Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Kiribati

1. Introduction: overview of the legal and institutional framework of Kiribati in the context of implementation of the United Nations Convention against Corruption


The implementation by Kiribati of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was issued on 31 March 2015 (CAC/COSP/IRG/I/4/1/Add.10).

The Republic of Kiribati is a parliamentary democracy and Kiribati’s legal system is comprised of Acts of Parliament, certain statutes of the United Kingdom of Great Britain and Northern Ireland, common law and customary law. The Head of State and Government is Te Beretitenti (President). The House of Assembly (Maneaba ni Maungatabu) is a unicameral legislative institution.


Entities with mandates relevant to the prevention and countering of corruption include: the Leadership Commission (LC), Office of the Attorney General (OAG), Public Service Commission (PSC), the Public Service Integrity and Corruption Control Unit (PSICCU), Central Procurement Unit (CPU), Kiribati Police Service (KPS) which includes the Financial Intelligence Unit (FIU) and the Transnational Crime Unit (TCU).

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

Kiribati launched a national anti-corruption strategy (NACS) in 2017. The NACS was adopted for the period of 2017 to 2019 but its implementation period was internally extended until 2021. At the time of the country visit in February 2023, the Cabinet was in the process of developing a new NACS for the period of 2023-2025. Other relevant initiatives include the Kiribati Development Plan 2020-2023 which contains commitments related to accountability, transparency, equality and inclusiveness, and the Kiribati Vision 2016-36, particularly pillar 4 on Good Governance, which highlights the government’s commitment to fight corruption through strengthening domestic policies, legislative frameworks, and strategic partnerships.

The implementation of anti-corruption policies is decentralized but the primary responsibility for the implementation rests on the National Anti-Corruption Committee (NACC) together with the LC and PSICCU. The NACC is an advisory body that consists of representatives from various public and private bodies such as the OAG, KPS, Kiribati Chamber of Commerce and Industry, Kiribati Local Government Association and so forth. The NACC is responsible for advising the government on matters related to anti-corruption, including recommendations on law reform and development of anti-corruption policies and standards. The NACC was established by a cabinet directive; and its mandate and procedural rules are delineated within its Terms of Reference.

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1 Kiribati informed that a new National Anti-Corruption Strategy for the period of 2023-2025 was launched in July 2023.
The LC is responsible for investigating corruption and misconduct of leaders as outlined in Sections 11 and 13 of the LCAA. In pursuant to Part VI of the PSMA, the PSICCU is responsible for conducting investigations of alleged acts of corruption by employees who reports directly to or hold positions below Secretaries of the Government Ministries and CEOs of the State-Owned Enterprises (SOEs). The PSICCU also conducts public outreach activities concerning corruption. However, the anti-corruption efforts of the LC and the PSICCU are hampered by insufficient staffing, resources, and the availability of specialized training that prevent them from fully implementing their mandates.

While there is no structured or formalized system in place for the periodic review of legislation to ensure its adequacy in preventing and combating corruption, the NACC actively contributes to the process by providing recommendations to Cabinet for the review and strengthening of relevant anti-corruption legislations.

Kiribati is a member of international and regional anti-corruption initiatives such as the Pacific Islands Legal Officers’ Network, Pacific Islands Forum Secretariat, and Pacific Association of Supreme Audit Institutions. Kiribati was reminded of its obligation to inform the Secretary-General of the name and address of its authorities that may assist other State parties in developing and implementing specific measures for the prevention of corruption in line with Article 6 Paragraph 3 of the Convention.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

Civil service in Kiribati is governed by the Constitution, the PSPMA, and the National Conditions of Service (NCS). Civil servants are appointed by the President acting in accordance with the advice of the PSC (Sections 99 and 100, the Constitution). More specific rules concerning appointment, promotion, conduct and termination of civil servants are outlined in the NCS. The NCS prescribes that public officer vacancies must be filled through open and merit-based competition (B4, NCS). According to the NCS, any person appointed to a permanent position must undergo a probation period (Section B12, NCS). There are other kinds of recruitment, such as contract-based recruitment and temporary recruitment. Recruitment is conducted by ministerial appointment panels responsible for the selection of qualified candidates, and salaries are determined by the NCS salary scale for all public servants (B6 and E.1, NCS). The NCS also outlines grounds for promotion, including work experience and education (B21-B2, NCS). Permanent civil servants can be terminated subject to the approval of the PSC, and removal decisions can be appealed within 21 days to the PSC (C1, C7, NCS). Kiribati has not identified positions considered especially vulnerable to corruption or adopted procedures applicable to such positions, including for their selection, training and rotation, where appropriate. In terms of integrity training, the Public Service Office conducts induction training covering topics of integrity and corrupt practices. LC collaborates with Parliament to conducts comprehensive induction workshops covering the LCCA for newly elected MPs. Further, the Public Service Office provides training on the code of conduct on an ad hoc basis.

The eligibility criteria for candidates in parliamentary elections include Kiribati citizenship and being at least 21 years of age (Section 55, Constitution). The Constitution also prescribes grounds for disqualification of candidates, including serving a sentence of imprisonment imposed by a court in the Commonwealth or allegiance to a foreign State (Section 55, Constitution). Presidential candidates are nominated from the members of the Parliament (Section 32). Eligibility criteria for candidates in local elections are governed by the Local Government Act (Section 9). There is no legislation governing transparency in the funding of candidatures for elected public office and funding of political parties.

In the context of conflicts of interest, the NCS imposes restrictions on the participation in politics for certain types of civil servants (D15, NCS). The NCS also prohibits the acceptance of gifts by civil servants and their family members, except...
for gifts received in the course of public duty that cannot be refused without giving offense (D16, NCS). The NCS does not contain provisions governing outside employment and commercial activities of civil servants, or rules on the disclosure of conflicts of interest.\(^2\) Penalties for misconduct (including violations of the conflict-of-interest rules) under the NCS include reprimand, suspension without pay, stoppage of increment, and dismissal (D23, NCS). The imposition of penalties is conducted by the SROs or the PSC, and civil servants can file appeals to the PSC (D24, NCS). In 2019, the Cabinet approved the Kiribati Public Service Code of Conduct (KPSCC) which contains rules on a range of matters such as conflicts of interest, acceptance of gifts, and misuse of public position. Failure to comply with the KPSCC can be penalized by sanctions under the relevant provisions of the NCS.

The LCCA contains rules prohibiting the acceptance of gifts and requiring the disclosure of conflicts of interest for an enumerated list of island leaders (Section 8, 9). The scope of relevant conflicts of interest encompasses any interests in matters under the control or influence of a leader. As was highlighted above, the implementation of the abovementioned rules is hampered by the limited resources available to anti-corruption bodies.

The LCCA imposes an obligation on island leaders and their immediate family members to submit annual declarations of assets and liabilities (Section 11). The LC is responsible for the implementation of the asset disclosure obligations under the LCCA (Section 11). Breaches of the LCCA can result in penalties such as fines, reprimands, or suspensions (Sections 18 and 19). However, the LC does not have sufficient resources and staff to enforce and implement the provisions of the LCCA. As a result, the asset disclosure rules are not currently enforced. Further, available annual declarations are published on the website of the LC. However, due to capacity limitations, the website is not updated regularly.

Anonymous complaints concerning potential misconduct or acts of corruption can be submitted directly to the PSICCU or the LC. However, there is no legislation on the protection of reporting persons or a general obligation for civil servants to report acts of corruption.

The Chief Justice is appointed by the President, acting in accordance with the advice of the Cabinet after a consultation with the PSC, and other judges of the High Court are appointed by the President, acting in accordance with the advice of the Chief Justice after consultation with the PSC (Section 81, Constitution). The Constitution prescribes eligibility criteria for judges of the High Court such as previous judicial appointments (Section 81). Judges of the High Court and the Court of Appeal can be removed for inability and misconduct on the basis of a recommendation on dismissal to the Parliament issued by a tribunal established by President (Section 83). Magistrates are appointed by the President based on the recommendation of the Chief Justice (Section 7, the Magistrates Courts Ordinance (MCO)). The MCO contains provisions designed to promote integrity in the judiciary, including the recusal of magistrates by reason of personal interest (Section 11). Kiribati also adopted a Code of Judicial Conduct applicable to judges and magistrates. The Code covers the principles of independence, integrity, impartiality, management of conflicts of interest, and acceptance of gifts (Sections 2.3 and 4.5). However, there are no rules concerning incompatible offices for judges and relevant officials responsible for public prosecution creating potential corruption and conflict of interest risks. Further, there are no training programmes concerning the content of the Code or ethical conduct for judges.

The OAG is responsible for criminal proceedings (Section 42, Constitution). In the exercise of prosecutorial functions, the Attorney-General must not be subject to the direction or control of any other person or authority (Section 42). The Attorney General can delegate prosecutorial powers to subordinate officers (Section 42). The

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\(^2\) Kiribati informed that the Government is in the process of reviewing the NCS to implement declaration forms for gifts exceeding AUD $20 and potential conflicts of interest encountered during official duties.
Attorney General is appointed and removed by the President, with no clearly defined criteria or independent assessment for the appointment and dismissal, creating a risk of interference in the proper performance of prosecutorial functions. There is no specific integrity training for prosecutors.

Public procurement and management of public finances (art. 9)

The public procurement process in Kiribati is decentralized and governed by the PA and Public Procurement Regulations (PPR). The PA prescribes open procedure as a standard procurement method (Section 20, PA). Limited and single-source procurements require the approval of the Chief Procurement Officer, along with a Secretary of the Ministry of Finance approval for single-source procurements (Regulation 15, PPR). Invitations to tender and other procurement documents must be made publicly available through online publication, and procurement entities must provide sufficient time for economic operators to submit their tenders (Sections 26 and 27, PA). Procuring entities are obliged to use model procurement documents issued by the CPO (Section 25, PA). Published invitations to tender must stipulate relevant evaluation criteria and procurement specifications (Regulation 33, PPR). The PA and PPR do not apply to procurements involving matters such as purchase or rent of immovable property, financial investments, and travel expenses (Regulation 3, PPR).

Procuring entities can prescribe eligibility criteria for tenderers (Regulation 36, PPR). Received tenders are assessed by evaluation committees established by procuring entities (Regulation 24, PPR). Evaluations are based on technical and financial criteria (Regulation 33, PPR). The PPR prescribes tenderer exclusion criteria, including previous criminal offences and breaches of tax obligations (Regulation 35, PPR). However, authorities reported challenges related to the implementation of this provision, including the identification of excluded tenderers. Further, there is no register of debarred tenderers.

Public procurements can be cancelled due to reasons such as suspicions of collusion or corruption (Regulation 27, PPR). Depending on the type of procurement, final contract awards are awarded by the Contract Award Committee or the Central Contract Award Board (Regulation 39, PPR). Contract award notices must be published (Section 29, PA); however, at the time of the country visit, this provision was not implemented in a consistent manner, including no online publication of awards. Depending on the type of procurement, complaints against procurement decisions can be submitted to the procuring entities, the CPO, or the Procurement Complaints Board (Regulations 52-54, PPR).

Members of the evaluation committees must be excluded from participating in procurements in which they may have conflicts of interest (Regulation 24, PPR). All procurement officers must declare any possible incompatibility with other positions and any possible personal interest in tenders or personal or family connection with tenderers (Section 4, PA). However, the abovementioned provisions are not consistently implemented in practice. There are no specific ethics and integrity training requirements for procurement personnel. Misconduct of procurement officers can be sanctioned by criminal or administrative penalties (Sections 38 and 39, PA).

According to Section 109 of the Constitution and Section 60 of the Rules of Procedure of the Parliament, the Minister of Finance is responsible for the preparation of a draft Appropriation Bill which is annually submitted to the Parliament for adoption. The deliberations concerning the adoption of the budget are open to the public. The Public Finance (Control and Audit) Act (PFA) outlines the duties of the Accountant General and accounting officers responsible for reporting on revenue and expenditure and recordkeeping (Sections 15 and 17, PFA). The Auditor General is responsible for the audit of all accounts prepared by the Chief Accountant and accounting officers (Sections 29 and 39, PFA). Although a system of internal audit was established under Section 14 of the PFA, there are no robust rules concerning risk management and
internal controls. Furthermore, there are no rules concerning timely reporting on revenue and expenditure.

The Government Finance Regulations (GFR) govern a range of public finance matters, including rules on recordkeeping (Regulation 2.1, GFR). The GFR contain an obligation to report any suspected loss, shortage, irregularity, fraud or theft affecting the funds of the Government (Regulation 17.1, GFR). Records must be kept in a digital or physical form for a period of seven years (Regulation 2.2.5, GFT). Breaches of the GFR and PFA by responsible officers can be penalized by criminal or administrative sanctions such as suspension, dismissal, and imprisonment (Regulation 17.11 GFR; Section 19, the Public Records Act). Further, the Penal Code prohibits the falsification or destruction of accounting documents by private and public companies (Section 298-299); however, there are no clear provisions governing the falsification of records under the PFA or the GFR.

Public reporting; participation of society (arts. 10 and 13)

The Constitution protects the freedom of expression, including the freedom to receive information without interference (Section 12). The Broadcasting Publication Authority Ordinance Revised Edition 2022, specify in section 12(2) the general duty of the Authority to promote the publication of news and information of general and special interest to all people. However, Kiribati does not have legislation governing substantive rules and procedures concerning the implementation of the right to access information. Certain public bodies and state-owned enterprises are obliged to publish annual reports (Section 24, State Owned Enterprises Act 2013).

Most ministries maintain websites with general information concerning the services they provide; however, there is no overarching policy on simplifying administrative procedures to facilitate public access to competent decision-making authorities. At the time of the country visit, Kiribati did not conduct periodic corruption risk assessments. Kiribati is planning to launch a Corruption Risk Management (CRM) program in the public sector in 2024.

The Rules of Procedure of the Maneaba ni Maungatabu allow members of the public to submit petitions to the Parliament, however, there is no public consultation process for legislative drafts (Section 25). All adopted bills and their explanatory memorandums must be published (Section 52). During the country visit, it was reported that several anti-corruption public information activities were organized in Kiribati.

The PSICCU and the LC accept anonymous corruption and misconduct complaints. However, there is no policy or legislation on the protection of reporting persons.

Private sector (art. 12)

The Kiribati Chamber of Commerce is working jointly with the Ministry of Commerce to promote a dialogue between the public and private sectors. However, there are no specific measures to promote cooperation between law enforcement agencies and the private sector. There are no codes of conduct for the correct and proper performance of business activities, although the Chamber of Commerce developed a draft code of conduct.

Any entity operating under a business name must submit its registration to the companies register (Section 4, Registration of Business Names Act; Section 7, CA). The Register contains a range of information concerning private entities, including company constitution, names of the directors, and names of shareholders (Section 7, CA). The company information in the register is not fully digitized or available online. The information in the register can be accessed by the public upon individual request and for a fee (Section 213, CA). There is no beneficial ownership register; however,

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3 Kiribati enacted the Digital Government Act in October 2023 which recognizes the rights to freedom of expression and information.
companies are required to collect information about the beneficial owners of shares (Section 52, CA). However, this information is not systematically updated or verified.

There are no general rules designed to prevent the misuse of procedures regarding the provision of subsidies and licences provided to private entities. Further, Kiribati has not adopted any restrictions on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held by those public officials during their tenure.

Private entities must keep appropriate accounting records that correctly reflect company transactions and their financial position (Section 149, CA). Companies with a specified number of shareholders are required to prepare audited financial statements, however, such companies have the option to exempt themselves from the audit obligations (Sections 152 and 153, CA). There are no dedicated rules concerning internal auditing controls. Companies also must prepare annual returns and submit them to the company register (Section 143, CA). The CA imposes penalties for the destruction and falsification of accounting records, books, or other documents (Section 231, CA). However, not all accounting practices described in Article 12 Paragraph 3 of the Convention are expressly prohibited. Further, there are no provisions that expressly prohibit the tax deductibility of expenses that constitute bribes.

**Measures to prevent money-laundering (art. 14)**

The main legislation prescribing measures to prevent money laundering is PCA, part V.

PCA establishes preventive measures and reporting obligations for financial institutions, including banks, cash dealers and money remitters (as defined in section 3). PCA also applies to a range of designated non-financial businesses and professions (DNFBPs), including natural or legal persons that provide electronic services for the transmission of money or value (section 3 PCA). However, at the time of the country visit, only one foreign bank was operating on the territory of Kiribati applying Australian anti-money laundering regulations.

Financial institutions are accountable under the PCA and subject to customer due diligence requirements (sec. 101-103), transactions monitoring (sec. 104), suspicious transaction reporting (sec. 106-107) and record keeping measures (sec. 110).

There is no designated supervisory authority for financial institutions. In 2021, Kiribati adopted a Financial Supervisory Authority Act and a Financial Institutions Act but the Authority is not yet established.

The PCA establishes the Financial Intelligence Unit (FIU) within the Kiribati Police. Section 17 of the Act gives the FIU the power to consult with “any relevant person” (domestic or foreign) in exercising its powers or duties.

The PCA was amended in 2005 to include provisions relating to the cross-border transfer of cash (in any currency), but the current definition does not include appropriate bearer negotiable instruments. A person leaving or entering Kiribati with an amount of cash greater than 5000 Australian dollars must declare such amount to an authorized officer. Anyone who fails to do so commits an offence punishable by a fine of 12,000 Australian dollars or two years imprisonment, or both (sec. 115A).

The PCA requires financial institutions or cash dealers to maintain complete originator information throughout the payment chain, scrutinize wire transfers that do not contain such information, and apply enhanced scrutiny on transfers that do not contain such information (Section 104(2)(b) and 105). However, at the time of the country visit the only entity providing money remittance services was the foreign bank operating on the territory.

At the time of the country visit, the FIU developed a new financial institution guidelines policy that was being adopted by the OAG and based on guidelines and
recommendations made by the FATF and the Asian Pacific Group (APG). Since 2013, Kiribati participates as an observer in APG but has not been assessed in a mutual evaluation.

The FIU has not signed any MoUs with foreign counterparts but does have informal connections, in particular with the Fiji FIU. Kiribati is also part of the Pacific Association of Financial Intelligence Units and applying for membership in the Egmont Group. However, Kiribati is not member of other international and regional networks.

The TCU cooperates through the Pacific Transnational Crime Network (PTCN) that established the Pacific Transnational Crime Coordination Centre (PTCCC) as well as through other counterparts, including INTERPOL and the Australian Federal Police (AFP).

2.2. Successes and good practices

- The establishment of multiple bodies with preventive anti-corruption mandates, including the Leadership Commission and the National Anti-Corruption Committee.

2.3. Challenges in implementation

It is recommended that Kiribati:

- Continue ensuring that NACS is adopted and updated in a timely manner and conduct periodic evaluations on the progress of the NACS implementation (Article 5(1)).

- Endeavour to adopt a structured system to periodically review legal instruments and administrative measures with a view to determining its adequacy to prevent and fight corruption (Article 5(3)).

- Strengthen the existing corruption prevention bodies by providing sufficient staffing, resources, and specialized training to ensure the full implementation of their mandates, including the mandates related to the conflict of interest and asset disclosure enforcement; furthermore, continue ensuring that the NACC meets regularly and fully implements its mandate (Articles 6(2), 7(4), and 8(5)).

- Endeavour to enhance public sector integrity by identifying positions considered especially vulnerable to corruption and adopting procedures for their selection, training and rotation, where appropriate (Article 7(1)(b)).

- Consider enhancing transparency in the funding of candidatures for elected public office and political parties by adopting legislation governing political funding and ensuring adequate transparency (Article 7(3)).

- Strengthen the existing conflict of interest framework by adopting rules on outside employment and commercial activities, as well as on disclosure of conflict of interest of civil servants; furthermore, ensure implementation of the rules on conflict of interest under the Leadership Code (Articles 7(4); 8(5)).

- Consider strengthening the existing corruption reporting mechanisms by adopting legislation on the protection of reporting persons and imposing a general obligation for civil servants to report acts of corruption (Articles 8(4) and 13(2)).

- Strengthen the existing asset disclosure regime by implementing the declaration requirements and publishing annual statements in a consistent manner (Article 8(5)).

- Strengthen the public procurement framework by ensuring that the excluded types of procurement under the PPA are subject to sufficient oversight and adequate regulation, ensuring timely and complete publication of information on contract awards, and considering to maintain a register of debarred tenderers;
furthermore, continue to enforce relevant provisions on the disclosure of personal interests and appropriate conduct of procurement personnel and consider adopting additional training requirements on ethics and transparency for the procurement personnel (Article 9(1)(a), 9(1)(b), and 9(1)(e)).

- Strengthen the system for the management of public finance by adopting clear and robust rules on internal controls and risk management for public bodies and rules concerning timely reporting on revenue and expenditure; furthermore, adopt clear provisions governing the falsification of records under the PFA, GFR, and other relevant instruments (Article 9(2)(d) and 9(3)).

- Strengthen the framework of public reporting and participation by adopting and enforcing legislation governing substantive elements of the right to access information and developing an overarching policy on simplifying administrative procedures to facilitate public access to competent decision-making authorities; furthermore, consider conducting and publishing comprehensive corruption risk assessments and adopting rules concerning public consultations during the law making process (Articles 10(a), 10(b), 10(c), 13(1)(a), and 13(1)(b)).

- Strengthen integrity and transparency in public prosecution by addressing the risk of political interference in the proper performance of prosecutorial functions, including the adoption of clearly defined criteria or independent assessment for the appointment and dismissal of the Attorney General, or the establishment of a separate position of the Director of Public Prosecution; furthermore, adopt rules concerning incompatible offices for judges and relevant officials responsible for public prosecution to address conflict of interest risks; furthermore, consider adopting training requirements on ethics and appropriate conduct for judges and prosecutors (Article 11(1) and 11(2)).

- Strengthen integrity and transparency in the private sector by:
  - Adopting measures to promote cooperation between law enforcement agencies and the private sector (Article 12(2)(a));
  - Promoting the adoption by private companies of standards of conduct for the correct and proper performance of business activities (Article 12(2)(b));
  - Digitizing the existing register of companies and ensuring that the register remains easily accessible to the public; furthermore, consider imposing an obligation on private entities to disclosure beneficial ownership information and ensuring that such information is verified and updated in a timely manner (Article 12(2)(c));
  - Considering the adoption, when necessary, of provisions to prevent the misuse of procedures regulating subsidies and licences for private entities (Article 12(2)(d));
  - Considering the adoption, when necessary and for a reasonable period of time, of restrictions on the professional activities or employment of former public officials, where such activities or employment relate directly to the functions held by those public officials during their tenure (Article 12(2)(e));
  - Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls and their financial statements are subject to auditing procedures (Article 12(2)(f));
  - And expressly prohibiting the accounting practices described in Article 12 Paragraph 3 of the Convention as well as tax deductibility of expenses that constitute bribes (Article 12(3) and 12(4)).

- Strengthen its supervisory regime, including by designating supervisory authorities for all relevant sectors, including the financial supervisory authority and DNFBPs (art. 14(1)(a)).
• Strengthen the ability of the FIU to cooperate at national and international levels (art. 14(1)(b)).

• Consider implementing feasible measures to detect and monitor the movement of appropriate bearer negotiable instruments across their borders (art. 14(2)).

• Endeavour to develop its regional, subregional and bilateral cooperation in order to combat money laundering (art. 14(5)).

2.4. Technical assistance needs identified to improve implementation of the Convention

• Review and strengthen existing anti-corruption legislations and policies, including new legislation and policies to address specific areas identified during the review process.

• Training and other support for domestic anti-corruption bodies and other stakeholders such as private sector, civil society organizations, and public officials.

• Support for developing systems for asset declaration and public procurement to enhance transparency and accountability.

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The Mutual Assistance in Criminal Matters Act (MLA Act) provides the legal basis for mutual legal assistance (MLA) on asset recovery. Kiribati does not make MLA conditional of the existence of a treaty and the Convention can be used as legal basis.

Kiribati has not established a dedicated unit for asset recovery and management. The Kiribati Police Service (KPS) has two units: the Financial Intelligence Unit (FIU) which is responsible for recovering assets of money laundering (secs. 18-19, 43 PCA) and the Transnational Crime Unit (TCU) which is in charge of recovering assets from other transnational crimes (section 44). The Criminal Investigations Division (CID) of the KPS is mandated to enforce orders of confiscation. In addition, the FIU provides assistance in monitoring and ensuring that no unaccountable money of foreign origin is deposited inside and outside Kiribati.

Section 67 of the Police Service Act (PSA) provides for the possibility to authorize the disclosure of information that is in possession of the police service, even without prior request. In practice, certain units of the KPS (such as the TCU) have spontaneously transmitted information to foreign competent authorities in previous cases. However, this practice is mostly carried out through formal and informal networks and arrangements.

The TCU cooperates internationally through the Pacific Transnational Crime Network (PTCN) as well as other counterparts such as FIU, INTERPOL and the AFP.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Part V of the PCA requires financial institutions to identify customers and verify their identity on the basis of reliable and independent source documents when entering into a continuing business relationship, conducting any transaction, when there is a suspicion of money-laundering or when there are doubts about the adequacy of previously obtained CDD information (art. 102). The Act does not require financial institutions to identify beneficial owners or take reasonable steps to determine their identity. Furthermore, the Act does not provide explicitly for enhanced scrutiny or due diligence for politically exposed persons (PEPs), their family members and close associates.
The FIU is mandated to issue guidelines to financial institutions and provide them training regarding transactions, record-keeping and reporting obligations. However, the FIU does not provide notification and advisories regarding higher-risk persons, accounts and transactions for whom they would be expected to apply enhanced scrutiny.

The PCA contains record keeping requirements (sec. 110) as well as the obligation to register original documents (sec. 111). The record keeping requirements do not apply to documents related to customer due diligence.

Kiribati does not have legal and regulatory provisions in place for preventing the establishment of shell banks in Kiribati or any legal and regulatory provisions to prevent financial institutions from entering into or continuing a correspondent banking business with such banks or with foreign financial institutions that permit their accounts to be used by shell banks.

The Statement of Interest (SoI) that all leaders need to submit annually includes declarations of estimated assets and liabilities obtained outside Kiribati (Leaders Code of Conduct Act 2016, sec. 11). However, the asset declaration requirements for Leaders do not extend to foreign bank accounts, including any signature or control authority over such accounts.

Kiribati has established a Financial Intelligence Unit (FIU) tasked inter alia with receiving, analysing and disseminating suspicious transaction reports (sec. 16, PCA). However, the FIU is integrated within the Kiribati Police Service (KPS) and is not financially or administratively independent.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Kiribati does not have specific legislative provision permitting another State to initiate civil action in national courts or claim for compensation and damages. Civil action can still be initiated by legal persons and not by foreign States. At the time of the country visit, this situation never occurred in Kiribati and no provisions allowed courts to order those who committed offences to pay compensation or damages to another State party. Section 28 of the PCA provides for the protection of third parties in the context of confiscation, which includes legal persons. However, as in the case of civil proceedings, there is no certainty that these measures can be extended to foreign States.

Sections 41 of the Mutual Assistance in Criminal Matters Act (MLA Act) provides for a registration process of foreign forfeiture orders before being enforced on national territory. Requests are received through the central authority which is the Attorney General. Kiribati applies a special procedure for countries that are part of the Commonwealth. Section 3 of the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth (Harare Scheme) provides for the direct enforcement of confiscation, seizure and freezing orders from another Commonwealth country.

Section 26 of the PCA provides for the possibility for the confiscation to be based on a serious offence, including the offence of money laundering instead of the predicate offence but the MLA Act does not specify if this is possible in a mutual legal assistance context. Confiscation in Kiribati is conviction-based, except where the person has absconded or died (sec. 29 of PCA). Kiribati does not a priori allow for the execution of a non-conviction based foreign forfeiture order (sec. 41(1)(b) MLA Act). However, authorities noted that the order would still go through the registration process and the possibility to execute it would be assessed by the High Court.

Sections 21, 41 and 47 to 49 of the MLA Act provide the enforcement of foreign search, seizure and freezing requests and orders. As in the case of foreign forfeiture orders, search, seizure and freezing orders must go through a process of registration (Section 41(3)). Part 4 of the PCA provides the authorities the power to preserve
property subject to confiscation, including based on the execution of a foreign order (sec. 50). The MLA Act also provides for the possibility for a police officer to seize and freeze other things that those strictly included in the search warrant if they are believed “to be relevant to the proceeding or investigation in the foreign country, to provide evidence about the commission of a criminal offence in Kiribati; and to be likely to be concealed, lost or destroyed if it is not seized.” (sec. 22(3)). During the country visit, Kiribati provided specific example of such cooperation that happened with Marshall Islands, Tuvalu and Nauru.

Kiribati does not have provision that allow to issue preservation orders without prior request and on the basis of a foreign arrest or criminal charge.

Section 8 of the MLA Act and section 14 of the Harare Scheme outline the format and the information that must be included in the MLA request. These provisions provide that requests must contain a minimum of information on the type of property to be searched for and confiscated. However, there is no obligation on the requesting State to provide adequate notification to bona fide third parties and to provide other information required under article 55 paragraph 3 of the Convention. Regarding the requests for confiscation, the Attorney General must be satisfied that a person has been convicted of the offence and that the conviction and the order are not subject to further appeal in the foreign country (sec. 41(1)(b)). On the other hand, the exact location of the properties and their precise nature is not necessary for the execution of the requests, particularly for search warrants.

Section 12(g) of the MLA Act provides for the possibility to refuse MLA requests if the “provision of assistance would impose an excessive burden on the resources of the Republic”. However, the act does not provide a definition of the term “excessive burden” and Kiribati has no experience in cases where this provision has been used. There is no reference to a potential time limit for the provision of assistance.

No provision within the MLA Act nor the Scheme clearly indicates that Kiribati should, before lifting a provisional measure, give the requesting State an opportunity to present its reasons in favour of continuing the measure. There are no specific rules concerning de minimis value of property.

Sections 26(4)(a), 28 and 31 of PCA provide for the protection of the *bona fide* third parties.

Return and disposal of assets (art. 57)

Kiribati does not have legal provision regulating asset disposal and return. Only the MLA Act provides for the possibility to enter in *ad hoc* arrangements to return confiscated property to the requesting foreign country (sec. 44(3)). The interests of *bona fide* third parties are protected (PCA sec. 26(4)(a), 28 and 31). There is no legal provision that gives effect to the obligations of paragraph 3 of article 57 of the Convention in the case of offences established in accordance with the Convention.

The law of Kiribati does not provide for the possibility deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings. At the time of the country visit Kiribati had not entered into any *ad hoc* agreements on asset return.

3.2. Successes and good practices

- Kiribati allows for the seizure and freezing of other properties and assets than those strictly detailed in a search warrant if those things are believed to be relevant to the proceeding or investigation in the foreign country, to provide evidence about the commission of a criminal offence in Kiribati; and to be likely concealed, lost or destroyed if not seized (art. 54(2)).

- Kiribati proactively and spontaneously transmits information to foreign competent authorities, without a prior mutual legal assistance request, where such information could assist in the investigation of offences (art. 56).
3.3. Challenges in implementation

It is recommended that Kiribati:

- Consider establishing a separate Financial Intelligence Unit (FIU) separated from the Kiribati Police Service, as well as an agency in charge of the management of seized and confiscated assets (arts. 51, 58).

- Take necessary measures to require financial institutions to identify beneficial owners and take reasonable steps to determine their identity, and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of politically exposed persons (domestic, or foreign) as well as their family members and close associates (art. 52(1)).

- Take necessary measures to issue advisories regarding higher-risk persons, accounts and transactions and to notify financial institutions of the identity of particular natural or legal persons to whose accounts they will be expected to apply enhanced scrutiny (art. 52(2)(a)(b)).

- Include customer due diligence records in registration and record keeping requirements provided by the PCA (art. 52(3)).

- Take appropriate measures to prevent the establishment of shell banks and consider requiring financial institution to refuse to enter into or continue correspondent banking relationships with shell banks or with foreign financial institutions that permit their accounts to be used by shell banks (art. 52(4)).

- Consider extending asset declaration requirements for Leaders to foreign bank accounts, including any signature or other authority over such accounts (art. 52(5)(6)).

- Take measures to permit another State party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence of the Convention, permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of the Convention (art. 53).

- Consider taking such measures to allow confiscation property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases for purposes of international cooperation (art. 54(1)(c)).

- Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property (art. 54(2)(c)).

- Consider amending the existing MLA guidelines by imposing an obligation on the requesting State to provide adequate notification to bona fide third parties and to provide other information required under article 55 paragraph 3 of the Convention (art. 55(3)).

- Consider defining the term “excessive burden” included in section 12(g)of the MLA Act and limiting its application to the property of de minimis value (art. 55(7)).

- Consider adopting measures providing for consultations before provisional measures are lifted (art. 55(8)).

- Take necessary measures to ensure that confiscated property is returned in line with article 57 of the Convention, even in the absence of an agreement with the requesting State (art. 57(3)) and regulate costs arising from asset recovery proceedings in accordance with article 57(4). (art. 57(3) and 57(4)).
• Consider concluding more bilateral and multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to asset recovery (art. 59).