

## **Executive Summary and Mission Findings**

- 1 In a little over 20 years of political independence, Kiribati's constitutional foundation is in need of review. The major concern is whether the democratic ideals of its Parliamentary system and the processes of constitutional checks and balances that had helped steer the young nation forward since 1978 - are still able to hold the ship on course. Or that in this new age of open government and globalisation, fresh challenges require fresh and innovating measures so to ensure those democratic ideals and the country's constitutional foundation are still intact, relevant and applicable today.
  
- 2 Good governance, accountability and transparency are an integral part of that democracy, and are inherent in the nature and form of the constitutional government of Kiribati. And though just recently invoked, the 8 Principles of Accountability themselves fit quite readily into this constitutional framework, as are the Guiding Principles of the Best Practices for Forum Island Countries Legislature. An important aspect of that constitutional system is the separation of powers between the three organs of the State – Parliament or the Maneaba ni Maungatabu, the Executive and the Judiciary – in which each of those organs is independent in the exercise of its own role and function. But that independence means that as the institution representative of the people, the Maneaba must at all times act as a *check* or *oversight* into the Executive and governmental administration. It must do so within its overall role as the lawmaker, as well as in the exercise of its Parliamentary authority through its select and standing committees and governmental commissions of inquiries into matters of national concern for the country. Unfortunately however and as evident in this assessment, indicators show there is need for constant check and reminders that these are properly at work.
  
- 3 Tested within and gauged against the Guiding Principles of the Best Practices for Forum Island Countries (FIC) Parliaments and Legislatures, there is much in need of legislative reform in and of the Maneabab-ni-Maungatabu. Such reform

however should be of a capacity building nature into the personnel themselves of the representatives of the people, as to better improve their performance and work, and equally important into the institution of the Maneaba itself that in the process should strengthen it overall. As the organ of State directly responsible and accountable to the electorate, this capacity strengthening is important Taken in their entirety and as a definite measure of political maturity, those Principles should ensure Kiribati democracy is in a healthy state into its modern development.

- 4 A major constraint is not understanding fully the Maneaba-ni Maungatabu's responsibility overall as the *check* and *oversight* into the Executive government. This is part of the existing resource difficulties currently affecting capacity strengthening of the Maneaba. Then there are the laws and rules that govern the workings of that responsibility and constitutional duty. These are outdated and ineffective. In the financial and economic sector for example, the laws are generally without the safeguard of Parliamentary approval in respect of foreign overseas loans and transactions. As well, there is political party domination by the Executive and Cabinet of the Maneaba which ensures the latter is without real political power or greater capacity in its separation independence to properly effect its check and oversight function. More pertinent is the duality of the role and function of the Beretitenti as Head of State and head of government, as well as that body's political involvement in the electoral process in the appointment of the Electoral Commission and the Chief Electoral Officer. These, together with appointments and terminations into the Public Service are not conducive to good governance or to show that political governance and accountability is properly at work.
- 5 Other notable aspects not assisting in achieving political governance is the Maneaba's failure to debate the Auditor General's Reports as far aback as 1993, or even the recent ones from 1997, 1998 and 1999. This is despite the clear findings in these recent reports that between 1997 and 1999, certain public revenue and

governmental finance unaccountable for totals close to \$A10million. Together with other qualifications expressly outlined, these Auditor General's Reports, relying primarily on the 8 Principles of Accountability, estimated close to a total of between \$A20m to \$A30 million public revenue, cannot be accounted for. No reasonable or justifiable explanation is offered for these other than that what is missing are the vouchers to explain where and how these public money had been used etc. In short, these discrepancies show the real need for accountability laws as there may be in a Leadership code of conduct and of course in the establishment of an Ombudsman institution and a review body like an Ombudsman Commission. These mechanisms should ensure that such conduct, generally of the nature of mala-administration and misfeasance in public office, should be investigated and redressed.

- 6 In making that assessment, the Maneaba can learn a lot from the proven experience of a number of its neighbouring countries who have sought to improve and strengthen their Parliamentary systems by utilising such accountability checks and good governance measures. Countries like Papua New Guinea, Vanuatu, Marshall Islands and Fiji who have incorporated Leadership Codes and Ombudsman provisions in their Constitutions, and others like Samoa who has legislated for the same in the exercise of its Parliamentary law making power. Having said that, the real success of course, is whether those laws are actually being used to effect good governance, accountability and transparency. And if so, whether the corruption and mala-administration sought to be administered thereunder are checked that leaders are brought to account for their alleged abuse and misuse of public office and tenure. In the case of Papua New Guinea with a complete regime in leadership accountability and an Ombudsman Commission, the answer is a measured yes; for Vanuatu and Samoa, the answer is a sure no. For Marshall Islands, it's uncertainty. Overall, that experience is certainly vital in assessing how and whether Kiribati can secure political governance and secure accountability and transparency in its Executive governance, through adoption of these good governance and accountability safegurads..

- 7 Overall, there is need for review of the Constitution. For the Maneaba itself to sustain its capacity to be the people's oversight and check into governmental administration, the Constitution must prescribe accordingly, and provide measures to properly and effectively achieve that. One obvious inability thereto is the political party system now dominant in the political sphere that the Constitution had not anticipated. Another as mentioned is the need to provide for a code of conduct by way of Leadership and Ombudsman provisions as the yardstick upon which the performance of government functions and leadership is measured against. It is this assessment's view these are better provided for by the Constitution, as to give those measures entrenched protection and safeguard, than through legislative law making.
  
- 8 Ultimately, it is not far off to say that there is significant work to be undertaken in order to help Kiribati and its Maneaba achieve, maintain and sustain political governance. Regular workshops and seminars can certainly help, but ultimately, it is the people themselves who must be fully knowledgeable and fully familiar with these. In the end and unless they are fully educated and are knowledgeable of their Constitution, the form of government it prescribes and for this assessment's purposes the role, function and overall part the Maneaba plays within that constitutional system, unless these are fully known, political governance cannot and shall not be achieved.

## **Recommendations**

- 1 It is advisable that the Maneaba-ni-Maungatabu and the Government of Kiribati re-examines its current Presidential system in the light of current demands for more public accountability and transparency.**
  
- 2 The Constitution and all laws relating to the Maneaba and its legislative functions and roles must be made public and available to the electorate and the people at large. A major part of this availability is for the Constitution and these laws to be taught and made a compulsory subject in schools, preferably at the secondary schools level. As the supreme law of the country, the Constitution should be essential learning.**
  
- 3 A Parliamentary hand book in I-Kiribati and in English that describes and explain the roles and functions of the Maneaba and the legislature is recommended to be made and published. It should detail briefly its oversight role, its lawmaking function and its representation capacity. Such a handbook should also try to explain in simple languages the principles of accountability and good governance.**
  
- 4 It should also try to explain what is involved in being a member of the Maneaba as well as being a government or Cabinet MP, and of course the Opposition. References may also be made to the Principles and Best Practice Guidelines of the FIC Legislatures and Parliaments and their applications to the Maneaba-ni-Maungatabu. It may be also be necessary to say something of the political party system that is now a strong determining factor in the politics of the country.**

- 5** There is need for regular workshops for all members of the Maneaba. This is to help them to familiarise in, and to have an overall understanding of the Maneaba as the oversight and check into Cabinet and government accountability. While the majority of MPs are former public servants and civil servants, and some are business people, they express the dire view, the Opposition members in particular, that with government having the majority in the Maneaba, their oversight role is ineffective and without any real measure. Former President Ieremia Tabi takes the view that in all his years of political and Parliamentary experience, it is still a long way away that Kiribati MPs are fully conversant and fully familiar with the nuts and bolts of Parliamentary democracy – its role, function and Parliamentary debate.
- 6** Closely related here is the office and role of the Speaker. While the Speaker is non-Parliamentarian in the sense that he is not an elected MP, his duty should be bipartisan and apolitical - simply independent, fair and politically impartial. As head of the Maneaba and a prominent constitutional office in its own right, it should be above politics - uncontrolled and not influenced by government or the Opposition. This is also for the obvious reason that being non-elected, the Speaker is not accountable to the electorate and the people. He is however accountable to the Maneaba that appoints him.
- 7** Overall, there is need to reassess the role and office of the Speaker in view of the emerging political party system. This also in respect of the fact that being paid by government from public funds and revenue, it can be said that some decisions by the Speaker might generally favour one side of the debate than the other. At least, this is the view of the majority of MPs interviewed. In any case, in over 20 years now of the Speaker not being accountable to the people in the electoral process, it may well be time to reconsider that, and perhaps let the electorate and the people determine such accountability and good governance.

- 8** An even greater concern here relates to the Guiding Principles of Best Practice for Forum Island Countries (FIC) Parliaments and Legislatures. No evidence shows that these are being utilised in strengthening the Maneaba-ni-Maungatabu, visa viz its oversight roles and law making functions; or in its representation capacity. As head of this organ of the State, it is encumbered on the Speaker to see these are indeed practised, and that they form the core foundation upon which political governance is maintained and sustained.
- 9** Closely associated herewith is the party political system now in operation. There are no clear party lines other than the Government on one side of the Parliamentary Chamber and the Opposition on the other. There are no party manifesto, no rules and no party Constitution to say how the party is governed and for the members to abide by. And of course, whether party politics can be favourable in the small island democracy of Kiribati. This needs further consideration and analysis. Of course, there is provided in the Bill of Rights of the Constitution the right to form assembly and associations.
- 9** There is urgent need to amend and update the Standing Orders and the Rules and Procedures of the Maneaba. This is now being carried out. An obvious defect in the current Rules, for example is its inability to expressly provide for the Auditor Report to be tabled and debated. Considering the amount of money and public funds since 1993 that is not accounted for, there is possibly abuse and misfeasance in public office, These are urgently needed to be looked into as a measure not just of political governance, but particularly in respect of accountability and transparent governmental administration.
- 10** Allied here is the need for a code of conduct by way of Leadership Code, Ombudsman provisions and an Ombudsman Commission. As mentioned in the Executive Summary, Kiribati can learn from the experience of some its

country neighbours in the region. These governance and accountability laws however are better prescribed by the Constitution as to give them the security and entrenchment not available under legislative law making. Such legislative endorsement runs the risk of being removed easily and readily by any government whose Executive governance becomes challengeable for corruption and abuse of public office.

- 11 There is need for amendment and an update consolidation to the Public Finance (Control & Audit) to allow for greater independence to the Auditor General Office as prescribed by the Constitution. Such amendment must also ensure that that Office is separated from the Ministry of Finance and Economic Planning. The fact that the Auditor General Reports had never been independently debated in the Maneaba is a major reason for this greater independence and separation. Considering the large sums of money not accountable for, this must be effected immediately. This also helps in securing compliance with the 8 Principles of Accountability in respect of Audit review of governmental expenditure and spending.
- 12 The Finance laws must be updated or fully amended. As they are and excepting some few amendments, all are pre Constitution laws. There is need also to have these follow the 8 Principles of Accountability, as well as consider fully the major aspects of good governance, accountability and transparency.
- 13 Overall, there is greater need to review the Constitution to provide for the various matters discussed and recommended herein, and in particular -

To include and provide for Freedom of Information provisions for an independent media and public information outlet. It should be noted

**however that there is freedom of expression and free speech secured by the Bill of Rights of the Constitution,**

**Inclusion of international human rights as may be relevant and applicable to Kiribati, particularly those of gender balance and equality. This however should make certain that the culture fabric, foundation and those customs and traditions of the country as applicable and relevant today are not merely made subservient and redundant thereto. The process should be a gradual evolution; and overall adoption should not be just a balancing exercise. Instead, the ultimate issue should be: whether these international human rights laws fit in and endears Kiribati for its growth, development and its people.**

## **PART 1**

### **Introduction**

- 1 This assessment looks at the ‘exercise of economic, political and administrative authority in the management of national affairs at all levels’ of Kiribati Parliament and its governmental administration. Characterised by efficiency, accountability, transparency, fairness and the rule of law, the emphasis for Kiribati is that its Maneaba-ni-Maungatabu, should not lose sight of its role of ensuring the Executive administration is functioning by laws properly formulated and grounded in appropriate policies tested under public scrutiny. *Scrutiny* of government functions and operations, *proper utilisation and exploitation* of limited national resources and the *political will* and *mandate* to govern and to bear ultimate *responsibility* by way of *check and balance* of overall governmental administration, are better served through political governance and accountability.
  
- 2 *Kiribati Legislative Needs Assessment* seeks to strengthen the Maneaba and the capacity of its Parliamentarians by ways of implementation of the principles of good governance and those of the 8 Principles of Accountability. Applying these should ensure that the principle law making function of the Maneaba, as well as its core oversight and representational roles, are not subservient or made ineffective in the overall agenda of nation building and national development. Indeed, good governance is not measured and should not be made to measure by periodic accounts of success or otherwise after every election year when Parliamentarians are elected into power. Rather, open government means open government: it calls for all processes of national decision making – in this regard Parliament’s oversight role, its legislative law-making power and its ultimate relationship to the constituency at large – to be made generally accessible and available to public scrutiny. It means national and rational debate, critical overall assessment to which the institution of the Maneaba – as distinctly separate from the other democratic organs of the State - is tested in its legitimacy and in the transparent and accountable exercise of its legislative authority.

- 3 Evidently, these principles are not new to the democracy of Kiribati. In the Constitution is encoded the fundamental principle that the Executive and Cabinet “shall be *collectively responsible* to the Maneaba-ni-Maungatabu for the executive functions of the State.” (Constitution Art 45). This is of course the universal principle of Executive and government accountability to Parliament, itself ultimately accountable to the electorate and the people in every general election every 4 years. That *collective responsibility* means that each Minister is *individually responsible* to and for the Ministry assigned to him or her, and in Cabinet is *collectively responsible* to Parliament for the administration and functioning of that Ministry. And Parliament of course is *ultimately accountable to the people* through the national general elections when that happens.
- 4 Overall, the objective here is threefold:
- to assess the existing laws in respect of Parliament and its Members;
  - to review the
    - (i) existing mechanisms and processes for legislative law making,
    - (ii) Parliament’s oversight role of check and balance into Executive governmental administration and its relationship with the electorate and the people, and
    - (iii) gender imbalance in parliamentary representation and equality for women leadership.

## **PART 2**

### **Parliament and Good Governance**

#### **Independence of Maneaba-ni-Maungatabu**

Under the Constitution – adopted in 1978 and structured by the separation of power doctrine – Parliament, known as the Maneaba-ni-Maungatabu (Art 52) - is the independent organ concern with law making, and to act as a check into the government administration of the Executive authority. This is its oversight role. The Parliamentary term is 4 years and elections are conducted under the first past the post election system. Elected members hold office until dissolution of the Maneaba for the next election, or for any of the reasons stated under Art 57 of the Constitution. A member’s seat could also be vacated for anyone of a number of reasons stipulated under Art 58 of the Constitution. Incidentally, candidates can also be disqualified from running for as prescribed under Art 56 of the Constitution.

#### **Presidential System of Government**

The Constitution prescribes for a Presidential system of government headed by the Beretitenti, who is also the Head of State. (Art 30) The holder is elected by all persons who are entitled to vote “in a general election” (Art 32(3)) from “not less than three nor more than four candidates” who are elected members of the Maneaba (Art 32(2)). Once elected, that member’s seat is deemed vacated so that a by election shall be conducted to fill that vacancy. On the other hand, the newly elected Beretitenti, shall not by that election as President, forfeit his seat in the House. The current Beretitenti is now into his second term. If he wins the next election and get nominated and elected one more time as Beretitenti, he would achieve 3 terms, or being Beretitenti for 12 years. Under the Constitution, he shall not be eligible to run again. (Art 32(5)).

There is a also a deputy President or Kauoman-ni-Beretitineti, who shall be appointed by the Beretitenti from “among the Ministers” (Art 39(2)). As is expected, the Kauoman-ni-Beretitineti is of course to take over the functions of

the Beretitenti where the latter shall not be available (Art 36 & 39(6)). The Beretitenti, together with the Kauoman-ni-Beretitenti “and not more than 8 other Ministers, and the Attorney General” shall form Cabinet (Art 40). This is the constitutional body that is vested with the Executive authority of the State (Art 45) and “shall be collectively responsible to the Maneaba-ni-Maungatabu for the executive functions of the Government” (Art 45).

### **Political Parties**

Political parties are part of the political system of Kiribati. While no formal rules or party manifesto are shown to govern the operations of such political parties, the two obvious ones are those of Government on the one side, and the Opposition on the other. The result is that the majority of members of the Maneaba are in Government, while the remaining, who of course constitute the minority, take up the Opposition. There are no independent members. By that majority, the government had been in power for two terms or 8 years. If they win the next elections scheduled for next year, they would hold onto power for 3 consecutive terms or 12 years.

### **Laws governing Parliament.**

The key legal mechanisms governing Parliament are the Constitutions, The Rules and Procedures of the Maneaba, and the Elections Ordinance in respect of general elections. The Constitution was adopted just prior to Independence in 1978, and is the supreme law. It is structured under the separation of power doctrine in which each of the three organs of the State – Maneaba-ni-Maungatabu, Executive/Cabinet and the Judiciary – is independent of each other, but all working for the Republic. The Speaker, who is a non-elected member of the Maneaba, heads Parliament. The Executive head and leader of Cabinet is the Beretitenti, who is an elected member of the Maneaba. As previously mentioned, after being nominated from among 3 or 4 members, a further election must be conducted from all voters and electors who voted in the general election. There is also a deputy President known as the Kauoman-ni-Beretitenti, who of course

shall act as Beretienti in the event of the latter not being available. The Chief Justice of course heads the Judiciary.

Other mechanisms governing political governance are of course the Parliamentary Select Committees and Standing Committees. These are prescribed by the Rules and Procedures of the Maneaba so to enable it to properly effect its role and function.

Overall, this is the constitutional structure of the Maneaba in which political governance is to operate. In the consultations and discussions with members of the Maneaba the Opposition members questioned if political governance is achieved by Executive domination of the Maneaba through the party political system. They also question that domination in what they say is the agenda arrangement of government business for debate in the Maneaba in which certain important matters are practically not raised or debated at all. For government, its members maintain all businesses of the House are prescribed by procedures and rules fully known to all members, and of course covered by the Maneaba's own laws. These are the practices of the Maneaba, as well as everything is under the control of the Speaker. In the event of course that any matter is not covered or prescribed, past precedent, practices and conventions of the Maneaba should ensure these are catered for.

## **PART 3**

### **AREAS FOR INSTITUTIONAL AND CAPACITY STRENGTHENING**

#### **Representation Role of Parliament**

##### **Nature of Representation**

The representative role of the Maneaba-ni-Maungatabu is prescribed by the Constitution and the Electoral Ordinance for 35 members elected from 23 electoral districts, together with a single member for the Banaban community and the Attorney General. The latter is *ex officio* member. With a rapidly increasing population now about 80,000, these electoral districts are in need of reconsideration in respect of population density per constituency. Alternatively, it may be necessary to redraw the electoral boundaries or to have 2 or more candidates elected from constituencies whose population has increased significantly since these electoral districts or wards were initially demarcated. In this way, it can be assured that there is even if not equal representation of constituency per candidate in the Maneaba. This also is in line with good governance. A notable achievement in this representation process is the number of women who had been elected into the Maneaba. Kiribati is among very few independent countries in the South Pacific region that has continued to have women elected national leaders. While however in proportion to the male population there could be more women leaders, as a continuing pattern of political consciousness, their participation in national politics is reassuring, and is a guaranteed measure of gender equality into the political mainstream.

Whether however this mainstream representation means that the people's aspiration and needs, wants etc are effectively represented in the Maneaba is not all too easy to gauge. According to the members consulted, most of whom are Opposition members, they say they are drowned out by the majority political party control the government has in the Maneaba. Even on some sensitive

national issues as highlighted in a number of Select Committee Reports and Commissions of Inquiries, these are not tabled in the House, and only government knows of the substance and contents of them. On the other hand, the Beretitenti and the government's majority political control of the country now in its second 4 year term, is a definite sign the electorate and the people are reasonably happy that their aspirations are effectively represented by government. The government is now due for its third and final term should its members win the next general election next year. In any case, there is no ground swell of public opinion that any of those Select Committee Reports or Inquiries etc, or their none disclosure and not being debated in the Maneaba have impacted adversely on government action and central administration generally.

Qualifications for candidature to the Maneaba are Kiribati citizenship and age of 21 years. There are however provisional requirements for electoral disqualification that should ensure that only the right candidates qualify (Constitution Art 56). As well, there are certain instances upon which an elected member's seat can be vacated, (Art 58) one of which is the recall or removal mechanism (Art 59). This representation recall is obviously an electoral accountability measure in which the majority of a member's electorate can petition the Speaker to have that member removed as their representative. However, there is lack of procedural safeguard for the member being recalled. No opportunity seems to be granted to such a member to defend himself/herself, or whether such a member can utilise the safeguards of the Bill of Rights of the Constitution. As an accountability aspect to political governance, it is advisable that the Constitution and the Electoral Act should make some provisions for this.

**Accordingly, it is recommended that this aspect be looked into for the future.**

#### **Electoral Commission accountable to whom?**

To effect good governance, accountability and transparency in Parliamentary representation, the electoral requirements in respect of the Electoral Commission

under the Constitution (Art 62 & 63) and the Electoral Act (s 4) may well need re-assessment. This is in respect of that Commission's members being appointed "by the Beretitiendi acting in accordance with the advice of Cabinet". It is also the same Commission that is granted the "responsibility for the conduct of elections to the office of the Beretitiendi", but at least in this latter function, it is undertaken "under the supervision of the Chief Justice" (Art 63(2)). As an aspect of good governance and accountability, it is clear that Commission is directly accountable and answerable to the Beretitiendi and Cabinet. The inevitable question of course is that: is the Electoral Commission intended to be an independent body to act reasonably in the performance of its functions and purposes? And if so, is this the best and fair way to do it, or are there any other ways to make these appointments?

**Accordingly, it advisable to look at these matters and whether there is needed to reassess their continuing relevance and suitability. Considering these were made since early independence 20 years ago now, may be the tide has turned with the practice and applications of good governance principles and laws.**

**It is also recommended to consider the following:**

**The appointment of the Chief Electoral Officer under section 4(1)) the Elections Ordinance 1977. That section provides that subject to appointments and removal of public servants by the Beretitiendi acting in accordance with the advice of the Public Service Commission under Art 99 of the Constitution, "there shall be a Chief Electoral Officer who shall be appointed by the Minister". In the first place, the Beretitiendi makes this appointment "acting in accordance with the advice of the Public Service Commission" (Art 99(1). In the second, the "Minister" is not defined. It is therefore assumed, from the contents and context of the ordinance that that Minister is again the Beretitiendi.**

**Then the Beretienti is also the appointment and terminating authority for the Public Service Commission, acting in accordance with the joint advice of the Chief Justice and the Speaker (Art 98 Constitution).**

**Overall, there is inevitably the appearance of what may be considered political that may not fit in well with good governance and accountability. It is therefore recommended that these be fully considered and re-assessed.**

### **Disparity of distance**

Kiribati's physical disparities and distances also ensure there must be continuity and frequent contact between the members of the Maneaba and the people, as there are only 2 sessions of the Maneaba in the year. This means there is more time for consultations that should generally lead to discussions and scrutiny of government policies, decisions, laws and bylaws. In fact, members consulted maintained not only do they live amongst the people, but also that some of them call meetings in the village maneaba where such discussions and consultations are undertaken. On the other hand, it cannot be denied that having only 2 sessions in the whole year, with MPs living on distant islands can be very difficult and hard to ensure that even urgent and emergency meetings of the Maneaba can be easily called. It may well be that these and the ocean distances in the many islands of the country where MPs come from, may require some of **decentralisation** as to better effect the good governance measures in the sense all governmental decisions administrations etc are dealt with at that decentralisation level - village or island.

**It is advisable that this decentralisation aspect may be considered and looked at more fully.**

**It is also recommended that given these difficulties, that the Maneaba requires each of its members to specifically make known to the people what**

**had been raised in the Maneaba at its sessions, as a way of ensuring its deliberations and decisions are known, and in the process shows its aware of the good governance and the Best Principles of Accountability.**

### **Proper representation**

Proper representation also means quality time in debate as well as having full materials on hand with members in respect of any issues raised in debate. The Rules (r. 33) of Procedures only provide for 15 minutes for a mover to speak on a motion and all others who are to speak on the topic is given 8 minutes. Obviously to have effective debate, there is need to extend that time frame to allow for greater debate and scrutiny. As well, effective representation requires debate materials to be on hand for every member, as well and for research assistance and help in preparation etc for debate. Towards good governance, this is lacking. In interviews with the Clerk and former Clerk of the Maneaba, both emphasised there is great need for these, inclusive of more typists to update Hansard, a Parliamentary counsel to help and draft bills for private members, and regular seminars and workshops for both members and the staff to help properly effect Maneaba's roll and function.

**Accordingly, it is recommended that research staff may be considered to help members in their preparation and their participation in Maneaba debates**

**It is also recommended that in respect of private members bills that a lawyer or a Parliamentary counsel be available for that. This certainly can help in the exercise of effective and informed representation.**

Regular Parliamentary seminars and workshops for both members and staff are needed. An aspect of this may be visits by staff to other Pacific Islands Parliaments, or to those of New Zealand and Australia, to see how these institutions perform and thereby learn something for Kiribati and the Maneaba.

## **Decentralisation**

It may well be that these and the physical disparities of the Kiribati Islands Group where MPs come from, call for **decentralisation** as a viable alternative to central administration. In this way, most governmental decisions are left entirely to each island and urban or village councils as to their everyday affairs, as for example utilisation of the fishing resources within say 50 miles of the country's EEZ. National finance and economic matters are of course the concern of the national government in Tarawa, with appropriate allocation to each island depending on their population, resources etc. This arrangement will not only bring close contact between island government and the people, but also that closer in scrutiny unto such administration. In any case, this is mentioned to illustrate the difficulties of physical distances that further distanced the people from their leaders in central government.

**It may be advisable for this to be considered as a long-term proposal. It is recommended accordingly.**

As it is right now, there should be regular community gatherings in the village maneaba for the people to discuss with their leaders what government is doing, in particular what the Maneaba itself is performing in respect of its overall oversight function. The assumption here of course is that the people themselves are fully aware of their leaders and their members of the Maneaba own role, what they do and are doing in government and the Maneaba, and that ultimately, these leaders are accountable to them. It is also assumed that the people understand the Constitution itself, the Presidential form of government it prescribes, the Parliament and the Maneaba they elect their leaders to, and of course that they are familiar with that organ of the State to which Executive and Cabinet decisions are subjected to in oversight scrutiny and check. In short, how can Parliament-constituency relationship be effected, properly maintained and sustained without the people's closer understanding of these basic governance principles and the Constitution?

**It is recommended therefore that the Constitution be distributed to every family and home for everyone to learn and know of the system of government it prescribes, and of the various roles its organs of State declares. As already recommended, this means the Constitution should be translated into Kiribati language.**

**This should also be made part of the recommendation for the Constitution to be made compulsory learning at secondary schools.**

#### **Parliamentary Select Committee reports etc**

Then there are the many Parliamentary Select Committee Reports and Commissions of Inquiry Reports that are not tabled and debated in the Maneaba. The same is also not reported in the media etc. Have the MPs in their relationships with their constituency and their electorate made these known or explained to the people why these are not publicised? And if they have, do the people agree or accept that because of one reason or another these cannot be made public and known? If not, how effective therefore are they as leaders, the representative of the people, practically unable to do anything as to show democracy is working? In any case, do the people themselves understand what good governance, political accountability and transparency is and what is expected of their leaders in respect thereof?

**Accordingly, it may be worth recommending that provisions be included in the Constitution and Electoral Act to state expressly that MPs must at all times inform and relate to their electorate and the people what are being debated and discussed in the Maneaba. Part of that requirement should ensure that MPs also inform the people of their own roles and functions, and what they are trying to achieve and effect while being their representative in the Maneaba. Overall, it is advisable to have this requirement made part of the electoral law for all prospective MPs and current MPs.**

## **Representation and Gender Equality**

Further aspect of Parliament constituency relationship is always the availability of leaders to discuss what they do in Parliament and in government, with the Church and non governmental organisations like women's groups and even with outsiders. Here, such issues as equality and gender balance can be raised. Kiribati have women leaders in the Maneaba and Cabinet who can also speak on these matters, and how being good mothers etc at home can readily be the foundation for good leaders at the national and Parliamentary level. Closely related herein is the public concern about some young girls – aged between 16 and 22 years – who had gone onboard the Korean fishing boats moored at Betio harbour. A radio program put out by the Broadcasting and Publications Authority, titled Boarding Foreign Fishing Vessels by Young Korean Girls, shows this to have happened. The young girls themselves were interviewed. They said they understand what people think about them and also that they are fully aware of Kiribati culture and how it is shameful to do such a thing. They said they met these sailors friends at nightclubs, who then invited them to come to the ships, but they did not. They informed the sailors of their families and parents, and also of Kiribati culture. As a result the sailors visited their parents and relatives at homes; and the girls were subsequently allowed to visit their boyfriends on the ships. Sometimes as a result of these visits, they were also able to get fish from their Korean boy friends.

Public outcry resulted. The general view aired in the program is that that may be what the girls themselves want, but as a national issue, the whole thing is not right. In general terms there is a dilemma between the freedom and the choice of the girls, and their parents perhaps, in allowing them to do what they are doing; and the public perception in the majority who see this as simply immoral, shameful and could possibly lead to AIDS. In short, there is a clear conflict of the girls' rights secured under Chapter 11 of the Constitution, and the current, social values inherent in and of Kiribati culture. Where shall the balance be drawn?

**Accordingly, it is recommended that this matter be fully considered and discussed, with a view to making changes where appropriate. It should be pointed out that while democratic and fundamental rights are expressly protected in Chapter 11 of the Constitution, culture and traditional rights are not.**

**Is this a national political matter?**

On the political and Parliamentary level however, it seems unfortunate the national leaders have not seen fit to say anything of this, either in government or Cabinet meetings, or when the Maneaba was in session, or even publicly. (Having said that, there is the second session of the Maneaba next month that may well debate this matter). And the questions arise: is this an issue bearing upon Parliament-constituency relations? Should personal freedom and one's choice to do what one prefers be weighted against the community and the public concern that such behaviour is not generally accepted? Are these matters of good governance and accountability? If not, should they be made so?

**Church and National Council of Women helping**

On the other hand, the major Churches in the country are coming out strong against it and are putting together initiatives to help young people. These include weekend activities and group gatherings like the 'te kabotaeka' and other social activities. The National Council of Women has also made its voice heard, and actually talked and interviewed some of the girls. And their view is simply that of equality: are not these girls old enough to know their own freedom and the liberty in the choice of their boyfriends and partners? And as mentioned, the media, through the Broadcasting and Publications Department's radio program, also gave it national coverage.

**Accordingly, it is recommended that these matters, women rights, conflicting values of democratic fundamental rights and culture, free media and the role of the Church etc - be made part of the overall agenda of the capacity**

**building of Parliament and Parliamentarians. In fact, these are the core aspects of good governance, accountability and transparency that Kiribati legislature must be fully familiar with, in the exercise and in the performance of its duties and functions.**

## **Law Making Function of Parliament**

### **For the peace, order and good government**

This is of course the major function of the Maneaba – to make laws for the peace, order and good government - of Kiribati. Under the Constitution (Art 66) legislative bills passed by the Maneaba and assented to by the Beretitenti become law as “Act” or statute. Beretitenti assent however is not mandatory; it is discretionary. In the event the Beretitenti is of the opinion that a Bill is “inconsistent with the Constitution”, then he withholds his assent and the bill is then returned to the Maneaba for amendment. If presented again for assent “and the Beretitenti is still of the opinion that the Bill, if assented to, would be inconsistent with the Constitution”, he can then refer it to the High Court “for a declaration” as to whether or not the Bill has that effect (Art 66(5)). Incidentally, this is a clear illustration of the *check* the Judiciary has over the law making power of the Maneaba.

### **Refusal of Assent**

In the consultations and interviews on this assessment, no instance was identified in which these lawmaking procedures had been called to use in the sense that the Beretitenti assent had been refused. In fact, it may well be that as head of government and as Beretitenti, a refusal of assent to legislation is highly unlikely to happen. This is of course for the obvious reason that as head of government, the Beretitenti had been fully involved in the Maneaba debates about such law that the Presidential assent as part of that legislative framework is merely formality. On the other hand, there is the inevitable risk of that duality of roles and functions that the Beretitenti may be in a situation as unlikely to maintain the

apolitical nature of his high office. This is an aspect that bears close scrutiny in respect of good governance and accountability.

**Accordingly, it is recommended that this be looked at and considered in the present and modern context of political governance and accountability.**

### **Ordinary law making and use of emergency procedures**

The Constitution (Article 68) and the Rules of Procedures of the Maneaba (Rules 40 & 41) prescribes for a bill to be read for the first time in any one session of the Maneaba. If a motion is passed for that bill in that first reading, it stands committed to “a committee of the whole Maneaba”. The debate on it therefore cannot proceed “until the next meeting of the Maneaba” (Art 68(3). However, the Rules allow for continuity of debate on such a bill in that same session if it “has been certified as urgent by the Beretitenti “ (Art 68(3)(a); or if “the Maneaba by a majority of all its members expressly agree to proceed with consideration of [it]”: Art 68(3)(b) & (Rule 41(5)). In this way, a bill receives its second reading in the one and same session, and thereby is “pass[ed]” as law once assented to by the Beretitenti. This is however notwithstanding the provisions of Art 68(3) as referred to above. Apparently, this is the procedure being used throughout in making laws: exceptional procedures generally intended for urgent legislation, rather than having bills made and passed in the ordinary exercise of legislative law making.

**It is recommended that this aspect be looked at fully as to make better provisions in the Rules of Procedures of the Maneaba for passing and making laws.**

**There is also the inevitable consequent of using urgent and emergency measures that the Maneaba may not be following its own rules and procedures in the performance of its law making function.**

### **Urgent procedures means no feedback from electorate**

In using these urgent procedures, it can be seen that there is little to no opportunity granted for public scrutiny or subjecting such bills to electorate analysis. In fact, add to this the physical disparities and the vast distances between the island constituencies and the Maneaba in Tarawa, it is doubtful the electorate's views on such laws can be obtained, even those of non governmental organisations and church groups. No clear or precise way of gauging the people's and electorate views on this law making function was evident from those consulted in this assessment. Even the Urban Councils were unable to make the appointments as scheduled. Nor is it the practice or the procedure that the people's views and comments on laws to be made, are sought or asked for. In fact a cursory look at the statutes shows most are practically old and pre Constitution ordinances which indicate their relevance and suitability today. It also indicates that if the electorate and the people were aware of their age and the wisdom in them now, they would have required their representatives and their leaders to have these changed and updated. This obviously means that as an indicator into the overall performance of this function of the Maneaba, there is a gap gradually widening that good governance and political experience should be able to bridge and sustain.

### **No Bills Committee**

A major aspect here relates to the absence of a Bills Committee. While the Rules provide that that function is taken over by "a committee of the whole House", it is difficult to see how the Maneaba can after debating a bill, or in the next sitting, meeting or session of the Maneaba, become the bills "committee". How that changeover of roles of practically the same members purport to effect properly a review or inquiry function that is intended to help and supplement the overall capacity building in Parliamentary law making is not easy to assess. In fact, such a committee of the whole Maneaba runs the risk of becoming a mere body of a government with a major political party control. It may also be the situation that in the absence of a Bills Committee per se, there is no opportunity for such a

committee to sit in its own time in its own agenda and invite public participation and views on such proposed laws.

**Accordingly, these aspects of the Rules have to be fully taken into consideration in the new Rules being prepared. In fact, it is recommended to have a Bills Committee itself, rather than have the Maneaba becoming a committee of itself.**

**Such a Bills Committee should have some members who are not MPs and at least one each from Government and the Opposition. It may be preferable to have as chairman someone who is not an elected member of the Maneaba.**

**It may be possible that such a Bills Committee would be in a better position to assess fully the proposed law after its first reading, and invite interested parties and people to make representations and comments. This certainly will allow even political parties and non-governmental organisations and church groups to give their views and opinions on such proposed laws.**

**A prerequisite in this regard is of course for the drafts of such bills and laws to be made public and available, or even publication of the same in the Government Gazette etc.**

**It may also be that since the Maneaba can only sit in 2 sessions in the whole year, this Bills Committee may be able to scrutinise such bills better so that its second and final readings would be readily known and assessed. It follows that subsequently, its debate would be brief and conclusive.**

On the other hand, it cannot be denied that having only 2 sessions in the whole year, with MPs living in islands scattered across a vast expanse of the Pacific Ocean, it is difficult to ensure that even urgent and emergency meetings of the Maneaba can be reconvened. Indeed, the bare facts are that MPs from the

Christmas Island constituency in the Line Group for example, have to travel to Hawaii first to come to Tarawa for the Maneaba sessions. Ironically, this is domestic travel routed internationally. For practical and financial purposes therefore, there is merit in the way the Rules purport to effect in just one (1) session what ordinarily is intended to be done in 2 or even more sittings of the Maneaba. Whether this however mean the Maneaba should always rely on use of emergency procedures is another matter. As stated, it would be more in line with good governance and political maturity that the Rules expressly state ordinary law making procedures and measures are used for ordinary legislative law making, and not as currently being done.

Overall, the Rules no doubt were intended that in between the sessions and the Maneaba meetings when MPs return to their constituencies, they would be able to raise and discuss with them what such laws are and their purposes etc. In that way, there is ultimate accountability and better procurement of good political governance. But given these practical realities and physical problems, there can be delays that ultimately bear directly upon this law making authority of the Maneaba.

**It is advisable therefore to consider whether it may be needed to have more than the current 2 sessions of the Maneaba in the year, may be 3 as to properly effect good governance measures and practices. The cost factor however, in respect of bringing MPs from their constituencies for more sessions and sittings of the Maneaba, is a major consideration that must always be born in mind.**

### **Standing Committee**

While there is no Bills Committee, there is a Standing Committee called, the Business Committee (r. 52. 2) No other Standing Committees are prescribed, though it is provided that “The Maneaba may establish more than one Standing

Committee.” (r. 57. 1). The point here is that this discretion can obviously assist in this law-making role by the creation of more Standing Committees if needed.

**In the recommendation for a Bills Committee, it is suggested that may be someone with business experience, say from the Business Standing Committee, may be appointed chairman.**

## **Oversight Function of Parliament**

### **Constitutional check**

That the Maneaba is able to know and understand well how the Executive government is governing the country, and whether in compliance with the rule of law, legislative procedures and electorate expectations, relies primarily in its constitutional *check*, through its political *oversight* of government performance in any Parliamentary term. As a best practice in Parliamentary governance, this oversight role is arguably the key to political governance. Within every 4 years after general elections, Parliamentary and Maneaba debate is the clearest measure there is that monitors Executive governmental performance and administration. Protected of course by parliamentary privilege and immunity, vigorous and heated debate is a permissible scrutiny of parliamentary free speech that underlies the basic content and substance of Parliament democracy. In Kiribati however, this falls short of fulfilling Parliamentary oversight in good governance, as well as in ensuring that government is subject to greater scrutiny and accountability in its performance. The failure to have the Auditor General’s Report debated in Parliament, as far back as 1993, is an obvious example. The 1999 Audit Report shows that between \$A20 - \$A30million is unaccounted for; yet that Report, like the others before it, is unlikely to be debated by the Maneaba in its November session, or to be made public and revealed in the news media or the radio. (Incidentally, both these public outlets are government controlled and owned.)

No clearer explanation was given by members interviewed, both Governmental and Opposition, as to why this is happening other than that Government has a

huge majority in the Maneaba that it virtually controls the proceedings and the debates. And as a matter of past practices and precedent in the debates, no Audit General Report had ever been debated. The general practice had been referral to the Public Accounts Committee, which following its own report of the Report of the Auditor General is merely tabled and subsequently passed over without any further debate or Maneaba scrutiny. Obviously, this is an area for more analysis and review as to the real function of the Maneaba in respect of the financial affairs of the government. How does this aspect fit in with the 8 Principles of Accountability or even the Best Practices Guidelines for Forum Island Countries Legislature?

**Accordingly, it is recommended that this particular aspect be considered and assessed fully, particularly as to the Maneaba's role and responsibility.**

**It is also recommended to consider these in the light of the 8 Principles of Accountability and the Best Practices Guidelines for FIC Legislatures.**

### **Budget 2001**

The national Budget for 2001 also did not touch on these missing vouchers, and the estimated overall unaccountable amount resulting. So also was the Public Accounts Committee unable to verify or check thoroughly with the chief accountant why financial records and vouchers are missing. Even in the interview with the current chief accountant, he was unable to explain why this is and was happening, except that he was just recently appointed to the job. It seems there is more to be understood as to the roll and functions of the Public Accounts Committee, as are other committees and select committees of the Maneaba. On the PAC, it is not an institution set up to review or report favourably of the finances of the government of the day visa-vis the Auditor General's Report. Rather, it is a *committee of Parliament* established to act in support of, and in strengthening its own independent role. In this way, good political governance is achieved, and there is sure and greater accountability of Parliament itself in its

oversight role, and more so of the government of the day in its financial and expenditure administration.

**Accordingly, it is so recommended to have training workshops and seminars etc to help the Public Accounts Committees and other similar Parliamentary committees and Select Committees, to understand more fully their functions and roles.**

**It cannot be emphasised any further that these are *committees of Parliament* set up to strengthen Parliament in its own capacity by way of oversight and check, and also as the representatives of the people. They are not and should not be taken to be government owned or controlled.**

Overall, the national Budget highlights specific requirements of departmental financial expenditure and spending like outcomes sought to be financed, outputs required thereof and the performance standards for objectives to be achieved, being targets closely identifiable with good governance and accountability. Indeed, in respect of the Maneaba (page 77 – 79), the outcomes sought expressly states the “[f]unctions of the Maneaba ... contribute to “’good governance’, open government, including accountability to the representatives of the people, and a functioning legislature”. These are clear references to political governance and accountability. Of the performance standards forecasted (page 80), particularly in respect of Parliamentary Select Committees and Standing Committees, there is unfortunately no mention made of their purposes as Parliamentary oversight and check mechanisms into Executive accountability as to achieve open government and make it readily accessible.

In reference to Principle 1 of the 8 Principles of Accountability, the budgetary processes are not easy to follow and do not contain “details of budget performance including results of audits and other evaluations”. As mentioned, this Audit aspect is a crucial annual indicator of how well government is financially

performing, and if not, what the Maneaba can do. Even governmental overseas borrowing without Maneaba referral or approval (see below) is not detailed as required by Principle 3. Overall, the budgetary language is technical and is difficult to be followed or understood by ordinary MPs, especially those from the out islands who are not familiar with monetary terms, and less familiar with the entire content of democratic accountability. Without being critical, there is real attempt to follow the Principles of Accountability, though it seems regrettable this appears rather difficult to manifest and follow through.

**It is advisable and is therefore recommended to have the Budget made much simple particularly in trying to achieve the intents and purpose of the 8 Principles of Accountability.**

#### **Other Users of Public Funds?**

Other institutions and bodies who are or should be users of public funds like non-governmental organisations (NGO) and the Church, do not appear to feature in the Budget. These do not seem therefore to have any real or actual participation into the affairs of the State. Consequently, they have little to no voice into political governance, other than of course as individual voter citizens. In consultations with both the Church and the National Council of Women, they share a lot in common in respect of not knowing how government finance is budgeted and allocated for, as well as not being able to scrutinise such governmental expenditure and spending. In fact both are uncertain of each other's role in the overall scheme of things, particularly as non government bodies working in allied of political governance and good governmental administration.

**Accordingly, it is recommended that some consideration be given to the role and place of non government organisations in the overall affairs of the State, particularly the Church and the National Council of Women. As a consequent, it is recommended that some budgetary allocations be made for them as appropriate thereto.**

### **Budgetary Laws are outdated**

A greater concern administratively on budgetary finance is that the laws governing governmental expenditure and spending are outdated, being pre-Constitution ordinances and regulations. Tested against the Best Practices Guide for FIC Legislatures and the 8 Principles of Accountability, these laws do not measure into good governance and accountability. These are the Public Finance (Control & Audit) Ordinance 1976 and the Government Borrowing & Guarantee Ordinance 1973. A major aspect in line with good governance, particularly in the oversight check by Parliament of Executive accountability is that these laws do not provide for Maneaba approval of major government loans and expenditure. In the Government Borrowing & Guarantee Ordinance for example, the Minister of Finance and Economic Planning, personally and by himself “may guarantee” such borrowing on behalf of government, “as he may think fit” without need for referral and or Parliamentary approval. Interestingly, if Parliament is the constitutional authority that approves the Budget for overall government spending and finance, inclusive of all money otherwise procured from outside, how is it permissible that it has no say, and therefore no oversight check or control of such overseas loans?

**Accordingly, it is recommended that the reform currently undertaken of all finance laws should consider these, particularly bearing in mind the 8 Principles of Accountability.**

**A major part of this budgetary reform is to separate the Office of the Auditor General from the Ministry of Finance, thereby ensuring its overall independence, and to give it greater power of scrutiny in line with the general principles of Economy, Efficiency and Effectiveness.**

### **Other Budgetary & Finance Laws.**

The Procurement Code currently in the bills stages of the Maneaba, while expressly noting the need for transparency in the procurement of services and contracts, its procurement requirements for suppliers and contractors seems to cater more for outside investors than Kiribati nationals and citizens. This is because of the intense and advance qualifications and experience required. Even in the tender requirements, it seems no local person would be able to apply. An urgent matter here is that Parliament has no Bills Committee that can spend more time and intense scrutiny of such legislation and others like it. In order that the oversight role of Parliament can achieve the purpose of helping strengthen it in its capacity and law making function, a Bills Committee, as recommended must be set up.

### **Party Political System**

AS mentioned, there are also now political parties and their own party agenda that emphasise more the government position on one side or the Opposition on the other, that, according to MPs interviewed, has resulted in Parliamentary debate deteriorating into personal mudslinging and vendetta accusations. There were even fights between members, one of which is now before the court of law. The inevitable consequence of course is that the oversight function of the Maneaba has accordingly gone off track and away from good governance. Whether that political party system as now practised is conducive to political governance is at best uncertain. But inclusive of the existing constraints and human resource difficulties (see below) inhibiting the better performance of its leaders and consequently the integrity of the Parliamentary institution of the Maneaba itself, it is clear a lot more need be known of political party systems and their suitability for the democracy of Kiribati.

**Accordingly, it is recommended that the suitability etc of political party system be fully considered, particularly in the light of good governance, accountability and transparency.**

### **Parliamentary Committees & Select Committees**

In any case, that scrutiny and Parliament's oversight role is of course not limited in the debates in the Maneaba. It includes and extends to oversight by way of Parliamentary select committees, special committees set up to look into special matters of governmental concern, and commissions of inquiries to investigate into any issue of national crisis. These are funded by the public purse and are therefore answerable to the government of the day. They are public institutions.

### **Public Accounts Committee**

An obvious example here is the Public Accounts Committee and its own report and verification of the findings of the Auditor General's Reports as mentioned. In the first place, this Committee consists entirely of government members of Parliament. No one is appointed from the Opposition. While the Constitution (Art 115) and Rules of Procedures of the Maneaba (r. 53) do not prescribe that the Committee's members are to be all of government MPs, it also does not say that a member or members must be appointed from the Opposition. The inevitable result of this arrangement is that PAC seems invariably to report in favour of government. Needless to say, this, as well as its composition is obviously an issue leaning heavily against political governance and accountability.

In interviews with members of the Public Accounts Committee, they were uncertain of their own roles and the purposes of the Committee itself. They also see the Committee more of a government body than that of the Maneaba in its oversight capacity. While the Constitution illustrates the extent and scope of that Committee's work, the particular requirements in respect of the Auditor General Reports is clear that the PAC is to "consider [that Report] and to report to the Maneaba in case of any excess or unauthorised expenditure of funds" (Art 115(4)(b)). In this regard, the particular aspects of the missing vouchers amounting over \$A8m and not accountable for as reported in the Auditor General's Reports since 1997 appears not to have been satisfactorily verified or explained.

Then there is of course the political party system that ensures a single party hold on political power and governmental control. And of course to maintain that, it is politically unwise to appoint anyone from the Opposition to any Parliamentary committee, as this would most likely create political friction leading naturally to political manourability and instability.

**Accordingly, it is recommended that in the workshops and seminars recommended, particular emphasis should focus on the role and function of the PAC, particularly in relation to it being a Parliamentary select committee, rather than a government appointed and controlled body.**

**The Rules of the Procedures of the Maneaba should make this clear and clarify the position as an aspect of political governance.**

#### **Other Parliamentary Committees**

Parliamentary oversight by way of its Standing Committees (Rules of Procedure r. 52), Select Committees (r. 55) and Parliamentary-governmental Commissions of Inquiry (under the Commission of Inquiry Ordinance 1914) seems not to be taken as part of Parliament's oversight check into Executive administration. Of the many of such reports initiated and publicly carried out, it appears none had been tabled and debated in the Maneaba. This is notwithstanding that under the Rules and Procedures (r. 55. 5), a Select Committee "shall, as soon as it has completed considering the matter referred to it, report to the Maneaba. It is also unclear if any had been publicly revealed and made known. Some examples include the Makin Electoral Recall Commission, the Jasmine 9 Commission of Inquiry, the Select Committee Report on the Bank of Kiribati, the Select Committee Report on the Land Tenure Commission, and the Ship Sliding Commission of Inquiry. Even the Constitution Convention a few years ago which appears to have been authorised under Art 131 of the Constitution, is unknown as to what is happening to it, or what it was suppose to achieve.

**Accordingly, it is recommended that the Rules of Procedures of the Maneaba should clarify clearly whether these Select Committee Reports and Commissions of Inquiries are to be tabled in Parliament, and after debate what is to be done. It is also advisable that the Rules should specify what is to be become of any leaders etc affected in such Report of Commissions.**

In respect of the Jasmine 9 Commission of Inquiry, this is leaked into the Internet. The matters raised in it bear directly into this oversight function of the Maneaba that political governance is better achieved by considering that Report fully. In short, this is a clear case in which provisions for a Leadership Code, Ombudsman office and even an Ombudsman Commission is required. (See Measures for Good Governance and Accountability.)

**Accordingly, these are recommended generally for discussions and considerations.**

**A further recommendation is for the Commission of Inquiry Ordinance to be updated, as all other laws bearing upon the role and function of the Legislative Assembly and the Maneaba.**

## **PART 4**

### **THE INDEPENDENCE OF PARLIAMENT**

#### **Unicameral**

The Parliament of Kiribati is unicameral, being of a single chamber of 35 members. The parliamentary term is 4 years. Constitutionally, the Maneaba ni Maungatabu, along with Cabinet and the Judiciary are structured separately, each to be its own independent self. But those roles overlap considerably that the ultimate check is given unto the Judiciary, being of course the non-elected leaders not subject to the people's electoral scrutiny. The theory of course is that since judges are not accountable to the election platform, the Judiciary would and should be able to act as the people's safeguard against political abuse and the tyranny of majority rule. Whether in practice that is what happens is another story.

#### **Speaker**

Under the Constitution, the Speaker, as head of the Maneaba and the Legislative Assembly maintains that independence. This can be seen his appointment as a non-elected member of the Maneaba, but nevertheless appointed by it from “among persons who are not members of the Maneaba” (Art 71(2)). That constitutional arrangement secures that the Speaker and his high office should have no leaning to either side of the political divide as between the Cabinet and government on the one hand, and the Opposition on the other. In short, an arrangement obviously anticipatory of good governance and accountability.

That political independence also goes hand in hand with political governance and accountability in the sense that in its work, Parliament is not to be dictated upon, or made to be influenced in the performance of its own tasks and responsibilities. Whether however in practice the same is happening is not entirely the subject of this assessment. However, according to MPs interviewed, the Opposition members claim the Speaker is pro-government while government MPs say he is not. The Speaker himself is in no doubt that he is performing his duties

independently as head of the Maneaba, and based of course on precedence and past Parliamentary practices.

However, between the factionalism of Cabinet/government and the Opposition, the independent Speaker should serve to ensure that all issues of national concern and importance are fully debated, and that both Government and Opposition members are given fair time for debate on each business of the day. It should therefore mean that the business agenda of the Maneaba should be available to all members in reasonable time before the date of the sessions of the House, so that members can make their own research and preparations. Considering that most members live away from Tarawa, this is important. Under the Rules of Procedures, no such procedure or requirement is prescribed. It is to be noted however that under the review of the Rules currently undertaken, a new rule 7 is being suggested to require that “all members have to be in Tarawa 2 weeks before the [Maneaba] meeting [starts].”

**Accordingly, it is recommended for consideration in the review of the Rules of Procedures that the business agenda of the House be made available to the members as soon as they are in Tarawa, or even earlier if possible.**

The Speaker should also ensure that the Maneaba is carrying out its work regardless of the politics inherent in political party systems that inevitably cloud the merits on any issue in dispute. In this way, it can be anticipated that the agenda of “government business” would or should include such Select Committee and Parliamentary Committee reports that public revenue and funding had been spent on. In the interviews with MPs, some stated little is known of what actually happened with these Select Committee reports and investigations. Under the Rules of Procedures (r.13) there is authority in the Speaker as he “otherwise directs” to transact the orders of the business of the Maneaba. That order, amongst other things, include ‘Order of Government Business’. And under r. 14, the arrangement of the business of the Maneaba, shall, unless otherwise ordered

by the Speaker, “Government business shall on each day of sitting, have precedence overall other business...”

### **Conventions of Parliament**

It may well be that by the *conventions* of Parliamentary democracy, it is permissible and allowable for the Speaker to have these reports of matters of urgent and national concern, to be tabled and debated. The reason being that as fundamental aspects of open government, these conventions, or *the unwritten practices of the Maneaba*, are an integral part of Parliamentary oversight that the Maneaba shall be failing in its duty and responsibility in not looking at these public reports and Parliamentary committee hearings and findings. In any case, these are matters of Parliamentary practice into political governance and accountability. On the other hand, it can be said that the Speaker cannot and should not rely on *conventions* that are not endorsed or expressly stated in the Constitution, or the Rules of Procedures, for these to be made 'business of government' and thereby receive scrutiny by the Maneaba. Overall, Parliamentary conventions are necessary tools of the House that inevitably can assist the Speaker in his role, and ultimately endear the Maneaba into fully achieving political governance and receive real meaning to open government.

**Accordingly, it is recommended that the role and functions of the Speaker may be better written as in a Speakers Guide. Alternatively, the same may be undertaken in the current review of the Rules of Procedures of the Maneaba.**

**Particular matters to consider here are the Parliamentary conventions and political practices of the Maneaba. It is advisable to have these written and make known for all MPs.**

### **Clerk of the Maneaba**

The Clerk is the administrative head of the Maneaba and was just recently appointed. He is appointed by the Public Service Commisison. He says the

Legislative Office is understaffed and is in need of qualified people to assist in the capacity strengthening of the Maneaba. The office is operated as part of Cabinet government in the sense that it is through there that everything is done for Parliament administration. According to the former clerk, this was of the reasons why he had to move away, as there no independence in the administration of the office. Of course, political governance relies on that independence. Right now, the Clerk says Parliamentary administration is in need of a table officer, sargeant at arms, a Parliamentary counsel, research officer/assistants and a qualified librarian. Even for an update to Hansard, this is well behind that at least 2 typists are needed. Incidentally, all these have been requested since 1999.

### **Assistant Clerk**

Currently, the Assistant Clerk is the most senior in the administrative section of the Maneaba. She had been in the office for well over 10 years and is quite familiar with what is needed in strengthening the capacity of the Maneba visa viz its rolls and functions. As noted, the manpower and staff requirements needed to effect that institutional strengthening has been in the pipeline since 1999. The assistant clerk is fully familiar with these.

### **Parliamentary Counsel, Research and Staff Assistance**

There is urgent need for research staff and assistance to help MPs in preparation etc for debate. A notable matter here is the absence of a Parliamentary counsel or anyone with legal qualification in the administration of the Legislative Assembly. An obvious need for such qualified personnel is of course a private member's bill. Without a Parliamentary counsel, there is no recourse to have such a member's bill drafted and prepared, and therefore the benefit of that member's representation for his/her constituency is shown to be ineffective. In interviews with both the former Clerk of the Maneaba and the current one, they are adamant a Parliamentary counsel is most needed, as well as extra staff.

Another matter most needed are typists, basically to update Hansard, as well as in the general work of the Assembly. Excepting the Clerk himself, there are no other qualified staff members.

### **Time for Debate**

Another aspect here is the time for debate in the Maneaba. These need to be extended to allow for greater scrutiny of governmental policies and laws. As already recommended, it is needed to extend the time to speak for or against a motion, as well as that the agenda of government business must be made available in reasonable time so that members can consider it, and make research etc to help them in their debate.

### **Duality of Roles of Beretitenti**

A significant issue of good governance, accountability and transparency is the duality of role and functions of the President – the Beretitenti – as Head of State and head of Government. This is prescribed by the Constitution. This arguably blurs the separation of power in the major organs of the State, and can obviously mean there is no clear demarcation in the functions and roles of the Beretitenti as Head of State that is constitutionally apolitical, and in the political position of the head of government. An example is the immunity of Parliamentary privilege generally available to members of the Maneaba. Is the same also available to the Beretitenti as Head of State while he is head of government?

Reviews and evidence from this assessment establishes this duality of roles and functions were prescribed in the Constitution for basically economic and financial reasons. As well and as a new, young nation then in its early sojourn into independence life, no greater concern was given this particular matter than that the nation needed to address more fundamental concern into its future survival and being on its own. And little also was emphasised of good governance, accountability and transparency then that this duality of roles by one leader was not an issue as likely to give rise to concern for the future. Even if it, the view was

emphatically expressed: “The guarantee against mismanagement, arrogance and excesses in the exercise of [Executive and governmental] power is the resubmission of the Beretitenti to the electorate and members of the Maneaba ...” (*Speaker v Attorney General* [1987] S. P. L. R. 149 @ 160 line 540)

Most of the stakeholders interviewed and assessed see those roles and functions quite differently now over 20 years of constitutional government, as well as in the light of good governance, accountability and transparency. Democracy is no longer earmarked solely on elections that take that long – 4 years - to wait upon. The ability of government and its Executive leaders to sustain and maintain itself during those years, and Parliament’s oversight role in making sure that Executive and government is continuously accountable through its various Parliamentary committees and public scrutiny, is really the test now. The majority of stakeholders are clear that while that arrangement was suitable then when the country achieved independence and the Constitution prescribed for separation of powers that secures the independence of each organ of the State, it is time now for review, and may be for change.

On the other hand, the Beretitenti and those in support of the continuity of the Beretitenti’s duality of roles and functions are emphatic in holding that there is nothing undemocratic or unbecoming in keeping those in one person. They said there was nothing in over 20 years of constitutional democracy to show this now needs changing, even with the ground swell on good governance, accountability and transparency.

Overall, it is to be noted that while the duality of roles and functions of the Beretitenti was an economic and financial concern at the time, today, Kiribati is holding foreign reserves amounting to about \$A700million. An annual salary of between \$A15,000 and \$A18,000 for the Beretitenti or between \$A60,000 and \$A72,000 for 4 years cannot dent or significantly affect that reserve. But the duality of those roles can certainly in some time or another, dent the integrity of

the nation, and in the process opened a hole into Kiribati democracy as to take it outside of, and away from mainstream governance, accountability and transparency.

### **Recall and Removal**

More important however in respect of political governance is the accountability check by way of recall or removal provisions in the Constitution (Art 59) of an elected member from the Maneaba. This recall check is a unique mandate. No other Constitution in the Pacific provides for this extra accountability check. The rationale is that since the people are the sole authority to elect their members into the Maneaba, they alone have the power and the authority to remove that member.

The recall check operates by way of national referendum where that members constituency, by a simple majority, can petition the Speaker for that Member's removal. This process is independent of the vacation of seats provisions grounded on a member's misbehaviour, imprisonment, death etc. These vacation of seats safeguard are prescribed in Art 58 of the Constitution.

The referendum requirement for recall is the clearest there is that Parliamentarians – excepting the Beretitenti (President), Kauoman-ni-Beretitenti (Vice/Deputy President, a Minister of State or the Attorney General) - are not beyond electoral accountability anytime within the 4 year election term a member was elected for. Indeed, there are no grounds required or any reasons prescribed for recall. It is simply that the majority wants the elected member removed and therefore recalled. Immediately, it seems transparency is lacking. The provision is simply that “if the Speaker receives a petition calling for the removal of an elected member ... signed by the majority of that member's electorate, then the petition is referred to the Electoral Commission for a referendum”. Under the referral and in the conduct of the referendum, the Commission is merely required to determine that the “majority” of that elector's constituency “vote” for removal. If the majority wins, then the seat must be vacated. Thereafter, a by election shall be conducted “within 3 months to fill that seat in the Maneaba ”.

### **Lack of fair opportunity and good governance?**

Unfortunately, no fair opportunity is given for that Parliamentary member to defend himself or to know why or what reasons the constituency wants him removed and recalled, or even if he can utilise the basic fundamental rights safeguard of the Bill of Rights the Constitution mandates (Chapter 2). Indeed, this is what happened in the only time this recall check was implemented in the Makin case in 1998. Makin's constituency petitioned for his recall and the Speaker referred the petition to the Electoral Commission. No reasons were given as to why the recall was sought, and no opportunity was given to Makin to explain or otherwise defend himself to the Speaker as an elected members of the Maneaba. As an issue of good governance, accountability and transparency, that failure dilutes disparagingly the good intentions the recall provisions might have been prescribed for. As it transpired, Makin approached the various elders and the people of his constituency before the referendum was conducted, and subsequently, the referendum fell through.

### **Does good governance require Maneaba to have a say?**

By way of commentary, it seems a member of the Maneaba has no say; and the *Maneaba* itself appears not to have a voice as to why one of its own members is being recalled and is being sought to be removed. Indeed, while Parliament is of course the institution ultimately accountable to the electorate in the general elections, the safeguard of that representation is maintained in the vacation of seat provisions as previously mentioned. This is of course for the clear reason that once elected, a member is a national leader, one endeared of Parliamentary status and leadership that should not and cannot be arbitrarily removed without the most basic of democratic safeguards. Should the Maneaba therefore have a say in the matter? Political governance obviously requires that.

**Accordingly, it is recommended that this aspect by fully considered and discussed in the workshop in November. It is further recommended that the**

***recall* and *removal* process be subject to the safeguards, as for example the Bill of Rights that the Constitution prescribes.**

## **PART 5**

### **EXISTING HUMAN RESOURCE CONSTRAINTS.**

#### **Major Inhibiting Factors**

As mentioned throughout this assessment, human resource constraints are a major factor inhibiting the full exercise of Maneaba role and functions, as well as in its members representation in relation to the electorate and the people. Members understanding of the oversight function of the Maneaba are generally lacking that in the end the levels of consideration of national issues are seen as superficial and may be insignificant. Overall, these consequently can result in national decisions being dealt with as matters of political party considerations as between Government and the Opposition, generally as a numbers game. Even Parliamentary Select Committees and Standing Committees seem not to be operating clearly to help strengthen the Maneaba's role in its oversight capacity or law making or even in its representation relation to the constituency. An obvious example here is of course are the Auditor General Reports and the Jasmine 9 Commission of Inquiry.

Then there are the staff and personnel problems at the Maneaba administrative office. Less staff, lack of necessary qualifications, no legal background or knowledge of the technical aspects of Parliamentary work, these are major problems. An obvious example here is the former Clerk of the Maneaba, who is a qualified lawyer but had to resign because of differences with the Secretary to Cabinet. Even trying to make update editions of Hansard is difficulty because there are no qualified typists. And while requests for these had been made as far back as 1999, there is no certainty anything shall be done in the near future.

Add to these the general lack of understanding of the Constitution as to the independence of the Maneaba, and the Parliamentary laws being outdated and in need of change and update, good governance, accountability and transparency have quite a way to reach into political governance in the country.

## **Review of Parliamentary Governance Laws**

As variously recommended herein, all laws relating to Parliament and the legislative make up of the Maneaba are in urgent need of update and consolidation, inclusive of the Constitution. A crucial aspect in this overview is the emphasis on achieving good governance, accountability and transparency, particularly the 8 Principles of Accountability in respect of finance and money matters. It is already recommended that these democratic measures are intermediary by nature in the sense that within every 4 years of any electoral term, the Maneaba should be continuously operating and functioning by these good governance measures and processes. Needless to say, this cannot be achieved and maintained without relevant laws applicable to make these measures work.

Overall, these laws are:

- Constitution – due for review. **It is recommended that the Maneaba pass a law preferably titled Constitution Review Act to allow for this process.** The recommendations for this review are fully cited under Recommendations in this assessment.
  
- Standing Orders and Rules of Procedure of the Maneaba. This review is already undertaken. It may be helpful if copies of other Pacific islands countries Standing Orders, as well as Australia and New Zealand, be made available to the Rules Committee so to assist them in that process.
  
- **all financial and money laws are in urgent need of consolidation and amendment. These include Public Finance (Control and Audit) Ordinance and Government Borrowing Ordinance.** The Budget and Appropriation Bills and legislation and the current Procurement Bill now before the House need also to be tightly assessed.

Part of this review should look particularly at the current policies and future practices of Parliament and government to see for better ways to allow for greater

participation of women in national decision making. The need also to pass laws and initiate administrative practices to strengthen women's role in political leadership and even in the local and village levels. An example here is some requirement that in making laws on gender issues, women committees like the National Council of Women should be invited to make representations etc.

**The same also is recommended in respect of the Church.**

**Accordingly, it is recommended for regular workshops to help in these.**

## **PART 6**

### **MEASURES FOR GOOD GOVERNANCE & ACCOUNTABILITY.**

This assessment has shown there is work to be done to achieve political governance and accountability, and thereby strengthen the legislative capacity of Kiribati Parliament in its oversight and law making roles. Such measures as recall and removal; electoral accountability; scrutiny by way of the electoral offences like corruption, bribery and treating under the Election Ordinance; and the constitutional checks into government finance and public spending by the Auditor General - these are safeguards that seemed inadequate as check and balances in State governance. Even the constitutional separation of powers seems ineffective as also is the Judiciary as the ultimate, unelected guardian and check into abuse of public office.

If anything, what may be needed are provisions for Leadership standards and professional integrity by way of a code of conduct for all leaders in the country. Leadership code, Ombudsman provisions and possibly an Ombudsman Commission is needed to make sure principles of good governance, accountability and transparency are part and parcel of governance and governmental administration. It is said these had been raised before in the Maneaba, but the proposal was defeated. That is a good sign. Obviously, it means something need be done. And if these principles together with those of the 8 Principles of Accountability and the Best Practices Guides for FIC Legislatures, were the yardstick upon which the Budget 2001 and the Auditor General's Reports had been gauged against, it is clear good governance is already shaping into the political governance of Kiribati. The same also are the tests for the Maneaba's own overall character and integrity.

**Accordingly, it is recommended that a Leadership Code of conduct for all national leaders, Ombudsman provisions and even an Ombudsman Commission, be introduced into the Constitution.**

**Particular instances of conduct not becoming of a national leader must be spelt out and defined, as well as the penalties in breach thereof. A clear requirement for such a code of conduct for example is a declaration (by a leader) of an interest in a matter that is likely to be of public or national concern.**

It should be noted that offences of **abuse of public office and governmental mala-administration** are **not criminal** offences until these are turned into criminal law investigations by the Police, upon referral from the appropriate authority. Until then, the matter is entirely administrative and governmental.

Again, there is need for regular workshops and seminars to help MPs. In every election year, it is certain there shall be elected new political leaders who no doubt are not familiar with, or are fully knowledgeable of the practices, procedures and the roles and functions of the Maneaba. These workshops and seminars can help these new leaders. The same also can serve as refresher courses for those who are re-elected. In any case, these can certainly help strengthen the institution of the Maneaba, and the members themselves, in understanding those basic matters as law making, oversight and what is expected of members as representatives of the people and the electorate.

**It is recommended accordingly.**

### **Non Governmental Organisation, Church & Women Groups**

A further weakness in the overall Parliament and as a constraint in its work capacity is the little to no opportunity or voice being given to Non Governmental Organisations (NGO) like the National Council of Women, an independent media

and even the Church. Very little of what government does and the Maneaba's own work in the overall national framework is known to and acknowledged by the people. This is where NGO, the media and the Church can assist. As public bodies not established or set up by government, and being much closer to the people, their contribution to scrutiny of national decision making is vital to achieving good governance. While there are women leaders in Parliament, that representation is not of women per se, but of the constituency overall. Specific issues of gender equality and more women in the workplace and private sector employment are better assessed from that women viewpoint than as part and parcel of national employment overall.

Some women that were consulted maintained part of the problem is the traditional view that women are better staying at home looking after the children and the family. In fact, in this way, there is lack of support for them to share and participate into leadership position. A matter that has caused major concern to the National Council of Women is the issue of the young girls visiting the Korean fishing boats at Betio. While that is very much an issue of vital public concern, unfortunately it is not raised or debated by the national leaders either in Cabinet or in the Maneaba.

Then there is the Church. In that same matter, the Church is making a stance, as was the media in making a broadcast program, titled *Boarding of Foreign Vessels by Young Kiribati Girls*, on October 9, 2001. This was based on interviews with some of these girls as to why they are going onto the fishing boats. Incidentally, it maybe that the Church has a much closer relationship to the people through its Sunday services, and others, which of course most attend, as compared to the only 2 sessions of the Maneaba in the whole year. Unfortunately, it is not privy to the finer details of Maneaba debate, and without even access to any of the Parliamentary Select Committee Reports or those of Commissions of Inquiries or even the Audit General's Report. As evident, these showed Maneaba oversight is in need of greater access to the public and the people..

**Accordingly, it is recommended that another way of strengthening the role of the Maneaba and MPs is to allow for these non governmental organisations to participate in, and make representations on any issue of national concern or those specifically affecting them in a minority sense.**

**It may also be appropriate to look at the radio program, Boarding of Foreign Fishing Vessels By Young Kiribati Girls.**



## **PART 7**

### **Conclusion: Impact and Needs Assessment – Concrete Initiatives**

Overall, the impact of this assessment is that the Kiribati Maneaba, its members and its legislative staff are in much need of practical training etc of good governance, accountability and transparency. Such concrete initiatives as regular workshops and seminars, frequent meetings and contact with the public at large and the electorate, are the type of tools the members of the Maneaba are in urgent need to dress themselves in, so that there is better appreciation of their roles and functions.

Parliamentary staff need chances and opportunities to visit and experience how other countries, particularly in the Pacific, manage and operate the workings of their Parliamentary systems. These can obviously help the Maneaba's legislative staff to manage and better perform their own duties and responsibilities. As also mentioned in the Recommendations herein, there is need for qualified personnel as for example a lawyer and Parliamentary counsel, as well as qualified librarian and typists.

An urgent aspect of these initiatives is the need to update the laws and procedures of the Maneaba, particularly its Standing Orders and its Rules of Procedures. The greater part for real participation of the Opposition in the Maneaba debate without being stifled by government domination as evident in the political party line, can only be effected through procedural laws that should allow them a fair, if not an equal opportunity in reply and in rebuttal.

Here, real independence in the Speaker and his Office must be assured and guaranteed. Parliamentary debate as the cornerstone of democracy cannot be effective unless there is bipartisan and a fair approach to that independence. As long ago as the Bill of Rights 1688 was it entrenched that only freedom and free

speech in the Parliamentary Chamber can secure the liberty the people anointed unto their representatives.

A practical reality that must be considered is of course the vast physical distances in the many islands of the Kiribati group to which of course the various members of the Maneaba are elected from. These relate directly to the sessions of the Maneaba in any one year and what of course those members can take back to the people after those sessions. How is democracy served in this way? Is there another way? And where do political governance, accountability and transparency fit in this scenario? The assessment must be realistic here: the practical realities are not and cannot be properly met in this legislative need assessment.

It must be repeated yet again and emphasised strongly that unless the Constitution and the institution of Parliament and the Maneaba it prescribes is fully and adequately known by the people and MPs themselves, little else would be appreciated. In this regard, it is worth mentioning that even when requested for a copy of the Constitution, one was not made available until a few days before departure.

In any case, the initiatives recommended and suggested here are some of the measures to ensure political governance and good effective administration.

