

REPUBLIC OF KIRIBATI

COURT OF APPEAL ACT 1980

ARRANGEMENT OF SECTIONS

PART I - PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II - COURT OF APPEAL

3. General jurisdiction.
4. Precedence and seniority.
5. Number of judges.
6. Sessions of Court.
7. Registrar of the Court.
8. Judges not to sit on appeals from their own decisions.
9. Appeals under other enactments.

PART III - APPEALS IN CIVIL CASES

10. Appeals in civil cases.
11. Powers of Court in civil cases.
12. Wrong ruling as to sufficiency of stamp.
13. Power to reserve questions of Law for the decision of the Court.
14. Conditions precedent to appeal.
15. Discretionary power of the Court.
16. Judgements.
17. Continuation of civil appeal notwithstanding absence of a judge.
18. Powers of a single judge of appeal.

PART IV - APPEALS IN CRIMINAL CASES

19. Right of appeal in criminal cases.
20. Referrals by Attorney General.
21. Appeals from High Court in its appellate etc. jurisdiction in criminal cases.
22. Determination of appeal in ordinary cases.

23. Powers of court in special cases.
24. Suspension of order for restoration or payment of compensation or expenses, etc.
25. Time for appealing.
26. Sentence of death or corporal punishment.
27. Judge's notes and report to be furnished on appeal.
28. Attorney General to be party.
29. Legal assistance to appellant.
30. Right of appellant to be present.
31. Costs of appeal.
32. Admission of appellant to bail and custody when attending Court.
33. Duties of Registrar with respect to notices of appeal, etc.
34. Powers which may be exercised by a judge of the Court.
35. Judgement in criminal appeals.
36. Power to reserve question of law for the decision of the court.
37. Prerogative of mercy.

PART V - RULES

38. Power to make rules of court.

REPUBLIC OF KIRIBATI
(No. 11 of 1980)

I assent,

N. Tabai
Beretitenti,
31 December, 1980.

AN ACT FOR THE ESTABLISHMENT OF A COURT OF APPEAL
AND TO MAKE PROVISIONS FOR APPEALS THERETO

Commencement: 31 December,
1980.

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

PART I - PRELIMINARY

Short title. 1. This Act may be cited as the Court of Appeal Act 1980.

Interpretation. 2. In this Act, unless the context otherwise requires -

"Appeal" for the purpose of Part III of this Act, includes a
motion for a new trial or to set aside any decision;

"appellant" includes a person who has been convicted and desires
to appeal under this Act; and where the Attorney-General is,
or is deemed to be, a party to any proceedings and desires
to appeal under this Act includes the Attorney-General;

"the Court" means the Court of Appeal;

"decision" includes an order, judgement or decree;

"legal representative" means barrister, solicitor or such other
person as the court may permit to appear on behalf of any
person;

"President" means the President of the Court of Appeal appointed
by the Beretitenti under section 91(3) of the Constitution;

"Registrar" means the Registrar of the Court of Appeal;

"sentence" includes any order of the Court made on conviction
with reference to the person convicted, and any disqualifi-
cation, penalty, punishment or recommendation made or
imposed by the Court, and "sentenced" shall be construed
accordingly.

PART II - COURT OF APPEAL

General
jurisdiction.

3. The Court shall have -

(a) power and jurisdiction to hear and determine all
appeals which lie to the Court by virtue of the
Constitution, this Act or of any other law for the
time being in force;

(b) all such powers and jurisdiction as are or may from
time to time be vested in the Court under or by
virtue of the Constitution, this Act or any other
law for the time being in force.

Precedence and seniority.

4(1) The judges of the Court, other than the President, shall, as between themselves, take precedence and have seniority as the President shall from time to time determine.

(2) In the determination of such precedence and seniority due regard shall be had to the date of appointment to, and the nature of, any judicial office held, or formerly held, by the judges respectively.

(3) In default of a determination under subsection (1) of this section judges or retired judges of any superior court in the Commonwealth (including the High Court) shall take precedence and seniority according to the respective dates of their first appointment as puisne judges in any territory.

Number of judges.

5(1) For the purpose of hearing and determining appeals the Court shall be summoned in accordance with directions given by the President and the Court shall be duly constituted if it consists of not less than three judges, but provision may be made by rules of court for the hearing and determining of specified classes of cases by two judges of the Court.

(2) In all appeals and applications brought before the Court ~~the determination of any question shall be according to the~~ opinion of the majority. If on the hearing of an appeal or application the Court is equally divided the appeal or application as the case may be shall be dismissed;

Provided that, if the President so directs, the appeal or application shall, on the request of the appellant or applicant, made within thirty days of the dismissal of the appeal or application or within such further period as the President may, at any time, allow, be re-argued and determined by three judges.

(3) A judge of the Court may sit as a judge upon the re-hearing of an appeal or application pursuant to the provisions of the proviso to the last preceding subsection notwithstanding that he was a member of the Court which was equally divided.

Sessions.

6. The Court shall sit at such places from time to time as the President may determine.

Registrar of Court.

7. The Registrar of the High Court shall be Registrar of the Court.

Judges not to sit on appeals from their own decisions.

8. Without prejudice to the provisions of subsection (3) of section 5 of this Act, a judge of the Court shall not sit as a judge on the hearing of an appeal from any order, judgement or decision made by himself or on the hearing of an appeal against a conviction or sentence if he was the judge by or before whom the appellant was convicted.

Appeals under other enactments.

9. With respect to appeals under enactments of, or in force in Kiribati other than this Act, the jurisdiction, powers and authorities of the Court shall be subject to the provisions of such enactments.

PART III - APPEALS IN CIVIL CASES

Appeals in
civil cases.

10(1) Subject to the provisions of the next succeeding subsection, and to section 123 of the Constitution an appeal shall lie under this part of this Act in any cause or matter, not being a criminal proceeding, to the Court -

- (a) from any decision of the High Court sitting in first instance, including any decision of a judge in chambers;
- (b) on any ground of appeal which involves a question of law only, from any decision of the High Court in the exercise of its appellate jurisdiction under any enactment which does not prohibit a further appeal to the Court.

(2) No appeal shall lie -

- (a) from an order allowing an extension of time for appealing from a decision;
- (b) from an order of a judge giving unconditional leave to defend an action;
- (c) from the decision of the High Court or of any judge thereof where it is provided by any enactment that such decision is to be final;
- (d) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree;
- (e) without the leave of the Court or judge making the order, from an order of the High Court of any judge thereof made with the consent of the parties or as to costs only;
- (f) without the leave of the judge or of the Court from any interlocutory order or interlocutory judgement made or given by a judge of the High Court, except in the following cases, namely:-
 - (i) where the liberty of the subject or the custody of infants is concerned;
 - (ii) where an injunction or the appointment of a receiver is granted or refused;
 - (iii) in the case of a decree nisi in a matrimonial cause or a judgement or order in an Admiralty action determining liability;

(iv) in such other cases as may be prescribed by rules of Court.

(3) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory order within the meaning of this section.

Powers of Court in civil appeals.

11. For all the purposes of and incidental to the hearing and determination of any appeal under this part of this Act and the amendment, execution and enforcement of any order, judgement or decision made thereon, the Court shall have all the power, authority and jurisdiction of the High Court and such power and authority as may be prescribed by rules of court.

Wrong ruling as to sufficiency of stamp.

12. The Court shall not grant a new trial or reverse any judgement by reason of the ruling of a court that the stamp upon any document is sufficient or that the document does not require a stamp.

Power to reserve questions of law for the decision of the court.

13. In addition and without prejudice to the right of appeal conferred by this part of this Act but subject to the provisions of section 123 of the Constitution a judge of the High Court may reserve for consideration by the Court, on a case to be stated by him, any question of law which may arise on the trial of any cause or matter, and may give any judgement or decision, subject to the opinion of the Court, and the Court shall have power to hear and determine every such question.

Conditions precedent to appeal.

14. Subject to the provisions of the next succeeding section, the Court shall not entertain any appeal made under the provisions of this part of this Act unless the appellant has fulfilled all the conditions of appeal as prescribed by rules of court.

Discretionary power of the Court.

15. Notwithstanding anything hereinbefore contained but subject to the provisions of section 123 of the Constitution, the Court may entertain an appeal made under the provisions of this part of this Act on any terms which it thinks just.

Judgements.

16(1) The decision of the Court in any proceedings under this Part of this Act or any judge taking part in the determination of the proceedings may be delivered by or in the presence of a court constituted differently from that which heard the proceedings, and may, at the discretion of the presiding judge, be delivered by a judge who was not present at the hearing of the proceedings, or by the Registrar, in the presence of the Court as for the time being constituted.

(2) It shall be lawful for any decision to be delivered by the effect thereof being pronounced, in such terms as the Court or judge shall think appropriate provided that the full terms of the decision shall have been reduced to writing and that a copy thereof is made available to the parties.

Continuation of civil appeal notwithstanding absence of a judge.

17(1) If, in the course of any proceedings under this Part of this Act, or in the case of a reserved judgement in any such proceedings at any time before delivery thereof, any judge taking part or having taken part in the hearing of the proceedings dies, or is unable through illness or any other cause to attend, or continue to attend, the proceedings or otherwise exercise his functions as a judge of appeal in relation thereto, the proceedings shall if the parties consent, continue before, and, without prejudice to the provisions of the last preceding section, the judgement or reserved judgement, as the case may be, shall be given by the remaining judges of the Court, not being less than two, and the Court as so remaining constituted shall, for the purposes of the proceedings, be deemed to be duly constituted notwithstanding the death, absence or inability to act of such judge as aforesaid.

(2) Where, in any such case as is referred to in the preceding subsection, proceedings continue to be heard before the remaining judges the proceedings shall be decided in accordance with the opinion of the majority of the remaining judges, and, subject to the provisions of the proviso to subsection (2) of section 5 of this Act, if there is no such majority the decision appealed against shall stand.

(3) If the parties do not consent that the proceedings should continue or that judgement should be given in accordance with the provisions of subsection (1) of this section, the appeal shall be re-heard.

Powers of a single judge of appeal.

18. The powers of the Court under this Part of this Act -

- (a) to give leave to appeal;
- (b) to extend the time within which a notice of appeal or an application for leave to appeal may be given or within which any other matter or thing may be done;
- (c) to give leave to amend a notice of appeal or respondent's notice;
- (d) to give directions as to service;
- (e) to admit a person to appeal in forma pauperis;
- (f) to stay execution or make any interim order to prevent prejudice to the claims of any party pending an appeal;
- (g) generally, to hear any application, make any order or give any direction incidental to an appeal or intended appeal, not involving the decision of the appeal;

may be exercised by any judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions; but, if the judge refuses an application to exercise any such power, the applicant or party aggrieved shall be entitled to have the matter determined by the Court as duly constituted for the hearing and determining of appeals under this Act.

PART IV - APPEALS IN CRIMINAL CASES

Right of appeal
in criminal
cases.

19. A person convicted on a trial held before the High Court may appeal under this part of this Act to the Court -

- (a) against his conviction on any ground of appeal which involves a question of law alone;
- (b) with the leave of the Court or upon the Certificate of the judge who tried him that it is a fit case for appeal against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the Court to be a sufficient ground of appeal; and
- (c) with the leave of the Court against the sentence passed on his conviction unless the sentence is one fixed by law.

Referrals by
Attorney General.

20(1) Where the High Court has acquitted a person or confirmed the acquittal of a person by a magistrates' court (whether in respect of the whole or part of any charge) the Attorney General may, if he desires the opinion of the Court on a point of law which has arisen in the case, refer that point to the Court and the Court shall, in accordance with this section, consider the point and give their opinion on it.

(2) For the purpose of their consideration of a point referred to them under this section the Court shall hear argument -

- (a) by, or by a legal representative on behalf of, the Attorney General; and
- (b) by, or by a legal representative on behalf of, the acquitted person if he wishes to present any argument to the Court.

(3) A reference under this section shall not affect the trial or appeal in relation to which the reference is made or any acquittal in that trial or appeal.

Appeals from
High Court in
its appellate,
etc. jurisdic-
tion in criminal
cases.

21(1) Any party to an appeal from a magistrates' court to the High Court may appeal, under this Part of this Act, against the decision of the High Court in such appellate jurisdiction to the Court on any ground of appeal which involves a question of law only (not including severity of sentence):

Provided that subject to section 20 of this Act no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a magistrates' court.

(2) For the purposes of this section, a decision of the High Court in the exercise of its revisional jurisdiction or on a case stated, under the provisions of the Criminal Procedure Code, shall be deemed to be a decision of the High Court in such appellate jurisdiction as aforesaid.

(3) On any appeal brought under the provisions of this section the Court may, if it thinks that the decision of the magistrates' court or of the High Court should be set aside or varied on the ground of a wrong decision on any question of law, make any order which the magistrates' court or the High Court could have made, or may remit the case, together with its judgement or order thereon, to the magistrates' court or to the High Court for determination, whether or not by way of trial de novo or re-hearing, with such directions as the Court may think necessary.

Provided that, in the case of an appeal against conviction, if the Court dismisses the appeal and confirms the conviction appealed against, it shall not (save as provided in the next succeeding subsection) increase, reduce or alter the nature of the sentence imposed in respect of that conviction, whether by the magistrates' court or by the High Court, unless the Court thinks that such sentence was an unlawful one or was passed in consequence of an error of law, in which case it may impose such sentence in substitution therefor as it thinks proper.

(4) If it appears to the Court that a party to an appeal brought under this section, though not properly convicted on some charge, has been properly convicted on some other charge, the Court may, in respect of the charge on which it considers that the appellant has been properly convicted, either affirm the sentence passed by the magistrates' court or by the High Court or pass such other sentence (whether more or less severe) in substitution therefor as it thinks proper.

(5) Where a party to an appeal brought under the provisions of this section has been convicted of an offence and the magistrates' court or the High Court could lawfully have found him guilty of some other offence, and on the finding of the magistrates' court or of the High Court it appears to the Court that the court must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the conviction entered by the magistrates' court or by the High Court a conviction of guilty of that other offence, and pass such sentence (whether more or less severe), in substitution for the sentence passed by the magistrates' court or by the High Court as may be warranted in law for that other offence.

(6) On any appeal brought under the provisions of this section, the Court may, notwithstanding that it may be of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has in fact occurred.

(7) Without prejudice to the application of sections 32 and 34 of this Act, in any case where an appeal under the provision of this section is pending a judge of the High Court may in his discretion grant bail to any convicted person who is a party to such appeal.

(8) The provisions of sections 24, 25, 29, 31, 32, 33, 34, 35 and 37 of this Act shall apply mutatis mutandis to appeals brought under the provisions of this section.

Determination
of appeal in
ordinary
cases.

22(1) The Court on any such appeal against conviction shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgement of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

Provided that the Court may, notwithstanding that it is of the opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

(2) Subject to the special provisions of this Act, the Court shall, if it allows an appeal against conviction, either quash the conviction and direct a judgement and verdict of acquittal to be entered, or if the interests of justice so require, order a new trial.

(3) On an appeal against sentence, the Court shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted by law by the verdict (whether more or less severe) in substitution therefore as it thinks ought to have been passed, or may dismiss the appeal or make such other order as it thinks just.

Powers of Court
in special cases.

23(1) If it appears to the Court that an appellant, though not properly convicted on some count or part of the information has been properly convicted on some other count or part of the information, the court may either affirm the sentence passed on the appellant at the trial or pass sentence in substitution therefor as it thinks proper and as may be warranted in law by the verdict on the count or part of the information on which the Court considers that the appellant has been properly convicted.

(2) Where the appellant has been convicted of an offence and the judge could on the information have found him guilty of some other offence, and on the findings of the judge it appears to the Court that the judge must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by such judge a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity,

(3) If on any appeal it appears to the Court that although the appellant was guilty of the act or omission charged against him, he was insane at the time the act was done or the omission made so as not to be responsible according to law for his actions, the Court may quash the sentence passed at the trial and order the appellant to be kept in custody in such place and in such manner as the Court shall direct until the Government orders otherwise, and the Government may thereupon and from time to time give such order for the safe custody of the appellant during pleasure and in such place and in such manner as to the Government may seem fit.

Suspension of order for restoration or payment of compensation or expenses, etc.

24(1) The operation of any order made on conviction by the judge before whom the conviction takes place for the payment of compensation or of any of the expenses of the prosecution or for the restoration of any property to any person, and the operation of the provisions of any law re-vesting in case of any such conviction in the original owner or his personal representative the property in stolen goods, shall (unless the judge before whom the conviction takes place directs to the contrary in any case in which in his opinion the title to the property is not in dispute) be suspended -

(a) in any case until the expiration of thirty days after the date of the conviction; and

(b) in cases where notice of appeal or leave to appeal is given within thirty days after the date of conviction, until the determination of the appeal;

and in cases where the operation of any such order or provisions is suspended until the determination of the appeal, the order or provisions shall not take effect as to the property in question if the conviction is quashed on appeal.

(2) The Court may by order annul or vary an order made in the trial for the payment of compensation or of any of the expenses of the prosecution or for the restitution of any property to any person, although the conviction is not quashed and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

Time for appealing.

25(1) Where a person convicted desires to appeal under this part of this Act to the Court, or to obtain leave of the Court to appeal, he shall give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of Court within thirty days of the date of conviction. Except in the case of a conviction involving sentence of death, the time, within which notice of appeal or notice of an application for leave to appeal may be given, may be extended at any time by the Court.

Sentence of death or corporal punishment.

(2) In the case of a conviction involving sentence of death or corporal punishment -

(a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section; and

- (b) if notice is so given, the sentence shall not be executed until after the determination of the appeal or, in cases where an application for leave to appeal is finally refused, of the application;

Provided that if a person sentenced to corporal punishment signs a statement that he does not intend to appeal against his conviction or sentence, his right to appeal shall be deemed to have been abandoned and shall, notwithstanding the provisions of any other written law, thereupon cease, and the sentence may be carried out forthwith.

Judge's notes and report to be furnished on appeal.

25. The judge before whom a person is convicted, shall in the case of an appeal under this part of this Act against the conviction or against the sentence, or in the case of an application for leave to appeal under this part of this Act, furnish to the Registrar, in accordance with rules of court, his notes of the trial; and shall also furnish to the Registrar in accordance with rules of court a report giving his opinion upon the case or upon any point arising in the case.

Supplemental powers of Court.

27. In the exercise of its jurisdiction under this part of this Act the Court may, if it thinks it necessary or expedient in the interests of justice -

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case; and
- (b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court, or in the absence of rules of court making provision in that behalf, as it may direct, before any judge of the Court or before any officer of the Court or Magistrate or other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court; and
- (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such application; and
- (d) where any question arising in the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted

before the Court, order the reference of the question in manner provided by rules of court for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner as far as it thinks fit to adopt it; and

- (e) appoint any person with special expert knowledge to act as assessor to the Court in any case where it appears to the Court that such special knowledge is required for the proper determination of the case,

and exercise in relation to the proceedings of the Court any other powers which may for the time being be exercised by the Court in civil matters and issue any warrants necessary for enforcing the orders or sentences of the Court:

Provided that in no case shall any sentence be increased by reason of or in consideration of any evidence that was not given at the trial.

Attorney-
General to be
party.

28. For the purposes of this Act, the Attorney-General shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor.

Legal assistance
to appellant.

29. The Court may at any time assign legal assistance to an acquitted person in any referral by the Attorney-General under Section 20 of this Act or an appellant in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the acquitted person or appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Right of
appellant to
be present.

30(1) An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it and is not prevented by sickness or other cause, on the hearing of his appeal, except where the appeal is on some ground involving a question of law alone, but, in that case and on any proceedings preliminary or incidental to an appeal shall not be entitled to be present, except where rules of court provide that he shall have the right to be present or where the Court gives him leave to be present.

(2) The power of the Court to pass any sentence under this Act may be exercised notwithstanding that the appellant is for any reason not present.

Costs of
appeal.

31(1) On the hearing and determination of an appeal under this part of this Act no costs shall be allowed to either side.

(2) The expenses of legal assistance assigned to an acquitted person or an appellant under this part of this Act and the expenses of any witness attending on the order of the Court or examined in any proceedings incidental to the appeal, or the referral by the Attorney-General under Section 20 of this Act, and of the appearance of an appellant when in custody on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal, and all

expenses of and incidental to any examination of witnesses conducted by any person appointed by the Court for the purpose, or any reference of a question to a special commissioner appointed by the Court, shall be defrayed out of the Consolidated Fund up to an amount allowed by the Court but subject to any provision as to rates and scales of payment made by rules of court.

Admission of appellant to bail and custody when attending court.

32(1) An appellant who is not admitted to bail shall pending the determination of his appeal be treated in like manner as a prisoner awaiting trial.

(2) The Court may, if it sees fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

(3) When an appellant under this part of this Act is admitted to bail under this Act the time during which he is at large after being so admitted shall be disregarded in computing the term of any sentence to which he is for the time being subject.

(4) Subject as hereinafter provided, six weeks of the time during which any appellant, when in custody, is treated as a prisoner awaiting trial in pursuance of the provisions of subsection (1) of this section, or the whole of that time if it is less than six weeks, shall be disregarded in computing the term of any such sentence as aforesaid:

Provided that -

(a) the foregoing provisions of this subsection shall not apply where leave to appeal is granted under this part of this Act or where any such certificate as is mentioned in paragraph (b) of section 19 of this Act has been given for the purpose of the appeal; and

(b) in any other case, the Court may direct that no part of the said time, or such part thereof as the Court thinks fit (whether shorter or longer than six weeks) shall be disregarded as aforesaid.

(5) Subject to the foregoing provisions of this section, the term of any sentence passed by the Court under this part of this Act in substitution for a sentence passed on the appellant in the proceedings from which the appeal is brought shall, unless the court otherwise directs, begin to run from the time when it would have begun to run if passed in those proceedings, and references in this section to any sentence to which an appellant is for the time being subject shall be construed accordingly.

Duties of Registrar with respect to notice of appeal, etc.

33(1) The Registrar shall take all necessary steps for obtaining a hearing under this part of this Act of any appeals or applications, notice of which is given to him under this Act, and shall obtain and lay before the Court in proper form all documents, exhibits and other things relating to the proceedings in the court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) If it appears to the Registrar that any notice of an appeal against a conviction, purporting to be on a ground of appeal which involves a question of law alone, does not show any substantial ground of appeal, the Registrar may refer the appeal to the Court for summary determination, and where the case is so referred, the Court may, if they consider that the appeal is frivolous or vexatious, and can be determined without adjourning the same for a full hearing, dismiss the appeal summarily, without calling on any person to attend the hearing or to appear for the Republic thereon.

(3) Any documents, exhibits or other things connected with the proceedings on the trial of any person before the High Court who, if convicted, is entitled or may be entitled to appeal under this part of this Act, shall be kept in the custody of the court of trial in accordance with rules of court made for the purpose for such time as may be provided by the rules, and subject to such power as may be given by the rules, for the conditional release of any such documents, exhibits or things from that custody.

(4) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this part of this Act to any person who demands the same, and to officers of courts, the Superintendent of Prisons and such other officers or persons as he thinks fit and the Superintendent of Prisons shall cause these forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this part of this Act and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

(5) The Registrar shall report to the Court or some judge thereof any case in which it appears to him that although no application has been made for the purpose, legal assistance ought to be assigned to an appellant under the powers given to the Court by this Act.

Powers which may be exercised by a judge of the Court.

34. The powers of the Court under this part of this Act to give leave to appeal, to extend the time within which notice of appeal or of an application for leave to appeal may be given, to assign legal aid to an appellant, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, may be exercised by any judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions; but, if the judge refuses an application on the part of the appellant to exercise any such power in his favour, the appellant shall be entitled to have the application determined by the Court as duly constituted for the hearing and determining of appeals under this Act.

Judgement in criminal appeals.

35(1) In an appeal under this part of this Act the Court shall ordinarily give only one judgement, which may be given by the senior member of the Court present at the hearing of the appeal or by such other judge present at the hearing of the appeal as he may direct:

Provided that :-

- (a) if any judge dissents from the judgement of the court it shall not be obligatory on him to sign the same; and
- (b) separate judgements shall be given if the Court is of the opinion that it is convenient that there should be separate judgements.

(2) The judgement of the Court or of any judge present at the hearing of the appeal shall be delivered in open Court either at the hearing of the appeal or at any subsequent time of which notice shall be given by the Registrar to the parties to the appeal.

(3) The judgement of the Court or of any judge present at the hearing of the appeal may be read in open court by any judge, whether present at the hearing of that appeal or not, or by the Registrar.

Power to reserve question of law for the decision of the Court.

36. In addition and without prejudice to the right of appeal conferred by this part of this Act, but subject to the provisions of section 123 of the Constitution, a judge of the High Court, at the conclusion of the hearing by him of any appeal or case stated from a Magistrates' Court in any criminal cause or matter, may reserve, on a case stated by him, any question of law which seems to him to be of general public importance and which may have arisen during such hearing, for consideration by the Court, and shall give his judgement subject to the opinion of the Court on such point of law. The Court shall have power after hearing the appellant or his legal representative, if he appears, and the respondent or his legal representative, if he appears, to determine every such question, and shall notify the High Court of its decision, and the judge shall make such order, conformable with the decision of the Court as may be necessary:

Provided that in the event of such judge dying or departing from Kiribati or being otherwise incapacitated from acting, another judge may make such order.

Prerogative of mercy.

37. Nothing in this Act shall affect the prerogative of mercy, but the Beretitenti in considering the exercise of such prerogative with reference to the conviction of a person by or in the High Court or to the sentence (other than sentence of death) passed on a person so convicted, whether or not the person convicted has petitioned in that behalf, may at any time if he desires the assistance of the Court on any point arising in the case, refer that point to the Court for their opinion thereon, and the Court shall consider the point so referred and furnish the Beretitenti with their opinion thereon accordingly.

PART V - RULES

Power to make
rules of court.

38(1) The Rules Committee established under the provisions of section 97 of the Constitution may make rules of Court for carrying this Act into effect and for regulating generally the practice and procedure under this Act.

(2) The power to make rules conferred by this section shall include power to adopt, or make rules in the terms of, any of the Rules of Her Majesty's Court of Criminal Appeal in England as made from time to time, with or without modifications.

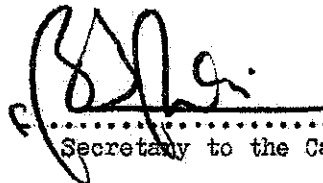
This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 9 December, 1980, and it is found by me to be a true and correctly printed copy of the said Bill.



.....
Clerk to the Maneaba ni
Maungatabu.

Published by exhibition -

- (1) at the Public Office of the Beretitenti on
31 December, 1980.



.....
Secretary to the Cabinet.

- (2) at the Maneaba ni Maungatabu on
31 December, 1980.



.....
Clerk to the Maneaba ni
Maungatabu.

COURT OF APPEAL ACT, 1980.

Explanatory Memorandum

Section 90 of the Constitution provides for there to a Court of Appeal for Kiribati, to have such jurisdiction and powers to hear and determine appeals as may be conferred on it "by any law in force in Kiribati".

This Act constitutes the necessary law referred to.

Before Independence appeals from the High Court went to the Fiji Court of Appeal. The present Act is based upon the Fiji legislation.

Part II deals with the establishment of the Court, the number of judges needed to constitute the Court, their precedence, where and when the Court shall sit, and names the Registrar of the High Court as Registrar of the Court of Appeal.

Part III deals with Civil Appeals. It lays down the circumstances in which appeals are possible, the time within which appeals must be brought and the powers of the Court in relation to the appeals. Section 20 provides that where a person has been acquitted by the High Court or the High Court has confirmed an acquittal by a magistrates' court, the Attorney-General may refer to the Court of Appeal a point of law for the Court's opinion. The Court's decision does not, however, affect the acquittal of the accused.

Michael Jennings
Attorney-General

COURT OF APPEAL ACT, 1980.

LEGAL REPORT.

I hereby certify my opinion that none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act.

Michael Jennings
Attorney General
16 December, 1980.