

REPUBLIC OF KIRIBATI.

DEPORTATION ACT 1979.

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Form 1: Deportation Order.

REPUBLIC OF KIRIBATI.
(No. 5 of 1979).

I assent.

Beretitenti.
December, 1979.

A BILL
entitled

AN ACT TO MAKE PROVISION IN RESPECT OF
THE DEPORTATION OF ALIENS.

Commencement:

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

- Short title. 1. This Act may be cited as the Deportation Act 1979.
- Interpretation. 2. In this Act, unless the context otherwise requires -
- "alien" means a person who is not a citizen of Kiribati;
- "convicted person" means a person who the Minister is satisfied has been convicted by any court of an offence punishable by imprisonment otherwise than only in default of payment of a fine;
- "deportation order" means an order under section 4(1);
- "deportee" means an alien against whom a deportation order has been made.
- Application of Act. Cap.77 3. The provisions of this Act are in addition to and not in derogation of the provisions of the Immigration Act, and in particular sections 4(1)(e), 13 and 16 of that Act.
- Deportation orders. 4.(1) In any case referred to in subsection (5), the Minister may make an order in Form 1 in the Schedule requiring an alien -
- (a) to leave Kiribati; and
- (b) to remain out of it.
- (2) A deportation order may be made subject to any condition that the Minister thinks proper.
- (3) Subject to section 6, a deportation order takes effect immediately on being served on the deportee, or at such later time as is provided for in the order.

(4) A deportation order may be revoked, and the conditions of a deportation order may be varied, by the Minister at any time.

(5) A deportation order may be made against an alien in any of the following cases:-

- (a) subject to section 5, if the alien is a convicted person in respect of whom the court that convicted him has recommended to the Minister that a deportation order be made against him, either in addition to or in place of sentence; or
- (b) if the Minister is satisfied that the alien has insufficient means to support himself and his dependants (if any); or
- (c) if the Minister is satisfied that the alien is, or has been, conducting himself in such a way -
 - (i) as to be dangerous to public safety, good order, public morality, public health, defence or national security; or
 - (ii) that his presence in Kiribati is otherwise contrary to the public good.

(6) The court that convicts an alien of an offence referred to in the definition "convicted person" in section 2 may, for the purposes of this Act, recommend to the Minister that a deportation order be made against the alien.

(7) Where a deportation order is made in reliance on subsection (5)(c), the order shall set out, in general terms, the conduct complained of.

(8) Where a deportation order is made in reliance on subsection (5)(c)(ii), the Order shall state the respect in which the presence of the alien is contrary to the public good.

Appeals against conviction or sentence.

5.(1) A deportation order shall not be made under section 4(5)(a) until -

- (a) the time allowed by law for appeal or further appeal (whether against conviction or against sentence) has expired and any appeal and any further appeal has been determined; or
- (b) the alien states, in writing, to the Attorney-General that he does not intend to appeal or to appeal further.

(2) For the purposes of subsection (1)(a) -

- (a) if no time is limited by law for making an appeal or further appeal - the time referred to in that paragraph shall be deemed to be a reasonable time, notified in writing by the Attorney-General to the alien, after the conviction or appeal as the case may be; and

- (b) if a time is limited by law for making an appeal or further appeal, but provision is also made for the extension of that time by leave of a competent authority - no account shall be taken of the possibility of such an extension unless application for leave or for an extension is made within the time so limited.

(3) Where in a case referred to in section 4(5)(a) an appeal is made against conviction or sentence and -

- (a) in the case of an appeal against conviction - the appeal is upheld; or
- (b) in the case of any appeal - the court on appeal certifies to the Minister that it does not concur in the recommendation,

the recommendation for deportation is of no effect, and any deportation order made on the ground of section 4(5)(a) is annulled, so far as it is made under that paragraph.

(4) Subsection (3) does not affect the powers of the Minister under section 4(5)(b) or (c) or a deportation order made in reliance on either of those paragraphs.

Review of orders.

6.(1) Where a deportation order is made against an alien in reliance on any provision of section 4(5), the alien may apply to the High Court for a review of the order on the ground that the terms and conditions of the order are, in the circumstances, unreasonable.

(2) Where a deportation order is made against an alien in reliance on section 4(5)(c), the alien may apply to the High Court for a review of the order on the ground that -

- (a) the conduct complained of did not occur; or
- (b) his conduct has not been such as to give reasonable justification, in a democratic society, for his deportation.

(3) An application under subsection (1) or (2) shall be made within a period of seven days after service of the order on the deportee or within such further time as the High Court, on application made within that period, allows.

(4) Where an application is made under this section, execution of the deportation order is stayed until a date fixed by the High Court unless before the hearing of the application the application is withdrawn, in which case the order takes effect immediately or on the date on which it would, but for this section, take effect, whichever is the later.

(5) The High Court shall proceed without delay to hear and determine an application under this section.

(6) In dealing with an application under this section, the High Court -

- (a) shall determine its own procedure; and
- (b) is not bound by technical rules of evidence but shall inform itself on the matter in whatever manner it thinks best, and may take account of any information (including hearsay) that is available to it.

(7) If on a review under subsection (1) the High Court is satisfied that the ground of the application is made out, it may vary the deportation order in such manner as it thinks reasonable.

(8) If on a review under subsection (2) the High Court is satisfied that a ground referred to in that subsection is made out, it shall, by order, so declare, and, subject to subsection (9), the order is thereupon annulled.

(9) Nothing in subsection (8) affects the operation of a deportation order so far as the order is made in reliance on section 4(5)(a) or (b).

Deportees
undergoing
sentence.

7. If a deportee has been sentenced, or is sentenced, to a term of imprisonment, the sentence shall be completed before the order is carried into effect, unless the Minister otherwise directed.

Deportation.

8. A deportee shall -

- (a) leave Kiribati in accordance with the deportation order; and
- (b) remain out of Kiribati as long as the order remains in force.

Detention
pending
deportation.

9.(1) A deportee may, by order of the Minister -

- (a) be detained until it is reasonably practicable to remove him from Kiribati; and
- (b) be placed on board a vessel or aircraft about to leave Kiribati.

(2) A deportee detained under section (1) -

- (a) shall be detained in such manner as is directed by the Minister; and
- (b) shall be deemed to be in lawful custody while so detained and until the vessel or aircraft on which he is deported leaves Kiribati.

Duty of
masters of
vessels and
aircraft.

10.(1) Subject to subsection (2), the master of a vessel or aircraft that is about to leave Kiribati and to call at any port or airport outside Kiribati shall, if so required by the Minister or an immigration officer -

(a) receive on board his vessel or aircraft -

(i) a deportee; and

(ii) the wife and dependants (if any) in Kiribati of the deportee, if they so request; and

(b) subject to subsection (2), give to them a passage to that port or airport, and proper accommodation and maintenance during the passage.

(2) Subsection (1)(b) does not prevent the master of a vessel or aircraft from transporting a deportee and his wife and dependants, or any of them, to a port or airport outside Kiribati other than the port or airport referred to in subsection (1).

Costs of
transport, etc.

11.(1) Subject to the succeeding provisions of this section, ~~unless otherwise arranged between the Government and the~~ deportee the costs of transport, accommodation and maintenance under section 10 shall be borne by the Republic.

(2) If the deportee and his wife and dependants, or any of them, are or is, in accordance with section 10(2), transported to a port or airport other than the port or airport referred to in section 10(1), the amount for which the Republic is liable under subsection (1) shall not exceed the amount for which it would have been liable if the vessel or aircraft had transported them to the first-mentioned port or airport.

(3) The Minister may, by written order, apply the whole or any part of any property in Kiribati of the deportee towards the costs for which the Republic is liable under subsection (1), and of the maintenance of the deportee, and of his wife and dependants (if any), while he is detained under section 9.

Cap. 77

(4) The whole or any part of the amount of any deposit, bond or security made or given under section 4(1)(e) of the Immigration Act in respect of the deportee, or the wife or a dependant of the deportee, may, in the manner prescribed by that paragraph, be forfeited or recovered as if the person concerned had contravened or failed to comply with a term or condition on a permit, and in that case shall be applied towards the costs for which the Republic is liable under subsection (1) in respect of the person to whom the deposit, bond or security related.

(5) Any amount left over after the application, in accordance with subsection (3) or (4), of any property or of any deposit, bond or security shall as soon as practicable be paid over to the person entitled to it.

Offences.

12.(1) A deportee who -

(a) fails to leave Kiribati in accordance with the terms of the deportation order made against him; or

(b) returns to Kiribati while the order is in force,

is liable to a fine of three thousand dollars and to imprisonment for three years.

(2) A person who harbours or conceals any person whom he knows, or has reasonable grounds to believe, to be in Kiribati in contravention of the terms of a deportation order is liable to a fine of one thousand dollars and to imprisonment for one year.

(3) If the master of a vessel or aircraft fails to comply with a requirement under section 10(1), he, the owner of the vessel or aircraft and any agent in Kiribati of the owner are each liable to a fine of four hundred dollars.

Repeals.

Cap. 78

Cap. 79

13.(1) The Deportation of Aliens Act and the Deportation (Immigrant British Subjects) Act, and any subsidiary legislation made under either of those Acts, are repealed.

(2) Notwithstanding subsection (1), any order or requirement, and any recommendation as to deportation made by a court, under either of the Acts repealed by that subsection that was in force immediately before the commencement of this Act shall, on that commencement, continue in force as if made under this Act.

SCHEDULE.
(Section 4(1)).

Form 1.

REPUBLIC OF KIRIBATI.

Deportation Act 1979.

DEPORTATION ORDER.

*WHEREAS _____, a person who is not a citizen of Kiribati, was on (date of conviction) convicted by (name of convicting court) of an offence punishable by imprisonment otherwise than only in default of payment of a fine, namely (specify offence of which convicted), and the said court recommended to the Minister that a deportation order be made against the said _____ :

OR

*WHEREAS I am satisfied that _____, a person who is not a citizen of Kiribati, has insufficient means to support himself and his dependants (if any):

OR

*WHEREAS I am satisfied that _____, a person who is not a citizen of Kiribati, is a person who is or has been conducting himself in such a way as to be dangerous to

- *public safety
- *good order
- *public morality
- *public health
- *defence
- *national security

in that (specify, in general terms, the conduct complained of):

OR

*WHEREAS I am satisfied that _____, a person who is not a citizen of Kiribati, is or has been conducting himself in such a way that his presence in Kiribati is contrary to the public good in respect of (state heading of public good - compare headings in section 4(5)(c)(i) and immediately above), in that (specify, in general terms, the conduct complained of):

NOW THEREFORE I, _____, the Minister of _____,**
by virtue of the powers conferred by the Deportation Act 1979, order
that the said _____ leave Kiribati and remain out of
it while this Order remains in force:

***AND I do further order that the sentence of (period of imprisonment)
imprisonment expiring on _____ to which the said
was sentenced on (date of sentence) by (name of sentencing court)
(any further details necessary to identify offence and sentence)
be completed before this Order is carried into effect.

An application for review of this Order, under section 6 of the
Deportation Act 1979, may be made within seven days after service of
this Order on the deportee, or such further period as the High Court,
on application made within that period, allows.

Subject to section 6 of the Deportation Act 1979, this Order takes
effect

*at the end of the period allowed for application for review
or when the deportee waives, by written notice to the
Attorney-General, his right to apply, whichever first occurs.

*on _____ 19 _____ or - _____

(a) at the end of the period allowed for application
for review; or

(b) when the deportee waives, by written notice to
the Attorney-General, his right to apply,

whichever last occurs.

*as set out above.

***This Order is subject to the following conditions:-

(Specify conditions)

Dated this _____ day of _____ 19 _____ .

Minister of _____ ** , ****

* Delete whichever is inapplicable.
** Title of Minister.
*** Delete if inapplicable.
****Or other title of person signing order.

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on November 29, 1979 and is found by me to be a true and correctly printed copy of the said Bill.

.....
Clerk of the Maneaba ni Maungatabu

I certify that the above Bill was, on November 29, 1979, passed by the Maneaba ni Maungatabu on a certificate of urgency under section 68(3)(a) of the Constitution.

.....
Speaker. 1979.

Published by exhibition at the Public Office of the Berotitenti 1979.

.....
Secretary to the Cabinet.

DEPORTATION ACT 1979.

Explanatory Memorandum.

The Constitution of Kiribati changes the constitutional law of the country, and the statute laws must now be amended so that they conform with the Constitution. The statute laws were called "Ordinances"; now they are "Acts".

The Maneaba ni Maungatabu has passed a Citizenship Bill that brings about a change of status that must be recognized in the statute law of deportation.

~~Section 4(5) specifies the circumstances in which a deportation order may be made.~~

Section 6 makes provision for the review by the High Court of deportation orders, and would allow the High Court to deal with an application for review without being bound by the rules of procedure or of evidence.

The penalty to which a deportee would be liable if he failed to leave Kiribato or returned is set out in Section 12.

The Act provides for the repeal of Chapters 78 and 79, the Deportation of Aliens Act, and the Deportation (Immigrant British Subjects) Act.

C. J. Lynch
Attorney General.