

Criminal Law and Procedure (Patriation) Act 1991

REPUBLIC OF KIRIBATI

CRIMINAL LAW AND PROCEDURE (PATRIATION) ACT 1991

Arrangement of Sections

Section

PART I - PRELIMINARY

1. Short title

PART II - AMENDMENTS TO THE PENAL CODE

2. Replaces section 3 of Cap. 67
3. Amends section 4 of Cap. 67
4. Replaces Part III of Cap. 67
5. Adds section 51A to Cap. 67
6. Adds sections 62A and 62B to Cap. 67
7. Replaces section 63 of Cap. 67
8. Amends section 100 of Cap. 67
9. Adds section 133A to Cap. 67
10. Amends section 148 of Cap. 67
11. Amends section 163 of Cap. 67
12. Adds section 181A to Cap. 67
13. Adds section 202A to Cap. 67
14. Adds sections 220A and 220B to Cap. 67
15. Adds section 245A to Cap. 67
16. Adds section 248A to Cap. 67
17. Adds sections 319A and 319B to Cap. 67
18. Amends section 325 of Cap. 67
19. Amends section 330 of Cap. 67

PART III - AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

20. Amends section 18 of Cap. 17
21. Adds section 62A to Cap. 17
22. Amends section 69 of Cap. 17
23. Replaces section 70 of Cap. 17
24. Adds section 101A to Cap. 17
25. Adds section 126 to Cap. 17
26. Adds section 140A to Cap. 17
27. Amends section 152 of Cap. 17
28. Adds sections 155A and 155B to Cap. 17
29. Replaces section 237 of Cap. 17
30. Replaces section 239 of Cap. 17
31. Repeals section 300 of Cap. 17

PART IV - MISCELLANEOUS AMENDMENTS

32. Amends section 43 of Cap. 52
33. Adds Part VIII to Cap. 82

PART V - REPEALS

34. Abolition of common law offences
35. Repeal of Imperial laws

THE REPUBLIC OF KIRIBATI (No. 4 of 1991)

I assent,

I. Tabai
Beretitenti.
1991

AN ACT TO AMEND THE PENAL CODE, THE CRIMINAL PROCEDURE CODE, THE MAGISTRATES' COURTS ORDINANCE AND THE PUBLIC ORDER ORDINANCE, IN CONNECTION WITH THE PATRIATION OF CRIMINAL LAW AND CRIMINAL PROCEDURE; TO ABOLISH CERTAIN COMMON LAW OFFENCES; AND FOR CONNECTED PURPOSES

Commencement:
1991

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

PART I - PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Criminal Law and Procedure (Patriation) Act 1991.

PART II - AMENDMENTS TO THE PENAL CODE

Replaces section 3 of Cap. 67

2. Section 3 of the Penal Code is repealed and the following substituted -

"Interpretation of Code

3. Subject to the provisions of any written law -

(a) expressions used in this Code shall be presumed, so

far as is consistent with their context, to be used with the meaning attached to them at common law, and shall be construed accordingly;

(b) in the interpretation of this Code a court shall not be bound by any judicial decision or opinion of any court outside Kiribati on the construction of any other statute or of the common law as to

- (i) the definition of any offence or of any element of any offence; or
- (ii) the rules as to criminal responsibility."

Amends section 4 of Cap. 67

3. Section 4 of the Penal Code is amended by -

(a) adding, after the definition of "dwelling-house", the following definition -

"explosive substance" includes -

- (a) any materials for making any explosive substance;
- (b) any device or materials used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance;
- (c) any part of any such device;"

(b) adding, after the definition of "judicial proceeding", the following -

""Kiribati aircraft" and "Kiribati ship" have the meanings given respectively by section 6A;"

Replaces Part III of Cap. 67

4. Part III of the Penal Code is repealed and the following Part is substituted -

"PART III **APPLICATION OF THIS CODE**

Application of Code Supplementary Appropriation Act 1991

5. (1) This Code applies with respect to -

- (a) acts done within the territorial limits of Kiribati;
and
- (b) any act outside those limits that is declared by this Code or any other law to constitute an offence.

(2) An act is done within the territorial limits of Kiribati if it is done on, under or above -

- (a) land within the seaward limits of the territorial waters of Kiribati;
- (b) internal waters of Kiribati;
- (c) archipelagic waters of Kiribati;
- (d) territorial waters of Kiribati.

Offences committed partly within and partly outside Kiribati

6. When an act which, if wholly done within the territorial limits of Kiribati, would be an offence against this Code, is done partly within and partly outside those limits, every person who within those limits does or make any part of such act may be tried and punished under this Code in the same manner as if such act had been done wholly within those limits.

Offences committed on aircraft or ship

6A. (1) A person who, outside the territorial limits of Kiribati, does an act which would constitute an offence if done within those limits commits that offence -

- (a) if he does the act on board a Kiribati aircraft while in flight;
- (b) if he does the act on a Kiribati ship; or
- (c) if he is employed at the time on a Kiribati ship and he does the act -
 - (i) on shore; or
 - (ii) on board a ship that is not a Kiribati ship but is in the same port as the ship on which he is employed.

(2) Subsection (1) does not apply to an act of the kind mentioned in paragraph (a) thereof which is expressly or impliedly authorised by or under any law when taking place beyond the territorial limits of Kiribati.

(3) Subject to subsection (4), an aircraft is a Kiribati aircraft -

- (a) if it is for the time being registered in Kiribati; or
- (b) if it is not for the time being registered in any country but either the operator of the aircraft or each person entitled as owner to any legal or beneficial interest in it -
 - (i) is a person qualified to be the owner of a legal or beneficial interest in an aircraft registered in Kiribati; and

(ii) resides or has his principal place of business in Kiribati; or

(c) if, being for the time being registered in some other country, it is for the time being chartered by demise to a person who, or persons each of whom, satisfies the requirements in paragraph (b).

(4) An aircraft is not a Kiribati aircraft -

(a) if it is an aircraft of a disciplined force of the Republic; or

(b) if it is an aircraft which belongs to or is exclusively employed in the service of the Republic,

but the Minister may by order designate that any such aircraft is a Kiribati aircraft.

(5) A ship is a Kiribati ship -

(a) if it is a ship registered under section 15 of the Merchant Shipping Act 1983;

(b) if it is a ship not registered under that section but required to be so registered, which is owned by a qualified person within the meaning of section 2 of the Merchant Shipping Act 1983;

(c) if it is a ship in relation to which a provisional certificate is in effect under section 18 of the Merchant Shipping Act 1983 (relating to ships which become Kiribati owned abroad);

(d) if it is a government ship within the meaning of section 2 of the Merchant Shipping Act 1983, whether or not it is registered under regulations made under that Act;

(e) if it is a ship, other than a government ship, that belongs to or is exclusively employed in the service of the Republic;

(f) if it is a local fishing vessel within the meaning of section 2 of the Fisheries Ordinance;

(g) if it is a ship employed solely in navigation on the inland waters or coasts of Kiribati or as an inter-insular vessel, or a lagoon service vessel, within the meaning of section 2 of the Shipping Ordinance;

(h) if it is a ship launched after completion or partial completion in Kiribati and not registered either in Kiribati or elsewhere.

(6) For the purposes of this section -

(a) the expression -

"operator", in relation to an aircraft at any time, means the person who at that time had the management of that aircraft;

"ship" includes any boat or other water craft used, or capable of being used, in navigation by water, and any hovercraft;

(b) the period during which an aircraft is in flight shall be deemed to include any period from the moment when power is applied for the purpose of the aircraft taking off on a flight until the moment when the landing run (if any) at the termination of that flight ends.

Offences committed abroad by State employees

6B. A citizen of Kiribati employed in the service of the Republic who, when acting or purporting to act in the course of his employment, does any act outside Kiribati which would, if done within Kiribati, constitute an offence is guilty of that offence."

Adds section 51A to Cap. 67

5. The Penal Code is amended by adding, after section 51, the following section -

"Loss of office etc, on conviction for treason

51A. (1) A person who is convicted of treason or misprision of treason, thereupon -

(a) shall vacate any office established by the Constitution or any written law, or any office in the public service or the disciplined forces or in a public corporation or public body, or any public employment; and

(b) is disqualified from holding any such office or employment until 5 years have elapsed after the sentence imposed following the conviction has been served;

and there shall immediately cease to be paid or payable to that person any pension or superannuation allowance to which he is entitled and which is payable from any public funds of Kiribati.

(2) Subsection (1) does not apply with respect to a person convicted of treason or misprision of treason who is granted a free pardon."

Adds sections 62A and 62B to Cap. 67

6. The Penal Code is amended by adding, after section 62, the following sections -

"Attacks against internationally protected person

62A. (1) If a person, whether a citizen of Kiribati or not, does outside Kiribati -

- (a) any act to or in relation to a protected person, which, if he had done it in Kiribati, would have made him guilty of an offence under section 129, 192, 193, 208, 216, 217, 218, 220, 220A, 221, 222, 237, 238, 242, 243, 245, 246, 248, or 319A (which relate to murder, manslaughter, offences endangering life, rape, assaults, offences against liberty or involving explosives); or
- (b) in connection with an attack on any relevant premises or on any vehicle ordinarily used by a protected person, which is made when a protected person is on or in the premises or vehicle, any act which, if he had done it in Kiribati, would have made him guilty of an offence under section 312, 313, 314, 315, 319 (1) to (3), (6), 319A or 320, (which relate to offences involving injury to property or involving explosives),

he is guilty of such of those offences of which the act would have made him guilty if he had done it in Kiribati.

(2) If a person in Kiribati or elsewhere, whether a citizen of Kiribati or not -

- (a) attempts to commit an offence, which by virtue of subsection (1) or otherwise, is an offence mentioned in subsection (1)(a) against a protected person or an offence mentioned in subsection (1)(b) in connection with an attack so mentioned; or
- (b) aids, abets, counsels or procures the commission of such an offence or of an attempt to commit such offence

he is guilty of attempting to commit the offence in question or, as the case may be, shall be subject to the provisions of sections 21 (which relates to principal offenders) in respect of the offence or attempt on question.

(3) A person in Kiribati or elsewhere, whether a citizen of Kiribati or not, is guilty of an offence if -

- (a) he makes to another person a threat that any person will do an act which is an offence mentioned in subsection (2)(a); or

(b) he attempts to make or aids or abets, counsels or procures the making of such a threat to another person,

with the intention that the other person shall fear that the threat will be carried out; and he shall be liable on conviction to imprisonment not exceeding -

(i) 10 years; and

(ii) the term to which a person would be liable for the offence constituted by doing the act threatened at the place where the conviction occurs and at the time of the offence to which the conviction relates.

(4) For the purposes of subsections (1) to (3), it is immaterial whether a person knows that another person is a protected person.

(5) Proceedings for an offence which would not be an offence apart from this section are subject to section 126 of the Criminal Procedure Code (requiring the consent of the Attorney-General).

(6) In this section -

"a protected person" means, in relation to an alleged offence, any of the following -

(a) a person who at the time of the alleged offence is a Head of State, a member of a body which performs the function of Head of State, a Head of Government or a Minister of Foreign Affairs and is outside the territory of the State in which he holds office;

(b) a person who at the time of the alleged offence is a representative or an official of a State or an official or agent of an international organisation of an inter-governmental character, is entitled under international law to special protection from attacks on his person, freedom or dignity and does not fall within paragraph (a);

(c) a person who at the time of the alleged offence is a member of the family of another person mentioned in paragraph (a) or (b) and -

(i) if the other person is mentioned in paragraph (a), is accompanying him,

(ii) if the other person is mentioned in paragraph (b), is a member of his household;

"relevant premises" means premises at which a protected person resides or is staying or which a protected person uses for the purpose of carrying out his functions as such a person;

"vehicle" includes any means of conveyance.

(7) If in any proceedings a question arises as to whether a person is or was a protected

person, a certificate issued by or under the authority of the Minister and stating any fact relating to the question shall be conclusive evidence of that fact.

Developing etc., biological weapons

62B. (1) A person who develops, produces, stock-piles acquires or retains -

(a) any biological agent or toxin of a type and in a quantity that has no justification for prophylactic, protective or other peaceful purposes; or

(b) any weapon, equipment or means of delivery designed to use biological agents or toxins for hostile purposes or in armed conflict,

is guilty of an offence and shall be liable to imprisonment for life.

(2) Where an offence under this section which is committed by a body corporate is proved -

(a) to have been committed with the consent and connivance; or

(b) to be attributable to any negligence on the part, of -

(i) any director, manager, secretary or other similar officer of that body corporate;

(ii) any person who was purporting to act in that capacity, he, or as well as the body corporate, is guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Proceedings under this section are subject to section 126 of the Criminal Procedure Code (requiring the consent of the Attorney-General).

(4) In this section -

"biological agent" means any microbial or other biological agent;

"toxin" means any toxin, whatever its origin or method of production."

Replaces section 63 of Cap. 67

7. Section 63 of the Penal Code is repealed and the following sections are substituted -

"Piracy

63. Any person who is guilty of the offence of piracy shall be sentenced to imprisonment for life.

Piracy by the law of nations

63A. (1) Any person, of whatever nationality, who does an act of piracy by the law of nations is guilty of the offence of piracy.

(2) For the purposes of any criminal proceedings in Kiribati in respect of piracy by the law of nations, Articles 15 to 17 of the Convention on the High Seas signed at Geneva on 29 April 1958 and set out in the Annex to this section shall be treated as constituting part of the law of nations.

(3) Subsection (1) does not apply with respect to any act done by or against a vessel that is -

- (a) a vessel in the service of the armed forces of any State;
- (b) an aircraft in respect of which there is in force a certificate issued by the Minister under any law relating to civil aviation that the aircraft is to be treated for the purposes of that Act as a military aircraft; or
- (c) a vessel, other than one referred to in paragraph (a) or (b), that belongs to or is exclusively employed in the service of Kiribati.

(4) A certificate of the Minister that a vessel is or is not a vessel of the kind mentioned in subsection (3)(a) or (3)(b) for the purposes of this section shall be conclusive evidence of the fact certified.

(5) The Beretitenti may by order provide that subsection (1) shall apply, with or without modifications, to vessels of the kind mentioned in subsection (3)(c).

ANNEX

Provisions of Geneva Convention on the High Seas to be treated as part of the Law of Nations

Article 15

Piracy consists of any of the following acts:

(1) Any illegal acts of violence, detention or any act of depreciation for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

- (a) On the High seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- (b) Against a ship, aircraft, persons or property outside the jurisdiction of any State;

(2) Any act of voluntary participation in the operation of a ship or of an aircraft within knowledge of facts making it a pirate ship or aircraft;

(3) Any act of inciting or intentionally facilitating an act described in sub-paragraph (1)

or sub-paragraph (2) of this Article.

Article 16

The acts of piracy, as defined in Article 15, committed by a warship, government ship or government aircraft whose crew has mutinied and taken control of the ship or aircraft are assimilated to acts committed by a private ship.

Article 17

A ship or aircraft is considered a pirate ship or aircraft if it is intended by the person in dominant control to be used for the purpose of committing one of the acts referred to in Article 15. The same applies if the ship or aircraft has been used to commit any such act, so long as it remains under the control of the persons guilty of that act.

Connected offences

63B. Any person who, with intent to commit, or at the time of or immediately after committing, or whilst attempting to commit, the offence of piracy by the law of nations in respect of a Kiribati ship or a Kiribati aircraft -

- (a) assaults with intent to murder a person on board or employed on board the ship or aircraft;
- (b) wounds any such person; or
- (c) unlawfully does any act by which the life of such person may be endangered,

is guilty of a felony and shall be liable to imprisonment for life.

Piratical acts

63C. (1) Any person who does a piratical act is guilty of the offence of piracy acts.

(2) A person does a piratical act who -

- (a) being a citizen of Kiribati, under the pretence of any commission from any State other than Kiribati or under pretence of authority from any person whatever, commits an act of hostility or robbery, while on the high seas or on board an aircraft (wherever registered) that is outside Kiribati, against another citizen of Kiribati;
- (b) while on board a Kiribati ship,
 - (i) turns enemy or rebel and piratically runs away with the ship or any boat, arms or ammunition or goods on board;
 - (ii) voluntarily yields up the ship, or any boat, arms or ammunition or goods on board, to a pirate;
 - (iii) counsels or procures any member of the crew of a vessel to yield up or

run away with any vessel or any goods on board any vessel or to turn pirate or to go over to pirates;

(iv) assaults the master of the ship, in order to prevent the master from fighting in defence of the ship or of goods in the charge of the master;

(v) imprisons or restrains the master of the ship; or

(vi) makes or endeavours to make a revolt in the ship.

Trading with pirates

63D. Any person who knowingly -

(a) trades with a pirate;

(b) furnishes a pirate with arms or ammunition or stores of any kind;

(c) fits out a vessel with a design to trade with, supply or correspond with a pirate,

is guilty of the offence of piracy.

Destroying goods on Kiribati ships

63E. Any person employed on board a vessel who on the high seas forcibly enters upon a Kiribati ship and throws overboard goods on board or destroys goods on board that ship is guilty of the offence of piracy.

Dealing in slaves at sea to be piracy

63F. A citizen of Kiribati or any person resident in Kiribati who, in Kiribati waters or on the high seas, knowingly and wilfully -

(a) conveys any person as a slave or for the purpose of that person being imported into any place as a slave, or of his being sold as a slave or subjected to slavery; or

(b) ships or receives or confines on board any vessel any person for the purpose of that person being so conveyed, sold or subjected,

is guilty of the offence of piracy.

Attempts and conspiracy to commit piracy

63G. Any person who, within or outside Kiribati,

(a) attempts to commit; or

(b) conspires with another to commit,

the offence of piracy is guilty of a felony and shall be liable to imprisonment for life.

Accessories after the fact to piracy

63H. Any person who, in or outside Kiribati, becomes an accessory after the fact to the offence of piracy is guilty of a felony and shall be liable to imprisonment for the term of 10 years."

Amends section 100 of Cap. 67

8. Section 100 of the Penal Code is amended by repealing subsection (2).

Adds section 133A to Cap. 67

9. The Penal Code is amended by adding, after section 133, the following section -

"Gross indecency with children

133A. Any person who -

(a) commits an act of gross indecency with or towards a child under the age of 15; or

(b) incites a child under the age of 15 to an act of gross indecency with him or another,

is guilty of a misdemeanour and shall be liable to imprisonment for 2 years."

Amends section 148 of Cap. 67

10. Section 148 of the Penal Code is amended by repealing subsection (2) and substituting the following subsections -

"(2) Where any 2 persons give notice in writing, signed by both of them, to a police officer that they have reasonable and probable cause to believe that an offence is being committed under subsection (1) by a person in the district where they reside, the police officer shall cause the complaint to be investigated with a view to the institution of criminal proceedings.

(3) If a magistrates' court does not proceed to try a person charged with an offence under subsection (1) who is attending before the court pursuant to a summons or warrant, the court may require that person to enter into a recognisance, with or without sureties, to be of good behaviour until such time as the offence has been tried".

Amends section 163 of Cap. 67

11. Section 163 of the Penal Code is amended in subsection (1) by adding after "ceremony of marriage" -

"in Kiribati or, if the person is a citizen of, or ordinarily resident in, Kiribati, in any part of the world".

Adds section 181A to Cap. 67

12. The Penal Code is amended by adding, after section 181, the following section -

"Possession of explosives in suspicious circumstances

181A. Any person who makes or knowingly has in his possession or under his control any explosive substance under circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, is guilty of a felony and shall be liable to imprisonment for 14 years; and the explosive substance shall be forfeited."

Adds section 202A to Cap. 67

13. The Penal Code is amended by adding, after section 202, the following section -

"Jurisdiction over murder or manslaughter

202A. A person is guilty of murder or manslaughter (if the foregoing provisions of this Part apply) where –

- (a) by an act which inflicts injury on another person within the territorial limits of Kiribati, he causes the death of that person, whether the act is done, and whether the death occurs, within or outside those limits;
- (b) he causes the death of another person anywhere in the world by an act done within the territorial limits of Kiribati; or
- (c) being a citizen of Kiribati, he causes the death of another person anywhere in the world by an act done anywhere in the world."

Adds sections 220A and 220B to Cap. 67

14. The Penal Code is amended by adding, after section 220, the following sections -

"Causing explosions endangering life

220A. Any person who wilfully and unlawfully causes by any explosive substance an explosion of a nature likely to endanger life, whether or not any injury to any person has been actually caused or not, is guilty of a felony and shall be liable to imprisonment for life.

Attempts to cause explosions endangering life

220B. Any person who within Kiribati or, being a citizen of Kiribati, anywhere in the world, wilfully and unlawfully -

- (a) does any act with intent to cause by any explosive substance an explosion in Kiribati of a nature likely to endanger life; or

- (b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life or to enable any other person by means thereof to endanger life,

whether any explosion does or does not take place, and whether any injury to any person has been actually caused or not, is guilty of a felony and shall be liable to imprisonment for 20 years; and the explosive substance shall be forfeited. "

Adds section 245A to Cap. 67

15. The Penal Code is amended by adding, after section 245, the following section -

"Dealing in slaves

245A. Any person who, within or outside Kiribati -

- (a) buys, sells, barter, lets, hires or in any other way deals with, any person as a slave;
- (b) employs or uses any person as a slave, or permits any person to be so employed or used;
- (c) confines, conveys, receives or imports any person as a slave or in order that the person may be subjected to slavery;
- (d) induces any person to sell, let or give himself or any person dependent on him or in his charge, as a slave;
- (e) builds, fits out, buys, sells, lets, hires, uses or permits to be used, or serves on board, any vessel that is used or intended for any of the purposes mentioned in paragraphs (a) to (d); or
- (f) agrees or offers to do any of the acts mentioned in paragraphs (a) to (e),

is guilty of a felony and shall be liable to imprisonment for 14 years."

Adds section 248A to Cap. 67

16. The Penal Code is amended by adding, after section 248, the following section -

"Inducing servitude

248A. Any person who induces any person to place himself or any person dependent upon him or in his charge, in servitude is guilty of a misdemeanour."

Adds sections 319A and 319B to Cap. 67

17. The Penal Code is amended by adding, after section 319, the following sections -

"Causing explosions endangering property

319A. Any person who wilfully and unlawfully causes by any explosive substance an explosion of a nature likely to cause serious injury to property, whether or not any injury to any property has been actually caused or not, is guilty of a felony and shall be liable to imprisonment for life."

Attempts to cause explosions endangering property

319B. Any person who, within Kiribati or, being a citizen of Kiribati, anywhere in the world, wilfully and unlawfully -

(a) does any act with intent to cause by any explosive substance an explosion in Kiribati of a nature likely to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to cause serious injury to property in Kiribati or to enable any other person by means thereof to cause serious injury to property in Kiribati,

whether any explosion does or does not take place, and whether any injury to property has been actually caused or not, is guilty of a felony and shall be liable to imprisonment for 20 years; and the explosive substance shall be forfeited."

Amends section 325 of Cap. 67

18. Section 325 of the Penal Code is amended by deleting the definition of "bank note" the words "of the Bank of England or".

Amends section 330 of Cap. 67

19. Section 330 of the Penal Code is amended in subsection (3)(k) by deleting all the words beginning "under Part I of the Merchant Shipping Act" to the end of the paragraph and substituting -

"under any law relating to merchant shipping or any entry or endorsement required by such a law to be made in or on any of those documents;"

PART III - AMENDMENTS TO THE CRIMINAL PROCEDURE CODE

Amends section 18 of Cap. 17

20. Section 18 of the Criminal Procedure Code is amended in paragraph (g) by deleting "under the Extradition Act 1870 or the Fugitive Offenders Act 1967" and substituting "under the Extradition Act".

Adds section 62A to Cap. 17

21. The Criminal Procedure Code is amended by adding, after section 62, the following section -

"Trial of offences committed outside Kiribati

62A. Where a person is accused of the commission of -

(a) an offence on board an aircraft in flight, or on board a ship, outside the territorial limits of Kiribati; or

(b) any act outside those limits that is declared by the Penal Code or any other law to be an offence,

the offence may be enquired into or tried by a court within the local limits of whose jurisdiction the offender may be for the time being."

Amends section 69 of Cap. 17

22. Section 69(1) of the Criminal Procedure Code is amended by adding, after "powers vested in him under this Code", "other than those in section 70".

Replaces section 70 of Cap. 17

23. Section 70 of the Criminal Procedure Code is repealed and the following section substituted -

"Information by the Attorney General

70. (1) Notwithstanding anything in this Code contained, if -

(a) an inquiry in accordance with section 209 or 210 in respect of an offence triable before the High Court -

(i) has not been held; or

(ii) has been held and the person accused has been discharged; and

(b) the Attorney General is of the opinion -

(i) from a reasonable and probable cause that an offence has been committed by that person; and

(ii) that it is in the public interest that that person should be tried upon an information before the High Court,

the Attorney General may cause an information to be drawn up in accordance with the provisions of this Code, charging that person with that offence.

(2) When signed by the Attorney General, an information drawn up pursuant to subsection (1) shall be filed in the registry of the High Court, and shall for all purposes be treated as if it were an information drawn up in pursuance of section 232."

Adds section 101A to Cap. 17

24. The Criminal Procedure Code is amended by adding, after section 101, the following section -

"Search for biological weapons

101A. (1) Where it is proved on oath to a magistrate or justice of the peace that there is reasonable ground for suspecting that a felony under section 62B of the Penal Code has been or is about to be committed, he may, by a search warrant, authorise a police officer or other person therein named -

- (a) to enter, at any time within one month from the date of the warrant, any premises or place named therein, if necessary by force, and to search the premises or place and every person found therein;
- (b) to inspect any document found in the premises or place or in the possession of any person found therein, and to take copies of, or seize and detain, any such document;
- (c) to inspect, seize and detain any equipment so found; and
- (d) to inspect, sample, seize and detain any substance so found.

(2) A search warrant issued under subsection (1) may authorise a person named therein to accompany the police officer or other person authorised to take the steps mentioned in that subsection and to assist him in taking any of those steps."

Adds section 126 to Cap. 17

25. The Criminal Procedure Code is amended by adding, after section 125, the following section -

"Leave for proceedings in certain cases

126. (1) Subject to subsections (2) to (4), proceedings for the trial of a person -

- (a) not being a citizen of Kiribati, for an offence committed on, over or under the territorial waters of Kiribati on board or by means of an aircraft or ship that is not a Kiribati aircraft or a Kiribati ship;
- (b) for an offence committed on board an aircraft while in flight elsewhere than within the territorial limits of Kiribati (other than offences under, or under any subsidiary legislation made under, any law relating to civil aviation);
- (c) for an offence referred to in section 62A(5) of the Penal Code (attacks against internationally protected persons);
- (d) for an offence under section 62B of the Penal Code (developing, etc., biological weapons);
- (e) for an offence under the Geneva Conventions Act 1990,

shall not be instituted in any court except by, or with the consent of, the Attorney General.

(2) Nothing in subsection (1) shall prevent -

- (a) the arrest, or the issue of a warrant for the arrest, of any person in respect of an offence;

(b) the detention in custody or the admission to bail of any person charged with an offence; or

(c) proceedings before a magistrates' court previous to the committal of any such person, or to the determination of the court that any such person is to be put upon trial.

(3) For the purpose of any proceedings mentioned in subsection (1) -

(a) it shall not be necessary to aver in any charge or information that any consent of the Attorney General required by that subsection has been given;

(b) the fact of such consent having been given shall be presumed unless disputed by the accused;

(c) the production of -

(i) a document purporting to be signed by the Attorney General;

(ii) a facsimile of such a document sent by telecommunication; or

(iii) any transcript in official form of any communication made by telecommunication and purporting to have been sent by the Attorney General,

and containing any consent required by subsection (1) shall be prima facie evidence of the consent.

(4) Subsection (1) shall not apply with respect to proceedings for the trial of a person for the offence of piracy by the law of nations under section 63A of the Penal Code.

(5) For the purposes of this section -

(a) "Kiribati aircraft" and "Kiribati ship" have the meanings given respectively by section 6A of the Penal Code;

"telecommunication" has the meaning given by the Telecommunication Act 1983;

(b) an aircraft shall be deemed to be in flight in the circumstances set out in section 6A(6)(b) of the Penal Code. "

Adds section 140A to Cap. 17

26. The Criminal Procedure Code is amended by adding, after section 140, the following section -

"Evidence in criminal proceedings in relation to aircraft or ships

140A. (1) Where, in any proceedings for an offence committed on board any aircraft or ship, the testimony of any person is required and the court is satisfied that the person in question cannot be found in Kiribati, there shall be admissible in evidence before that court any deposition relating to the subject matter of those proceedings previously made on oath by that person outside Kiribati which was so made -

- (a) in the presence of the person charged with the offence; and
- (b) before a judge or magistrate of a Commonwealth country or before a consular officer of or acting on behalf of Kiribati.

(2) Any such deposition shall be authenticated by the signature of the judge, magistrate or consular officer before whom it was made, who shall certify that the person charged with the offence was present at the taking of the deposition.

(3) It shall not be necessary in any proceedings to prove the signature or official character of the person appearing so to have authenticated any such deposition or to have given such a certificate; and such a certificate shall, unless the contrary proved, be sufficient evidence in any proceedings that the person charged with the offence was present at the making of the deposition.

(4) If a complaint is made to a consular officer of or acting on behalf of Kiribati that any offence has been committed -

- (a) on a Kiribati aircraft while in flight elsewhere than in or over Kiribati;
- or

- (b) on board a Kiribati ship outside Kiribati,

that officer may enquire into the case on oath.

(5) Nothing in this section shall prejudice the admission as evidence of any deposition which is admissible in evidence apart from this section.

(6) For the purposes of this section -

- (a) "deposition" includes any affidavit, affirmation or statement made upon oath;

"Kiribati aircraft" and "Kiribati ship" have the meanings given respectively by section 6A of the Penal Code;

- (b) an aircraft shall be taken to be in flight in the circumstances set out in section 6A(6)(b) of the Penal Code. "

Amends section 152 of Cap. 17

27. Section 152 of the Criminal Procedure Code is amended by deleting "private prosecutor" wherever the words occur and substituting "prosecutor".

Adds sections 155A and 155B to Cap. 17

28. The Criminal Procedure Code is amended by adding, after section 155, the following sections -

"Compensation for apprehension of criminal exertion

155A. (1) Without prejudice to any other power to order the payment of costs or compensation, a court may order that the Republic pay to any person who appears to the court to have been active in the apprehension of a person charged before the court

with a felony such sum of money as to the court seems reasonable to compensate him for the expense, and loss of time in connection with the apprehension.

(2) Where, in any criminal proceedings against a person charged with a felony, it appears to the court that a person was killed whilst endeavouring to apprehend the person so charged, the court may order that the Republic pay such sum as to the court seems fair and reasonable -

(a) to the husband or wife of the person killed;

(b) if there is no such husband or wife living, to the children of the person killed; or

(c) if there are no such husband, wife or children living, to the parents of the person killed.

(3) A sum ordered to be paid under this section shall be paid out of the Consolidated Fund on presentation to the Minister of Finance of an order signed by the Chief Justice.

Compensation for loss of property

155B. (1) Without prejudice to any other power to order the payment of costs or compensation, a court may, immediately after convicting a person of an offence and if it thinks fit, award a sum of money, not exceeding \$500, by way of satisfaction or compensation for personal injury or loss of or damage to property suffered by the applicant through or by means of the offence.

(2) A sum of money awarded under subsection (1) shall be deemed to be a judgment debt due to the applicant from the convicted person and shall be recovered in the same manner as an order for costs.

(3) Nothing in this section prevents the applicant from instituting civil proceedings for damages in respect of injury, loss or damage for which a sum of money has been awarded under subsection (1), but -

(a) in any such civil proceedings the court shall deduct from any damages awarded against the convicted person so much of the sum awarded under subsection (1) as has been paid; and

(b) thereafter any part of that sum that has not been paid may not be recovered except with the leave of that court."

Replaces section 237 of Cap. 17

29. Section 237 of the Criminal Procedure Code is repealed and the following substituted—

"Information by Attorney General

237. (1) All informations shall be in the name of the Attorney General and, subject to section 69, shall be signed by him.

(2) Subject to section 241 and 242, an information duly drawn up in pursuance of section 232 and signed by the Attorney General shall be valid and effectual and may be

proceeded with accordingly."

Replaces section 239 of Cap. 17

30. Section 239 of the Criminal Procedure Code is repealed and the following substituted—

"Practice in High Court in criminal jurisdiction

239. The High Court in its criminal jurisdiction may, on any matter of practice with respect to which there is no provision in this Code, rules of court or any other law, follow such practice as, in the circumstances of the case, appears appropriate for the proper ordering of the proceedings."

Repeals section 300 of Cap. 17

31. Section 300 of the Criminal Procedure Code is repealed.

PART IV - MISCELLANEOUS AMENDMENTS

Amends section 43 of Cap. 52

32. Section 43 of the Magistrates' Courts Ordinance is amended by deleting all the words beginning "and in default" to the end of the section and substituting -

"and in default thereof, in substantial conformity with the practice and procedure for the time being observed by the High Court in the exercise of its criminal and civil jurisdiction."

Adds Part IX to Cap. 82

33. The Public Order Ordinance is amended by adding after Part VIII, the following Part -

**"PART IX
RIOT DAMAGE COMPENSATION**

Compensation for damage by riot

52. (1) Where -

(a) any -

- (i) building, or appurtenant premises;
- (ii) machinery;
- (iii) structure; or
- (iv) vehicle,

is damaged or destroyed by any persons taking part in a riot; or

- (b) property in any building or appurtenant premises is damaged, stolen or destroyed by any such persons,

compensation shall be paid in accordance with this Part to any person who sustains loss by the damage, stealing or destruction.

(2) In fixing the amount of compensation, regard shall be had to the conduct of the person who has sustained the loss, whether as respects -

- (a) the precautions taken by him;
- (b) his being a party or accessory to the riot; or
- (c) any provocation offered to the persons taking part in the riot,

or otherwise.

(3) Where any person who has sustained the loss receives, by way of insurance or otherwise, any sum to recoup him, in whole or in part, for the loss,

- (a) the compensation otherwise payable to him under this Part shall -

- (i) if exceeding that sum, be reduced by that amount;

- (ii) in any other case, not be paid to him;

- (b) the payer of the sum shall be entitled to compensation under this Part in respect of the sum so paid in like manner as if he had sustained the loss; and

- (c) any policy of insurance given by the payer shall continue in force as if he had made no such payment;

and where the person who sustained the loss is recouped otherwise than by the payment of a sum, this provision applies as if the value of the recoupment were a sum paid.

Mode of awarding compensation

53. (1) Claims for compensation under this Part shall be made to the Minister who shall inquire into the truth thereof and shall, if satisfied, fix such compensation as appears to him just.

(2) The Minister may make regulations respecting the time, manner and conditions within, in and under which claims for compensation under this Part are to be made; and, in particular, may provide for -

- (a) the particulars to be stated in any claim;

- (b) the verification of any claim, and of any facts

incidental thereto, by statutory declarations,
production of books, vouchers and documents,
entry of premises and otherwise;

(c) obtaining information or assistance for determining
the claims;

(d) any matter which under this Part can be prescribed.

(3) All claims not made in accordance with the regulations may be excluded.

Right of action to person

54. (1) Where -

(a) a claim to compensation has been made in
accordance aggrieved with the regulations; and

(b) the claimant is aggrieved -

(i) by the refusal or failure of the Minister to fix compensation upon the claim;
or

(ii) by the amount of the compensation fixed,

he may bring an action against the Minister to recover compensation in respect of all or
any of the matters mentioned in the claim and to an amount not exceeding that
mentioned therein.

(2) If, in the action, the claimant fails to recover -

(a) any compensation; or

(b) an amount that exceeds that fixed by the Minister,

he shall pay the costs of the Minister as between legal practitioner and client.

Payment of compensation

55. Where any compensation under this Part has been fixed by, or recovered in an
action against, the Minister shall, on the prescribed conditions having been complied
with, authorise the payment from the Consolidated Fund in the prescribed manner of -

(a) the amount of the compensation; and

(b) all costs and expenses payable by the Minister in or
incidental to the execution of this Part.

Claimants in the case of places of worship and public institutions

56. (1) For the purposes of this Part -

(a) where a place of religious worship is damaged or
destroyed, or any property therein is damaged,

stolen or destroyed, the trustees for the religious body in whom the place is vested; and

(b) where a school, hospital, public institution or public building, is damaged or destroyed, or any property therein is damaged, stolen or destroyed, the persons having control thereof or the persons in whom the legal estate therein is vested,

shall be deemed to be the persons who have sustained the loss, and claims may be made by any one or more of those persons in relation both to the building and appurtenant premises and to property therein.

(2) Payment to any claimant referred to in subsection (1) shall discharge the liability of the Minister to pay compensation but shall be without prejudice to the right of any person to recover the compensation from the payee.

(3) Nothing in this Part authorises claims to be made in relation to a building, or appurtenant premises, or property therein, that is owned by the Republic."

PART V - REPEALS

Abolition of common law offences

34. The following distinct offences under the common law, in so far as they are, or may be, part of the law of Kiribati, are abolished -

- (a) maintenance (including champerty);
- (b) challenging to fight;
- (c) eavesdropping;
- (d) being a common barrator;
- (e) being a common scold;
- (f) being a common night walker;
- (g) publishing a defamatory libel;
- (h) writing, composing or publishing a seditious libel;
- (i) composing, printing or publishing a blasphemous libel.

Repeal of Imperial laws

35. (1) The following enactments of the United Kingdom Parliament are repealed to the extent that they are, or may be, part of the law of Kiribati:

Admiralty Jurisdiction Act 1391

Offences at Sea Act 1536
Sale of Offices Act 1551
Piracy Act 1698
Piracy Act 1721
Disorderly Houses Act 1751
Dockyards, etc Protection Act 1772
Offences at Sea Act 1799
Criminal Jurisdiction Act 1802
Offences at Sea Act 1806
Sale of Offices Act 1809
Murders Abroad Act 1817
Disorderly Houses Act 1818
Slave Trade Act 1824
Criminal Law Act 1826, sections 28 to 30
Piracy Act 1837
Slave Trade Act 1843
Admiralty Offences (Colonial) Act 1849
Piracy Act 1850
Coinage (Colonial Offences) Act 1853
Admiralty Offences (Colonial) Act 1860
Offences against the Person Act 1861, section 9, 10 and 57
Foreign Enlistment Act 1870
Forfeiture Act 1870, sections 2 and 4
Slave Trade Act 1873
Slave Trade Act 1876
Courts (Colonial Jurisdiction) Act 1874
Territorial Waters Jurisdiction Act 1878
Explosive Substances Act 1883
Riot Damages Act 1886
Admiralty Offences (Colonial) Act 1890
Forged Transfers Act 1891
Forged Transfers Act 1892
Uniforms Act 1894
Merchant Shipping Act 1894, sections 685 to 687, 689 and 691
Criminal Justice Act 1948, section 31
Costs in Criminal Cases Act 1952
Indecency with Children Act 1960
Tokyo Convention Act 1967
Hijacking Act 1971
Protection of Aircraft Act 1973
Biological Weapons Act 1974
Internationally Protected Persons Act 1978.

(2) The following Orders of Her Majesty's Privy Council are repealed to the extent that they are part of the law of Kiribati:

Tokyo Convention Act 1967 (Overseas Territories) Order 1968, SI 1968 No. 1864
Hijacking Act 1971 (Overseas Territories) Order 1971, SI 1971 No. 1739
Protection of Aircraft Act 1973 (Overseas Territories) Order 1973, SI 1973 No. 1757
Biological Weapons Act 1974 (Overseas Territories) Order 1975, SI 1975 No. 240
Internationally Protected Persons Act 1978 (Overseas Territories) Order 1979, SI 1979 No. 456.

CRIMINAL LAW AND PROCEDURE (PATRIATION) ACT 1991

EXPLANATORY MEMORANDUM

The Criminal Law and Procedure (Patriation) Act in the main replaces provisions of inherited law relating to the criminal law and criminal procedure. The replacement provisions largely reproduce the principles of the inherited law but are drafted in a form which permits their inclusion, by way of amendment, into the existing statutes on these subjects - the Penal Code, Cap. 67; the Criminal Procedure Code, Cap. 17; the Public Order Ordinance, Cap. 82; and the Magistrates' Courts Ordinance, Cap. 52.

The Act also repeals United Kingdom legislation that is, or may be, part of the law of Kiribati but which is superseded by the replacement provisions. In addition a number of common law offences that may technically have been inherited and may remain part of the law of Kiribati. These are either no longer suited to present day conditions or unnecessary by reason of adequate provisions in the Penal Code.

Part II (sections 2 to 19) is concerned with amendments to the Penal Code, Cap. 67.

Section 2 replaces section 3 of the Penal Code which requires the principles of legal interpretation in England to be followed and meanings attaching to expressions in the English criminal law to be used for the same expressions in the Code. The replacement section, whilst removing the references to "English" law, requires common law meanings to be followed (for "common law", see Laws of Kiribati Act 1989, section 6). It also permits the Kiribati courts to determine the meaning of the Code without being bound by decisions from other jurisdictions. The Interpretation and General Clauses Ordinance, Cap. 46, by its own terms (section 2) continues to apply in respect of the Penal Code.

Section 3 adds new definitions to the Penal Code necessitated by sections 6A and 181A, 220A and 220B, 319A and 319B, added to the Code by sections 4, 12, 14 and 17.

Section 4, in replacing Part III of the Penal Code, makes new provision for the application of the Penal Code. Whilst Kiribati was dependent, restrictions upon the competence of the legislature to make law in relation to events outside Kiribati were probably observed when the Code was enacted.

Section 5 of the Penal Code will now take specific account of extra-territorial offences (some of which were created by inherited legislation : see, eg: section 62A of the Penal Code added by section 6) and the jurisdictional authority that stems from the determination of Kiribati's territorial limits by the Marine Zones (Declaration) Act 1983, No. 7. It supersedes the Admiralty Offences (Colonial) Act 1849 and the Territorial Waters Jurisdiction Act 1878.

Section 6 of the Code is amended to clarify the position with respect to criminal acts which are partly done outside Kiribati, to enable the person doing them to be proceeded against as if the acts were wholly done within Kiribati.

Of the new provisions, section 6A replaces in a more systematic form the existing law with respect to criminal acts on board aircraft and ships. The former is contained in section 1 of the Tokyo Convention Act 1967 (extended to Kiribati by SI 1968, No. 1864) and the latter, in a very unsatisfactory form, by the Offences at Sea Act 1799, the Admiralty Offences (Colonial) Act 1849, the Courts (Colonial Jurisdiction) Act 1874 and sections 686 and 687 of the Merchant Shipping Act 1894.

Section 6B, in replacing the Criminal Jurisdiction Act 1802 and section 31 of the Criminal Justice Act 1948, permits the Kiribati courts to try State employees for offences against the law of Kiribati

committed abroad in the course of their official employment.

Section 5, by adding section 51A, replaces section 2 of the Forfeiture Act 1870, with modifications, to disqualify those convicted of treason and misprision of treason from official positions.

Section 6 adds sections 62A and 62B to the Penal Code. The provisions in section 62A were originally made part of the law of Kiribati by the International Protected Persons Act 1978, extended by SI 1979, No. 456. They are designed to prevent acts of terrorism against visiting Heads of Government and similar persons. The provisions in section 62B were originally made part of the law of Kiribati by the Biological Weapons Act 1974, extended by SI 1975, No. 240.

Section 7, adding sections 63 to 63H to the Penal Code, replaces the referential incorporation of the English law of piracy under section 63 of the Penal Code by sections drafted to provide a consistent statement of the law and to remove anachronisms. The mandatory life sentence set out in section 63 is retained.

Section 63A replaces sections 4, 7(pt) and Schedule of the Tokyo Convention Act 1967, extended to Kiribati by SI 1968, No. 1864, in so far as it deals with air piracy and piracy by the law of nations.

The other sections replace the Piracy Acts 1698, 1721, 1837 and section 9 of the Slave Trade Act 1824, but they deal separately with attempts, conspiracy and accessories after the fact, for which general offences the Penal Code provides comparatively light penalties.

Section 8, in repealing section 100(2) of the Penal Code, eliminates the reference to the Statutory Declarations Act 1835. This interpretation section is superfluous by reason of the definition of "statutory declaration" in section 3 of the Interpretation and General Clauses Ordinance, Cap. 46.

Section 9, in adding section 133A to the Penal Code, replaces the Indecency with Children Act 1960 which makes gross indecency with children (such as sexually stimulating a child) an offence.

Section 10, in repealing section 148(2) of the Penal Code, ends the operation in Kiribati of the Disorderly Houses Acts 1751 and 1818. Subclause (2) provides a procedure for requiring the police to pursue complaints by local residents about the operation of brothels, but in a simpler form than that contained in those Acts. The power to deal with brothels in section 148(1) is unaffected.

Section 11 brings the existing law of bigamy (sections 163 of the Penal Code) into line with English law (see Offences against the Person Act 1861, section 57) by permitting prosecutions in certain cases where the marriage is celebrated outside Kiribati.

Section 12 incorporates into the Penal Code, as section 181A, section 4 of the Explosive Substances Act 1883 dealing with possession of explosives in suspicious circumstances. This may be a statute of general application, but several of its provisions are required to give full effect to the inherited provisions on aircraft offences - Hijacking Act 1971, as extended by SI 1971, No. 1739, and the Protection of Aircraft Act 1973, as extended by SI 1973 No. 1757 (both patriated by the Aircraft Security Act 1990) and in the Internationally Protected Persons Act (see clause 6, above). Other provisions of the Act are incorporated by sections 14 and 17.

Section 13 clarifies the power of the Kiribati courts to deal with homicides committed outside Kiribati. It supersedes the Admiralty Offences (Colonial) Acts 1849, 1890, and in so far as they may have been inherited, sections 9 and 10 of the Offences Against the Person Act 1861.

Section 14 incorporates into the Penal Code, as sections 220A and 220B, those provisions of section 3 of the Explosive Substances Act 1883 that relate to threats to life (with which this Part of the Code is concerned).

Section 15 incorporates into the Penal Code, as section 145A, replacement provisions for section 2 of the Slave Trade Act 1824 as extended by section 1 of the Slave Trade Act 1843.

Section 16 adds section 248A to the Penal Code, as the inherited law relating to slavery and the existing provisions of the Penal Code (Sections 241-249) appear not to be wide enough to cover the prohibition on "servitude" in section 6 of the Constitution.

Section 17 incorporates into the Penal Code as section 319A and 319B those provisions of section 3 of the Explosive Substances Act 1883 that relate to threats of serious injury to property (with which this Part of the Code is concerned).

Section 18 deletes the specific superfluous references in section 325 of the Penal Code to the "Bank of England" in connection with bank notes.

Section 19 replaces specific references to the Merchant Shipping Act 1894 in section 330 of the Penal Code by more general provisions to the same effect.

Part III (sections 20 to 31) provides for amendments to the Criminal Procedure Code, Cap. 17.

Section 20 replaces references to the now repealed Extradition Act 1870 and the Fugitive Offenders Act 1967 (see Cap. 32A) in section 18 of the Criminal Procedure Code.

Section 21 incorporates into the Criminal Procedure Code, as section 62A, a single set of provisions to determine which local courts have jurisdiction with respect to offences committed extra-territorially. It replaces section 1(3) of the Tokyo Convention Act 1967 and sections 685 and 686 of the Merchant Shipping Act 1894.

Section 22 makes a minor amendment to section 69 of the Criminal Procedure Code consequential upon the amendment in section 23, to preclude delegation by the Attorney General of his powers to file informations.

Section 23 replaces the referential incorporation by section 70 of the Criminal Procedure Code of English practice with respect to the power of the Attorney General to file informations, by a statement of the power conferred.

Section 24 incorporates into the Criminal Procedure Code, as section 101A, provisions as to search derived from the Biological Weapons Act 1974, as extended to Kiribati by SI 1975, No. 240.

Section 25 incorporates into the Criminal Procedure Code a new section 126 (the former having been repealed by the Constitution (Laws Adaptation) Order 1980). This requires consent to be given by the Attorney General for prosecutions of offences that may have international implications. In form, the section follows the original section 126, with some updatings, but it replaces provisions found in the Territorial Waters Act 1878; the Internationally Protected Person Act 1878, as extended by SI 1979 No. 56; the Biological Weapons Act 1974, as extended by SI 1975 No. 240; and the Geneva Conventions Act 1957, as extended by SI 1959 No. 1301 (in respect of the latter see the Geneva Conventions Act 1990).

Section 26 incorporates into the Criminal Procedure Code, as section 140A, a replacement provision for section 5 of the Tokyo Convention Act 1967, as extended by SI 1968 No. 1864, on taking evidence with respect to offences on aircraft. The provision has been widened to include ships and so replaces section 691 of the Merchant Shipping Act 1894.

Section 27 amends section 152 of the Code so as to permit the prosecution to seek costs in respect of the proceedings against a person who has been convicted, and conversely to allow acquitted persons to apply for costs against the prosecution where there were no reasonable grounds for bringing the case (cp, Costs in Criminal Cases Act 1952). At present these powers are available only in respect of

private prosecutions.

Section 28 incorporates into the Criminal Procedure Code, as sections 155A and 155B, a replacement provision for sections 28 to 30 of the Criminal Law Act 1826 and section 4 of the Forfeiture Act 1870. These provisions authorise the award of limited compensation to persons involved in the arrest of criminals or for personal injury or for damage to or loss of property. In the latter case, provision is made to preserve the right to bring civil proceedings.

Section 29 replaces section 237 of the Criminal Procedure Code which referentially equates Kiribati procedures with provisions in the Administration of Justice (Miscellaneous Provisions) Act 1933.

Section 30 replaces section 239 of the Criminal Procedure Code which required the High Court to follow English practice and procedure in cases where there is local provision. The new section permits the High Court to proceed as seems proper, which would include following practice in English or other common law courts.

Section 31 repeals section 300 of the Criminal Procedure Code which permits the High Court to issue "any writ or order" in criminal proceedings that may be issued by "the High Court in England" (criminal jurisdiction in England since 1971 has been exercised by the Crown Court). Given the general jurisdictional powers of the High Court, there is little evidence that this default provision is required.

Part IV (sections 32 and 33) is concerned with amendments to the Magistrates' Courts Ordinance, Cap. 52 and the Public Order Ordinance, Cap. 82.

Section 32 replaces the provisions in section 43 of the Magistrates' Courts Ordinance which require the courts to follow English practice in the absence of express provisions in Kiribati law. Practice of the Kiribati High Court is substituted.

Section 33 introduces a new Part IX into the Public Order Ordinance, in replacement for the Riot (Damages) Act 1886. This requires compensation to be paid to private persons who suffer damage as a result of riot. The Minister is authorised to make regulations to give effect to the scheme.

Part V (sections 34 and 35) is concerned with necessary repeals.

Section 34 abolishes a series of common law offences which, by virtue of section 2(a) of the Penal Code, may technically be part of Kiribati law. These have dropped out of usage, in most cases because of alternative provisions in the written law (for example, relating to breaches of the peace). Maintenance and champerty are offences relating to improper interference with, or the financing of, another's law suit. A barrator is a person who improperly stirs up or encourages law suits. The offences relating to sedition, blasphemy and libel are not needed by reason of Parts XI, XV and XIX of the Code.

Section 35 repeals United Kingdom legislation that is displaced by provisions in the earlier parts of the Bill. In addition repeals are included of United Kingdom legislation relating to aircraft offences (following the enactment of the Aircraft Security Act 1990) and a small number of United Kingdom statutes of paramount force concerned with criminal law that are no longer appropriate to the circumstances of Kiribati.

Michael Neua Takabwebwe
The Attorney General
21 January 1991