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*Annual Address delivered at the Formal opening of the Court Commencing the 2018 Legal Year of the High Court of Kiribati on 9 February 2018 by the Honourable Chief Justice Sir (Gilbert) John Baptist Muria Kt*

## **Introduction:**

The year 2018 has begun for us on a sad note, as we will never forget the MV Butiraoi tragedy. More than 80 lives had been lost at sea when the MV Butiraoi sank on its way from Nonouti to Tarawa.

The Judiciary joins with all those who have expressed their sympathy for the loss of loved ones during the MV Butiraoi Tragedy and so :

On behalf of the Judiciary officers, staff and our families, I convey to you the families, relatives, friends of those who tragically lost their lives at sea and to the people of Nonouti our sincere condolence for the loss and grief caused to you as result of the MV Butiraoi Tragedy. We share with you your sorrow and grief. But we are a people of faith and hope believing that they are resting in the perfect Peace of their Maker, our God. May their souls rest in the Lord.

In the usual court tradition, we gather once again to mark the Legal Opening of the Courts in Kiribati for another year. I am pleased to see so many of you here present. I trust that the spirit of this time-honoured occasion will enthuse you into another year of meaningful service to the people of Kiribati in whatever work or chores you do.

In common with many of our neighbours in the Pacific, Kiribati continues to face the throes of the challenges on the effect of climate changes. Of course, we should not be deterred by such challenges. Rather, we should

embrace them as part of our life's endeavours to face the challenges before us.

Whatever we do as Judicial Officers, Court Officers, Lawyers, Legal Practitioners and Court staff, we should strive to achieve *Justice* for all during this new Legal Year. And so I feel that we should set for ourselves a new thematic theme for this new Legal Year, 2018. I have chosen the Theme for 2018 Legal Year as: "JUSTICE AND STEWARDSHIP FOR ALL IN KIRIBATI" encompassing in the broadest sense, our legal and moral obligations to care, protect and serve the people under our care. Our calling as legally trained, nurtured and skilled professionals, endows us with the great responsibility and obligation of ensuring that justice is accorded to the people we serve and that we are to be good stewards of our God-given environment.

My address this Legal year will be shorter since I feel that I should only touch on specific matters that are needed to be mentioned.

## **Judicial Appointments**

In my previous addresses on this occasion, I spoke of the need for additional judicial appointments to the High Court of Kiribati.

Presently, and following the departure of Mr Justice Vincent Zehurikize (the Commonwealth seconded Judge) almost a year ago, the only Judge serving in the High Court is again, the Chief Justice (myself). To cover the entire country and serve the people well, there is a need to have more than one judge in the High Court of Kiribati.

The Establishment Register (ER) for the Judiciary has already created the Post of Puisne Judge a year ago. However, the details of the Post have just been sorted out and advertisement to fill the position has been done. The Office of the Chief Registrar had received four (4) applicants. I express my

sincere gratitude to all those who have shown their interest to offer their services to the people of Kiribati as a Judge. Of course, only one applicant will be successful since there is only one Post of PJ available under the present ER.

Under section 81 (2) of the Constitution, a Judge of the High Court is appointed by the Beretitenti on advice of the Chief Justice sitting with the Public Service Commission. I am pleased to inform this sitting that the PSC sitting with the Chief Justice had already considered the applications and the ADVICE will be tendered to His Excellency Te Beretitenti and that upon completion of the formalities, the appointment will be made by His Excellency Te Beretitenti in due course.

## **Need for Adequate Manpower Resources**

This is a perennial issue, and one that is common to many small jurisdictions such as ours. Adequacy of manpower is one of the essential ingredients for an effective and efficient judiciary. The following manpower resources are presently needed to adequately service the Judiciary in Kiribati:

### **a. Judges (Line Posts)**

Save for the period, May 2014 to May 2017, during which the Commonwealth funded Judge, Mr Justice Vincent Zehurikize, was seconded to the Kiribati Judiciary, the only Judge of the High Court of Kiribati was and still is, the Chief Justice. As I have said earlier, the Judiciary's Establishment for 2018 has created a permanent post of Puisne Judge of the High Court. This is what we call, Line Post, since it is a position created in line with the Establishment Register.

Arrangements have been put in place to fill the post of Puisne Judge now established in the Judiciary shortly.

The appointment of the Puisne Judge will provide much needed help to the Chief Justice in the High Court. However, in view of the vastness of the area of Kiribati of 3.5 million square kilometres, the provision of two Judges is still not adequate to properly and effectively serve the people in Kiribati through the High Court of Kiribati.

**b. Judicial Assistance (Non-Line Positions)**

Kiribati is a small jurisdiction and its legal professional manpower resources are still developing. To help enhance the development of its legal professional manpower resources to a mature and sustainable level, I am of the firm view that the Judiciary in Kiribati will continue to need assistance from outside to beef up its judicial capacity.

In the present circumstances of Kiribati, the Judiciary will greatly benefit from additional judicial assistance through short to medium term judicial appointments of legally and suitably qualified and experienced lawyers or judicial officers. Such lawyers or judicial officers may be those retired from active service or still current service and would have the time to offer their valuable assistance to small jurisdiction, like Kiribati.

Appointments to the Bench in Kiribati under such arrangement do not occupy current established posts in the Judiciary Establishment Register (ER). Hence, they are non-line positions. The terms and conditions of service will form part of their appointment package to come and serve in Kiribati. Assistance in this form can normally be dealt with through bilateral arrangement.

I believe that similar arrangements exist in some of the small Pacific Islands jurisdictions. I would very much like Kiribati to benefit also from such judicial assistance from our neighbouring larger and more resourceful jurisdictions in the Region.

## Need for Proper Court Facilities

### a. High Court Building

The need for proper court facilities has become a perennial call by the Judiciary. I can only repeat the call that the Judiciary, and in particular, the **High Court** needs for a purpose-built building with proper facilities. The present building was last renovated, I am told, about 30 years ago. I earnestly urge that a **New Building for the High Court of Kiribati** to be built. In this regard, I ask the Government to assist in facilitating this worthwhile **Judiciary (High Court Building) Project**. This includes securing the land within and around the Court premises.

The Judiciary is the Third Arm of the State. The demands expected from it to provide services to the people of Kiribati are as onerous as those demanded of the other Arms of the State. It must therefore be equipped with necessary facilities and infrastructure to carry out its functions and obligations.

In the meantime, there is a need to add office spaces to the existing High Court Building to accommodate all High Court personnel. Presently the High staff and officers are housed in the Magistrates Court Building. Such a situation does not serve the High Court well.

### b. High Court Library

The Judiciary is also presently without a proper High Court Library premises to store all legal text books, including Law Reports and other written materials. With our twin programme, the High Court has been continuously supplied legal text books and Law Reports from Australia. Unfortunately, the Judiciary lacks proper facilities to store these books.

### **c. Sheriff's Office**

The office of the **Sheriff of the High Court** is a very important part of the work of the Courts. The Sheriff plays a vital role in the process of enforcing judgments and orders of the Courts.

The Sheriff's duty involves, not only serving execution processes, but also seizing assets, properties and items from defaulting judgment debtors. The Sheriff needs adequate and proper facilities to store, keep, maintain and secure assets and other properties seized.

### **d. Magistrates Court Buildings and offices in the Outer Islands**

Apart from Kiritimati Island, Magistrates Court sittings, as well as High Court sittings, in the Outer Islands are usually held in the Maneabas. Very often the Maneabas belong to the Island Council. Quite often the Island Councils themselves are parties to cases before the Courts. Such an arrangement is not compatible with the principle of the independence of the judiciary.

For the same reason, court staff and court clerks operating out from Council offices also runs counter to the maintenance of the principle of the independence of the Judiciary.

I urge that in the Outer Islands, separate buildings be constructed to accommodate both the hearing chambers and offices of the Courts.

## **Training of judicial officers**

Upgrading of the knowledge and skills of judicial officers and court staff, through training, remains one of our areas of focus.

These workshops and trainings were of great benefit to those who attended in the enhancement of the performance of their duties and responsibilities.

I encourage the continuation of these training and learning opportunities by our court officers and staff.

Under this thematic approach, I am pleased to advise that we have a good number of our Court officers, clerks and staff are now taking up Certificate of Justice at the University of the South Pacific here at its Kiribati Campus. Apart from the other course participants from other Government and private offices, the judiciary has 29 participants taking up the course. We hope in the second batch, we will field 30 participants. The first lecture was conducted last week here at the USP Kiribati Campus by Professor Eric Colvin. I express, on behalf of Kiribati, in the particular, the Judiciary our sincere thanks and appreciation to the Government for sponsoring the participants and for resurrecting this invaluable course which will greatly benefit all those who are taking the course, Piloted in Kiribati.

The New Zealand Government, through the Judicial Pacific Participation Fund (JPPF), continues to support the Kiribati Judiciary through sponsoring our Judicial officers to attend the various courses, seminars, workshops and trainings in New Zealand. The trainings have greatly helped our Judicial officers in the Magistrates' Courts to keep up their knowledge and skills relevant to their judicial duties. Presently invitations have already been given to Kiribati Judiciary to participate in a number of the JPPF activities in New Zealand.

On behalf of the Judiciary I express our sincere gratitude and appreciation to the New Zealand Government for this invaluable assistance.

## **Judicial Developments**

Since we started in 2011 embarking on plans to enhance the work of Judiciary in Kiribati, a number of developments have taken place in the Judiciary. These are part of the stride which the Judiciary has taken to fulfil its Vision and Mission. Some of these development actions had already

been mentioned in previous addresses. But it is worth noting the developmental changes that have been taking place and are part of the development process in the Judiciary in Kiribati.

**i. Severance of the Office of the People's Lawyer.**

This was an achievement both for the Judiciary and Office of the People's Lawyer. But it was more of an achievement for the OPL than the Judiciary. For the Judiciary, it was simply freeing itself from the extra administrative load of managing and overseeing the OPL. But there are more fundamental constitutional and legal reasons why the OPL should rightly be taken out of the control of the Judiciary. First, the union was incompatible with the principle of the independence of the Judiciary, and secondly, there was no justification for the judiciary to be exercising administrative control or otherwise over the OPL which was set up to provide independent legal advice and assistance to those who need such assistance without interference from any other persons or authority.

For the OPL, the severance has helped the Office to achieve independence in the control, planning and management of the Office. Since the severance two years ago, the OPL has advanced and progressed in its own right as an important and independent legal office.

**ii. Publication of Courts Annual Reports**

A Court Annual Report is the Judiciary's way of sharing its work, progress and aspirations to those whom it serves. It is also a way for the Judiciary to demonstrate its transparency and to acknowledge with thanks its use of public funds to carry out its public duties and functions.

With the help of the Pacific Judicial Development Programme (PJDP), the Judiciary had published its Court Annual Report for 2012, 2013 and 2014. Regrettably, the Judiciary has fallen behind in producing its Court Annual Reports for 2015, 2016, and 2017. Work in producing the 2015 and 2016

Court Annual Report had been undertaken, but due to technical difficulties the Court Annual Report Committee had not been able to pull through its work in having the Report completed until now. The Committee is determined to complete the Court Annual Reports for the years mentioned.

### **iii. Drafting of New High Court (Civil Procedure) Rules**

The Draft of the new High Court (Civil Procedure) Rules is already in place. I think I mentioned this before. What is left to do is for the Rules Working Committee to complete its consideration of the Draft and to receive feed-back on the Costs from the Law Society. We are determined to have the new Rules put in place as soon as possible.

### **iv. Securing the establishment of the Post of Puisne Judge**

For quite a while, the Post of Puisne Judge (PJ) had not been established in the Judiciary Establishment Register (ER). The Judiciary has now secured the Post of Puisne Judge in its Establishment Register.

Under this year's ER, one position of PJ has been created. The Position, as I mentioned earlier, will be filled very shortly by the successful candidate who, among others, have applied for the position.

In this connection, I am very happy to advise that Parliament had passed the Judges Act 2017 prescribing that the number of other Judges of the High Court shall not be less than two and not more than five. We should at least aim to ensure that we have the minimum number of Judges in place at all times. We can add more judges to the Court as we progress.

I wish to express our gratitude to the Government, through the Ministry of Justice, for its support in facilitating and enabling the Legislation to be tabled in Parliament and for its passage into law. The Act is a milestone in the development of the Judiciary in Kiribati.

I have been advised that the Judges Act had been assented by HE Te Beretitenti on 14 February 2018.

#### **v. Severance of the Administration of the Magistracy**

Up until the present moment, the High Court and Magistrate Courts have been under one administration. This is not conducive to the proper and effective administration of the two Courts which occupy two different levels with different administrative procedures. To properly administer and manage the two Courts, it is necessary that each should be separately administered.

With the establishment of the Post of Chief Magistrate (CM) in the Judiciary ER, the Magistrates Courts will come under the administrative supervision of the Chief Magistrate, and not under the supervision of the Chief Registrar anymore. I am sure the CM will be enhanced by the appointments of Principal Magistrates and Senior Magistrates, in addition to the existing Single Magistrates.

As part of the aim of the Judiciary of professionalising the Magistracy, the newly created positions in the Magistracy, namely Chief Magistrate, Principal Magistrates and Senior Magistrates will all be legally qualified judicial officers.

The Chief Registrar will concentrate of the administration and management of the High Court and Court of Appeal.

The nature and interest of the offices and judicial officers in the different tiers of the Courts demand that they be separately administered. In this regard, the Judiciary expresses its appreciation to the Government for approving the new Judiciary ER with Posts mentioned. I am confident that these new developments will enhance the advancement of the Judiciary in Kiribati.

#### **vi. Establishment and Designation of High Court Registry in Kiritimati Island.**

The Judiciary will also further take another step this year in its development stride. In this regard, I wish announce that under the power vested in the Chief Justice, I will formally designate the establishment of the second High Court Registry in Kiribati. The second High Court Registry will be in Kiritimati Island. This means that High Court cases will be able to be filed in High Court Registry in Kiritimati Island, instead of sending them to Tarawa to be filed at the High Court Registry in Betio.

Judging by the continuing increase of cases coming before the Magistrates Court and High Court in Kiritimati Island, and increase in commercial and developmental activities in Kiritimati Island, there is justification in upgrading the status of Judicial development in Kiritimati Island.

#### **Cases in the Courts**

As is always the case, the Courts (Magistrates Courts, High Court and Court of Appeal) in Kiribati continued to be busy throughout 2017. The statistics are yet to be finalised properly before they are published. However, 13,000 cases have been brought before the Magistrates Courts in 2017 and about 400 in the High Court, and 17 in the Court of Appeal, a total of 13,417 cases. About 60% of the cases have been disposed of. As I have said, the details of the case statistics will be finalised and will be included in the Court Annual Report. One thing is certain, there is no sign that the number of litigation channelled through the Courts in Kiribati are slowing down.

#### **Concluding Remarks**

To conclude, let me take the opportunity to express the Judiciary's appreciation to H.E. Te Beretitenti for gracing this ceremonial sitting of the High Court with your presence.

I take this opportunity also say thank you to all those who have given assistance to the Judiciary and the administration of justice as a whole. I express our gratitude to the Government of Kiribati for supporting the work of the Judiciary, all Governments from other countries represented here in Kiribati by their High Commissioners and Ambassadors - Republic of China (Taiwan), Australia, New Zealand; thank you for your generous help and support to the Judiciary; other international and regional organisations, especially PJDP (now PJSI) which is funded by MFAT NZ and administered by the Federal Court of Australia. PJSI has continuously provided assistance to the Judiciary through its judicial development programme; SPC, UNWOMEN, and many others who have helped the work of the Judiciary in Kiribati.

A word of thanks and gratitude to the public, in general, for their continuing support to the work of the Courts throughout Kiribati. The 'Public' is the best litmus test that we can count on, to gauge our success or failure.

Thank you Fr Maukai Ititaake of the Catholic Church for the wonderful Church Service at St Bauro, Betio, the message and the blessings to mark the opening of this legal year. We have been blessed by God with the talents, skills and knowledge that we have. Let us use them to justly serve our people and for the greater Glory of God.

Thanks and appreciation to the Commissioner of Police for the Police Band and Guard of Honour mounted for the occasion. We greatly appreciate it.

I thank you all, the Chief Registrar and your great Team of staff members and all those who in one way or another helped, organised, facilitated and made this occasion a success.

Finally I thank you all for your presence. It is an honour for us in the Courts and the legal fraternity that you graced this occasion by your presence. Thank you.

God bless you all:

16 February 2017

Betio, Tarawa, Kiribati