

REPUBLIC OF KIRIBATI  
(No. 12 of 2008)

I assent,  
*Autotung*  
Beretitenti  
31 December, 2008

AN ACT TO AMEND THE *MEASURES TO COMBAT TERRORISM  
AND TRANSNATIONAL ORGANISED CRIME ACT 2005*

Commencement:  
2008

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

**1. Short title**

This Act may be cited as the *Measures to Combat Terrorism and Transnational Organised Crime (Amendment) Act 2008*.

**2. Meaning of 'principal Act'**

In this Act 'principal Act' means the *Measures to Combat Terrorism and Transnational Organised Crime Act 2005*.

**3. Amendment of section 2(1)**

Section 2(1) of the principal Act is amended—

- (a) by inserting after the definition of 'authorised officer' the following definitions—
- “BCN weapon' means a biological, chemical or nuclear weapon;  
'biological weapon' means—
- (a) any microbial or other biological agent, or toxin, whatever its origin or method of production, of a type and in a quantity that has no justification for prophylactic, protective or other peaceful purposes, or
  - (b) any weapon, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict;

‘chemical weapon’ means the following, together or separately—

- (a) toxic chemicals and their precursors, except where intended for—
  - (i) industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes; or
  - (ii) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
  - (iii) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
  - (iv) law enforcement, including domestic riot control purposes,  
as long as the types and quantities are consistent with such purposes;
- (b) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (a), which would be released as a result of the employment of such munitions and devices;
- (c) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in paragraph (b);”;

- (b) by inserting after the definition of ‘fraudulent travel or identity document’ the following definitions—

“‘IAEA’ means the International Atomic Energy Agency;

‘IAEA Statute’ means the Statute of the IAEA, done at New York on 26 October 1956;”;

- (c) by inserting after the definition of ‘material benefit’ the following definition—

“‘means of delivery’ means missiles, rockets and other unmanned systems capable of delivering nuclear, chemical and biological weapons that are specifically designed for delivering those weapons;”;

- (d) by inserting after the definition of ‘military service’ the following definition—

“‘nuclear facility’ means—

- (a) a nuclear reactor, including a reactor installed in or on any vessel, vehicle, aircraft or space object, for use as an energy source in order to propel the vessel, vehicle, aircraft or space object or for any other purpose; or

- (b) a plant or conveyance being used for the production, storage, processing or transport of radioactive material; or
  - (c) any other facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material;”;
- (e) by inserting after the definition of ‘nuclear material’ the following definitions—
- “‘Nuclear Material Convention’ means the *Convention on the Physical Protection of Nuclear Material and Nuclear Facilities*, done at Vienna and New York on 3 March 1980, and the amendment to the Convention done at Vienna on 8 July 2005;
- ‘nuclear weapon’ includes a nuclear weapon and any other nuclear explosive device;”;
- (f) by inserting after the definition of ‘Plastic Explosives Convention’ the following definition—
- “‘precursor’ means any chemical reactant which takes part at any stage in the production, by whatever means, of a toxic chemical, including any key component of a binary or multi-component chemical system;”;
- (g) by inserting after the definition of ‘public official’ the following definitions—
- “‘radioactive device’ means—
- (a) any nuclear explosive device; or
  - (b) any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or the environment;
- ‘radioactive material’ means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or the environment;”;
- (h) by inserting after the definition of ‘ship’ the following definitions—
- “‘source material’ has the meaning given by Article XX of the IAEA Statute;
- ‘special fissionable material’ has the meaning given by Article XX of the IAEA Statute;”;

- (i) by inserting after the definition of 'terrorist property' the following definition—

“‘toxic chemical’ means any chemical which, through its chemical action on life processes, can cause death, temporary incapacitation or permanent harm to humans or animals, and includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;”.

**4. Amendment of section 3(3)(a)**

Section 3(3)(a) of the principal Act is amended by repealing “or (iv)” and substituting “, (iv), (v) or (vi)”.

**5. New section 9A**

Before section 10 the following section is inserted in Part III of the principal Act—

**“9A. Terrorist act**

Any person who commits a terrorist act commits an offence and is liable upon conviction to imprisonment for life.”.

**6. Repeal and replacement of section 10**

Section 10 of the principal Act is repealed and the following section is substituted—

**“10. Terrorism financing**

- (1) A person must not provide or collect, by any means, directly or indirectly, any property, intending, knowing or having reasonable grounds to believe that the property will be used, in full or in part, to carry out a terrorist act.
- (2) A person must not provide or collect, by any means, directly or indirectly, any property intending, knowing or having reasonable grounds to believe that they will benefit an entity that the person knows is a specified entity.
- (3) Any person who commits an offence under this section is liable upon conviction to imprisonment for life.
- (4) In a prosecution for an offence under subsection (1), it is not necessary for the prosecutor to prove that the property collected or provided was actually used, in full or in part, to carry out a terrorist act.”.

7. New section 14A

After section 14 of the principal Act the following section is inserted—

**“14A. Participation in a terrorist group**

Any person who participates (whether as a member, associate member or prospective member) in a terrorist group, knowing that it is a terrorist group, commits an offence and is liable upon conviction to imprisonment for life.”.

8. Amendment of section 34(4)

Section 34(4) of the principal Act is amended by repealing “*Convention for the Physical Protection of Nuclear Material*, done at Vienna and New York on 3 March 1980” and substituting “Nuclear Material Convention”.

9. Amendment of section 35

Section 35 of the principal Act is amended—

- (a) in paragraph (a), by inserting “or the environment” after “property”;
- (b) by inserting the following paragraphs after paragraph (c)—
  - “(ca) without lawful authority carries, sends or moves nuclear material into or out of a State; or
  - (cb) unlawfully does an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the person intentionally causes, or where the person knows that the act is likely to cause, death or serious injury to any person or substantial damage to property or the environment by exposure to radiation or release of radioactive substances; or”;
- (c) by repealing paragraph (e) and substituting the following paragraph—
  - “(e) threatens—
    - (i) to use nuclear material—
      - (A) to cause death or serious injury to any person; or
      - (B) to cause substantial damage to property or the environment; or
      - (C) to commit an offence mentioned in paragraph (cb); or
    - (ii) to steal nuclear material, or commit an offence mentioned in paragraph (cb), to compel a person, state or an international organisation to do or refrain from doing any act,”.

## 10. Amendment of section 36(1)

Section 36(1) of the principal Act is amended by inserting the following paragraphs after paragraph (g)—

- “(ga) when the purpose of the act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or abstain from doing any act—
- (i) uses against or on a ship or fixed platform, or discharges from a ship or fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death, serious injury or damage; or
  - (ii) discharges from a ship or fixed platform oil, liquefied natural gas or other hazardous or noxious substance, which is not covered by sub-paragraph (i), in such quantity or concentration that causes or is likely to cause death, serious injury or damage; or
  - (iii) uses a ship in a manner that causes death, serious injury or damage; or
  - (iv) threatens to commit an offence mentioned in sub-paragraphs (i), (ii) or (iii); or
- (gb) transports on board a craft—
- (i) any explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause, death, serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act; or
  - (ii) any BCN weapon, knowing it to be a BCN weapon; or
  - (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement; or
  - (iv) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purpose; or
  - (v) any other person, knowing that the person has committed an act that constitutes an offence under this Act, and intending to assist that person to evade criminal prosecution;”.

## 11. New Division 7 in Part VI

After section 39 the following Division is inserted in Part VI—

### “DIVISION 7—NUCLEAR TERRORISM

#### 39A. Nuclear terrorism

- (1) Any person who—
- (a) unlawfully possesses radioactive material or makes or possesses a radioactive device with the intent to cause—
    - (i) death or serious bodily injury; or
    - (ii) substantial damage to property or the environment; or
  - (b) unlawfully uses in any way radioactive material or a radioactive device, or uses or damages a nuclear facility, in a manner which causes a release or increases the risk of the release of radioactive material with the intent to—
    - (i) cause death or serious bodily injury; or
    - (ii) cause substantial damage to property or the environment; or
    - (iii) compel a person, State or international organisation to do or refrain from doing any act; or
  - (c) threatens to commit an offence mentioned in paragraph (b); or
  - (d) unlawfully and intentionally makes a demand supported by a threat or use of force—
    - (i) for the supply of radioactive material or a radioactive device; or
    - (ii) for a nuclear facility to be made available or for access to a nuclear facility,
- commits an offence and is liable upon conviction to imprisonment for life.
- (2) A threat referred to in subsection (1)(c) or (d) must be made in circumstances which indicate the credibility of the threat.”

## 12. Amendment of Schedule 1

Schedule 1 to the principal Act is amended—

- (a) in item 6—
- (i) by inserting “*and Nuclear Facilities*” between “*Material*” and “*done*”; and
  - (ii) by inserting at the end thereof “, and the amendment to the Convention done at Vienna on 8 July 2005”; and

- (b) in item 8, by inserting at the end thereof “, and the Protocol to the Convention done at London on 14 October 2005”; and
- (c) in item 9, by inserting at the end thereof “, and the Protocol to the Protocol done at London on 14 October 2005”; and
- (d) by inserting after item 12 the following item—
  - “13. *International Convention for the Suppression of Acts of Nuclear Terrorism* adopted by the General Assembly of the United Nations on 13 April 2005.”.

MEASURES TO COMBAT TERRORISM AND TRANSNATIONAL  
ORGANISED CRIME (AMENDMENT) ACT 2008

EXPLANATORY MEMORANDUM

This Act seeks to update the *Measures to Combat Terrorism and Transnational Organised Crime Act 2005*, to implement the legislative obligations imposed by the following counter terrorism instruments—

- the *International Convention for the Suppression of Acts of Nuclear Terrorism* (the Nuclear Terrorism Convention);
- the 2005 amendments to the *Convention for the Physical Protection of Nuclear Material* (the Nuclear Material Convention);
- the 2005 Protocol to the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* (the SUA Convention); and
- the 2005 Protocol to the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (the SUA Protocol).

The opportunity is also taken to enhance some of the original provisions, to reflect international developments, and to correct some errors in drafting.

Section 3 of the Act inserts a number of new definitions, required by the new instruments. Section 4 corrects a drafting error in section 3 of the principal Act.

Section 5 inserts a new section 9A, to create the offence of committing a terrorist act. Section 6 replaces section 10 of the principal Act, to improve upon the original description of the offence of terrorism financing. Section 7 inserts a new section 14A, to create the new offence of participation in a terrorist group.

Section 8 amends section 34(4) of the principal Act, to simplify the reference to the Nuclear Material Convention. Section 9 amends section 35, to insert new provisions required by the 2005 amendments to the Nuclear Material Convention. Section 10 amends section 36, to insert new provisions required by the 2005 Protocol to the SUA Convention and the 2005 Protocol to the SUA Protocol. Section 11 inserts a new Division 7 in Part VI, to implement our legislative obligations under the Nuclear Terrorism Convention. Finally, section 12 amends Schedule 1 to the principal Act to reflect the new counter terrorism instruments.

Titabu Tabane  
Attorney General  
24 June 2008

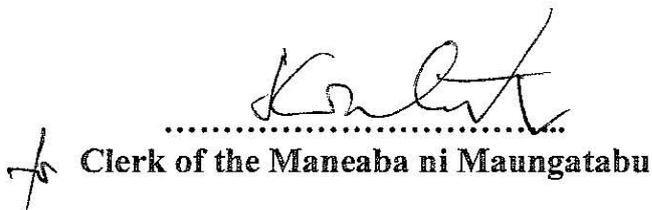
**CERTIFICATE OF THE CLERK OF THE MANEABA NI  
MAUNGATABU**

This printed impression of the Bill has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 9<sup>th</sup> December 2008 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

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day of December 2008.

  
Clerk of the Maneaba ni Maungatabu