the removal of most of the finance staff. The CEO was sent on indefinite leave, pending the results of the investigation.

The *Electoral Ordinance 1978*,<sup>16</sup> also deals with corruption, and Part III of the Ordinance proscribes bribery and undue influence in connection with the electoral process. There were no election petitions following the 2007 Elections.

- e) **Refraining from exertion of pressure, and abuse of persons carrying out their lawful duties;**

Apart from the reported case of the Minister's inappropriate exertion of pressure and influence on persons carrying out their lawful duties in the purchase of *MV Mataraoi* from a local businessman,<sup>17</sup> there were no reported major cases of inappropriate exertion of pressure and abuse of persons carrying out their lawful duties.

Forcing or threatening members of the *Maneaba ni Maungatabu* to do or not to do anything, and generally any act which interferes with members of the *Maneaba*, its officers and the proper functioning of the *Maneaba ni Maungatabu*, are offences under Section 8 of the *Privileges, Immunities and Powers of the Maneaba ni Maungatabu Act 1986*,<sup>18</sup> punishable with a fine of \$400 and imprisonment not exceeding six months.

<sup>13</sup> *Constitution of Kiribati* Ch II, s 12.

<sup>14</sup> *Penal Code (Cap 67)* (Kiribati).

<sup>15</sup> *Te Tarakai* (South Tarawa), February 2009.

<sup>16</sup> *Electoral Ordinance 1978* (Kiribati).

<sup>17</sup> See above n 8 and accompanying text.

<sup>18</sup> *Privileges, Immunities and Powers of the Maneaba ni Maungatabu Act 1986* (Kiribati).



- f) **Refraining from using any legal immunity or privilege as a cloak or shield for behaviour of a lower ethical standard than that reasonably expected of the leader by citizens;**

Section 76 of the Constitution provides for privileges of the *Maneaba*, which are further defined in the *Privileges, Immunities and Powers of the Maneaba Ni Maungatabu Act 1986*.<sup>19</sup> This Act provides for parliamentary privileges and immunity of the Members of Parliament. Note that immunities also exist for members of the Commission of the High Court.<sup>20</sup>

There were no cases of abuse of legal immunity reported in 2008.

- g) **Establishing and empowering bodies, such as Ombudsman Commission, to independently investigate public complaints against government actions;**

Kiribati does not have an Ombudsman, Ombudsman Commission or office of equivalent function in connection with the investigation of complaints against government actions or services.

The *Police Services Act 2008*<sup>21</sup> was passed by the *Maneaba ni Maungatabu* and assented by the *Beretitenti* on 23 December 2008. The new legislation replaced the *Police Ordinance (Cap. 73)*,<sup>22</sup> and provides for the organisation and discipline of the Kiribati Police and of special constables and for matters incidental thereto. The Police Services Act 2008 creates the Police Professional Standards Unit, which has the responsibility for monitoring police officers' conduct, and ensuring that they are in accordance with the Kiribati Police Code of Professional Standards. The Code reflects the expectations that the police service and the public have of how police officers should behave and conduct themselves. It also provides for the mechanism through which complaints against police officers' conducts and actions are investigated and dealt with.

- h) **Ensuring that the Auditor-General reports directly and in a timely manner to Parliament/Congress;**

Section 114(2) of the Constitution provides for the Auditor-General to audit the public accounts of Kiribati and of all departments, courts and authorities of the Government. It also provides for the Auditor-General to submit annually audit reports directly to the *Maneaba ni Maungatabu* through the Speaker of the *Meneaba* on the accounts of the Government and any corporation, statutory board, body or commission. The Public Accounts Committee established under Section 115 of the Constitution, which exercises oversight over Government accounts for the *Maneaba ni Maungatabu*, is required to consider such accounts in conjunction with the report of the Auditor-General and report and make recommendations on them to the *Maneaba*.

The backlog of accounts from Government, statutory bodies and companies, which were often presented for auditing several years after the end of the financial year, did not allow for the Auditor-General to report on Government accounts in a timely manner. As such, his report was often several years late, and would often pass without the scrutiny of the *Maneaba ni Maungatabu*. For example, in April/May 2008, the Auditor-General's Report on Government accounts for the financial

<sup>19</sup>Ibid.

<sup>20</sup>*Constitution of Kiribati* ch VI, s 84(2).

<sup>21</sup>*Police Services Act 2008* (Kiribati).

<sup>22</sup>*Police Ordinance (Cap 73)* (Kiribati).





year ending on 31 December 2004, was tabled in the *Maneaba ni Maungatabu*, and for the first time, the report was vigorously debated. The close scrutiny brought about by the debate led to a firm commitment by Government to ensure that accounts are presented to the Director of Audit within six months after the close of the financial year as required by law.

In a report to the *Maneaba ni Maungatabu* in May 2009, it was reported that Government accounts were submitted only four days after their due date, a considerable improvement compared to other years where the accounts were outstanding for years. Nonetheless, accounts of most statutory bodies and Government-owned companies are many years overdue for auditing, despite the reminders from the Public Accounts Committee. The *Maneaba ni Maungatabu* is deeply concerned about non-compliance to the requirement of the law. In fact, the Speaker in December 2008 publicly named over ten government-owned companies and statutory corporations with outstanding annual accounts that have not been submitted to the Auditor-General.<sup>23</sup> Some of these companies' accounts have been overdue for audit since 2004.

### iii) Protection of fundamental human rights:

The Constitution of the Republic of Kiribati provides for the protection of fundamental human rights and freedoms of the individual (Chapter II) and for the protection of the rights of citizens (Chapter III). Fundamental human rights include protection of right to life, of right to personal liberty, from slavery and forced labour, from inhumane treatment, from deprivation of property, from privacy of home and other property, to secure protection of law, of freedom of conscience, of freedom of assembly and association, of freedom of movement, from discrimination on the grounds of race etc, from periods of public emergency and through the enforcement of protective provisions. The Constitution entrenches these rights by providing under Section 69(3) that any Bill to alter fundamental human rights and freedom of the individual would require the support, in a referendum, of two-thirds of the voters.

It should be noted however, that the Constitution gives no guidance as to whether the rights it confers are to be applied against individuals as well as the State. Section 3 provides that the rights of individuals are subject to limitations stated in the relevant sections and that those limitations are not only to protect the public interests, but also to ensure that the enjoyment of rights and freedoms by any individual does not prejudice the rights and freedoms of others.<sup>24</sup>

The Constitution also provides for the special rights of the Banaban people, and these rights are protected through veto powers granted to both the elected member for Banaba and the nominated member of the Rabi Council of Leaders.<sup>25</sup>

A number of other Acts of Parliament also support fundamental human rights in Kiribati. Among others, there are laws protecting the rights of workers and consumers. *The Industrial Relations Code (Cap 45)*,<sup>26</sup> the *Trades Union Ordinance 1977*,<sup>27</sup> and the *Workmen's Compensation Ordinance (Cap 102)*,<sup>28</sup> and subsequent amendments, which consistently sought to improve the protection of the rights of workers and in a number of cases, aligned these worker-related national legislations to international conventions. The *Consumer Protection Act 2001*<sup>29</sup>

<sup>23</sup>*Maneaba ni Maungatabu*, Government of Kiribati, (Minutes of Proceedings for 9 December 2008) p 8.

<sup>24</sup>Jennifer Corrin, 'From Horizontal to Vertical to Lateral: Extending the Effects of Human Rights in Post Colonial Legal Systems of the South Pacific' (2009) 58 *International and Comparative Law Quarterly* 1, 1-41.

<sup>25</sup>*Constitution of Kiribati* ch IX, s 124(3)(b).

<sup>26</sup>*The Industrial Relations Code (Cap 45)* (Kiribati).

<sup>27</sup>*Trades Union Ordinance 1977* (Kiribati).

<sup>28</sup>*Workmen's Compensation Ordinance (Cap 102)* (Kiribati).

<sup>29</sup>*Consumer Protection Act 2001* (Kiribati).



provides for the rights of consumers to be protected from hazardous and sub-standard products, dubious business practices and exploitive situations.

There had been no reports of major violations of fundamental human rights and freedom of individuals in 2008.

The Constitution prohibits practices such as torture and other cruel, inhumane or degrading treatment or punishment, although there had been instances of extrajudicial traditional communal justice in the rural areas, in which village elders decide cases and mete out punishments. Although these incidences of communal justice are becoming rare, they still persist and the latest reported case was in 2008 on the island of Beru, where a woman's possessions were destroyed by fire on the order of traditional village leaders. Perpetrators in these cases were often prosecuted.

Kiribati signed two important Human Rights-related International Conventions in 2004. They are the *Convention on the Elimination of all forms of Discrimination against Women (CEDAW)*,<sup>30</sup> and *Convention on the Rights of the Child (CRC)*,<sup>31</sup> Full compliance with CEDAW is constrained by people's attitudes to women. Incidences of sexual harassment and spousal abuse are not uncommon, and the latter incident is generally unreported.

Kiribati's reservations on Articles 24, 26 and 28 of the *Convention on the Rights of the Child (CRC)*, remain in 2008. Prostitution involving underage girls continued to be a problem. Since there is no provision in law which makes prostitution illegal and the legal age of consent being set at 15 years, police efforts to address the problem are hindered. The Kiribati Police Service has established a special unit within its headquarters to deal with domestic violence, child abuse and neglected and/or abused old people. The Family Assistance for Sexual Offences Unit is supervised by a female police officer who is on call 24 hours a day.

## Section 2:

### Principle 2 – Respect for Cultural Values, Customs and Traditions

- i) Respect for cultural values, customs, traditions and indigenous rights and observation of traditional protocols in the exercise of power.

The preamble to the Kiribati Constitution declared that the people of Kiribati 'shall continue to cherish and uphold the customs and traditions of Kiribati.' Indeed, the Government respects cultural values, customs and traditions, in which egalitarianism is predominant, and these continue to influence government policies and actions. Some laws relating to cultural values, customs and traditions include the *Native Lands Ordinance (Cap 61)*.<sup>32</sup>

Many of the 'home-grown' provisions of the Constitution, including the mixed Westminster/Presidential system of government and the recall provision, and the *Electoral Ordinance*,<sup>33</sup> were based on cultural values, customs and traditions. More recent government policies, such as monthly payments to the aged (70+ years), are often justified on the basis of the age-old tradition of caring for one's elders. The contribution of elders to nation-building is recognized and honoured each year in

<sup>30</sup>*Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

<sup>31</sup>*Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 530 (entered into force 2 September 1990).

<sup>32</sup>*Native Lands Ordinance (Cap 61)* (Kiribati).

<sup>33</sup>*Electoral Ordinance 1978* (Kiribati).





two public holidays, one for the *unimwane* (elderly men and traditional leaders) and one for the *unaine* (elderly women).

A wider consultation involving traditional and Church leaders, originally envisaged to focus solely on the leadership code, has developed to address a wider context of '(i) a broader context of nation building to encourage the fostering of an environment of shared collective responsibility nationally; (ii) forging a stronger partnership and collaboration with all national institutions and civil society, including churches, the private sector, women and youth groups and traditional leaders.'<sup>34</sup>

The quota system used to select applicants for training at the Marine Training Centre and the Fisheries Training Centre is premised on the egalitarian ethos. These training centres also prepare trainees for overseas employment opportunities.

Cultural values also influence Kiribati's position on international conventions such as the Convention on the Rights of the Child (CRC).<sup>35</sup> On CRC, Kiribati's position is that whilst it supports the main thrust of the Convention, it feared that it focused entirely on the obligations of parents to children without due concern for the protection of parents from their children. As the *Beretitenti* pointed out in 2000, 'In my culture, as in many others, children are taught from an early age to respect their parents and to care for them in old age. In some cases, the CRC advocates the rights of children to the point where it can be seen as encouraging them to lose respect for their parents...There was a great opposition to our reservations from certain countries without properly understanding our cultural values vital for harmonious existence of our people.'<sup>36</sup> In 2008, and despite a change of Government, Kiribati still has not withdrawn its reservations on Articles 24, 26 and 28 of the Convention on the Rights of the Child.

## Section 3:

### Principle 3 – Respect for Freedom of Religion

#### i) Respect for religious belief and practice:

The Constitution provides for the individual's freedom of religion (s.11(1)), including to change one's religion and to undertake religious practice or belief in worship, teaching and observance. Religious groups are also empowered by the Constitution to establish places of education (s.11(2)) and to provide religious instructions (s.11(3)), amongst other rights, as set out in Section 11. A specific law, the *Religious Bodies (Amendment) Act 1985*<sup>37</sup> provides for registration of religious bodies and the trustees of religious bodies. The law at all levels protects this right against abuse, either by government or private actors. The *2008 Report on International Religious Freedom* on Kiribati recognizes that there had been isolated reports of abuses or discrimination based on religious affiliation, belief or practice.<sup>38</sup>

Although the *Religious Bodies (Amendment) Act 1985*<sup>39</sup> requires that any religious organisation must claim two per cent of persons of the age of 18 years as members

<sup>34</sup>Makurita Baaro, 'Innovative Strategies for Resource Mobilization' (Paper presented at the Regional Forum on Reinventing Government in the South Pacific, Nadi, Fiji, 20-22 February).

<sup>35</sup>CRC, above n 31.

<sup>36</sup>Teburoro Tito, President of Kiribati, 'Kiribati' (Statement delivered at the United Nations Special Session on Children, 10 May 2002).

<sup>37</sup>*Religious Bodies (Amendment) Act 1985* (Kiribati).

<sup>38</sup>United States Department of State, *2008 Report on International Religious Freedom – Kiribati*, (2008), UNHCR <<http://www.unhcr.org/refworld/docid/48d5cbc652.html>> at 1 November 2008.

<sup>39</sup>*Religious Bodies (Amendment) Act 1985* (Kiribati).



before it may be registered, there are no consequences of not registering, and religious bodies continue to perform services to their adherents.

The Kiribati National Council of Churches (KNCC) has been in existence since 1998, and certain religious bodies such as the Church of Jesus Christ of the Latter Day Saints and the Seventh Day Adventist church are excluded from membership on theological and doctrinal grounds.

## Section 4:

### Principle 4 – Respect for People on whose behalf Leaders Exercise Power

#### i) Proper use of official powers:

Powers of elected leaders and public officials are specified in the Constitution and the Acts of Parliament which cover a wide range of activities.

For example, Section 66 of the Constitution empowers the members of the *Maneaba Ni Maungatabu* to make laws for the peace, order and good government of Kiribati. The power of the *Maneaba* to make laws shall be exercised by the Bills it passes which are called Acts. The *Maneaba*, under Section 60(3)(b), also make provisions with respect to the powers, practices and procedure of the High Court.

The powers of the *Beretitenti* defined in the Constitution include the following: constituting and abolishing public offices (s.51); appointments, for example of public employees, acting on the advice of the Public Service Commission (s.99)(1); the appointment of the Chair and Commissioners of the Public Service Commission, acting on the advice of Speaker and Chief Justice (s.98)(1); appointments to the offices of Secretary to Cabinet and Secretary to a department (s.100)(1); appointments to the office of the Director of Audit (s.100)(2); and appointments to the Office of Commissioner of Police (s.100)(3).

The Commissioner of Police has powers to make appointments to any office in the Kiribati Police below the rank of Assistant Superintendent (s.102)(1). The Constitution also empowers the *Maneaba ni Maungatabu* to decide on matters of citizenship (s.28) and empowers the Minister of Finance to authorize the issue of money from the Consolidated Fund (s.110). Section 39(7) states that any person performing the functions of the office of *Beretitenti* shall not exercise the power of the *Beretitenti* to remove the *Kauoman-ni-Beretitenti* (Vice President) from office.

The powers of the Attorney-General are defined under Section 42(4).

In an egalitarian setting and with a population of under 100,000 people, leaders are not set apart and nor are they removed from the rest of the community. Leaders are very conscious that they are exercising power on behalf of the people, as specified by the Constitution. In Kiribati, this notion acts as a deterrent to leaders' exercise of power for their own benefit and gain. Leaders are, therefore, often careful to avoid being seen to be using their power for their own gains. However, in spite of this, there had been allegations of nepotism by leaders, including political leaders, heads of Government ministries and CEOs of government-owned companies and statutory corporation. These allegations were not often investigated, and in most



cases were difficult to prove, due to the smallness of society where most people are relatives.

In the *Report of a Commission of Inquiry into the purchase of a ship by the Kiribati Shipping Services Limited (KSSL)*,<sup>40</sup> the Commission was satisfied 'that the Minister was using his political influence and powers excessively to obtain the Board's approval at its meeting on 1 April 2008' in order to benefit the owner of the ship who 'was seeking a very special favour from the Minister whom he knew and associated [with] well like a brother to unfairly and unjustly obtained payments from KSSL.'<sup>41</sup> The Commission found that the Minister had acted illegally and confirmed that three major Acts were contravened by the Minister's actions. These are the *Merchant Shipping Act 1983*,<sup>42</sup> the *Procurement Act 2002*,<sup>43</sup> and the *Penal Code (Cap 67)*.<sup>44</sup> In relation to the contravention of the Penal Code, the Commission invited the Attorney-General to explore the following charges: (i) Secret Commission on Government contracts contrary to Section 368 of the Penal Code; (ii) Abuse of office contrary to Section 90(2) of the Penal Code; (iii) Perjury contrary to Section 96(2) of the Penal Code; (iv) False information to public servant contrary to Section 122(a) of the Penal Code; and (v) False pretences contrary to Section 301(a) of the Penal Code.

**ii) Honesty in dealing with the people and Parliament, with any misleading information corrected at the earliest practical opportunity:**

Despite claims and counter-claims of MPs from opposing sides of the *Maneaba ni Maungatabu*, there had been no reported instances of incorrect information being purposely used to mislead the *Maneaba ni Maungatabu* or the people in 2008.

**iii) Publicising information on legal wrongdoing, ethical lapses and false or misleading statements:**

The press in Kiribati is very quick to publish information on alleged legal wrongdoing, alleged ethical lapses and alleged false or misleading statements. At the beginning of 2008 and 2009, the contents of the four newspapers in the country were dominated by the stories of the Minister of Communications, Transport and Tourism Development's alleged abuse of power in the purchase of *MV Mataraoi*, and a major fraud in the government-owned Kiribati Oil Company (KOIL) respectively.<sup>45</sup> In the latter case, it was reported that some \$800,000 was allegedly misappropriated by staff members over a period of four years from 2005. The incident led to the dismissal of four staff members, including the CEO.

Newsletters issued by Opposition parties, and individuals MPs have been active in making statements on Government's slowness to act, including inaction to specific issues, alleged legal wrong-doings, ethical lapses and what they perceived to be false and misleading statements.

In March 2009, the newspapers carried the story of a case initiated by the MP for Tabiteuea South against the Government seeking the High Court's declaration that the manner in which Government used \$440,705.92 from the Consolidated Fund to purchase 28 containers of rice from Geoffrey Hughes (Export) Pty Ltd in Australia and Punjas & Sons Ltd in Fiji was improper and unlawful. The Court ruled in favour of the plaintiff. In a story carried by the *Te Uekera*,<sup>46</sup> the Secretary

<sup>40</sup>Commission of Inquiry, above n 8.

<sup>41</sup>Ibid, Recommendations 4 and 5.

<sup>42</sup>*Merchant Shipping Act 1983* (Kiribati).

<sup>43</sup>*Procurement Act 2002* (Kiribati).

<sup>44</sup>*Penal Code (Cap 67)* (Kiribati).

<sup>45</sup>*The Kiribati Newstar* (South Tarawa), 2008-9; *Te Mauri* (South Tarawa), 2008-9; *Te Tarakai* (South Tarawa), 2008-9; *Te Uekera* (South Tarawa), 2008-9.

<sup>46</sup>Government Violated Finance Law', *Te Uekera* (South Tarawa), March 2009.



for Finance was quoted to have admitted that the manner in which the money was used was not in accordance with Section 109(4) of the Constitution. This section of the Constitution concerns authority of the Minister of Finance to approve advances from the Consolidated Fund for urgent and unforeseen need. The main issue was that the Minister of Finance failed to include this un-budgeted expenditure in a Supplementary Appropriation Bill for appropriation at the next meeting of the *Maneaba ni Maneaba*, as required by law.

**iv) Giving priority to official duties over private interests:**

Leaders and public servants, as broadly set out in the Constitution,<sup>47</sup> in upholding the Constitution, declared that ‘the will of the people shall ultimately be paramount in the conduct of the government of Kiribati’. Elected leaders and public office holders are expected to give priority to their duties over private interests. In 2008, there was no reported instance of leaders and public servants giving priority to their private interest over their duties.

**v) Performance of public duties uninfluenced by fear of personal cost or any hope of personal benefit:**

This part of the principle will be discussed together with Section 4 (vi).

**vi) Public and private conduct that does not lead to a conflict of interest, or in which the fair and impartial exercise of duties might be compromised:**

In a much publicised case, three members of the Board of Directors of Kiribati Shipping Service Limited were dismissed by the Minister of Communications, Transport and Tourism Development for refusing to agree to the purchase of a ship, *MV Mataraoi* from a private businessman, and replaced them with colluding individuals who, individually, agreed to the purchase.

The Commission of Inquiry praised the three Directors for their exercise of diligence and high standards of administration in its finding Number 9: ‘The Commission was pleased to note the courageous efforts and adamant position... in refusing to approve the purchase, at least not without adequate information on the condition of the vessel and [proper] cost-benefit analysis.’<sup>48</sup>

**vii) Ensuring that public facilities are used only for public purposes and not for personal purposes unless authorised by legislation or by a public decision of Cabinet.**

No such reported cases/instances in 2008.

## Section 5:

### Principle 5 – Respect for Members of the Public

**i) Treatment of members of the public honestly and fairly with proper regard for their rights and obligations:**

As stipulated in the Constitution, MPs and leaders in the public service are expected to treat citizens equally regardless of gender, race, colour, creed or political belief.

<sup>47</sup>Constitution of Kiribati Schedule 1 – Oaths and Affirmations.

<sup>48</sup>Commission of Inquiry, above n 8.





Some traditional values and practices continue to discriminate against women in Kiribati. Two notable examples in 2008 were in relation to land inheritance and the rights of a spouse who is a female Kiribati citizen. As far as land inheritance is concerned, the *Lands Code of 1956*<sup>49</sup> provides for the shares of sons to exceed that of daughters when an estate of an owner is shared. In the case of the rights of a spouse who is a female Kiribati citizen, there is no specific mention of their right to citizenship, but a woman married to an I-Kiribati citizen, automatically or by registration shall become a citizen of Kiribati on Independence day according to Section 22 of the Constitution, or may apply for registration as citizen of Kiribati under Section 26.

In December 2008, there was a reported attempt by Government to amend Section 26 of the Constitution to enable men married to I-Kiribati citizens to enjoy the same rights as their women counterparts, but this was withdrawn at the eleventh hour. In many other areas, there are no obvious signs of discrimination against women. Women participate fully in the democratic process, receive education and engage in the work force. A promise for a separate Ministry for Women Affairs by the *Beretitenti* has not come to fruition, although women's affairs continue to be part of the Ministry of International and Social Affairs. International Women's Day is dutifully observed every year in March as a public holiday. It is understood that a separate Ministry for Women Affairs was included in a constitutional amendment bill which was withdrawn in December 2008.

On the issue of race, there is an increasing number of Chinese in the country, most of them married to I-Kiribati and are in possession of Kiribati passports, who carry out businesses, some of which compete directly with I-Kiribati-owned businesses. This has become a matter of concern to many people, including leaders and business people. The Annual General Meeting of the Kiribati Chamber of Commerce in March 2009 was dominated by concerns by local business people over the increasing number of Chinese in business. Earlier, in 2008, the Public Accounts Committee added its voice to this growing concern in its *Report to the Maneaba ni Maungatabu* in December 2008, which urged Government to set up a Select Committee of the *Maneaba ni Maungatabu* to look into a number of issues relating to the increased number of Chinese in the country, including the question of whether or not due processes were followed in the granting of residential visas, citizenship and business/foreign investment licenses. A Select Committee was set up by the *Maneaba ni Maungatabu* during its sitting in May 2009. Its terms of reference are much broader, and look at the whole issue of the granting of citizenship and business licences to foreigners.

The *Citizenship (Amendment) Act 1986*<sup>50</sup> empowers the Minister responsible for matters relating to citizenship, acting in accordance with the advice of the Cabinet, to deprive a person not of Kiribati descent, who acquired his citizenship by naturalization or adoption, if he (the Minister) is satisfied that it is not in the public good for the person in question to continue to be a citizen of Kiribati. The *Deportation (Amendment) Act 1982*,<sup>51</sup> gives the Minister the power to deport an alien without having to wait for the result of the alien's appeal to High Court, as provided for in the original Act, which could be used to delay deportation. The

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<sup>49</sup>*Lands Code of 1956* (Kiribati).

<sup>50</sup>*Citizenship (Amendment) Act 1986* (Kiribati).

<sup>51</sup>*Deportation (Amendment) Act 1982* (Kiribati).

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amendment removes the alien's right of appeal and makes the Minister's decision final.

I-Kiribati enjoy freedom of religion, and leaders uphold this fundamental right.

The increase in the number of political parties from three prior to the 2007 General and Presidential Elections, to four in 2008, has increased political participation. Apart from freedom of association provided by the Constitution, there is currently no legislation on political parties.

## Section 6:

### Principle 6 – Economy and Efficiency

#### i) Ensuring that public resources are not wasted, abused, or used improperly or extravagantly:


As a predominantly egalitarian society, public resources, in theory, belong to the community, and no one has monopoly or greater claim over such resources. People who are put in positions where they are responsible for public resources are often under close scrutiny from other members of the community. Any abuse or misuse of that responsibility is abhorred and attracts criticism from the rest of the community, who perceive it as an attempt by the person entrusted with the responsibility to gain personally from it, or to raise him/herself above the rest of the community. Persons entrusted with responsibilities over public or communal resources are accountable to the rest of the community.

In addition to the finance provisions of the Constitution,<sup>52</sup> Kiribati has enacted legislation to ensure that public resources are well-managed and not wasted, abused, or used improperly or extravagantly. Section 107 of the Constitution provides for a Consolidated Fund into which all government revenue shall be paid – except for receipts, earnings and accruals of Special Funds established by the *Maneaba ni Maungatabu* under Section 107(2) of the Constitution. Section 108(1) of the Constitution stipulates that 'No money shall be issued from the Consolidated Fund except upon the authority of a warrant under the hand of the Minister of Finance.' Section 107(2) specifies the conditions for which the Minister of Finance may issue the warrant for the purpose of meeting any expenditure. These are: (a) the expenditure has been authorised for the financial year during which the issue is to take place by an Appropriation Act; and (b) the expenditure has been authorised in accordance with the provisions of Sections 109(4), 110 or 111 of the Constitution.

These provisions deal with advances from the Consolidated Fund to meet urgent and unforeseen need for additional expenditure. The provisions also provide for a purpose for which no sum has been appropriated and for authorisation of expenditure in advance of appropriation and delay in appropriation owing to dissolution of the *Maneaba ni Maungatabu*. In accordance with Sections 109(1) and (2) of the Constitution, the Appropriation Act seeks to charge upon the Consolidated Fund the sums required for the recurrent expenditure of the Government for each financial year. The schedule to the Act specifies the total aggregate amount appropriated, and its breakdown by heads of expenditure.

<sup>52</sup> Constitution of Kiribati ch VIII, s 106-116.





*Public Finance (Control and Audit) Ordinance 1976 (Cap 79)*,<sup>53</sup> is the principal legislation ‘which provides for the control and management of the Consolidated Fund and public finances of Kiribati, for the collection, issue and payment of public moneys, for the audit and examination of public accounts and of the accounts of statutory bodies, and for other purposes connected therewith and incidental thereto’.<sup>54</sup> Enacted in 1976, the Ordinance has been amended 11 times in order to strengthen its provisions for control and audit of public funds, widen the scope of permitted investments from the Consolidated Fund, as well as align its provisions to new budgeting procedures and enable it to respond to and reflect changing circumstances and requirements of the country. Several of these amendments merit special mention.

The 1984 amendment empowers the Auditor-General to make a special report at any time about his work and submit it to the *Maneaba ni Maungatabu*. In relation to the accounts of a statutory corporation, a new proviso was inserted, which permitted the Auditor-General’s report on the accounts of a statutory body to be laid before the *Maneaba ni Maungatabu* without the comments of the statutory corporation. The latter proviso is necessary because the presentation of the Auditor-General’s report to the *Maneaba ni Maungatabu* has experienced delays due to the slowness of the concerned statutory corporation to provide its comments. The 1985 amendment empowers the Minister of Finance to authorise the transfer of any sum or sums of money from any Special Fund established under Section 107(2) of the Constitution to the Consolidated Fund. This amendment enables Government to transfer excess funds from any Special Fund to the Consolidated Fund, which may be needed by Government to balance its budget deficit. With the Revenue Equalisation and Reserve Fund (RERF) being a Special Fund, the amendment in effect gives legal basis to a long-standing practice of transferring funds from the RERF to the Consolidated Fund to balance Government’s budget deficit. The 1993 amendment introduced a new part IX (Sections (47)-(48)), that deals with sanctions against public officers for misconduct, failure to carry out their responsibilities, negligence resulting in the loss of public moneys, recovery of funds and losses, and enforcement of audit queries.

To provide for parliamentary oversight over public funds, the Public Accounts Committee (PAC) is established under Section 115(1) of the Constitution. Section 115(2) prescribes the functions of the PAC as follows:

- (a) to consider the accounts of the Government in conjunction with the report of the Auditor-General;
- (b) to report to the *Maneaba*, in the case of excessive or unauthorised expenditure of funds, including the reasons for such expenditure;
- (c) to propose any measures it considers necessary to ensure that the funds of the Government are properly and economically spent; and
- (d) where a report on the examination and audit of the accounts of any corporation, statutory board, body or commission is required by law to be laid before the *Maneaba*, to consider, report on and make recommendations to the *Maneaba* in respect of such accounts.

In carrying out its functions, the PAC relied on the report of the Auditor-General on the annual accounts of the Government. The Committee went through the accounts of different ministries and in the process, interrogated accounting officers from each ministry and division who appeared before the Committee. The PAC is

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<sup>53</sup>*Public Finance (Control and Audit) Act* (Kiribati).  
<sup>54</sup>Government of Kiribati, *The Laws of the Republic of Kiribati* (revised ed, 1982) 3.

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assisted in its consideration of Government accounts by the Auditor-General and the Accountant-General.

It is obvious from the information obtained from interviews and the Reports of the Auditor-General, that the work of PAC and the Auditor-General is hampered by the poor performance and the lack of responsiveness from Accounting Officers. It is surprising that Accounting Officers are not brought to task over their lack of responsiveness to the Auditor-General's queries and other weaknesses as identified and highlighted repeatedly by both PAC and the Auditor-General.

Notwithstanding the sanctions provided under Section 47 of the *Public Finance (Control and Audit) (Amendment) Act*,<sup>55</sup> and the procedures for the enforcement of audit queries prescribed in Section 48 of the same Act, information from the PAC and the Auditor-General shows that many of their findings and recommendations have not been acted upon. This is evidenced by the fact that the same findings recur annually, the failure to respond to Audit queries is not considered as constituting serious misconduct; and there is a significant lack of urgency to recover lost funds and stores (totalling \$361,826.98 as at end of 2007) and a failure to prosecute public servants for fraud, embezzlement or misappropriation.

The Revenue Reserve and Equalisation Fund (RERF), an off-shore investment fund established with royalties from the now-closed phosphate industry, is a major financial resource, which has underpinned the national self-confidence of Kiribati.<sup>56</sup> With a closing balance in 2008 of US\$389 million (AUD\$562 million), which represents a decline of around 30 percent from the 2007 closing balance due mainly 'to large draw-downs in recent years, and the global decline in asset values' (IMF 2009), concern has been expressed by major international financial institutions on the need to safeguard this important resource. IMF has called for 'a well-defined rule for draw-downs from the RERF and a medium-term budgetary framework [to] smooth expenditure and safeguard the RERF.'<sup>57</sup> This call was made against the background of a sharp increase in the Government's draw-down from the RERF of AUD\$45 million in 2007 to fund expenditure and repay loans from the Bank of Kiribati.<sup>58</sup> ADB's *Kiribati Economic Report 2008* has expressed concerns on the nature of the governance arrangements of the RERF and their effectiveness in countering the financial and political risks of increasing fiscal pressures on the Government. The ADB Report has argued that 'it is essential for good governance that access to the RERF be governed by explicit rules, and subject to parliamentary scrutiny and public information.'<sup>59</sup>

## Section 7:

### Principle 7 – Diligence

#### i) Exercise of proper diligence, care, and attention:

Schedule 1 of the Constitution prescribes Oaths and Affirmations to be made by the *Beretitenti*, *Kauoman ni Beretitenti*, other Ministers, the Attorney-General, Members of the *Maneaba ni Maungatabu*, Judges, Commissioners of the High Court, and Judges of the Court of Appeal, on assuming office. Senior public servants, like Permanent Secretaries, also take oath before the *Beretitenti* before assuming their

<sup>55</sup>*Public Finance (Control and Audit) Act* (Kiribati).

<sup>56</sup>Asian Development Bank, 'Asian Development Outlook 2008: Kiribati', (2008) Asian Development Bank <<http://www.adb.org/Documents/books/ADO/2008/KIR.asp>> at 13 October 2008, 181.

<sup>57</sup>*Ibid.*

<sup>58</sup>Asian Development Bank, 'Kiribati Social and Economic Report 2008', (2008) Asian Development Bank <<http://www.adb.org/Documents/Reports/KIR-Social-Economic-Report/2008/KIR-Social-Economic-2008.pdf>> at 19 October 2008.

<sup>59</sup>*Ibid.* 182.





new office. Police officers and other specialist public officers, such as medical professionals also take oaths, which are a statutory requirement for their entry into public service. In most cases, these oaths serve the purpose of not only reminding the leaders of the need ‘to well and truly serve the Independent and Sovereign Republic of Kiribati in accordance with the Constitution and the law,’ but also to exercise proper diligence, care and attention in the execution of their duties and responsibilities.

The conduct of public servants is governed by the National Conditions of Service (NCS), a document which is often referred to as the ‘Bible’ of the Public Service. Section D of the NCS deals with public servants’ conduct and discipline. All of its 38 clauses cover a wide range of issues and topics, including compliance to orders and instructions, standards of behaviour, dealing with the public, unauthorised disclosure, involvement in commercial activities, receiving gifts, false information, and disciplinary procedures and punishments. The NCS also serve as a guide for conditions of service in statutory corporations and state-owned companies.

A number of laws are in place to ensure that proper diligence, care and attention to duties and responsibilities are enforced and maintained. One such law is the *Public Finance (Control and Audit) (Amendment) Act 1993*,<sup>60</sup> which prescribes disciplinary actions against public officers mishandling of public funds. In effect, this provision acts to induce proper diligence, care and attention by a public officer in the execution of his or her duties, especially in handling public moneys. The definition of ‘public officer’ was broadened under the *Public Finance (Control and Audit) (Amendment) Act 1996* to ‘include directors or members of the Board or Committee of a government-owned company, corporation or special fund and other body or authority established under any provision of any law, and including also other officers and employees of same.’<sup>61</sup>

Under Section 47 of the Act, new sections (s.47A, 47B, 47C, 47D and 47E) were inserted with the object of giving Cabinet power to surcharge a member including a former MP ‘with any amount that such member may have claimed, been paid to or received or spent. Cabinet, on the other hand, questions or doubts the validity or propriety of such payment under the *Salaries and Allowances of Members of the Maneaba ni Maungatabu Act (Cap 92A)*.<sup>62</sup> The imposition of the surcharge will also apply if the payment to, or expenditure by, the member is questioned by the Commission of Inquiry established under the *Commission of Inquiry Ordinance (Cap 10)*. Other situations which may lead to the imposition of the surcharge include improper payments of public money for which the member has been responsible, failure to account for money, causing deficiency, loss or destruction or damage to public money, and failure to retire an imprest within a prescribed period. The Amendment also provides for a procedure for imposition of a surcharge and a mechanism for the recovery of amounts of surcharge as determined by Cabinet.

In 2008, two Acts relating to the Police Service were passed by the *Maneaba ni Maungatabu*. The *Police Service Act 2008* repealed the *Police Ordinance (Cap. 73)*, effectively updating it since its passage in 1965. Along with the Police Powers and Duties Act 2008, the new law allows for reforms to the Police Service, making it more responsive to the demands of a modern police service. The *Police Service Act 2008* contains provisions relating to the discipline of police officers and a system of

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<sup>60</sup>Public Finance (Control and Audit) (Amendment) Act 1993 (Kiribati), s 47(7).

<sup>61</sup>Public Finance (Control and Audit) (Amendment) Act 1996 (Kiribati).

<sup>62</sup>Explanatory Memorandum, *Salaries and Allowances of Members of the Maneaba ni Maungatabu Act (Cap 92A)*.

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appraisal of police officers' performance. *The Police Powers and Duties Act 2008* has a number of objectives, which include *inter alia*, ensuring fairness to, and protection of the rights of persons against whom police officers exercise powers under the Act.

**ii) Always seeking to achieve high standards of public administration:**

From the above examples, it is evident that there is continuing effort by Kiribati leaders to consistently seek to achieve high standards of public administration. In 2008, the *Maneaba ni Maungatabu* reverted to holding three sessions a year, as required by its Rules of Procedure, after several years of meeting only twice a year, because it was claimed that there was not enough business for the *Maneaba* to justify three meetings. The *Maneaba* sat three times in 2008 and passed 19 Bills - the highest number of Bills passed since 1997. The types of laws enacted also improved issues of equity. For example, the Private Member's Bill was passed to amend the *Provident Fund Ordinance (Cap 78(A))*<sup>63</sup> in order to give the Court discretion to decide on how the fund is to be distributed among the deceased member's dependants. Now the deceased's spouse (wife) and parents can benefit from the deceased's fund. The Lands Code approach, which applies in the principal Act, excludes these dependants as being not included under the definition of 'next of kin'. The amendment was welcomed by a number of women's groups.

Although leaders of Kiribati aspire to achieving high standards of public administration, there were some prominent cases which lacked proper diligence. One such case was the purchase of *MV Mataraoi*.<sup>64</sup> Diligent compliance to due process and collective responsibility were ignored.<sup>65</sup> The permanent secretary and the Management of the Kiribati Shipping Services Limited<sup>66</sup> were also identified as failing to advise the Minister and enforce the application of procedures.<sup>67</sup>

## Section 8:

### Principle 8 – National Peace and Security

The *Maneaba ni Maungatabu* is empowered under Section 66(1) of the Constitution to make laws for the peace, order and good government of Kiribati. Under Section 126 of the Constitution the disciplined forces are also required to maintain national peace and security and gain further direction from associated legislations like the *Prisons (Amendment) Act 1985*,<sup>68</sup> *Proceeds of Crime (Amendment) Act 2005*,<sup>69</sup> *Public Order (Amendment) Act 2006*,<sup>70</sup> *Aircraft Security Act 1990*,<sup>71</sup> *Arbitration Act 1990*,<sup>72</sup> *Chemical Weapons (Prohibition) Act 2006*,<sup>73</sup> *Consumer Protection Act 2001*,<sup>74</sup> *Customs Act 1993*,<sup>75</sup> *Dangerous Drugs (Amendment) Act 1995*,<sup>76</sup> *Food Safety Act 2006*,<sup>77</sup> *Industrial Relations Code 1998*,<sup>78</sup> *Immigration (Amendment) Act 1983*,<sup>79</sup> *Mutual Assistance in Criminal Matters Act 2003*,<sup>80</sup> *National Disaster Act 1993*.<sup>81</sup>

The two Police Acts – the *Police Services Act 2008* and the *Police Powers and Duties Act 2008*, enacted in 2008, set the platform for reforms to the Police Service.<sup>82</sup> The Acts repealed the Police Ordinance.

**i) Promotion of peace, security and harmony:**

Section 126 of the Constitution forbids Government from establishing another disciplined force, apart from the Kiribati Police Force (now Service), the Prison Service, the Marine Protection Service and the Marine Training School.

<sup>63</sup>Provident Fund Ordinance (Cap 78(A)) (Kiribati).

<sup>64</sup>Commission of Inquiry, above n 8.

<sup>65</sup>Ibid.

<sup>66</sup>Ibid.

<sup>67</sup>Ibid.

<sup>68</sup>*Prisons (Amendment) Act 1985* (Kiribati).

<sup>69</sup>*Proceeds of Crime (Amendment) Act 2005* (Kiribati).

<sup>70</sup>*Public Order (Amendment) Act 2006* (Kiribati).

<sup>71</sup>*Aircraft Security Act 1990* (Kiribati).

<sup>72</sup>*Arbitration Act 1990* (Kiribati).

<sup>73</sup>*Chemical Weapons (Prohibition) Act 2006* (Kiribati).

<sup>74</sup>*Consumer Protection Act 2001* (Kiribati).

<sup>75</sup>*Customs Act 1993* (Kiribati).

<sup>76</sup>*Dangerous Drugs (Amendment) Act 1995* (Kiribati).

<sup>77</sup>*Food Safety Act 2006* (Kiribati).

<sup>78</sup>*Industrial Relations Code 1998* (Kiribati).

<sup>79</sup>*Immigration (Amendment) Act 1983* (Kiribati).

<sup>80</sup>*Mutual Assistance in Criminal Matters Act 2003* (Kiribati).

<sup>81</sup>*National Disaster Act 1993* (Kiribati).

<sup>82</sup>See above Section 7(i).





The Kiribati Police Service is responsible for promoting and maintaining peace, security and harmony in the country. Its authority is further set out in the *Police Service Act 2008*.<sup>83</sup> The Kiribati Police Service, through its Maritime Division, is also responsible for maritime surveillance and the protection of Kiribati's Exclusive Economic Zone. This role is supplemented by the Kiribati Government's cooperation with New Zealand, which provides regular aerial surveillance and with the US, through its bilateral 'ship rider' agreement. The US-Kiribati 'ship rider' agreement was signed in 2008. In March and April 2009, two foreign vessels were arrested for fishing without a licence in Kiribati's Exclusive Economic Zone.

Kiribati also believes in global peace and security. The International Peace and Human Rights Day, which falls early December, is an annual public holiday. In 2008, two pieces of international security-related legislation were passed by the *Maneaba ni Maungatabu*. The *Measures to Combat Terrorism and Transnational Organised Crime (Amendment) Act 2008* updates the principal Act, and implements legislative obligations imposed by several counter terrorism instruments to which Kiribati is party, including the Convention on the *Physical Protection of Nuclear Material*,<sup>84</sup> and the *International Convention for the Suppression of Acts of Nuclear Terrorism*.<sup>85</sup> The *Anti-Personnel Mines (Prohibition) Act 2008*,<sup>86</sup> implements the obligations of Kiribati under the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*.<sup>87</sup>

Internally, at island level, the government has had to work closely with religious groups to maintain peace. In 2003, conflicts erupted in the islands of Beru, Butaritari and Maiana and peace was restored through what was considered an innovative State-Church partnership.

**ii) Refusal to give or obey an illegal order to use force against another citizen:**

There was no reported instance of this in 2008.

**Section 9:**

**Principle 9 – Respect for Office**

**i) Exercise authority and interact with people in a manner that is open, transparent, accountable, participatory and decisive but fair and equitable:**

Section 45 of the Constitution vests the executive authority of Kiribati in the Cabinet, which shall be collectively responsible to the *Maneaba ni Maungatabu* for the executive function of the Government. Section 46 stipulates that: 'In the exercise of any function conferred upon him by this Constitution or any law, the *Beretitenti* shall, unless it is otherwise provided, act in his own deliberate judgement and shall not be obliged to follow the advice tendered by any other person.'

Throughout 2008, members of the *Maneaba ni Maungatabu* have been actively engaging with Government to ensure that it exercises its authority in an accountable and decisive, but fair and equitable manner. The daily proceedings of the *Maneaba* are broadcasted live on Radio Kiribati, and through this the people are following the development of issues brought before the *Maneaba*, and form their opinions on the performance of Government, individual Cabinet ministers and their members.

<sup>83</sup>*Police Services Act 2008* (Kiribati).

<sup>84</sup>*Convention for the Physical Protection of Nuclear Material*, opened for signature 3 March 1980 (entered into force 8 February 1987).

<sup>85</sup>*International Convention for the Suppression of Acts of Nuclear Terrorism*, opened for signature 14 September 2005.

<sup>86</sup>*Anti-Personnel Mines (Prohibition) Act 2008* (Kiribati).

<sup>87</sup>*Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*, opened for signature 3 December 1997, 36 ILM 1507 (entered into force 15 June 2000).



Section 68(3) of the Constitution provides that ‘The *Maneaba* shall not proceed on a Bill after its first reading in the *Maneaba* until the next following meeting of the *Maneaba* unless – (a) the Bill has been certified as urgent by the *Beretitenti*, or (b) the *Maneaba* expressly resolves, by a majority of all members of the *Maneaba*, to proceed with the consideration of the Bill.’ The intent of this provision is to ensure openness, transparency, accountability and participation by citizens in law-making. In 2008, the Government organised a national workshop on the new Local Government Act and its implementation, in which all Chief Councillors (now called Mayors) and island representatives participated. Earlier, in 2006, there was wide consultation on the Leadership Code, which was later expanded to address general issues of nation-building and shared collective responsibility nationally.<sup>88</sup> Apart from the Money Bills – the Appropriation Bill 2008,<sup>89</sup> and the three *Supplementary Appropriation Bills*, which justifiably because of practical reasons were certified by the *Beretitenti* as urgent – all the 15 Bills brought before the *Maneaba* in 2008 were discussed with the people before their second and final reading.

**ii) Seek to strengthen the integrity of a leader’s Office and its effectiveness:**

The Leadership Code Bill 2006<sup>90</sup> was presented to the *Maneaba ni Maungatabu* in November 2006. The Bill sought to introduce a code of conduct for leaders when in office. It failed to obtain support as MPs were uncomfortable with some of its provisions.



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<sup>88</sup>See above Section 2.

<sup>89</sup>Appropriation Bill 2008 (Kiribati).

<sup>90</sup>Leadership Code Bill 2006 (Kiribati).

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