

# Codes of Judicial Conduct in the Pacific

## Introduction

Throughout May, June and July 2011 I was contracted to work on behalf of PJDP under terms of reference entitled 'Codes of Judicial Conduct Expert - To facilitate the development of Codes of Judicial Conduct in three Pacific island countries'.

There were two aspects to my brief. The first output was initially expressed as *"to develop a Strategy Paper and detailed briefing to be presented at the regional National Coordinators' Leadership Workshop on how to improve harmonisation of codes of judicial conduct (CoJC) in the region"*. It was subsequently agreed with the team leader that the focus of the paper should be to suggest an appropriate project strategy/policy regarding CoJC and that it should be submitted after my in-country visits. The second output was to develop CoJC in Niue, Tuvalu and Kiribati.

My tour of duty excluding travel was as follows:

2 weeks	3 weeks	1	3 weeks
Niue	Tuvalu	NC	Kiribati

*NC = National Coordinators workshop.*

This paper examines the principal issues identified, and makes recommendations as to an appropriate PJDP strategy regarding Codes of Judicial Conduct. I have come to the conclusion that the project's purpose would be served best by adopting the following aims:

1. To ensure that as soon as possible every judge has access to simple and clear guidance regarding judicial conduct presented in his or her own language and addressing the particular issues that he or she is likely to encounter, priority being given to those judges at the lowest levels and in the subordinate courts.
2. To support and facilitate the provision of local training designed to explore and reinforce those guidelines at the earliest opportunity after their formulation and distribution, priority being given to those judges at the lowest levels and in the subordinate courts.
3. To work with CJs to foster a sense of judicial identity and judicial community.

## The Project and CoJC

The project's stated purpose is *"to strengthen governance and the rule of law in Pacific Island Countries<sup>1</sup>"*.

In preparing its 18 Month Implementation Plan PJDP researched and analysed stakeholders' priorities and the findings of an extensive needs analysis. From that work 10 classes of activities on which to focus were distilled. The development and publication of Codes of Judicial Conduct (CoJC) has the potential to further the following three of them:

- (to) support judicial leadership, notably, ethical standards;
- (to) promote core professional skills of judging and judicial administration ;
- (to) explain the judicial function and role, particularly to lay actors;

In describing Component 2 the 18 month plan states:

*"First, this phase of activity will support the development of Codes of Judicial Conduct (CoJC) Project (Output 2.1) and will mobilise technical assistance through the network of National Coordinators to facilitate and support the development of codes of judicial conduct in those countries which choose to introduce them, notionally piloting work in each sub-region in three sample PICs. While it is anticipated that each participating jurisdiction will formulate its own unique code, these are likely to build on the Bangalore Principles. Further, some degree of harmonisation with these codes will be enabled through their consideration at the regional level at both the National Coordinators' Leadership Workshop and at the Chief Justices' Leadership Workshop."*

## Harmonisation

The possible strategies for harmonisation range from attempting to formulate a 'one-size-fits-all' code for all Pacific Island Countries (PICs) at one extreme, through to a simple statement or accord wherein the PICs affirm the basic principles of conduct.

For the reasons explained below I believe it would be a mistake to attempt very close harmonisation. To be useful a CoJC must resonate with its audience and the language must be pitched appropriately. Illustrations of application must be relevant to the judges to whom they are directed. This is implicit in the passage from the 18 month plan quoted above.

In developing a CoJC the needs of the judges in the lowest courts should be kept in focus. The pyramidal structure of court systems means that inevitably there are greater numbers of judges in the lower courts<sup>2</sup>. Getting it right in the lower courts should be of utmost importance because the majority of all cases start and finish in the lower courts and it is there that most ordinary citizens are likely to experience, and form their views of the quality of justice.

PIC	Niue	Tuvalu	Kiribati
Senior Judges Law trained	2	2	3 <sup>3</sup>
Subordinate Courts Lay Judges	6	88	146
	▲	▲▲▲	▲▲▲▲▲

<sup>1</sup> PJDP Phase 2 -18 month implementation plan.

<sup>2</sup> See figures in table - Appendix 1

<sup>3</sup> The CJ, Chief Registrar and Deputy Chief Registrar. In Kiribati 1 single magistrate has an LLB

The language<sup>4</sup> and tone of a country's code of conduct should therefore be tailored to the needs of the judges in the lower courts. Where there are lay judges an appropriate CoJC will be a much simpler and perhaps more basic guide than the discursive and somewhat academic codes which may be appropriate for judiciaries comprised wholly of trained and highly experienced lawyers.

The overall length of the code is also an important consideration especially in communities with an oral tradition. Whilst it is tempting, attempting to deal with every eventuality might result in code that is either so compendious as to remain unread or so general as to be of little use.

In my work in Niue, Tuvalu and Kiribati I started with a consideration of the six principles enunciated in Bangalore<sup>5</sup>. In no jurisdiction was there any dissent from these, or any strong desire to add to them. This is hardly surprising; these principles have now gained almost universal acceptance<sup>6</sup>. The format adopted in all three jurisdictions is one in which each principle is simply stated and followed by an explanation of its scope and application. The codes are nevertheless quite different in the way they are expressed; in each case we attempted to capture the language used by the judges in our discussions.

The Niuean judges were all formally educated, I think probably to college level, with either experience in business, responsible jobs in the community or public service. The Tuvaluan island court magistrates and the magistrates in Kiribati had possibly less formal education, and their experience and training was limited because of the extreme physical isolation of the islands on which they live and work. The codes reflect these differences.

It may well be possible to harmonise CoJC across the region to the extent of affirming the basic 'Bangalore' principles and possibly the overall structure.

### **What benefits or advantages would come from harmonisation?**

The discussion surrounding any move to harmonise could not but help develop the thinking and understanding of those involved as regards ethical issues. Reaffirmation of judicial independence and the duty and responsibility of judges to safeguard respect for the judiciary and the law can only have positive effects on confidence and leadership.

The potential benefits may be summarised as follows:

- Build a stronger Pacific judicial community (especially valuable for otherwise isolated judges working without a reference point). - Confidence building.
- PICs might pool resources to provide some kind of forum for judicial discussion regarding conduct issues.
- Greater parity in administration of justice between Pacific peoples

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<sup>4</sup> Whilst I am principally referring to the tone and complexity of language, in many cases the CoJC will need to be provided in the native language of the judges.

<sup>5</sup> The Bangalore Principles of Judicial Conduct  
[http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf)

<sup>6</sup> See also: Judicial Integrity Group 6th Meeting Lusaka 2010  
<http://www.gtz.de/de/dokumente/en-judicial-integrity-sixth-working-group-meeting-zambia-2010.pdf>

### **What are the dangers or disadvantages of harmonisation?**

As indicated above, an attempt to develop a common code might either result in a very generalised statement of principle (giving little effective guidance) or, by attempting an exhaustive coverage of all possible contingencies, become overloaded and over-complicated. Either way the result would not further the interests of justice.

As regards a move to affirm or agree basic principles, my principal concern is that scarce resources might be diverted to support high level academic discussion when they could be used to much greater advantage elsewhere such as in the provision of training regarding judicial ethics and basic skills for judges in very remote areas. Such training is relatively expensive because of the time and cost taken by travel.

### **Who would benefit?**

In my visits to the remote island courts of Tuvalu and Kiribati it became very clear that the principal issues for these judges are want of training and want of materials in local language. After the workshops, participants volunteered that they had learned from the discussing the application of principles. I am unsure, what if any, additional benefit these judges stand to gain from a move to harmonisation.

Any discussion spanning the member PICs is almost certain to be a 'high end' discussion between senior members of the judiciary since it is they that hold the responsibility for guiding their country's judiciary. They are also more likely to have the language and the technology to communicate freely with each other. There is nothing to suggest that the more senior judges are not fully conversant with the principles of judicial conduct. It is the more junior, less experienced and especially the lay judges who need help in this regard and most of them would perforce be excluded from the debate; currently very, very few of the local judges have access to the internet and in any event language issues would prevent their taking part in any pan-Pacific on-line debate.

During the National Coordinators' Workshop I was able to investigate how other jurisdictions deal with the following issues regarding the application of the principles of conduct in small communities:

#### **1. Community involvement**

To what degree is it proper for local judges to involve themselves in their community?

Can judges properly participate or hold office in traditional councils?

Is it reasonable to expect a local judge to live in isolation within a small community?

#### **2. Impartiality**

In determining what relationships are too close for a judge to sit, should we weigh in the balance the consequences of recusal?

Are there legitimate steps that can be taken to negate any appearance of bias?

Does what a reasonable man would think change according to circumstances and in the light of custom so as to alter the degree of relationship which would prohibit a judge from hearing a case?

#### **3. Conflict with tradition and custom**

Are there any circumstances in which the requirements of tradition dictate behaviour contrary to the ethics and the principles of conduct?

All delegates recognised these as familiar issues and in general their approaches to the challenges were similar, following principle but tempered by pragmatism. It would be very instructive to see the same questions<sup>7</sup> discussed by the senior members of the judiciary at the Chief Justices' Workshop. They might well formulate guidance which would be useful to any jurisdiction reviewing its CoJC.

### **CoJC for Niue, Tuvalu and Kiribati<sup>8</sup>**

In each of these three countries I interviewed as many stakeholders as time permitted before conducting development workshops with groups of local judges. In all three countries the revised code was approved and adopted by the Chief Justice. I shall briefly describe my observations in each jurisdiction

#### **Niue**

Niue is a single island with a very small resident population (there were about 1000 adults eligible to vote in the recent election). It has a very small judiciary comprising 2 senior judges - the CJ and one other, both resident in NZ, and 6 local lay judges - 3 Commissioners and 3 Justices of the Peace.

The standard of education in Niue is particularly high and just about everyone I spoke to was interested in civil society and politically informed. The registry has organised training for the lay judges from time to time, and each has a copy of the benchbook.

My discussions with the local judges and with stakeholders revealed a consensus as to the principal conduct issues. Not surprisingly, these relate to the small size of the community. Each local judge knows, or knows of, just about every other islander. In a community of large extended families the local judges can often identify some degree of relationship. Just about everyone I spoke to believed strongly that in the interest of justice there should be local judges familiar with Niue and the ways of its people. In recent years there has been a tendency to put more and more business into the lists of visiting NZ judges. The local judges now deal almost exclusively with criminal matters. There are only 3 Commissioners and 3 JPs. Usually they sit as a bench of three (one commissioner + two JPs) and currently courts are held only about once a month. If the local judges recuse themselves cases may have to wait for a visiting NZ judge. NZ judges visit approximately twice a year.

The local judges also expressed the feeling that their role was undervalued. If that is so it may explain why it has become difficult to recruit local judges. The judges believe that the publication of CoJC will inform the public as to their role and encourage a better understanding of the way in which decisions are made.

Although the local judges are all individuals of some standing in the community with significant achievements in their personal and working lives, I believe this small group of very isolated judges lacks communal confidence in relation to the judicial role. They expressed the need for more training and yet they appeared well informed and conscientious in preparing for and reflecting on their role. I suggested they form a 'Judicial Association' to meet and discuss matters relating to the court and also to consider other ways in which they might ensure a

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<sup>7</sup> Set out in Appendix 2

<sup>8</sup> To be found in Appendix 3

proper public awareness of their role; talks in schools or involvement in the organisation of mock trials for schools. It was clear that they greatly value any opportunity to discuss their work with CJ Savage or Judge Isaac, both of whom they look to for leadership.

In 2008 Mere Pulea worked with the judges who voiced the opinion that they wanted to develop the code of conduct to be more 'aspirational' and to publish it with a view to better informing the public as to the nature of the judicial role. The judges at that time liked the Fijian model which is closely based on Bangalore. After some discussion of the various possibilities it was agreed that the code should take the form of a brief statement of each principle followed by guidelines as to its scope and application.

It was further agreed that the code should be translated into Niuean so as to make it accessible to everyone.

### **Tuvalu**

Tuvalu consists of a group of 8 'islands' most of which are atolls comprising several islets; the islands are spread across some 600 kilometres north to south. The population is about 10,000; approx 4000 are concentrated on Funafuti whilst some islands have populations of only a few hundred. Inter-island transport is by boat. A government boat makes successive journeys to the north or south calling at two or three islands per voyage. The primary purpose is to ship cargo and people but generally the boat stays at each island for several hours. Journeys are subject to last minute change and the schedule is to some extent controlled by the tides which restricts offloading and loading at the outer islands. Most islands will usually see the boat once a fortnight. Each island has 5 Island Court Magistrates and 6 Island Land Court Magistrates. Courts usually sit about once a week or once a fortnight; a bench of 3 constitutes the Island Court and 6 the Island Lands Court.

I managed to visit two of the outer islands Nukufetau and Vaitupu where I conducted workshops. I also conducted a workshop with the magistrates in Funafuti.

As in Niue the principal conduct issues relate to the close nature of the community; everyone knows everyone else. In Tuvalu there are additional problems related to the geographic isolation which makes the provision of training extremely difficult. Tuvaluan statutes exist only in English and as a consequence the magistrates have no access to the written law. Ensuring local judges have access to the primary sources of law and other guidance in their own language would be an admirable objective for any future phase of the programme

The Senior Magistrate makes a circuit to each of the outer islands about three times a year. During these visits there may be an opportunity for training, however if there is work to be done there may not be time before the boat leaves again.

### **Kiribati**

With a population of approximately 100,700 Kiribati consists of 21 Islands including the Gilbert Islands, Line Islands and Phoenix Islands. Many of the islands are atolls comprising several islets. Communication between the islands is by boat or plane. Ferries run between those islands which are relatively close. Most if not all islands have air-strips and Air Kiribati operates flights between Tarawa and the outer islands. The schedule is subject to last minute change and or cancellation and some islands have flights only once a week. There is a large concentration of population in South Tarawa whilst in the outer islands the population is more sparsely distributed in sometimes quite isolated villages. In South Tarawa there are 6 single

magistrates whilst each outer island has its own court and 7 island magistrates, all lay, who sit in benches of 3. Once again the principal issues are associated with the closeness of the community. The only law trained judges are the CJ Sir John Baptist Muria, The Chief Registrar and the Deputy Chief Registrar. The single<sup>9</sup> magistrates in South Tarawa all have the benefit of a significant amount of training organised by the registry and it is the CJ's intention that after a period of transition all single magistrates should be law trained. The magistrates in the outer islands have little by way of training and very few materials to support their work; as in Tuvalu just getting to them to deliver training is difficult and time consuming.

I conducted workshops on two of the outer islands, North Tarawa and Abaiang. I also conducted a workshop with the six single magistrates in South Tarawa.

### **General observations**

In all three countries but particularly Kiribati and Tuvalu, conduct issues arise from the inter-relation between traditional community structures and the organs of 'modern' democratic governance. The traditional councils are still very much alive in these jurisdictions and whilst generally they sit comfortably alongside the newer system, there can be conflict when, as still happens in some instances, the traditional council seeks to impose corporal punishment or banishment. Recently in Kiribati a traditional village council (Maneapa) declared war on a neighbouring village!

Individual local judges may sit only once a month. They are paid an allowance for any sitting or training day. The part-time nature of their work means that local judges often have other jobs or hold other roles within the community which can give rise to potential conflicts.

In Tuvalu and Kiribati magistrates are selected for their seniority within the community and are often also elders in the village council. These men, and they are nearly all men, are wise and experienced, but they have not generally had the opportunity for formal higher education.

In all three countries there is a need to strengthen the sense of 'judicial identity', i.e. to build a more robust judicial community. Each CJ has an important leadership role to play in this regard. Kiribati has already identified 'identity' as a priority and has the additional advantage of a CJ who resides in-country. It was very clear that the local judges in all three jurisdictions greatly valued the opportunity to meet and discuss matters with each other and with the senior judges in their jurisdiction.

### **The Development Process**

In each country I talked to as many stakeholders as time permitted to get an appreciation of the situation on the ground. I then held development workshops with the local judges. In Kiribati I was able to talk to the CJ before commencing development workshops. In Niue and Tuvalu, where the CJs are not resident in-country, I had email contact. In all three jurisdictions I found the local judges had a basic awareness of the rules of conduct. I introduced the development exercise in each case by explaining Bangalore. I invited participants to suggest additional principles or alternative approaches, but in all three jurisdictions the same basic structure was agreed, i.e. a statement of each 'Bangalore' principle followed by guidelines as to its scope and application. During workshops we discussed the particular conflicts which were likely to arise, how the application of the principles could best be explained by reference to the circumstances

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<sup>9</sup> So called because they sit singly.

of the particular country. In Niue, where all the local judges speak English, the code was developed in English and arrangements made subsequently for translation. In Tuvalu we tried to develop the English and Tuvaluan versions side by side, however in the final analysis I felt it necessary to employ a translator to ensure that the two versions convey the same message. In Kiribati we concentrated more on the precise translation during the workshops. This was possible only because the National Coordinator has exceptionally good language skills. In our final session the English speaking single magistrates checked the two versions.

### **Future Action - Follow up**

All the local judges in Niue were involved in the development of the code and are therefore very much aware of its provisions. If additional training is needed, that does not present any great problem since they are easily brought together. The court is planning an official launch for the new code when the CJ next visits later this year.

In Tuvalu and Kiribati I was only able to work with a representative sample of the local judges. In Tuvalu I worked with 33/88 island magistrates (38%) and in Kiribati with 18/140 (13%). If those magistrates who did not participate in the development exercise are to be engaged they will require training. Whilst ideally this should coincide with the distribution of the revised code, the difficulty of organising training for these judges has led me to recommend that distribution should take place as soon as possible rather than be held back until such time as training can be organised.

In both Tuvalu and Kiribati bringing island magistrates into the administrative centre for training is likely to be very expensive, and would involve removing them from their islands for considerable periods of time. In most cases they would have to come in for a week or a fortnight and if you wished to gather magistrates from a number of islands the period would be extended considerably. Kiribati is nevertheless hoping to convene a magistrates' convention later this year. Bringing groups of magistrates in from perhaps 2 or 3 islands at a time may be the best solution.

### **Dangers and difficulties**

I was acutely aware that it would have been all too easy for me to put words into the mouths of the people with whom I was working. Two factors are at work. Firstly the local judges accord tremendous respect to what they regard as experience in a superior system. In every workshop I encouraged judges to recognise and have confidence in the value of their own local experience. Many have served for a very considerable time; I met one gentleman who had been a magistrate for 50 years - since before independence. The second factor was the tight schedule I was working to. It would have been very easy to push acceptance of my wording through. I sincerely hope I have not done that. It was my aim to ensure that the judges who participated have a sense of ownership regarding the code they developed.

I have already mentioned the difficulties of translation into local language; these arose at least in part because we were working in my language, English and translating into local language. In Kiribati we were able to reverse the process to some extent and work in Kiribati translating to English. How much better might this be if work were conducted from the start in the local language? The aim should be to support someone from within the country's judiciary to conduct the work.



## Recommendations

In the light of my experience I make the following recommendations:

1. The project should encourage PICs to review their current guidance regarding judicial conduct with the aim of ensuring that every judge has access to simple and clear guidance in his own language which addresses the particular issues that he is likely to encounter. Particular consideration should be given to those judges at the lowest levels and in the subordinate courts. Where necessary the project should support:
  - a. the revision of codes,
  - b. the translation of codes into native language.
2. The project should support and facilitate the provision of local training designed to explore and reinforce conduct guidelines. Priority being given to those judges at the lowest levels and in the subordinate courts. This training will need to be delivered in local language.
3. The project should work with CJs to foster a sense of judicial community.

## Execution

### Recommendation 1

The first opportunity to formally launch a review of the suitability of existing guidance on conduct might be the forthcoming CJs' workshop.

Where there is need to revise or develop a CoJC the project should support the process. Wherever possible the process should be conducted by a member of the judiciary concerned. Members of the judiciary should be encouraged to recognise a duty to contribute to training and development as part of their judicial role.

It might be possible for the project to prepare a support pack of some kind to be used in developing or revising a code. The preparation of a support pack could usefully be informed by the Chief Justices' discussions regarding the principles. *See below*

### Recommendation 2

Where a need for training in relation to conduct is identified the project should encourage training to be delivered locally, in local language and by local trainers wherever possible. This will be made easier given the project's recent resolution to concentrate on capacity rather than certification in relation to judicial trainers.

The project has a role to play in helping individual jurisdictions work out the most efficient way to deliver training, especially where the recipients are in remote locations. In the interests of sustainable development the project should support the design and development of training packages rather than seek to deliver the training itself. As capacity increases this will soon be a realistic option; in helping to deliver the project's forthcoming training, newly trained trainers will apply and further develop their skills so they should gain the confidence necessary to take charge of training in their home countries. .

It has been mooted that conduct might be included in some generic Benchbook; if that is to happen great care must be taken to discuss principle only in order to avoid any risk of conflicting with the guidance given by an individual country's CoJC.

### **Recommendation 3 - Judicial Identity - Judicial Community**

The Chief Justices have it in their power to strengthen the sense of judicial community within their jurisdictions and thereby build a robust 'judicial identity' for their judges, increasing confidence and strengthening judicial independence. When the CJs meet in November there is an opportunity for them to share good practice and to discuss practical steps they can take to support the judges in their jurisdictions, especially those in remote local courts. This might extend to formulating a statement of the responsibilities they accept as part of the CJ's role.

The CJs' Workshop will also provide an opportunity for CJs to consider affirming the Bangalore principles. It might also provide a forum for more general discussion regarding those common issues of conduct raised at the National Co-ordinators' Workshop.

Kerin Pillans  
31 July 2011

Appendix 1	Table summarising current status across PICs with regard to CoJC
Appendix 2	Questions discussed at the National Coordinators' Workshop
Appendix 3	Codes of Judicial Conduct for Niue, Tuvalu and Kiribati

## Appendix 1

### Summary of current position as regards guidance on judicial conduct, and approximate numbers of judges law trained and lay.

Pacific Island Country	What guidance exists	Total number of judges (Approx)	Judges
Cook Islands 11,124	Guidance on ethical principles in benchbook	14	High Court x 3 NZ Judges (law trained) Justices of the Peace x 11 lay (= 2 or 3 on each island)  11 lay
Federated States of Micronesia 106,836	Code of Judicial Conduct American Bar Association	200 +	National Court Judges Kosrae x 3 lay Phonpei x 8 ( 2 law trained - 6 lay) Chuuk x 4 (1 law trained - 3 lay) Yap x 3 (1 law trained - 2 lay)  Municipal Courts Kosrae 10 outer island courts judges sit in benches of 10 (land cases) 100 Phonpei 11 courts approx 2 lay judges per court (all kinds of small matters) 22 Chuuk 40 municipale courts Yap 5 village courts on main island  more than 200 lay

<b>Kiribati</b> 100,743	Revised CoJC 2011	150	High Court - CJ Sir John Baptist Muria Chief Registrar = law trained and hears some matters. Tarawa - Magistrates Court - 6 Single Magistrates non-law trained (CJ intends that Single Magistrates should be law trained) Outer islands - village courts - 7 lay mags per court x 21 islands <b>approx 140 lay</b> <i>Magistrates Court Ordinance.</i>
<b>Marshall Islands</b> 67,182	Code of Conduct (own model)	33	Supreme Court x 1 CJ Law trained High Court x 2 Law trained Traditional Rights Judges 3 (Lay) District Court (Lay) x 3 Community Courts x 24 (Lay) 1 per island <b>30 lay judges</b>
<b>Niue</b> 1,400	Revised CoJC 2011	8	CJ Savage + 1 High Court judge 3 Commissioners and 3 Justices of the Peace (all lay) <b>6 lay judges</b>
<b>Nauru</b> 9,322	Leadership Code in Constitution	4	Supreme Court - CJ Peter Law + 1 judge Magistrates Court - Resident Magistrate x 1 Family Court - Resident Magistrate x 1
<b>Palau</b> 20,956	Code of Conduct (own model)	15	Supreme Court (Appellate and Trial Divisions) Lands Court - 4 Judges Court of Common Pleas - 9 Judges Law Trained

<p><b>Papua New Guinea</b> 6,187,591</p>	<p>Guidance on ethical principles in Magistrates Handbook* plus detailed code of conduct and explanations.</p> <p><i>* Village Court magistrates are NOT part of magistracy.</i></p>	<p>121 + village magistrates</p>	<p>Supreme Court and National Court - 21 judges law trained</p> <p>District Courts Magistrates (legally qualified) approx 100 <a href="http://www.magisterialservices.gov.pg/jurisdictions.htm">http://www.magisterialservices.gov.pg/jurisdictions.htm</a></p> <p>Village Court Magistrates (lay) (These courts are not part of the formal judicial system. These magistrates are not considered part of the magistracy. They are appointed for their standing in the community and knowledge of customs - they operate customary law)</p>
<p><b>Samoa</b> 193,161</p>	<p>Guidance on ethical principles in Lands Court Benchbook</p>	<p>26</p>	<p>Supreme Court x 4 judges (3 local + 1 Aus) law trained District Court Judges x 2 (law trained) and Fa'amasino Fesoasoani (Customary Land Court x 20 (all = lay except for President) (Bench = 5)</p> <p style="text-align: right;"><i>20 lay judges</i></p>
<p><b>Solomon Islands</b> 571,890</p>	<p>Guidance on ethical principles in benchbook</p>	<p>115</p>	<p>High Court - CJ + 5 judges Magistrates - Principle mags x 6 law trained, Second Class Magistrates = 3 lay Local Courts - Local Court justices - approx 100 lay (jurisdiction = &lt;6ms &lt;\$200 cases are first referred to Chiefs)</p> <p style="text-align: right;"><i>103 lay judges</i></p>
<p><b>Tokelau</b> 1,384</p>	<p>Guidance on ethical principles in benchbook -</p>	<p>15+</p>	<p>1 Court for each of 3 islands 1 Law Commissioner per court (&lt;\$150 or &lt;3m's community service (No Prison)) Law Commissioners are lay appeals committee = 4 members of village council (12 lay committee members)</p> <p style="text-align: right;"><i>15 lay judges(including appeals committee members)</i></p> <p>Land disputes go to Village Council -Taupuleta Serious cases go to High Court in NZ</p>

<b>Tonga</b> <b>105,916</b>	Guidance on ethical principles in benchbook + Code of Conduct Rules 2010	10 + lands court	Supreme Court CJ + 2 law trained Magistrates Court magistrates - 8 most with some law training Lands Court
<b>Tuvalu</b> <b>10,544</b>	Revised CoJC 2011	90	High Court CJ Gordon Ward Senior Magistrate - Afele Kitiona (Law trained) Island Magistrates 5 per island - lay - <i>Island Courts Act</i> Island Lands Court Magistrates 6 per island total - lay - <i>Native Lands Act</i> <span style="color: orange;">(88 lay judges)</span>
<b>Vanuatu</b> <b>224,564</b>	Guidance on ethical principles in benchbook + Ten point code at section 5.3 N.B. Island Court Magistrates do not get the Benchbook	213	Supreme Court 5 judges (3 local +1Aus +1NZ) Magistrates Court 8 law trained magistrates Island Courts - (sit as benches of 3) <span style="color: orange;">approx 200 lay justices</span>

## Appendix 2

At the National Coordinators' Workshop I asked delegates to discuss the following questions:

### **Law, custom and tradition**

To what extent is knowledge of the community, its customs and traditions considered a valuable qualification for a judge?

- How is such knowledge used?
- Does an intimate knowledge of the community help or hinder the administration of justice?

### **Impartiality**

In a small jurisdiction when should a judge recuse him or her self because he or she knows a person involved in a case?

In determining what relationships are too close should we weigh in the balance the negative effects of recusal?

### **Independence/Impartiality**

To what degree is it proper for a judge to involve themselves in the local community?

- Should judges participate or hold office in traditional councils?
- Is it reasonable to expect a local judge to isolate themselves within a small community?
- Do we need to be detached in order to be impartial?
- Is it reasonable to demand the same from part-time judges as we do from full time 'professional' judges?

### **The value of local justice**

Overall does the group favour local judges administering local justice or are local courts second best?

# Appendix 3

## Revised Codes of Judicial Conduct

Niue      Page 2

Tuvalu    Page 10

Kiribati    Page 16



# Code of Judicial Conduct for Niue

## What is this code for?

This code is issued for guidance of judges and to inform the people of Niue as to the role of the judges. These are guidelines only, not rules. It is for each judge to decide what the principles require in any given situation and different judges may properly interpret the requirements of the code differently.

The judge's primary duty is to administer justice by applying the law. This is reflected in the oath in which the judge swears to serve "*in accordance with the constitution and law.*"

This means that in deciding any case the judges must identify the applicable law and base their decision on a consideration of only those matters and facts which the law says are relevant; the judges must not take anything else into consideration.

## Why is there a code?

Upon appointment to the High Court of Niue Commissioners and Justices of the Peace swear the following:

"I swear by Almighty God that I will well and truly serve Her Majesty as the Head of State of Niue, Her heirs and successors, in accordance with the Constitution and the law, in the office of (Commissioner or Justice of the Peace); and I will do right to all manner of people, without fear or favour, affection or ill will. So help me God."

In performing their judicial role judges make decisions which affect peoples' lives, it is important that the people affected by judicial decisions and those who may one day come before the court, have confidence that every case will be heard and decided fairly in accordance with the law.

If the respect and confidence of the public in the justice system is to be upheld Commissioners and Justices of the Peace must respect and comply with the law in their public and private lives, conducting themselves in a manner which will not bring themselves or their office into disrepute.

The following six principles or values are recognised in almost every judicial code of conduct.

However the principles are not to be neatly confined, they overlap and blend one into another.

Each principle is stated below and followed by guidelines as to its scope and application.

## **Definitions**

“**Judge**” is used in its widest sense to include any Judge, Commissioner or Justice of the Peace.

“**Appearance**” is to be judged from the view point of a reasonable member of the community.

In determining what a reasonable, fair minded and informed member of the community might think a judge may take account of his or her knowledge of the community’s values and customs.

## **1. Independence**

*Judicial independence is essential to the rule of law and the fair conduct of trials. It is for the judges alone to interpret and apply the law and in doing so they should be seen to be free from any external influence. A judge should do nothing in public or private that might undermine his or her individual independence, the institutional independence of the judiciary, or the appearance of independence.*

### **Scope and application**

1.1 Good governance requires that the judiciary must operate independently and free from influence by the Cabinet and public servants (the executive) or the Assembly (the legislature). This independence is fundamental to democracy and protected by the constitution.

1.2 A judge must however be independent and free from any and all influence other than those considerations required by the law, and to that end should:

- a. firmly reject any attempt to influence his or her decisions in any matter before the Court outside the proper process of the Court;
- b. not allow public opinion or fear of public disapproval to affect the decision making process
- c. encourage and uphold arrangements and safeguards to maintain and enhance the independence of the Judiciary;

## **2. Impartiality**

*Judges must be impartial, and appear to be impartial in both the decision and the decision making process.*

*Judges should make sure that their conduct, both in and out of Court, maintains and enhances confidence in their impartiality and that of the Judiciary.*

*If, in any particular case, a judge recognises that his or her impartiality is compromised he or she must not sit. The proper cause of action is for the judge to disqualify (recuse) him or her self.*

### **Scope and application**

2.1 Particular aspects of conduct relating to impartiality are discussed below. In considering these it should be born in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community both are important aspects of the judicial role. In deciding cases the law requires judges to evaluate the credibility of evidence, and in some cases to decide what is reasonable, such decisions require knowledge of local mannerisms and customs. Nevertheless, as much as is reasonably possible a judge should conduct his or her personal and business affairs so as to minimise the occasions on which it will be necessary to be disqualified from hearing cases.

2.2 The duty to be impartial touches on several areas of judicial conduct and overlaps to a considerable extent with the principles of independence, integrity, propriety and equality.

2.3 A judge's conduct in and out of court should maintain and enhance confidence in his or her impartiality.

2.4 A judge must not allow his or her decisions to be affected by, or appear to be affected by bias or prejudice.

- a. Conflicts of interest or bias may arise both from personal interests and relationships and from financial interests and relationships.
- b. Prejudice may be against a group or section of the population but may also occur at personal level against individuals based on their personal characteristics or prior contact. Judges must be alert to guard against prejudice where ever it may arise whether in themselves or in others.

2.5 Upon appointment a judge should review his or her membership of any commercial, social and political groups and withdraw from any involvement that could compromise his or her judicial position.

Judicial demeanour should demonstrate impartiality.

2.6 Whilst acting decisively, maintaining firm control of the process and ensuring cases are dealt with quickly, a judge should treat everyone before the Court with equal respect and courtesy.

Civic and charitable activity

2.7 Judges are free to participate in civic, charitable and religious activities, subject to the following considerations:

- a. A judge should avoid any activity or association that could reflect adversely on his or her impartiality or interfere with the performance of judicial duties.
- b. A judge should not solicit funds (except from judicial colleagues or for appropriate purposes) or lend the prestige of the judicial office to such solicitations.
- c. A judge should avoid involvement in causes and organisations that are likely to be engaged in litigation.
- d. A judge should not give legal or investment advice.

Political activity

2.8 All political activity must cease upon appointment. Judges should refrain from conduct that could give rise to the appearance that they are engaged in political activity. Judges should refrain from:

- a. membership in political parties and political fundraising;
- b. attendance at political fundraising events;
- c. contributing to political parties or campaigns;
- d. taking part publicly, in controversial political discussions except in respect of matters directly affecting the operation of the Courts, the independence of the Judiciary or fundamental aspects of the administration of justice;
- e. signing petitions to influence a political decision.

2.9 Members of a judge's family have every right to be politically active. Sometimes this may adversely affect the public perception of the judge's impartiality. In any case before the Court where there could reasonably be such a perception, a judge should not sit.

Conflict of interest

2.10 A judge must disqualify him or her self in any case in which he or she will not be able to judge impartially, or where that appears to be the case. Generally a judge should not preside over a case where the accused or witness is a

- a. is a near relative; (ie. A member of your immediate family: parent, spouse, sibling, child including adopted or step child, Grandparents.)
- b. is a close friend;

- c. is an employer or employee; or
- d. has a close business relationship with the judge.

2.11 A judge should not preside over a case where he or she has or may appear to have preconceived or pronounced views relating to:

- a. issues;
- b. witnesses; or
- c. parties.
- d. A judge should strive to avoid making any assumptions in relation to the foregoing and should make a decision based only on the evidence.

2.12 It is **not** appropriate for a judge to disqualify him or herself if:

- a. the matter giving rise to a possibility of conflict is insignificant or a reasonable and fair-minded person would not be able to make an argument in favour of disqualification;
- b. no other Commissioners or Justices of the Peace are available to deal with the case and then only if, because of urgent circumstances, failure to act could lead to a miscarriage of justice.

*NOTE: Niue is a very small country and if judges were to disqualify themselves in every case where they know of one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice. Therefore, the interest of justice requires that judges are careful not to disqualify themselves too readily. Inevitably judges will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly and the judges should explain their decision clearly. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.*

*The Niuean people are used to the idea that individuals may “wear a number of different hats” and the judges must make it clear from the way they conduct themselves, that with the judicial hat comes impartiality.*

2.13 Where the circumstances are evenly balanced the consent of the party or parties after full disclosure in open court may be relevant, however care should be taken to identify any possibility that consent is not freely given. For instance a party may feel that he or she cannot bear the delay of waiting for a trial with a differently constituted bench.

### **3. Integrity**

*Through all his or her public and private life a judge should demonstrate soundness of moral character through consistency of action, values, honesty and truthfulness. By conducting themselves with integrity judges will sustain and enhance public confidence in the Judiciary.*

#### **Scope and Application**

3.1 By exhibiting and promoting respect for the law and high standards of conduct in his or her professional and private life a judge will reinforce public confidence in the judiciary.

3.2 This means judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed members of the community. Judges should encourage and support their judicial colleagues to observe these high standards.

### **4. Propriety**

*A judge must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.*

#### **Scope and Application**

4.1 A judge must act with propriety in order to uphold the dignity and authority of the judicial office. A judge's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works.

4.2 A judge should avoid any relationship which may put him or her in such a position as to be, or appear to be, subject to the influence of others. To this end, Judges should especially avoid developing, or appearing to develop, close social relationships with the prosecuting authorities and those individuals who represent parties in court.

4.3 It is improper for judges to use their judicial office to obtain any favour or advancement and judges must avoid any conduct which might give the appearance of so doing.

#### **Gifts**

4.4 If there is any possibility that the giving of a gift is an attempt or might appear to be an attempt to curry favour a Judge must not accept.

### Confidential Information

4.5 A judge should not discuss or disclose any confidential matters learnt of by reason of his or her office which includes the deliberations of judges in reaching their decisions. It is however proper for judges to discuss with other judges issues arising during the conduct of cases in the interest of developing good practice.

## **5. Equality**

*A judge should ensure that every one is treated with respect and courtesy and with equality according to the law.*

### **Scope and Application**

5.1 It is the duty of the judges to ensure that people attending court proceedings, in whatever capacity, are treated as equal before the law.

5.2 Judges should:

- a. ensure that the trial process is fair and that all parties are given an equal opportunity to put their case and to answer any evidence put against them;
- b. carry out their duties with appropriate consideration for all persons be they parties, witnesses, court personnel, observers or judicial colleagues, and without discrimination;
- c. strive to be aware of and understand and accommodate differences arising from, for example, gender, race, religious conviction, culture, ethnic background or disability;
- d. avoid membership in any organisation that you know currently practices any form of discrimination that contravenes the law;

5.3 A judge should disassociate him or herself from, and make clear his or her disapproval of clearly irrelevant comments or improper conduct by court staff, counsel, or any other person in court. Improper conduct can include sexist, racist, or discriminatory language or actions which are prohibited by law.

## **6. Competence and Diligence**

*A judge must be prepared to engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.*

### **Scope and Application**

6.1 This means judges should:

- a. be conscientious in fulfilling their judicial duties, which include not only the conduct of cases in court, but other judicial tasks essential to the Court's operation;
- b. bring to each case a high level of competence and ensure that they are sufficiently informed to provide adequate reasons for each decision;

- c. take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for their role;
- d. not engage in conduct incompatible with the diligent discharge of judicial duties or condone such conduct in colleagues.

6.2 Decisions should be delivered as quickly as circumstances permit; usually this will be immediately. This means judges must be familiar with common offences, jurisdiction and procedure; and prepare before sitting in Court.

### Cases of doubt

In any case where a judge is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the head of the judiciary. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.



## Code of Judicial Conduct for Tuvalu

This code is issued for guidance of magistrates and to inform the people of Tuvalu as to the role of the magistrates. It should be read and interpreted in conjunction with the Leadership Code Act 2006.

The magistrate's primary duty is to administer justice by applying the law. This is reflected in the oath in which the magistrate swears:

"I swear by Almighty God that I will well and truly serve Our Sovereign Lady Queen Elizabeth, her Heirs and Successors, as a Judicial Officer and I will do right to all manner of people after the laws and usages of Tuvalu, without fear or favour, affection or ill will. So help me God."

### 1. Independence

*Judicial independence is essential to the rule of law and the fair conduct of trials.*

*A magistrate should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.*

1.1 A magistrate must not be actively involved in government or politics. This is why the Islands Court Act says a member of the Kaupule may not be a magistrate.

1.2 Magistrates are also members of the community and may properly take their part as members of the Falekaupule, where they may vote on policy and in the election of members of the Kaupule.

1.3 In deciding cases a magistrate must make his or her decisions according to the law and the evidence and without fear or influence from the Kaupule, central government, anyone or anything outside the proper process of the court.

## 2. Impartiality

*Impartiality in both the decision and the decision making process is essential to the proper discharge of judicial duties.*

2.1 Particular aspects of conduct relating to impartiality are explained below. In considering these it should be borne in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community; both are important aspects of the judicial role. In deciding cases the law requires magistrates to evaluate the credibility of evidence, and in some cases, to decide what is reasonable. Such decisions require knowledge of local mannerisms and customs. Where a court takes local custom or tradition into account, it must say so in open court.

2.2 A magistrate must be impartial.

2.3 A magistrate must also appear to be impartial, which means that a reasonable and fair minded member of the community knowing all the circumstances would believe that the magistrate is impartial.

2.4 In any case where there might be a reasonable doubt about a magistrate's impartiality he or she should recuse him or her self and let another magistrate hear the case.

2.5 A magistrate should not sit in any case involving a person with whom the magistrate has a close relationship, and should not sit in any case involving the magistrate's

- a. immediate family (i.e. parent, spouse, brother or sister, child including an adopted or step child.)
- b. close friend
- c. workmate

This guideline applies whatever the capacity in which the person is involved; whether the person is a defendant, victim, witness, complainant or party to a civil case.

2.6 A magistrate should not sit on a case where he or his family might benefit from the outcome. This applies whether the interest is direct or indirect and includes:

- a. a financial interest, or
- b. an interest in land,
- c. an interest in other property

2.7 In a land case a magistrate ought not to decide a case concerning land which belongs to a Kaitasi of which he or she is a member.

2.8 A magistrate should not sit on any case where he or she has or may appear to have preconceived or pronounced views relating to:

- e. issues;
- f. witnesses; or
- g. parties.

2.9 A magistrate should strive to avoid making any assumptions and should make a decision based only on the evidence.

2.10 If the Island Magistrates believe their impartiality would be compromised because of the high social standing of the individual concerned it may be appropriate to refer a case to the Senior Magistrate. e.g. a case involving the Pule ote Fenua, Pule ote Kaupule, the pastor or his wife.

2.11 A magistrate should not recuse him or herself merely because he or she knows a person involved in the case. In a small community it is inevitable that the magistrates will know the people.

*NOTE: Tuvalu is a small country and the island jurisdictions are very small. If magistrates were to disqualify themselves in every case where they know one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice. Therefore, the interest of justice requires that magistrates are careful not to disqualify themselves too readily. Inevitably magistrates will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly and only on the evidence. The magistrates should explain their decision clearly giving their full reasoning. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.*

*It is for the magistrates to make it clear from the way they conduct themselves, that when they are sitting a magistrates they will always be impartial.*

### **3. Integrity**

***Through all his or her public and private life a magistrate should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.***

3.1 By conducting themselves with integrity magistrates will sustain and enhance public confidence in the Judiciary.

3.2 A magistrate must be honest in his public and private life so that people will know that the magistrate can be trusted.

3.3 A magistrate must be true to the judicial oath.

#### 4. Propriety

*A magistrate must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.*

4.1 A magistrate's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works. By their behaviour individually and collectively magistrates should teach people to respect the court and the rule of law.

4.2 Whatever a magistrate does he must do properly, according to the law and with respect for the customs and traditions of the people.

4.3 It is improper for magistrates to use their judicial office to obtain any favour or advancement and magistrates must avoid any conduct which might give the appearance of so doing.

4.4 A magistrate should avoid any relationship which may put him or her in such a position as to be, or appear to be, subject to the influence of others. To this end, Magistrates should especially avoid developing, or appearing to develop, close social relationships with the prosecuting authorities and those individuals who represent parties in court.

#### Gifts

4.5 If there is any possibility that the giving of a gift is an attempt or might appear to be an attempt to gain favour, a Magistrate must not accept.

4.6 A magistrate does not accept any gift, benefit or advantage whatsoever that might influence the conduct of his official duties or which might give the appearance of so doing.

*(N.B. Specific guidance regarding traditional gifts can be found in The Leadership Act)*

#### Confidential Information

4.7 A magistrate should not discuss or disclose any confidential matters learnt of by reason of his or her office. The deliberations of magistrates in reaching their decisions are confidential. It is proper for magistrates to discuss with other magistrates issues arising during the conduct of cases in the interest of developing good practice. A magistrate must never seek the opinion of any person, even another magistrate, other than those hearing the case in question as to the appropriate decision.

## 5 Equality

*A magistrate should ensure that every one is treated with respect and courtesy and with equality according to the law.*

5.1 It is the duty of the magistrates to ensure that every court hearing is fair. This means that everyone participating in court proceedings must be treated:

- a. equally, no matter high or low, and
- b. with respect and courtesy, and
- c. without prejudice or hatred.

AND that parties to a case must be:

- d. given the same voice in order to put their case to the court.
- e. present during proceedings to hear the case against them and the evidence submitted in support of that case.
- f. given an opportunity to answer anything said against them
- g. given the opportunity to put their own evidence before the court.

5.2 The court must recognise and uphold all those rights given by law to individuals.

## 6. Competence and Diligence

*A magistrate must engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.*

6.1 The Island Magistrates are created by statute (the Island Courts Act and The Native Lands Act) and the powers of magistrates are limited by statute. Magistrates must take care not to exceed the authority given to them.

6.2 A magistrate should read and use the materials provided for his or her guidance, such as the benchbook and the laws of Tuvalu.

6.3 A magistrate should participate in such training as is available.

6.4 Court hearings should be conducted at scheduled and published times and should commence punctually.

6.5 Decisions should be given in reasonable time and full reasons should be given identifying the relevant law and the evidence relied upon.

6.6 The magistrates should ensure that the court makes and keeps an adequate written record of the decision and the reasons therefore.

### Cases of doubt

In any case where a magistrate is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the Senior Magistrate or the head of the judiciary, the Chief Justice. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.

# **CODE OF CONDUCT FOR JUDICIAL OFFICERS OF THE REPUBLIC OF KIRIBATI**

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## **i) PREFACE**

The conduct of Judicial Officers (and in Kiribati, by this term I mean Judges, Commissioners of the High Court, Chief Registrar, Magistrates, Justices of the Peace and other persons carrying out judicial functions in Kiribati) has always been a matter of public concern and interest.

In addition, apart from the provisions of the Constitution, governing the removal of Judges for misconduct, there is no formal machinery available to members of the public for the processing of complaints against Judicial Officers for any alleged misconduct.

This new Code of Conduct and the accompanying mechanism for the handling of complaints against Judicial Officers have been voluntarily adopted by the entire membership of the Judiciary and will henceforth bind all serving Judicial Officers.

The overall objectives are threefold:

- i) To ensure public confidence in the administration of justice;
- ii) To enhance public respect for the institution of the Judiciary; and
- iii) To protect the reputation of individual Judicial Officers and of the Judiciary as a whole.

It is hoped that members of the public will support and cooperate with the Judiciary as it seeks, for the first time in its history, to regulate the conduct of its members in the interest of all concerned.

SIR JOHN BAPTIST MURIA  
CHIEF JUSTICE  
OCTOBER 2011



**CODE OF CONDUCT FOR JUDICIAL OFFICERS**  
**OF THE REPUBLIC OF KIRIBATI**

**ii) PURPOSE**

The purpose of this Code is to establish standards for ethical conduct of Judicial Officers. It is designed to provide guidance to Judicial Officers and to afford the judiciary a framework for regulating judicial conduct. It is also intended to assist Government operatives, Parliamentarians, legal practitioners and the public in general to better understand and support the judiciary.

The principle enshrined in this Code presupposes that Judicial Officers are accountable for their conduct to the appointing authorities and the general public. The Code is therefore to supplement and not substitute or derogate from existing rules of law and conduct which bind Judicial Officers.

The Judicial Officer's primary duty is to administer justice by applying the law. This is reflected in the oath in which the Judicial Officer swears:

*"I,....., do swear by Almighty God that I will well and truly serve the Independent and Sovereign Republic of Kiribati as a judicial officer, and will do right to all manner of people after the laws and usages of Kiribati, without fear or favour, affection or ill will. So help me God."*

**iii) PREAMBLE**

**WHEREAS** the Constitution of Kiribati enshrines the fundamental principles of freedom, democracy and justice;

**AND WHEREAS** an independent, strong, respected and respectable Judiciary is indispensable for the impartial administration of justice in a democratic state.

**AND WHEREAS** at the annual conference of the said members/justices the draft Code was discussed, approved and unanimously adopted the draft Code.

**WE THE MEMBERS OF THE JUDICIARY OF KIRIBATI** hereby freely and voluntarily accept to be guided and bound by this Code of ethics.

## **1. INDEPENDENCE**

***Judicial independence is essential to the rule of law and the fair conduct of trials.***

***A Judicial Officer should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.***

1.1 A Judicial Officer must not be actively involved in government or politics. This means a Judicial Officer should not be a member of the village council.

1.2 Judicial Officers can be involved in village activities such as the Maneapa but it is important those activities should be in compliance with the law.

1.3 A Judicial Officer must make his or her decisions from the evidences before the court in accordance with the law without the interference or influence from bodies outside the court.

## **2. IMPARTIALITY**

***Impartiality in both the decision and the decision making process is essential to the proper discharge of judicial duties.***

Note: Particular aspects of conduct relating to impartiality are explained below. In considering these it should be borne in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community; both are important aspects of the judicial role. In deciding cases the law requires Judicial Officers to evaluate the credibility of evidence, and in some cases, to decide what is reasonable. Such decisions require knowledge of local mannerisms and customs. Where a court takes local custom or tradition into account, it must say so in open court.

2.1 A Judicial Officer must not be biased

2.2 A Judicial Officer must not appear to be biased. (In the eyes of the community)

2.3 A Judicial Officer should not sit and hear a case that would give him or his family benefits. This applies whether the benefit is direct or indirect and includes money, lands and any other benefit.

2.4 A Judicial Officer should not hear a case which involves a close family member, close friend, or workmate

2.5 If he feels thinks his decision would be affected, or appear to be affected a Judicial Officer should not sit and hear a case. He or she should withdraw and let another Judicial Officer hear the case

2.6 A Judicial Officer should not recuse him or her self merely because he or she knows a person involved in the case. In a small community it is inevitable that the Judicial Officers will know the people.

*NOTE: Kiribati is a small country and the island jurisdictions are very small. If Judicial Officers were to disqualify themselves in every case where they know one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice.*

*Therefore, the interest of justice requires that Judicial Officers are careful not to disqualify themselves too readily. Inevitably Judicial Officers will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly. The Judicial Officers should explain their decision clearly giving their full reasoning. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.*

***It is for the Judicial Officers to make it clear from the way they conduct themselves, that when they are sitting as Judicial Officers they will always be impartial.***

### **3. INTEGRITY**

***Through all his or her public and private life a Judicial Officer should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.***

3.1 Judicial Officers make decisions that affect peoples' lives, therefore it is important that a Judicial Officer should demonstrate a good and moral character so that he or she displays an image of a judge that can be trusted and respected.

3.2 A Judicial Officer must be true to the judicial oath.

### **4. PROPRIETY**

***A Judicial Officer must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.***

4.1 A Judicial Officer's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works. Judicial Officers should encourage respect the court and the rule of law.

4.2 A Judicial Officer should make sure that everything he or she does is in compliance with the law and so far as possible with the customs of the community.

4.3 A Judicial Officer should not use his or her judicial power or position in an improper way to get any benefit and Judicial Officers must avoid any conduct which might give the appearance of so doing.

4.4 A Judicial Officer should avoid any relationship with people in the community that could put him or her in an awkward position in trying to do their duty. In particular Judicial Officers should avoid developing close social relationships with the police and with lawyers or others who regularly represent parties in court.

#### Gifts

4.5 A Judicial Officer should not accept any kind of gift, favour or benefit that could influence his or her judicial decisions.

#### Confidential Information

4.6 A Judicial Officer should not release or say anything regarding a decision of the court before it is published. A Judicial Officer should not discuss details of individual cases outside court.

4.7 A Judicial Officer should not release information about the Judicial Officers' discussions when making their decisions.

### **5 EQUALITY**

***A Judicial Officer should ensure that every one is treated with respect and courtesy and with equality according to the law.***

5.1 Every proceeding should be conducted fairly.

5.2 The court must ensure that all persons appearing before it are given equal treatment without regard to their position, behaviour or any preconceptions.

5.3 The court must ensure that the parties are given the opportunity to present their case.

5.4 The court must ensure that all parties are given the opportunity to hear all the evidences and arguments from all sides. A Judicial Officer must not discuss the case with any party outside court.

5.5 The court must recognise and uphold all those rights given by law to individuals.

## **6. COMPETENCE AND DILIGENCE**

***A Judicial Officer must engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.***

6.1 Magistrates are created by statute (Magistrates' Courts Ordinance CAP 52 1977) and the powers of Magistrates are limited by statute. All Judicial Officers must take care not to exceed the authority given to them.

6.2 A Judicial Officer should read and use the materials provided for his or her guidance, such as the benchbook and the laws of Kiribati.

6.3 A Judicial Officer should participate in such training as is available.

6.4 Court hearings should be conducted at scheduled and published times and should commence punctually.

6.5 Decisions should be given in reasonable time and full reasons should be given identifying the relevant law and the evidence relied upon.

6.6 The Judicial Officers should ensure that the court makes and keeps an adequate written record of the decision and the reasons therefore.

### **Cases of doubt**

**In any case where a Judicial Officer is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the head of the judiciary, the Chief Justice. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.**

## **7. ESTABLISHMENT OF JUDICIAL ETHICS COMMITTEE**

7.1 The Chief Justice shall, for the purposes of this Code appoint a Committee to be called the Judicial Ethics Committee.

The Committee shall consist of –

- (a) the Chief Justice of the High Court who shall be chairman;
- (b) a Justice of the Court of Appeal; and
- (c) the Chief Registrar of the High Court.

The Chief Registrar shall act as Secretary to the Committee.

### **7.2 Functions of Judicial Ethics Committee**

- (a) Any person who has a complaint relating to the conduct of a Judicial Officer other than the Chief Justice in respect of the officers conduct may send the complaint in writing to the Chief Justice who shall, after determining whether there is merit in the complaint, refer it to the committee for investigation.
- (b) Where the complaint is in respect of the conduct of the Chief Justice, the complainant shall submit the complaint in writing to the most senior Justice of the Court of Appeal.

### **7.3 Procedures of Judicial Ethics Committee:**

- (a) Subject to this Code, the Committee shall adopt its own procedures for the investigation of complaints;
- (b) Where the complaint is in respect of the conduct of a Magistrate, the committee shall co-opt the most senior Magistrate to take part in its deliberations but such Magistrate shall not vote on any decision to be taken by the Committee;
- (c) All meetings of the committee shall be convened by the Chairman or at the request of the Chief Justice.
- (d) The quorum for a meeting of the Committee shall be two.

- (e) The committee may, if it thinks necessary, require the Complainant to appear before the committee but shall give an opportunity to the Judicial Officer against whom the complaint is made to be heard.
- (f) After conducting an investigation, the Committee shall decide whether any allegations made in the complaint have been proved and if it so decides it shall:-
  - (i) Inform the Chief Justice accordingly making any recommendations, it thinks fit;
  - (ii) Inform the complainant and the Judicial Officer whose conduct was investigated, of its findings.
- (g) Any recommendation made to the Chief Justice shall state whether the conduct of the Judicial Officer is of such gravity that the matter should be referred to the Judicial and Legal Service Commission.
- (h) The Chief Justice shall cause to be kept a register in which shall be recorded all complaints investigated by the Committee and the outcome of such complaints.



## **8. INTERPRETATION**

In this Code:-

words importing the masculine gender include female;

words in the singular include the plural and words in the plural the singular, "family" means the spouse and children of the Judicial Officer;

"Judicial Officer" means the Chief Justice, a Judge of the Court of Appeal, a Judge of the High Court, a Judge Advocate, the Registrar of the High Court, the Registrar of the Court of Appeal, any Deputy Registrar, a Magistrate or any Justice of the Peace performing the functions of a Magistrate;

"Committee" means the Judicial Ethics Committee established by the Chief Justice under paragraph 6.1.

## **9. COMMENCEMENT**

This Code shall come into force on the [ ] day of [ ] 2011.

## **COMPLAINTS**

**ALL COMPLAINTS AGAINST JUDICIAL OFFICERS COVERED BY THIS CODE OF CONDUCT SHOULD BE ADDRESSED TO:**

**"THE JUDICIAL ETHICS COMMITTEE  
HIGH COURT OF KIRIBATI  
P O BOX 501  
BETIO, TARAWA  
REPUBLIC OF KIRIBATI**

**TEL: (686) 26451**

**FAX: (686) 26149**