

DISASTER RISK MANAGEMENT AND CLIMATE CHANGE ACT

Table of Contents


DISASTER RISK MANAGEMENT AND CLIMATE CHANGE BILL.....	1
PART I.....	3
PRELIMINARY.....	3
Short title.....	3
Commencement.....	3
Purpose.....	3
Application.....	4
Principles.....	4
Definitions and abbreviations.....	5
PART 2.....	8
GOVERNANCE ARRANGEMENTS.....	8
Overall responsibility.....	8
Kiribati National Expert Group on Climate Change and Disaster Risk Management.....	8
Roles and Responsibilities of the lead ministry.....	10
Government ministries, agencies and bodies.....	10
Local Councils.....	13
Mayors.....	13
Island Disaster Committees and Taskforces.....	14
PART 3.....	15
FUNDING ARRANGEMENTS.....	15
Funding sources.....	15
Disaster and Climate Change Rapid Response Fund.....	15
PART 4.....	16
ACTION FOR DISASTERS AND CLIMATE CHANGE.....	16
Types of action.....	16
Levels of action.....	16
Declarations.....	17
Community engagement and inclusion.....	18
Prevention, mitigation, adaptation and risk reduction.....	19
Disaster preparedness, response and recovery.....	20
Review and improvement.....	21
PART 5.....	21
NON-GOVERNMENT AND INTERNATIONAL ASSISTANCE.....	21
	1

Domestic non-government responders.....	21
International responders.....	22
Requirements and expectations.....	22
Standby and special arrangements.....	24
PART 6.....	24
ACCOUNTABILITY AND MISCELLANEOUS MATTERS.....	24
Standards and compliance.....	24
Rights protections.....	25
Compensation and assistance.....	26
Offences.....	27
Immunities.....	28
Amendments, repeal and regulations.....	28
Schedule 1.....	32
Acronyms and abbreviations provisions (s7(2)).....	32
DISASTER RISK MANAGEMENT CLIMATE CHANGE BILL.....	33
EXPLANATORY MEMORANDUM.....	34



REPUBLIC OF KIRIBATI
(No. of 2019)

I assent.

 Beretitenti
12 / 02 / 2020
2019

An Act
entitled

**AN ACT TO PROVIDE FOR DISASTER RISK MANAGEMENT, CLIMATE CHANGE
AND FOR CONNECTED PURPOSES**

Commencement:
2019

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

PART I
PRELIMINARY

Short title

1. This Act may be cited as the *Disaster Risk Management and Climate Change Act 2019*.

Commencement

2. This Act commences on a date appointed by the Minister by notice.

Purpose

3. The purpose of this Act is to:
 - a) Help communities to reduce, adapt to, prepare for, respond to and recover from the impacts of disasters and climate change;
 - b) Provide for effective and coordinated action on disaster risk management and climate change; and

- c) Support implementation of international guidelines and commitments under relevant international agreements.

Application

- 4. (1) This Act covers:
 - (a) All places, people and organisations in Kiribati;
 - (b) The Republic of Kiribati; and
 - (c) All risks relating to disasters and climate change.
- (2) This Act does not cover:
 - (a) armed conflict; or
 - (b) civil strife (such as strikes and riots), except where Cabinet so directs.
- 5. This Act is to be read in conjunction with other legislation, and in the event of inconsistency, this Act shall prevail for aspects relating to disasters and climate change.

Principles

- 6. This Act shall be interpreted in accordance with the following nine statements of principle:
 - a. Climate change and disaster risks affect all individuals, communities and the environment, and action to address them must be mainstreamed and integrated across all sectors and levels of government and society;
 - b. Arrangements for disasters and climate change should be simple, clear and transparent, so they are understandable and accessible to everyone;
 - c. Climate change and disaster risks should be managed within an overall framework of sustainable development and in line with the sustainable development goals;
 - d. Risk assessment based on forecasting and projections may be used without requiring perfect science, as a necessary precaution for protection of Kiribati;
 - e. Limited resources must give priority to where resources will have the greatest impact in reducing the physical, psychological, natural, economic, social, cultural and human impacts of disasters and climate change;
 - f. Action should be as local as possible and as national as necessary, with international support as required;
 - g. People in Kiribati must be made aware of the risks they face, the actions they may take, and what support may be available to assist them;
 - h. To ensure local ownership and that no one is left behind, priority should be given to community engagement, participation and empowerment which is inclusive of vulnerable groups and all people; and
 - i. Rights and global standards should be adhered to as far as possible or applicable, including human rights principles such as equality and non-discrimination.

Definitions and abbreviations

7. (1) In this Act, unless the context otherwise requires:

‘adaptation’ involves practical actions, skills and knowledge to help people, communities and ecosystems cope with the effects of climate change;

‘Beretitenti’ is the President of the Republic of Kiribati;

‘children and young people’ refers to people who are under 18, including ‘children’ being under 14 years of age, and ‘young people’ being between 15 and 17 years of age;

‘climate’ refers to the average weather conditions over a long period of time, based mainly on measurements of temperature, rainfall and wind;

‘climate change’ refers to any persistent change in the climate over time, such as changing rainfall patterns, increasing temperatures, sea-level rise, ocean acidification, and occurrence of storms and droughts;

‘compensation’ as locally defined encompasses any value (money or in-kind items) received by affected individuals, companies, organisations and governments for loss, damage, suffering, injury or to meet their needs;

‘Declaration of State of Public Emergency’ is an official action under the Constitution to activate special powers including access to public and private resources not otherwise within the control of the KNEG and Disaster Controller;

‘disaster’ refers to a serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceed the ability of the affected community or society to cope using its own resources;

‘Disaster Controller’ is a person who makes quick decisions in disaster response as provided for in section 21, to mobilise human, physical and financial resources for action, and who has the final authority in case of situations of disagreement between sectors or other responders;

‘Disaster Declaration’ is an official action recognising that national response capacity is overwhelmed and international assistance is needed beyond what is already available through regular development assistance;

‘disaster preparedness’ refers to knowledge, capacities, plans and actions to be better able to anticipate, respond to, and recover from, the impacts of hazards and related disasters;

‘disaster response’ is action taken following a disaster to prevent further harm, reduce disaster impact and address the needs arising;

‘disaster risk reduction’ refers to actions which help to prevent a disaster, mitigate the risk or reduce the negative impact of hazards and related disasters;

‘disaster prevention’ refers to actions that can stop a risk becoming a reality, avoiding any adverse impacts of hazards and related disasters;

‘disaster risk management’ is the application of disaster risk reduction policies and strategies to prevent new disaster risk, reduce existing disaster risk and manage residual risk (risk

leftover after prevention and mitigation efforts), contributing to the strengthening of resilience and reduction of disaster losses, and includes prevention, risk reduction, preparedness, response, recovery and review;

'discrimination' is any distinction, exclusion or restriction which undermines equal enjoyment of a person's rights, including cases where something may look non-discriminatory but has that as a practical effect on specific people and may need temporary special measures to help achieve equality;

'drought' refers to a lengthy period of little or no rain and increased evaporation, which gradually results in inadequate or unsuitable water for crops, sanitation, hygiene, cooking and drinking;

'early warning' involves, in sudden onset disasters, communicating when an imminent threat has been detected to the people likely to be affected by it, on the nature of the threat and what measures must, should or may be taken;

'emergency' is a situation which requires immediate attention to stop a hazard or prevent further harm from it;

'emergency services' are police, marine and fire services;

'emissions' are gases released into the atmosphere, which is the gaseous envelope of mainly nitrogen and oxygen, that surrounds the earth;

'epidemic' is a spike in cases of an infectious human or animal disease;

'erosion' is a process by which soil and rock are dislodged over time by water or wind, and transported and deposited in other locations;

'exposure' refers to the people, property, systems, and other elements present in places which may experience loss or damage from hazards.

'flooding' is a significant inundation of water into an area of land;

'gender' refers to the socially constructed roles, identities, responsibilities and expectations of males and females of different ages;

'gender equality' refers to the equal rights, responsibilities and opportunities for all people and it exists where there is no discrimination based on whether a person is a male or a female, including in their involvement in decision making, access to opportunities and resources, and fair distribution of workload and responsibilities, while recognising their differences in needs, priorities, interests, capacities and risks faced;

'hazard' is a dangerous phenomenon, substance, activity or condition that may cause loss of life, injury or other health impacts, property damage, loss of livelihoods and services, social and economic disruption, or environmental damage;

'immediate needs' are requirements to prevent loss of life, dignity or health, or damage to critical infrastructure;

'Level 1 action', 'Level 2 action' and 'Level 3' action are defined in section 20;

'Local Council' is an elected body as provided for in the *Local Government Act 1984*

'Maneaba ni Maungatabu' is the Parliament;

'Mayor' is an elected local official as provided for in the *Local Government Act 1984*.

'mainstreaming' refers to the process of integrating climate change and disaster risk management across all parts of government and society, such as into land use planning, agriculture and health and education services;

'Minister' means the Minister responsible for the administration of this Act;

'Ministry' means the ministry responsible for the administration of this Act;

'ministry' means any other Government ministries;

'mitigate' means to prevent the worst harms from a hazard;

'mitigation' of disasters refers to actions that can reduce the negative impacts of hazards which cause disasters, while mitigation of climate change refers to reduction of human-made (greenhouse gas) emissions (through more efficient use of energy, reducing the use of non-renewable energy sources such as coal and gas, increasing use of renewable energy sources such as solar power, and increasing natural or artificial stores of carbon, such as trees or landfills);

'organisation' is a group of individuals formally composed for a particular purpose be it commercial, social, religious, environmental, humanitarian or other purpose. It includes for example businesses, companies, state owned enterprises, institutions, associations, groups and networks, be they domestic or foreign;

'recovery' means restoring people's lives back to normal after a disaster, preferably including necessary changes that will increase their resilience;

'relief items' include food assistance plus non-food items such as buckets, tarpaulins, medical health and hygiene supplies, and equipment such as pumps and chainsaws;

'relief services' are actions to assist affected individuals in key areas such as health, nutrition, water, sanitation, hygiene, protection and education. This includes for example medical personnel examining patients, water engineers testing water quality, and trauma counselling.

'renewable energy' is energy that comes from sources that are not depleted or can be easily replenished, such as solar energy;

'resilience' is the capacity of a community, society or natural system to maintain its structure and functioning through stress or change;

'risk' is the probability that people and things with exposure to hazards will experience loss or damage as a result of the hazard;

'Secretaries' are senior government staff in each Ministry who manage ministry operations on behalf of the relevant Minister;

‘sector’ refers to a government area of action (such as health, education), and typically aligns with government ministries but may include other organisations involved in work on that area;

‘slow onset’ refers to disasters and climate change situations that take a long time to develop, such as a drought which takes time to reach sufficient severity to be considered a disaster;

‘social inclusion’ means taking into account diversity and difference and ensuring those who may have less voice or visibility are included and protected, including the meaningful participation of women and marginalised groups in planning and decision-making at all levels;

‘sudden onset’ refers to disasters for which there is little or no warning, including storms, fires, air and sea craft incidents;

‘sustainable development’ is development that meets the needs of the present without compromising the ability of future generations to meet their own needs;

‘te buia’ is a style of traditional house in which the floor is raised off the ground;

‘unimwane’ is a council of male elders with traditional authority at village level, who closely manage community activities;

‘unaine’ is a council of female elders who are respected leaders in the community; and

‘vulnerability’ refers to characteristics of individuals, communities, organisations and systems which affect their ability to cope with adverse situations.

(2) The examples stated in this Act are for explanatory purposes and are not part of this Act.

(3) Abbreviations

Schedule 1 lists all the abbreviations used in this Act. The changes to the content of this schedule can be made by notice by the Minister.

PART 2

GOVERNANCE ARRANGEMENTS

Overall responsibility

8. The Beretitenti has overall responsibility for protection of people and places in Kiribati from disasters and climate change, acting upon advice of the Cabinet.
9. Secretaries provide oversight and support to the Kiribati National Expert Group on Climate Change and Disaster Risk Management (KNEG), individually through supporting their representatives and collectively through the Development Coordinating Committee (DCC).

Kiribati National Expert Group on Climate Change and Disaster Risk Management

10. (1) The Kiribati National Expert Group on Climate Change and Disaster Risk Management, or KNEG for short, is hereby established as the principal strategic coordination and technical advisory body for disaster risk management and climate change at the national level.

(2) KNEG members are Directors from each government ministry plus the Ministry that responsible for the administration of this Act, Kiribati Meteorological Service, Kiribati Police Service, Kiribati Red Cross Society (KRCS) and relevant non-government entities representing vulnerable groups and others as specified in the Regulations to this Act.

(3) KNEG roles and responsibilities include:

- a) Ensuring a joint national action plan for climate change and disaster risk management is in place and keeping it updated;
- b) Undertaking regular risk and vulnerability analysis, compiled from data from various sectors and through conducting Integrated Vulnerability Assessments and other primary research and community engagement;
- c) Planning and designing climate change adaptation and mitigation and disaster risk management initiatives and projects, including offering inputs to plans and designs of government bodies and other stakeholders;
- d) Providing strategic and technical advice on sector initiatives and assessments related to climate change and disaster risk management;
- e) Supporting the work of Island Disaster Committees, Taskforces, and Local Councils with their development committees including development and implementation of their own plans derived from the joint national action plan;
- f) Contributing technical and strategic inputs to climate finance project proposals;
- g) Providing advice to the Board to the Disaster and Climate Change Rapid Response Fund to inform the criteria it sets for the use of disaster response funds;
- h) Providing updated manuals, guidelines, standard operating procedures and processes for the implementation of disaster risk management and climate change actions, drawing from international standards and national circumstances;
- i) Taking note of 'Level 1' actions being undertaken at sector and island levels for management of disaster risk and climate change, and leading coordination of 'Level 2' and 'Level 3' actions for disasters;
- j) Facilitating and coordinating non-government and international organisations involved in disaster risk management and climate change actions;
- k) Providing overall coordination of action to minimise gaps and overlaps and ensure optimal prioritisation of resources based upon need and urgency, and in consultation with a range of community stakeholders including women, youth, older people, people living with disabilities and other diversity;
- l) Maintaining, in collaboration with the National Statistics Office, a database of various assessments, actions taken and other climate change and disaster risk management information;
- m) Monitoring, reporting and evaluation on progress of implementation of climate change and disaster risk management plans and actions, including reporting to relevant parliamentary committees and international bodies; and

n) Undertaking other relevant actions as KNEG.

(4) To support on specific technical or coordination tasks, the KNEG may form such temporary or ongoing committees, working groups or task forces as it sees fit, which may include invited expertise from outside the KNEG.

Example: For improved coordination of disaster logistics, KNEG creates a Logistics Taskforce bringing together KNEG representatives from Ministry, Ministry responsible for Communication, airport and port authorities, and representative from Kiribati National Shipping Ltd to review logistics arrangements.

(5) During disaster response KNEG members may be seconded to the Ministry to provide surge support in their specific areas of expertise if required for a particular disaster.

(6) The KNEG undertakes regular reporting to the DCC, and in the case of urgent actions requiring Cabinet approval, the Ministry liaises directly with Cabinet on behalf of KNEG.

Roles and Responsibilities of the lead ministry

11. The Ministry responsible for disaster and climate change is the lead agency on climate change and disaster risk management at the national level, and its roles and responsibilities include:

- (a) Serving as secretariat to the KNEG and for the joint national action plan;
- (b) Serving as, or an equivalent function to, a National Disaster Management Office (NDMO) seen in other countries;
- (c) Administering the Disaster and Climate Change Rapid Response Fund under direction of its Board;
- (d) Coordinating climate change and disaster-related planning and action by government and various organisations, including needs assessments, resource mobilisation, logistics and other common services;
- (e) Strengthening national action and capacity on disasters and climate change, including initiating trainings and drills at government and community levels;
- (f) Supporting the work of Island Disaster Committees, Taskforces and Local Councils;
- (g) Activating, in liaison with the Commissioner of Police where appropriate, an Emergency Operations Centre where required for urgent Level 2 or Level 3 actions in disasters;
- (h) Liaising with Cabinet for decisions, information and accountability purposes;
- (i) Representing, where agreed by the KNEG and directed by The Minister, the Republic of Kiribati at relevant international conferences, conventions and other gatherings; and
- (j) implementing actions under this Act as directed by KNEG and undertaking related tasks as appropriate.

Government ministries, agencies and bodies

12. All government ministries, agencies and bodies are required to:

- (a) Ensure mainstreaming and integration of climate change and disaster risk management considerations in the execution of their regular functions;

- (b) Facilitate effective participation of their representatives on KNEG, ensuring an internal system is in place for their representative(s) on KNEG to keep their ministry, agency or other body updated;
 - (c) Consult KNEG for strategic and technical inputs to their sector, and keep KNEG updated on actions and expenditures relating to climate change and disaster risk management;
 - (d) Have plans and standard operating procedures in place to protect staff, equipment and infrastructure and to facilitate continued capacity to function following disasters;
 - (e) Maintain an inventory of items and equipment which may be needed for response to disasters and climate change;
 - (f) Ensure staff with designated roles for disaster response are trained in their role and have the equipment needed to act effectively; and
 - (g) Make available to the KNEG and the Ministry their facilities, assets and personnel as required to support disaster response under this Act, including where applicable, providing suitable structures for use as temporary evacuation centres.
13. Some government ministries, agencies and other bodies have specific roles and responsibilities for disaster risk management and climate change, as follows:
- (a) ministry based in the Line and Phoenix (Linnix)
 - provides coordination functions in Kiritimati;
 - (b) Kiribati Meteorological Service (KMS):
 - the authoritative source of information on weather, climate and ocean conditions, and for advising KNEG on related hazards including extreme spring tides, tropical cyclones, tsunami, and droughts of sufficient severity to be considered a disaster;
 - (c) Kiribati Police Services (KPS):
 - provides leadership where emergency services response by Police Services or Fire Services is necessary to prevent loss of life and further damage, including the initial establishment of an Emergency Operations Centre if required. KPS focuses on prevention of fires and road accidents, dissemination of public warnings, safety of people and personal property during evacuation, and security of relief items as necessary;
 - (d) ministry responsible for information, communication and transports
 - responsible for air and sea transport safety for disaster prevention and response, regulation and support of tourism operators, controlling maritime incidents such as oil spills, maintaining appropriate communications and transport equipment for use in public warnings and disaster response, and supporting the KNEG and Ministry on logistics and emergency telecommunications as needed;
 - (e) ministry responsible for environment, lands and agricultural development
 - focuses through the KNEG on the impact of climate change and disasters on the environment and land use, and has a principal role in food security, livelihoods, protection of animals, controlling biosecurity threats, management of solid and

hazardous waste and materials including disaster debris (such as broken trees and rubbish), and ensuring environmentally sound recovery planning;

(f) ministry responsible for fisheries and marine resources development

focuses on climate change consequences for coastal fisheries and marine resources, and complements the Department responsible for environment and land in its role in disasters on food security and livelihoods from a fisheries perspective;

(g) ministry responsible for infrastructure and sustainable energy

ensures planning requirements for construction and rehabilitation of private infrastructure take into account climate change and disaster risk, and leads through the KNEG on climate resilience and disaster response to damage to public infrastructure including physical structures, roads, power and water supply and sanitation;

(h) ministry responsible for finance and economic development:

channels government budget and external funding, is responsible on behalf of KNEG for seeking and obtaining climate and disaster financing from international and global sources, and overall accounting on expenditure in Kiribati on climate change and disaster risk management;

(i) ministry responsible for employment and human resources development:

supports through KNEG the maintenance of a database of people with specific competencies which may be useful in climate change and disaster response situations, and managing any short-term contracting of personnel in disaster situations;

(j) ministry of health and medical Services:

responsible for the protection of patients and outpatients during disasters, and leads in disaster response through KNEG, on health, nutrition, hygiene and safety of water for consumption purposes, epidemic control and dead body management;

(k) ministry responsible for women, youth and social affairs:

supports mainstreaming and integration of gender and protection in climate change and disaster risk management with particular attention to women, children and young people, people living with disabilities and other diversity or vulnerability, social welfare and counselling, including through social welfare officers at island level;

(l) ministry responsible for education:

ensures that students are protected and cared for before, during and after a disaster; that there is a continuity of education and psychosocial support after a disaster; and that resilience and knowledge on climate change and disaster risk management shall be promoted in learning institutions and included in the curriculum;

(j) ministry responsible for commerce and industrial cooperatives:

liaises with the private sector on climate change and disasters, including opportunities for the private sector to ensure business continuity in disasters and contribute to disaster response;

- (m) ministry responsible for foreign affairs and immigration:

uses contacts with foreign governments and international agencies to assist and advocate for Kiribati on climate change and disaster risk management, and focuses in disasters on the wellbeing of foreigners and foreign businesses, missions and organisations affected; and

- (n) ministry responsible for internal affairs:

maintains updated lists of Island Disaster Committees and Taskforces and communications with islands during emergencies and provides where appropriate support from a paid staff in the islands for activities such as trainings and drills.

Local Councils

14. (1) In Local Councils:

(a) Local implementation of disaster preparedness and response, recovery and review are otherwise delegated to an Island Disaster Committee (IDC) or Taskforce; and

(b) Decisions on climate change adaptation and disaster risk reduction remains with the Local Council, typically working through their development committee in respect of the island strategic plans with a climate change or disaster risk reduction component, and liaising with the Island Disaster Committee with respect to overlaps with disaster preparedness, response and recovery.

- (2) Local Councils shall form an IDC or Taskforce under this Act and in deciding on its size and composition, shall take into account the:

(a) need for key functions to be represented including police, medical, water, food security and social welfare;

(b) importance of having people who are willing to actively participate in community outreach for awareness, early warning, assessment and response;

(c) importance of having a combination of formal and traditional power holders as members;

(d) importance of balanced representation, including gender, age, disability and other diversity;

(e) need for a secretariat to undertake regular functions (such as facilitating trainings and drills, coordinating volunteers and response personnel, facilitating needs assessment teams, and compiling situation reports); and

(f) the need to be able to act rapidly and effectively in urgent situations.

- (5) To ensure strong community engagement, the requirement under section 32(4) of the *Local Government Act 1984* that at least two-thirds of committee members shall be council members is waived.

Mayors

15. (1) Mayors have the overall responsibility at local level for disaster risk management and climate change, under the national disaster management structure established in this Part.

- (2) Mayors maintain their powers to take immediate decisions and steps where necessary in disasters pursuant to section 49 of the *Local Government Act 1984*.
- (3) In the aftermath of a disaster where communication links are broken with the KNEG, the Ministry and Emergency Operations Centre if operationalised, the Mayor will temporarily perform these functions until communications are restored.

Island Disaster Committees and Taskforces

16. (1) Each island besides Tarawa and Kiritimati shall have an Island Disaster Committee, which is chaired by the Mayor. IDCs may be given a unique name at the island level, if this locally preferred.
- (2) Urban and town councils in Tarawa and Kiritimati shall have a Taskforce, chaired by the Mayor, which performs similar roles to an IDC but takes into account the presence of the Ministry (for Tarawa) and Linnix (for Kiritimati) to support direct disaster actions.
- (3) IDC roles and responsibilities include:
 - (a) Making their own plans and procedures to implement national legislation and plans for climate change and disaster risk management in their island;
 - (b) Providing updated information on risks and island experiences of climate change and disasters, and contributing to ongoing risk and vulnerability analysis;
 - (c) Maintaining, where appropriate, prepositioned stocks of relief items;
 - (d) Raising public awareness of disaster risk management and climate change, and disseminating warnings to the public in a timely and accessible manner;
 - (e) Conducting initial damage, loss and needs assessments and communicating the findings to the Ministry and the Ministry responsible for Internal Affairs along with local preferences and priorities if assistance is being requested to address the impacts;
 - (f) Working together with KNEG representatives on more detailed sector damage, loss and needs assessments if required;
 - (g) Receiving and distributing relief items, and facilitating relief services, on a needs basis and ensuring the most vulnerable groups are not left behind;
 - (h) Coordinating the action of any non-government or international organisations or personnel present in their island;
 - (i) Keeping the full Council updated on action taken and seeking advice and guidance as appropriate, and continuously providing updates and situation reports to the Ministry and Ministry responsible for Internal affairs;
 - (j) Accounting for actions and expenditure; and
 - (k) Related tasks for the local implementation of disaster preparedness, response, recovery and review, and actions requested on behalf of KNEG.

- (4) Taskforces have many of the same roles as IDCs in sub-paragraph (1) but focus more on local risk analysis, public awareness, early warning and rapid assessment of damage and needs.

PART 3

FUNDING ARRANGEMENTS

Funding sources

17. (1) Annual budget allocations for all sectors must include mainstreaming and integration of climate change and disaster risk reduction and preparedness, taking into account the key roles and responsibilities outlined in Part 2 of this Act. In the case of the lead ministry for disaster risk management and climate change, annual budget allocations must make provision for disaster response.
- (2) Where a State of Public Emergency is declared, the minister responsible for finance and economic development has power under section 109(4) of the Constitution to authorise additional sector budget as required and authorise and file a Supplementary Appropriation Bill at the next meeting of the Maneaba ni Maungatabu.
- (3) During disaster response which are too urgent for regular government expenditure processes, the Disaster and Climate Change Rapid Response Fund may be utilised as provided in section 18 of this Act.
- (4) Funding through external donors may be sought and obtained by any government ministry, agency or body, noting that:
- (a) funding for climate change adaptation, disaster risk reduction, disaster preparedness and recovery goes through the regular development process;
 - (b) international assistance to the Republic of Kiribati by foreign states and international organisations is provided under ongoing or standby bilateral arrangements, or pursuant to a Disaster Declaration with request for international assistance; and
 - (c) foreign disaster response funding to the State is facilitated by the Ministry responsible for Foreign Affairs and notified to KNEG for coordination purposes.

Disaster and Climate Change Rapid Response Fund

18. (1) Pursuant to section 107 of the Constitution, a Special Fund is hereby created outside of the Consolidated Fund, titled the Disaster and Climate Change Rapid Response Fund, for vital actions in disaster response.
- (2) The Disaster and Climate Change Rapid Response Fund is hereby established. It is:
- (a) governed by a Board comprised of:
 - (i) the Secretary of the Ministry as Chair;
 - (ii) the Secretary of the ministry for finance as accounting officer;
 - (iii) the Director of the National Strategic Policy Division of the Ministry;

- (iv) Secretary General of the Kiribati Red Cross Society'; and
- (v) Head of the Kiribati Association of Non-Government Organisations (KANGO);
- (b) an account at the Australia and New Zealand (ANZ) Bank in Kiribati titled 'Disaster and Climate Change Rapid Response Fund' managed by three trustees who are members of the Board, and the balance of which does not revert to the general account;
- (c) comprised of any money appropriated by the Government of Kiribati as a contribution for the purposes of this Act and direct donor contributions as an alternative option to regular government channels;
- (d) used for disaster response as determined by the Board based on criteria it sets with advice from KNEG, except where external funding is nominated by the donor as being for a specific government ministry, agency or body to use as it sees fit;
- (e) not used for the administration of the fund or for the Board purposes, which are paid from the regular budget of the Ministry; and
- (f) subject to transparency and accountability measures including biannual summary of accounts submitted to Cabinet and Kiribati Audit Office.

PART 4

ACTION FOR DISASTERS AND CLIMATE CHANGE

Types of action

19. (1) Action for disasters and climate change shall include:
 - (a) Planning for action which is localised and inclusive;
 - (b) Taking steps to prevent disasters from occurring;
 - (c) Contributing towards climate protection through mitigation efforts;
 - (d) Reducing risk from disasters and adapting to climate change;
 - (e) Preparing for, responding to, and recovering from disasters; and
 - (f) Reporting and reviewing actions for transparency and continuous improvement.
- (2) The Regulations shall make detailed provision on action for disasters and climate change, in addition to the provisions in this Part.

Levels of action

20. (1) Action on disaster risk management and climate change is characterised at three levels, based upon whether they are implemented by one island or ministry (Level 1), or with national assistance (Level 2) and international assistance (Level 3) that goes beyond mere funding and guidance.
 - (a) 'Level 1 action' is taken by a single island or ministry, agency or other body. Projects may be funded nationally or internationally, but the action itself is at a local or ministry level.

Examples: (i) an island has isolated flooding from a king tide and the people affected stay for a few days in a maneaba then go home; (ii) an infectious disease is identified in a hospital and steps are successfully taken to treat it and stop it spreading.

- (b) 'Level 2 action' is needed where local/island capacity to address immediate needs is overwhelmed, or it is beyond a single ministry or other government body, and KNEG facilitates a national response to multiple affected islands or across multiple government sectors. Financial and material donor support may be provided from international sources, but the action itself is by national actors.

Examples: (i) a tropical cyclone hits four islands and each IDC submits their rapid assessments to the KNEG who coordinates to send a boat or flight to each island with relief items and personnel; (ii) an extensive marine oil spill affects shore-based activities and makes fish unsafe for eating, and KNEG coordinates to address food security and livelihoods, and ensure response is environmentally sound.

- (c) 'Level 3 action' occurs where national capacity to address immediate needs is overwhelmed, and the international community provides support and assistance locally and nationally as needed. This includes funding, use of assets and equipment, relief items and relief services by international personnel working through national coordination structures.

Examples: (i) severe drought conditions across Kiribati result in exhaustion of water in wells, tanks and water reserves, and desalination equipment is insufficient; (iii) a major earthquake in Samoa sends a two-metre tsunami which causes major loss of life and affects government infrastructure for response.

Declarations

- 21. (1) In circumstances where Level 3 actions are required, the Minister with advice from KNEG may recommend to the Beretitenti that a state of public emergency exist and the Beretitenti may, upon advice of Cabinet, issue a Disaster Declaration, a Declaration of a State of Public Emergency, or both.

(2) A Disaster Declaration:

- (a) is used where there are specific disaster response needs which are not within national response capacity;
- (b) formally announces that there is a disaster for which national response capacity needs to be supplemented by international assistance;
- (c) requests Ministry responsible for Foreign Affairs to seek international assistance as required; and
- (d) applies for the time period specified in the declaration or, if no time period is stated, lapses within 7 days unless it is extended by further Declaration.

(3) A Declaration of a State of Public Emergency, where proclaimed for disaster response purposes:

- (a) is issued pursuant to section 16 of the Kiribati Constitution;

- (b) is used where domestically present resources under control of various bodies are urgently needed for disaster response, to activate special powers to access government budgets, assets and personnel or require individuals and organisations to provide labour, assets, land and services for disaster response;
- (c) empowers entry to any premises or property, or control of freedom of movement, for the purposes of investigating and containing a hazard or its consequences;
- (d) enables related powers, such as power to reimburse people affected by Government action under special powers;
- (e) may cover all or part of Kiribati;
- (f) applies until the following meeting of the Maneaba ni Maungatabu unless revoked prior;
- (g) is endorsed or extended for a specific time period by the Maneaba ni Maungatabu; and
- (h) is revoked by lapse of the specified time period or earlier if revoked by The Beretitenti.

(4) Where a Disaster Declaration or Declaration of State of Public Emergency is issued, the Beretitenti is deemed, by virtue of this section, to have appointed the Director of the Strategic National Policy Division as the Disaster Controller, to take actions and exercise powers as reasonably justified in the circumstances. In the absence or death of the nominated Disaster Controller, the Commissioner of Police shall so act, and in the absence or death of the Commissioner of Police the minister shall nominate an alternative Disaster Controller.

Community engagement and inclusion

22. (1) Community participation in climate change and disaster risk management is required, including:
 - (a) Community service and volunteering, which is encouraged and also required under Schedule 1 of the *Law of Kiribati Act 1989* which establishes a "duty of a member of a community to contribute, whether by labour, money or in kind, to projects for the welfare of that community";
 - (b) Representation in structures for disaster risk management and climate change, to ensure involvement in decision making processes, with assistance given to train and prepare community representatives; and
 - (c) Receiving and sharing information on disaster risk management and climate change within their families and communities.
- (2) Protection of people is central to disaster risk management and climate change, and action under this Act shall take into account the distinct risks, concerns and priorities of diverse groups of people including:
 - (a) infants and pregnant and breastfeeding mothers, who have specific nutritional and hygiene requirements to ensure they are healthy despite the impacts of climate change and disasters;

- (b) girls and women (including widows, single women, female-headed households and older women), who have important roles in families in times of disasters, specific needs relating to sexual and reproductive health, and increased risk of deepening inequality and increasing prevalence of gender-based violence which may require specific actions;

Examples: separated sleeping spaces in maneabas being used as evacuation centres, toilets with lockable doors, security presence.

- (c) children and young people, who are the future of Kiribati and have the right to be involved in matters which affect their lives, who require specific protections and may suffer long term disadvantage from disruptions to their education;
 - (d) older people, who often have valuable contributions based on past disaster experiences, have representation through unimwane and unaine, and who are more likely to have physical and mobility constraints and chronic illnesses which may require specific responses to ensure their safety and dignity during disasters and climate change;
 - (e) people living with disabilities, including identifying barriers and enablers to their full participation in actions for disaster risk management and climate change, as well as recognising their capacities and not just their vulnerabilities and ensuring their needs and priorities are assessed and addressed; and
 - (f) people with other diversity which may result in barriers or discrimination, including for example people with chronic or mental illnesses, people from minority religions and people with different relationship preferences and gender identities.
- (3) Social inclusion and public participation is required across all stages of disaster risk management and climate change, including:
- (a) diverse representation on committees, taskforces and response teams, with representatives identified through transparent and inclusive criteria and processes;
 - (b) a cross-section of people consulted in needs assessments and in the design monitoring and evaluation of disaster risk management and climate change projects;
 - (c) project participants with different gender, age and abilities, having reasonable adjustments of tasks and times according to their capacities and competing workloads; and
 - (d) providing different avenues for people to ask questions and give feedback, based upon the different ways they share information.

Prevention, mitigation, adaptation and risk reduction

23. (1) Multisector efforts are required to prevent disasters, through:
- (a) raising awareness on risks, and what can be done to prevent them;
 - (b) enhancing laws and their implementation, including those relating to fire safety, air and sea transport safety, land use and planning, and protection of water sources from harmful human activity; and
 - (c) related measures.

- (2) Multisectoral efforts are required to mitigate climate change, through:
 - (a) reducing emissions;
 - (b) increasing natural stores of carbon through enhancement of mangroves, coastal vegetation and seagrass beds; and
 - (c) related measures.
- (3) Multisectoral efforts are required for climate change adaptation and disaster risk reduction, including:
 - (a) structural measures such as raising land, adjusting design of structures, and coastal protection measures;
 - (b) non-structural measures to build resilience such as through community education, guidance and empowerment; and
 - (c) using ongoing risk analysis to ensure the most appropriate measures are taken.

Disaster preparedness, response and recovery

24. (1) Multisector efforts are required to prepare for disasters, including:
 - (a) raising awareness of communities on the risks they face and steps they can take to prepare for and respond to them;
 - (b) strengthening response capacity of key disaster actors such as IDCs and government staff through trainings and equipment;
 - (c) testing awareness and response capacity through annual disaster simulations or drills;
 - (d) prepositioning stocks of relief items and equipment in strategic locations, such as by the Government or Kiribati Red Cross Society;
 - (e) identifying structures suitable for use as evacuation centres and arranging with the owners and occupiers for their use to keep people safe in the event of a disaster, ensuring they meet minimum standards for safety and dignity; and
 - (f) operationalising national and locally suitable early warning systems to disseminate tailored messages to key responders and members of the public, using multiple methods that take into account diverse levels of disaster awareness and different ways people access and share information;
- (2) Multisector efforts are required to respond to disasters through:
 - (a) KNEG identifying whether Level 1, Level 2 or Level 3 action is required, based on information received (in slow onset disasters, through Drought Committees and IDCs, and in sudden onset disasters, through the Kiribati Meteorological Service, IDCs, specific Ministries plus satellite and other data);
 - (b) relevant ministries, agencies and bodies taking the lead in circumstances where specific legislation applies, such as Part 9 of the *Biosecurity Act* 2011 for situations like pest outbreaks and disease epidemics, or the *Maritime Act* 2017 for situations like sinking vessels and oil spills, with notice being given to KNEG where Level 2 or Level 3 actions are required;

- (c) establishing an Emergency Operations Centre (EOC) for Level 2 and Level 3 action, by the Ministry in most disasters, or by the Kiribati Police Services in circumstances where substantial immediate action is required by emergency services (police, fire);
 - (d) IDCs and Taskforces undertaking initial rapid disaster assessments and using them for Level 1 response or sharing with the Ministry for coordinating multi-sector action through KNEG (rather than a 'cluster' approach familiar to international responders); and
 - (e) KNEG undertaking with IDCs further detailed disaster assessments where needed for specific sectors.
- (3) Multisector efforts are required to recover from disasters through:
- (a) ensuring recovery actions are integrated within the context of sustainable development; and
 - (b) applying a 'build back better' principle for improved resilience to future disasters and climate change.

Examples: (i) using 'te buia' style raised houses; (ii) permanent structures with guttering for collecting rainwater; (iii) putting pig pens away from wells; and (iv) planting climate-resilient crops.

Review and improvement

25. As detailed in the Regulations, after action reviews based on responder and community inputs are required at local and national levels to assess implementation, evaluate the effectiveness of response, and identify lessons learned which may require additional preparedness actions before another disaster.

PART 5

NON-GOVERNMENT AND INTERNATIONAL ASSISTANCE

Domestic non-government responders

26. (1) Subject to section 28, individuals and organisations in Kiribati may provide financial, in-kind assistance and services in support of actions for disasters and climate change.
- (2) The auxiliary role of the Kiribati Red Cross Society (KRCS) under its specific legislation is recognised and respected, for all levels of action under this Act. In locations where KRCS does not have local chapters or volunteers present, KRCS may provide surge support at least for Level 2 and Level 3 actions from its head office or its international counterparts.
- (3) Where churches and faith-based organisations are involved in disaster response, assistance must be based on need without distinction made as to the religion of affected people.
- Example: if a church maneaba is established as an evacuation centre, it must not refuse to receive and accommodate people from other faiths.*

(4) Where state owned enterprises or private sector actors provide assistance for disasters and climate change, their action shall be deemed voluntary and without entitlement of payment unless they are acting:

- (a) under a standby arrangement with the government for disaster response, as provided for in this Act;
- (b) under an ongoing Framework Agreement (within the meaning of the *procurement law of Kiribati*) for the supply of goods or services over a given period of time; or
- (c) upon government instruction issued pursuant to powers during a state of emergency, with reimbursement of expenses directly incurred.

International responders

27. (1) International organisations may enter agreements to provide assistance under this Act for disaster risk management and climate change purposes.

(2) For disaster response, international organisations may provide assistance following declaration of a disaster or state of emergency for Level 3 actions and upon request of the Ministry responsible for foreign affairs.

(3) International organisations, including global and regional bodies, with ongoing presence and projects in support of Kiribati or with a standby or ongoing arrangement under this Act may provide assistance upon the request of a relevant national agency without the need for an official request pursuant to a declaration of disaster and/or state of emergency.

Examples: 1. An organisation in the United Nations Joint Presence Office in Kiribati which provides regular health support expands support after flooding by providing replacement clinic stocks and equipment upon informal request to MHMS; 2. After a ferry capsizes the New Zealand Orion helicopters are requested and rapidly deployed under a standby arrangement to support search and rescue; 3. A police patrol boat from Samoa is mobilised to support evacuation from an outer island as part of a regional standby patrol boat support agreement.

(4) The International Federation of Red Cross and Red Crescent Societies (IFRC) may provide assistance through the Kiribati Red Cross Society (KRCS) at any time, in line with its fundamental principles and auxiliary role as set out in its law.

(5) People who want to volunteer their services for an Action under this Act must:

- (a) register with the Ministry if they are already in Kiribati; or
- (b) obtain prior approval from the Ministry before travelling to Kiribati, if they are outside of Kiribati.

Requirements and expectations

28. (1) All non-government and international responders involved in disaster risk management or climate change in Kiribati are required to:

- (a) demonstrate respect for Kiribati culture, government, and for the laws of Kiribati;
- (b) agree in writing to abide by the Kiribati Code of Conduct for Responders;

- (c) implement their action through national coordination structures to avoid creating overlaps or leaving gaps;
 - (d) use Kiribati personnel, products and suppliers where feasible from a cost and logistics perspective, to stimulate the local economy and reduce air travel related emissions;
 - (e) ensure that relief items are appropriate in the context, of good quality, within expiry dates, bearing labels in English language, and equipment and construction materials with relevant documentation evidencing technical specifications and industry quality standards are met;
 - (f) avoid exporting to Kiribati any unsolicited donations of relief items;
 - (g) avoid bringing known genetically modified organisms and products into Kiribati, or distributing any breastmilk substitutes except where prescribed by a clinic or hospital;
 - (h) minimise the amount of non-biodegradable items brought into Kiribati, and maximise what is reusable, recyclable and returnable through making provisions for their safe and environmentally sensitive disposal, donation, re-export or sale after use (provided that payment of previously exempted frees, duties, taxes or charged is made for any items that are sold);
 - (i) coordinate all plans and actions with KNEG provide information via the Ministry on the type, location, duration and monetary value of their activities in Kiribati which fall under this Act; and
 - (j) have a system for responding to complaints, and for referring people who require protection to the right place to get assistance.
- (2) Organisations involved in disaster risk management in Kiribati can reasonably expect to be:
- (a) afforded respect for their application of the humanitarian principles including humanity (relieving human suffering wherever it is found), neutrality (not taking sides in politics and conflict), impartiality (giving assistance according to need without distinction on the basis of nationality, race, ethnicity, religion, class, gender, gender identity, sexual orientation, disability, age or political opinion) and operational independence (conducting their needs-based operations without interference or undue pressure from donors or the Kiribati or foreign government); and
 - (b) offered quarterly briefings, and more regular updates during disaster response where appropriate.
- (3) Where acting exclusively for disaster purposes, non-government and international humanitarian organisations may, where provided for in the Regulations to this Act, receive a waiver or claim back:
- (a) duties and taxes on goods and equipment imported exclusively for disaster response and/or re-exported if they are no longer required;
 - (b) income taxes as provided for in the *Income Tax Act 1989* for international personnel engaged in disaster risk management;

- (c) taxes, fees and charges on use of land and property; and
- (d) goods and services tax paid on items procured locally.

Standby and special arrangements

29. (1) To facilitate rapid action in disaster response, non-government and international organisations including regional bodies may enter into standby arrangements with the government of Kiribati for:
 - (a) disaster response personnel to receive a visa on arrival and temporary work permit without charge;
 - (b) recognition of foreign professional qualifications, registrations, certificates and licences that are current in an overseas jurisdiction;
 - (c) waiver of restrictions on the amount of Australian currency that can be brought into Kiribati, or special restrictions on opening of bank accounts;
 - (d) waiver of import permit requirements, and priority clearance through Customs and Quarantine of goods and equipment declared to be exclusively imported for disaster response, based on the submission of required documentation relating to the items including records of any inspections undertaken at the load port;
 - (e) priority approval for transport permissions including at ports and airports, use of Kiribati airspace, and waiver of fees associated with demurrage, docking fees, fees relating to overflight, landing, parking, taking off, and navigation; and/or
 - (f) approval for access to bandwidth, frequencies and satellite use for telecommunications and data transfer associated with disaster response.
- (2) Following a disaster the Cabinet may, on advice of KNEG in relation to a specific Level 3 disaster situation, issue instructions for similar waivers and approvals to apply for other non-government and international organisations engaged in disaster response.
- (3) In the event there is credible information that any individual or organisation has falsely declared items to be imported for disaster purposes, they shall be charged in arrears the regularly applicable taxes, duties and fees, in addition to possible offences under this Act.

PART 6

ACCOUNTABILITY AND MISCELLANEOUS MATTERS

Standards and compliance

30. Actions under this Act for disaster risk management and climate change should, as far as practical, conform with international normative standards, tools and guidelines, as provided for in the Regulations to this Act.
31. A failure by a person, organisation, government or other body to comply with requirements established by virtue of this Act may, in addition to the offences in section 35, have consequences as provided for in the Regulations.

Reporting requirements

32. (1) All bodies with a role under this Act are required, in relation to disaster risk management and climate change, to provide KNEG with a:
- (a) copy of any subsidiary plans and procedures relevant to the joint national action plan;
 - (b) summary report on actions taken on an annual basis or otherwise upon Ministry request following a specific disaster; and
 - (c) brief indication of lessons learned which may be useful for future response.
- (2) The Ministry on behalf of KNEG is required to:
- (a) make available regularly updated information on requests received, payments and the status of actions taken on disaster risk management and climate change; and
 - (b) issue a biennial summary report on actions taken.

Rights protections

33. (1) People affected by climate change and disasters shall have their fundamental rights protected, including:
- (a) freedom of movement and residence (despite urbanisation) with Government focus placed instead on raising community awareness about urbanisation and addressing the drivers of it;
 - (b) land and property rights (despite temporary or ongoing evacuation, relocation or migration due to impact of disasters and climate change);
 - (c) right to an adequate standard of living, access to housing, livelihood and education;
 - (d) respect for families, without discrimination based on family size (despite overpopulation) with focus on raising awareness about healthy families;
 - (e) right to basic social services, including health and education, to enable people, particularly children and young persons, to survive, thrive and develop to their full potential;
 - (f) gender equality and protection from violence including gender-based violence; and
 - (g) privacy and personal data protection.
- (2) Pursuant to section 14 of the Constitution in the interests of public safety, The Minister may, on advice of the Cabinet declare a location affected by climate change and/or disasters to be unsafe for specific purposes including development, residence or presence, or only safe for specific purposes, such as vegetation or crops.
- Example: land above a vital water reserve which risks contamination from human and animal waste may be declared only suitable for organic crops.*
- (3) People have a right to move away from a place where they feel unsafe and:
- (a) those who do not have alternative land or people they can live with but wish to remain in Kiribati may apply to the Government to be allocated a parcel of state land under the *State Lands Act 2001*; and

(b) those who hold land under the *State Lands Act 2001* and intend to return to it shall not be considered to have abandoned their lot and face reversion of the land to the state, except as established by section 37(m).

(4) Where a person's property poses a risk to the life and property of other people:

(a) a Government notice may be issued requiring the person to take specific actions within a nominated timeframe to remove the risk;

(b) if the person under (a) fails to comply, the Government may take the actions directly and claim for the reasonable cost of doing so; and

(c) if the circumstances are highly urgent and require immediate attention the Government may authorise entry to land for the purpose of taking specific actions to address the risk.

Examples: (i) a person's coconut tree is dangerously leaning and at risk of falling on a neighbour's house; (ii) a person has containers of fuel which are not sealed or are stored in a way to be at risk from an impending king tide.

Compensation and assistance

34. (1) This section applies to disasters only and does not restrict any rights to effective remedies that exist outside of this Act.

(2) Compensation from the Government is presently not payable for:

(a) general damage or loss resulting from disasters;

(i) owners of waterfront land which is low lying cannot claim compensation for land which is eroded or submerged;

(ii) owners of a vehicle, boat or other asset such as a coconut tree cannot claim compensation if it is damaged or destroyed in a storm;

(iii) the owner of a supermarket cannot claim compensation if a king tide causes their stocks to get wet.

(b) any expense or inconvenience from evacuating or taking other precautionary measures following a public warning in circumstances where it turns out to be a false alarm; or

(i) a person stops fishing early to prepare their home ahead of a disaster;

(ii) a person removes the roof and walls of their traditional structure and has to put them back up after the warning has passed;

(iii) a person buys food to take while staying in a maneaba;

(iv) a person delays a boat journey to a neighbouring island due to a storm warning but believes it may have been safe to have gone.

(c) the time and cost of people helping one another to prepare for and respond to disasters, as this is part of the existing legal duty to contribute to community welfare as provided for in Schedule 1 of the *Law of Kiribati Act 1989*.

Examples: (i) a person helps to build a seawall; (ii) a person fixes a neighbour's roof or uses their vehicle to help move people out of harm's way; (iii) a person cooks meals for people who are sheltering in an evacuation centre; (iv) a person allows neighbours to drink water from their tank after a king tide affects the neighbour's well.

(4) Compensation is payable:

- (a) by a private individual or organisation whose wilful or negligent action or inaction causes another person or organisation to suffer direct loss or damage; and

Examples: (i) a person who fails to secure metal sheeting on their roof and it flies off during heavy wind; (ii) a person who refuses to cut down a dangerous tree and it falls on their neighbour's car.

- (b) where a person who is injured or killed, without any negligence or wilful misconduct on their part, while undertaking response actions upon the request or instruction of Government, to the same extent of coverage under the *Workmen's Compensation Act 1977*.

(5) Nothing in this section affects:

- (a) a person's right under section 8 of the Kiribati Constitution to compensation where their land is acquired by the Government for public purpose;

- (b) the limits to government liability under the *Government Liability Act 2010*; or

- (c) any contractual arrangement freely entered for exchange of goods and services for payment.

(6) Humanitarian assistance is distinct from other locally understood forms of compensation, as it is not payable based on what is lost or damaged, but on what is needed to prevent and alleviate human suffering, and is:

- (a) decided based on who has difficulty in meeting their basic needs such as food and water, protection and health care;

- (b) targeted to those in greatest need without discrimination on any grounds including age, gender, religion, residential status or community standing; and

- (c) not provided to everyone in an affected area, only those who need it.

Examples: (i) a community water source is contaminated and a desalination plant is provided along with containers for water collection; (ii) a storm damages fishing equipment, and families who have lost their food source and livelihood receive replacement fishing nets; (iii) after a disaster a top up is given for vulnerable groups receiving pensions; (iv) hygiene kits are distributed to women of reproductive age; (v) houses are damaged in an area, and households with people living with disabilities, injured or older people are assisted to fix their roofs.

Offences

35. (1) A person commits an offence and shall be liable upon conviction to a fine not exceeding \$2,000 and/or to imprisonment for a term not exceeding two years if the person:

- (a) hinders, obstructs or resists a government staff or other person acting under the instructions of Government, an IDC or Taskforce, in the exercise of their functions or duties under this Act;
 - (b) without reasonable cause, fails to comply with a lawful direction or order under this Act;
 - (c) falsely represents oneself as exercising functions or duties under this Act or making representations on behalf of the Government without official mandate to do so;
 - (d) procures, imports, prepares or distributes relief items and equipment that are of such unacceptably poor quality as to be unfit for purpose, such as unfit for human consumption, beyond their expiry dates, or known to be genetically modified;
 - (e) falsely represents that goods, equipment or personnel entering Kiribati are solely for the purpose of response to disasters;
 - (f) uses funds received for disaster risk management and/or climate change purposes for unapproved and/or unintended purposes;
 - (g) diverts relief items or equipment, such as by sale or distribution based on political or other criteria besides need; and/or
 - (h) makes a false compensation claim.
- (2) A person who takes advantage of their involvement in disasters and climate change action for the purposes of sexually exploiting or abusing another person commits a criminal offence and is liable to prosecution under Part XVI of the Penal Code. A foreigner may face deportation and/or prosecution in Kiribati or in their home country.

Immunities

36. (1) Whilst individuals have a duty to do no harm, by not jeopardising the lives, physical and psychological safety, freedom and wellbeing of people and places affected by disasters, the following people are immune from civil or criminal action for anything done or omitted to be done under this Act for disasters, provided their conduct is in good faith, without negligence or wilful misconduct or false representation:
- (a) a person acting under a paid retainer or direct agreement with or instruction of a government staff, an IDC or Taskforce under this Act;
 - (b) a member of the Board of the Disaster and Climate Change Rapid Response Fund;
 - (c) a volunteer who tries to help protect people or property; and
 - (d) a person who takes urgent steps to prevent significant harm, injury or loss of life from a real and imminent threat, which may otherwise be in violation of the law.
- (2) The rights, privileges and immunities international organisations and their personnel may enjoy under international law are not affected by this Act.

Amendments, repeal and regulations

37. (1) The *National Disaster Act 1993* is hereby repealed.

(2) The following legislative provisions are hereby amended:

(a) *Biosecurity Act 2011:*

(i) in section 69(2) which requires the Minister to consult the National Disaster Committee before declaring a biosecurity emergency area, the words “National Disaster Committee” are replaced by “KNEG”; and

(ii) in section 70(2)(b), “as appropriate, consult and liaise with the National Disaster Committee” is replaced with the words “respond in accordance with the provisions of the *Disaster Risk Management and Climate Change Act 2019*”;

(b) *Building Act 2006:*

(i) in section 8(1) which currently provides for buildings to be structurally sufficient, safe and stable, is added a new sub-paragraph (c) stating “be designed for resilience to climate change and disaster risks”;

(ii) in Schedule 1 titled ‘Exempt Building Work’ which currently exempts, under 1(h), from building approval “a dwelling house built using traditional methods and substantially from traditional materials where not more than 12 people will ordinarily be resident”, is added the words “with preference for use of the te buia design to ensure elevation from ocean inundation and storm-related flooding”; and

(iii) in Schedule 1 is added a new sub-paragraph 1(i) stating “any building using a Climate and Disaster Friendly Design as may be issued under this Act”;

(c) *Communication Act 2013:*

(i) in section 2 which defines a “consumer” as a customer who contracts for a communications service that is offered on standard conditions that are of general application and not negotiated individually, is added at the end “, whether or not a charge is made for the service”; and

(ii) in section 73, which provides for a communications licensee (such as a phone service) to remove a tree, shrub or plant that interferes with communications and reasonable cost is charged to the person occupying the land, is added at the end of section 73(4) “except where action under this section is the result of a disaster event”;

(d) *Food Safety Act 2006:*

in section 2, the definition of “food business” is varied by adding after “food for sale” the words “or donation”;

(e) *Local Government Act 1984:*

in section 49 which requires Mayors to report decisions taken without reference to the Local Council, where the words “the Minister” appear, the words “and the Office that is responsible for disaster risk management and climate change” are added;

(f) *Maritime Act 2017:*

(i) in section 234 is added a new sub-section 3 with the words "The National On-Scene Commander coordinates with the Disaster Controller under the *Disaster Risk Management and Climate Change Act 2019*";

(ii) in section 235(1) after the words "there shall be a National On-Scene Commander who" the provision is amended to read

"a. is the final decision maker in relation to containment of the marine pollution; and

b. defers, in relation to any human or onshore consequences of the marine pollution, to the Disaster Controller under the *Disaster Risk Management and Climate Change Act 2019*.";

(iii) in section 235(2) after the words "the following powers" the word "and obligations" is added and after sub-section e. the following subsections added:

"f. Protect life at sea and prioritise minimising harm to human and marine life;

g. notify the Ministry in the event the marine pollution will impact human activities including fishing and shore-based activities.";

(iv) in Schedule 4 paragraph (1) is added a new sub-paragraph (iv) with the words "The *Disaster Risk Management and Climate Change Act 2019* defines three levels of response and the local and regional response provided above equates to Level 1 action, while national response may equate to Level 2 or Level 3 action depending on the severity of the consequences on human life and livelihoods.";

(g) *National Building Code of Kiribati 2012*:

(i) in DF1.1 and NF1.1 which state that "Floor levels of all new buildings must be a minimum of 300mm above the natural ground level", 300mm is changed to 1000mm;

(ii) in DF1.2 and NF1.2 which require buildings on land prone to flooding that the "top of the floor must be kept at not less than 300 mm above the known flood level at the site", 300 mm is changed to 1000 mm; and

(iii) in NF4.4 which sets out requirements for artificial lighting in stairways, ramps and corridors, is added at the end of sub-paragraph (c) "including to and at external sanitation facilities";

(h) *Nippon Causeway Tolls Act 1987*:

in section 4 a new sub-section (7) is added with the words "Tolls shall not be enforced in times of disaster, from the issuance of an early warning to the time of shift from disaster response to recovery actions as provided in the *Disaster Risk Management and Climate Change Act 2019*.";

(i) *Police Powers and Duties Act 2008*:

in section 9 which covers general powers and duties, a new sub-section (4) is added with the words "In relation to disaster risk management, a police officer has additional duties towards the preservation of life and property, and as provided in the *Disaster Risk Management and Climate Change Act 2019* and Regulations.";

(j) *Prisons Ordinance 76 1977:*

in section 59 which covers prisoner release on licence (temporary release), a new sub-section (3) is added with the words "In circumstances of impending disaster the Minister may, upon advice of the Office responsible for disasters and climate change under the *Disaster Risk Management and Climate Change Act 2019*, order temporary release of prisoners or other appropriate measures to protect their lives, on condition of returning to prison immediately after the risk has passed"; and

in section 46 a sub-section marker (1) is added at the beginning, and at the end of the provision is added a new sub-section (2) with the words "Where prisoners undertake work such as seawall construction or other measures for mitigation of risks relating to disasters and climate change, this work comes within the duty of community contribution under Schedule 1 of the *Law of Kiribati Act 1989* and is neither forced nor hard labour.";

(k) *Quarantine Ordinance 85 1977:*

in section 14 which provides for quarantine of persons and goods, a new sub-section (3) is added with the words "Actions taken under this section are to be notified to the Office responsible for disasters and climate change pursuant to the *Disaster Risk Management and Climate Change Act 2019*, together with details of those in quarantine and how their basic needs will be met, and details on the nature of any goods which are prevented import which may impact upon people in Kiribati being able to meet their basic needs.";

(l) *Squatters (Recovery of Land) Act 2005:*

a new section 15 is added with the words "This Act does not apply to disaster displaced people under the *Disaster Risk Management and Climate Change Act 2019*, for the period between announcement of early warning of a disaster, and when disaster response shifts to disaster recovery, except if the land is subject to usage restrictions such as to protect water reserves."

(m) *State Lands Act 2001:*

(i) a new sub-section 11(8) is added which reads "If family abandonment of a plot is for reasons of climate change or disasters, the 90-day periods in this section are expanded to 6 months";

(ii) a new sub-section 11(9) is added which reads "The owner may apply for extension for further six-month period up to a maximum of two years"; and

(iii) at the end of section 16 will be added the words "or section 11(8)".

(3) The Minister may make regulations necessary and convenient to achieve the purposes and outcomes of this Act.

Schedule 1

Acronyms and abbreviations provisions (s7(2))

'DCC' is the Development Coordinating Committee;

'IDC' is an Island Disaster Committee, as distinct from an Island Development Committee;

'KMS' is the Kiribati Meteorological Service;

'KNEG' is the Kiribati National Expert Group on Climate Change and Disaster Risk Management;

'KPS' is the Kiribati Police Services;

'Linnix' is the Line and Phoenix Islands;

DISASTER RISK MANAGEMENT CLIMATE CHANGE BILL

EXPLANATORY MEMORANDUM

This Act gives legislative effect to the whole-of-nation approach to disaster risk management and climate change, within the overall context of sustainable development. It is designed and drafted in language that is understandable to non-lawyers. It contains structures that minimise bureaucracy and maximise efficiency in action, which is particularly important in times of disaster. The legislation was developed in consultation with a variety of government, non-government and international stakeholders, and is tailored to the Kiribati context of a small, widely dispersed population. The present focus is predominantly on disaster risk management and climate change adaptation, and it is anticipated in the years to come that an amendment bill will be prepared to increase the legislative content on climate change mitigation and related actions.

Part 1 of the Act contains preliminary parts. The purpose of the legislation focuses not only on government structures for disaster risk management and climate change, but on helping individuals and communities in adapting and responding to these unavoidable circumstances. The legislation is underpinned by nine key principles which may be used to guide interpretation.

Part 2 contains governance arrangements including the role of The Beretitenti and Cabinet, government ministries and other bodies, and local government. It formalises the role of the Kiribati National Expert Group on Climate Change and Disaster Risk Management and provides details on the roles and responsibilities of Island Disaster Committees. It establishes a slightly different structure for urban and town councils, where national disaster responders are present and able to support in response complemented by a Taskforce with the mayor and community representatives.

Part 3 provides for funding arrangements including national budgetary allocations, donor support, and the establishment of the Disaster and Climate Change Rapid Response Fund. To maximise speed in mobilisation of resources to the communities in need, it is a Special Fund within the meaning of the Kiribati Constitution.

Part 4 contains principal provisions for the planning and implementation of action for disaster risk management and climate change. A specific focus is placed on localisation of action and on ensuring community engagement and inclusion. Details are provided across the cycle of action on disasters and climate change, with action being characterised on three levels based on whether the island or individual ministry can manage the response itself, or if it needs coordinated action at the national and/or international levels.

The legislation provides for actions to prevent disasters and, where the hazard cannot be prevented, how Kiribati will reduce the risk and prepare for responding to it. Response provisions include slow onset and sudden onset disasters, such as droughts and storm surges. It covers the use of emergency services, and the declaration of a disaster and/or state of emergency where required for the whole or part of Kiribati. Also covered is the recovery phase after disasters, including building back better for enhanced resilience to disasters and climate change. Details on coordination amongst response agencies and response to specific types of disasters is covered in the Regulations.

Part 5 covers assistance from non-government and international stakeholders, which is welcomed provided it is in accordance with Kiribati plans and priorities, respectful to culture, and is accountable. It includes action by the Kiribati Red Cross Service, non-government organisations, community and church groups, the private sector, bilateral support from foreign states, and multilateral support through the United Nations and other global bodies. It includes measures to facilitate their involvement, such as expedited visa processes, customs clearance, recognition of foreign certifications, and establishment of pre-authorisations and ongoing agreements.

Part 6 contains accountability measures including standards of action, rights protections, compensation, immunities and offences, and reporting requirements. As disaster risk management and climate change are mainstreamed, the Act also includes a number of consequential amendments to related legislation to ensure the body of Kiribati law is coherent and in alignment. Lastly it provides for the making of regulations under the Act.

His Excellency Taneti Maamau

The Beretitenti and Minister for Foreign Affairs and Immigration

30 July 2019

LEGAL REPORT

I hereby certify that in my opinion none of the provisions of the above Act are in conflict with the Constitution and that HE The Beretitenti may properly assent to the Act.

Tetiro Maate Semilota
Attorney General

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

This printed impression of the Disaster Management and Climate Change Act 2019 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 4th of November 2019 and is found by me to be a true and correctly printed copy of the said Bill.

Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this ...13... day
of ...February..... 2020.

Eni Tekanene
Clerk of the Maneaba ni Maungatabu