

REPUBLIC OF KIRIBATI  
(No. 4 of 1991)

I assent,

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

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

PART I - PRELIMINARY

Short title and commencement

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

PART II - AMENDMENTS TO THE PENAL CODE

Replaces section 3 of Cap. 67

Section 3 of the Penal Code is repealed and the following  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

Interpret- 3. Subject to the provisions of any written law -  
tion of

- Code
- (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 -

(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".

Amends section 62A to Cap. 17

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

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 -

- 70.(1) Notwithstanding anything in this Code contained,
- Information if -  
the  
Attorney  
General
- (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 Bio-  
logical  
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 pro-  
ceedings  
to  
obtain  
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;

Minister of Finance of an order signed by the Chief Justice.

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 -

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 -

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

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 Section 300 of the Criminal Procedure Code is repealed.

PART IV - MISCELLANEOUS AMENDMENTS

Amends section 43 of Cap. 52

2. 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

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

"PART IX

RIOT DAMAGE COMPENSATION

Compens-  
ation  
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;