



National Integrity Systems

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Executive Summary

There is no specific translation for the term 'corruption' in the language of Kiribati, though the indigenous terms *babakanikawai*, *kamangao* or *aonikai* clearly indicate deviant and dishonest behaviour. The public is therefore generally aware of what kinds of acts qualify as corruption (though traditional custom blurs the line between activities such as vote-buying and legitimate gift-giving), and are also very interested in the activities of their politicians and bureaucrats. Relevant legislation is also in place to explicitly prohibit acts such as embezzlement, bribery and abuse of office. Yet strongly entrenched procedures for dealing with such kinds of behaviour are not in evidence. There is no overarching anti-corruption strategy, no anti-corruption agencies, and no Ombudsman.

Corruption in Kiribati occurs at all levels of society, though it is most notable in governmental circles with regards nepotism, petty bribery from public officials and possible instances of vote-buying. Further, as this report indicates, the Auditor General recently noted that around \$20-30 million of public funding was unaccounted for. Such acts of corruption may extend to the private sector, though here there is a higher likelihood of punishment for wrongdoings. Cases of embezzlement have been on the increase, though not often reported, in religious organisations.

In terms of the national governance structure, Kiribati's present system of government was formulated after 87 years of colonial rule and combines aspects of both presidential and parliamentary systems, with both Presidential and Parliamentary terms lasting four years. Tradition can play an important part in national level politics, as witnessed most dramatically by the aftermath of the May 2003 elections. Here one party gained only 15 of the 41 possible seats in Parliament (the Maneaba ni Maungatabu) but were successful in getting their Presidential candidate into office. This party then approached the *unimwane* (the elders and traditional leaders) to request that their local MP be allowed to move parties in exchange for a cabinet position in government – this move was successful and resulted in the party subsequently gaining a majority in parliament too. Party politics do exist, then, but cultural influences may influence the way in which those politics play out, and the Maneaba ni Maungatabu has been criticised for its inadequate oversight role. The Presidential role has also been questioned as the President (*Beretitenti*) not only heads the government but is also Head of State.

With regards other aspects needed to maintain integrity in government, the private sector is small and relatively corruption-free and the Courts are fully independent. However, although there is a spread of media ownership and freedom of the press is guaranteed by the constitution, attempts have been made the present government to dismantle the regime of restrictions on the media imposed by the previous government that were met with public outrage. Members of the public are willing to refuse to vote back in Members of Parliament that do not perform well, but the small and egalitarian nature of Kiribati society means that it is difficult for individuals to perform 'whistleblower' roles in other social and political arenas. And one last important factor for analysing corruption in Kiribati stems from increasing external interest in Kiribati's domestic politics. Allegations of funding being secured from the Chinese government, Japanese businessmen and the Government of Taiwan in the last elections indicate how external funding is becoming increasingly important in Kiribati politics.

In addition to the need for an overarching Anti-corruption strategy, other recommendations arising from this report thus include:

- public education programmes designed to heighten people's awareness of what constitute corruption in the Kiribati context;
- research into the extent of nepotism and cronyism;
- formulating an Anti-Corruption strategy for Government;
- the need for an inquiry into the possibility of creating the Office of the Ombudsman;

and the need for more research into the influence of external actors involvement in Kiribati elections and other areas.

Country Overview

The Republic of Kiribati (formerly the Gilbert Islands) gained its independence after some 87 years of British colonial rule on 12 July 1979. A few years from independence, in a move which deviated slightly from a path followed by most former British dependencies, a constitutional conference was held in which representatives from major divisions of the island communities were invited to discuss the shape and main features of the nation's constitution on independence. The Constitution, which resulted from this consultation (plus other processes and conventions) "combined aspects of both presidential and parliamentary systems, which its framers believed better reflected the fundamentally egalitarian socio-political structure of Kiribati society." (van Trease 1992, p. ix)

The Beretitenti (President) is the Head of State and Head of Government, who is elected by popular vote for a four year term. Presidential candidates – not more than 4, and not less than 2 – are chosen from among members of the Maneaba ni Maungatabu (Parliament) during the first meeting of the Maneaba ni Maungatabu after the General Election, and they compete in a nationwide Presidential election. The Constitution limits the terms of the Beretitenti to three terms of 4 years. The Cabinet is then appointed by the Beretitenti from among the members of Parliament, and includes the Beretitenti, Kauoman ni Beretitenti (Vice President), Attorney General and up to ten other ministers.

The Maneaba ni Maungatabu is unicameral and is composed of 42 members – 40 elected members, 1 member nominated by the Banaban community in Fiji through Rabi Council of Leaders and the Attorney General, who is an ex-officio member. The Maneaba has a 4-year life. Each of the inhabited islands together with the three divisions of the capital island, Tarawa i.e South Tarawa, Betio and North Tarawa, form the constituencies. The number of representatives from each constituency vary according to population: those constituencies with populations of less than 2000 are represented by one member, those with more than 2000 but less 3000 are represented by two members and those with more than 3000 are represented by three members of Parliament.

The judiciary is fully independent, and as the Chief Justice, Honourable Robin Millhouse QC pointed out in a presentation to a national workshop on Good Governance in November 2001: "I [am] proud to say that in Kiribati the courts have complete independence and I have never felt even the slightest suspicion of pressure in deciding a case." The hierarchy of the courts in Kiribati follows the standard model of inferior court, superior court, and Court of Appeal, which is normally constituted by a panel of three judges from outside Kiribati. In addition, the country has retained an appeal to the Privy Council in England on a limited range of matters. (Care et.al 2000: 289). The Chief Registrar of the High Court of Kiribati pointed out that no case had been referred to the Privy Council since Independence. There were also Island Courts, which deal minor local matters, but these were abolished by the Magistrate Courts Act in 1977.

The lowest Court is the Magistrate Court, and is composed of three magistrates sitting together, with one of them being a presiding magistrate. Section 88 of the Kiribati Constitution establishes the High Court, which is constituted by the Chief Justice and other judges. The Chief Justice is appointed by the Beretitenti acting in accordance with the advice of the Cabinet after consultation with the Public Service Commission. (s81(1)). The other judges are also appointed by the Beretitenti in accordance with the advice of the Chief Justice and the Public Service Commission. (s81(2)). The office of the Chief Justice has always, since independence, been held by an expatriate.

Section 90 of the Constitution establishes the Court of Appeal, which is constituted by the Chief Justice, other judges of the High Court and other persons appointed by the Beretitenti, acting in accordance with the advice of the of the Chief Justice sitting with the Public Service Commission. (s.30(1) and s.91). The President of the Court of Appeal is appointed by the Beretitenti, acting in accordance with advice of the Cabinet after consultation with the Public Service Commission. Section 5 (1) of the Court of Appeal Act stipulated that the Court of Appeal must sit with not less than three judges.

The Laws of Kiribati Act 1989 specify that the Courts must take customs and customary law into account when considering specified matters in criminal and civil proceedings. (Sched. 1 paragraph 3).

Despite the existence of political factions within the legislature in the lead up to Independence, no attempt was made to formalise the place and role of political parties in the governance of Kiribati structure. Consequently, the constitution has no provisions for the Leader of the Opposition (or the Opposition for that matter), nor mention of, or even references to them. Nonetheless, political factions based on those who support Beretitenti and his policies on one side and those who are not supportive of the Beretitenti, on the other side, has continue to exist. The former became the Government party and the latter the Opposition. (van Trease 1980 and 1992) In the recent elections of 2002 and 2003, what used to be factions organized around the personalities of certain leaders in the 1970s have become more formalized and organized, each having its manifesto, a formal structure and followers and supporters outside Parliament. They even have funds which they used to finance their campaigns and other activities. Between the two major parties, there had been allegations and counter-allegations made in Parliament of foreign contributions in the last elections. That "bwatei," a transliteration of the English word "party" and "te kaaitara" (opposition) becoming part of the Kiribati political lexicon is testimony to the entrenchment of parties in the contemporary political landscape of Kiribati.

The present political scene is dominated by two main political parties, Boutokaan te Koaua (BTK) and Maneaban te Mauri (MTM). The BTK Party is the party in power under the leadership of Beretitenti Anote Tong and controls 24 of the 41 (40 elected and 1 nominated) seats in the Maneaba ni Maungatabu. MTM Party under the leadership of the former Beretitenti, Teburoro Tito, controls the remaining 17 seats. The BTK also has amongst its members two former Beretitenti, Ieremia Tabai and Teatao Teannaki.

The BTK Party introduced an interesting innovation in post-election manoeuvring for numbers which involved the people and the traditional political structure in the islands. In the May 2003 elections the BTK Party won only 15 of the 41 contested seats, but they were able to push through their nominee for the Presidential election, who went on to win the Presidential election with a margin of 1101 votes over the MTM Party candidate and older brother, Harry Tong. With only 15 seats (and 17 with the addition of the 2 independents) Anote Tong and the BTK Party lost no time in going straight to the people and the unimwane (male elders and traditional leaders) to solicit their assistance and support in fulfilling what the party regarded as the mandate that the people of Kiribati had given him and his party through their votes. The BTK Party leadership wrote to the people and leaders of the islands from which they would like to recruit members and requested that they allow their member of Parliament to move to their side and accept the Beretitenti's offer of a cabinet position. (Nakara, [pers.comm.](#) 12 August 2003) Striking a chord of island pride, almost all of the islands approached, with exception of one or two, obliged and asked their members to cross the floor, as they put it, "for the sake of the island and in the national interest." (Taom 2003) A major consideration in the minds of the island traditional leadership was the anticipation of additional benefits to the island from the presence of their representative in Cabinet. No mention of cash inducement has been made. So successful was this strategy that Beretitenti Anote Tong was able to form his Government and secured the majority he required within a month after his election and well before the opening of Parliament. Six months before, the ill-fated government of Beretitenti Teburoro Tito struggled to get its majority, but failed.

Apart from the Constitution, there are no specific laws guaranteeing the freedom of speech and of the press. The Broadcasting and Publication Authority Act which established the Government-owned media organization has provisions which, in effect, provided for the censorship of its radio and newspaper. There is no law which restrict media ownership, and in recent years there has been a spread of media ownership. Of the three weekly newspapers in the country, one is published by the Government-owned Broadcasting and Publication Authority, one is owned and published by the Kiribati Protestant Church and the third one, The Newstar, by a private company. But, while the spread of media ownership is not restricted, it has been observed that the Government, in particular the previous one, has not been very forthcoming in its assistance to private media companies. A private radio station, FM101, owned by former President Ieremia Tabai, has had to wait for a good three years before its license to broadcast was finally issued. In those three years, Tabai

felt that a number of technical and other hurdles were put in the way to delay the issue of the license. (Tabai, quoted in PINA News Online, 11 August 2000). In June 2002 the Maneaba ni Maungatabu passed the Newspaper Registration Amendment Act which require newspapers publishing stories directed at individuals to carry that person's reply in the same article. If they do not, then the Registrar can fine the newspaper A\$500. He can even deregister the newspaper. The Pacific Islands News Association President has described the amendments as 'draconian' and as something that would 'stifle freedom of expression.' (Radio New Zealand International news, 6 June 2002). The new Anote Tong-led Government had moved for the repeal of the Act in the November 2003 sitting of Parliament. The Newspaper Act Amendment Bill successfully went through its first reading in November 2003, and will be passed as in the June 2004 meeting of the Maneaba ni Maungatabu.

The private sector is relatively small in Kiribati, made up for the most parts by small retailers, bus and transport owners and a few wholesalers. The large companies are mostly Government-owned companies, which tend, in most cases, to be monopolies.

Government is therefore the major employer in Kiribati. All employees' terms and conditions of service are controlled by the National Conditions of Service, which is periodically reviewed; the latest review was done in 2002. The quality of the public service has vastly improved in the last ten or so years with the increase in the number of university graduates occupying senior positions in the public service. According to the report of the last Census (in 1995), of the total number of 297 university graduates in the country, 78 percent are in employment, mostly in the Public Service, statutory companies and government-owned companies (Statistics Office 1997).

Corruption Profile

Definitions and Scope

Corruption is a general term which encompasses many different forms of misuse of power or misuse of office (Gorta 2001:14), often for private gain. There is no Kiribati word which means 'corruption' and one would often hear I-Kiribati people use the word 'corruption' without translating it. They would say 'te corruption' when referring to the act of corruption, or 'e corrupt' when referring to the character of person or action suspected to be corrupt. Perhaps the closest Kiribati words which largely capture the essence of 'corruption' are *aonikai*, *babakanikawai*, and *kamangao*. In different ways, these three words refer to wrongful and deviant ways of doing things with the intention of benefiting unduly from such actions. *Aonikai* refers to the act of deliberately doing something in a wrongful way in order to benefit oneself or those associated with oneself. *Babakanikawai* can simply be translated as cheating for private or group gain, while *kamangao* is an act of deliberately doing something in a deviant way for private gain or for the benefit of those to whom one is associated.

Part X of the Penal Code (Cap 67) listed the following under the heading corruption and the abuse of office: official corruption (s85), extortion by public officers (s86), public officers receiving property to show favour (s87), officers charged with the administration of property of a special character or with special duties (s88), false claims by officials (s89), abuse of office (s90), false certificates by public officers (s91), unauthorized administration of oaths (s92), false assumption of authority (s93), personating public officers (s94) and threat of injury to persons employed in the public service (s95). Part XXXVII of the Penal Code deals with secret commission and corrupt practices. Other misconducts such as embezzlement by clerks and servants (s266), stealing and embezzlement by co-partners (s252) and conversion (s271) are also regarded as corrupt acts.

Any action perceived to be done in a *babakanikawai*, *kamangao* or *aonikai* manner whether in government, the private sector, NGOs (including the churches) is unjustifiable. But, because procedures for dealing with such improper behaviour are lacking, perpetrators can easily get away without being punished. In the private sector, there is no doubt that proprietors are vigilant against employees who misused their positions, and are often dismissed forthwith. In the churches, embezzlement by church group treasurers had often gone unpunished. The prevalence of such misconduct has reached an intolerable level, and something was needed to be done. In the Kiribati Protestant Church, one of the major Christian denominations in the country where a number of groups exist within a parish to raise funds for church activities, instances of embezzlement and conversion have been on the increase so that the recent General Assembly of the church in 2001 was compelled to lay down the procedures for dealing with such misconducts. (Rev. Karaiti, personal communication, 25 August 2003).

Nepotism is often alleged in Kiribati, especially with heads of divisions/sections favouring people related to them – through blood, marriage, fosterage or same island affiliation – in appointments, promotions or training awards. None of these allegations have been successfully proven. This is due mainly to the fact that there is at present no mechanism to enable formal complaints about nepotism to be made in order to enable investigations to be carried out. Also, it is worth noting that in a small society like Kiribati there is often the likelihood for people in senior and responsible positions to be related to the people they appointed or promoted.

Other legislations, such as the Electoral Ordinance, also deal with corruption, and it is in connection with elections that the I-Kiribati often discuss corruption. Part III of the Electoral Ordinance proscribes bribery and undue influence in connection with the electoral process. Section 24 describes conduct which is deemed to give rise to such an offence, but the legitimacy of the Kiribati custom of *mweaka* (which requires people visiting a maneaba to make offerings) has been preserved and recognized. In December 1997, section 24 of the Ordinance was amended by the addition of a proviso:

"Provided further that any person making a customary offering to a Maneaba, referred to in I-Kiribati as 'Mweaka', 'Moanei' or 'Ririwete', with the sole intention of showing respect for the customs and traditions of Kiribati, shall not be guilty of bribery."

In October 2002, section 3 of the Electoral Ordinance was further amended by adding for the purpose of the Act the following definition:

"mweaka, moanei or ririwete' means, in accordance with Kiribati traditions and customs, the giving away or offering of a gift of a block of tobacco containing 30 sticks of tobacco and not weighing more than 500g or its equivalent in cash of not more than \$20.00 or such other higher figure as inflation may allow."

This is a practice connected with the election process which is causing problems, especially in relation to the distinction between 'respect for customs and tradition' and 'intention to influence voters'.

A more recent manifestation of the distinction between 'respect for customs and traditions' and 'intention to influence voters' is the practice where requests would be made to the candidates in the maneaba often under the pretext of imposing a 'fine'. Bwere Eritaia, a former Cultural Officer in his evidence in a recent electoral petition case against Beretitenti Anote Tong, considered the practice whereby Masters of Ceremonies would impose a 'fine' on a guest in a maneaba gathering a form of *bubuti*. *Bubuti* is a custom "whereby it is acceptable for someone lacking in [certain] resources to make a specific request to another who is better endowed...."(Williams CJ in *Patrick Tatireta and Others v Anote Tong*, 15 October 2003). In *Bwebwenibeia Kararaua v Kataotika Tekee* Lussick CJ dealt extensively with the practice and referred to instances involving a fine of a chainsaw (estimated value \$800) and a video set (estimated value \$2000). Finding that the intention with which gifts are made is crucial, Lussick CJ concluded:

"I now come to consider the all important question of the intention of the respondent in providing the chainsaw. If all he intended to do was to comply with custom and/or benefit his constituency then he cannot be guilty of a corrupt or illegal practice. If, on the other hand, his intention was to induce the electors to vote for him then he is guilty of the corrupt practice of bribery and the election must be avoided."(quoted in Williams CJ *op.cit* p.18)

Basing his judgement on the on the above, Millhouse JC in *Teiraoui Tetabea v Tamwi Naotaraui and Others* (on 13 February 2003) concluded:

"I agree with my predecessor. I cannot find that these gifts were made with the intention of influencing voters: they were made because of custom. The candidates had no choice." (*ibid.*)

Causes

Traditions and customs are largely responsible for a number of corrupt practices, especially insofar they relate to people's respect for, and observation of them. In a normal circumstance, a visit to a maneaba not one's own requires the presentation of a gift, *te mweaka*. In the context of an election, that practice would raise the issue of the distinction between the observation of a custom or the intention to influence voters. The distinction between both is at best hazy, but the people themselves know when the gift is poisoned i.e the gift given is intended to influence the way people vote, and when it is made in observance of a tradition. To make matters complicated, people are learning to take advantage of their 'more fortunate' visitors and have made requests for items that are normally costly, as seen in the cases cited above. When the visitor/candidate responds, is he merely observing a customs which provides that a *bubuti* (request) made in the maneaba cannot be turned down, or is he trying to buy people's vote through his generosity.

Obligations to one's kins, affines and those whom share the same affiliation e.g village, island, or even nowadays, religious denomination, are an important tradition which can contribute to nepotism in the workplace. A number of instances had been alleged where a head of a division would appoint people to whom he/she is related or connected, but none has so far been investigated or proven. A possible explanation for such behaviour is because it is easy to work with those you are familiar with, you can trust them and you can also discipline them. They know you and they will help you.

In the above examples, it is argued that while it is often difficult to differentiate between respect for tradition and corrupt practices, the main litmus test, if it is easily provable, is the intention of the person making the gift, or in position of authority.

The present way of life in Kiribati where people are increasingly depending on money for their livelihood in urban centres of Tarawa is another contributing factor to corrupt practices, especially petty corruption by officials and embezzlement by those entrusted with money. The most vulnerable officers are those who deal directly with the public like Custom officers and Police officers. In 1999, in a well publicised case, a businessman and Member of Parliament was convicted of massive fraud of Customs and bribery of a Customs Officer, and was fined a total of A\$143,105, and in default cumulative sentences of two years imprisonment plus another two years for bribery were imposed. (Republic v. Johnny Mosi Kum Kee, Kiribati Court of Appeal, Criminal Appeal No.1 of 1999 Judgement 22/11/99). Earlier in 1996, a number of custom officers were dismissed after receiving bribery from importers. The temptation to accept bribery and embezzle money is often caused by low wages vis-à-vis rising costs of living and an aspiration for a better way of life. The temptation is in some ways strengthened by the decline of a Kiribati cultural value through which those who commit theft and other practices (such as corruption) which disgraced the group were effectively ostracised by their kin-group.

Levels/Types

As pointed out above, corruption exist at different levels of Kiribati society, from the political level involving political leaders to officials to non-governmental organisations including religious groups. At the political level, corruption is largely in the form of influencing and buying votes by political parties, and both the major political parties have accused each of this electoral misconduct. A Regional Security Report on Kiribati has argued that the policy of the former Government to pay ex-gratia payments to illegal strikers in 1980 twenty two years later was a vote buying exercise. (Van Trease 2000). The party now in power has been accused of buying votes through gift-giving in a number of maneaba meetings during their election campaign. (Patrick Tatireta and Others v. Anote Tong). There have also been corrupt cases involving individuals leaders. A former Minister in the previous government was accused of misconduct in the acquisition of a power generator. His conduct was a subject of Commission of Enquiry, whose report was never tabled.

At the official level, the nature of corrupt practices ranges from accepting bribes as in the case of custom officers cited above, to nepotism to embezzlement. Corruption also exists in the church parish groups. In one case in Kiritimati, a treasurer of a Protestant group, who is also a police constable, embezzled over A\$10,000 in funds raised by his parish group in 2000. The case against him is still pending, and a pastor in one of the parishes in Kiritimati reckoned that his fellow officers are delaying the case. (Pastor Riinimarawa, personal comm. August 2003). This and many other similar cases has caused the Kiribati Protestant Church Assembly to introduce measures designed to counter embezzlement of parish funds, which in most cases were raised through ordinary people generosity and goodwill.

Costs

No attempt has been made to quantify the costs of corruption in the Kiribati context, but it should be very substantial. When revenue collectors like custom officers accepted bribes, they cost the country a lot in lost revenue. If the amount in fine imposed on businessman and MP Johnny Kum Kee is based on the amount he defrauded custom, then the cost to the country in lost revenue from such corrupt practices is quite substantial. Tax evasion

and underreporting of income and profit is another area which can cost the country a lot in lost revenue.

The lack of good practice in regard to accounting procedures, as pointed out by the Auditor-General report in 2000, which led to A\$20-30 million accounted for is too high a cost for Government. It is interesting to note from the debate during the 2002/2003 election campaigns that the previous government did not consider it serious, insisting, as it often did on many occasions, that when \$20 to 30million dollars worth of payment vouchers are unaccounted for, it does not mean that the same amount in cash is lost.

Nepotism also cost the country a lot of money, especially when those who are not competent enough are appointed to job. Their inefficiency cost the government money.

The impact of change

Kiribati has gone through a lot of changes, which impact on the nature and types of corruption. The change to a very monetised type of living, where money is main basis of livelihood, has increased the temptation on the part of officials to engage in petty corruption through the acceptance of bribes and other misconducts, which give them personal financial gains.

Political changes in the last ten years had seen the formalisation of political parties, which have attracted support from external actors. This support is hardly free, coming as it does with strings attached which can cause a change in policy. Dr Harry Tong in a letter to the editor column of Te Uekera claimed that the present government's diplomatic recognition of ROC/Taiwan was made in return for Taiwan's support to their election campaign. (Te Uekera 16 January 2004 p.3). The present Government had also made similar claims about the previous Government's close relations with China (Teaero, T. "How Tito Won the Presidency Again" *Islands Business*, April 2003). As the political game gets competitive, and as part of getting the necessary financial support, the involvement of external players will also increase.

The National Integrity System

Executive

The Constitution prescribes a Presidential system of Government headed by the Beretitenti (President), who is also Head of State. The Beretitenti is elected nation-wide from "not less than three nor more than four candidates" (S.32(2)), nominated by members of the Maneaba ni Maungatabu from amongst themselves. The Constitution also provided for the Kauoman ni Beretitenti (Vice President), who shall be appointed by the Beretitenti from among the Ministers.(S.39(2)). The Beretitenti, together with the Kauoman ni Beretitenti and not more than 10 other ministers, and the Attorney General make up the Cabinet, a constitutional body that is vested with the executive authority of the State and "shall be collectively responsible to the Maneaba ni Maungatabu for the executive functions of the Government." (S.45).

The vigorous (and sometimes, heated) debates in the Maneaba ni Maungatabu has been one of the clearest indicators that members of the Maneaba ni Maungatabu are monitoring the performance of the Government (Executive) and individual ministers. The Government is often questioned on its policies and practices in a number of key areas, while individual ministers were 'grilled' over the way implemented policies and their conducts. This monitoring role is made more effective by the fact that the debates and daily proceedings of the Maneaba ni Maungatabu are broadcast live on the national radio. There is a lot of interest by the public in the live broadcasts from the Maneaba ni Maungatabu and it is very common to find people sitting around their radios listening attentively to what was going on in the Maneaba ni Maungatabu, monitoring not only the performance of Government and its ministers, but also their representatives. The election loss by seven Ministers of the Tito-led Government in the General Elections of November 2002 can, to a large extent, be attributed to the people's knowledge of their performance and conduct from the broadcasted proceedings of the Maneaba ni Maungatabu.

However, a recent report on Kiribati Legislative Needs Assessment has pointed out that the Maneaba ni Maungatabu is falling short of fulfilling its oversight role in good governance, and especially in ensuring that Government is subject to greater scrutiny and accountability in its performance (Malifa 2001: 29). The report cited the Maneaba ni Maungatabu's failure to have the Auditor General's report debated as far back as 1993, and especially the fact that the 1999 Audit Report showed that between \$20-30 million is unaccounted for, yet "that Report, like the others before it, is unlikely to be debated by the Maneaba in its November session, or to be made public and revealed in the news media or the radio"(Malifa 2001:29), both of which are owned and controlled by Government.

The duality of the role of the Beretitenti as Head of State and Head of Government is an area of growing concern, as it "arguably blurs the separation of power in the major organs of the State, and can obviously mean there is no clear demarcation in the functions and roles of the Beretitenti as Head of State that is constitutionally apolitical, and in the political position of head of government."(Malifa 2001:42). It can, as the report goes on to point out, "certainly in some time or another, dent the integrity of the nation, and in the process open a hole into Kiribati democracy as to take it outside of, and away from mainstream governance, accountability and transparency."(Malifa 2001:42). Commenting on one consequence of this duality in roles, the Pacific Regional Security Report on Kiribati pointed out that when he operates as Head of Government, the Beretitenti operates "in a confrontational mode, which is why the Opposition feels aggrieved. They feel they have no neutral institution to turn to — no one to listen to them. The only alternative is to turn to the courts, which is a lengthy process and only adds to the frustration."(Van Trease 2002: 9)

Legislature

Article 52 of the Constitution provides for the legislature for Kiribati that is known as the Maneaba ni Maungatabu. In addition to its legislative function, the Maneaba ni Maungatabu also act as a check into the government administration of the Executive authority.

The key legal mechanisms which govern the Maneaba ni Maungatabu are the Constitution, the Rules and Procedures of the Maneaba ni Maungatabu, and the Elections Ordinance. The Constitution is the supreme law of Kiribati, which establishes the Maneaba ni Maungatabu as one of the three organs of the State under the separation of powers doctrine; the other two organs are the Executive/Cabinet and the Judiciary. The Rules and Procedures of the Maneaba ni Maungatabu regulates the conduct of the business of the Maneaba ni Maungatabu. The Electoral Ordinance prescribes for the election of members of the Maneaba ni Maungatabu.

A select Committee of the Maneaba ni Maneaba was established in 2001 to review its Rules and Procedures. When its report was tabled in 2002 there were many concerns that the final report was not really the Select Committee's, but the Government's. The Chairman of the Select Committee admitted Cabinet's heavy editing of, and addition to, the report when he told the present Parliament in its November 2003 sitting that the final report that was presented to the Maneaba ni Maungatabu was very different from their original report. One of changes introduced by the report was the new powers given to the Speaker who now has the power to dismiss Members of Parliament, among other things, after having been sent out by the Speaker for three times. There was an outcry by the public who saw this provision as removing "the people's power to elect and dismiss their member of Parliament through the ballot box." (Te Uekera, 23 November 2002).

The politics of consensus, which characterized the traditional maneaba system, has all but disappeared in contemporary Kiribati politics, and in its place, confrontational politics is now well entrenched, with its principle of "us and them"- the Government and Opposition. (Van Trease 2002:8). The division has often given way to a situation where motions were, as one member of Parliament puts it, "judged not on their merit but on the basis of who moves them" (Banuera Berina MP in a political campaign speech, Radio Kiribati, 12 May 2003). In other words, Government, which had the majority, would often opposed Opposition motions not because of their substance, but because the mover is from the opposing side.

The way party politics operated in the Maneaba ni Maungatabu had also undermined the Maneaba's role as the check and oversight into the Executive and governmental administration. The Legislative Needs Assessment Report has alluded to the "political domination by the Executive and Cabinet of the Maneaba which ensures [that] the latter is without real political power and greater capacity...to properly effect its check and oversight function." (Malifa 2001:2). In fact, there had been numerous cases when the Government would use its majority in the Maneaba to prevent certain important matters from being debated, and being put under close scrutiny by the Maneaba.

One means by which Parliaments exercise their check and oversight function is through Parliamentary Commissions of Enquiry. In Kiribati, there had been a number of such select committees or commissions of enquiry since 1995, but it is interesting to note that none of their reports had been tabled or debated in the Maneaba ni Maungatabu. This is notwithstanding that under the Rules and Procedures of the Maneaba ni Maungatabu, a Select Committee "shall as soon as it has completed considering a matter referred to it, report to the Maneaba." (r.55.5). One example of such reports was the Report of the Jasmine 9 Commission of Enquiry. The Jasmine 9 was a South Korean long-liner which was impounded by Kiribati authorities on 22 June 1998 for fishing illegally in Kiribati waters. The Report outlined a sequence of events, in which a Government backbencher was involved as a go-between the Korean owners and the Kiribati authorities. The sequence of events culminated in the planned escape of the Jasmine 9 on 18 February 1999 in which, as the Report claimed, was "knowingly or unknowingly aided and assisted" by a Government back-bencher named in the Report. The report found, among other things, that a Government backbencher had "either knowingly or unknowingly aided and assisted in the planned escape of the Jasmine 9." (Commission of Enquiry into the Escape of the Jasmine 9: Final Report).

Political Parties

Political parties have become entrenched in the Kiribati political scene. The last round of six elections in 2002 and 2003 have seen political factions on the floor of the Maneaba ni Maungatabu evolve into normal political parties with manifestos, structures and

membership beyond the Maneaba in the wider community. The two parties fund their activities through subscriptions from members (usually fortnightly or monthly contributions), donations from business houses and supporters, and loans from the Bank of Kiribati. These are well-known sources of funding, but there also sources which are not usually acknowledged in public, as often claimed by allegations and counter-allegations in the Maneaba.

In a lead up to the General Elections in November 2002, a photocopy of a Chinese embassy cheque in the amount of several thousands dollars was used by a Minister in the previous Government to pay for the uniforms for a soccer team from a village in his constituency. The writer sighted a photocopy of the cheque which was circulated around South Tarawa. The Minister was one of the two members from North Tarawa. He won his seat in the November 2002 election, but lost in 2003. The cost of the uniforms was less than a thousand dollars, and the change was paid to the Minister to pay for other projects, including a small seawall project. The fact that a cheque from the Chinese Embassy was used gave rise to allegations that the Chinese provided the funds for the Government party at the time (Maneaban te Mauri). In the last session of the Maneaba ni Maungatabu, the former Beretitenti, Mr Teburoro Tito claimed that the party now in power (Boutokaan te Koaua) received funding from Japanese businessmen, whom the BTK party leaders met with in Majuro, Marshall Islands. The present Opposition has filed an electoral petition which involved the hiring of a New Zealand-based lawyer, and the bringing into Tarawa of some 20 witnesses from the outer islands; meaning that the party must have spent a substantial amount of money. The respondent's (Beretitenti) party hired local lawyers and brought in less than 20 witnesses for whom they paid fares and \$20 subsistence per diem allowance each. For these expenses, each party member is to fork out \$300 as a contribution to the costs of the case. (Bakeeua, [pers.comm.](#) 28 September 2003).

Whether the allegations of foreign funds are proven or not, it is important to recognize the fact that as the party machineries get well organized, it will attract funding from sources within and outside the country. These donations are not free, but come with strings which may have ramifications on other areas. After some 24 years after independence, times have changed and due recognition should now be given to political parties so that appropriate disclosure and other provisions can be put in place.

Electoral Commission

The Kiribati Constitution (Ss. 61,62 and 63) provides for the Electoral Commission, which consists of the Chief Electoral Commissioner and not less than two nor more than four commissioners. The Head (Chief Electoral Commissioner), and members of the Commission, are appointed by the Beretitenti (President), acting in accordance with the advice of the Cabinet.

It is clear from the above that the Electoral Commissioner is directly accountable and answerable to the Beretitenti, who, given the duality of his role, is not apolitical as a Head of Government. Without its independence to act reasonably in the performance of its functions and purposes, the potential is there for the commission to be stacked with sympathizers and supporters of the Government of the day.

Apart from statistical reports on elections and report on the number of electoral districts (the last one being in 1998), the Commission rarely produced any report on the conduct of elections etc. No attempt has been made by the Commission to address recent developments, e.g foreign assistance, in the way elections are contested in Kiribati.

Supreme Audit Institution

The Constitution (S.114(4)) provides for the Auditor General to be fully independent in exercising his/her functions. Although the Auditor General is appointed by the Beretitenti acting on the advice of the Public Service Commission, it is clear, from looking at the backgrounds of those who have held the office of auditor general, that the appointment had been based on professional merit. All those who have held the position of auditor general since independence in 1979 have had either considerable experience in the Audit Office (now known as Kiribati National Audit Office) or relevant professional qualifications, or, in most cases, both. The Auditor General is protected from removal without relevant

justification. The appointee can only be removed on the advice of the tribunal appointed by the Beretitenti. The provision pertaining to the removal of the Auditor General has never been invoked.

The Government of Kiribati's response to UNDP Good Governance's Stocktake Questionnaire on Principles of "Best Practice" for Public Accountability acknowledged that the Auditor-General's independence "is not fully achieved as his budget, as well as the recruitment of his staff are controlled by the Ministry of Finance and Economic Development and the Public Service Commission." (Ministry of Finance and Economic Planning 2001). Because of these controls on the Kiribati National Audit Office, it can be argued that full deployment of resources to enable the Auditor-General to exercise his functions may be constrained due to insufficient provisions (from the Ministry of Finance) and delays in the recruitment of additional staff when required.

As required under S. 114 (3) of the Constitution, the Auditor General submitted his reports to the Maneaba ni Maungatabu, where they are tabled. The general practice is for the reports to be referred to the Public Accounts Committee, which scrutinised and then presented its own report on the Auditor General's report to the Maneaba. Because the Rules and Procedures of the Maneaba ni Maneaba does not provide for the Report to be debated, it was merely tabled and subsequently passed over without any further debate or Maneaba scrutiny. The 1999 Report of the Auditor General, as pointed out above, showed that between \$20-30 million of public funds was unaccounted for, yet there was very little debate on it. In the subsequent national Budgets, no mention of the missing vouchers was made, and the estimated overall unaccountable amount resulting. So also was the Public Accounts Committee unable to verify or check with the Accountant General why financial records and vouchers were missing. The PAC, whose membership was drawn exclusively from one party, the Government MTM Party and the Chair being also chair of the same party, seemed to have seen its role chiefly as "an institution set up to review or report favourably [on] the finances of the government of the day vis-à-vis the Auditor General's Report." (Malifa 2001:30).

Judiciary

The judiciary is fully independent, and no undue influence or pressure has been exerted on it in the performance of its functions under the Constitution. As one of the three organs of the State under the separation of powers doctrine, the Judiciary is independent of the other two organs, the Executive/Cabinet and Legislature/Maneaba ni Maungatabu. The officers of the Judiciary, i.e the judges and magistrates, are appointed on merit. The Kiribati Constitution (Art.81(3)) prescribes the qualification for appointment as Chief Justice and other judge of the High Court as having "held office as judge in any country or has been qualified for not less than 5 years to practise as a barrister or solicitor." Appointees are protected from removal without relevant justification. According to the Kiribati Constitution (S.83) judges of the High Court can be removed before the expiry of their term only on the recommendation of an independent tribunal of inquiry, and only on grounds of incapacity, or inability to perform functions of the office, or conduct unbecoming. Since Independence in 1979, there had been no instance when judges of the High Court were removed before the expiry of their terms. It is worth noting that after some 24 years of independence, the office of Chief Justice had still not been localized. In a small island environment, this is perhaps a good thing in so far as preserving the independence of the High Court as perceived by the people. In 2002, a veteran I-Kiribati lawyer with some twenty years experience as the country's attorney general was appointed Judge of the High Court. Because of his affinal relationship with the Beretitenti, the Opposition party questioned the appointment in Parliament, alleging nepotism on the part of the Beretitenti. (Boutokaan te Koaua newsletter March 2002).

Apart from cases of embezzlement and fraud by public employees, there had not been any instances of successful prosecution of corrupt senior officials in the past 3 years, although there had been allegations of corrupt practices by some senior officials and even ministers. For example, in 1995 there were allegations of corrupt practices against the Minister of Line and Phoenix Group in relation to the procurement of a generating plant for Christmas Island. A Parliamentary Commission of Enquiry was set up to investigate the matter. The report of the enquiry was never tabled in Parliament, and no follow up action was ever taken. (Hon. Tetabo Nakara, personal communication, 19 January 2004).

Civil (Public) Service

The public sector includes government ministries, local government and public enterprises. There are 20 main government agencies (including 12 ministries), 28 government-owned and controlled businesses and four commercial joint-ventures and 21 local government bodies. (ADB 2002:73). The public sector accounts for two-thirds of formal employment and almost 80 percent of total wages and salaries.(ADB 2002:73).

The performance of the public sector is regulated and guided by government publications such as budget document, the National Development Strategies and the National Conditions of Service. Although, there is a marked improvement in the qualifications of public servants as evident in the growing number of university graduates in the service and senior officials with postgraduate qualifications, there are culturally-derived informal understandings by public servants which are markedly different from formal rules as set out in official publications. These informal understandings appeared to have been more influential than the formal rules, and they have the effect of representing a constraint on raising formal performance standards that may prevent significant or sustained change, and on strategies for improving public sector performance. Examples of these informal understandings according to the Asian Development Bank 2002 report are that:

employment in the public sector is a way of distributing government income through the extended family rather than a contractual obligation to work;
nonperformance of work obligations will be tolerated if it is not too obvious;
private enterprise is to be treated with caution bordering on noncooperation:
information is not to be shared unless asked for, and then only sparingly; and
issues are not best confronted and problems are best left to solve themselves.(ADB 2002:72).

The perception of employment in the public sector as a way of distributing government income through the extended family, can be used by those in positions of authority to justify nepotism and the appointment of their close relatives.

The second last bullet point, i.e general reluctance to share information, has the effect of discouraging a culture of 'whistle-blowing' which in turn affect the reporting of public servants involved in bribery and corrupt practices. In an essentially egalitarian cultural environment of Kiribati, to report on others (even those who engage in corrupt practices) can easily be construed as one's attempt to promote him/herself at the expense of those he/she reported.

There are no specific laws establishing criminal and administrative sanctions, apart from the Penal Code. The National Conditions of Service provides for disciplinary actions in cases against public servants involved in bribery and corrupt practices. It also provides for the political independence of public servants by prohibiting their involvement in politics. In practice, public servants' involvement in politics can be seen to be a rather vague area which has not been defined precisely. Apart from NCS provisions relating to General Elections and the candidacy of public servants, other forms of political involvements (e.g overt support for a political party etc.) are not addressed, and this could lead to a situation where the independence of the public service is compromised.

The same report also commented at length on the ineffective supervision of public enterprises, which in 2002 received a total of \$14.6 million in subsidies. Despite vigorous monitoring of the financial records by the Auditor-General, there is only partial follow-up by boards and management of adverse findings. This is reflected "in the repetition from year to year of adverse findings on the same matter and high incidence of qualified audit opinions."(ADB 2001:91). A qualified audit opinion is provided when the auditor-general is unable to satisfy himself/herself as to the reliability of the accounts.

Police and Prosecutors

The Kiribati Police Force is an independent body with 1 policeman/woman for every 222 people. Regular police officers are augmented by 167 special constables, which reduces the police/people ration to 1 to 152. (Kiribati Government, 2004). Although the Force works effectively to maintain law and order in the country, there are concerns about the need for improvement in a number of areas where the Force seems to be ineffective. One such area is the traffic in South Tarawa, where the Traffic laws relating to speed limit and other areas are often not enforced because the Force does not have the capacity to do so.

In the area of investigation of complaints, most people interviewed during the research for this paper complained about the inefficiency of the Police Force in this area. For example, the author's wife lodged a complaint with the Police station in Bikenibeu against a driver from the Otintaai Hotel, who recklessly reversed his mini-bus into her car. The complaint was lodged in March 2003 and it is still pending. When she last checked in November 2003, she was told that the officer working on the case had misplaced the papers. A bus owner owning a fleet of 15 buses complained that she had to wait for many months before insurance claims on her bus is paid. The delay was due to the slowness of police investigation work.

Visitors to Tarawa, who have returned after several years overseas, have often observed the decline in police standards, and have commented on the untidiness of their uniform. The question is: Is this an outward expression of their low morale.

The Commissioner of Police is independent, and is appointed by the Beretitenti "acting on the advice of the Cabinet tendered after consultation with the Public Service Commission. Section 101 (4,5) of the Kiribati Constitution sets out the procedure and the grounds for the removal of the Commissioner. With regards avenues for complaints against the police, although police officers are often vulnerable to bribery and corrupt practices, there are at present no independent mechanisms dedicated to handling complaints of corruption against police. Lastly, the public prosecutors in Kiribati are independent.

Public Procurement

The Public Procurement Act was enacted in 2002, and it provides, among other things, guidelines and regulations governing all government procurements of goods and services. The Act provides for two Procurement Committees: one for amounts between \$5000 to \$50000 comprising the Permanent Secretary for Finance, who chairs the Committee and three other members from outside the Ministry of Finance; and the Central Procurement Review Board which decides on larger procurements valued over \$50,000 and chaired by the Office of the Beretitenti. The Act seems to be working well, although it is early days yet before its relative weaknesses and strengths, especially in the context of Kiribati, are fully identified.

Ombudsman

Kiribati has not established the Office of the Ombudsman or its equivalent (i.e an independent body to which citizens can make complaints about maladministration) despite the fact that there have been requests for the establishment of the Ombudsman. (In the 1977 Constitutional Convention, a meeting which the discussed the shape and provisions of the constitution of the new nation, the issue of the Ombudsman was raised by representatives of I-Kiribati students studying outside Kiribati as one of the means of giving meaning to the fundamental human rights provisions of the Constitution).

Investigative/watchdog agencies

There are no investigative/watchdog agencies (e.g an Anti-Corruption Bureau) in existence in Kiribati at the present time.

Media

The Kiribati Constitution (s.12) guarantees freedom of speech and of the press. Moreover, the BPA Act which set up the Broadcasting and Publication Authority provides for it to carry and broadcast all kinds of stories and news, including those on corruption. However, another recent legal measure has been described by the Pacific Islands News Association President as 'draconian' and as something that would 'stifle freedom of expression.' These comments were made with respect to the June 2002 passing of the Newspaper Registration Amendment Act. This amendment now requires newspapers publishing stories directed at individuals to carry that person's reply in the same article. If they do not, then the Registrar can fine the newspaper A\$500, or s/he may deregister the newspaper.

In terms of the spread of media in Kiribati, out of the three weekly publications, one is published by the Government-owned Broadcasting and Publication Authority, one is owned and published by the Kiribati Protestant Church and the third one by a private company. However, it also has to be noted that while the spread of media ownership is not restricted, Government has not been very forthcoming to private media companies – with one private radio station being made to wait for three years before its license to broadcast was finally issued. (PINA News On-line, August 11, 2001).

With regards to the freedoms given to government owned media, while publicly-owned media can and have often covered views of government critics, it is important to note that greater coverage is generally given to government views. The weekly newspaper, Te Uekera therefore carries a four page information newsletter issued by the Office of the Beretitenti which carries stories that are heavily pro-government.

Moreover, there are provisions in the BPA Act for the Government to stop stories from going to press under the pretext that it would not be 'in the national interest.' Journalists are strongly aware of the reality of censorship, and may fear retaliation. This has meant that there is little investigative reporting to do with issues of corruption in the Kiribati media.

Civil Society/Private Sector/NGOs

In the context of Kiribati, where the Government is a dominant actor, civil society is often understood as a grouping of religious bodies, lobby/interest groups, the private sector and non-governmental organizations.

There is no Freedom of Information Act, but civil society may request access to any information and documents it required from any public authorities, including government ministries. But, the actual experience from those from civil society who had tried to get access to information and documents has been one of frustration. The officials from whom access is requested would often be indifferent, and would ask a lot of questions which has the effect of making the person requesting the information or document feel that he is meddling in something in which he has no right. One of the reasons for public officials' non-cooperative attitude is their fear of being disciplined for disclosing information.

There are no citizen's groups monitoring the government's performance in areas of service delivery, but the people through their Members of Parliament would often raise the issue of the government performance in the areas of service delivery as it relate to their different islands/constituencies.

Civil societies and Citizen's groups have the right and can regularly make submissions on proposed legislation. Section 68 (3) of the Kiribati Constitution provides that "The Maneaba shall not proceed on a Bill after its first reading in the Maneaba until after the next following meeting of the Maneaba..." This provision provides the opportunity for people and civil society to make submissions on the proposed legislation.

While people and citizen's group can and have in fact exercised their rights to make submissions on proposed legislations, it should be noted that the consultation implied in S.68(3) of the Constitution has largely been in the form of 'for information only' with very little submission from the people. In addition, the proviso to s.68(3) which allow for the

finalization of the Bill in the same sitting of the Maneaba when certified as urgent by the Beretitenti (s.68(3a), or if the Maneaba “expressly resolves, by a majority of all the members of the Maneaba, to proceed with the consideration of the Bill” (s.68(3b), can easily, and have on many occasions been used, to exclude submissions from people and citizen’s groups. Thus, the provision that bills be circulated as provided for in the Constitution has not really resulted in greater popular and island council involvement in law-making.

Traditional Organisations

The most influential traditional organization in Kiribati is the Botaki ni Unimwane (Council of elders), which are island-specific, and their influence rarely extent outside their island. They are not viewed as part of the National Integrity System. Despite the influence of the Botaki ni Unimwane in each island, there is no legislation that recognises their influence.

The Botaki ni Unimwane, can from time to time call for funds to be raised through financial contributions from each member (normally adult members) of their island. Such contributions are normally kept in bank accounts under the name of the island or the council of elders, and they are not subject to external review or audit. Neither do they have any part in controlling corruption in other bodies.

As guardians of Kiribati culture, the council of elders uses the force of culture as the informal anti-corruption measure that they apply to their own members and to those under their authority. Awareness of Kiribati cultural norms, which generally abhors stealing and corrupt behaviour, and people’s possible reaction to their breach, is a deterrent to the commission of such behaviour. But times have changed and the odium of such misconducts have lost their force.

The meetings of the Botaki ni Unimwane are usually open to all members of the community, but no one, apart from the elders, is allowed to speak unless invited by the elders. To speak without the elders’ permission is considered a very serious breach of protocol, which may result in some kind of sanctioning by the elders. The media rarely cover the meetings of the elders, because such meetings are often regarded as community meetings to which outsiders are out of place.

Regional and Local Government

Each inhabited island in Kiribati, with the exception of Kiritimati, has a local government authority in the form of an island council. Island Councils are regulated by the Local Government Act 1984. The following offices at local (i.e island) level are appointed, and funded, by national government: Clerk to Island Council, who is the Chief Executive of the Council; Council Treasurer, who is responsible for the financial affairs of the Council; Island Project Officer, whose main responsibility is to assist council in the preparation and management of its development projects. Island councils normally appoint and fund assistants to each of the national government-appointed officials. There are other national government-appointed public servants who are based on each outer island, but directly responsible to their respective ministries rather than Island councils. They are: teachers, police, nursing officers and agricultural officers.

There are no disclosure provisions on nepotism, conflict of interest, gifts and hospitality and post public office employment operating at local and regional level. Apart from the Kiribati National Audit Office, which, from time to time, carries out the auditing of island council accounts, there are no national agencies with a remit to deal with corruption work at island level. There are no specific agencies dealing with corruption at island and regional levels.

Progress with Government Anti-Corruption Strategy

Government has not announced a comprehensive anti-corruption strategy yet, but it is moving towards it, albeit in a rather piecemeal manner. A Public Contracts Act, which provides for rules and procedures pertaining to Government contracts was enacted in last meeting of the Maneaba ni Maungatabu in November 2003. Earlier, in his policy statement at the opening of the 8th Parliament in September, President Aote Tong stated his

government's wish to introduce the Leadership Code during the life of the current Maneaba (Parliament). No specific time-frame for the introduction of that important anti-corruption initiative has been announced.

Donor Anti-Corruption Initiatives

No multilateral donor agency is based in Kiribati, but bilateral agencies such as AUSAID and NZAID are present through their resident diplomatic missions. The Embassy of the People's Republic of China (until November 2003), the British High Commission and ROC/Taiwan Embassy (from November 2003) also host the bilateral aid programme of their respective governments.

Although, AusAid and NZAID have no projects which are specifically concerned with anti-corruption, both major resident donors are concerned with good governance and accountability. Standard project documents from both donors have included anti-corruption clauses, which prohibit the use of funds from the project for corrupt and improper purposes. AusAid has an on-going project in the area of capacity building in financial management, information systems and customs revenue collection and management.

Both AusAid and NZAID have on many occasions cooperated and coordinated their activities. One current example is the present Kiribati Education Sector Programme where Australia and New Zealand are working very closely with local stakeholders in monitoring the multi-million educational project.

Future Research and Donor Support

The research for this report has identified the following key areas and issues in terms of corrupt activities that require immediate attention:

- public education programmes designed to heighten people's awareness of what constitute corruption in the Kiribati context;
- research into the extent of nepotism and cronyism;
- formulating an Anti-Corruption strategy for Government;
- is there a need for the Ombudsman in Kiribati?

A lot has been said from both sides of the Maneaba ni Maungatabu about involvement of external funding in the last round of elections. There is a need for more in-depth study of political parties' external connections: Which countries/organizations are involved? How much funding was involved? What are the interests of these external actors in Kiribati? and so on.

There had been different anti-corruption measures implemented in recent years, probably in response to perceived, alleged or actual instances of corrupt practices. These included, among others, legislations (e.g The Public Procurement Bill 2002), and new procedures such as the introduction, albeit informal, of rules and register of gifts by cabinet ministers in the previous government. Given the existence of corruption at different levels, more effort beyond the present piecemeal and somewhat reactive approach is required in the form of an overarching Anti-corruption strategy. As a prerequisite for a comprehensive Anti-corruption strategy, there is a definite need for corruption in its entirety and different levels/manifestations to be understood, and more importantly, that this understanding be shared as widely as possible within the government and in the wider public.

Anti-Corruption Activities

The present Government claimed to be committed to good governance as implicit in its policy of "tibwabwaan te kabwaia nte Tautaeka ae anaaki nte eti ao te riai" (literally: the distribution of national benefits through a government based on good governance). It has signaled its intention to introduce the Leadership Code during the life of the present Parliament, and has begun with the repeal of the Beretitenti (Immunities from Civil Proceedings) Act of 1997, the enactment of Public Contracts Act 2003. On the basis of its pronouncements, and the introduction of the Newspaper Registration Amendment Bill in the last meeting of Parliament, the Government is duty-bound to spell out its anti-corruption strategy, and in particular, its component parts - the different legislations, policies and structures. It is hoped that in the three legislations that it has, or in the process of enacting, this is just the beginning in the long process of implementing a series of anti-corruption measures. An effective public education programme is needed to help dispel some of the prevailing attitudes that discourage a culture of 'whistle-blowing' and reporting of corrupt practices.

Overview of Government's reforms

No reforms specifically relating to anti-corruption has been carried by Kiribati Government. There is however, an on-going public sector reform that contributes, among others, to governance, accountability and anti-corruption strategies.

One of the 3 key structural policy issues that the National Development Strategies 2000-2003 identified as affecting national development, which must be addressed is Public sector reform. The main elements of the reform are:

- Full institutionalisation of the output budget system, including the introduction of performance based contracts and effective performance monitoring;
- Implementing a Strategic Management Information System to aid budget management, monitoring and control;
- Restructuring (right-sizing) of government ministries to concentrate on core functions and a more efficient and effective delivery of outputs in accordance with performance standards;
- Establishment of clear priorities to assist in effective resource allocation;
- Privatisation of Public Enterprises and/more rigorous enforcement of commercial management and operational practices;
- External borrowing only to be incurred for investment projects that are consistent with national policy objectives, have been appraised to ensure that an acceptable rate of return will be achieved, and which are sustainable in terms of technical, human and financial resource use; and
- Maintaining prudent fiscal management. (Republic of Kiribati 2000:6).

The NDS admitted that for the Public Sector reform to be successfully implemented there will have to a high level of commitment on the part of political leaders and government administrators, as well as the acceptance and support of the public at large.

Apart from work on strengthening the Government's output budgeting and financial management system, which continued under an Australian aid project, the updating and strengthening of procurement procedures in the public sector through the enactment of the Public Procurement Act 2002, there has been very little progress in the Public Sector reform. The new National Development Strategies 2004-2007 has continued with the reforms.

Assessment of Progress

One of the reasons for slow progress with public sector reforms, and especially the restructuring or 'right-sizing' of government ministries and the privatisation of Public Enterprises, is the reluctance by government to put jobs at risk. As pointed out by the Asian Development Bank study (ADB 2000), employment in the public sector is generally perceived as a way of distributing income, and as such any right-sizing would result in the loss of jobs. Likewise, privatisation of public enterprises is also perceived to be something that would result in job loss, especially when the new owner (who is not Government, but

a private company) is not committed to the need to distribute income. In the early 1990s Government offered a number of public enterprises such as Kiribati Supply Company Ltd and Otintaai Hotel for sale. Several overseas and local businessmen bided but the deals fell through, partly because of a cultural factor and partly because of the terms offered by Government were not attractive enough.(Mackenzie 1995:266-267). The main cultural factor which constitute a constraint on privatisation is the reluctance to work for individuals as this is seen, in the context of an egalitarian society like Kiribati, to be degrading. Successive Kiribati government have paid lip-service to privatisation. Teburoro Tito's government declared a moratorium on privatisation in 1995 pending a careful review of the wider implications of the policy (Mackenzie 1995: 267).

Other elements of the reform appear to be not as difficult and problematic, at least from a cultural perspective, as the two components cited above, and some progress may be achieved during the life of the current National Development Strategies. The component, Maintaining prudent fiscal management, is the subject of an on-going Australian-aid project, 'Management information service'. Now in its second phase, the \$2.7million project will extend the new accounting system to other line ministries and continue to provide training in output budgeting, accrual accounting and management. The outcome will be increased accountability, more effective government spending and better use of donor resources. (AusAID n.d :2).

Overview of donor anti-corruption initiatives

While all donors to Kiribati shared an interest in seeing their aid funds used for the purpose it was intended rather than being used for corrupt purposes, it is interesting to note that none of the major aid donors to Kiribati have taken corruption head on with their projects. Maybe this is a good sign that corruption may not be a serious concern as in other countries, and that there are other priority needs that have to be addressed. Apart from New Zealand provision in its project document that prohibits the use of funds provided for corrupt purposes, and Australia capacity building projects in the area of public sector reforms, there is very little donor activities in the area of anti-corruption in Kiribati.

Assessment of priority areas, activities and issues

There are four priority main areas/issues which need to be addressed:

- Public education and awareness raising
- Capacity building
- Enforcement of laws
- Facilitation of integration of NIS

Public and community awareness is of critical importance in the success of a major undertaking, such as the present attempt to combat corruption, which seeks, in some part, to challenge prevailing practices and promote new changes in the way people behave and habitually do things. It is hoped that greater awareness of corruption and how it affects government, communities and individuals will lead to a general support for a national strategy for dealing with corruption.

The focus of the public education should be on the development of a campaign that target a broad section of the community via radio, news print, workshops, community plays, and even through formal education, in schools.

Institutions/organisations in Kiribati society which play a crucial role in combating corruption need to be identified and their capacities built and strengthened. One such organization is the Kiribati Police Force, whose capacity need to be built in areas such as the detection and investigation of corrupt activities. A survey identifying capacity building needs of different organizations/institutions which play important roles in combating corruption needs to be done, and on the basis of its findings, a programme of capacity building can be put in place.

A number of laws relating to corrupt activities exist, but they are not being enforced due to a number of reasons, which include, among others, lack of capacity. There is thus a need for a comprehensive review of all laws dealing with different aspects of corruption with a view to updating them and making them more enforceable.

Finally, and in the long term, there is a definite need for the integration of the National Integrity System. A national consultation, bringing together all the relevant organizations and institutions, and based along the lines of the questionnaire in Appendix 1, can be a useful starting point. By discussing their specific roles in controlling and combating corruption in a consultative manner with like-minded actors and organizations with related roles, different organizations will come to understand the broader picture and the different roles that each can play in it.

Key Issues

The National Integrity System (the NIS)

Kiribati has a relatively good framework of laws which establish and regulate institutions, as well as promoting good governance, transparency and accountability. But, these laws would need to be reviewed and updated with the view to making them more effective and enforceable. Each of these laws (and this also applies to institutions, organizations and established procedures) seems to work well in their own specific areas quite independently of other pillars of NIS. Thus, for Kiribati, the main issue insofar as NIS is concerned is the fact that its main components or pillars are not effectively integrated. This lack of integration affects the effectiveness of the system. It has been suggested in the previous section that one way of integrating NIS is to start with a national consultation which brings together institutions which are normally part of NIS, and get them to discuss their roles in a consultative manner. The outcome of this should be a shared vision of NIS with each 'pillar' supporting it. On the basis of this shared vision, institutional arrangements for NIS are made.

One important pillar of NIS which is not present in Kiribati at this time is the Office of the Ombudsman. There has been a lot of interest in this important office, and with increasing complexity of the ordinary citizen's relations and interaction with the State in Kiribati, perhaps the time is now right for this office to be established.

Effectiveness of Government and Donor-Supported Activities

The present Government has undertaken a series of important anti-corruption initiatives on its own without assistance from the donors, whose priorities are still largely in areas/issues other than anti-corruption strategies and good governance. There is room for an effective partnership between Kiribati Government and donors in the area of anti-corruption strategies, but it is important Kiribati drives the initiative rather than donor imposing it on Kiribati. Kiribati has worked effectively with donors in other areas of development.

Priorities and Recommendations

As pointed out above, there are four main priority areas/issues which need to be addressed:

- Public education and awareness raising
- Capacity building
- Enforcement of laws
- Facilitation of integration of NIS

In addition, to these four areas it is recommended that attention is given to the establishment of the office of the Ombudsman in Kiribati. This is an important 'pillar' of NIS, which has been absent from Kiribati for so long.

Appendix 1 - Questionnaire

Executive

Can citizens sue government for infringements of their civil rights?

Legal and formal position

Yes, citizens can sue government for infringement of their civil rights. To facilitate citizen's rights to sue government, the State provides legal aid through the People's Lawyer, which has an establishment of 5 lawyers in 2003.

What actually happens

While citizens can sue government for infringement of their civil rights, most citizens do not take advantage of this right because they do not know they have the right. The Beretitenti (President) has been immune from civil action as provided for in the Beretitenti (Immunities from Civil Proceedings) Act of 1997. However, the new Government of President Anote Tong, which came into power in July 2003, has repealed the Act in its very first Parliamentary sitting in September.

Are there procedures for monitoring of assets, including disclosure provisions?

Legal and formal position/What actually happens

There are no procedures for monitoring of assets, including disclosure provisions, for cabinet ministers and high level officials.

Are there any differences in procedures and disclosure provisions between elected ministers, appointed ministers and high level officials?

Legal and formal position/What actually happens

There are no differences in procedures and disclosure provisions, which at the moment are non-existent.

Are there conflict of interest rules?

Legal and formal position/What actually happens

There are at present no conflict of interest rules for ministers or high level officials. Because of this, there had been allegations of ministers having interests in companies winning contracts for development projects. For example, it was alleged a number of times in Parliament that one of the ministers in the previous Tito government was a partner in an electrical contracting company which won the contract for electrical work for Junior Secondary Schools in the outer islands. (Boutokaan te Koaua newsletter, September 2002).

Are there rules and registers concerning gifts and hospitality?

Legal and formal position/What actually happens

Although there are no formal rules concerning gifts and hospitality, there have been some attempts to address this issue, albeit informal, by the previous government of President Teburoro Tito, especially in relation to disclosure of gifts and hospitality by cabinet

ministers is concerned. The register for cabinet ministers is kept up to date by the Secretary to Cabinet. There was no register of gifts and hospitality for high level officials.

Are there restrictions on post ministerial office employment?

Legal and formal position/What actually happens

There are no restrictions on post ministerial employment as far as ministers and high officials are concerned.

Are members of the executive obliged by law to give reasons for their decisions?

Legal and formal position

Ministers are not obliged by law to give reasons for their decisions.

What actually happens

Although ministers are not obliged by law to give reasons for their decision, they, in fact, are obligated through the Parliamentary process, especially in response to questions raised by Members of Parliament.

Do ministers or equivalent high level officials have and exercise the power to make final decisions in ordinary contract award and licensing cases? Is this power limited to special circumstances?

Legal and formal position

Ministers and high level officials have no final say in final decisions in ordinary contract award and licensing cases.

What actually happens

In practice, ministers can influence the final decision on ordinary contract award as evidenced in the number of allegations made in Parliament about contracts awarded to companies connected to ministers.

Are there administrative checks and balances on decisions of individual members of the executive?

Legal and formal position/What actually happens

There are no administrative checks and balances on decisions of individual members of the executive.

Legislature

Is the legislature required to approve the budget?

Legal and formal position/What actually happens

Yes, the Maneaba ni Maungatabu (Kiribati Parliament) is required under Section 109 of the Kiribati Constitution to approve the Budget.

Are there significant categories of public expenditure that do not require legislative approval?

Legal and formal position/What actually happens

No, there are significant categories of public expenditure that do not require legislative approval. All public expenditures require legislative approval.

Are there conflict of interest rules for members of Parliament?

Legal and formal position/What actually happens

There are, at present, no conflict of interests rules for Parliamentarians. Unlike public employees, who are not permitted to take up private employment, or engage in private business, trade or commercial undertakings while being employed by Government or Statutory Corporations (s.D16 National Conditions of Service), members of Parliament are not prevented from engaging in private business and trade. These activities have the potential to create a conflict of interest.

Are there rules and registers concerning gifts and hospitality for parliamentarians?

Legal and formal position/What actually happens

No, there are no rules and registers concerning gifts and hospitality for parliamentarians.

Are there restrictions on post legislature employment?

Legal and formal position/What actually happens

There are no restrictions on post legislature employment. It is very common in Kiribati for members of parliament who failed to win re-election to return to their pre-legislature occupations after their terms in Parliament.

Elections

Is there an independent Electoral Commission?

Legal and formal position/What actually happens

The Kiribati Constitution (Ss. 61,62 and 63) provides for the Electoral Commission, which consists of the Chief Electoral Commissioner and not less than two nor more than four commissioners.

Who appoints the Head of the Commission?

Legal and formal position

The Head, and members of the Commission, are appointed by the Beretitenti (President), acting in accordance with the advice of the Cabinet.

What actually happens

The formal position with regards to the appointment of the Head and members of the Electoral Commission has the potential to lead to a situation where the Commission is stacked with sympathisers of the Government of the day.

Political Party Funding

Are there rules on political party funding?

Legal and formal position/What actually happens

There are currently no rules on political parties funding, although it is common knowledge that both parties (Boutokaan te Koaua and Maneaban te Mauri) receive substantial donations from businesses and private individuals. There had been allegations and counter allegations made in Parliament by the two major political parties of donations from foreign organisations and governments during the last 2002/2003 general and presidential elections. (Minutes of the Second Session of the 8th Maneaba ni Maungatabu, 15 to 29 November 2003).

Are substantial donations and their sources made public?

Legal and formal position/What actually happens

There are no rules requiring political parties to make public sources of substantial donations that they receive.

Are there rules on political party expenditures?

Legal and formal position/What actually happens

There are no rules on political party expenditures.

Are political party accounts published?

Legal and formal position/What actually happens

Political party accounts are not published.

Are accounts checked by an independent institution, are they published and they submitted to parliament?

Legal and formal position

Political party accounts are not checked by an independent institution. Such independent institution is not in existence. Neither are political party accounts required to be published nor presented to parliament.

Supreme Audit Institution

Is the auditor general independent?

Legal and formal position/What actually happens

The Kiribati Constitution (S.114(4)) provides for the Auditor General to be fully independent in the exercise his/her functions.

Is the appointment of auditor general required to be based on professional criteria/merit?

Legal and formal position/What actually happens

Although the Auditor General is appointed by the Beretitenti (President) acting on the advice of the Public Service Commission, it is clear, from looking at the backgrounds of those who have held the office of Auditor General, that the appointment had been based on professional merit. All those who have held the position of auditor general since independence in 1979 have had either considerable experience in the Audit Office (now known as Kiribati National Audit Office) or relevant professional qualifications, or, in most cases, both.

Is the appointee protected from removal without relevant justification?

Legal and formal position/What actually happens

The Auditor General is protected from removal without relevant justification. The appointee can only be removed on the advice of the tribunal appointed by the Beretitenti. The provision pertaining to the removal of the Auditor General has never been invoked.

Is the office of Auditor General adequately resourced?

Legal and formal position

The Kiribati National Audit Office is adequately staffed by people with relevant qualifications. The establishment register shows the number of staff at KNAO to be 51. Of this, 27 have relevant professional qualifications and experience. In a recent review of the Public Service, almost all of these positions were upgraded (Public Service Office, 2002, Establishment Register).

Are all public expenditures audited annually?

Legal and formal position/What actually happens

] All public expenditures are audited annually, except for the accounts of Public companies.

Is reporting up to date?

Legal and formal position/What actually happens

Reporting is up to date.

Are reports submitted to a Public Accounts Committee and/or debated by the legislature? Are they acted on by the government?

Legal and formal position/What actually happens

Reports are submitted to the Public Accounts Committee, but are not debated by the Maneaba ni Maungatabu. Because they are not debated, action by the government on the reports is minimal.

Are all public expenditures declared in the official budget?

All public expenditures, i.e those made by ministries and government departments, are declared in the official budget, except for expenditure by state-owned companies, whose expenditures are not declared in the official budget.

Judiciary

Have the courts the jurisdiction to review the actions of the executive?

Legal and formal position/What actually happens

The courts do not have the jurisdiction to review the actions of the executive.

Are judges/investigative magistrates independent?

Legal and formal position/What actually happens

Judges and investigative magistrates are independent.

Are appointments required to be based on merit?

Legal and formal position/What actually happens

The appointment of judges and magistrates are required to be based on merit. The Kiribati Constitution (S.81(3)) prescribes the qualification for appointment as Chief Justice and other judge of the High Court as having "held office as judge in any country or has been qualified for not less than 5 years to practise as a barrister or solicitor."

Are the appointees protected from removal without relevant justification?

Legal and formal position/What actually happens

Appointees are protected from removal without relevant justification. According to the Kiribati Constitution (S.83) judges of the High Court can be removed before the expiry of their term only on the recommendation of an independent tribunal of inquiry, and only on grounds of incapacity, or inability to perform functions of the office, or misbehaviour.

Are recruitment and career development based on merit?

Legal and formal position/What actually happens

Recruitment and career development of judges and investigative magistrates are based on merit.

Have there been instances of successful prosecution of corrupt senior officials in the past 3 years?

Legal and formal position/What actually happens

Apart from cases of embezzlement by public employees, there had not been any instances of successful prosecution of corrupt senior officials in the past 3 years, although there had been allegations of corrupt practices by some senior officials and even ministers. For example, in 1995 there were allegations of corrupt practices against the Minister of Line and Phoenix Group in relation to the procurement of a generating plant for Christmas Island. A Parliamentary Commission of Enquiry was set up to investigate the matter. The report of the enquiry was never tabled in Parliament, and no follow up action was taken. (Hon Tetabo Nakara (who at the time was Secretary of the Commission of Enquiry), Personal Communication, 19 January 2004).

Civil Service

Are there laws establishing criminal and administrative sanctions for bribery?

Legal and formal position/What actually happens

There are no specific laws establishing criminal and administrative sanctions for bribery, but the National Conditions of Service (NCS) provide for disciplinary actions in cases against public servants involved in bribery and corrupt practices. The new Government has committed itself to introducing legislations establishing criminal and administrative actions for bribery.

Are there rules requiring political independence?

Legal and formal position

The National Conditions of Service provides for political independence through its provisions which prohibits the involvement of public servants in politics. For example, public servants are required to take leave without pay when they seek election to the National Parliament. When they get elected, they are required to resign forthwith.

What actually happens

'Involvement in politics' insofar as it relate to public servants is a rather vague area that has not been defined precisely. Apart from NCS provisions relation to General Elections and the candidacy of public servants, other forms of political involvements (e.g overt support of a political party etc.) are not addressed. Consequently, the independence of the public service is put in a situation where it can be compromised.

Are recruitments/career development rules based on merit?

Legal and formal position

Recruitments, promotions and selections for career development through in-service training are based on merit. The National Conditions of Service provides that the authority to appoint and promote Government employees is vested in the Beretitenti acting in accordance with the advice of the Public Service Commission. (NCS s.B.1). The NCS (sB.22) provides that "[n]o employee should seek the influence of Members of the Maneaba ni Maungatabu (Parliament) as a means of enhancing his/her prospects of promotion. Any attempts to obtain promotion by such means may debar the employee from consideration for the promotion concerned." The selection for in-service is made by the In-Service Training Committee, which comprised mostly of Permanent Secretaries and Heads of Division.

What actually happens

Although there had been numerous allegations of nepotism in appointments, promotion and selections for in-service training, no complaints have been made to enable proper investigations to be carried out. One reason for the lack of complaints is the absence of procedures and mechanisms which enable employees to lodge complaints, or even request review of decisions relating to appointments, promotions and career development.

Are there specific rules to prevent nepotism? Cronyism?

Legal and formal position

Apart from the NCS provision which gives the authority to make appointment to the Beretitenti acting in accordance with the advice of the Public Service Commission and merit to be basis of both appointment and promotions, there are no specific rules to prevent nepotism and cronyism.

What actually happens

There had been a number of allegations of nepotism, but none of them had been successfully proven. This is due mainly to the fact that, as pointed out above, there is at present no mechanism to enable formal complaints to be made in order to enable investigations to be made. Also, it is worth noting that in a small society like Kiribati there

is often the likelihood for people in senior and responsible positions to be related to the people they appointed or promoted.

Are there rules and registers concerning acceptance of gifts and hospitality?

Legal and formal position

There National Conditions of Service (ss D.19 a, b, and c) set out rules which forbid public employees (and their families) from giving or receiving gifts in the form of money, goods, passages or any other benefits. Valuable gifts received in the course of official duty which cannot be refused without giving offence may be accepted, but must not be retained without the permission of the Secretary to the Cabinet. Employees are required to submit full descriptions of such gifts to the Secretary to the Cabinet, who shall issue instructions regarding its disposal after consultation with the Senior Responsible Officer of the Ministry or Organisation concerned. There are currently no registers concerning acceptance of gifts and hospitality.

What actually happens

It is in reality very difficult for provisions of NCS dealing with gifts and hospitality to be administered and policed.

Are there restrictions on post public service employment?

Legal position/What actually happens

There are no restrictions on public service employment. For those public servants who have reached the compulsory retirement age of 55 years, whose services are still required, there is provision for their re-engagement on individual contract terms. Most public servants on reaching retirement would choose to pursue other endeavors, be it in business or politics without any restrictions. Likewise, politicians who failed to retain their seats normally revert to their pre-election jobs without any restrictions at all.

Are there procedures and criteria for administrative decisions published (e.g for granting permits, licences, bank loans, building plots, tax assessments, etc.)?

Legal and formal position/What actually happens

There are no procedures and criteria for administrative decisions published in areas such as the granting of permits, licenses, bank loans, building blocks, taxes, and so on.

Are there means for complaints by members of the public?

Legal position/What actually happens

Members of the public have several means for complaints against decisions made by public employees, but the most popular one is through their Member of Parliament who would raise it with the Minister of the ministry concerned on one-on-one basis or raise it in Parliament.

Are there administrative checks and balances on decisions of individual public officials?

Legal and formal position

There are administrative checks and balances on public officials.

Police and Prosecutors

Is the Commissioner of Police independent?

Legal and formal position/What actually happens

The Commissioner of Police is independent

Are appointments required to be made on merit?

Legal and formal position

Appointments are required to be made on merit. The Kiribati Constitution (S.100(3)) provides for the power to make appointments to office of Commissioner of Police to be vested in the Beretitenti, "acting on the advice of the Cabinet tendered after consultation with the Public Service Commission."

Is the appointee protected from removal without relevant justification?

Legal and formal position/What actually happens

The Commissioner of Police is protected from removal without relevant justification. The Kiribati Constitution (s.101(4 and 5)) sets out the procedure and the grounds for the removal of the Commissioner of Police.

Are public prosecutors independent?

Legal and formal position/What actually happens

Public prosecutors are independent.

Are there special units for investigating and prosecuting corruption crimes?

Legal and formal position/What actually happens

There are no special units for investigating and prosecuting corruption crimes. Corruption crimes are investigated and prosecuted in the same way as the other crimes.

Is there an independent mechanism to handle complaints of corruption against the police?

Legal position and formal/What actually happens

There is at the present time no independent mechanism dedicated to handling complaints of corruption against the police. Officials of the Kiribati Police claimed that normally complaints against police officers, including those of corruption are handled in the first instance by the Commissioner of Police.

Does civil society have a role in such a mechanism?

Legal and formal position/What actually happens

Civil society has no role in an independent mechanism handling complaints of corruption against police. Such mechanism is non-existent at the present time.

In the last five years, have police officers suspected of corruption been prosecuted (or seriously disciplined or dismissed)?

Legal and formal position/What actually happens

No police officer suspected of corruption has been prosecuted in the last five years.

Are there any cases of corruption within the prosecuting agencies?

Legal and formal position/What actually happens

There are no reported cases of corruption within the prosecuting agencies at the present time.

Which legislative instruments can be used by the police and public prosecutors for the investigation and prosecution of cases of corruption/bribery?

Legal and formal position/What actually happens

Apart from the Penal Code and Electoral Act, there are no specific legislative instruments which can be used by the police and prosecuting agencies for the investigation and prosecution of cases of corruption/bribery.

Is private-to-private corruption punishable by law?

Legal and formal position

While private-to-private corruption is, in theory, punishable by law, the fact that it is rarely reported renders it considerably difficult for the perpetrator to be punished.

How many cases of prosecution have been undertaken in the previous years? How many have been successful? If the number is low, are there other effective measures or other good reasons why the number is low?

The number of prosecution in previous years had generally been low due to a large extent to the slowness of police investigations.

Public Procurement

Do rules for public procurement require competitive bidding for all major procurements with limited exceptions?

Legal and formal position

Rules for public procurement require competitive bidding for all procurements with limited exceptions. The Public Procurement Act provides for two Procurement Committees: one for the amount \$5,000 to \$50,000, comprising of the Permanent Secretary for Finance, who chairs the Committee and three other members from outside the Ministry of Finance; and the second – the Central Procurement Review Board – which decides on larger procurements valued over \$50,000 and chaired by the Office of the Beretitenti.

What actually happens

Because of the limited number of suppliers in Kiribati, there is very little competitive bidding, and this can easily result in sole sourcing, especially for those procurements which are sourced locally.

Are the rules laid down in documents publicly accessible?

Legal and formal position

The rules for procurement are laid down in documents (e.g Procurement Act) which are publicly accessible.

What actually happens

The Procurement Act has only been enacted at the end of 2002, and not everyone has had access to it, nor are familiar with it.

Are there strict formal requirements that limit the extent of sole sourcing?

Legal and formal position/What actually happens

There are no formal requirements that limit the extent of sole sourcing.

Are all major public procurements widely advertised to the private sector?

Legal and formal position/What actually happens

Although there is a requirement that all major public procurement be widely advertised to the private sector, the reality is that they are not widely advertised.

Are procurement decisions made public?

Legal and formal position/What actually happens

Procurement decisions are required to be made public, but what is actually happening is that the decisions are not always made public, and it is only when people enquired when they are informed about the decisions.

Is there a procedure to request review of procurement decisions?

Legal and formal position

The Procurement Act provides for a procedure which enables the review of procurement decisions.

What actually happens

Because of the relative newness of the Act, the procedure for the review of procurement decisions has not been applied.

Can an unfavourable decision be reviewed in a court of law?

Legal and formal position

The Act provides for an unpopular decision to be reviewed in a court of law.

What actually happens

Again because the Act had only been enacted in a few months, no unpopular decisions had been reviewed in a court of law.

Are there provisions for the blacklisting of companies proved to have bribed in a procurement process?

Legal and formal position/What actually happens

There are provisions in the Procurement Act for blacklisting companies proved to have bribed or given gifts to officials in order to gain favour in a procurement process.

Are there rules and procedures to prevent nepotism /conflict of interest in public procurement?

Legal and formal position/What actually happens

There is a provision of the Procurement Act which seeks to prevent nepotism and conflict of interest in public procurement.

Are assets, incomes and lifestyles of public procurement officers monitored?

Legal and formal position

There are no provisions for monitoring assets, incomes and lifestyles of public procurement officers.

What actually happens

Apart from members of the two procurement committees mentioned above, there are no procurement officers whose sole responsibility is public procurement.

Ombudsman

Kiribati has not established the Office of the Ombudsman or its equivalent (i.e an independent body to which citizens can make complaints about maladministration), but there have been requests for the establishment of the Ombudsman or its equivalent. In the 1977 Constitutional Convention, a meeting which the discussed the shape and provisions of the constitution of the new nation, the issue of the Ombudsman was raised by representatives of I-Kiribati students studying outside Kiribati as one of the means of giving meaning to the fundamental human rights provisions of the Constitution.

Investigative/Watchdog Agencies

There are no investigative/watchdog agencies (e.g Anti-Corruption Bureau) in existence in Kiribati at the present time.

Media

Is there law guaranteeing freedom of speech and of the press?

Legal and formal position

Apart from the guarantees of the protection of freedom of expression in the Kiribati Constitution (s.12), there are no specific laws guaranteeing the freedom of speech and of the press.

What actually happens

In June 2002 the Maneaba ni Maungatabu passed the Newspaper Registration Amendment Act which require newspapers publishing stories directed at individuals to carry that person's reply in the same article. If they do not, then the Registrar can fine the newspaper A\$500. He can even deregister the newspaper. The Pacific Islands News

Association President has described the amendments as 'draconian' and as something that would 'stifle freedom of expression.'

Is there censorship of the media?

Legal and formal position/What actually happens

The Broadcasting and Publication Authority Act which established the Government-owned media organization has provisions which, in effect, provided for the censorship of the its newspaper and radio.

Is there a spread of media ownership?

Legal and formal position

There is no law which restrict media ownership, and in recent years there has been a spread of media ownership. Of the three weeklies, one is published by the Government-owned Broadcasting and Publication Authority, one is owned and published by the Kiribati Protestant Church and the third one by a private company.

What actually happens

While the spread of media ownership is not restricted, Government has not been very forthcoming to private media companies. A private radio station, FM101, owned by former President Ieremia Tabai, had to wait for a good three years before its license to broadcast was finally issued. There were a number of technical and other hurdles that the private radio station had to clear before it was allowed to broadcast. (PINA News On-line, August 11, 2001).

Does any publicly-owned media regularly cover the views of government critics?

Legal and formal position/What actually happens

While publicly-owned media can and have often covered views of government critics, it is important to note that on balance more coverage is given to government views. In addition, the weekly newspaper, Te Uekera carries a four page information newsletter issued by the Office of the Beretitenti, which has, on a number of occasions, carried stories and information that may be construed as propaganda. The supplement is called Rongorongono Man Te Tautaeka (News from the Government). Inheriting the newsletter, the new Government has renamed it, Rongorongono Man Am Tautaeka (News from your Government).

Have journalists investigating cases of corruption been physically harmed in the last five years?

Legal and formal position

No journalist investigating cases of corruption has been harmed in the last five years.

What actually happens

While no journalist had been physically harmed, there have been threats of other kinds of recrimination for stories they write. (A feature article in Te Uekera, immediately following the election of the Anote Tong-led Government made references to the lack of freedom in the previous government and threats of recrimination. Iaram Tabureka, Te Uekera, 17 July 2003).

Does the media carry articles on corruption?

Legal and formal position

The BPA Act which set up the Broadcasting and Publication Authority provides for it to carry and broadcast all kinds of stories and news, including those on corruption.

What actually happens

Although the Act provides for BPA to carry and broadcast stories and items on corruption, the reality is that it is very easy, given the censorship provision in the BPA Act, for the Government to stop the story, often under the pretext of it being 'in the national interest.' Journalists have alluded to the many instances where a story is stopped because Government felt that it would not be in the national interest for it to be aired or published. It is because of journalists' awareness of the reality censorship, and probably due to a fear of retaliation from those mentioned in the story (which is commonplace in small societies) that investigative reporting which exposes corruption is absent in Kiribati media. Stories of corruption, if they are reported, tend to be something that the public are already well been aware of.

Do media licensing authorities use transparent, independent and competitive criteria and procedures?

Legal position/What actually happens

The Ministry of Communication, Transport and Tourism, which is the media licensing authority, does not use transparent, independent and competitive criteria and procedures. In the case of a private radio station (FM101) cited above, the fact that the owners perceived that excessive technical details and requirements had been used as hurdles in their getting a licence to broadcast may point to the lack of transparency in the licensing criteria and procedures.

Are liberal laws or other sanctions (e.g withdrawing of state advertising) used to restrict reporting of corruption?

Legal position/What actually happens

No liberal laws or other sanctions (e.g withdrawal of state advertising) are used to restrict reporting of corruption.

Civil Society

Does the public have access to information and documents from public authorities?

Legal and formal position

Civil society may request access to any information and documents it required from any public authorities, including government ministries.

What actually happens

While civil society can request access, the actual experience from those from civil society who had tried to get access to information and documents has been one of frustration. The officials from whom access is requested would often be indifferent, and would ask a lot of questions which had the effect of making the person requesting the information or document feel that s/he is meddling in something in which s/he has no right.

Do the public authorities generally co-operate with civil society groups?

Legal position/What actually happens

Public authorities generally co-operate with civil society groups, but there are officials and public employees who tended to be unco-operative for fear of being disciplined for disclosing information.

Are there citizen's groups or business groups campaigning against corruption?

Legal position/What actually happens

There are no citizen's groups or business groups actively campaigning against corruption.

Are there citizen's groups monitoring the government's performance in areas of service delivery?

Legal and formal position/What actually happens

There are no citizen's groups monitoring the government's performance in areas of service delivery, but the people through their Members of Parliament would often raise the issue of the government performance in the areas of service delivery as it relate to their different islands/constituencies.

Do citizen's groups regularly make submissions to the legislature on proposed legislation?

Legal and formal position

People and Citizen's groups have the right and can regularly make submissions on proposed legislation. Section 68 (3) of the Kiribati Constitution provides that "The Maneaba shall not proceed on a Bill after its first reading in the Maneaba until after the next following meeting of the Maneaba..." This provision provides the opportunity for people and civil society to make submissions on the proposed legislation.

What actually happens

While people and citizen's group can and have in fact exercised their rights to make submissions on proposed legislations, it should be noted that the consultation implied in S.68(3) of the Constitution has largely been in the form of 'for information only' with very little submission from the people. In addition, the proviso to s.68(3) which allow for the finalization of the Bill in the same sitting of the Maneaba when certified as urgent by the Beretitenti (s.68(3a), or if the Maneaba "expressly resolves, by a majority of all the members of the Maneaba, to proceed with the consideration of the Bill" (s.68(3b), can easily, and have been used, to exclude submissions from people and citizen's groups.

Does the education system pay attention to integrity issues and corruption/bribery? Is it expected to?

Legal position/What actually happens

The education system does not, at the present time, pay attention to integrity issues and corruption/bribery. It seems that there is no expectation for the education system to pay attention to such issues.

Traditional Organisations

To what extent are traditional organisations, such as councils of chiefs, subject to the National Integrity System? And to what extent are they part of the National Integrity System?

Legal position/What actually happens

Traditional organizations, such as the Botaki ni Unimwane (Council of elders), are island-specific, and their influence does not extend outside their island. They are not subject to the National Integrity System, nor seen as part of it. Despite the influence of the Botaki ni Unimwane in each island, there is no legislation that recognises their influence.

Is their funding and staffing subject to external review and audit?*Legal position/What actually happens*

Traditional organizations, such as the Botaki ni Unimwane, can from time to time call for funds to be raised through financial contributions from each member (normally adult members) of their island. Such contributions are normally kept in bank accounts under the name of the island or the council of elders, and they are not subject to external review or audit. Apart from the trustees of the account, the council of elders does not have permanent staff.

Do what extent are they part of the NIS controlling corruption in other bodies?*Legal position/What actually happens*

Traditional organizations are not in any way part of the NIS, and they have no part in controlling corruption in other bodies.

What anti-corruption measures, formal or informal, do they apply to their own members?*Legal position/What actually happens*

As guardians of culture, the council of elders uses the force of culture as the informal anti-corruption measure that they apply to their own members and to those under their authority. Awareness of cultural norms and people's possible reaction to their breach is a deterrent to corruption or corrupt behaviour.

To what extent are their deliberations and decisions open to the public, and the media?*Legal position/What actually happens*

The meetings of the Botaki ni Unimwane are usually open to all members of the community, but no one, apart from the elders, is allowed to speak unless invited by the elders. To speak without the elders' permission is considered a very serious breach of protocol, which may result in some kind of sanctioning by the elders. The media rarely cover the meetings of the elders, because such meetings are often regarded as community meetings to which outsiders are out of place.

Private Sector and NGOs

What measures have private companies adopted to reduce corruption within their own activities?*Legal position/What actually happens*

Private companies generally conduct their business in private, and there has been no effective system adopted yet, by the companies themselves or the Government, to reduce corruption within their own activities.

What measures have private companies, or the Chamber of Commerce, adopted to discourage their members from corrupting public officials?

Legal and formal position/What actually happens

No measures have been adopted yet by private companies, or the Chamber of Commerce, to discourage their members from corrupting public officials.

What has the impact of privatization and outsourcing and increased use of NGOs in service delivery been on opportunities for corruption, and the control of corruption?

Legal and formal position/What actually happens

There has been very little progress towards privatisation in Kiribati, and the use of NGOs in service delivery has been minimal. Commerce is dominated by Government-owned companies.

What measures have NGOs or peak bodies adopted to reduce opportunities for corruption in their activities?

Legal and formal position/What actually happens

NGOs and peak bodies have not adopted any specific measures to reduce opportunities for corruption.

What measures have Churches adopted to reduce opportunities for corruption in their own activities?

Legal and formal position/What actually happens

The number of cases of embezzlement of church funds is rising, and Churches such as the Kiribati Protestant Church have put in place procedures designed to reduce opportunities and actual instances of corruption. Most cases of embezzlement previously went unpunished, but now, under the new procedures, local church officials are to be reported to the police for investigation whenever they are suspected of engaging in embezzlement and other acts of corruption.

Regional and Local Government

Are there, at regional and local level, rules and disclosure provisions similar to those operating at national level on nepotism, conflict of interest, gifts and hospitality and post public office employment?

Legal and formal position/What actually happens

There are no disclosure provisions on nepotism, conflict of interest, gifts and hospitality and post public office employment operating at local and regional level.

What public offices at regional and local level are appointed national government?

Legal and formal position/What actually happens

The following offices at local (i.e island) level are appointed, and funded, by national government: Clerk to Island Council, who is the Chief Executive of the Council; Council Treasurer, who is responsible for the financial affairs of the Council; Island Project Officer, whose main responsibility is to assist council in the preparation and management of its

development projects. Island councils normally appoint and fund assistants to each of the national government-appointed officials.

There are other national government-appointed public servants who are based on each outer island, but directly responsible to their respective ministries rather than Island councils. They are: teachers, police, nursing officers and agricultural officers.

Is there a legal requirement that meetings of island councils be open to the press and public?

Legal and formal position

There is no provision in the Local Government Act 1984 that closes the meetings of island councils from the press and public.

What actually happens

People are usually not interested in the meetings of island councils. The press is based on the capital, South Tarawa, and have easy access to only 2 of the 22 local councils.

Are there clear criteria restricting the circumstances in which island councils can exclude the press and public?

Legal and formal position/What actually happens

There are no clear criteria restricting the circumstances in which island councils can exclude the press and the public.

Do national agencies with a remit to deal with corruption (anti-corruption agencies, ombudsmen, supreme audit institutions, and so on) work at regional or local levels and are there specific agencies with regional and local responsibilities?

Legal and formal position/What actually happens

Apart from the Kiribati National Audit Office, which, from time to time, carries out the auditing of island council accounts, there are no national agencies with a remit to deal with corruption work at island level. There are no specific agencies dealing with corruption at island and regional levels.

Progress With Government Anti-Corruption Strategy

Has the government announced an anti-corruption strategy and a timetable for implementation?

Government has not announced a comprehensive anti-corruption strategy, but has made references to proposals which are part of an anti-corruption strategy. For example, in his policy statement at the opening of the 8th Parliament in September, President Anote Tong stated his government's wish to introduce the Leadership Code during the life of the current Maneaba (Parliament).

Donor Anti-Corruption Initiatives

Which bilateral and multilateral donor agencies are based in the country?

No multilateral donor agency is based in Kiribati, but bilateral agencies such as AUSAID and NZAID are present through their resident diplomatic missions. The Embassy of the People's Republic of China and the British High Commission also host the bilateral aid programme of their respective governments.

What type of anti-corruption initiatives have they supported?

Ausaid and NZaid have supported a number of projects in the area of good governance, and customs administration.

Are there any examples of donors cooperating or coordinating their programmes?

Ausaid and NZaid have on many occasions cooperated and coordinated their activities. One current example is the present Kiribati Education Sector Programme where Australia and New Zealand are working very closely.

Future Research And Donor Support

Can key areas or issues be identified in terms of corrupt activity that the research for the report has demonstrated as requiring immediate attention, and which are they?

The research for this report has identified the following key areas and issues in terms of corrupt activities that require immediate attention:

- a. public education programmes designed to heighten people's awareness of what constitute corruption in the Kiribati context;
- b. research into the extent of nepotism and cronyism;
- c. formulating an Anti-Corruption strategy for Government;
- d. is there a need for the Ombudsman in Kiribati?, and
- e. A comprehensive Anti-corruption strategy.

Is there a particular aspect of corrupt activity either particular to the country concerned, or significant in terms of effect or impact, that would require more in-depth research?

A lot has been said from both sides of the Maneaba ni Maungatabu about involvement of external funding in the last round of elections. There is a need for more in-depth study of political parties' external connections: Which countries/organizations are involved? How much funding was involved? What are the interests of these external actors in Kiribati? and so on.

Is there a particular approach or initiative to combating corruption that may be considered for further research or study as an example of best practice?

Given the present trend where there is increasing evidence of foreign involvement in the elections as parties become more formalised, there is a need to research into disclosure mechanisms for political parties with a view to introducing them to Kiribati. A prerequisite for this is the need to acknowledge that parties are permanent fixtures of the present system, and that there is a need for registration regulations which in-built provisions for disclosure and audit.

The introduction of Political Parties regulatory mechanism is an example of best practice as it combats corruption in the activities of political, which if unchecked, will have serious repercussions in other areas including, most importantly, government policy.

Can key areas or issues relating to possible anti-corruption initiatives be identified as requiring donor support?

Assistance to Government in its commitment to introducing the Leadership Code could use donor support.

Can key areas or issues relating to anti-corruption initiatives be identified in terms of forming the basis for potential donor prioritization, sequencing, cooperation and coordination?

One key area relating to anti-corruption initiatives which can form the basis for potential donor prioritization, sequencing, cooperation and coordination is in the identification of the key components of a comprehensive Anti-corruption strategy. Building on what has already been done, what new laws need to be introduced? What laws need to be revised? And what new procedures and structures are needed?

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Appendix 3 - Legal References

The Constitution of Kiribati

The Penal Code (Cap 67)

The Electoral Ordinance 1978

The Court of Appeal Act 1980

The Broadcasting and Publication (Amendment) Act 1980

The Local Government Act 1984.

The Laws of Kiribati Act 1989

The Beretitenti (Immunities from Civil Proceedings) Act 1997

The Public Procurement Act 2002.

The Public Contracts Bill 2003 (to be enacted in the June 2004 meeting of the Maneaba ni Maungatabu).

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