



Chief Justice's Chambers High Court of Kiribati



Speech of Chief Justice Hastings to Open the 2022 Legal Year

Kam na bane ni mauri. A warm Pacific greeting to you all, including Madame Speaker, the Minister of Justice, judicial officers, members of the public service, members of the diplomatic corps, counsel and staff.

Thank you Madame Attorney-General and Mr Tekanene for your speeches. I was interested to hear the President of the Law Society's references to greater use of mediation and arbitration to resolve disputes, a review of the Law Society Act and the designation of some lawyers as Senior Counsel. I was encouraged by the Attorney-General's intention to consolidate the laws of Kiribati and to create our own legal database. These initiatives are very much needed and welcomed.

Welcome again everyone to this Special sitting of the High Court of Kiribati. It is the first hybrid *virtual* legal year opening. I thank the staff of the judiciary who have worked hard to make this possible.

This virtual meeting shows that we can carry on our business and at the same time comply with public health restrictions in court. It is an example of how everyone working together can overcome the challenges posed by the arrival of the pandemic in Kiribati. Another example of overcoming these challenges is the daily meeting I have with the senior management team of the judiciary. These virtual daily meetings allow the business of the judiciary to continue through lockdowns. They are also a good way of looking after each other, of checking in to make sure we are all physically and mentally well. Looking after our physical and mental health, both our

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own and that of the people we work with, is as important as continuing the business of the courts because if we are unwell, we cannot provide the access to justice that every person in Kiribati is entitled to have.

This speech is my opportunity to set the direction the judiciary will take in the coming year. As you can see, I'm speaking from my office in Wellington. I intended to be back in Kiribati in the middle of January but the arrival of Omicron in both Kiribati and New Zealand scuppered that wish. Flights are few and far between, but I intend to be on the next available plane to Tarawa. Kiribati is tugging at my heart strings, and I am anxious to get back to my second home as soon as possible. There is much work to be done.

That work has now increased in volume and complexity. It is important to note that while the pandemic has added challenges to the way we work and engage with each other, the old challenges remain, and remain in many cases unresolved. Dealing with the pandemic should not distract us from continuing to deal with the issues that existed before the pandemic arrived.

The opening of a new legal year is a timely opportunity to remind ourselves why we are here. The judiciary aims to be worthy of the public's trust and confidence. It can only do that if it is independent, appropriately resourced, and staffed by people who know the law and who can deliver justice fairly, empathetically, efficiently and in a timely manner. Let me unpack that vision.

An independent judiciary is essential to the rule of law. The judiciary must be independent of the executive and the legislative branches of government. The Courts will sometimes be asked to rule upon whether a branch of government has overstepped the powers granted to it by the Constitution. If the judiciary is not seen to be independent, and is not actually independent, any such ruling will carry little or no weight. An independent judiciary is essential to the rule of law and good governance.

An independent judiciary is also good for business. The private sector enters into many contracts with the executive branch. Disputes will inevitably arise. They will need resolution in court. If the courts are not seen to be independent of the executive branch of government, then the private sector will have no faith in the ability of the courts to resolve disputes fairly. This is bad for business, and the reputation of Kiribati will suffer as a result.

The separation of powers does not mean that each branch of government operates in separate self-contained silos. To ensure that each branch of government stays in its lane, each branch must communicate with the other two, particularly when it looks like there is about to be some lane changing. It is important that each branch does nothing to interfere with the operation of the other branches' constitutional and legal obligations. I think communication is the key to maintaining the separation of powers and respect for the other branches of government.

This brings me to the statement of intent contained in our strategic plan. Our vision of an independent judiciary worthy of public trust and confidence requires the appointment of sufficient judicial officers and court staff to enable the efficient and effective delivery of justice. In the spirit of communicating with the executive branch, I can say right now to the appointing authority – the executive branch - that we do not have sufficient judicial officers and court staff to enable the efficient and effective delivery of justice.

There is a back log of cases awaiting a hearing. By any measure, it is enormous. At the end of 2019, there were 1370 cases waiting to be heard. In 2020, 280 new cases arrived, and 80 cases were disposed of. That meant the backlog increased by 200 cases to 1570. In 2021, Chief Justice Muria had left, Justice Lambourne could not return, and I did not arrive until the middle of the year. That left the High Court without any sitting judges, and with only one Commissioner. Nevertheless, new cases kept arriving, 202 of them. The absence of judicial officers meant that only 54 cases were disposed of, the bulk of those in the second half of the year. The backlog increased again, to 1718 cases waiting to be heard.

The facts speak for themselves. The backlog cannot be contained and shrunk without more judicial officers. The arrival of new cases is relentless. On one view, this is a good thing. It shows that people continue to seek justice from the judiciary. It shows that people continue to place their trust in the judiciary to resolve disputes. But how long will this trust continue if the backlog continues to grow, cases continue not to be heard, and justice is delayed and effectively denied? The lower number of new cases last year (202 compared with 280 the year before) may be a sign of diminishing trust. I note here the President of the Law Society's reference to mediation and arbitration as alternative ways of resolving disputes. People will stop coming to court if they cannot get timely justice. Although we have Friday morning meetings to triage the backlog cases, I cannot hear 1700 backlog cases by myself, and deal with the new ones, even with the help of the Commissioner.

What needs to be done?

First, we need to reschedule a virtual Court of Appeal session to resolve Justice Lambourne's case as soon as possible.

Second, the executive branch needs to comply with the law passed by the legislative branch and assented to by Te Beretitenti. That law is the High Court Judges (Salaries and Allowances) Act. It states that there shall be not less than two nor more than five other judges appointed to the High Court of Kiribati. "Other judges" refers to judges other than me. In other words, the High Court bench must consist of a minimum of three judges including me. *Even with* Justice Lambourne sitting on the bench deciding cases, we are still at least one judge short. There are plenty of senior counsel, men and women, who are eminently qualified to be appointed to the High Court. True, many of them have been, or are, politically active, but that alone cannot be a reason not to appoint an otherwise qualified lawyer to the bench. There is plenty of space on this bench for appointments from all over the political spectrum, and all lawyers know to leave politics at the court room door when they are appointed. Any lawyer appointable to the bench knows it is the job of a judge to apply the law regardless of whether

or not the law matches their political beliefs. Appointing foreign judges because they have not been politically active in Kiribati to my mind just pushes an issue that needs to be resolved now further into the future. And think how wonderful it would be for Kiribati to appoint a male or female lawyer, or lawyers, learned in the law, who are from Kiribati. Perhaps we could start by appointing a recently retired I-Kiribati lawyer to the Court of Appeal and senior counsel to the High Court. A court needs to look like the people it serves. The appointment of judges from Kiribati needs to happen now.

Ideally, we would have a full bench of six to deal with the backlog and the new cases. It is embarrassing, and diminishes the reputation of Kiribati, to have the executive branch in breach of a law that directly affects the operation of the judicial branch. Kiribati needs to be perceived as a place where the rule of law not only prevails, but is cherished by each branch of government. The effective delivery of justice is a prerequisite for a wealthy, healthy and peaceful nation. Those words are taken directly from the 2020-2023 Kiribati Development Plan. They must be seen to be more than a slogan.

Third, cases must no longer be adjourned without a return date. Every court date, every court appearance, must have meaning. Whatever needs to be done to progress a case must be done by a certain date or the case will risk being dismissed. The new rules of civil procedure that will come into force this year should facilitate this, but lawyers also need to prosecute their cases with greater vigour. The efficient operation of the legal system requires a team effort.

Fourth, we need more court staff. The much-vaunted legal sector reform led by the executive branch started before I arrived, but does not seem to have progressed. Everyone watching this live stream would agree that various aspects of the legal sector can and should be improved, but many of the improvements, including what I have suggested earlier, do not have to wait for a large reform project to get started and completed. The improvements can be done now. Engaging more court staff to support

judicial officers dealing with the backlog, and the new cases, should not have to depend on a project led by another branch of government.

Fifth, the people of Kiribati will not only benefit from more court staff, but also more court staff who are knowledgeable in the law and trained in procedure. In the spirit of frank and open communication with the executive branch, I offer a bouquet instead of a criticism. I congratulate the executive branch for funding the in-service LLB training for our judicial and court officers who have a Diploma in Justice. This improves the ability of the judiciary to deliver justice in a fair and timely manner to all who seek access to it. I also congratulate the New Zealand government for its continued support and funding of the Pacific Justice Sector Programme which has benefitted, and continues to benefit, judicial officers in Kiribati and throughout the Pacific. By educating our judicial officers and court staff, the PJSP strengthens the independence of Kiribati's judiciary, which in turn promotes Kiribati as place that values the rule of law.

I mentioned my view that the efficient operation of the legal system is a team effort. It involves the profession, including the newly admitted members of the profession. As a former academic and current honorary lecturer at the Victoria University of Wellington, I encourage newly admitted members of the profession, fresh from university themselves, to engage in academic writing, perhaps starting with case or legislation notes, that can be submitted to the Comparative Law Journal of the Pacific. I would be happy to mentor the writing of such articles.

Sixth, in addition to more judicial officers and court staff, we need new buildings and equipment. I will personally give guided tours to any member of the executive branch, and any member of the diplomatic corps, who wishes to see the state of our buildings in Betio. Current expenditure on the judiciary takes up about 2 percent of the national budget. More judges and staff would not add significantly to that small percentage. And a small increase in capital expenditure would alleviate my daily concerns about staff heroically doing their jobs in old, cramped and unsafe premises. They deserve better. The people of Kiribati deserve a justice precinct they can be proud of, one that does not put those who

deliver justice at daily risk of physical and mental injury. I know governments of countries including China, Australia and New Zealand have authorized funds to build infrastructure here, and have built courthouses in other Pacific countries. Not just a new court house in Betio, but court houses elsewhere in Tarawa and in the outer islands, should be next on the list of capital expenditure from any source. The statistics in our soon to be published annual report should provide more than enough information for a business case to be made to any entity, here or overseas, with funds for this much-needed expenditure.

So, in a nutshell, where does this leave us? I have painted a picture in which old challenges can be resolved in new ways. The pandemic need not distract us from delivering justice to the people of Kiribati. We can take advantage of the restrictions it imposes to imagine new ways of doing things. We can also take this opportunity to address old issues. We need to be open to paying more attention to the needs of the judiciary so that it can better serve the people of Kiribati. There is much work to be done this year.

Now please find me a plane so that I can get back to Kiribati.

Te Mauri, Te Raoi ao Te Tabomoa.

W K Hastings

Chief Justice

11.2.2022

