

## TERMS OF REFERENCE

**Reference:** PGKIR0690

**Post Title:** Consultant - Court Rules and Procedures

**Nature of Arrangement:** Short-Term Consultancy

**Project Title:** Support to the High Court of Kiribati

**Project Location:** Kiribati

**Start Date:** ASAP

### 1. BACKGROUND

The Judiciary of Kiribati is made up of Magistrates' Courts, High Court and Court of Appeal. Limited right of appeal to the Privy Council still exists in certain matters only. The High Court has original jurisdiction as well as appellate jurisdiction. The High Court of Kiribati is established under Chapter VI, section 80 of the Constitution. The judges of the High Court shall be the Chief Justice and "such number of other judges" as may be prescribed.

At present Kiribati's 33 islands and a population of about 107,000, stretched over an area of 1.3 million square miles, are served a High Court comprised only of the Chief Justice, the Commissioner of the High Court (who is also the Chief Registrar) and a High Court Judge provided by the Commonwealth Fund for Technical Cooperation (CFTC). There are also 150 magistrates in Kiribati sitting across the 21 courts of the islands of Kiribati. As there is no Chief Magistrate, the role of support to the magistrates falls to the Chief Registrar.

Within this context of constrained judicial capacity, one of the key additional challenges facing the Judiciary in Kiribati is the current application of the 1964 Western Pacific High Court Civil Procedure Rules. These Civil Procedure Rules which date back to the colonial era are still being used today and desperately need updating, no longer being relevant to the needs of the legal system.

New rules are required to provide greater access to justice, more discipline in the institution and conduct of proceedings and the accelerated disposal of civil cases. The High Court presently aims to develop new draft Rules and Procedures by the end of 2015. The Rules Working Committee has already identified the model used in Belize as a fitting template to develop Kiribati's new Rules and Procedures.

### SPECIFIC AIMS OF THE NEW RULES

- To make the Rules simpler, and justice more accessible
- Clarify the duties of all parties
- Support more efficient and effective access to justice in the timely and low-cost disposal of cases.
- Increase the speed of moving cases through the courts
- Allow the court to take charge of cases once filed
- Provide rules in language which is both accessible and unambiguous
- Separate the Rules and Procedures for the High Court and Magistrates Court respectively, to avoid confusion in the Magistrates' Court.
- Allow Kiribati to catch up with the region

## **2. PURPOSE OF ASSIGNMENT**

The purpose of this assignment shall be the production new Civil Procedure Rules accompanied by Practice Directions for their implementation in the High Court of Kiribati.

## **3. TASK OF EXPERT**

It shall be the task and responsibility of the expert to:

- i. Review the current rules and acquaint herself/himself with their provisions;
- ii. Consult with relevant stakeholders on the requirement of new rules
- iii. Propose necessary components and additions for the new Civil Procedure Rules
- iv. Review the model used in Belize (which has been selected as an appropriate format for Kiribati to follow)
- v. Prepare a working draft of the new rules based on the Belize model, which will be shared for consultation prior to finalisation
- vi. Draft Practice Direction necessary to accompany and to give effect to the provisions of the new Civil Procedure Rules
- vii. Undertake any other work necessary in order to complete the task of perfecting the Rules and Procedures;
- viii. Development of a finalised draft to the Chief Justice for his approval preparatory to the promulgation of the new civil procedure rules.
- ix. Work closely with and advise the Chief Justice and/or the Chief Justice's nominated representative in the performance of these tasks;
- x. Support a three day workshop on working with the new rules for lawyers, court and registry staff and Judges.

## **4. ASSIGNMENT DELIVERABLES**

- 4.1 An Inception Progress Report following the first visit
- 4.2 Production on a first draft of the new rules, to be shared for consultation.
- 4.3 Final Progress Report following the second visit
- 4.4 Finalised draft of the Rules and Practice Directions
- 4.5 Sensitisation and training material for lawyers, court and registry staff and Judges

## **5. IMPLEMENTATION ARRANGEMENTS**

It is envisaged that up to 40 working days will be spent in Kiribati undertaking these tasks and responsibilities. This is envisioned to be delivered through an initial 2 week visit, to be followed by remote drafting, support for consultation (as required) and subsequent re-engagement in Kiribati for the finalisation and sensitisation process under a second visit.

The Judiciary of Kiribati has established a Rules Working Group who will support the collection of relevant information and will support the role of the expert. The Working Group includes: Chief Registrar, People's Law Office, private sector lawyers, Senior Registrar, Attorney General's Office, Kiribati Law Society, and the Solicitor General. Additionally, selected stakeholder consultation will be included, leveraging the broad representation of the working group.

The new rules once drafted will be delivered to the Rules Committee, then to the Attorney General before moving to Parliament for promulgation.

## **6. Transfer of Expertise**

The Commonwealth Secretariat attaches particular importance to the transfer of expertise and knowledge to counterparts. The Consultant in his/her discussions with the Reporting Officer should draw attention to the need for key staff to be assigned as counterparts at the beginning of the assignment. This should be reported in the Inception Report. Capacity development activities for key counterpart staff should also be specifically identified in the Inception Report. An update to these actions should be provided on this in all Progress Reports.

## **7. Experience & Qualifications**

The successful candidate should possess the following experience and qualifications to be considered for this post:

### **Essential**

- Degree and professional qualification in law
- Minimum of 10 years' professional experience as a judge of a higher court in any Commonwealth jurisdiction, including a minimum of 5 years' experience of hearing cases as a Judge of a higher court.
- Experience of revising Court Rules and Procedures in any Commonwealth jurisdiction in support of modern and efficient court systems;
- Strong presentation, communication and report writing skills
- Fluency in written and spoken English
- Computer skills: word processing, spread-sheets, and presentations.

### **Desirable**

- Experience of developing and delivering capacity building inputs for the justice sector
- Experience of working in a Commonwealth Country or/ the Pacific region