

REPUBLIC OF KIRIBATI  
(No. 1 of 2010)

I assent,

*Ando Tung*

Beretitenti

*21 May, 2010*

**AN ACT TO AMEND THE COURT OF APPEAL ACT 1980**

Commencement:  
2010

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

**1. Short title**

This Act may be cited as the *Court of Appeal (Amendment) Act 2010*.

**2. Definition of 'principal Act'**

In this Act 'principal Act' means the Court of Appeal Act 1980.

**3. Amendment of section 2**

In section 2 of the principal Act, the definition of 'sentence' is repealed and the following definition is substituted—

"sentence' includes any order of a court made on conviction with reference to the person convicted, and any disqualification, penalty, punishment or recommendation made or imposed by the court, whether or not the order is made instead of passing sentence, and 'sentenced' shall be construed accordingly."

**4. Amendment of section 19**

Section 19 of the principal Act is amended by repealing the marginal note and substituting "Appeal by person convicted".

**5. Repeal of sections 19A and 19B; new section 19A**

Sections 19A and 19B of the principal Act (as inserted by section 2 of the *Court of Appeal (Amendment) Act 2003*) are repealed, and the following section is substituted—

**“19A. Appeal by Attorney-General**

The Attorney—General may appeal to the Court—

- (a) with the leave of the Court, against a judgment of the High Court acquitting a person;
- (b) against an order of the High Court staying proceedings or further proceedings on an information or charge;
- (c) against an order of the High Court, made under section 38(1) of the Penal Code (Cap.67), for dismissal of a charge without proceeding to conviction; and
- (d) against any sentence pronounced by the High Court.”.

**6. Amendment of section 20**

Section 20 of the principal Act is amended—

- (a) after subsection (1), by inserting the following subsections—

“(1A) Where the High Court has discharged a person after the Republic’s legal representative, as a result of a determination on a point of law, has entered a nolle prose qui, the Attorney—General may refer that point to the Court and the Court shall, in accordance with this section, consider the point and give their opinion on it.

(1B) Notice of any reference under this section shall be given to the person acquitted or discharged, as the case may be.”;

- (b) in subsection (2)(b), by repealing “acquitted person” and substituting “person acquitted or discharged”; and

- (c) in subsection (3), by repealing "A reference under this section" and substituting "Where a reference under this section relates to a trial or appeal in which the person charged has been acquitted, the reference".

**7. Amendment of section 21(1)**

Section 21(1) of the principal Act is amended by repealing "only (not including severity of sentence): Provided that subject to section 20 of this Act no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a magistrates' court".

**8. Amendment of section 22**

Section 22 of the principal Act is amended—

- (a) in subsection (1)—
  - (i) by repealing "The Court on any such appeal against conviction" and substituting "On an appeal, the Court"; and
  - (ii) by repealing "of the court before whom the appellant was convicted" and substituting "or order of the High Court"; and
- (b) after subsection (3), by inserting the following subsections—
  - "(4) If the Court allows an appeal against an acquittal, it may order—
    - (a) that a conviction be entered against the offender; or
    - (b) that a new trial shall be had in such manner as the Court may direct,and the Court may make such other order as it thinks just.
  - (5) If the Court allows an appeal brought under paragraphs (b) or (c) of section 19A, it shall set aside the order to which the appeal relates, and may make such other order as it thinks just."

**9. New section 23A**

After section 23 of the principal Act, the following section is inserted—

**“23A. Power to order new trial**

- (1) On any appeal the Court may, either of its own motion or on the application of the appellant, order a new trial at such time and place as it thinks fit, if the Court considers that a miscarriage of justice has occurred, and that, having regard to all the circumstances, such miscarriage of justice can be more adequately remedied by an order for a new trial than by any other order which the Court is empowered to make.
- (2) Where a new trial is directed, the Court may make such order as to it seems fit for the safe custody of the accused person or for admitting him or her to bail.”.

**10. Amendment of section 25**

Section 25 of the principal Act is amended by repealing subsection (1) and inserting the following subsections—

“(1) Any person convicted desiring to appeal to the Court, or to obtain leave to appeal, against any conviction or sentence, shall give notice of the appeal, or of the application for leave to appeal, within thirty days of the date of such conviction or sentence.

(1A) An appeal, or an application for leave to appeal, by the Attorney-General against any acquittal, order or sentence, is to be brought by the Attorney-General giving notice of the appeal, or of the application for leave to appeal, within thirty days of the date of the acquittal, order or sentence, as the case may be.

(1B) The time within which notice of appeal, or notice of an application for leave to appeal, may be given, may be extended at any time by the Court.”.

**COURT OF APPEAL (AMENDMENT) ACT 2010**  
**EXPLANATORY MEMORANDUM**

This Act amends the *Court of Appeal Act 1980* to better provide for appeals by the Attorney—General to the Court of Appeal against decisions of the High Court in criminal cases.

Section 3 enhances the definition of ‘sentence’. The original definition appeared to define the expression as relating to orders of the Court of Appeal, which has been corrected. The definition is also extended to include orders that may be made instead of passing sentence, such as probation orders and care, protection and control orders, under sections 36 and 39 of the *Penal Code*, respectively.

Section 4 makes a minor amendment to section 19 of the Act, stating clearly the purpose of the section.

Section 5 repeals sections 19A and 19B, which had provided for appeals by the Attorney—General against sentence and acquittal, and restates them in a single section. Furthermore, provision is made to enable the Attorney—General to appeal against orders of the High Court staying proceedings, as well as orders which result in the discharge of an accused person without proceeding to a conviction. It is necessary to include these additional types of order as neither can be properly described as either a sentence or an acquittal. Without the opportunity available to appeal to the Court of Appeal against the full range of orders, it would not be possible to seek to remedy potential injustice.

Section 6 amends section 20 of the Act to extend the power of the Attorney—General to refer a point of law to also cover situations where a High Court ruling has resulted in a withdrawal of the charge. Without the amendment, the power to refer a point of law is limited only to cases of acquittal. With the amendment, it will be possible to challenge the ruling in the Court of Appeal and, if successful, to take further proceedings against the accused.

Section 7 amends section 21 to remove a proscription on appeals against the confirmation by the High Court of a Magistrates’ Court acquittal.

Section 8 amends section 22 to provide for the sorts of orders the Court of Appeal can make should it allow an appeal brought under any of the new provisions.

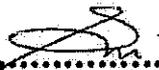
Section 9 inserts a new section 23A, which makes clear provision for the Court of Appeal’s power to order a new trial in appropriate circumstances.

**Section 10 amends section 25 of the Act to provide a time limit within which the Attorney—General must lodge an appeal. Previously there was no time limit for Attorney—General’s appeals, only for appeals by convicted persons.**

**Titabu Tabane  
Attorney General  
14 October 2009**

**CERTIFICATE OF THE CLERK OF THE MANEABA NI  
MAUNGATABU**

This printed impression of the Bill has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 12<sup>th</sup> April 2010 and is found by me to be a true and correctly printed copy of the said Bill.

  
.....  
**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this .....<sup>21</sup> day  
of April 2010.  
*MAY*

  
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**Clerk of the Maneaba ni Maungatabu**