

REPUBLIC OF KIRIBATI
(No. 13 of 2001)

I assent,

Beretitenti.
 2001

**AN ACT TO ESTABLISH A LAND TENURE AND ADMINISTRATION
 SYSTEM FOR STATE-OWNED LANDS ON ISLANDS IN THE
 REPUBLIC OF KIRIBATI WHERE DEVELOPMENT AND
 SETTLEMENT IS TO BE ENCOURAGED**

Commencement:
 2001

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

Short title and commencement

1. This Act may be cited as the State Lands Act 2001 and shall come into operation on such date as the Beretitenti, acting in accordance with the Cabinet, may, by notice appoint.

Principles

2. This Act shall be interpreted in accordance with the following principles:
 - (a) The State is the owner of land in the Republic, and some of these lands should be made available for development including permanent settlement of citizens and their families, who otherwise have no or limited access to land.
 - (b) A land tenure system should give certainty to occupants while preserving the land's designation for settlement purposes; and avoid the risk of undue fragmentation and crowding.
 - (c) Once the State has established the optimum plot size appropriate for a family, safeguards should be established to prevent over crowding and degradation of the land.
 - (d) The State has a continuing interest in the land so that any alienation or change of use of the land should occur only under this Act.
 - (e) When granting land the State should give consideration to the future needs of Kiribati.

- (f) The objective of the planning provisions of this Act is to encourage sustainable development. Sustainable development is community growth and progress consistent with the preservation and prudent enhancement of the natural diversity of the environment; and it includes family planning without which sustainable development is not possible.

Interpretation

3. In this Act unless the context otherwise requires-

“alienate” or “alienated,” means the making over, from one person to another, of land or an interest in the land;

"contract" means the registered contract, referred to in section 8, and includes any modifications, annexures or subsequent adhesions thereto;

“Court” means the High Court unless the Magistrates’ Court is specifically referred to;

"family" includes,

- (i) the owner and the owner's spouse; and,
- (ii) the owner’s children; and,
- (iii) the owner’s parents and the parents of the owner's spouse; and,
- (iv) it further includes children of those children referred to in paragraph (ii) and parents of the parents referred to in paragraph (iii);

“occupy” or “occupation” means remaining on or residing on the land for 3 months or more;

“owner” means the person or persons for the time being registered as titleholder on the plot;

"plan" means, the strategic plan described in section 8;

"plot" means a unit of land the survey and registration for which has been completed, and it may include separated pieces of land;

“State” means the Republic of Kiribati;

“survey” means a cadastral survey certified by or on behalf of the Director of Lands.

Registry

4. (1) There shall be a land registry office established for each island to which this Act is made to apply, in which shall be kept a land register.

- (2) A duplicate land registry will be located in the Office of the Director of Lands, South Tarawa.
- (3) Each land register shall be in a form and contain the information approved in writing by the Minister acting in accordance with the advice of the Cabinet.
- (4) The land registers in both registries shall be considered authoritative; but in the event of any inconsistency between them the relevant South Tarawa land register will be preferred.
- (5) Notwithstanding sub-section (2) where the integrity of a land register as to a particular plot has been compromised the other land register will be preferred.
- (6) No contract shall be executed and no transfer effected until subsection (1) has been complied with.
- (7) Forthwith upon the execution of a contract and any related transfer of land under this Act, the documents shall be lodged for registration in the appropriate land registries.

Indefeasibility of Statutory and Registered Interests

5. The rights of,

- (a) the State provided for in this Act; and
- (b) the State and of the registered owner of any estate or interest in the land shown on the title, including the contract;

shall be held and enjoyed free from all other interests that are not registered except in the case of actual fraud, and then any rights thereby arising, shall only affect the land to the extent that;

- (i) a registered owner of any estate or interest, who is innocent of the actual fraud, is not prejudiced;
- (ii) the purposes of this Act are not defeated thereby; and
- (iii) a land planning strategy is in no way compromised.

Declaration of Land to be made available

- 6. (1) The Minister, acting in accordance with the advice of Cabinet may, by order in writing, declare that an island or a defined part of an island is to be made available for disposition under this Act.
- (2) The Minister may,
 - (a) include in the order referred to in subsection (1); or
 - (b) include in another order in writing later;

the number of plots to be made available for development in that place, with the size of such plots.

Survey

7. (1) The Minister shall cause a survey to be made of those islands or portions of islands which the State proposes to make available for development.
- (2) In performance of such survey, the Minister acting in accordance with the advice of Cabinet shall fix for an island or part of an island the plot size.
- (3) The plot size shall be determined on the basis of that size unit of land, which, on that part of that island, is likely to sustain on-going support for a family.

Strategic Plan

8. (1) Before recommending the transfer of any plots on land described in sections 6 or 7, the Minister shall requisition and obtain from the Secretary of the Ministry, a strategic plan for that land.
- (2) The plan shall include a report proposing the number of plots that might responsibly be transferred in the next strategic planning period, so that where practicable, sufficient land is reserved for the future needs of Kiribati.
- (3) The plan may include a land use plan prepared under the Land Planning Ordinance (Cap. 48).
- (4) The plan shall become effective only upon the approval in writing of the Beretitenti, acting in accordance with the advice of Cabinet.
- (5) The plan shall provide that the contract, described in section 9, only becomes binding on the State upon its execution by the Minister, acting in accordance with the advice of Cabinet.
- (6) The plan may be modified from time to time, and the provisions of this section shall apply to such modifications.
- (7) Any use or occupation of land, for any period of time, pursuant to an ineffective plan under subsection (4), or pursuant to a non-binding contract under subsection (5), shall be deemed to be a trespass on such land.

Contract of Ownership and Development

9. (1) The Minister may require, and where a plan prescribes, shall require, the first registered occupant of a plot, to adhere, by execution, to a contract which sets out the principles under this section, together with any special terms of the grant, or form of land tenure.

- (2) The contract terms may change from time to time and such changes become effective when registered against the plot.
- (3) The contract shall be filed in the registry so that the contract will form part of the documentation located whenever registration particulars for a plot is searched.
- (4) All subsequent owners of a plot shall comply with the current terms of any registered contract.
- (5) The contract shall have the terms set out in Schedule One with such additional terms not inconsistent with this Act as the parties may agree.

State Right of Reversion

- 10.** (1) Subject to subsection (3) no person shall cause any land governed by this Act to be alienated or charged in any manner, nor shall any occupation of such land, other than by the family be allowed, except –
- (a) by transfer back to the State; or
 - (b) by Ministerial permit under section 13.
- (2) A purported transaction in contravention of subsection (1) shall be of no force or effect, and any occupation under such transaction shall be deemed to be a trespass.
- (3) The State may, by consent in writing, executed in the manner described in section 8(5) as recorded in the certificate described in section 17 allow the direct transfer in the Registry of a plot from the owner named in the Registry, to a successor owner.
- (4) A direct transfer under subsection (3) shall only be registered where it is demonstrated that:
- (a) State consent has been given under section 17; or
 - (b) there is compliance with section 15.

State Reversion on Abandonment

- 11.** (1) Upon the owner's leaving the plot unoccupied by any family member for more than 90 days the Minister may apply to the Magistrate's Court on notice to the owners, and the court shall declare the plot of land to be abandoned.
- (2) No application may be made or considered under subsection (1) unless the application is filed during the period of abandonment, or within 12 months after the abandonment in question has ended.
- (3) A declaration of abandonment granted under subsection (1), shall be filed in the appropriate registries, and thereafter the Minister may direct the Registry, in writing, to register the ownership into the name of the State or to such new owners, pursuant to a contract, as the Minister may direct.

- (4) Before or during the course of a period, but not after, when the family will not be occupying the plot, an application may be made, for or on behalf of the owners, to the Minister, for a specific extension of the 90 day period allowed for in subsection (1).
- (5) Any application for non-occupation under subsection (4) may be determined by the Minister pursuant to such inquiries or consultations as, in his sole discretion, the Minister considers appropriate.
- (6) The Minister shall not extend the period of permitted non occupation under subsection (5), for a period longer than 12 continuous months without his first receiving the approval in writing of the Beretitenti, acting in accordance with the advice of Cabinet.
- (7) A plot shall be deemed to be abandoned under this section, and a declaration may be sought at any time after the last registered owner has died leaving no children able or willing to occupy the plot, and the last of the family properly and ordinarily residing on the plot at the time of that owner's death, have vacated the plot.

Island Council

- 12. Where the land governed by this Act, is located in a place where Local Government Council is operative, it shall be the duty of the Ministry to consult with such a Council before finalising any decision under sections 7, 11, 13 and 15.

Exceptional residential permission

- 13. (1) Notwithstanding the definition of family, the Minister may, on the application of an owner, permit in writing, the occupation of a plot or part of it, by a person with close family connection to the registered family, who would, but for that consent not be entitled to reside there.
- (2) Where an individual is permitted to occupy a plot under subsection (1), the Minister must determine and set out in writing compelling circumstances and reasons of a humanitarian kind for the granting of the permission.
- (3) Where an application under subsection (1) of this section is refused, the Minister shall deliver his reasons in writing.
- (4) The individuals permitted under subsection (1) shall leave the subject plot of land if –
 - (a) at any time the Minister directs in writing, with reasons;
 - (b) at the term set out in the permission no longer prevail;
 - (c) the circumstances found in subsection (2) no longer prevail.
- (5) The owner may appeal against the Minister's decisions under this section to the Magistrates' Court, which shall only interfere with the decision where it finds

that –

- (a) the Minister has acted without evidence of the existence of the circumstances described in subsection (2) of this section; or
- (b) the Minister has failed to consider circumstances of a humanitarian kind; or
- (c) the Minister has a personal interest in the matter and such interest of the Minister has materially influenced his decision.

Offence

- 14.** (1) Any person found occupying land governed by this Act, who is not a family member, and who is not otherwise permitted under section 13 commits an offence and shall be liable on conviction to a fine not exceeding \$5000 or to imprisonment for a term not exceeding 6months or to both.
- (2) In any such prosecution the Court in which the prosecution is brought shall have the power, in addition to any other sanction it may see fit to impose, to order the offender to vacate forthwith the subject land.

Enforcement

- 15.** (1) Where a registered family is unable or unwilling to comply with the terms of any grant or related contract requirements of this Act the Minister shall enforce the provisions of this section.
- (2) Subject to subsection (4) the Minister may by certificate in a form set out in Schedule 2 require that a plot registered to an individual shall be registered in the name of the State or another individual.
- (3) The certificate, referred to in subsection (2) shall only be issued where the Minister has received the written approval of the Beretitenti, acting in accordance with the advice of Cabinet, in advance of the execution of the certificate.
- (4) No certificate shall be issued under this section unless the Ministry has taken steps to obtain a resolution of the non-compliance:
- (a) by arranging where practicable, through an officer of the Ministry, to meet with appropriate family members to review the concerns of the Ministry, and
 - (c) by issuing a written notice to the family members which shall -
 - (i) list the matters requiring remedy and the steps necessary to remedy the non-compliance, and the consequences of continued non-compliance under subsection (2); and
 - (ii) require that not less than 30 days or more than 60 days from the date of the delivering of notice that the family shall remedy the non-compliance; and

- (iii) be delivered to the plot and prominently fixed thereto; and
 - (iv) be personally delivered where practicable to appropriate family members residing on the plot; and
 - (v) be mailed to those ascertained individuals not residing there; and
 - (vi) be delivered to the Chief Councillor of a Local Government Council in the area of the subject plot; and
- (d) a written report has been prepared for use by the Beretitenti and Cabinet narrating,
- (i) the relevant history of the plot; and,
 - (ii) the non-compliance in issue; and,
 - (iii) the steps taken under this section to obtain a remedy of that issue; and,
 - (iv) a clear statement of the efforts at compliance of the family or its position concerning the Notice, as the case may be.

Discretionary compensation for improvements only

16. The Minister, in his sole discretion, but only after receiving the written approval of the Beretitenti, acting in accordance with the advice of Cabinet, may direct that financial compensation, up to but no more than the current value of improvements on the plot, be paid to the family or registered owners from whom a plot has been transmitted under section 15(2).

Direct transfer

- 17.** (1) A plot may be transferred in writing from registered owners to a transferee but only with the consent of the State under section 10(3).
- (2) The memorandum of an intention to transfer land may be in the form of a last will and testament of the registered owner.
 - (3) The consent of the State required under this section shall be recorded in a certificate which shall comply with the terms of subsections (2) and (3) of section 15.
 - (4) Prior to issuing the certificate referred to in subsection (3), the Minister shall be satisfied on written report of an officer of the Ministry,
 - (a) that the interests of the transferring family and its affected members have been appropriately considered; and,
 - (b) that the transferees and their family are willing and able to comply with the terms of the registered grant and the current terms of any contract;

- (c) where the owners have separated in circumstances where section 18 applies, that the non-resident owner's rights under section 18, have been provided for.
- (5) Subject to subsection (6), it shall not be competent for the transferring party hereunder to receive monetary or other consideration for the transfer where the transfer is within the family of the transferring party.
- (6) An arrangement may be made whereby the child who inherits the land makes payment of valuable consideration to that child's siblings, or to a non resident owner as provided in subsection (4)(c) of this section.
- (7) Wherever possible the Minister shall allow transfers only to an individual owner, or to such owner and that owner's spouse or partner. This provision is intended to fulfil the objective that a plot should be occupied by a family as defined in section 3 above.

When husband and wife as joint owners separate

- 18.** (1). This section applies where the owners are husband and wife and the owners separate so that one owner cannot reasonably be expected to reside on the plot.
- (2) The Minister may on his own, or on the request of an owner, investigate whether the plot's non-resident owner is receiving adequate subsistence in all the circumstances.
 - (3) Where the Minister finds that adequate subsistence is not being provided to the non-resident owner and to dependents in his/her care he may direct that maintenance in money or kind shall be paid from the one owner to the other.
 - (4) The level of maintenance the Minister may order to be paid shall be an amount commensurate with the needs of the recipient owner, and the productivity of the plot and the income of, either money or kind, of the other owner.
 - (5) Where the Minister finds,
 - (a) the maintenance order is not being complied with; and
 - (b) the maintenance would be available from –
 - (i) the proceeds of a transfer of the plot, if the plot is directed to be transferred; or
 - (ii) the plot if the plot were owned by a person other than the defaulting owner,

the Minister may treat the default as a ground under the Act section 14(1) for enforcement as provided in that section.

- (6) From the proceeds of such compensation as the State may provide under section 15, or from the proceeds of any transfer, the Minister may direct that a portion of such proceeds be paid to the owner requiring subsistence under this section.

Lands under this Act are not native lands

- 19.** Land to which this Act is made applicable shall not be considered to be native lands. under the Native Lands Ordinance, cap 61,

SCHEDULE 1
(Section 9(5))
The Contract Form

This contract is made pursuant to the State Lands Act (“the Act”) in 4 copies (1 for each of the parties and 1 for each of the appropriate registries),

Between: THE GOVERNMENT OF KIRIBATI,
 by the Minister of
 (Hereinafter referred to as “the Government”)

And:

[Being the individual or individuals intended to be named as owner in the
 Registry] (Hereinafter referred to as “the owners”)

1.This is a transfer agreement under the State Lands Act 2001 concerning the plot of land described in the schedule attached to this Contract (“the plot”).

2.The initial parents who will be registered as owners of the plot are the owners_____.

3.The owners agree that the only persons entitled to reside on the land are the owners, their children and their children's children, the owners parents and their parents, and such other dependents of the owners as the Minister or the Court may allow under the Act.

4.The owners agree that the land shall be used for the habitation of themselves and their family as defined in the Act; and for such other uses as will not impair the family from supporting itself. This clause shall not be read as authority to develop the land in any particular way.

5.Any building or development on the land not otherwise prohibited hereunder shall be performed in compliance with any current law or plan related to that building or development.

6.The owners acknowledge:

- (a) the State Lands Act applies to the land tenure and occupation of the plot;
- (b) by confining the use of the plot to the family and such other persons as the Minister or the Court shall determine, it is intended to avoid the risks of fragmentation of the plot, and crowding;

- (c) the owners may not transfer or give up occupation of the plot except to the State, or use the land for borrowing money, without the consent of the Minister pursuant to the Act;
- (d) that should the plot remain unoccupied by the owners and the owners' family for more than 90 days, it shall be treated as an abandonment of the land, and the Minister may obtain a declaration from the Court; and thereafter the Minister may direct the relevant registries that ownership of the plot shall revert to the State, or to such other owners as the State may direct.

7. It is further acknowledged that:

- (a) the plot will be used by the family of the owners, as the term family is defined in the Act;
- (b) when the owners are ready to pass on their ownership the owners will request that the plot be transferred to their child who is willing to occupy it under the Act;
- (c) the State is limited in its ability to accommodate the owner's children on new plots of land;
- (d) there is no obligation on the State to seek to accommodate children of the owners ahead of other I Kiribati.

8. Where the plot is transferred to a family member the owner may not seek or obtain money consideration for the transfer. An arrangement may be made whereby the inheriting child makes some payment to brothers and sisters.

9. At the sole discretion of the Minister as approved under subsection 15(5) of the Act, where the land is transferred out of the family to, or by direction of, the Government, compensation shall, be paid to the family in an amount no greater than the value of improvements on the plot.

10(1). This clause applies where the owners are husband and wife, and the owners separate so that one owner cannot reasonably be expected to reside on the plot.

- (2) The Minister may on his own, or on the request of an owner, investigate whether the plot's non-resident owner is receiving adequate subsistence in all the circumstances.
- (3) Where the Minister finds that adequate subsistence is not being provided to that owner and to dependents in his/her care he may direct that maintenance in money or kind shall be paid from one owner to the other.
- (4) The level of maintenance the Minister may order to be paid shall be an amount commensurate with the needs of the recipient owner, and the productivity of the plot and the income of, either money or kind, of the other owner.
- (5) Where the Minister finds,
 - (i) the maintenance order is not being complied with; and,
 - (ii) if the plot were directed to be transferred maintenance would be available from the proceeds of such transfer, or from the plot, if the plot were owned by a person other than the defaulting owner,

The Minister may treat the default as a ground under the Act section 14(1) for enforcement as provided in that section.

- (6) From the proceeds of such compensation as the State may provide under section 15, or from the proceeds of the transfer from or by way of the consent of the State, the Minister may direct that a portion thereof should be paid to the owner requiring subsistence under section 17 of the Act.

11. To the extent of any inconsistency between this contract and the provisions of the Act, the provisions of the Act shall prevail.
12. [additional terms, if any]

EXECUTED AT THIS DAY OF 20____

THE MINISTER BY AND WITH THE WRITTEN APPROVAL OF THE
BERETITENTI IN ACCORDANCE WITH THE ADVICE OF CABINET

THE OWNERS (print name and give address and occupation)

SCHEDULE (to contract)
DESCRIPTION OF THE PLOT

...

SCHEDULE 2 (S.15 (2))
CERTIFICATE OF TRANSFER OF THE MINISTER

The Minister of Home affairs and Rural Development [as the case may be] by and with the written approval of the Beretitenti acting in accordance with the advice of Cabinet Hereby directs that the plot of land governed by the Act and described in the Schedule attached, presently registered to _____

Shall be transferred to _____.

This certificate is issued under the authority of section _____ of the State Lands Act on the grounds that:

[here state the basis of the authority referring to any relevant documents, Cabinet minute, Notice, certificates, consent or Court Reasons, which support the transfer and attach true copies of these documents where practical]

[where this form is used for the original State grant, there shall be noted "ORIGINAL GRANT"]

Signed at _____ this _____ day of _____ 20_____

Minister of _____

STATE LANDS ACT 2001

EXPLANATORY MEMORANDUM

This Act establishes a new land holding system for State owned lands. The present English style land tenure system is proving to be inadequate, because it does not prevent more desirable islands from becoming crowded. The local government administration is not equipped to impose and enforce a land planning regime that will compel families to use the land based resources in a sustainable way. The answer proposed by this bill is to combine a land planning component with the land title rights, leaving with the State, sufficient rights of control of the land, to enforce the land use expectations.

The Bill will only apply to lands owned by the State. Its use will be mostly in the Line and Phoenix groups. No one's present land holding is affected by the Bill. The Bill is a settlement plan. Once the Bill, the registry systems and survey are in place, the government will have greater confidence that State lands can again be made available to I-Kiribati, because there will be appropriate means to regulate land use. This may be the last opportunity in Kiribati to make a land holding system the servant to forward planning and sustainable land uses.

For ease of reference the principles of interpretation in clause 2 of the Bill are repeated here. Because the concept of joining land use planning, with land tenure, is a new idea for Kiribati, it is felt that a statement of principles will be useful:

“Principles

2. This Act shall be interpreted in accordance with the following principles:
 - (a) The State is the owner of land in the Republic, and some of these lands should be made available for development including permanent settlement of citizens and their families, who otherwise have no or limited access to land.
 - (b) A land tenure system should give certainty to occupants while preserving the land's designation for settlement purposes; and avoid the risk of undue fragmentation and crowding.
 - (c) Once the State has established the optimum plot size appropriate for a family, safeguards should be established to prevent over-use of the land.
 - (d) The State has a continuing interest in the land so that any alienation or change of use of the land should occur only under this Bill.

- (e) When granting land the State should give consideration to the future needs of Kiribati..
- (f) The objective of the planning provisions of this Bill is to encourage sustainable development. Sustainable development is community growth and progress consistent with the preservation and prudent enhancement of the natural diversity of the environment; and it includes family planning without which sustainable development is not possible.”

The central features of the Bill are twofold:

1. Once an appropriate plot size for a settlement area has been fixed (the strategic plan clause 8), the plot of land is restricted in its use to a family. It cannot be further subdivided. Family is widely defined (clause 3) to include the owner and his spouse, the owner’s children, his parents, and his spouse’s parents, and it includes the owner’s grandchildren. Any other persons who wish to live on the land will have to apply through the owner to the Minister.
2. There can be no sale of the land outside the family. The State retains a right of reversion (a right to take the land back) (clause 10) should the family move off the land, or if the owners do not use the land as the land holding terms require.

It is required that when the first owners of land take their title they will enter into a contract with the Republic. The contract becomes part of the land title because it is filed in the registry with the memorial of ownership. The contract sets out the terms of the grant of land, and the requirements of the Bill. The owners will have no doubt that if they wish to move onto State land that is governed by the Bill, there will be restrictions on how they can use the land. The land cannot become a commodity for sale; and it cannot become a place for persons, outside the definition of “family”, to migrate. If prospective owners think that the system is not good for them, then they do not sign the contract, and they do not move to the land.

The executive authority of the State under the Bill resides in the designated Minister on the written approval of the Beretitenti in accordance with the advice of Cabinet, as to the following powers:

- Establishing a stretch of State land to be governed by the Bill (clause 6);
- Establishing a strategic plan for that land with an optimum plot size (clause 8);
- Directing that a plot of land be transferred from one owner to a new owner (subject to the safeguards described in clauses 15 and 17).
- Awarding the owners any compensation for improvements to the plot when the plot is directed to be transferred to new owners (clause 16).

The Minister’s power to take back land when he/she finds a plot to be abandoned for more than 90 days requires a court application (clause 11). And where the

Minister declines to permit a person outside the definition of family to reside on the land, the owner can appeal to the Court (clause 13).

The owner of a plot can transfer the plot to one of the owner's children with the consent of the State. The transferee child cannot be asked to pay the owner for this transfer, but the child can enter into an arrangement to pay some compensation to that child's brothers and sisters who must move off the land (clause 17).

Where owners separate and one of the owners must move off the plot, the Minister is empowered to direct the resident owner to take reasonable care of the owner who had to move out. This section is concerned with the situation where an owner caring for children, or an owner who has worked hard on the plot, is left with nothing when that owner is forced off the land (clause 18).

The State is not required to favour children of the owner, other than the inheriting child. The State must consider the interests of all I-Kiribati when it comes to making plots of land available on State land. In this way it is expected that owners will give consideration to the best size for their family. Owners will realise that there is limited access to new lands, and only one of their children will be entitled to remain on the plot and have a family there (clause 2(c)).

Michael N. Takabwe
Attorney General
7 May 2001