



GOVERNMENT OF KIRIBATI

**KIRIBATI'S IWP, POPS, NBSAP-Add on  
and NBF PROJECTS**

***I N F O R M A T I O N   P A P E R***  
**R E V I E W   O F   K I R I B A T I   L A W S**

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### TABLE OF ABBREVIATIONS

EEZ	Exclusive Economic Zone
EIA	Environmental impact assessments
CBD	Convention on Biological Diversity
ECD	Environment and Conservation Division of the Ministry
GATT	General Agreement on Tariffs and Trade
GEF	Global Environment Facility
IWP	International Waters Programme
LMO's	Living Modified Organisms
MELAD	Ministry of Environment, Lands and Agricultural Development
NBF	National Biosafety Framework Project
NBSAP	National Biodiversity Strategy and Action Plan
POPS	Persistent Organic Pollutants, and includes the project to give effect to Kiribati's obligations under the Stockholm Convention
SPREP	South Pacific Regional Environment Programme
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Program
WCPT	Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
WTO	World Trade Organisations

## **1. BACKGROUND**

### **1.1 The International Waters Programme (IWP)**

The International Waters Programme is implementing the Strategic Action Plan for the countries of the South Pacific. Activities in Kiribati under the IWP are focused on waste management issues and the effects that waste disposal has on water supply and coastal waters. Pilot projects, particularly involving the Bikenibeu West Community, are proposed to address the fundamental causes of terrestrial derived wastes at community level. At a national level it is proposed to review the structure, functions and operations of the waste management authorities and agencies on Tarawa. This review will include an assessment of institutional capacities, synergies and inter-linkages with the objective of delivering an efficient and sustainable waste management service. Revenue generation options to promote the financial sustainability of the services on Tarawa shall be a feature of the proposed review.

To facilitate the activities proposed under the IWP in Kiribati, the Government of the Republic of Kiribati, through the ECD and the IWP Project Coordination Unit based at the SPREP in Apia, has commissioned a review of natural resource and environment related legislation in Kiribati. The focus of this review highlights areas where there may be over lapping jurisdiction, or potential for conflict between the laws in force or proposed for Kiribati.

### **1.2 Persistent Organic Pollutants**

In 2002, Kiribati signed the Stockholm Convention on Persistent Organic Pollutants and ratified it in September, 2004. The Convention will enter into force in Kiribati on December, 11, 2004. The objective of the Stockholm Convention is “to establish sound management of hazardous chemicals, and especially those 12 chemicals, namely aldrin, chlordane, DDT, dieldrin, dioxins, endrin, furans, hexachlorobenzene, heptachlor, mirex, PCBs and toxaphene which are known to cause serious human health effects such as cancer, birth defects and reproductive problems which are known to be spread through the world as a result of past uses.”

To fulfill its obligations under the Stockholm Convention, Kiribati needs to amend government policies and apply necessary laws for the sound management of hazardous chemicals, environmental management and pollution control. Consideration must be given to applying provisions under existing legislation for implementing some of the Convention requirements (eg. can POPs pesticides be banned under the Pesticides or Health Acts, can other imports of PCBs be banned under the Customs Act or the Environment Act?).

Some of the main elements of the project relating to POP's are -



- Capacity building, including staff training and development, and improved access to technical support and information resources related to chemical management and pollution prevention. This could include support for activities in Agriculture, Environment, Health and other relevant agencies.
- Assistance in development and implementation of relevant legislation.
- Support to address specific pollution issues, such as management and disposal of hazardous wastes, effective management of contaminated sites, and upgrading of specific waste disposal systems such as those used for medical wastes.
- Activities to reduce pollution from combustion sources, such as power stations, either through improvements to plant operation (and improved fuel efficiency) or the introduction of renewable energy technologies.
- The development of community waste management activities, so as to eliminate the disposal of rubbish by burning.
- Development of a programme for testing of imported foods for chemical contamination.
- Training and improved facilities for the storage, use and handling of chemicals in schools and laboratories.
- Public awareness programmes and the preparation of educational materials to assist in developing understanding and knowledge about chemical safety and related environmental topics (Note: awareness activities are a key part of the NIP process).

### **1.3 UNDP-GEF Project on assessment of capacity building needs and Country CHM project (NBSAP Add-on)**

Kiribati recognises the significance of biodiversity conservation and acceded to the Convention on Biological Diversity (CBD) on 16<sup>th</sup> August 1994. The objectives of the CBD relate to “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and technologies, and by appropriate funding”.

To fulfil its obligations under the CBD, Kiribati secured funding from GEF through UNDP- Fiji to develop a National Biodiversity Strategy and Action Plan (NBSAP) and additional funding for an assessment of capacity building needs and country driven CHM Project (NBSAP Add On).

Some of the main elements of NBSAP Add On are -

- To stock-take existing human and institutional capacity including legal, policy and financial mechanisms for the implementation of general measures for in-situ and ex-situ conservation and sustainable use of natural resources and the environment.

- To identify and assess gaps in existing methodologies - including human, institutional, legal and financial needs for effective implementation of biodiversity conservation.
- To prepare and identify recommendations, training and awareness raising needs for on-going capacity for biodiversity conservation.

#### **1.4 UNEP-GEF Project on the Development of a National Biosafety Framework (NBF) for the Republic of Kiribati**

The Republic of Kiribati has acceded to the Cartagena Protocol on Biosafety, a supplementary international agreement to the Convention on Biological Diversity. The objective of the Cartagena Protocol is “to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on trans-boundary movements”.

To fulfill its obligations under the Cartagena Protocol, Kiribati joined the UNEP/GEF Capacity Building Project on the Development of NBF's in February 2003. The main objective of this project is the development of a National Biosafety Framework for Kiribati in accordance with the relevant provisions of the Cartagena Protocol. The main elements of this framework are -

- (a) A biosafety policy
- (b) The regulatory regime
- (c) A system to handle requests (administrative, risk assessment & management, decision making)
- (d) Follow up actions (monitoring, inspections and enforcement)
- (e) Public Awareness and Participation

The principal focus of this legislative review is to facilitate the drafting of legislation necessary to give effect to a regulatory regime.

#### **1.5 A parallel review (IWP, POPS, NBSAP and NBF)**

The need to review the laws of Kiribati relating to environment management and protection in the context of IWP, POPS, NBSAP and the NBF is a common one. The national legislation related to the management of natural resources and the protection of the environment is of relevance to all these activities. Furthermore, all four projects are implemented within the context of Kiribati's efforts towards achieving sustainable development and pursuing its national priorities.

To optimise resource use and for value-added purposes, this Report provides a legislative review for application to the IWP, POPS, NBSAP and NBF activities. If it is regularly reviewed and up-dated it should form a very practical and useful

basis for considering the application of all environment related laws in Kiribati in the future, and for reporting on the state and extent of those laws.

## 1.6 Objectives

The stated objectives are -

- A.** To review natural resource and environment-related legislation in order to recommend improvements in how the government manages the natural resources of Kiribati.

To achieve this objective, the Review should –

- Take into consideration the Environmental Legislative Review in 1993.
- Consider existing Laws of Kiribati, Ordinances, Acts, Regulations, and Policies.
- Reflect the inputs of the Attorney General’s Office and the Project Coordinators of IWP (including PCU), POPs and NBF, and their Project Task Forces.

- B.** To draft appropriate legislation and or regulations as required for the NBF and NBSAP Add On.

To achieve these objectives the consultant should–

- Take into consideration the Report of the survey of national legislations and administrative systems, regional and international conventions and agreements, already undertaken under the UNEP/GEF Capacity Building Project on the Development of NBF for Kiribati.
- Work closely with the national project’s National Project Coordinator, local Consultants, NEA, NCC, and Technical Team that include specifically the Representative from the Attorney General’s Office.

## 2. BACKGROUND REFERENCES AND CONSULTATIONS

### 2.1 References consulted

This review of legislation has drawn extensively on the “*Kiribati – Environmental Legislation Review*” by Mere Pulea and David Farrier. This Publication was completed in 1993 but remains of great use and relevance today.

Other references consulted during this Review include –

- National Foreign Investment Policy
- Local Government Review Report – December 2000

## **2.2 Consultations and Outcomes**

Time constraints prevented broad consultation at government and community level. However meetings were held with the project committees formed for the purposes of the IWP, NBSAP and NBF projects. These committees included key government and community stakeholders, including representatives of the private sector. The outcomes of the consultations are noted in the Phase 2 Reports on the Analysis of the Legislation. These are identified as matters raised during consultations

## **3. SCOPE AND METHODOLOGY**

### **3.1 Current and proposed legislation**

This review of Kiribati's legislation includes both current laws, and those that are at an advanced stage of formulation and drafting, but which have not yet been enacted.

Each current law is referred to as an "Ordinance" if it was enacted prior to 1979, or as an "Act" if it was enacted after Independence. Proposed laws are termed "Bills".

### **3.2 Assessing the relevance of laws to this Review**

It is common that legislative reviews applying to particular areas of the law require a subjective determination as to the relevance of particular laws, and therefore as to their inclusion in the Review.

In this case however, the basic objectives of the IWP, POPS, NBSAP and the NBF are clearly stated and are not difficult to apply in the context of this Review. These then form the basis of determining the relevance of any particular law to this Review. The critical concepts are –

- Matters relating to constitutional authority and jurisdiction
- Administrative arrangements affecting the management of the environment
- Environment Protection and Management
- Protection of human health
- Natural Resources
- Control of Transboundary movements
- Recognition and protection of culture and traditional institutions and values
- Public awareness and participation (including the involvement of the private sector)
- Other regulatory regimes

- Regional and international cooperation and harmonisation of arrangements

The laws (and proposed laws) of Kiribati are therefore reviewed under the above headings.

## 4. REVIEW OF RELEVANT LEGISLATION

### 4.1 Matters relating to constitutional authority and jurisdiction

#### KIRIBATI CONSTITUTION ACT

*Year passed:* 1979

*Date of effect:* 12<sup>th</sup> July 1979

*Amended:* 1995

*Repealed the following laws:* No laws repealed

#### Main objects

To make constitutional arrangements for Kiribati and the basis of its government and legal authority.

#### Relevance to this Review

This is the basis of all laws in Kiribati. Some reference is made in the Constitution to environment related matters.

#### Substance of the relevant provisions

*Preamble* The natural resources of Kiribati are vested in the people and their Government. The customs and traditions of Kiribati shall be cherished and upheld.

*Section 8* Some exemptions to the protection from deprivation of property relate to the need to—

- protect human health
- impose town or country planning requirements
- carry out works of soil conservation or the conservation of other natural resources
- carry out agricultural development or improvement works which the owner has refused to undertake
- acquire property which is injurious to the health of human beings, animals and plants
- allow prospecting and mining of minerals

*Section 9* The guaranteed protection for privacy of home and other property does not prevent the entry into a home for any purposed related to public health, town and country planning and the development of mineral resources.

*Section 14* The guaranteed protection of freedom of movement does not prevent laws applying restrictions on movement or residence which –

- are in the interests of public safety or public health
- relate to environment conservation or the fulfillment of international treaty obligations

*Section 18* Makes reference to the Marine Protection Service.

### MARINE ZONES (DECLARATION) ACT 1983

*Year passed:* 1983

*Date of effect:* 16<sup>th</sup> May 1983

*Amended:* Nil

*Repealed the following laws:* Nil

*Administered by*

#### Main objects

To demarcate Kiribati's marine areas and determine the extent of its jurisdiction under international law.

#### Relevance to this Review

The effective exercise of jurisdiction over a nation's maritime zones has many implications for its capacity to protect its environment and implement its international obligations.

#### Substance of the relevant provisions

*Section 4* The inland waters are defined.

*Section 5* Provision is made for the archipelagic waters.

*Section 6* Kiribati's territorial sea extends for 12 nautical miles from the base lines, taking account of the archipelagic waters.

- Section 7* Provision is made in relation to the Exclusive Economic Zone. The seabed and subsoil of the EEZ are to be treated as part of Kiribati's continental shelf.
- Section 8* The jurisdiction applying to the inland waters and territorial sea is the same as that applying to its land. Its rights over the EEZ extend to matters concerning resource exploitation and environment protection. Kiribati has exclusive rights to explore, exploit, conserve and manage all the natural resources of the waters, the seabed and the subsoil.
- Section 9* Provision is made for the rights of passage of ships and aircraft.
- Section 10* Regulations may be made in relation to the following matters –
- scientific research
  - exploration and exploitation for economic purposes, including the production of energy from water, currents and winds
  - the construction and use of structures such as artificial islands and oil rigs
  - measures for the protection and conservation of the marine environment

## THE LAWS OF KIRIBATI ACT 1989

*Year passed:* 1989

*Date of effect:* 23<sup>rd</sup> February 1990

*Amended:* Nil

*Repealed the following laws:* Nil

*Administered by*

### Main objects

To declare what constitutes the laws of Kiribati.

### Relevance to this Review

The manner in which the customary laws of Kiribati are recognized may have some implications in relation to rights over its natural resources.

### Substance of the relevant provisions

- Section 5* The customary laws of Kiribati are recognised. In accordance with Schedule 1 these include laws relating to–

- the ownership by custom of rights in, over or in connection with any sea or lagoon area, inland waters or foreshore or reef, or in or on the seabed, including rights of navigation or fishing
- the ownership by custom of water, or rights in, over or to water.

*Section 6* The common law of Kiribati is recognised.

*Section 7* The applied laws include certain Acts and subsidiary legislation of the United Kingdom.

## FORESHORE AND LAND RECLAMATION ORDINANCE 1969

*Year passed:* 1969

*Date of effect:* 10<sup>th</sup> June 1969

*Amended:* 1972, 1973, 1974, 1977, 1980

*Repealed the following laws:* Nil

*Administered by*

### Main objects

To make provision in relation to the ownership and management of the foreshore and to regulate the reclamation of land.

### Relevance to this Review

The determination of the foreshore in Kiribati is made in accordance with the provisions of this Act.

### Substance of the relevant provisions

*Section 3* Ownership of the foreshore and seabed is vested in the State. This may be subject to public rights of navigation and fishing, and to private rights which may exist in relation to these areas and their resources. Customary rights in this context are therefore preserved. Foreshore may be designated foreshore under this section.

## **4.2 Administrative arrangements affecting the management of the environment**

### ENVIRONMENT ACT 1999

*Year passed:* 1999

*Date of effect:* 21<sup>st</sup> March 2000

*Amended:* Nil

*Repealed the following laws:* No laws repealed

*Administered by* the Environment and Conservation Division of MELAD



### Main objects

To provide for the protection, improvement and conservation of the environment.

### Relevance to this Review

This is the principal law applying to the management and protection of the environment in Kiribati.

Substance of the relevant provisions

*Section 3* The objects of the Act include –

- the provision of an integrated system of development control, EIA and pollution control
- the prevention, control and monitoring of pollution
- the reduction of risks to human health and the prevention of environmental degradation, especially from the discharge of pollutants, waste treatment and disposal, the promotion of recycling and composting and enforcing compliance with international obligations
- protecting and conserving natural resources (particularly terrestrial vegetation, coral, fish and marine life).

The precautionary principle is stated as a guiding principle. Regard must also be had to the interests of future generations. The conservation of biological diversity and ecological integrity is referred to. A reference is made to “improved valuation and pricing of environmental resources”.

*Section 4* All other Acts must be construed as far as possible to give effect to this Act. Compliance with this Act does not affect the need to comply with any other law.

*Section 5* The Minister, acting in accordance with the advice of Cabinet, is responsible for the administration and implementation of this Act. Environment Inspectors may be appointed by the Beretitenti, acting on the advice of the Public Service Commission.

*Section 6* The functions of the Minister are exhaustively listed.

*Section 7* Further functions of the Minister include the responsibility to –

- manage and control the ECD
- promote coordination with other Ministries and divisions

- revise and amend environmental strategies and programmes
- devise and implement policies on EIA and pollution control
- monitor and advise on international developments
- conduct and promote research, environmental education and environmental quality objectives.

*Section 8* Performance targets on pollution control and environment assessments may be set for public authorities.

*Section 9* Directions may be given to public authorities by the Beretitenti on the advice of Cabinet.

(For environment protection and management aspects of this Act see **4.3**)

## LOCAL GOVERNMENT ACT 1984

*Year passed:* 1984

*Date of effect:*

*Amended:* 1985, 1987, 1989 (2 amendments), 1992, 1994, 1995

*Repealed the following laws:* The Local Government Ordinance

*Administered by*

### Main objects

To provide for a system of local government in Kiribati.

### Relevance to this Review

Under this Act local governments may be vested with a range of environment related powers and responsibilities.

### Substance of the relevant provisions

*Section 3* The Minister may establish Local Government Councils.

*Section 6* Provision is made for the nomination and election of members.

*Section 7* Provisions apply to ex-officio and nominated members.

*Section 9* Matters concerning qualifications for and disqualifications from office are provided for.

*Part IV* Sections relate to the meetings and procedures of Councils.

*Part V* The functions of Councils are dealt with in sections 36-49.

*Section 36* Councils have the general function of maintaining order and good government within their areas.

*Part VI* Sections 50-53 relate to Council bye-laws.

*Section 45* Councils may be vested with functions and powers from the list in the Schedule. (see **4.3**)

*Section 47* If a Council fails to perform any function the Minister, acting on the advice of Cabinet, can make an order directing it to do so, or may transfer the function to another person or body.

*Section 51* Councils have the power to make by-laws. These must be widely advertised and discussed at public meetings. They may be vetoed, cancelled or replaced by the Minister.

*Section 116* The functions that may be vested in Local Government Councils may be conferred on any public officer if there is no Council.

*Section 123* The Minister, in consultation with local councils, may make regulations for giving effect to this Act.

(For environment protection and management aspects of this Act see **4.9**)

## PUBLIC UTILITIES ORDINANCE 1977

*Year passed:* 1977

*Date of effect:* 1<sup>st</sup> September 1977

*Amended:* 1980, 1983, 1997 (2 amendments)

*Repealed the following laws:* Nil

*Administered by* the Ministry of Works and Energy

### Main objects

To establish a Public Utilities Board to undertake water supply, electricity and sewerage functions.

### Relevance to this Review

The provision of water supplies and sanitation services have important environmental aspects.

### Substance of the relevant provisions

*Section 3* The Public Utilities Board is established.

- Section 4* Properties, rights and liabilities are vested in the Board.
- Section 5* The Minister may declare any area to be a water supply or electricity supply area.
- Section 7* The Board has the exclusive right to supply water in a water supply area. Permission may be given to persons to supply, water, distribute and sell water within a water supply area. The Board has exclusive functions relating to disposal of sewage and the supply of sewerage services.
- Section 8* The powers of the Board are prescribed. These include the rights to –
- do all necessary acts for the collection, production, distribution, supply and sale of water
  - establish, operate and maintain sewerage
  - control, manage, maintain, operate and supervise waterworks and so far as is practicable provide and adequate supply of water to the public
  - conserve water by diminishing, withholding, suspending or diverting the supply of water
- Section 11* Powers of entry are given.
- Section 30* Offences related to the supply of water are prescribed. These include matters relating to –
- unauthorised diverting and taking water
  - unauthorised acts which diminish the quantity or quality of water
  - unauthorised selling of water
- Section 35* The Minister, after consulting the Board, may make regulations relating to –
- preventing the misuse or waste of water
  - regulating the supply of water to consumers
  - preventing waste, conservation, misuse and pollution of water
  - the sanitary control of water reserves

## PUBLIC HIGHWAYS PROTECTION ACT 1989

*Year passed:* 1989

*Date of effect:* 1<sup>st</sup> June 1989

*Amended:* Nil

*Repealed the following laws:* Nil

*Administered by*

Main objects

To establish a Highway Authority to provide for the protection of public highways.

Relevance to this Review

Provision is made in relation to littering on the public highway.

Substance of the relevant provisions

*Section 3* The Highway Authority is established.

*Section 4* The Highway Authority is empowered to prohibit and control the dumping of rubbish and litter of any kind on a public highway.

*Section 5* It is an offence to remove sand, gravel and other such matter from a public highway or to deposit litter or rubbish on the public highway.

KIRIBATI PORTS AUTHORITY ACT 1990

*Year passed:* 1990

*Date of effect:* 31<sup>st</sup> December 1990

*Amended:* Nil

*Repealed the following laws:* Nil

*Administered by*

Main objects

To establish the Kiribati Ports Authority and provide for the management of sea ports in Kiribati.

Relevance to this Review

The exercise of powers by the Kiribati Ports Authority in accordance with this Act can have significant implications on the marine environment.

Substance of the relevant provisions

*Section 8* The Authority may –

- control the erection of works in ports and their approaches, both above and below the high water mark
- reclaim, excavate, raise or enclose any land in a port

- make regulations controlling the removal of material from the bed of a port or its approaches

*Section 52* Regulations may relate to –

- the cleaning and standard of private wharves
- the use of sirens etc.
- the cleanliness of ports facilities and waters, and matters relating to pollution from oil or rubbish
- regulating the removal of any stone, shingle, earth or other material from the bed of any area declared to be a port or the approaches to a port
- prohibiting any operation which in the opinion of the Authority is undesirable.

## HARBOURS ORDINANCE 1957

*Year passed: 1957*

*Date of effect: 5<sup>th</sup> June 1957*

*Amended: 1968, 1971, 1972, 1973, 1974, 1980*

*Repealed the following laws: Nil*

*Administered by*

### Main objects

To make provision in relation to the harbours in Kiribati.

### Relevance to this Review

The powers that may be exercised by Harbour Masters under this Act may have implications for the environment in these areas.

### Substance of the relevant provisions

*Section 22* Restrictions are placed on vessels carrying explosives.

*Section 24* Obstructions are to be removed.

*Section 25* Permission is required to intentionally wreck vessels.

*Section 27* Permission from the Harbour Master must be obtained before material (ballast) is taken from within the limits of the harbour.

*Section 28* The Harbour Master has a limited power to license developments on the tidal lands and waters of a harbour. A limit of 21 years applies and restrictions are applied to the activities which may be

licensed. These include ship building and repair, boat sheds, landing places and other related matters.

*Section 44* Offences relate to permitting wastes etc to enter harbours.

*Section 50* Any encroachment on the waters of a harbour require the permission of the Minister.

*Section 53* Regulations may relate to a range of matters covered by the sections noted above.

## NATIONAL DISASTER ACT 1993

*Year passed:* 1993

*Date of effect:* 24<sup>th</sup> January 1994

*Amended:* Nil

*Repealed the following laws:* Nil

*Administered by*

### Main objects

To provide for the management of and preparedness for natural disasters.

### Relevance to this Review

This invokes certain management issues that could have effects on the environment with the intent of preparing for the impacts of natural disasters.

### Substance of the relevant provisions

*Section 2* “Disasters” include cyclones, tidal waves, floods, fires, droughts, volcanic eruptions, epidemics and airplane or maritime disasters.

*Section 5* A National Disaster Council is established.

*Section 10* Local Government Councils must establish disaster committees.

*Section 12* A National Disaster Plan is to be prepared.

## **4.3 Environment Protection and Management**

### **4.3.1 General Environment Protection Provisions**

ENVIRONMENT ACT 1999 (cont'd)

(Details are noted in **4.2**)

*Part III* Comprehensive provision is made in relation to Development Control, Environmental Impact Assessment, Review and Monitoring. An extensive list of Prescribed Developments is stated in the Schedule.

*Part IV* Comprehensive provision is made in relation to pollution control, including provisions relating to –

- preventing pollution and noxious discharges (section 30)
- discharging wastes likely to cause pollution (section 31)
- measures to be taken by occupiers of premises (section 32)
- prescribed premises to be licenced to discharge wastes and pollutants (sections 34 – 36 and 38)
- duties of occupiers of prescribed premises (section 37)
- issuing pollution abatement notices (sections 39 and 40)
- issuing stop notices (section 41)
- powers concerning discharge of wastes and pollution (section 43)
- discharge from vehicles, vessels and aircraft (section 45)
- interference with anti-pollution devices (section 46)
- regulating equipment emitting unreasonable noise (section 47)

*Section 53* The Minister, acting in accordance with the advice of Cabinet, may make Regulations “prescribing all matters that are required or permitted to be prescribed under the Act”. Some specific areas where regulations may be made are specified in sub-section (2).

## ENVIRONMENT REGULATIONS 2001

*Year passed:* 2001

*Date of effect:* 13<sup>th</sup> December 2001

*Amended:* Nil

*Repealed the following laws:* No regulations repealed

*Administered by* the Environment and Conservation Division of MELAD

### Main objects

To provide for further definitions, forms and other matters under the Environment Act 1999.

### Relevance to this Review

These Regulations make further provision in relation to certain matters provided for under the Environment Act 1999, including matters relating to pollution, wastes and EIA procedures.



Substance of the relevant provisions

*Regulation 5* Further clarification of “pollution” is stated in relation to contamination of land, water and air and also as it may be applied to noise.

*Regulation 6* Further clarification of “waste” is stated in relation to household domestic wastes, building and demolition wastes, hazardous wastes, clinical wastes, quarantine wastes, ballast water and waste oil.

*Part 2* Additional matters are prescribed in relation to EIA procedures.

*Regulation 11* Prescribed premises which require pollution control licences for the discharge of wastes under section 34 may be designated by the Minister, acting on the advice of Cabinet, and also include all of the premises following premises prescribed in Schedule 8 –

- certain food and beverage processing establishments
- iron and steel processing plants
- certain non-metallic industry premises
- leather, paper, textile and wood processing premises
- fish and marine product industries
- chemical industries
- certain agricultural and logging industries
- public works involving landfilling, waste disposal, hydro power and desalination
- genetic engineering

The other Schedules to the Regulations relate to the following –

- Schedule 1 Guidelines on Maximum Acceptable Limits of Certain Soil Pollutants
- Schedule 2 Guidelines on Maximum Acceptable Limits of Certain Water Pollutants in the Coastal and Lagoon Waters of Kiribati
- Schedule 3 Guidelines on Maximum Acceptable Limits of Certain Air Pollutants
- Schedule 4 Guidelines on Maximum Acceptable Noise Limits
- Schedule 5 Application Form for Carrying Out a Prescribed Development
- Schedule 6 Initial Environment Evaluation Report Form
- Schedule 7 Environmental Impact Statement Form
- Schedule 9 Application Form for a Pollution Control Licence

LOCAL GOVERNMENT ACT 1984 (cont'd)

(Details are noted in **4.2**)

*Section 45* The functions listed in the Schedule and which may be vested in Local Government Councils include the following environment related responsibilities –

- controlling plant diseases, weeds and pests
- regulating areas and methods of planting and types of crops and trees
- regulating the keeping of livestock
- providing for the improvement and control of fishing and related industries
- regulating the killing of animals, reptiles, birds and fish
- prohibiting the construction of new buildings without Council approval
- regulating the erection, construction, demolition, conversion, alteration, repair, sanitation and ventilation of buildings and structures
- providing for building lines and the layout of buildings
- prescribing conditions for the siting of buildings
- providing for the demolition of dangerous buildings
- regulating the making of bwabwai-pits and other excavations
- regulating the use of natural building materials
- establishing and controlling tree nurseries, forests and woodlands, and selling the produce
- preventing the erosion of land
- engaging in and promoting land reclamation
- carrying out sanitary services dealing with rubbish and excreta and prohibiting acts detrimental to the sanitary condition of the area
- providing for public water supplies
- preventing water pollution
- regulating the storage of inflammable and offensive materials
- preventing and removing public nuisances
- making and maintaining roads, paths, bridges, drains and watercourses
- regulating the planting or destruction of vegetation along the roads or in public places
- providing for the owners and occupiers of land to maintain it, clear it and keep it free of vegetation and rubbish
- prescribing the conditions under which offensive trades may be carried on
- preserving and controlling the removal of any antique artifact

(Other aspects concerning the planning responsibilities are stated in **4.10**)

## SPECIAL FUND (WASTE MATERIAL RECOVERY) BILL 2004

*Year drafted: 2004*

*To be administered by the Environment and Conservation Division.*

### Main object

To levy deposits in respect of the recovery of waste materials.

### Relevance to this Review

This is a novel approach to encourage effective management and disposal of certain wastes.

### Substance of relevant provisions

*Section 3* The Minister for environment acting on the advice of Cabinet may levy deposits in relation to prescribed materials for waste material recovery. Such determinations must be laid before the parliament and take effect on publication of them, unless they are disallowed by the parliament.

*Section 4* The types of material covered by the deposit arrangements are determined by the Minister acting on the advice of Cabinet. These determinations also have to be laid before the parliament.

*Section 5* Regulations may be made relating to –

- places where deposits may be paid
- persons to receive payments and the dealing with them
- deposits to be paid on imported materials
- the recovery of materials and the expenses of this
- general administration of waste material recovery

*Section 6* The Waste Material Recovery Fund is established.

*Section 7* Provision is made in relation to payments into the Fund.

*Section 8* Provision is made in relation to payments out of the Fund.

*Section 9* Controls are placed on the Special Fund.

*Section 11* Offences are prescribed. Fines of \$1,000 are provided for.

## PENAL CODE (CAP. 67 1977)

*Year passed:* 1965

*Date of effect:* 18<sup>th</sup> October 1965

*Amended:* 1965, 1967, 1968, 1969, 1970, 1971, 1972 (2 amendments), 1973 (2 amendments), 1976, 1977, 1980, 1990

*Repealed the following laws:*

*Administered by*

### Main objects

To make comprehensive provision in relation to the criminal law applying in Kiribati.

### Relevance to this Review

### Substance of the relevant provisions

*Section 46* The performance of community work (“community service orders”) may be imposed as punishments for offences.

Some offences in the Code are relevant to the environment and to its enforcement. These include –

- Giving false information to a public servant – section 122
- Trespass on burial places – section 125
- Polluting or obstructing watercourses – section 172
- Posting placards – section 173
- Wearing a uniform without authority – section 175
- Sale of noxious or adulterated foods – section 178
- Fouling the air – section 179
- Killing tame birds – section 281
- Killing animals with the intent to steal – section 282

## TRAFFIC ACT 2002

*Year passed:* 2002

*Date of effect:* xx 2002

*Amended:*

*Repealed the following laws:* Traffic Ordinance

*Administered by*

Main objects

To provide for the control of traffic and the licensing of vehicles, bicycles and drivers.

Relevance to this Review

This law may be of marginal relevance as its operative provisions relate to safety issues and not the environmental consequences that may flow from the use of vehicles.

Substance of the relevant provisions

*Section 12* Vehicles may only be registered if they are mechanically sound and if their exhaust systems control the emission of excessive exhaust fumes.

*Section 16* The same conditions apply to the issues of a registration certificate on the transfer of ownership of a vehicle.

*Section 18* Defect notices may be issued on a number of grounds including the emission of excessive exhaust fumes.

*Section 30* The road rules listed in the Schedule apply in Kiribati.

*Division 3* Provision is made in a number of sections for the issuing of penalty notices.

*Section 34* Regulations may be made for any necessary matter.

**4.3.2 Marine Pollution**

## MARINE POLLUTION PREVENTION BILL

*Year drafted – 2000*

*To be administered by*

Main objects

To implement the provisions of the MARPOL Convention and to make comprehensive provision for matters relating to marine pollution and responses to marine pollution incidents.

Relevance to this Review

Controls over marine pollution and the capacity of a country to respond to marine pollution incidents are key aspects of its domestic laws and international obligations in the environment context.

#### Substance of relevant provisions

A draft Model Regional Marine Pollution Prevention Bill was prepared in 2000 with assistance from SPREP, SPC and IMO. It is comprehensive and may be difficult to apply in Kiribati's context, but many of its features could be reflected in regulations made under the Territorial Seas and Exclusive Economic Zone Act 1997. These relate to –

- Part II Marine Pollution Prevention
- Part III Marine Pollution Response
- Part IV Marine Casualties
- Part V Liability and Compensation for Oil Pollution Damage
- Part VI Dumping and Incineration of Wastes

#### HARBOURS ORDINANCE 1957

(Details are stated in **4.2**)

*Section 24* Derelict vessels can be cleared from the harbour.

*Section 44* It is an offence to throw anything into a harbour or to allow it to fall in, whether it comes from land or from a vessel. It is also offence to let something fall on to land from where it may enter a harbour. Timber and vessels no longer fit for service must not be placed or left in a harbour.

#### HARBOURS REGULATIONS 1958

*Regulation 9* It is an offence for the master or owner of a vessel or shore installation to discharge oil into a harbour, or allow oil to enter into a harbour.

#### KIRIBATI PORTS AUTHORITY ACT 1990

(Details are stated in **4.2**)

*Section 52* Regulations may be made to keep the waters of a port clean and preventing them free of oil, rubbish or other things.

## SHIPPING ACT 1990

*Year passed:* 1990

*Date of effect:* 1<sup>st</sup> November 1990

*Amended:* 1998

*Repealed the following laws:* The Shipping Ordinance (Cap. 93) and the Shipping (Certification of Seamen) Ordinance (Cap. 94) and any Regulations.

*Administered by*

### Main objects

To make comprehensive provision in relation to shipping in Kiribati.

### Relevance to this Review

Certain provisions may have relevance to the prevention of pollution.

### Substance of the relevant provisions

*Section 10* All ships must have seaworthiness certificates.

*Section 14* Orders may be made for the detention and repair of unseaworthy vessels.

*Section 26* Provision is made in relation to the discharge of substances in ports and port approaches in contravention of international conventions.

## MERCHANT SHIPPING ACT 1983

*Year made:* 1983

*Date of effect:* 30<sup>TH</sup> June 1983

*Amended:* Nil

*Repealed the following laws:* Nil

*Administered by*

### Main objects

To make comprehensive provision for the registration of ships.

### Relevance to this Review

The regulation of vessels may have implications for fishing on the high sea and the observance of relevant convention, and affect other matter relating to the marine environment such as marine pollution.

Substance of the relevant provisions

- Part II* Makes comprehensive provision in relation to the registration of ships.
- Section 11* Deals with the survey and measurement of ships.
- Section 41* The Registrar is empowered to require that information be provided.
- Section 44* Provides for the liability of ship owners.
- Section 45* Requires the registration of managing owners.
- Section 61* A general regulation making power is provided for.

MERCHANT SHIPPING (OIL POLLUTION)(GILBERT ISLANDS) ORDER 1975

*Year made:* 1975

*Date of effect:*

*Amended:*

*Repealed the following laws:*

*Administered by*

Main objects

Applies certain provisions of the Merchant Shipping (Oil Pollution) Act 1971 (UK) to Kiribati.

Relevance to this Review

This applies provisions of the Brussels Convention relating to uniform rules and procedures for determining questions of liability and compensation for oil pollution.

Substance of the relevant provisions

- Section 4* Reference is made to the International Oil Pollution Compensation Fund. Some exemptions apply to the use of these funds to meet liabilities.
- Section 5* Applications may be made to the court to limit liability based upon tonnage and other factors.
- Section 12* Provision is made for taking action against insurers.



*Section 14* Ships carrying more than 2,000 tonnes of oil may not enter or leave a port unless they are certified as being owned by a State and that the State shall assume responsibility for pollution liability.

*Section 23* The general position as to liability of ship owners for oil pollution is stated.

#### WRECK AND SALVAGE ORDINANCE 1966 (CAP. 103 1977)

*Year passed:* 1966

*Date of effect:* 7<sup>th</sup> February 1966

*Amended:* 1971, 1973, 1977, 1978

*Repealed the following laws:* Nil

*Administered by* the Chief Customs Officer

#### Main objects

To make comprehensive provision in relation to ship wrecks and their salvage.

#### Relevance to this Review

These issues may have impacts on the marine environment.

#### Substance of the relevant provisions

*Section 3* The Chief of Customs is appointed as the receiver of wrecks.

*Section 4* The receiver of wrecks is empowered to charge of all matters at wreck sites.

*Section 6* All articles washed ashore must be delivered up to the receiver.

*Section 11* Rules apply to persons finding wrecks.

*Section 14* Wreck under \$50 in value or which is perishable may be sold immediately.

*Section 33* Penalties apply to plundering or secreting wreck.

#### **4.3.3 Wildlife Protection**

#### WILDLIFE CONSERVATION ORDINANCE 1975

*Year passed:* 1975

*Date of effect:* 29<sup>th</sup> May 1975

*Amended:* 1980

*Repealed the following laws: Nil  
Administered by*

Main objects

To provide for matters related to the conservation of wildlife.

Relevance to this Review

Wildlife sanctuaries may be declared under this Act.

Substance of the relevant provisions

- Section 3* Birds and animals may be declared either fully or partially protected. Partial protection prevents hunting during a closed season. "Designated areas" may be declared for the protection of certain species.
- Section 4* Provision is made for the appointment of wildlife wardens.
- Section 5* Prohibitions of hunting, killing or capturing can be applied during closed seasons. So too can prohibitions against possessing, acquiring, selling or giving any which have been unlawfully killed or captured, or any part or product of them. Exceptions can be granted under licences. A general notice allowing specified species to be captured but not killed can also be applied.
- Section 6* Prohibitions against searching for, taking or willfully destroying or damaging eggs and nests apply in closed seasons. Prohibitions also apply to possessing, acquiring, selling or giving eggs or nests that have been unlawfully taken. Exceptions can be granted under licences.
- Section 7* There is a prohibition on hunting turtles on land. Licences for turtle hunting on land may be granted.
- Section 8* Areas may be declared as wildlife sanctuaries. In such sanctuaries the hunting, killing or capturing of birds and other animals without a licence is prohibited. Eggs and nests are also accorded protection. Conditions may be placed on licences authorising entry into "closed areas".
- Section 9* Possession of wild turtles is an offence.
- Section 11* Wildlife wardens are given powers of arrest, search and seizure.

*Section 13* Wildlife wardens may undertake prosecutions.

#### **4.3.4 Reserves**

PROHIBITED AREAS ORDINANCE 1957

*Year passed:* 1957

*Date of effect:* 22<sup>nd</sup> March 1957

*Amended:* 1968, 1973, 1977, 1980

*Repealed the following laws:* Nil

*Administered by*

##### Main objects

To provide for certain islands and their territorial waters to be prohibited areas.

##### Relevance to this Review

Prohibited areas declared under this Act could be set aside for conservation purposes.

##### Substance of the relevant provisions

*Section 2* The “territorial waters” of the islands is defined.

*Section 3* Any island can be declared to be a prohibited area.

*Section 4* Entry into prohibited areas is forbidden without permission.

*Section 5* Powers to remove persons from protected areas are provided for.

**(Note:** Birnie, Canton, Enderbury and Hull Islands are prohibited areas – L.N 46/72)

CLOSED DISTRICTS ACT 1990

*Year passed:* 1990

*Date of effect:* 17<sup>th</sup> July 1990

*Amended:* Nil

*Repealed the following laws:* The Closed Districts Ordinance (Cap.9) as amended by Schedule 3 to the Constitution (Laws Adaptation) Order 1980 and any Regulations made thereunder.

*Administered by*

##### Main objects

To re-enact a former Ordinance providing for the declaration of closed districts.

### Relevance to this Review

Closed districts can be declared for conservation purposes, and these can be parts of islands.

### Substance of the relevant provisions

*Section 3* The Beretitenti, acting on the advice of Cabinet, may declare closed districts. The grounds for such declarations are that they must be reasonably required in the interests of public health, environmental conservation of the fulfillment of Kiribati's international treaty obligations.

*Section 4* Person may be licensed to enter.

*Section 5* Conditions of entry may apply to licences.

*Section 6* Licences may be revoked.

*Section 11* Regulations may be made generally for the purposes of giving effect to this Act.

### RECREATIONAL RESERVES ACT 1996

*Year passed:* 1996

*Date of effect:* 6<sup>th</sup> December 1996

*Amended:* Nil

*Repealed the following laws:*

*Administered by*

### Main objects

To make provision in relation to recreation reserves.

### Relevance to this Review

This is one of a series of laws in Kiribati related to land reserved for public purposes.

### Substance of the relevant provisions

*Section 3* The office of Recreational Reserves Administrator is established.

*Section 4* The Minister acting on the advice of Cabinet may declare recreation reserves.

- Section 6* Regulations may be made, including regulations prescribing conditions and restrictions the Minister may consider to be necessary for the protection, preservation and maintenance of natural, historical, scientific or other valuable features of any reserve.
- Section 7* A range of reserve management functions are vested in the Minister.
- Section 10* Every reserve that is subject to any regulations made under this Act and shall be administered for the provision of recreational areas for the people of Kiribati and the protection, preservation and maintenance of any valuable feature of the reserve. Activities and entry shall be strictly in accordance with the regulations.
- Section 12* Offences include –
- altering, damaging, destroying, removing or interfering with any feature whether organic or inorganic in any reserve
  - depositing, throwing or leaving any rubbish or any thing in any reserve except in a place or receptacle provided for the purpose

#### **4.3.5 Animals**

##### ANIMALS (CONTROL OF EXPERIMENTS) ACT 1957 (CAP. 2)

*Year passed: 1957*

*Date of effect: 11<sup>th</sup> September 1957*

*Amended: 1968, 1971, 1973*

*Repealed the following laws: Nil*

*Administered by*

##### Main objects

To control experiments on animals.

##### Relevance to this Review

There is relevance to the protection of animals in these provisions. Although no absolute protection is offered.

##### Substance of the relevant provisions

*Section 3* Experiments on animals may only be performed by licensed persons.

*Section 4* Experiments may not be performed for the enhancement of skills.

*Section 6* Restrictions apply to the performance of licensed experiments.

*Section 10* Provision is made for the keeping of records by licensees and for the inspection of records.

*Section 11* Returns may be required from licensees.

*Section 12* A general regulation making power is provided for.

#### TAMANA COUNCIL (CONTROL OF PIGS) BY-LAWS 1990

*Year passed:* 1990

*Administered by* the Tamana Local Government Council

##### Main objects

To provide for the control of pigs.

##### Relevance to this Review

The control of pigs and other animals is important in some areas and may assist in the promotion of human health and the well-being of animals.

##### Substance of the relevant provisions

*By-law 2* Pig pens must be maintained in a clean condition and may not be erected within 200 feet of a well, street, building or dwelling.

*By-law 4* Persons breaching these by-laws may be imprisoned for a term of 6 weeks.

(These by-laws are noted as an example of the kind of powers that may be exercised under the Local Government Act 1984 in this context.)

#### **4.3.6 Quarantine Arrangements**

##### PLANTS ORDINANCE 1976

*Year passed:* 1976

*Date of effect:* 1<sup>st</sup> September 1976

*Amended:* 1980

*Repealed the following laws: Nil*  
*Administered by MELAD*

*Section 11* Controls may be imposed to eradicate plant diseases within Kiribati. The Minister may declare infected areas and prohibit the movement of plants or plant material in or out of the area.

*Section 13* The Minister may make regulations prescribing measures to be undertaken in infected areas to further prevent the introduction or spread of plant diseases and pests, and to seek their eradication. They may also further empower Quarantine Officers in this regard. Provision may be made for the compensation of persons whose plants are destroyed.

#### **4.4 Protection of human health**

##### **PUBLIC HEALTH ORDINANCE 1926**

*Year passed: 1926*

*Date of effect: 1<sup>st</sup> December 1926*

*Amended: 1952, 1971 (2 amendments), 1973, 1974, 1980*

*Repealed the following laws: Nil*

*Administered by*

##### Main objects

To make provision in relation to matters of public health.

##### Relevance to this Review

Issues of public health are clearly relevant to the environment.

##### Substance of the relevant provisions

*Section 3* The Minister may make regulations for the purpose of protecting and advancing public health, and specifically relating to –

- latrines, dustbins and drains
- scavenging, cleaning and disinfecting
- removal and disposal of night-soil and house refuse
- abatement of nuisances injurious to public health
- preventing the spread of infectious diseases
- regulating the carrying on of any trade
- regulating the sale of milk
- protecting tanks, vats, cisterns and other water storage devices from pollution

- regulating the use of any rain, stream, well or water source and the prevention of water pollution
- mosquitoes
- protection of food for sale
- certain places of business (lodging houses, slaughter-houses etc)

## PUBLIC HEALTH REGULATIONS 1926

*Year passed:* 1926

*Date of effect:* 1<sup>st</sup> December 1926

*Amended:* 1971 (2 amendments), 1974

*Repealed the following laws:* Nil

*Administered by*

Main objects

To make regulations under the Public Health Act.

### Relevance to this Review

These Regulations apply matters related to the protection of human health.

### Substance of the relevant provisions

<i>Regulation 2</i>	All premises and land must be kept clean.
<i>Regulation 3</i>	No stagnant water may lie on land for more than 24 hours.
<i>Regulation 4</i>	No tins and other things capable of holding water may be permitted to lie on land.
<i>Regulation 7</i>	Guttering and downpipes must be kept clean and “efficient”.
<i>Regulation 10</i>	No person may deposit or cause to be deposited any empty tin, bottle or other receptacle in any street, road or public place.
<i>Regulation 11</i>	Every occupied house and building must have a latrine.
<i>Regulation 12</i>	Latrines must be kept clean.
<i>Regulation 14</i>	Rubbish must be burnt if possible, or put in tins ready for daily collection.



*Regulation 20* Any well or water supply that is injurious to health can be ordered to be closed.

**(Note:** First offenders may only be fined \$20 or imprisoned for 1 month)

PURE FOOD ACT 1913 (CAP. 84 1977)

*Year passed:* 1913

*Date of effect:* 31<sup>st</sup> July 1913 (some parts) and 27<sup>th</sup> May 1940

*Amended:* 1940, 1968, 1971, 1974, 1977

*Repealed the following laws:* Nil

*Administered by*

### Main objects

To make provision in relation to the wholesomeness and purity of food and to set relevant standards.

### Relevance to this Review

This law has important implications for human health.

### Substance of the relevant provisions

*Section 3* Describes circumstances in which food may be said to be adulterated.

*Section 4* Deals with adulterated foods.

*Section 5* Deals with mixing foods which are injurious to human health.

*Section 8* Provides that food stores etc are to be kept clean.

*Section 9* Makes provision for food packaging and makes the named person liable.

FOOD SAFETY BILL 2004

*Year drafted:* 2004

*To be administered by*

### Main objects

To promote public health and safety with regard to food, to regulate the preparation, sale and use of food, to assist consumers to make informed choices on food and to promote fair trading practices in relation to food.

Relevance to this Review

This law has important implications for human health and for the rights of consumers.

Substance of the relevant provisions

This Bill up-dates and modernises the provisions and concepts of the Pure Food Act. More comprehensive provision is made for the licensing of food establishments and the importation of food products.

## TOBACCO CONTROL BILL 2004

*Year drafted – 2004*

*To be administered by –*

Main object

To prohibit advertising and promotion of tobacco products, and to regulate the labelling of tobacco product packages, the sale of tobacco products and smoking in certain public places.

Relevance to this review

This has human health aspects and implications for the environment.

Substance of relevant provisions

*Part II* Prohibits the advertising and promotion of tobacco products.

*Part III* Regulates the packaging and labeling of tobacco products.

*Part IV* Regulates the sale of tobacco products.

*Part V* Regulates the use of tobacco products.

*Section 10* Prohibits smoking in certain public places.

## PHARMACY AND POISONS ORDINANCE 1949

*Year passed: 1949*

*Date of effect: 2<sup>nd</sup> August 1949*

*Amended: 1950, 1952, 1967, 1968, 1969, 1971, 1973, 1974, 1977*

*Repealed the following laws: Nil*

*Administered by*

### Main objects

To control pharmacy and the sale and distribution of drugs and poisons.

### Relevance to this Review

The effective regulation of poisons has important implications for human health and the environment.

Substance of the relevant provisions

- Part II* Establishes and empowers the Pharmacy and Poisons Board.
- Part III* Provides for the registration and regulation of pharmacists.
- Part IV* Makes comprehensive provision in relation to the regulation of the business of pharmacists.
- Part V* Controls the sale of medicines.
- Part VI* Controls the import and sale of poisons.
- Section 54* Pharmacists are permitted to sell poisons.
- Section 55* Licences may be granted for the sale of poisons.
- Section 56* A register of premises licensed to sell poisons must be maintained.
- Section 62* There is a general power to make regulations.

LOCAL GOVERNMENT ACT 1984 (cont'd)

(Details are stated in **4.2**)

- Section 45* Permits responsibilities for sanitation to be assigned to Local Government Councils.

### **LOCAL COUNCIL BY-LAWS**

There are some Local Council by-laws (e.g Betio Town Council By-Laws) which permit the Council to decline a building permit on the grounds that requirements as to sanitation are not met. Provision for sewage must be made to the satisfaction of the Council. Latrines may be located on beaches with Council approval. Provision is also made in relation to controlling littering.

## PUBLIC UTILITIES ORDINANCE 1977 (cont'd)

*Year passed:* 1977

*Date of effect:*

*Amended:* 1980, 1983, 1997 (2 amendments)

*Repealed the following laws:*

*Administered by* the Ministry of Works and Energy

(Details are stated in **4.2**)

*Section 7* The Public Utilities Board has the exclusive right to perform functions related to the supply of sewerage services and the treatment of sewage.

## HARBOURS ORDINANCE 1957 (cont'd)

(Details are stated in **4.2**)

*Section 48* It is an offence to cast or discharge night soil, sewage or other filth into the harbour.

## 4.5 Natural Resources

### 4.5.1 Land

#### NATIVE LANDS ORDINANCE 1956

*Year passed:* 1956

*Date of effect:*

*Amended:* 1978, 1979, 1980, 1983 (2 amendments)

*Repealed the following laws:*

*Administered by* MELAD

#### Main objects

To make comprehensive provision in relation to recognition, ownership and dealing with native land.

#### Relevance to this Review

Land is a principal natural resource and forms a critical background against which an assessment of the environment related laws can be undertaken.

#### Substance of the relevant provisions

- Section 2* “Native” is defined as “any aboriginal inhabitant of the Islands and a descendant of any aboriginal inhabitant.”
- Section 4* Indefeasible title is given in relation to native lands registered with the Native Lands Commission. Power is vested in Magistrates to approve the alienation of native lands consistent with the provisions of this Act.
- (Section 58 of the Magistrates Court Act 1978 gives powers to the court to hear and adjudicate all cases concerning land matters in accordance with the Lands Code, or customary law if the Code has no application in a particular case. The powers include all matters related to land boundaries and the transfer, registration, possession and utilisation of native lands.)
- Section 5* Native lands may not be alienated by sale, gift, lease or otherwise to any person who is not Kiribati. Lands may be alienated to the Government, Local Government Councils and certain other government entities. However such lands do not cease to be native lands for the purposes of this Act.
- Part VI* Provision is made for the lease of native lands. The following rules apply –
- No lease or sub-lease to a non-native is effective until approved under the Ordinance (section 9).
  - The Minister’s approval is required (section 10).
  - An inspection of the proposed lease by the court is required (section 10(2)) and the court must confirm a range of matters before Ministerial consent may be given.
  - The Minister must be satisfied as to the fairness of the lease and its compliance with the Ordinance.
  - Registration of the lease shall be directed by the Minister (section 10(5)).
  - Section 11 states the requirements for natives to lease native lands. Under sections 13 and 14 there may be no assignment or transfer of a native lease unless approved by the Minister and the Court.
- Section 22* A surveyor may enter lands for the purpose of surveying them and to assess if any damage is done to crops, plants, fences or other property. Provision is made in section 24 for the assessment of compensation.
- Section 28* This declares the Gilbert and Phoenix Islands Lands Code to be the code of laws governing native lands from 1<sup>st</sup> March 1963. The Code

describes and applies customary law relating to land tenure, including the distribution and transfer of lands.

*Section 35* Complaints concerning unlawful occupation of lands may be made to the Clerk of the Court. Courts may order the payment of compensation and any removal costs associated with an unlawful occupation. Unlawful occupation of land is an offence.

## NON-NATIVE LAND (RESTRICTION ON ALIENATION) ORDINANCE 1974

*Year passed:* 1974

*Date of effect:*

*Amended:* 1980

*Repealed the following laws:*

*Administered by* MELAD

### Main objects

To make comprehensive provision in relation to the recognition, ownership and dealing with non-native lands.

### Relevance to this Review

Land is a principal natural resource and forms a critical background against which an assessment of the environment related laws can be undertaken.

### Substance of the relevant provisions

*Section 2* Non-native land is defined as “land owned by a person other than a native but does not include land owned by Local Government Councils (and other specified entities) which immediately prior to its alienation to the Council or (other body), as the case may be was owned by a native”.

*Section 3* Non-native land cannot be alienated by sale, gift or lease unless notice is given to the Minister.

*Section 4* The Minister may advise the intended purchaser that the Government intends to purchase the land. If the Minister and vendor are in disagreement the land is deemed to have been acquired for a public purpose under the State Acquisition of Lands Ordinance 1954.

## FORESHORE AND LAND RECLAMATION ORDINANCE 1969 (cont'd)

(Details are given in **4.1**)

### Main objects

To regulate reclamations of the foreshore and seabed.

### Relevance to this Review

The reclamation of foreshores and seabeds has important implications on the environment and for coastal management.

### Substance of the relevant provisions

- Section 3* Areas of foreshore may be designated foreshore in accordance with this section. The extraction of sand, gravel, reef mud, coral, rock and other similar substances may only be undertaken under licence from the Chief Lands Officers. Affected landowners must be consulted.
- Section 4* Procedures are prescribed for the reclamation of seabeds and foreshore lands. Public notification must be given. Objections may be lodged. (EIA is not required under this Act but the Environment Act makes provision in this regard). These procedures do not apply to the construction of causeways or Local Government Council landing-places.
- Section 6* Approvals given under this Act operate to extinguish all private and public rights of navigation and fishing.
- Section 7* Procedures are applied to the consideration of compensation for the extinguishment of rights.
- Section 9* Reclaimed lands vest in the State.
- Section 10* The Minister may enter into agreements for the sale, lease or grant of reclaimed lands.
- Section 11* These provisions do not apply to the filling in of foreshore lands by their owners. Any reclamation by landowners does not create any right or claim over the area.

### STATE ACQUISITION OF LANDS ORDINANCE 1954

*Year passed:* 1954

*Date of effect:* 25<sup>th</sup> June 1954

*Amended:* 1968, 1972, 1973, 1974 (2 amendments), 1986, 2001

*Repealed the following laws:* Nil

*Administered by* MELAD

Main objects

To make provision for the acquisition of lands by Government for public purposes.

Relevance to this Review

Lands may be acquired under this Act for any public purpose related to environment protection and the conservation of the natural resources of Kiribati.

Substance of the relevant provisions

*Section 10* Land may be acquired for any purpose related to the construction, maintenance or improvement of any road. Land may not be acquired on either side of a public highway without the consent of landowners.

*Section 11* Road reserves can be created and restrictions are placed on building within 9 metres of either side of the centre of a highway. Planting of trees and crops on a road reserve is prohibited.

NEGLECTED LANDS ORDINANCE 1959

*Year passed:* 1959

*Date of effect:* 25<sup>th</sup> June 1959

*Amended:* 1969, 1971 (3 amendments), 1974, 1977, 1980

*Repealed the following laws:* Nil

*Administered by*

Main objects

This law provides for the purchase of neglected lands and regulates the sale of such lands to indigent natives.

Relevance to this Review

This law seeks to ensure the effective utilisation of Kiribati's limited land resources.

Substance of the relevant provisions

*Section 2* "Neglected lands" are defined to be any "land suitable for agricultural use which is not being fully and efficiently utilised for agricultural purposes".



“Indigent natives” are said to be any native who has insufficient land to support himself or his family.

- Section 3* The Minister may arrange to purchase neglected land from its owner.
- Section 4* Inquiries must be made as to the whereabouts of the owner. Compulsory acquisition of neglected lands is provided for.
- Section 5* The court is empowered in the context of the acquisition of neglected lands. Orders may be applied to neglected land to ensure that it is used by the owner.
- Section 7* The owner may be required to satisfy the court as to compliance with an order made to utilise it, or to satisfy the court as to the reasons for non-compliance.
- Section 8* Failure to satisfy a court may result in the acquisition of the land. Compensation is assessed by the Court.
- Section 13* Acquired lands shall not cease to be native lands.
- Section 15* Provision is made for the offering of neglected lands for sale.
- Section 16* Acquired lands may be offered by private sale or for sale by auction.

#### LANDOWNER'S TAXATION ORDINANCE 1957

*Year passed:* 1957

*Date of effect:* 1<sup>st</sup> August 1957

*Amended:* 1958, 1961, 1971, 1972 (2 amendments), 1973, 1977, 1980

*Repealed the following laws:* Nil

*Administered by*

#### Main objects

This Act imposes taxes on lands.

#### Relevance to this Review

An effective land tax regime may promote the efficient use of scarce land resources.

#### Substance of the relevant provisions

*Section 4* Methods of assessing land are to be approved by the Minister. Rights of appeal are provided for.

*Section 6* Non-payment of land tax is an offence.

#### **4.5.2 Fisheries**

##### FISHERIES ORDINANCE 1977

*Year passed:* 1977

*Date of effect:* 3<sup>rd</sup> March 1978

*Amended:* 1978, 1983, 1984, 1988, 1992, 1995, 1997

*Repealed the following laws:* Nil

*Administered by*

##### Main objects

To make comprehensive provision in relation to the development of Kiribati's fisheries resource.

##### Relevance to this Review

The fisheries resource of Kiribati is a crucial natural resource and the legal provisions applying to the development and conservation of the fisheries is a key element of the environment protection regime applying in this country.

##### Substance of the relevant provisions

*Section 2* "Fish" and "fishing" are broadly defined and include the taking or harvesting of any aquatic animal. This includes turtles and turtle eggs, moluscs, crustaceans, sea urchins, beche-de-mer, corals, sponges and seaweed. Preparatory and support activities are also deemed to be fishing.

"Local fishing vessels" do not include native boats and any boat less than 7 metres, even if they are powered and are being used for commercial fishing.

*Section 3* The Minister has the role of promoting the development of fishing and fisheries to ensure that the resource is exploited for the full benefit of the nation.

*Section 4* All "local fishing vessels" used commercially must be licensed. The period of a licence is limited to 12 months unless the Minister approves otherwise.

- Section 5* Foreign fishing vessels entering or fishing in the EEZ must have a permit. Conditions apply to these permits.
- Section 6* Fish processing establishments (including vessels which are preserving fish) must be licensed and conditions are applied to these licences.
- Section 7* Licences may be cancelled or suspended by the Chief Fisheries Officer. There is a right of appeal to the Minister.
- Section 8* Authorised officers (including police officers and members of the defence force) have wide powers of search, seizure and arrest.
- Section 9* Foreign vessels in breach of licence conditions may be seized.
- Section 14* Certain fishing practices are prohibited. This includes the use of explosives and noxious substances. It is an offence to be in possession of fish caught in this manner.
- Section 15* Vessels may be forfeited upon conviction.
- Section 20* The Minister may enter into agreements with governments and international agencies. Such bodies may be authorised to issue fishing permits.
- Section 21* The Minister is empowered to licence non-Kiribati fishers, including commercial fishers, to fish in any sea or lagoon area, or on any reef forming part of any customary fishing ground.
- Section 22* Regulations may be made in relation to –
- the conservation and protection of all species of fish
  - the establishment of closed seasons
  - the designation of prohibited areas
  - limits on the size of fish and the number of fish
  - prohibitions on fishing practices and equipment likely to damage the fish stock
  - the taking of coral and seaweed
  - the conditions and procedures to be observed by foreign fishing vessels (These relate to prohibitions on fishing in closed areas, reporting requirements, notice of transshipment and the inspection of vessels by authorised officers).

## FISHERIES (PACIFIC ISLANDS STATE'S TREATY WITH THE UNITED STATES OF AMERICA) ACT 1988

*Year passed:* 1988

*Date of effect:* 2<sup>nd</sup> November 1988

*Amended:* Nil

*Repealed the following laws:* Nil

*Administered by*

### Main objects

To give legal endorsement and effect to the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America signed at Port Moresby on 2<sup>nd</sup> April 1987.

### Relevance to this Review

This treaty is an important aspect of the regional fisheries arrangement.

### Substance of the relevant provisions

*Section 3* The Treaty is brought into effect in Kiribati.

Relevant Aspects of the Treaty include –

- Kiribati's sovereign rights to explore, exploit, conserve and manage the fisheries resources of the EEZ are recognised.
- The development focus is emphasised with the USA offering technical and economic support for the development of the resource.
- Financial sharing arrangements are provided for and provision is made for other technical assistance.
- US fishing vessels are licensed to fish for tuna, other than southern bluefin tuna.
- Certain areas may be closed to fishing.
- Grounds are stated for the refusal of licences, including the lack of good standing on the register of fishing vessels maintained by the FFA.
- The terms under which licences are granted are stated in Annex 1. Only purse seine fishing is allowed. Information as to position and catch must be provided. Observers must be accommodated. No disruption may be caused to traditional and locally based fishers and fishing vessels.
- Special enforcement provisions are included.

## FISHERIES CONSERVATION AND PROTECTION (ROCK LOBSTERS – PANULIRUS SPECIES) REGULATIONS 1979

*Year passed: 1979*

*Administered by*

### Main objects

To provide for the conservation and protection of certain species of rock lobsters.

### Relevance to this Review

This is an exercise of the power under the Act to make regulations promoting the conservation of certain fish species.

### Substance of the relevant provisions

Prohibitions are placed on the taking, possession and sale of immature rock lobsters and females bearing eggs.

## PROHIBITED FISHING AREAS (DESIGNATION) REGULATIONS 1978

*Year passed: 1978*

*Administered by*

### Main objects

To prohibit fishing in certain designated areas. These Regulations were originally made to protect brine shrimp aquaculture.

### Relevance to this Review

This is an exercise of the power under the Act to make regulations in support of the development of the fisheries resource.

### Substance of the relevant provisions

Prohibitions are placed on fishing in certain areas – Azur, Pelican and Isles Lagoons and the Tonga Channel, with the adjoining Artemia Ponds.

## FISHERIES (VESSEL LICENCES) REGULATIONS 1981

*Year passed: 1981*

*Administered by*

Main objects

To provide for the licensing of fishing vessels.

Relevance to this Review

Conditions applying to fishing vessel licences can impose requirements aimed at conserving the fish resource.

Substance of the relevant provisions

No model conditions are stated in these Regulations but the standard conditions stated in the approved licence form include the following provisions –

- vessels must not fish within 3 miles of the shores of any island, except when bait fishing
- records of the catch must be kept
- other records for scientific research purposes must be kept
- observers must be permitted on vessels

**LOCAL COUNCIL BY-LAWS**

There are numerous Council by-laws imposing prohibitions and restrictions on certain fishing practices, the use of certain practices in relation to certain fish, and to fishing in certain areas and at certain times.

**4.5.3 Mining and Minerals****MINERAL DEVELOPMENT LICENSING ORDINANCE 1977**

*Year passed: 1977*

*Date of effect: 1<sup>st</sup> April 1978*

*Amended: 1980*

*Repealed the following laws: Nil*

*Administered by*

Main objects

To make provision for the licensing and development of activities relating to the utilisation of Kiribati's mineral resources.

Relevance to this Review

The extraction of minerals has important implications on the environment and requires the imposition of developmental controls.

Substance of the relevant provisions

- Section 2* This law does not apply to Ocean Island (Banaba).  
 “Mineral” is defined to mean “any substance, whether in solid, liquid or gaseous form, occurring naturally in or on earth, or in or under the seabed formed by or subject to a geological process, but does not include water”.
- Section 3* Customary rights for Kiribati to take minerals are recognised, but may be made subject to conditions. A licence under this law is required in relation to searching for or extracting minerals. This requirement does not apply to the taking of building materials. Prospectors and miners must be Kiribati or companies registered in Kiribati.
- Section 7* Public officers may be authorised to take minerals.
- Section 10* Provision is made for the granting of reconnaissance licences. They may not apply for longer than 2 years. Environmental conditions may be placed on licences.
- Section 11* Gazettal of licences is required.
- Section 12* Periodic reporting requirements apply.
- Section 13* Certain rights to erect camps and temporary buildings and to make other operational arrangements are given.
- Section 15* Prospecting licences may be granted if the applicant has adequate financial capacity, is technically competent and has sufficient operational experience.
- Section 16* Terms and conditions can be imposed on prospecting licences.
- Section 19* Prospecting licences are valid for 3 years and may be renewed for two further periods of 2 years.
- Section 23* Full and accurate records must be kept and reporting requirements apply.
- Section 26* Minerals may only be removed under a prospecting licence for the purpose of analysis.

- Section 27* The holder of a prospecting licence may apply for the grant of a mining licence. Comprehensive provision is made in relation to mining licences in section 28-39.
- Section 42* The holder of any right under this law may not exercise it in relation to any burial area or land which is set aside for a government purpose. Any finds of historical or archaeological importance must be reported.
- Section 44* Provision is made for the payment of fair compensation to landowners and occupiers.
- Section 46* Land may be compulsorily acquired to secure the development or utilisation of mineral resources, and such purposes are deemed to be public purposes under the State Acquisition of Lands Ordinance.
- Section 55* The Minister may suspend or cancel any right given under this law.
- Section 58* Regulations may be made, including those relating to protecting water resources, preventing pollution and protecting sea resources.

**FORESHORE AND LAND RECLAMATION ORDINANCE 1969**  
(Details are stated in **4.1**)

- Section 3* The Minister may designate parts of the foreshore and the removal of sand, gravel, reef mud, coral, rock and other similar substances may only be taken from such areas with the approval of the Minister.

**4.5.4 Water Resources**

**PUBLIC UTILITIES ORDINANCE 1977**

(Details are in **4.2**)

Main objects

To establish the Public Utilities Board and to vest responsibilities in the Board in relation to the provision of public utilities and services.

Relevance to this Review

This Act makes provision in relation to the supply of water and the protection of the water resources of Kiribati.

Substance of the relevant provisions



- Section 7* Exclusive rights in relation to the provision of water supplies is vested in the PUB. Licenses may be granted for others to provide this service.
- Section 8* With the approval of the Minister, the PUB may declare any area to be a water reserve in order to ensure adequate supplies of pure water. PUB can order owners and occupiers to remove structures and fill in pits, or can undertake these works itself.
- Section 30* It is an offence to do anything which is likely to pollute a water reserve, or to erect a structure or dig a pit on a reserve without the approval of the Board. It is an offence to do, cause or permit anything which may soil, foul, corrupt or injure the water supply.
- Section 35* Regulations may be made in relation to preventing the pollution of water and to ensure the sanitary control of water reserves.

## PUBLIC HEALTH ORDINANCE

(Details are stated in **4.4**)

- Section 3* Regulations may be made to prevent the pollution of any rain, stream, well or other water supply.

## **4.6 Control of transboundary movements**

### CUSTOMS ACT 1993

*Year passed:* 1993

*Date of effect:* 25<sup>th</sup> February 1994

*Amended:* 1995

*Repealed the following laws:* Subject to sections 145, 146, 147 and 148, the Customs Ordinance (Cap. 22) (in this Part referred to as the "former legislation") is repealed.

*Administered by* the Comptroller of Customs

#### Main objects

To provide to the regulation and collection of customs.

#### Relevance to this Review

Customs laws have implications relating to transboundary movements.

#### Substance of the relevant provisions

- Part III* Prohibitions and restrictions can be applied to imports, carriage coastwise or exports of certain goods. These can be applied to any goods, except goods for transshipment. The Schedules provide lists of prohibited and restricted exports and imports.
- Section 31* Provision is made for the customs control of all imports.
- Part V* Comprehensive provision is made in relation to the importation of goods. Provision is made for the entry of goods, reporting requirements relating to cargo and for the powers of the customs.
- Part VI* Comprehensive provision is made in relation to warehouses and to the warehousing of goods.
- Part VIII* Provision is made in relation to the export of goods.
- Section 93* Provides for the clearance of ships and aircraft.
- Part IX* Deals with imports and exports by post.
- Section 108* Provides for the appointment of customs officers
- Part XII* Provides extensively for the powers of customs officers.
- Section 143* Provision is made for the making of very wide-ranging regulations.

#### QUARANTINE ACT 1929 (CAP. 85)

*Year passed:* 1929

*Date of effect:* 1<sup>st</sup> January 1931

*Amended:* 1931, 1940, 1946, 1952, 1967, 1968, 1969, 1971, 1972, 1973, 1974

*Repealed the following laws:* Nil

*Administered by*

#### Main objects

To make comprehensive provision in relation to quarantine.

#### Relevance to this Review

The effective imposition of quarantine arrangements and requirements are an important aspect of environment protection. It is also relevant in the context of transboundary movements.

#### Substance of the relevant provisions

- Section 5* Provision is made for the appointment of quarantine officers.
- Section 6* Provision is made for the appointment of temporary officers.
- Part III* General quarantine provisions are made relating to –
- infected places
  - ports of entry
  - emergency quarantine grounds
  - obligations of ships masters coming from infected places
  - fumigation of vessels
- Part IV* Comprehensive provision is made in relation to the quarantine of vessels, persons and goods.
- Part VI* Provision is made in relation to miscellaneous matters including –
- powers of officers
  - forfeiture of goods
  - vaccinations
  - cleansing and disinfecting vessels
- Section 82* A general regulation making power is provided for, including regulations relating to –
- requiring notification to a quarantine officer of each case of a quarantinable disease which arises in Kiribati or within any specified part of the Islands or within any quarantine area.
  - prescribing the precautions to be taken to prevent the ingress to or egress from a vessel of rats, mice, mosquitoes or other vermin or species or kinds of animals or insects liable to convey disease.
  - prescribing the measures to be taken by the masters, owners or agents of vessels to destroy rats, mice, mosquitoes or other vermin or species or kinds of animals or insects liable to convey disease which may exist on the vessels.
  - prescribing and establishing and maintaining on vessels, or within any quarantine area, of conditions unfavourable to, and to the migration of, rats, mice, mosquitoes or other vermin or species or kinds of animals or insects liable to convey disease, and fixing the time limit for the completion of any work necessary for the purpose of establishing such conditions, and empowering the Secretary, in case of default by the master, owner or agent, to carry out any such work at the expense of the master, owner or agent.

- prescribing the precautions to be taken by masters of vessels in respect of the vessels and their crews, passengers and cargoes at infected places, and on the voyage from infected places, and on voyages between ports or places in the Islands, to prevent the introduction into the Islands or spread of quarantinable diseases.
- regulating the discharge from vessels of any water, ballast or refuse.
- regulating the sanitary condition of vessels in ports.
- providing for the granting of certificates by quarantine officers in relation to any vessels or goods examined or treated by them or under their supervision.
- prescribing the movements of any person subject to quarantine
- prescribing measures of disinfection, fumigation and other measures of quarantine which vessels, persons or goods subject to quarantine shall carry out or be subjected to.
- prescribing the conditions under which any prophylactic or curative vaccine or serum may be prepared and offered for sale.
- establishing and maintaining places, works and services for the sanitary control of aerial navigation, and prescribing sanitary measures to be taken in respect of international aerial navigation, either generally or in relation to specific diseases, in accordance with the provisions of any International Convention for the sanitary control of aerial navigation for the time being in force.
- requiring and prescribing reports from vessels by radio-telegraphy.
- regulating traffic within the Islands by land and sea, and prescribing measures of quarantine in relation to such traffic for the prevention of the occurrence or spread of communicable diseases.

## PLANTS ORDINANCE 1976

(Details are in **4.3.6**)

### Main objects

To provide for the protection of plants and the imposition of quarantine arrangements to control the importation of plants, and to prevent the introduction and spread of plant diseases.

### Relevance to this Review

Effective quarantine arrangements are important aspects of a nation's environmental protection regime and are aimed at preventing the introduction of

plant diseases and pests. This has particular relevance to the controls that may be exercised over transboundary movements into Kiribati.

Substance of the relevant provisions

- Section 3* Quarantine Officers are appointed by the Minister. Powers of entry, search and examination are given to these officers.
- Section 4* The Minister may make orders prohibiting or regulating the importation of plants into Kiribati. Offending plants may be seized and destroyed.
- Section 5* Ports of entry for plants are prescribed. Post officers must also give notification of the arrival of any plants in the mail.
- Section 6* Permits are required for the importation of plants. Certificates from the place of export are required to certify that the plant is free from diseases or pests. Packaging must be clean and new. Inspection must be undertaken before the plant is released.
- Section 7* Customs officers and post officers are given powers to seize plants and containers and wrappings in which plants are contained. These may be treated and fumigated.
- Section 8* The importation of earth is prohibited and it can be seized and disposed of.
- Section 9* Quarantine Officers are empowered to—
- enter and inspect vessels and aircraft
  - require passengers to make declarations concerning plants in their possession
  - search and examine baggage and personal effects
  - fumigate and treat baggage suspected of being infested with disease or pests
- Section 14* The Minister may declare plants that can be imported without permits.
- Section 18* Quarantine Officers may require a person possessing any imported plant to provide proof that the plant is not unlawful. If no such proof is provided then the plant may be destroyed.

## BIOSECURITY BILL 2004

**(Note:** There is some doubt about whether a recently drafted Biosecurity Bill shall proceed to Parliament as has been planned. Comments about its text have been made by a consultant working on model biosecurity legislation for Pacific island countries and sponsored by SPC. Given the current uncertainty the observations made below relate to the draft model biosecurity law prepared for SPC eventhough this is not the version that is currently before the Parliament).

### Main objects

To protect the health, environment and agriculture of Kiribati and to facilitate trade in its animal and plant products.

### Relevance to this Review

This draft law seeks to make comprehensive provision for biosecurity related issues and processes, and to harmonise these in the region.

### Substance of relevant provisions

*Section 2* There are definitions given to “environment”, “export”, “import”, “fish”, “living organism” and “organism” which should be harmonised with those given in related laws. There is no definition of “living modified organism”. “Regulated articles” include all living organisms, whether modified or not.

“Pest risk analysis” or “PRA” is defined but does not appear to be referred to in any substantive provision.

*Section 3* The purposes of the law are stated to be –

- controlling the introduction and spread of new pests and diseases affecting plants and animals;
- controlling those pests and diseases affecting plants and animals that are already present in Kiribati;
- providing for the safe import and export of animals and animal products and plants and plant products;
- facilitating cooperation in the prevention of the international movement of pests and diseases affecting plants and animals.

There is no application of a precautionary principle.

*Section 7* This law is in addition to any other regulatory law and does not derogate from the application of any such law.

- Section 9* All regulated articles must be declared and submitted for biosecurity control when being brought into Kiribati.
- Section 10* Articles may be designated as prohibited articles if they present and unacceptable biosecurity risk to Kiribati.
- Section 11* Pests and diseases may be designated as prohibited.
- Section 14* Articles may be exempted from biosecurity control if they pose no biosecurity risk.
- Part 3* Makes comprehensive provision for import and export permits.
- Section 19* Certain exemptions apply, including for goods in transit
- Section 21* Provision is made for export permits, and conditions may be imposed.
- Section 27* Prescribes the duties of importers and exporters to, inter alia, declare goods and make them available for inspection.
- Section 28* Duties are imposed on masters and captains to permit inspections and to file documents.
- Section 29* Restrictions are placed on the disposal at sea of garbage and ballast.
- Part 5* Prescribes the powers of biosecurity officers.
- Section 44* Powers to order destruction or reconsignment are given.
- Part 6* Makes comprehensive provision in relation to the internal control of pests.
- Section 53* The Minister, after receipt of appropriate scientific advice and with the authorisation of Cabinet, may in writing approve the release of beneficial organisms or biocontrol agents to control or eradicate particular pests or diseases in Kiribati.
- Part 7* Makes comprehensive provision for the declaration of biosecurity emergencies, including the making of emergency regulations.
- Part 8* Makes comprehensive provision for the establishment of a National Biosecurity Service.

*Section 58* The office of Director of Biosecurity is established as a position in the public service.

*Section 59* Provides for the appointment of biosecurity officers.

*Part 9* General provision is made for the administration of the Act, including the need to consult broadly in relation to its implementation and any regulations made under it.

*Section 66* Obliges a range of public officials, including environment officers to cooperate in the implementation of this Act.

*Part 11* Makes provision for matters aimed at facilitating international cooperation.

*Section 80* Regulation making powers are vested in the Minister.

## IMPORTATION OF ANIMALS ORDINANCE 1919

*Year passed:* 1919

*Date of effect:* 17<sup>th</sup> July 1919 (in part) and 3<sup>rd</sup> June 1964

*Amended:* 1954, 1964, 1971, 1972, 1973, 1980

*Repealed the following laws:* Nil

*Administered by*

### Main objects

To control the importation of animals into Kiribati.

### Relevance to this Review

The controls applied to the importation of animals is an important aspect of the nation's environment protection regime and has particular relevance to the controls that may be placed on transboundary movements into Kiribati.

### Substance of the relevant provisions

*Section 3* The Beretitenti, acting in accordance with the advice of the Cabinet, may make regulations—

- (a) prescribing the ports and parts of ports at which imported animals may be landed;
- (b) defining parts of ports;



- (c) prohibiting or regulating the movement of imported animals into, in or out of a defined part of a port;
- (d) prohibiting or regulating the landing of imported animals, or of any specified kind thereof, or of carcasses, fodder, litter, dung or other thing brought from any specified country or from any specified part thereof;
- (e) prescribing and regulating the inspection and the examination and the mode, time and conditions of slaughter of imported animals in a defined part of a port;
- (f) prescribing and regulating the seizure, detention, quarantine, isolation or destruction of any imported animal, carcass, fodder, litter or dung;
- (g) prescribing and regulating the treatment of animals to which this Ordinance or the regulations made under this Ordinance apply;
- (h) prescribing fees and charges for any services rendered in respect of animals to which this Ordinance or the regulations made under this Ordinance apply.

*Section 4* Inspectors may be appointed by the Minister.

*Section 6* Vessels may be detained.

*Section 10* Importation of animals from certain countries may be prohibited.

*Part III* Comprehensive provision is made in relation to dogs.

## IMPORTATION OF ANIMALS REGULATIONS

*Year passed:*

*Date of effect:*

*Amended:* 1980, 1990, 1998

*Repealed the following laws:*

*Administered by*

### Main objects

To place prohibitions and controls of the importation of animals, manure and fodder, litter, fittings and other things which have come into contact with animals.

### Relevance to this Review

As noted above the ability of a country to control the transboundary movement of animals into its jurisdiction is an important feature of its environment protection capacity.

Substance of the relevant provisions

*Regulation 3*           The importation of any animal, manure or any fodder, litter, fittings or other things that have come into contact with animals is absolutely prohibited unless it complies with these Regulations.

*Regulation 7*           Cattle, horses and mules may only be imported from New Zealand, Fiji, Tasmania, NSW, Victoria or South Australia.

*Regulation 8*           Cattle may also be imported from the USA.

*Regulation 10*        A veterinarian certificate is required to state that the animal has been examined 7 days prior to shipment and that the animal has been found to be disease and vermin free. They must have been dipped or sprayed with anti-tick solution.

*Regulation 11*        Restrictions are placed in relation to the importation of chickens.

NUCLEAR INSTALLATIONS (GILBERT AND ELLICE ISLANDS) ORDER 1972

*Year passed:* 1972

*Date of effect:*

*Amended:*

*Repealed the following laws:*

*Administered by*

Main objects

To apply the certain provisions of the Nuclear Installations Act 1965 (UK) to Kiribati.

Relevance to this Review

This law deals with issues related to the transportation of fissile material and radioactive by-products.

Substance of the relevant provisions

*Section 10* Operators of nuclear installations are required to ensure that no occurrence arises from the transportation of nuclear material within Kiribati that causes injury or damage from radioactivity.

*Section 12* Compensation is payable in the event of breach of this law.

*Section 13* The duties apply in instances of natural disaster but not war.

*Section 26* This law does not cover the transportation of natural uranium or radioactive isotopes prepared for use for industrial, commercial, agricultural, medical or scientific purposes.

#### CARRIAGE OF GOODS BY SEA ORDINANCE 1926 (CAP.7)

*Year passed: 1926*

*Date of effect: 31<sup>st</sup> March 1926*

*Amended: 1952, 1973*

*Repealed the following laws: Nil*

*Administered by*

##### Main objects

To give effect to laws relating to the carriage of goods by sea.

##### Relevance to this Review

This has implications in the context of transboundary movements.

##### Substance of the relevant provisions

*Section 3* Applies the standard rules of the Bill of Lading appearing in the Schedule to the carriage of goods by sea under the laws of Kiribati.

#### **4.7 Recognition and protection of culture and traditional institutions and values**

#### COPYRIGHT ORDINANCE 1917 (CAP. 16 1980)

*Year passed: 1917*

*Date of effect: 13<sup>th</sup> June 1917*

*Amended: 1918, 1952, 1953*

*Repealed the following laws: Nil*

*Administered by*

### Main objects

To make provision in relation to copyrights (but there are only four operative provisions).

### Relevance to this Review

In its current state this Act has little relevance but it is the only law in Kiribati which recognises copyright in this jurisdiction.

### Substance of the relevant provisions

*Section 2* It is an offence for persons to –

- (a) make for sale or hire any infringing copy of a work in which copyright subsists;
- (b) sell or let for hire, or by way of trade expose or offer for sale or hire any infringing copy of any such work;
- (c) distribute infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright;
- (d) by way of trade exhibit in public any infringing copy of any such work;
- (e) import for sale or hire any infringing copy of any such work

Penalties are fines of \$4 for each breach and may not exceed a total of \$100.

*Section 3* Restrictions are placed on the importation of printed copies.

*Section 4* A very limited regulation making power is provided for (eventhough sub-section (2) makes a questionable reference to the “generality” of sub-section (1)).

*Section 5* Section 22 of the Copyright Act 1956 of England does not apply as part of the law of Kiribati.

## **4.8 Public awareness and participation (including the involvement of the private sector)**

## ENVIRONMENT ACT 1999

(Details are given in **4.2**)

*Section 6* The functions of the Minister include the following matters –

- assisting in the development of legislation for systems of environmental planning at national, provincial and local level, and the development of national, provincial and local environment plans
- promoting the participation of the community in environmental decision-making
- ensuring the freedom of access to information on environmental matters and to ensure that the community has access to relevant information about hazardous substances used by industry and public authorities and by private persons and enterprises
- conducting public education and awareness programs about the environment
- promoting the study of the environment through research, surveys, listing and classification.

*Section 7* Additional functions of the Minister are–

- to develop a comprehensive community participation policy concerning all aspects of the Division's work, and facilitate the implementation of the policy
- conduct and promote environmental research, education and quality objectives.

*Section 19* Provision is made in relation to the publication of initial environmental evaluation reports in the context of EIA's. Objections may be lodged and rights of appeal are provided for.

*Section 21* Similar provisions to those in section 21 apply to environment impact statements.

## **4.9 Other regulatory regimes**

### **4.9.1 Physical Planning**

#### LAND PLANNING ORDINANCE 1972

*Year passed:* 1972

*Date of effect:* 1<sup>st</sup> January 1973

*Amended:* 1973, 1974, 1977, 1979, 1980 (2 amendments), 2000

*Repealed the following laws:*

*Administered by the Central Planning Board – Ministry of Home Affairs and Rural Development*

Main objects

To apply controls over land use and developments within designated areas.

Relevance to this Review

Land use planning has important implications on environment management and must be considered in the context of other development controls such as those applied under EIA requirements.

Substance of the relevant provisions

- Section 2* “Development” is defined as “ the carrying out of any works or the erection of any structure on any land within a designated area or the use to which such land or any works or structure are put.”
- Section 3* The Minister may designate areas to which this Act shall apply.
- Section 4* A Central Land Board is constituted and provision is made in relation to its meetings.
- Section 5* Local Land Boards may be established in designated areas. These may be the Local Government Council.
- Section 9* The Central Land Board must arrange for the preparation of a General Land Use Plan for each designated area. These may be single plans or a series of plans. Village representation is required when plans are prepared.
- Section 10* Provision is made for the public scrutiny of plans. Plans may be approved under this section.
- Section 11* Following the preparation of General Land Use Plans detailed Land Use Plans must be prepared.
- Section 12* Public scrutiny of the detailed plans is provided for. Local Boards must consider all requests for amendments.
- Section 14* General Land Use Plans can be replaced by revised plans prepared and approved in accordance with similar procedures.

- Section 15* The Central Board may approve amendments to General Land Use Plans.
- Section 17* Changes of land use fall under this regulatory regime, but works which only affect the interior of a building and do not materially affect the external appearance do not require permission.
- Section 18* Development approvals given by Local Boards must be in accordance with the provisions of the applicable plans.
- Section 19* Applications must be submitted for development approvals. (EIA's may be required under this section).
- Section 20* Local Boards must consider all applications and must allow the applicant to make submissions.
- Section 21* Rights of appeal are provided for.
- Section 25* Approvals cease if work has not commenced within 12 months and a further application is then required.
- Section 26* Permission may be given to pre-existing non-conforming land uses.
- Section 28* Action may be taken against any unauthorised development.
- Section 31* While planning controls are exercised by the Central Planning Board and Local Land Planning Boards, every local board must comply with directions given to it by the Central Board.
- Section 32* Powers to make regulations are given to both the Central Land Board and the local boards.

#### LOCAL GOVERNMENT ACT 1984 (CONT'D)

(Details are stated in **4.2**)

- Section 50* Councils have the power to make by-laws in relation to any of their approved functions. Many of these relate to matters such as land use restrictions, cutting and removing trees, extracting gravel, sand and soil, lighting fires, trespassing into places where access is prohibited, erecting unauthorised structures, depositing rubbish and dead animals, grazing animals, restrictions on vehicle access, taking dogs into certain areas and urinating in public.

*Schedule* Many powers and responsibilities which may be vested in Local Government Councils relate to planning and building requirements. These are listed in **4.2**. Other such powers include –

- the laying out and adornment of public places by architectural schemes or ornamentation, including the erection of statues, fountains or other structures
- the control and management of recreation grounds, open spaces and parks

#### **4.9.2 Building Controls**

TOWN COUNCIL BY-LAWS (E.G BETIO TOWN COUNCIL BY-LAWS)

*Year passed:* 1975

*Date of effect:* 10<sup>th</sup> July 1975

*Administered by* Betio Town Council

##### Main objects

To enforce building standards and require approvals for the erection or modification of buildings.

##### Relevance to this Review

The controls that are exercised over the erection and modification of buildings are an important aspect of the management of the environment and controlling the effects that the erection of buildings may have on the environment.

Substance of the relevant provisions

*By-law 3* No building may be erected without approval. Conditions may be attached to building permits.

*By-law 4* Building plans must be submitted, but the Council is vested with some discretion.

*By-law 5* The plans must conform to applicable building standards.

*By-law 6* Plans will not be approved unless the building will be fit for human habitation and the plans comply with requirements relating to –

- drainage systems
- planning zoning and restrictions on land use
- proximity to roads.



Approvals may be withheld if any other aspect of the proposal is unsatisfactory.

- By-law 10* Permits will lapse if work has not commenced within 6 months.
- By-law 12* Inspections will be undertaken during erection and upon completion.
- By-law 13* Buildings erected for business purposes must be rat-proof.
- By-law 14* Orders may be made for the repair or demolition of dilapidated buildings.
- By-law 17* Buildings may not be erected on land that has been used for the disposal of human wastes or dead animals.
- By-law 20* Requirements for sanitation and waste disposal may be set and must be complied with.
- By-law 21* Buildings must have guttering and water storage.

#### **4.9.3 Business and Commerce**

##### FOREIGN INVESTMENT ACT 1985

*Year passed:* 1985

*Date of effect:* 10<sup>th</sup> September 1985

*Amended:* Nil

*Repealed the following laws:* Nil

*Administered by*

##### Main objects

To supervise and control foreign investment in Kiribati.

##### Relevance to this Review

The regulation of foreign investors can include controls over the nature of their business activities. These controls can ensure protection of the environment and can assist in the implementation of international conventions.

##### Substance of the relevant provisions

*Section 4* Establishes a Foreign Investment Commission to administer this law.

*Section 10* The consideration of applications by foreign investor must include the affect on the local natural and social environment.

*Section 11* Approvals given can be mad subject to conditions.

*Section 14* A register of foreign investors must be kept.

*Section 21* A general regulation making power is provided for.

**(Note:** The National Foreign Investment Policy states that businesses related to the harvesting of certain fisheries are closed to foreign investment. Restricted areas include driftnet fishing, dynamite fishing, chemical fishing and coral exploitation form conservation areas. Conserved wildlife and the logging of coconut bearing trees are also included in this category. The Act does not in fact make provision for closed or restricted activities.)

## CONSUMER PROTECTION ACT 2001

*Year passed:* 2001

*Date of effect:* 14<sup>th</sup> January 2002

*Amended:* Nil

*Repealed the following laws:* Nil

*Administered by*

### Main objects

To provide for consumer protection and administration, the rights of consumers, and for fair trading and statutory warranties.

### Relevance to this Review

Aspects of this law deal with human health issues and the rights of consumers in relation to product information.

### Substance of the relevant provisions

*Part II* Comprehensive provision is made for the administration of the Act, including the powers of the Minister, the appointment and powers of inspectors, and the investigation of complaints. Extensive powers are given in relation to obtaining information and to dealing with the information sought and obtained. Provision is made for keeping certain information confidential.

*Part III* Comprehensive provision is made for cons umer protection. This includes approved quality standards and product recalls.

*Part IV* Provision is made for fair trading and statutory warranties. This includes misleading conduct and parts inventories.

*Part V* Powers and enforcement and consumer remedies are provided for.

*Section 30* A general regulation making power is provided for.

#### PETROLEUM ORDINANCE 1965 (CAP. 69 1977)

*Year passed:* 1965

*Date of effect:* 1<sup>st</sup> September 1968

*Amended:* 1971, 1972

*Repealed the following laws:* Nil

*Administered by*

#### Main objects

To regulate the importation storage and sale of petrol.

#### Relevance to this Review

This law does not regulate petroleum as a natural resource but some aspects of it relate to procedures relating to petrol which may protect the environment.

#### Substance of the relevant provisions

*Section 3* Regulates the mooring, storage and discharge of petrol.

*Section 5* Conditions apply to the keeping of petrol.

*Part III* Deals with all aspects of the storage of petrol.

*Section 7* Packaging and marking petrol products is provided for.

*Section 11* Permission is required to sell petrol.

*Part V* Makes comprehensive provision in relation to the testing of petrol.

*Section 25* A general regulation making power is provided for. This includes regulations relating to the prevention of the escape or discharge of petroleum, or water mixed with any petroleum, from any vessel into inland or tidal water.

#### **4.10 Regional and international cooperation and harmonisation of arrangements**

## ENVIRONMENT ACT 1999

(Details are given in **4.2**)

*Section 3* An objective of the Act is to “comply with and give effect to regional and international conventions and obligations relating to the environment.”

## 5. LEGISLATIVE OBLIGATIONS UNDER INTERNATIONAL CONVENTIONS

### 5.1 Relevant Convention and Protocols

The following are the relevant conventions, protocols and regional agreements applying to Kiribati and to be considered in the context of this Review –

- The Convention on Biological Diversity
- Cartagena Protocol
- World Heritage Convention
- Framework Convention on Climate Change
- Regional Seas Conventions
- Convention to Combat Desertification
- The Vienna Convention and Montreal Protocol on Ozone Depleting Substances
- Basel Convention and Waigani Convention to control the transboundary movements and disposal of hazardous wastes
- CITES (International trade in endangered species)
- WTO and GATT
- PICTA and PACER (Pacific trade agreements)
- Stockholm Convention

The task here is not to review these international documents in detail or to determine the full scope of their application to Kiribati. Where there are clear obligations to give effect to their provisions in the domestic laws of Kiribati, then this is noted and some explanation of the nature and extent of the obligation is given. It is important to note the areas where it appears that the current laws are deficient in this regard. The nature of the required remedial action is noted.

#### **The Convention on Biological Diversity**

The legislative obligations under this Convention are non-specific but the following are matters about which consideration should be given to the enactment of appropriate laws –

- (a) the regulation and management of Kiribati's biological resources;
- (b) the regulation of any activity which may be detrimental to Kiribati's biological diversity;
- (c) the control and eradication of invasive species;
- (d) the recognition, protection and application of traditional knowledge, innovations and practices in relation to the management, protection and utilisation of Kiribati's biological diversity;

- (e) measures and facilities for in-situ and ex-situ conservation of Kiribati's biological diversity;
- (f) the declaration and management of protected areas, and the implementation of special measures to conserve Kiribati's biological diversity;
- (g) access to genetic resources within Kiribati, and the equitable sharing of benefits arising from the development and exploitation of such resources;
- (h) access to and transfer of technologies relevant to Kiribati's biological diversity;
- (i) plans, strategies and measures for the rehabilitation and restoration of degraded eco-systems;
- (j) systems for the monitoring of and reporting on issues and matters relevant to or affecting Kiribati's biological diversity; and
- (k) any other appropriate measure to promote the conservation and sustainable use of Kiribati's biological diversity.

#### *Current state of Kiribati's laws*

It cannot be said that the current laws of Kiribati make comprehensive provision in relation to any of these matters. The current laws that might be invoked in support of this Convention are wide-ranging and generally out of date. In many respects there are clear deficiencies. For example, while action may be taken to declare reserves under three or four laws, none of these make effective provision for the management of the reserves, and are particularly silent about community involvement in management plans.

#### *Options*

A new Part should be inserted into the Environment Act to deal in a general but all embracing manner with the issues noted above that apply in the context of this Convention. This could be titled "Protection of the Biodiversity" and would set well with the existing Parts of the Environment Act dealing with development controls and pollution control. An appropriate definition of "biodiversity" should be formulated and inserted into section 2. And most importantly a new general regulation making power should take the place of the current section 53 to permit a range of regulations to be made to give some legal effect to the matters noted above.

### **Cartagena Protocol**

This Protocol is almost unique in the detail of the legislative provision that it requires be made in domestic legislation. These matters include detailed arrangements in relation to the following matters –

- A designated competent authority and focal point in Kiribati
- Regulation, Management and Control of LMO's
- Risk assessments based upon sound scientific analysis to determine effects on the environment and on the biological diversity, and to human health
- Notifications of and controls over transboundary movements of LMO's
- Public awareness and participation (including the involvement of the private sector)
- Capacity building
- Preservation of cultural and traditional values
- Regional and international cooperation and harmonisation of arrangements

#### *Current state of Kiribati's laws*

No provision is currently made in any law to give effect to the rights and obligations flowing from the Protocol. However the matter is under consideration and a draft law shall be prepared during the currency of this Review.

#### *Options*

It is suggested that these matters be addressed by Regulations after the recommended change has been made to the regulation making power in section 53 of the Environment Act 1999. These will be drafted for Kiribati immediately following the finalisation of this Review.

### **Convention Concerning the Protection of the World Cultural and Natural Heritage**

The objective of this Convention is to establish an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organised on a permanent basis and in accordance with modern scientific methods.

The key provisions of this Convention relate to the following matters –

- (a) Each Party recognises that the duty of identification, protection, conservation and transmission to future generations of the cultural and natural heritage belongs primarily to the State.

- (b) Parties are to integrate the protection of their heritage into comprehensive planning programmes, to set up services for the protection of their heritage, to develop scientific and technical studies and to take necessary legal, scientific, administrative and financial steps to protect their heritage.
- (c) Parties undertake to assist each other in the protection of the cultural and natural heritage.
- (d) A World Heritage Committee is established to which each Party shall submit a list of its national heritage and which will publish a "World Heritage List" and a "List of World Heritage in Danger".
- (e) Any Party may request assistance for property forming part of its listed heritage, and such assistance may be granted by the Fund in the form of studies, provision of experts, training of staff, supply of equipment, loans or subsidies.

#### *Current state of Kiribati's laws*

Apart from the general reference in section 3 of the Environment Act to the object of implementing international conventions there is little provision made in that Act or any other law to achieving this object in a context such as this Convention. There is no specific reference to this Convention in any law and there is no specific provision aimed at addressing any of the objects, requirements or processes envisaged by it.

There is no effective integration in any law of Kiribati relating to any aspect of this Convention and little detailed provision in any of the disparate laws that may have some limited application in this context. The area of conservation reserves is provided for in a range of laws. None of these make useful provision in relation to effective management of conservation areas.

The laws of Kiribati are very deficient in the context of preserving the nation's cultural heritage.

There is little or no provision in the laws aimed at facilitating cooperative arrangements amongst countries at a regional or sub-regional level. This is despite the fact that this was a key feature of the Biketawa Declaration made in Kiribati in 2001.

#### *Options*

There is a clear and pressing need to make appropriate provision in the laws of Kiribati. It is recommended that amendments be made to the Environment Act, inter alia, to make provision for the following –



1. A definition of biodiversity should be inserted.
2. A new Part dealing with the protection of the biodiversity and the implementation of the procedural and substantive requirements and processes under the World Heritage Convention.
3. The appointment and empowerment of dedicated environment committees, which could include a World Heritage Committee.
4. The provision of a general regulation making power in the place of the existing section 53. This would permit a range of regulations to be made to achieve the objectives and obligations of this Convention.
5. Reference should be made in the objects stated in section 3 to regional and sub-regional cooperation in accordance with the principles of the Biketawa Declaration.

Consideration should then be given to the making of regulations to meet the needs of this Convention relating to achieving the listing of the proposed areas under the Convention, and the effective management of the areas in accordance with the objects and obligations of the Convention.

### **Framework Convention on Climate Change**

This Convention is not based on the premise that domestic legislation in a country like Kiribati is a fundamental instrument for achieving its objectives. No legislation exists in Kiribati that is directly related to climate change issues and none appears to be under consideration.

### **Regional Seas Conventions**

Proposed amendments to the Protocol to the SPREP Convention dealing with the dumping of wastes at sea may necessitate the inclusion of the following matters in relevant domestic laws in Kiribati -

- Adoption of the Precautionary Principle
- Reverse listing approach – having a “White List” of relatively inert materials that may be considered for dumping, rather than a “Black List” of prohibited materials
- Standardisation of Annexes and their contents
- Adoption of the Polluter Pays Principle
- Standardisation of definitions
- Provision for prohibition of incineration of wastes at sea

Proposed amendments to the Protocol to the SPREP Convention dealing with responses to marine pollution incidents would necessitate the inclusion of a number of matters in relevant domestic laws in Kiribati. The *SPREP Protocol* states the need for co-operation in combating pollution in cases of emergency and requires Parties to take all necessary measures to prevent, reduce and control marine pollution or the threat of pollution.

### *Current state of Kiribati's laws*

There are no laws in Kiribati which deal effectively with the issues of dumping and incinerating wastes at sea.

A draft Marine Pollution Prevention Bill which makes comprehensive provision for responses to marine pollution incidents is under consideration in many Pacific Island countries. This is a model law drafted for application throughout the region and questions must be asked as to the appropriateness of some of its technical and administrative provisions to a country like Kiribati where ports facilities and response capacities are limited.

### *Options*

The issue of dumping and incineration of wastes at sea might be best dealt by amendments to the Marine Zones (Declaration) Act 1983. This could be done in conjunction with amendments needed to regulate the transboundary movements of hazardous wastes. Other relevant issues could be addressed by Regulations under the marine zones legislation or the Shipping Act.

The draft model Marine Pollution Prevention Bill should be thoroughly reviewed to ensure that its provisions can be effectively implemented in Kiribati. It can form the basis of a re-drafted law.

### **Convention to Combat Desertification**

This Convention envisages that an enabling environment conducive to meeting its objectives shall be provided by strengthening existing legislation or enacting new laws. Nonetheless it is not clear as to how this may be given effect to in the context of a country like Kiribati where the concept of desertification is not easily applied.

### *Current state of Kiribati's laws*

There is no comprehensive law in Kiribati dealing with issues of the ownership, management and protection of the water resource. Provision is made in relation to pollution of water in a range of laws and responsibilities and powers are vested in a wide range of government agencies.

The Ministry of Health plays a role in relation to water quality. The Public Works Department has assumed the role of setting water standards and monitoring water quality but there is no known legal basis for this. The Public Utilities Board has the exclusive function of supplying water or regulating other water suppliers under authorisations given by the Board. The Environment Division wants to play a role in this regard but it is not easy to see how it can be easily accommodated.

### *Options*

The formulation of comprehensive water resources legislation would be extremely advantageous. This could formalise the current arrangements noted above and need not affect the current distribution of responsibilities relating to water testing and pollution control responsibilities. It could formalise the setting, monitoring of water standards, and reporting on them.

### **The Vienna Convention and Montreal Protocol on Ozone Depleting Substances**

There is a clear obligation under the Protocol to enact legislation to impose a regulatory regime in relation to ozone depleting substances. The following are matters about which legislative provision is required to give effect to Kiribati's obligations in relation to ozone depleting substances -

1. Prohibitions on Importation
2. Prohibitions on the Importation of Certain Goods
3. Exemptions in relation to imports
4. Prohibitions on Exportation
5. Prohibitions on Manufacture
6. Prohibitions on Sales
7. Exemptions in relation to sales
8. General Principles to be applied in relation to permits
9. Quarantine and pre-shipment permits
10. Medical permits
11. Base year permits
12. General provisions in relation to permits
13. Goods for which no permit may apply
14. Environment Officers
15. Powers of Environment Officers
16. Seizure of substances and goods
17. Forfeiture of seized substances and goods
18. Call-up of substances and goods
19. Offences and penalties

### *Current state of Kiribati's laws*

There is no law in Kiribati currently giving effect to these matters.

### *Options*

The deadlines for making appropriate legislative arrangements make these matters deserving of a degree of priority. These matters could be covered by

regulations made under the Environment Act 1999 if the proposed amendments are made to section 53.

**Basel Convention and Waigani Convention to control the transboundary movements and disposal of hazardous wastes**

The *Basel Convention* regulates the movement of hazardous wastes and other wastes on a global basis. The Convention sets down the criteria for assessing hazardous wastes in the respective annexes.

The annexes are divided into:

- categories of wastes to be controlled;
- categories of wastes requiring special consideration;
- list of hazardous characteristics;
- the manner of disposal operations is also specified;
- information to be provided on notification;
- information to be provided on the movement document;
- arbitration.

The Parties are obliged to prohibit the export of hazardous wastes or other wastes if the State of import does not consent to the specific import or has prohibited the import of such wastes. The Convention prescribes measures to apply to the proposed import or export of wastes. Parties are required to implement their own national legislation regulating hazardous wastes and to inform the Basel Secretariat of such information. A competent authority and a focal point must be designated.

Under the *Waigani Convention* each Party must ban the importation of all hazardous wastes and radioactive wastes from outside the Convention area. They must also prohibit the dumping of hazardous wastes and radioactive wastes at sea. The Parties are to co-operate to ensure that no illegal import of hazardous wastes and radioactive wastes from a non-Party enters areas under the jurisdiction of a Party.

The scope of the *Waigani Convention* includes radioactive wastes and domestically prohibited goods. It prohibits the import of hazardous wastes into its Convention Area.

*Current state of Kiribati's laws*

There are no laws in Kiribati which effectively deal with the issue of transboundary movements of hazardous wastes through Kiribati's maritime waters.

### *Options*

This deficiency should be addressed by appropriate amendments to the Marine Zones (Declaration) Act 1983. As noted above these changes could also deal with the issues of dumping and incinerating wastes at sea. If the model Marine Pollution Prevention Bill was adapted and enacted in Kiribati then these issues would be effectively addressed.

The movement of wastes into and through Kiribati could otherwise be dealt with by prescribing wastes to be prohibited substances under the proposed Biosecurity law and the Customs Act.

### **CITES (International trade in endangered species)**

Appropriate legislation is a clear requirement of this Convention to give full effect to its objects. In fact Parties have an obligation to provide biennial reports on legislative and other measures taken. A regulatory system requiring the granting of permits for certain species and the keeping of records of trade is a key feature of the obligations under this Convention.

#### *Current state of Kiribati's laws*

Some provision is made for the protection of wildlife under the Wildlife Conservation Ordinance 1975. This focuses on the protection of certain species (either fully or partially) and the declaration of sanctuaries. There are no operative provisions relating to trade in any wildlife species.

Declarations may be made of prohibited or restricted imports and exports under the Customs Act.

### *Options*

Part III of the Customs Act could be usefully applied to declaring certain species to be prohibited or restricted exports. However it would be advisable to enact legislation dealing specifically with the licensing and border control issues contemplated by this Convention.

### **WTO and GATT**

#### *Current implications*

The purpose of this Report is not to review such compliance issues or to advocate matters associated with the concept of free trade.

It is suggested that none of the legislative amendments advocated in this Section can be construed as problematic in this context, but it is left to others to make the final analysis.

### **PICTA and PACER (Pacific trade agreements)**

Similarly it is not the purpose of this Report to review issues associated with regional trade arrangements or proposals. None of the legislative amendments advocated in this Section should impact on such obligations. Indeed all such proposals are necessary to give effect to Kiribati's clear obligations to effectively protect the environment of the region and to increase its capacity to respond to threats to the safety of the environment.

### **Stockholm Convention**

This Convention comes into force in Kiribati in December 2004. One main objective of this Review is to assist in the formulation of the necessary Implementation Plan. The Analysis of Laws relevant to the Convention is the subject of a separate Report. A new law will be needed to implement the provisions of this Convention. These include provisions relating to the following –

(a) Definitions or words and terms used in the law. These will need to reflect the administrative entities in Kiribati, and will also need to be harmonised with the definitions in the Convention and with related laws in Kiribati. The 12 identified POPS must be listed and provision should be made for the list to be added to. The concept of “environmentally sound disposal” is important.

(b) The adoption of the precautionary approach.

“Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. (Principle 15 – ***Rio Declaration***)

(c) Measures to reduce or eliminate releases from intentional production and use. These must include all necessary prohibitions, restrictions and administrative measures to give effect to Article 3. The production and use of endrin and toxaphene must be banned. Production of aldrin, dieldrin and heptachlor must be prohibited. The applications of DDT in Kiribati should be considered and appropriate provision made in the law.

(d) Provision for the registration of exemptions, if applicable, under Article 4. These may apply to the use of remaining supplies of aldrin, dieldrin and heptachlor, but it is preferable to simply ban them outright.

- (e) Measures to reduce or eliminate releases from unintentional production. The action plan and necessary strategies should be formulated under the auspices of the law. The requirements of Article 5 must be met. Other provisions might reflect the need to promote the development and use of substitutes and the application of best available techniques.
- (f) Measures to reduce or eliminate releases from stockpiles and wastes. The law should make provision for the identification of stockpiles and wastes as required under Article 6. Appropriate management arrangements and other measures should be prescribed.
- (g) The implementation plan required under Article 7 must be given some legislative backing. Certain matters relating to its implementation should also be supported by the provisions of the law. Equipment containing PCB's must be phased out by 2025 but this should be assessed in Kiribati and appropriate arrangements made under the law to meet this objective before the deadline under the Convention. Issues relating to the release of dioxins, furans, hexachlorobenzene and PCB's through combustion or industrial production should be considered in the plan and appropriate provision reflected in the law.
- (h) Provision should be made for the designation of the focal point in Kiribati and for the discharge of its reporting and other functions. The need to be able to access and report on information and data should be provided for, if this is not to be part of amendments to the Environment Act in a more general way.
- (i) Reference might be made to the development, endorsement and implementation of public awareness and education programs. Appropriate arrangements might be made for public participation in addressing POPS (possibly through a designated committee if such an amendment is to be made to the Environment Act). Training issues may or may not have a place in the applicable legislation.
- (j) The promotion of research, development and monitoring capacities might be provided for. Any particular monitoring processes might be given some firm legal basis. Cooperation at national, regional and international level should be referred to and promoted.