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CODE OF CONDUCT FOR JUDICIAL OFFICERS OF THE REPUBLIC OF KIRIBATI

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

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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."

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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)

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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.

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- 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.

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- (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 1st 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