

# Constitution of the Marshall Islands

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MIRC 2005

## CONSTITUTION OF THE REPUBLIC OF THE MARSHALL ISLANDS

### PREAMBLE

**WE, THE PEOPLE OF THE REPUBLIC OF THE MARSHALL ISLANDS,** trusting in God, the Giver of our life, liberty, identity and our inherent rights, do hereby exercise these rights and establish for ourselves and generations to come this Constitution, setting forth the legitimate legal framework for the governance of the Republic.

We have reason to be proud of our forefathers who boldly ventured across the unknown waters of the vast Pacific Ocean many centuries ago, ably responding to the constant challenges of maintaining a bare existence on these tiny islands, in their noble quest to build their own distinctive society.

This society has survived, and has withstood the test of time, the impact of other cultures, the devastation of war, and the high price paid for the purposes of international peace and security. All we have and are today as a people, we have received as a sacred heritage which we pledge ourselves to safeguard and maintain, valuing nothing more dearly than our rightful home on the islands within the traditional boundaries of this archipelago.

With this Constitution, we affirm our desire and right to live in peace and harmony, subscribing to the principles of democracy, sharing the aspirations of all other peoples for a free and peaceful world, and striving to do all we can to assist in achieving this goal.

We extend to other peoples what we profoundly seek from them: peace, friendship, mutual understanding, and respect for our individual idealism and our common humanity.

**[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic'. By way of Constitutional Amendment #2, the third Paragraph was amended by making the following change to the last sentence of that Paragraph: 'All we have and are today as a people, we have received as a sacred heritage which we pledge ourselves to safeguard and maintain, valuing nothing more dearly than our rightful home on the islands within the traditional boundaries of this archipelago.']**

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## ARTICLE I

### SUPREMACY OF THE CONSTITUTION

#### Section 1. **This Constitution to be Supreme Law.**

(1) This Constitution shall be the supreme law of the Republic of the Marshall Islands; and all judges and other public officers shall be bound thereby.

(2) No legislative or executive instrument and no decision of any court or other government agency made on or after the effective date of this Constitution shall have the force of law in the Republic unless it has been made pursuant to this Constitution.

**[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'; that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

#### Section 2. **Inconsistency with this Constitution.**

(1) Any existing law and any law made on or after the effective date of this Constitution, which is inconsistent with this Constitution, shall, to the extent of the inconsistency, be void.

(2) Any other action taken by any person or body on or after the effective date of this Constitution, which is inconsistent with this Constitution, shall, to the extent of the inconsistency, be unlawful

#### Section 3. **Interpretation and Application of this Constitution.**

(1) In interpreting and applying this Constitution, a court shall look to the decisions of the courts of other countries having constitutions similar, in the relevant respect, to the Constitution of the Republic of the Marshall Islands, but shall not be bound thereby; and, in following any such decision, a court shall adapt it to the needs of the Republic, taking into account this Constitution as a whole and the circumstances in the Republic from time to time.

(2) In all cases, the provisions of this Constitution shall be construed to achieve the aims of fair and democratic government, in the light of reason and experience.

**[By way of Constitutional Amendment #1. the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

#### Section 4. **Enforcement of this Constitution.**

Subject to this Constitution's express limitations on the judicial power,

(a) the Attorney-General acting in the name of the people of the Republic of the Marshall Islands, and all persons directly affected by an alleged violation of this Constitution, whether by private individuals or public officials, shall have standing to complain of such violation in a case or controversy that is the subject of an appropriate judicial proceeding;

(b) any court of general jurisdiction, resolving a case or controversy implicating a provision of this Constitution, shall have power to make all orders necessary and appropriate to secure full compliance with the provision and full enjoyment of its benefits;

(c) the Government of the Republic and any local government shall not be immune from suit in respect of their own actions or those of their agents; but no property or other assets of the Government of the Republic or of any local government shall be seized or attached to satisfy any judgment.

**[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'; that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

## ARTICLE II

### BILL OF RIGHTS

#### Section 1. **Freedom of Thought, Speech, Press, Religion, Assembly, Association, and Petition.**

(1) Every person has the right to freedom of thought, conscience, and belief; to freedom of speech and of the press; to the free exercise of religion; to freedom of peaceful assembly and association; and to petition the government for a redress of grievances.

(2) Nothing in this Section shall be construed to invalidate reasonable restrictions imposed by law on the time, place, or manner of conduct, provided:

(a) the restrictions are necessary to preserve public peace, order, health, or security or the rights or freedoms of others;

(b) there exist no less restrictive means of doing so; and

(c) the restrictions do not penalize conduct on the basis of disagreement with the ideas or beliefs expressed.

(3) Nothing in this Section shall be construed to prevent government from extending financial aid to religiously supported institutions insofar as they furnish educational, medical or other services at no profit, provided such aid does not discriminate among religious groups or beliefs on the basis of a governmental preference for some religions over others, and provided such aid goes no further than:

- (a) reimbursing users of educational, medical, or other nonprofit services for fees charged to such users; or
- (b) reimbursing such institutions for costs incurred in providing such services, but only with funds channeled through an organization open to all religious institutions that provide the services in question.

**Section 2. Slavery and Involuntary Servitude.**

(1) No person shall be held in slavery or involuntary servitude, nor shall any person be required to perform forced or compulsory labor.

(2) For the purposes of this Section, the term 'forced or compulsory labor' does not include:

- (a) any labor required by the sentence or order of a court;
- (b) any other labor required of a person lawfully detained if reasonably necessary for the maintenance of the place of detention;
- (c) any service required by law in lieu of compulsory military service when such service has been lawfully required of others.

**Section 3. Unreasonable Search and Seizure.**

(1) The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(2) A search or seizure shall be deemed unreasonable as a matter of law if no warrant has been obtained despite adequate time to obtain one.

(3) Any seizure of a person shall be deemed unreasonable as a matter of law unless the person is promptly informed of the cause of such seizure and is ensured a prompt opportunity to contest its legality before a judge.

(4) A search of premises not belonging to, or occupied by, the person who is believed to have committed a crime shall be deemed unreasonable as a matter of law unless the person whose premises are searched has been given a prior opportunity, in an adversary hearing, to challenge or comply with a subpoena identifying the persons or things to be produced, or the officer issuing a warrant for the search has reasonably determined that such prior notice and hearing would create an undue risk that the persons or things sought would be removed or otherwise made unavailable.

(5) Evidence obtained through an unreasonable search and seizure, or pursuant to an invalid warrant, cannot be used to support a criminal conviction.

**Section 4. Due Process and Fair Trial.**

(1) No person shall be deprived of life, liberty, or property without due process of law.

(2) Every person charged with a criminal offense shall be presumed innocent until proven guilty beyond a reasonable doubt.

(3) Bail shall not be required in an amount greater than needed to ensure that the accused will appear for trial, nor may any person be detained before trial when other means are available to provide reasonable assurance that he will not flee or gravely endanger the public safety.

(4) In all criminal prosecutions, the accused shall enjoy the right to be informed promptly and in detail of the nature and cause of the accusation against him; to a prompt judicial determination of whether there is good cause to hold him for trial; to a speedy and public trial before an impartial tribunal; to have adequate time and facilities for the preparation of his defense; to defend himself in person or through legal assistance of his own choice and, if he lacks funds to procure such assistance, to receive it free of charge if the interests of justice so require, to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor.

(5) There shall be a right to trial by jury, unless knowingly and voluntarily waived by the accused, whenever the applicable law makes the offense punishable by three (3) or more years in prison or, in the case of an offense for which no maximum is specified, whenever the sentence actually imposed is three (3) years or longer.

(6) No person shall be held to answer for a crime except on presentment or indictment or criminal information.

(7) No person shall be compelled in any criminal case to be a witness against himself, or against his spouse, parent, child, or sibling, or to give testimonial evidence against any such person whenever that evidence might directly or indirectly be used to obtain such person's criminal conviction.

(8) No person shall be subjected to coercive interrogation, nor may any involuntary confession or involuntary guilty plea, or any confession extracted from someone who has not been informed of his rights to silence and legal assistance and of the fact that what he says may be used against him, be used to support a criminal conviction.

(9) No person shall be subjected to double jeopardy, but retrial shall be permitted after a conviction has been reversed on the defendant's appeal.

(10) No person shall be preventively detained, involuntarily committed, or otherwise deprived of liberty outside the criminal process, except pursuant to Act, subject to fair procedures, and upon a clear showing that the person's release would gravely endanger his own health or safety or the health, safety, or property of others.

## **Section 5. Just Compensation.**

(1) No land right or other private property may be taken unless a law authorizes such taking; and any such taking must be by the Government of the Republic of the Marshall Islands, for public use, and in accord with all safeguards provided by law.

(2) A use primarily to generate profits or revenues and not primarily to provide a public service shall not be deemed a 'public use.'

(3) Land rights shall not be taken if there exist alternative means, by land fill or otherwise, of achieving at non-prohibitive expense the purpose to be served by such taking.

(4) Before any land right or other form of private property is taken, there must be a determination by the High Court that such taking is lawful and an order by the High Court providing for prompt and just compensation

(5) Where any land rights are taken, just compensation shall include reasonably equivalent land rights for all interest holders or the means to obtain the subsistence and benefits that such land rights provide.

(6) Whenever the taking of land rights forces those who are dispossessed to live in circumstances reasonably requiring a higher level of support, that fact shall be considered in assessing whether the compensation provided is just.

(7) In determining whether compensation for land rights is just, the High Court shall refer the matter to the Traditional Rights Court and shall give substantial weight to the opinion of the latter.

(8) An interest in land or other property shall not be deemed 'taken' if it is forfeited pursuant to law for nonpayment of taxes or debt or for commission of crime, or if it is subjected only to reasonable regulation to protect the public welfare.

(9) In construing this Section, a court shall have due regard for the unique place of land rights in the life and law of the Republic.

**[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

#### **Section 6. Cruel and Unusual Punishment.**

(1) No crime under the law of the Republic of the Marshall Islands may be punished by death.

(2) No sentence of imprisonment at hard labor shall be imposed on any person who has not attained the age of 18 years.

(3) No person shall be subjected to torture or to inhuman and degrading treatment, to cruel and unusual punishment, or to excessive fines or deprivations.

**[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

#### Section 7. **Habeas Corpus.**

(1) In order that the legality of any person's detention always remain subject to appropriate challenge in a court of law, the writ of habeas corpus shall not be suspended.

(2) Any person held in custody is entitled to apply, in person or through another, to any judge in the Republic of the Marshall Islands for a writ of habeas corpus.

(3) There shall be a prompt hearing on any application for a writ of habeas corpus, and if it appears that the person being detained is being held in violation of this Constitution or other law of the Republic, the judge with whom the application was filed shall order the immediate release of the person detained, subject to reasonable provisions for appeal by the detaining authority.

(4) In the case of a person detained pursuant to a criminal conviction or sentence, the judge with whom the application was filed shall determine whether the judgment underlying the challenged detention was rendered without jurisdiction or in violation of the detained person's rights under this Constitution or other law of the Republic and shall set the judgment aside and order the prisoner's release if either infirmity is found.

(5) The provisions of paragraphs (3) and (4) of this Section shall extend not only to the fact of the applicant's custody but also to such particular conditions of the applicant's custody as are challenged as being contrary to law.

(6) Insofar as a determination under paragraph (4) or paragraph (5) of this Section requires a ruling on a controverted matter, the judge with whom an application for habeas corpus has been filed shall treat as conclusive any prior determination of a court of record in which the applicant had a full and fair opportunity to litigate the matter, providing such determination either was ultimately upheld on appeal or was knowingly and voluntarily permitted to stand without challenge by the applicant. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

#### Section 8. **Ex -Post Facto Laws and Bills of Attainder.**

(1) No person shall be subjected to ex post facto punishment such as punishment in excess of that validly applicable at the time the act in question was committed, or punishment imposed by a procedure less favorable to the accused than that validly applicable at the time the act was committed.

(2) No person shall be subjected to punishment under a bill of attainder such as a law which singles out for penalty a named or readily identifiable individual or group of individuals.

#### **Section 9. Quartering of Soldiers.**

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in the manner prescribed by law.

#### **Section 10. Imprisonment for Debt.**

No person shall be imprisoned for debt; nor shall any person be imprisoned for failure to pay a fine assessed as punishment for a crime unless he has been afforded a reasonable time to make payment and has been found to have the means to do so.

#### **Section 11. Conscription and Conscientious Objection.**

No person shall be conscripted to serve in the armed forces of the Republic of the Marshall Islands except in time of war or imminent danger of war as certified by the Cabinet, and no person shall be conscripted if, after being afforded a reasonable opportunity to do so, he has established that he is a conscientious objector to participation in war. **[By war of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

#### **Section 12. Equal Protection and Freedom from Discrimination.**

(1) All persons are equal under the law and are entitled to the equal protection of the laws.

(2) No law and no executive or judicial action shall, either expressly, or in its practical application, discriminate against any person on the basis of gender, race, color, language, religion, political or other opinion, national or social origin, place of birth, family status or descent.

(3) Nothing in this Section shall be deemed to preclude non-arbitrary preferences for citizens pursuant to law.

#### **Section 13. Personal Autonomy and Privacy.**

All persons shall be free from unreasonable interference in personal choices that do not injure others and from unreasonable intrusions into their privacy.

#### **Section 14. Access to Judicial and Electoral Processes.**

(1) Every person has the right to invoke the judicial process as a means of vindicating any interest preserved or created by law, subject only to regulations which limit access to courts on a non-discriminatory basis.

(2) Every person has the right to participate in the electoral process, whether as a voter or as a candidate for office, subject only to the qualifications prescribed in this Constitution and to election regulations which make it possible for all eligible persons to take part.

(3) In the administration of judicial and electoral processes, no fee may be imposed so as to prevent participation by a person unable to afford such fee.

#### **Section 15. Health, Education, and Legal Services.**

The Government of the Republic of the Marshall Islands recognizes the right of the people to health care, Education, and legal services and the obligation to take every step reasonable and necessary to provide these services. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

#### **Section 16. Ethical Government.**

The Government of the Republic of the Marshall Islands recognizes the right of the people to responsible and ethical government and the obligation to take every step reasonable and necessary to conduct government in accord with a comprehensive code of ethics. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

#### **Section 17. Other Rights.**

The enumeration in this Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

#### **Section 18. Invoking Bill of Rights Provisions.**

(1) No right secured by the Bill of Rights may be denied or abridged, whether directly through the imposition of force or penalty, or indirectly through the withholding of privilege or benefit.

(2) Any provision of the Bill of Rights may be invoked either as a defense to a civil or criminal proceeding or as a basis for legal or equitable relief against any actual or threatened violation.

### **ARTICLE III**

## **MWEO IMON IROIJ**

### **Section 1. The Council of Iroj.**

(1) There shall be a Council of Iroj of the Republic of the Marshall Islands.

(2) The Council of Iroj shall consist of 5 eligible persons from districts of the Ralik Chain and 7 eligible persons from districts of the Ratak Chain of the Republic selected as follows:

from the Ralik Chain excluding Ujelang.....	4 Irojlaplaps
from Ujelang.....	1 Irojlaplap
from Mili.....	1 Irojlaplap
from Arno.....	1 Irojlaplap
from Mejit.....	1 Irojlaplap
from Majuro.....	1 Irojlaplap
from Airok (Maloelap).....	1 Irojlaplap
from Aur, Maloelap (excluding Airok), Wotje, Utrik and Ailuk.....	1 Irojlaplap
from Likiep.....	1 Owner

(3) If, in any district, a person or group of persons becomes recognized, pursuant to the customary law or to any traditional practice, as having rights and obligations analogous to those of Irojlaplap, that person, or a member of that group nominated by the group, shall be deemed to be eligible to be a member of the Council of Iroj as though he were an Irojlaplap.

(4) Where in any district, the number of persons eligible to be members of the Council of Iroj is greater than the number of seats to be filled

(a) the term of office of the member or members from that district shall be one calendar year;

(b) before the expiration of any calendar year, the eligible persons in that district shall endeavor to reach agreement among themselves as to which of them shall be the member or members from that district during the next calendar year;

(c) if, by the date of the first meeting of the Council in any calendar year, there has been no such agreement, the Nitijela shall as soon as practicable proceed, by resolution, to appoint one or more of the eligible persons to be the member or members from that district;

(d) the selection of any member, whether by the eligible persons themselves or by the Nitijela, shall take account of the need for a reasonable rotation among the eligible persons in that district, but any member may serve for two or more terms, consecutively or otherwise.

(5) If, in the case of any district, there is for any reason no person eligible to be a member of the Council of Iroj in accordance with paragraphs (2) or (3) of this Section, the Council of Iroj shall as soon as practicable proceed, by resolution, to appoint as a member of the Council a person who, in the opinion of the Council, having regard to the customary law and any traditional practice, is qualified by reason of his family ties to a person who, but for that reason, would have been eligible to be a

member of the Council from that district.

(6) The term of any member of the Council of Irojij taking office during any calendar year shall be the remainder of that calendar year.

(7) A person shall not be eligible to be a member or the deputy of a member of the Council of Irojij if:

(a) he is not a qualified voter; or

(b) he is a member of the Nitijela

(8) Any question that arises concerning the right of any person to be or to remain a member, or the deputy of a member, of the Council of Irojij, or to exercise the rights of a member, shall be referred to and determined by the High Court. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

## Section 2. **Functions of the Council of Irojij.**

The Council of Irojij shall have the following functions:

(a) the Council may consider any matter of concern to the Republic of the Marshall Islands, and it may express its opinion thereon to the Cabinet;

(b) the Council may request, in accordance with Section 3 of this Article, the reconsideration of any Bill affecting the customary law, or any traditional practice, or land tenure, or any related matter, which has been adopted on third reading by the Nitijela;

(c) the Council shall have such other functions as may be conferred on it by or pursuant to Act. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

## Section 3. **Requests for Reconsideration of Bills.**

(1) Subject to paragraph (8) of this Section, the Clerk of the Nitijela shall transmit to the Clerk of the Council of Irojij, for reference to the Council, a copy of every Bill adopted on third reading by the Nitijela.

(2) The Council of Irojij may, within 7 days after the date of such transmittal, adopt a resolution expressing its opinion that a Bill so transmitted to the Council affects the customary law or a traditional practice, or land tenure, or a related matter, and requesting the Nitijela to reconsider the Bill, or it may sooner, by writing signed by the Chairman of the Council, record its decision not to adopt any such resolution.

(3) The Clerk of the Council of Iroj shall forthwith transmit to the Clerk of the Nitijela, for reference to the Speaker, a copy of any such resolution or decision, together with any observations on the Bill which the Council may wish to make.

(4) The Speaker may, pursuant to Section 21 of Article IV, certify that a Bill required to be transmitted to the Council of Iroj has been passed by the Nitijela, if he is satisfied that the Council has, in relation to that Bill, adopted no resolution pursuant to paragraph (2) of this Section within the period of 7 days referred to in that paragraph, or has sooner recorded its decision not to adopt any such resolution.

(5) If, in relation to any Bill, the Council of Iroj has adopted a resolution pursuant to paragraph (2) of this Section, the Nitijela may proceed to reconsider the Bill, together with any observations of the Council thereon.

(6) In the course of any such reconsideration, the Speaker may, in consultation with the Chairman of the Council of Iroj, arrange for the holding of a joint conference between members of the Council and members of the Nitijela, for the purpose of endeavoring to reach agreement about the content of the Bill.

(7) After reconsidering the Bill, the Nitijela may decide not to proceed with the Bill, or may amend the Bill in any manner it thinks fit, or may, by resolution, reaffirm its support for the Bill without amendment.

(8) The provisions of paragraph (1) of this Section shall not apply to an Appropriation Bill or a Supplementary Appropriation Bill or to any Bill which the Nitijela has amended or reaffirmed, pursuant to paragraph (7) of this Section.

(9) The Speaker may, pursuant to Section 21 of Article IV, certify that a Bill to which paragraph (5) of this Section relates has been passed by the Nitijela, if he is satisfied that it has been amended or reaffirmed pursuant to paragraph (7) of this Section.

#### **Section 4. Compensation of Members of the Council of Iroj.**

The compensation of members of the Council of Iroj shall be specifically prescribed by Act.

#### **Section 5. The Chairman and the Vice-Chairman of the Council of Iroj.**

(1) The Chairman and the Vice-Chairman of the Council of Iroj shall be the members of the Council elected to those offices by a majority of the members present and voting at a meeting of the Council.

(2) The Council of Iroj shall, by secret ballot, proceed to elect the Chairman and the Vice-Chairman, before the despatch of any other business, at the first meeting of the Council of Iroj in each calendar year, and shall so proceed to elect a member of the Council to fill any vacancy in the office of Chairman or Vice-Chairman, before the

despatch of any other business, at the first meeting of the Council after the occurrence of the vacancy.

(3) The Chairman or Vice-Chairman may resign his office by writing signed by him, delivered to the Clerk of the Council of Iroij, and each shall vacate his office:

(a) on the entry into office of a new Chairman or Vice-Chairman elected when the Council of Iroij first meets in each calendar year; or

(b) if he ceases to be a member of the Council of Iroij; or

(c) if he is removed from office by a resolution of the Council of Iroij carried by not less than two thirds of the members present and voting at a meeting of the Council.

#### **Section 6. Functions of the Chairman.**

(1) The Chairman shall preside over any meeting of the Council of Iroij at which he is present and shall have other functions conferred on him by this Constitution or by Act, or pursuant to a resolution of the Council.

(2) If the Chairman is not present at any meeting of the Council of Iroij, or, through absence, illness or any other cause, he is unable to perform any other function of his office, or the office of Chairman is vacant, the Vice-Chairman shall preside over that meeting or perform that function until the Chairman is again present at that meeting or able to perform that function.

(3) If, on any occasion, there is neither a Chairman nor a Vice-Chairman who is able to preside over any meeting of the Council of Iroij or perform any other function of the Chairman, then, until the Chairman or the Vice-Chairman is again able to perform that function, it shall be performed by the oldest member of the Council who is available.

#### **Section 7. Procedure of the Council of Iroij.**

(1) The Council of Iroij shall meet in regular session during any period when the Nitijela is meeting in regular session, and in special session during any period when the Nitijela is meeting in special session, and shall remain in regular or special session, as the case may be, during such period after the date of termination of every session of the Nitijela as may be necessary to permit the Council to adopt a resolution or record its decision in relation to any Bill transmitted to it, pursuant to Section 3 of this Article.

(2) The Council of Iroij shall meet in Special session at any other time fixed by the Chairman of the Council, or by the Clerk of the Council acting at the request of not less than 9 members, and shall remain in such special session until such date as the Council may decide.

(3) Business may be validly transacted at any meeting of the Council of Iroij if the

number of members present is not less than 6.

(4) Except as otherwise provided in this Section, the Council of Iroj shall determine its own procedure.

#### **Section 8. Vacancies in the Council of Iroj.**

(1) The seat of a member of the Council of Iroj shall become vacant if:

(a) he dies; or

(b) he resigns his seat by writing under his hand delivered to the Clerk of the Council;  
or

(c) he ceases to be a qualified voter; or

(d) he becomes a member of the Nitijela.

(2) Any vacancy in the Council of Iroj shall be filled by applying, as nearly as may be, the provisions of Section 1 of this Article.

#### **Section 9. Deputies of Members of the Council of Iroj.**

(1) A member of the Council of Iroj who is prevented by absence, illness or any other cause from attending any meeting of the Council or of any committee thereof or of any joint committee or joint conference may appoint a person who is qualified by reason of his family ties to that member to be his deputy at that meeting.

(2) If, at any meeting of the Council of Iroj, or of any committee thereof or of any joint committee or joint conference, any member is absent, and is not represented by a deputy appointed by him, or the seat of any member is vacant, the Council of Iroj may, by resolution, appoint a person who, in the opinion of the Council, having regard to the customary law and any traditional practice, is qualified by reason of his family ties to that member to be his deputy at that meeting.

(3) Any deputy of a member may perform the functions and shall have the powers, duties and privileges of that member: Provided that no deputy of a member shall perform the functions of Chairman unless there is no member of the Council available to perform those functions.

#### **Section 10. Privileges of the Council of Iroj and its Members.**

(1) Neither the Council of Iroj nor any member of the Council shall be subject to any proceeding outside that body, or subjected to any liability, civil or criminal, in relation to the casting of any vote, the making of any statement, the publication of any document or the taking of any other action as part of the official business of the

Council of Iroij.

(2) The Council of Iroij shall not be disqualified from the transaction of business by reason only that there is a vacancy among its members, or that, in any case where Section 9 of this Article applies, no appointment of a deputy has been made pursuant to that Section.

(3) Nothing done in the course of the official business of the Council of Iroij shall be questioned on the ground that some person who acted as a member of the Council or the deputy of a member in relation to that matter was not qualified so to act.

#### **Section 11. Clerk of the Council of Iroij.**

(1) There shall be a Clerk of the Council of Iroij who shall be an officer of the Public Service and shall have the functions conferred on him by this Constitution or by or pursuant to Act or to a resolution of the Council.

(2) The Clerk of the Council of Iroij shall be responsible for arranging the business for and keeping a record of the proceedings of the Council of Iroij.

(3) The Clerk of the Council of Iroij shall perform, with respect to the Chairman and to the other members of the Council such secretarial and other functions as may be required.

### **ARTICLE IV**

#### **THE LEGISLATURE**

##### **Section 1. Legislative Power Vested in the Nitijela.**

(1) The legislative power of the Republic of the Marshall Islands shall be vested in the Nitijela and shall be exercised by Act.

(2) The power conferred by this Section shall include the power:

(a) to repeal, revoke or amend any law in force in the Republic; and

(b) to confer, by Act, the authority to promulgate rules, regulations, orders or other subordinate instruments pursuant to that Act and in furtherance of its stated purposes; and

(c) to make all other laws which it considers necessary and proper for carrying into execution any of its other powers, or any power vested by this Constitution in any other government agency or any public officer. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the**

**term 'Republic']**

**Section 2. Membership of the Nitijela.**

(1) The Nitijela shall consist of 33 members to be elected from the following electoral districts in the number indicated beside the name of each electoral district:

Majuro.....	5
Kwajalein.....	3
Ailinglaplap.....	2
Arno.....	2
Jaluit.....	2
Jabat .....	1
Mili.....	1
Ebon.....	1
Lib.....	1
Namdrik.....	1
Maloelap.....	1
Wotje.....	1
Likiep.....	1
Ailuk.....	1
Aur.....	1
Namu.....	1
Wotho .....	1
Enewetak & Ujelang.....	1
Bikini & Kili.....	1
Rongelap.....	1
Mejit .....	1
Utrik.....	1
Lae .....	1
Ujae .....	1

Narikrik, Erikub, Jemo, Taka, Bikar, Bokak, Rongrik and Ailinginae shall each be included in the electoral district with which it is most closely associated, pursuant to the customary law or any traditional practice.

(2) At any election in any electoral district, every qualified voter shall have the right to vote for as many candidates as there are seats to be filled; and the requisite number of candidates who receive the greatest number of votes, whether or not the number of votes received by any candidate constitutes a majority, shall be the member or members elected to represent that electoral district, and shall be so declared pursuant to law.

(3) Subject to paragraphs (4) and(5) of this Section, the Nitijela may, by Act, amend paragraph (1) of this Section so as to vary the total number of members of the Nitijela, or the number of electoral districts, or their geographic boundaries, or the number of members to be elected from any electoral district.

(4) Any such amendment of paragraph (1) of this Section shall, so far as practicable, be made in accordance with the principle that every member of the Nitijela should represent approximately the same number of voters; but account shall also be taken of geographical features, community interests, the boundaries of existing administrative and recognized traditional areas, means of communication and density and mobility of population.

(5) The Nitijela shall not proceed further than the first reading of any Bill or amendment to a Bill which, in the opinion of the Speaker, makes provision for amending paragraph (1) of this Section, unless it has before it a report, made by a committee of the Nitijela, or by some other body authorized for the purpose by Act, reviewing the composition of the Nitijela and stating whether or not it would be desirable in the circumstances, having regard to the provisions of paragraph (4) of this Section, to amend paragraph(1); and that report has been published.

(6) It shall be the duty of the Nitijela to call, at least once in 10 years, for a report, pursuant to paragraph (5) of this Section and to publish that report.

### Section 3. **Elections of Members of the Nitijela.**

(1) Elections of members of the Nitijela shall be conducted by secret ballot under a system of universal suffrage for all citizens of the Republic of the Marshall Islands who have attained the age of 18 years, and who are otherwise qualified to vote pursuant to this Section.

(2) No person shall be qualified to be a voter if:

(a) he is certified to be insane; or

(b) in respect of his conviction for a felony, he is serving a sentence of imprisonment or is released on parole or probation.

(3) Every person otherwise qualified to be a voter shall have the right to vote in one and one only electoral district, being an electoral district in which he either resides or has land rights; but a person who has a choice of electoral districts pursuant to this paragraph shall exercise that choice in any manner prescribed by law. **[By war of Constitutional Amendment #1 the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

### Section 4. **Qualifications of Candidates.**

(1) Every qualified voter who has attained the age of 21 years is qualified to be a candidate for election as a member of the Nitijela.

(2) Any person who is qualified to be a candidate under paragraph (1) of this Section shall have the right to be a candidate in any electoral district in which he is entitled to vote, or unless otherwise provided by Act, in any other electoral district:

Provided that no person may, at any election, be a candidate in more than one electoral district.

**Section 5. Public Servants Who Become Candidates or Are Elected.**

(1) Employees of the Public Service who become candidates for election as members of the Nitijela shall be granted leave of absence for the purposes of their candidature in accordance with any conditions prescribed by law.

(2) If any such employee is declared elected as a member of the Nitijela, he shall be deemed to have resigned from his employment in the Public Service.

**Section 6. Vacation of Seats by Members of the Nitijela.**

(1) The seat of any member of the Nitijela shall become vacant if, and only if,

(a) he ceases to possess any qualification to be a candidate which he was required to have at the time of his candidature; or

(b) he dies; or

(c) he resigns his seat, by writing signed by him, delivered, in the case of a member other than the Speaker to the Speaker, and, in the case of the Speaker, to the Clerk of the Nitijela; or

(d) he is absent without the leave of the Nitijela from the meetings of the Nitijela held on 20 consecutive sitting days; or

(e) he accepts appointment (except as a member of the Cabinet) to any other office entitling him to compensation from public money: or

(f) the Nitijela is dissolved.

(2) If the seat of any member of the Nitijela becomes vacant for any reason other than the dissolution of the Nitijela, the vacancy shall be filled at an election in the electoral district which he represented, held at the time prescribed by law, and conducted in accordance with Sections 3, 4 and 5 of this Article.

(3) Whenever the seats of the members of the Nitijela become vacant as a result of the dissolution of the Nitijela, the vacancies shall be filled at a general election held pursuant either to Section 12 or to Section 13 of this Article, as the case may require, and conducted in accordance with Sections 3, 4 and 5 of this Article.

**Section 7. The Speaker and the Vice-Speaker.**

(1) The Speaker and the Vice-Speaker shall be the members of the Nitijela elected to those offices by the Nitijela.

(2) The Nitijela shall, by secret ballot, proceed to elect the Speaker and the Vice-Speaker before the despatch of any other business, at the first meeting of the Nitijela after each general election; and shall so proceed to elect a member of the Nitijela to fill any vacancy in the office of Speaker or Vice-Speaker, before the despatch of any other business, at the first meeting of the Nitijela after the occurrence of the vacancy.

(3) The Speaker or the Vice-Speaker may resign his office by writing signed by him, delivered to the Clerk of the Nitijela, and each shall vacate his office:

(a) on the entry into office of a new Speaker or Vice-Speaker elected when the Nitijela first meets after a general election; or

(b) if he ceases to be a member of the Nitijela for any reason other than the dissolution thereof; or

(c) if he takes office as the President or a Minister; or

(d) if he is removed from office by a resolution of the Nitijela carried by not less than two thirds of the total membership of the Nitijela.

#### **Section 8. Functions of the Speaker.**

(1) The Speaker shall preside over any meeting of the Nitijela at which he is present and shall have the other functions conferred on him by this Constitution or by or pursuant to Act or to the Rules of the Nitijela.

(2) The Speaker shall be responsible for ensuring that the official business of the Nitijela is conducted in compliance with this Constitution and the Rules of the Nitijela, and shall exercise his functions impartially.

(3) If the Speaker is not present at any meeting of the Nitijela, or through absence, illness or any other cause, he is unable to perform any other function of his office or the office of Speaker is vacant, the Vice-Speaker shall preside over that meeting or perform that function until the Speaker is again present at that meeting or able to perform that function.

(4) If at any time when the Nitijela is in session, there is neither a Speaker nor a Vice-Speaker who is able to preside over a meeting of the Nitijela or perform any other function of the Speaker, the Clerk of the Nitijela shall preside for the purpose of enabling the members of the Nitijela to select one of their number, not being the President or a Minister, to preside over any meeting and perform any other function of the Speaker until the Speaker or the Vice-Speaker is present at that meeting or able to perform that function.

(5) If at any time when the Nitijela is not in session there is neither a Speaker nor a Vice-Speaker who is able to perform the functions of the Speaker, then, until the Speaker or the Vice-Speaker is again able to perform those functions, they shall be performed by a member of the Nitijela not being the President or a Minister, appointed for the purpose by the Clerk of the Nitijela, by writing signed by him.

(6) Every document, including any certificate, signed by the Speaker in the performance of his functions shall be countersigned by the Clerk of the Nitijela, and where, pursuant to this Section, any such document or certificate is signed by the Vice-Speaker or by a member of the Nitijela performing the functions of the Speaker, it shall be so stated on the document or in that certificate.

#### **Section 9. Determination on Questions of Membership of the Nitijela.**

Any question that arises concerning the right of any person to vote at an election of a member or members of the Nitijela, or to be or to remain a member of the Nitijela, or to exercise the rights of a member, or concerning the conduct of any person in relation to any election of a member or members of the Nitijela, shall be referred to and determined by the High Court.

#### **Section 10. Sessions of the Nitijela.**

(1) The Nitijela shall meet in regular session on the first Monday in January in each year and shall, subject to Section 11 of this Article, remain in session for 50 sitting days:

Provided that the President may, by writing signed by him, appoint a later date for the termination of any regular session.

(2) If there has been a general election or if, at any time when the Nitijela is not in session, an election of the President is for any other reason required, and more than 60 days will elapse before the date of the next regular session of the Nitijela, the President shall, within 14 days after the date of the general election or the date of the occurrence of any other event requiring an election of the President, call the Nitijela to meet in special session on a date not more than 30 days after the date of the call; and in any case where the President has not called the Nitijela to meet in special session in accordance with this paragraph, the Speaker shall call the Nitijela to meet in special session as soon as practicable.

(3) If more than 120 days have elapsed after the date on which the preceding session of the Nitijela terminated, any 10 members of the Nitijela, not being members of the Cabinet, representing not less than 4 electoral districts, may, by written petition signed by each of them, request the President to call the Nitijela to meet in special session in order to consider the matter or matters of urgent public business set forth in the petition. Unless the President has within 7 days of the receipt of the petition, called the Nitijela to meet in special session on a date not more than 30 days after the date of the call, the Speaker shall call the Nitijela to meet in special session as soon as practicable. Any special session called pursuant to this paragraph may consider any matter; but no such special session shall be terminated before the expiration of 30 sitting days unless the Speaker has certified that the Nitijela has sooner disposed of the matter or matters of urgent public business which it was called to consider.

(4) At any time when the Nitijela is not already meeting in regular session or in

special session, the President may, by writing signed by him, call it to meet in special session.

(5) Subject to paragraph (3) of this Section and to Section 11 of this Article, the President shall, by writing signed by him, appoint the date for the termination of any special session of the Nitijela.

#### **Section 11. Special Provisions as to Termination of Sessions and Recesses of the Nitijela.**

(1) Subject to Sections 12 and 13 of this Article,

(a) whenever, during any session of the Nitijela, an election of a President is required, that session of the Nitijela shall not terminate and no recess shall be held until there has been an appointment of the members of the Cabinet, after the election of a President, unless, in relation to an election following the tender of the President's resignation from office pursuant to paragraph (3) of Section 7 of Article V, that tender has sooner lapsed; or

(b) whenever, during any session of the Nitijela, notice is given of a motion of no confidence in the Cabinet, that session of the Nitijela shall not terminate and no recess shall be held before the expiration of 10 days after the date of the giving of the notice, unless that motion has sooner been voted upon.

(2) Subject to paragraph (1) of this Section, the Rules of the Nitijela may provide for the holding of a recess during any session of the Nitijela.

#### **Section 12. Dissolution of the Nitijela and General Election.**

(1) Pursuant to paragraphs (2) and (3) of this Section, the Nitijela shall be dissolved and there shall be a general election of all members of the Nitijela in every fourth calendar year, unless the Nitijela is sooner dissolved and a general election is sooner held pursuant to Section 13 of this Article.

(2) The Nitijela shall automatically be dissolved on the thirtieth day of September in the fourth year after the year in which the last preceding general election was held:

Provided that, if in any calendar year there was, pursuant to Section 13 of this Article, a general election on or before the thirtieth day of April, the Nitijela shall automatically be dissolved on the thirtieth day of September in the third year after the year in which that general election was held

(3) In the year when the Nitijela is dissolved on the thirtieth day of September, there shall be a general election on the third Monday in November.

#### **Section 13. Special Provisions for Early Dissolution of the Nitijela and a General Election.**

(1) The President may, by writing signed by him, dissolve the Nitijela if:

(a) a motion of no confidence in the Cabinet has twice been carried and has twice lapsed, and no other President has held office in the interval between the two votes of no confidence; or;

(b) no Cabinet has been appointed within 30 days after the date on which the Nitijela proceeded to elect a President for any reason other than the tender of the President's resignation from office following a vote of no confidence.

(2) The power of the President to dissolve the Nitijela shall lapse, if it has not been exercised before the expiration of 30 days after the date on which it first arose.

(3) In every case where the Nitijela has been dissolved pursuant to this Section, there shall be a general election on the seventh Monday after the date of the dissolution.

#### **Section 14. Clerk of the Nitijela.**

(1) There shall be a Clerk of the Nitijela who shall be an officer of the Public Service and shall have the functions conferred on him by this Constitution or by or pursuant to Act or to the Rules or a resolution of the Nitijela.

(2) The Clerk of the Nitijela shall be responsible for:

(a) preparing the business and keeping a record of the proceedings of the Nitijela and publishing that record from time to time; and

(b) arranging for the signing of documents and giving of certificates by the Speaker, whenever any signature or certification of the Speaker is required pursuant to this Constitution or to any law, and keeping a record of all documents and certificates so signed or given; and

(c) arranging for the performance, with respect to the Speaker and to the other members of the Nitijela, of such secretarial and other functions as may be required.

#### **Section 15. Procedure of the Nitijela.**

(1) Subject to this Section and to any Act, the Nitijela may from time to time make Rules for the regulation and orderly conduct of its proceedings and the despatch of its official business.

(2) The Rules of the Nitijela shall ensure that, in the conduct of its official business, there is an opportunity for all points of view represented in the Nitijela to be fairly heard.

(3) Except where this Constitution otherwise provides, every question before the Nitijela shall be decided by a majority of the votes of the members present and voting at a meeting of the Nitijela.

(4) Unless pursuant to an Act or to the Rules of the Nitijela, a member is required to

abstain from voting on any matter in which he has a personal interest, every member present when any question is put to the Nitijela shall vote thereon.

(5) When any question is put to the Nitijela, any member may call for a roll-call vote thereon, unless this Constitution requires that vote to be by secret ballot.

(6) No member of the Nitijela may vote more than once on any question, or vote by proxy or be represented at any meeting of the Nitijela by any other person.

(7) No motion or other proposal shall be adopted and no candidate shall be elected on an evenly-divided vote, but further votes may be taken in respect of the motion or other proposal or election in the manner prescribed in the Rules of the Nitijela.

(8) No business shall be transacted at any meeting of the Nitijela if the number of members then present is less than half of the total membership of the Nitijela.

(9) The powers of the Nitijela shall not be affected by any vacancy in its membership.

(10) No Bill shall be passed unless it has been read three (3) times in the Nitijela.

(11) Any Bill or other business before the Nitijela at its dissolution shall lapse.

(12) The Nitijela may, by resolution, declare that any person who has acted contrary to the provisions of this Constitution or of any Act relating to the conduct of the official business of the Nitijela, or to the Rules of the Nitijela, is in contempt of the Nitijela; but no member of the Nitijela shall be punished therefor, except by suspension for no longer than 10 sitting days pursuant to such Act or Rules, and no person other than a member shall be punished therefor, except pursuant to an Act defining offenses relating to contempt of the Nitijela and making provision for their trial and punishment by the High Court.

#### **Section 16. Privileges of the Nitijela and its Members.**

(1) The validity of any proceeding in the Nitijela or in any committee thereof, or in any joint conference or joint committee, and the validity of any certificate duly given by the Speaker under Section 10 or Section 21 of this Article, or Section 3 or Section 4 of Article XII, or Section 6 of Article XIII, shall not be questioned in any court; but this shall not be taken to preclude judicial review of the validity of any Act or resolution of the Nitijela under this Constitution.

(2) Members of the Nitijela shall, except in cases of felony, be privileged from arrest during any session of the Nitijela, and in going to or returning from the same.

(3) Neither the Speaker nor any officer of the Nitijela in whom powers are vested for the regulation of procedure or the conduct of business or the maintenance of order shall, in relation to the exercise of any of those powers, be subject to the jurisdiction of any court; but this shall not be taken to preclude the exercise of judicial power under Section 7 of Article 11 or judicial review, in an action against the Clerk of the

Nitijela as nominal defendant, pursuant to Section 9 of this Article.

(4) Neither the Nitijela nor any member of the Nitijela shall be subject to any proceeding outside that body, or subjected to any liability, civil or criminal, in relation to the casting of any vote, the making of any statement, the publication of any document or the taking of any other action as part of the official business of the Nitijela.

#### **Section 17. Compensation of Members of the Nitijela.**

The compensation of the President, the Ministers, the Speaker, the Vice-Speaker and the other members of the Nitijela shall be specifically prescribed by Act.

#### **Section 18. Introduction of Bills in the Nitijela.**

Any member of the Nitijela may introduce any Bill, or propose any motion for debate in, or present any petition to, the Nitijela; and any such Bill, motion or petition shall be considered and disposed of in accordance with this Constitution and the Rules of the Nitijela.

#### **Section 19. Special Provisions with regard to Bills Prescribing Compensation.**

(1) This Section shall apply to any Bill or amendment to a Bill which, in the opinion of the Speaker, prescribes the compensation of any person or class of persons whose compensation is required to be specifically prescribed by Act.

(2) The Nitijela shall not proceed further than the first reading of any Bill or amendment to which this Section applies, unless it has before it a report made by a committee of the Nitijela, or by some other body authorized for the purpose by Act, as to the level of the salary and the scale of the allowances (if any) which ought to be paid to any person or class of persons affected by that Bill or amendment; and that report has been published.

(3) The committee of the Nitijela or other body making that report shall take into account, in relation to any person or class of persons affected by any Bill or amendment to which this Section applies.

(a) the general level of incomes in the community; and

(b) the cost of living; and

(c) the nature of the office and of the services to be performed; and

(d) the qualifications of the person or class of persons affected; and

(e) the amount of time which the person or class of persons affected are expected to devote to their duties; and

- (f) whether the person or class of persons affected are free to engage in any other occupation for gain or reward: and
- (g) any other conditions of the appointment of the person or class of persons affected.

(4) An Act prescribing the compensation payable to any person or class of persons whose compensation is required to be specifically prescribed by Act shall not, of itself, be regarded as authority for the expenditure of public money; and any expenditure for the purpose of paying that compensation shall be authorized only pursuant to Article VIII.

**Section 20. Special Provisions with Regard to Bills Prescribing the Qualifications of Judges.**

The Nitijela shall not proceed further than the first reading of any Bill or amendment to a Bill which, in the opinion of the Speaker, prescribes any qualification required for appointment as a judge, unless it has before it a report by the Judicial Service Commission as to whether such a qualification would be appropriate, and that report has been published.

**Section 21. When Bills Become Law.**

(1) Subject to the requirements of paragraph (5) of Section 4 of Article XII, in those cases to which that paragraph applies, a Bill shall become law if, and only if:

- (a) it has been passed by the Nitijela; and
- (b) the Speaker, being satisfied that it has been passed in accordance with this Constitution and with the Rules of the Nitijela, has endorsed on a copy of the Bill a certificate of compliance with the requirements of this Section and has, in the presence of the Clerk of the Nitijela, signed that certificate and inscribed thereon the date of signature; and
- (c) the Clerk of the Nitijela has, in the presence of the Speaker, countersigned the certificate on that copy of the Bill.

(2) A Bill may be signed and countersigned pursuant to this Section whether or not the Nitijela is then in session.

(3) A Bill which becomes law in accordance with the requirements of this Section shall be an Act of the Nitijela.

(4) Subject to its provisions, an Act shall come into force on the date of certification.

**ARTICLE V**

**THE EXECUTIVE**

## Section 1. **Executive Authority and Collective Responsibility of the Cabinet.**

(1) The executive authority of the Republic of the Marshall Islands shall be vested in the Cabinet, whose members are collectively responsible to the Nitijela.

(2) Subject to law, the Cabinet may exercise elements of its executive authority directly, or through its individual members, and through other officers responsible to the Cabinet; but neither the provisions of any such law, nor any delegation of elements of the Cabinet's executive authority shall have the effect of diminishing the responsibility of the Cabinet and of each of its members to the Nitijela for the direction and implementation of executive policies.

(3) The executive authority so vested in the Cabinet shall include but shall not be limited to the following powers, functions, duties and responsibilities:

(a) the Cabinet shall have the general direction and control of the government of the Republic;

(b) the Cabinet shall recommend to the Nitijela such legislative proposals as it considers necessary or desirable to implement its policies and decisions; and, in particular, the Cabinet, taking into account the provisions of Article VIII, shall recommend to the Nitijela proposals for the raising of taxes or other revenue and for the expenditure of public money;

(c) the Cabinet shall be accountable to the Nitijela for all public expenditure and for relating such expenditure to the appropriations made by the Nitijela or to other authority conferred by this Constitution or by Act;

(d) the Cabinet shall be responsible for conducting the foreign affairs of the Republic, whether by treaty or otherwise; Provided that no treaty shall be finally accepted and no ambassador or other head of diplomatic mission shall be appointed by the Cabinet, without the approval of the Nitijela, signified by resolution.

(e) the Cabinet shall be responsible for making such provision as may be reasonable and necessary for the security of the Republic; Provided that no armed forces shall be raised or stationed in the Republic in peacetime except by Act;

(f) the Cabinet shall have the power of reprieve and pardon;

(g) the Cabinet shall be responsible for establishing and maintaining such hospitals and other institutions and for providing such other services as may be reasonable and necessary for the public health;

(h) the Cabinet shall be responsible for establishing and maintaining such public schools and for making such other provision as may be reasonable and necessary to provide educational opportunities for the people of the Republic;

(i) the Cabinet shall be responsible for establishing and maintaining such other institutions and services and for making such other provision as may be reasonable and necessary to achieve an adequate standard of living for the people of the Republic, to enable them to enjoy their legal rights, and to serve their economic, social and cultural welfare;

(j) in the exercise of its responsibilities, the Cabinet may make such contracts and

other instruments on behalf of the Government of the Republic as it considers necessary.

(4) No treaty or other international agreement which is finally accepted by or on behalf of the Republic on or after the effective date of this Constitution shall, of itself, have the force of law in the Republic. **[By way of Constitutional Amendment #1 the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

## Section 2. **Composition of the Cabinet.**

(1) The Cabinet shall consist of the President (who shall be a member of the Nitijela) and the other members of the Nitijela who are appointed as Ministers pursuant to this Article.

(2) Subject to Section 8 of this Article, the members of the Cabinet shall continue in office until their successors are appointed.

## Section 3. **The President.**

(1) The President shall be the Head of State of the Republic of the Marshall Islands.

(2) The President shall be elected by a majority of the total membership of the Nitijela and shall be appointed to office pursuant to paragraph (2) of Section 4 of this Article.

(3) The Nitijela shall, by secret ballot, proceed to elect the President at the first meeting of the Nitijela after each general election and also at the first meeting of the Nitijela after either:

(a) the President's seat in the Nitijela has been vacated for any reason other than the dissolution thereof; or

(b) the President has tendered or is deemed to have tendered his resignation from office.

(4) The President may at any time tender his resignation from office by writing signed by him, addressed to the Speaker.

(5) Where the President has tendered or is deemed to have tendered his resignation from office, that tender may not be withdrawn. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

## Section 4. **Appointment of the Cabinet after Election of the President.**

(1) As soon as practicable after his election to that office, the President elect shall nominate to the Speaker for appointment as Ministers not less than 6 nor more than 10 other members of the Nitijela who have consented to the nomination.

(2) Upon receiving the nominations made by the President elect under this Section, the Speaker shall, by instrument signed by him, appoint to office, as members of the Cabinet, the President elect and the Ministers so nominated.

(3) If the President elect has not, within 7 days after the date of his election to that office, submitted to the Speaker his nomination of not less than 6 members of the Nitijela for appointment as Ministers, his election to that office shall have no effect, and the Nitijela shall proceed as soon as practicable again to elect a President.

#### **Section 5. Allocation of Portfolios.**

(1) The President shall, as soon as practicable after taking office, by writing signed by him, allocate among the members of the Cabinet (including himself if he so desires) the portfolios of Ministers of Finance, Minister of Foreign Affairs, Minister of Communications and Transportation, Minister of Resources and Development, Minister of Social Welfare, Minister of Public Works and such other portfolios as may be necessary or desirable for giving to a member of the Cabinet the primary responsibility for any Department or function of government.

(2) The President shall have the primary responsibility for any Department or function of government in respect of which no allocation of a portfolio is for the time being in force.

#### **Section 6. Appointment of Ministers and Allocation of Portfolios at Other Times.**

(1) The President may, at any time when the total number of Ministers is less than 10, submit to Speaker, with the consent of the member, the nomination of a member of the Nitijela for appointment as a Minister.

(2) The Speaker shall, by instrument signed by him, appoint as a Minister any member so nominated.

(3) The President may, at any time, by writing signed by him, allocate any portfolio in respect of which no allocation is in force, or may reallocate any portfolio.

(4) Whenever it appears to the President that any Minister will, by reason of illness or absence from the Republic of the Marshall Islands or from the seat of government, be temporarily unable to discharge the responsibilities of any portfolio allocated to him, he may, by writing signed by him, direct any other Minister to discharge the responsibilities of that portfolio, until the Minister to whom that portfolio has been allocated is again able to discharge those responsibilities. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands.']**

## **Section 7. Vote of No Confidence in the Cabinet.**

- (1) At any meeting of the Nitijela, any 4 or more members of the Nitijela who are not members of the Cabinet may give notice of their intention to make a motion of no confidence in the Cabinet.
- (2) Any such motion shall be voted on at a meeting of the Nitijela held not earlier than 5 days nor later than 10 days after the date of the giving of the notice.
- (3) If the motion of no confidence is carried by a majority of the total membership of the Nitijela, the President shall be deemed to have tendered his resignation from office.
- (4) If the Nitijela has not elected a President at the expiration of 14 days after the date on which the President is so deemed to have tendered his resignation from office, the vote of no confidence and the tender of the President's resignation shall lapse.
- (5) In any case where a vote of no confidence has lapsed, notice of intention to make a motion of no confidence in the Cabinet may not again be given until the expiration of 90 days after the date on which that vote of no confidence lapsed, unless there has sooner been an appointment of the members of the Cabinet, following the election of a President.

## **Section 8. Vacation of Office by Ministers.**

- (1) A Minister shall vacate his office as a member of the Cabinet if:
  - (a) his appointment as a Minister is revoked by the President, by instrument signed by him; or
  - (b) he vacates his seat in the Nitijela for any reason other than the dissolution thereof; or
  - (c) he resigns his office by writing signed by him, delivered to the President.
- (2) If the occurrence of any vacancy in the office of a Minister brings the total number of Ministers below 6, the President shall, within 30 days after the occurrence of the vacancy, submit to the Speaker the nomination of a Minister pursuant to paragraph (1) of Section 6 of this Article.
- (3) If, in any case where paragraph (2) of this Section applies, the President does not nominate a Minister in accordance with its provisions, he shall be deemed to have tendered his resignation from office.

## **Section 9. Acting President.**

- (1) Whenever, by reason of illness, or absence from the Republic of the Marshall Islands or from the seat of government, or for any other reason, the President is

temporarily prevented from performing his functions in the Republic or at the seat of government, as the case may be, the President, or failing him the Cabinet, may request the Speaker to appoint a Minister the functions of President until such time as the President is capable of again performing his functions or has vacated his office; and the Speaker shall, by instrument signed by him, make such an appointment accordingly.

(2) If the President vacates his seat in the Nitijela for any reason other than the dissolution thereof, the Speaker, acting at the request of the Cabinet, or if he receives no such request within 7 days of the date on which the President so vacates his seat, then acting in his own discretion, shall, by instrument signed by him, appoint a Minister to perform the functions of President until the members of the Cabinet are appointed after the election of a President. **[By way of Constitutional Amendment # 1, the term 'Marshall Island' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

#### Section 10. Meetings of the Cabinet.

(1) No business shall be transacted at any meeting of the Cabinet unless at least 4 members of the Cabinet are present.

(2) The Cabinet shall not be disqualified from the transaction of business only because there is a vacancy among its members, or because, in any case where paragraph (4) of Section 6 of this Article applies, no direction has been given pursuant to that paragraph.

(3) No proceeding of the Cabinet shall be questioned on the ground that a person who acted as a member of the Cabinet in relation to that proceeding was not qualified so to act.

(4) Notice of every meeting of the Cabinet and a copy of every paper to be considered at that meeting shall be given to each member of the Cabinet, to the Chief Secretary, to the Attorney-General, and to the Secretary of Finance.

(5) The Chief Secretary shall have the right to attend any meeting of the Cabinet and to speak on any matter under consideration by the Cabinet, and shall so attend if required to do so by the President or other member of the Cabinet presiding.

(6) The President shall preside over every meeting of the Cabinet at which he is present.

(7) The decision of the Cabinet on any matter shall be taken by the members of the Cabinet present at a meeting of the Cabinet.

(8) Subject to this Section, the Cabinet shall regulate its own procedure in such manner as it thinks fit.

## Section 11. **Instruments and Other Decisions Made by the Cabinet.**

(1) Any instrument made by the Cabinet shall have effect, and any other decision of the Cabinet shall be duly authenticated, when that instrument or the record of that decision has been signed by the President, whether or not he was present at the meeting of the Cabinet at which the instrument or other decision was made, and by the Clerk of the Cabinet.

(2) In any case not otherwise provided for in this Constitution or any other law, and with the consent or approval of the Nitijela if required, the President or a Minister acting with the authority of the President may sign, pursuant to a decision of the Cabinet, any instrument of appointment or other instrument made on behalf of the Government of the Republic of the Marshall Islands. **[By way of Constitutional Amendment # 1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

## Section 12. **Clerk of the Cabinet.**

(1) There shall be a Clerk of the Cabinet who shall be an officer of the Public Service and shall be responsible for arranging the business for and keeping the minutes of meetings of the Cabinet, and for conveying decisions of the Cabinet to the appropriate person or authority, and shall perform, with respect to the Cabinet, such secretarial and other functions as may be required.

(2) The Clerk of the Cabinet shall be responsible for bringing to the attention of the Cabinet any opinion expressed to the Cabinet by the Council of Iroij.

## **ARTICLE VI**

### **THE JUDICIARY**

#### Section 1. **The Judicial Power.**

(1) The judicial power of the Republic of the Marshall Islands shall be independent of the legislative and executive powers and shall be vested in a Supreme Court, a High Court, a Traditional Rights Court, and such District Courts, Community Courts and other subordinate courts as are created by law, each of these courts possessing such jurisdiction and powers and proceeding under such rules as may be prescribed by law consistent with the provisions of this Article.

(2) Each court of the Republic shall have power to issue all writs and other processes, make rules and orders and promulgate all procedural regulations, not inconsistent with law, as may be required for the due administration of justice and the enforcement of this Constitution.

(3) The authority granted in paragraph (2) of this Section include, in the case of the Supreme Court and the High Court and such subordinate courts as are created by law,

the power to grant bail, accept forfeit security therefor; make orders for the attendance of witnesses with or without documents, make orders for the disposal of exhibits, and punish contempt of court.

(4) Unless otherwise provided in the Constitution, every judge of the Supreme Court or of the High Court shall be a person with qualifications prescribed by or pursuant to Act; shall be appointed by the Cabinet acting on the recommendation of the Judicial Service Commission and with the approval, signified by resolution, of the Nitijela; may, pending such approval, discharge the duties of his office until the expiration of 21 days after the commencement of the next ensuing session of the Nitijela; and shall hold office during good behavior until reaching the age of 72 years unless, in the case of a judge who is not a citizen of the Republic, the judge has been appointed for a term of one or more years, or in the case of a sitting judge in another jurisdiction, for a particular session of court.

(5) Until the Nitijela prescribes by Act the qualifications for judges of the Supreme Court and of the High Court, such judges must be persons qualified by education, experience, and character to discharge judicial office.

(6) No judge shall take part in the decision of any case in which that judge has previously played a role or with respect to which he is otherwise disabled by any conflict of interest.

(7) The compensation of the Chief Justice and any other judges of the Supreme Court and of the Chief Justice and any other judges of the High Court shall be specifically prescribed by Act.

(8) A judge of the Supreme Court or of the High Court may be removed from office only by a resolution of the Nitijela adopted by at least two-thirds of the its total membership and only on the ground of clear failure or inability faithfully to discharge the duties of such office or for the commission of treason, bribery, or other high crimes or abuses inconsistent with the authority of his office.

(9) If the Nitijela is not in session, the Cabinet may suspend any judge of the High Court or of the Supreme Court until the expiration of 21 days after the commencement of the next ensuing session, but only for such cause as would justify removal of the judge by the Nitijela.

(10) Whenever the office of any judge of the Supreme Court or of the High Court, having previously been filled, is temporarily vacant, or any such judge is disabled from performing the duties of his office, the Cabinet, acting on the recommendation of the Judicial Service Commission, may appoint as an acting judge to discharge the duties of that office for the duration of such vacancy or disability, a person qualified within the meaning of paragraph (5) of this Section. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequent/v herein, with the term 'Republic']**

Section 2. **The Supreme Court.**

(1) The Supreme Court shall be a superior court of record, shall consist of a Chief Justice and such number of other judges as may from time to time be prescribed by Act, and shall have appellate jurisdiction, as to both law and fact, with final authority to adjudicate all cases and controversies properly brought before it, in accord with this Constitution and other applicable laws of the Republic of the Marshall Islands.

(2) An appeal shall lie to the Supreme Court:

(a) as of right from any final decision of the High Court in the exercise of its original jurisdiction;

(b) as of right from any final decision of the High Court in the exercise of any appellate jurisdiction, but only if the High Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of the Constitution;

(c) at the discretion of the Supreme Court, subject to such conditions as to security for costs or otherwise as the Supreme Court thinks fit, from any final decision of any court

(3) The High Court may, on its own motion or on application of any party to the proceedings, remove to the Supreme Court any question arising as to the interpretation or effect of the Constitution in any proceedings of the High Court, other than proceedings set down for trial before a bench of 3 judges.

(4) In any case in which a question has been removed to the Supreme Court, it shall determine that question and either dispose of the case or remand it to the High Court for disposition consistent with the Supreme Court's determination. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'.]**

### Section 3. **The High Court.**

(1) The High Court shall be a superior court of record having general jurisdiction over controversies of law and fact in the Republic of the Marshall Islands; shall consist of a Chief Justice, and such number of other judges as may from time to time be prescribed by Act, shall have original jurisdiction over cases duly filed in the High Court; and shall have appellate jurisdiction over cases originally filed in subordinate courts; and, unless otherwise provided by law, shall have jurisdiction to review the legality of any final determination by a government agency at the behest of any party aggrieved by such determination.

(2) At any time when the judges of the Supreme Court and of the High Court number 4 or more, any judge of the High Court may convene a bench of 3 judges to decide any case in the High Court's jurisdiction, if the convening judge has determined that the case involves either a substantial question of law as to the interpretation or effect of a provision of this Constitution or any other matter of public importance; and, if an insufficient number of judges of the High Court is available, then without prejudice to the appellate jurisdiction of the Supreme Court in relation to that case, the remaining members of the bench shall be judges of the Supreme Court. **[By way of**

**Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

#### **Section 4. The Traditional Rights Court.**

(1) The Traditional Rights Court shall be a court of record; shall consist of panels of 3 or more judges selected so as to include a fair representation of all classes of land rights, including, where applicable, the Iroijiplap, Iroijedrik, Alap and Dri Jerbal; and shall sit at such times and places and be chosen on such a geographical basis, as to ensure fair and knowledgeable exercise of the jurisdiction conferred by this Section.

(2) The size, membership and procedures of the Traditional Rights Court shall be consistent with paragraph (1) of this Section, and shall be determined by the High Court unless and until the Nitijela makes provision for those matters by Act.

(3) The jurisdiction of the Traditional Rights Court shall be limited to the determination of questions relating to titles or to land rights or to other legal interests depending wholly or partly on customary law and traditional practice in the Republic of the Marshall Islands.

(4) The jurisdiction of the Traditional Rights Court may be invoked as of right upon application by a party to a pending judicial proceeding; but only if the court in which such proceeding is pending certifies that a substantial question has arisen within the jurisdiction of the Traditional Rights Court.

(5) When a question has been certified to the Traditional Rights Court for its determination under paragraph (4), its resolution of the question shall be given substantial weight in the certifying court's disposition of the legal controversy before it; but shall not be deemed binding unless the certifying court concludes that justice so requires. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic' of the Marshall Islands.]**

#### **Section 5. The Judicial Service Commission.**

(1) There shall be a Judicial Service Commission which shall consist of:

(a) as Chairman, the Chief Justice of the High Court, or if his office is vacant, a person qualified by legal training, experience and temperament, appointed by the Cabinet to act during the period of the vacancy;

(b) the Attorney-General or, if for any reason the Attorney-General is unable to act, the Chairman of the Public Service Commission;

(c) a citizen of the Republic of the Marshall Islands, who is neither a member of the Nitijela nor an employee of the Public Service, appointed from time to time by the Cabinet.

(2) No business shall be transacted by the Judicial Service Commission unless three

present; and all questions proposed for decision by the Commission shall be majority of the votes of those members,

(3) The Judicial Service Commission shall:

- (a) make recommendations on judicial appointments on its own motion or at the request of the Cabinet;
- (b) recommend or evaluate criteria of qualification for judges on its own motion or at the request of the Speaker or the Cabinet;
- (c) appoint and remove judges of subordinate courts, and of the Traditional Rights Court if authorized to do so by Act;

(d) exercise such other functions and powers as may be conferred by law.

(4) In the exercise of its functions and powers, the Judicial Service Commission shall not receive any direction from the Cabinet or from any other authority or person, but shall act independently. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

## **ARTICLE VII**

### **THE PUBLIC SERVICE**

#### **Section 1. The Public Service of the Republic of the Marshall Islands.**

(1) The Public Service of the Republic of the Marshall Islands shall comprise all such employees as may be necessary to assist the Cabinet in exercising the executive authority of the Republic and to perform such other duties in the service of the Republic as may be required.

(2) Except as provided in paragraphs (3) and (4) of this Section, no person shall receive any compensation from public money unless he is an employee of the Public Service.

(3) For the purposes of this Article, a public corporation or other statutory authority constituted under the law of the Republic shall be deemed to be an office of government, and a member or employee of any such public corporation or other statutory authority shall be deemed to receive his compensation from public money; but, without prejudice to the status for any other purpose of any such public corporation or statutory authority, or of any member or employee or funds thereof, or of any other money from which the compensation of any such member or employee may be paid, the application of this Article in a particular case may be excluded by Act.

(4) Nothing in this Section shall apply to any person whose compensation is required to be specifically prescribed by Act, or any person required by this Constitution to be appointed to office otherwise than by the Public Service Commission, or any member

of a naval, military or air force, a police force, or a fire, coastguard or prisons service established by law, or any officer or employee of a local government, or to honorary service, or consultancy service remunerated only by fees or commission.

(5) Unless otherwise provided by law, an employee of the Public Service may be granted leave without pay in order to serve the Republic in any other capacity not involving a conflict of interest. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

## Section 2. The Chief Secretary.

(1) There shall be an officer of the Public Service to be called the Chief Secretary, who shall be the head of the Public Service and the chief administrative and advisory officer of the Government of the Republic of the Marshall Islands.

(2) In addition to the other functions and powers conferred on him by law, the Chief Secretary shall be responsible to the Cabinet for the general direction of the work of all Departments and offices of government. The head of any such Department or office shall account for the work of that Department or office to the Chief Secretary, as well as to the Minister primarily responsible for that Department or office.

(3) Notwithstanding anything in paragraph (2) of Section 10 of this Article, the Public Service Commission shall consult the President and shall obtain the concurrence of the Cabinet before it appoints any person to be the Chief Secretary.

(4) No appeal by any employee of the Public Service shall lie against the promotion or appointment of any person to the office of Chief Secretary. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

## Section 3. The Attorney-General.

(1) There shall be an Attorney-General who shall be an officer of the Public Service and shall have the same qualifications as those required for appointment as a judge of the High Court,

(2) The Attorney-General shall be the head of any Department or office dealing with the administration of justice and of any other Department or office placed under his authority by the Public Service Commission.

(3) In addition to the other functions and powers conferred on him by law, the Attorney-General shall advise on legal matters referred to him by the Cabinet, the President or a Minister, and shall be responsible for instituting, conducting or discontinuing any proceedings for an offense alleged to have been committed, and for seeing to it that the laws are faithfully executed.

(4) In exercising his responsibilities under paragraph (3) of this Section, the Attorney-General shall not receive any direction from the Cabinet or any other authority or person, but shall act independently. He may exercise these responsibilities either in person or through officers subordinate to him, acting under and in accordance with his general or special instructions.

(5) Notwithstanding anything in paragraph (2) of Section 10 of this Article, the Public Service Commission shall consult the President and shall obtain the concurrence of the Cabinet before it appoints any person to be Attorney-General.

(6) No appeal by any employee of the Public Service shall lie against the promotion or appointment of any person to the office of Attorney-General.

#### **Section 4. The Secretary of Finance.**

(1) There shall be an officer of the Public Service to be called the Secretary of Finance who shall be the head of the Finance Department.

(2) In addition to the other functions and powers conferred on him by law, the Secretary of Finance shall be responsible for the preparation of the accounts relating to all public revenues and expenditure for each financial year, and for advising the Minister of Finance on all matters pertaining to the budget.

#### **Section 5. The Public Service Commission.**

(1) There shall be a Public Service Commission of the Republic of the Marshall Islands consisting of a Chairman and 2 other members.

(2) The Chairman and other members of the Public Service Commission shall be appointed by the Cabinet, acting with the approval of the Nitijela, signified by resolution.

(3) At any one time, at least 2 members of the Public Service Commission shall be citizens of the Republic; and no member of the Commission shall remain a member if he ceases to be such a citizen.

(4) No person shall be appointed to be or shall remain a member of the Public Service Commission if he is or becomes a member of the Nitijela.

(5) No member of the Public Service Commission shall hold concurrently any office in the Public Service.

(6) A member of the Public Service Commission shall be appointed to hold office for a term of not more than 3 years, but shall be eligible for reappointment.

(7) In making appointments under Section 5 of this Article, and in fixing the terms of office of appointees, account shall be taken of the need to ensure that there is reasonable continuity in the membership of the Public Service Commission and that

the terms of individual members will not expire at the same time. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequent/v herein, with the term 'Republic']**

**Section 6. Tenure of Office of Members of the Public Service Commission.**

A member of the Public Service Commission may at any time resign his office by writing signed by him, addressed to the President; but he shall not be removed or suspended from office except on the like grounds and in the like manner as a judge of the High Court or of the Supreme Court.

**Section 7. Compensation of Members of the Public Service Commission.**

The compensation of the Chairman and other members of the Public Service Commission shall be specifically prescribed by Act.

**Section 8. Procedure of the Public Service Commission.**

(1) At least 2 members of the Public Service Commission shall concur in any decision of the Commission.

(2) Subject to this Section and to any Act, the Public Service Commission shall determine its own procedure.

(3) No proceeding of the Public Service Commission shall be questioned on the ground that a person who acted as a member of the Commission in relation to that proceeding was not qualified so to act.

**Section 9. Functions and Powers of the Public Service Commission.**

(1) The Public Service Commission shall be the employing authority for the Public Service and shall have the general oversight and control of its organization and management and shall be responsible for reviewing the efficiency and economy of all Departments and offices of government.

(2) Subject to any law, the Public Service Commission may prescribe and determine the conditions of employment of employees of the Public Service and shall have such other functions and powers as may be conferred on it by or pursuant to Act.

(3) Except as provided in paragraph (2) of Section 10 of this Article, the Public Service Commission shall be responsible to the Cabinet for the carrying out of its duties and the exercise of its functions and powers, and the Commission shall, as necessary, inform and advise the Cabinet in relation to any matter affecting the Public Service.

(4) Without prejudice to paragraph (3) of this Section, the Public Service Commission shall, as soon as practicable after the end of each calendar year, furnish to the Cabinet a report on the state of the efficiency and economy of the Public Service and on the work of the Commission for that calendar year. A copy of that report shall be laid before the Nitijela at its regular session.

#### **Section 10. Appointments within the Public Service.**

(1) All employees of the Public Service shall be appointed by or under the authority of the Public Service Commission and, subject to any law, shall hold office on such conditions as may from time to time be prescribed or determined by the Commission.

(2) In all matters relating to decisions about individual employees (whether they relate to the appointment, promotion, demotion, transfer, disciplining or cessation of employment of any employee or any other matter) the Public Service Commission shall not receive any direction from the Cabinet or from any other authority or person, but shall act independently and in accord with criteria relating only to the individual's ability to perform his duties.

#### **Section 11. Conditions of Employment in the Public Service.**

In establishing and revising the conditions of employment in the Public Service, the factors to be taken into account shall include:

- (a) the need for the Public Service to recruit and retain an efficient staff, and, in particular, to provide varied careers and adequate advancement for the citizens of the Republic of the Marshall Islands;
- (b) the need to afford reasonable opportunities of employment for the citizens of the Republic;
- (c) the need to act consistently with government economic and social policy, bearing in mind that the conditions of employment in the Public Service are a major element in the general well-being of the Republic. **[By way of Constitutional A Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands' that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

### **ARTICLE VIII**

#### **FINANCE**

##### **Section 1. Legislative Control of Public Revenue and Expenditure.**

(1) No taxes shall be imposed or other revenue raised and no public money shall be expended unless authorized by law.

(2) All revenues received by the Government of the Republic of the Marshall Islands shall be paid into an appropriate public fund or account established by this Constitution or by Act. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

#### Section 2. **The Cabinet to Take Responsibility for Budgetary Matters.**

(1) It shall be the responsibility of the Cabinet to make proposals to the Nitijela on all matters pertaining to the budget.

(2) Except with the recommendation or consent of a member of the Cabinet, the Nitijela shall not proceed further than the first reading of any Bill or amendment thereto introduced by a member of the Nitijela other than a member of the Cabinet, if that Bill would, in the opinion of the Speaker, dispose of or charge any of the public revenues of the Republic of the Marshall Islands, or revoke or alter (otherwise than by way of reduction) any disposition thereof or charge thereon, or impose or alter or abolish any tax, rate, due, fee or fine. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

#### Section 3. **The General Fund.**

(1) There shall be a Republic of the Marshall Islands General Fund.

(2) All taxes and other revenues and moneys raised or received by the Government of the Republic shall be paid into the General Fund, unless permitted by Act to be paid into some other fund or account established for a specific purpose. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'; that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

#### Section 4. **Withdrawals from the General Fund or other Public Account.**

(1) No moneys shall be withdrawn from the General Fund unless the issue of those moneys:

(a) has been authorized by the Appropriation Act or a Supplementary Appropriation Act; or

(b) has been authorized as anticipated or reprogrammed expenditure pursuant to Section 7 of this Article, or as an advance against a Contingencies Fund, pursuant to Section 9 of this Article; or

(c) is to meet expenditure specifically charged on the General Fund by this Constitution or by Act.

(2) No moneys shall be withdrawn from the General Fund except with the authority of the Secretary of Finance, who shall satisfy himself that the expenditure of those moneys has been approved pursuant to Section 5 of this Article and that the withdrawal is made in accordance with such other procedures as may be prescribed by law.

(3) No moneys shall be withdrawn from any other public fund or account unless the issue of those moneys has been authorized by or pursuant to Act.

#### **Section 5. The Cabinet to Supervise Expenditure and to Account to the Nitijela.**

(1) No public money shall be expended without the approval of the Cabinet or of a person or body to which such approval authority has been delegated by or pursuant to Act.

(2) Any such delegation, whether or not to one or more members of the Cabinet, shall not derogate from the Cabinet's collective responsibility to account to the Nitijela for all public expenditure and to relate such expenditure either to the appropriations made by the Nitijela or to the authority conferred by this Constitution or by Act.

(3) The Secretary of Finance may make a report to the Cabinet on the immediate and long-term financial implications of any proposal for the expenditure of public money, and he shall make such a report pursuant to a direction of the Cabinet or of the Minister of Finance given either generally or in the particular case.

(4) The Minister of Finance shall, as soon as practicable after the end of the financial year, lay before the Nitijela at its regular session the accounts relating to all public revenues and expenditure for that financial year.

#### **Section 6. The Annual Appropriation Bill.**

(1) The Minister of Finance shall, in relation to each financial year, lay before the Nitijela, as soon as practicable after the commencement of its regular session, budget estimates of the revenues and expenditure of the Republic of the Marshall Islands for that financial year.

(2) The budget estimates shall cover all expected sources of revenue payable into the General Fund, including loans raised or to be raised, and all proposed expenditure from the General Fund including expenditure charged on the General Fund by this Constitution or by any Act, or payable under a continuing appropriation.

(3) Budget estimates relating to the raising of loans shall be accompanied by an analysis showing the future cost of servicing and repaying the loan.

(4) Budget estimates of capital expenditure shall be accompanied by an analysis showing the estimated future cost of maintaining the asset created or acquired.

(5) The program areas categorized in the budget estimates for that financial year (other than items charged on the General Fund by this Constitution or by Act or payable under continuing appropriation) shall be included in a single Bill, to be known as the Appropriation Bill, which shall be introduced into the Nitijela to provide for the issue from the General Fund of the sums necessary to meet the expenditure incurred in those program areas and the appropriation of those sums for the purposes specified in the Bill. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

#### **Section 7. Anticipated and Reprogrammed Expenditure.**

(1) Subject to such restrictions as may be prescribed by Act, the Cabinet may approve the expenditure of such sums as it considers necessary:

(a) in anticipation of provision to be made in the Appropriation Act for any financial year:

Provided that the total amount issued and paid under this subparagraph in relation to any program area in any financial year shall not exceed the unexpended balance of the amount appropriated for that program area for the preceding financial year, together with an amount equal to 25 percent of the amount so appropriated; and all money so spent shall be included in the budget estimated for that financial year; or

(b) where, during the period between the passing of the Appropriation Act for any financial year and the end of that financial year, it is desirable that money appropriated in one program area should be spent in another program area:

Provided that the total amount of all sums issued and paid under this subparagraph in any financial year shall not result in an increase or decrease of more than 10 percent in the funds appropriated for any program area.

(2) A statement of the reprogrammed expenditure for any financial year shall be included in the accounts for that year laid before the Nitijela.

#### **Section 8. Supplementary Appropriation Bills.**

(1) If, after the passing of the Appropriation Act in respect of any financial year, the Cabinet finds it necessary or desirable to propose any expenditure over and above that authorized by that Appropriation Act, the Minister of Finance may lay before the Nitijela one or more supplementary estimates of the proposed expenditure and of the unappropriated revenues which are, or will be, available to meet that expenditure; and all requirements relating to budget estimates shall in each case apply.

(2) The program areas categorized in any such supplementary estimates shall be included in a Supplementary Appropriation Bill, which shall be introduced into the Nitijela to provide for the issue from the General Fund of the sums necessary to meet the supplementary expenditure incurred in those program areas and the appropriation of those sums for the purposes specified in that Supplementary Appropriation Bill.

## Section 9. **Contingencies Fund.**

- (1) If so empowered by Act, the Cabinet, on being satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, may authorize advances from the General Fund, to be charged against the amount prescribed as a Contingencies Fund, to meet that need.
- (2) A statement of all advances charged against the Contingencies Fund for any financial year shall be included in the accounts for that year laid before the Nitijela.
- (3) If the amount so advanced has not already been appropriated by a Supplementary Appropriation Act, the budget estimates for the next succeeding financial year shall include provision for such an appropriation.

## Section 10. **Lapse of Appropriations.**

The appropriations made by the Appropriation Act or any Supplementary Appropriation Act shall lapse at the end of the financial year to which that Act relates, or at the end of such longer period as that Act may have prescribed in relation to a particular program area.

## Section 11. **Compensation of Certain Officers Charged on the General Fund.**

- (1) The compensation payable to the holders of the offices of judge of the Supreme Court or of the High Court, of a member of the Public Service Commission and of Auditor-General shall be a charge on the General Fund.
- (2) During the term of office of a holder of any such office, his compensation may be increased but not reduced, unless as part of a general reduction of compensation applied proportionately to all persons whose compensation is required to be specifically prescribed by Act.

## Section 12. **Public Debt Charged on the General Fund.**

All debt charges for which the Republic of the Marshall Islands are liable shall be a charge on the General Fund. **[By way of Constitutional Amendment #1, the term 'Marshall Islands ' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'.]**

## Section 13. **The Auditor-General.**

- (1) The Speaker shall nominate and, with the approval of the Nitijela, signified by resolution, the President shall appoint an Auditor-General of the Republic of the Marshall Islands.

(2) The Auditor-General shall hold office during good behavior until he reaches the age of 72 years.

(3) The Auditor-General may at any time resign his office by writing signed by him, addressed to the Speaker; but he shall not be removed or suspended from office except on the like grounds and in the like manner as a judge of the High Court or of the Supreme Court.

(4) If the office of Auditor-General is vacant, or it appears that the Auditor-General is for any reason unable to perform the functions of his office, the Speaker shall nominate and the President shall appoint an Acting Auditor-General; and the Acting Auditor-General shall continue to perform those functions until a new Auditor-General is appointed and assumes office, or, as the case may be, until the Auditor-General is again able to perform the functions of his office.

(5) A person who has held office as Auditor-General shall not be eligible for appointment to any other office in the service of the Republic within a period of 3 years after ceasing to hold the office of Auditor-General. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'; that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

#### Section 14. **Compensation of Auditor-General.**

The compensation of the Auditor-General shall be specifically prescribed by Act.

#### Section 15. **Audit of Accounts.**

(1) The Auditor-General shall audit the public funds and accounts of the Republic of the Marshall Islands including those of all Department or offices of the legislative, executive and judicial branches of government and of any other public corporation or other statutory authority constituted under the law of the Republic unless, in relation to any such public corporation or other statutory authority, provision is made by Act for audit by any other person.

(2) The Auditor-General may exercise his responsibilities under paragraph (1) of this Section either in person or through officers of the Public Service who are subordinate to him, acting in accordance with his general or special instructions.

(3) For the purpose of carrying out his functions under this Article, the Auditor-General or any person authorized by him shall have full access to all public records, books, vouchers, documents, cash, stamps, securities, stores or other government property in the possession of any officer.

(4) The Auditor-General shall report at least once annually to the Nitijela, at its regular session, on the performance of his functions under this Article, and shall, in

his report, draw attention to any irregularities in the accounts audited by him.

(5) In the exercise of his functions, the Auditor-General shall not receive any direction from the Cabinet or from any other authority or person, but shall act independently.

(6) Nothing in this Section shall prevent the Auditor-General from offering any technical advice and assistance to any person or authority having a responsibility in relation to the public revenues and expenditure of the Republic. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'; that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

## ARTICLE IX

### LOCAL GOVERNMENT

#### Section 1. **Right to a System of Local Government.**

(1) The people of every populated atoll or island that is not part of an atoll shall have the right to a system of local government which shall operate in accordance with any applicable law.

(2) The system of local government shall in each case extend to the sea and the seabed of the internal waters of the atoll or island and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of that atoll or island is measured.

(3) The whole of the land and sea areas to which any system of local government extends shall lie within the jurisdiction of a local government; and, where there is more than one local government, the land and sea boundaries of their respective jurisdictions shall be as defined by law.

#### Section 2. **Power to Make Ordinances.**

(1) A local government may make ordinances for the area in respect of which it has jurisdiction, provided that such ordinances are not inconsistent with any Act, or, to the extent that it has the force of law in the Republic of the Marshall Islands, with any other legislative instrument (other than a municipal ordinance) or any executive instrument.

(2) Without limiting the generality of the power conferred by paragraph (1) of this Section, an ordinance may provide for the levying of taxes and for the appropriation of funds for local purposes. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

## ARTICLE X

## TRADITIONAL RIGHTS

### Section 1. **Traditional Rights of Land Tenure Preserved.**

(1) Nothing in Article II shall be construed to invalidate the customary law or any traditional practice concerning land tenure or any related matter in any part of the Republic of the Marshall Islands, including, where applicable, the rights and obligations of the Iroijlaplap, Iroijedrik, Alap and Dri Jerbal.

(2) Without prejudice to the continued application of the customary law pursuant to Section 1 of Article XIII, and subject to the customary law or to any traditional practice in any part of the Republic, it shall not be lawful or competent for any person having any right in any land in the Republic, under the customary law or any traditional practice to make any alienation or disposition of that land, whether by way of sale, mortgage, lease, license or otherwise, without the approval of the Iroijlaplap, Iroijedrik where necessary, Alap and the Senior Dri Jerbal of such land, who shall be deemed to represent all persons having an interest in that land.

(3) Nothing in this Constitution shall be construed so as to preclude its application to every place within the traditional boundaries of the archipelago of the Republic. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'; that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic'. By way of Constitutional Amendment #35, new Paragraph (3) was added. Amendment #1 exempted from its provisions new Paragraph (3).**

### Section 2. **Declaration of the Customary Law.**

(1) In the exercise of its legislative functions, it shall be the responsibility of the Nitijela, whenever and to the extent considered appropriate, to declare, by Act, the customary law in the Republic of the Marshall Islands or in any part thereof. The customary law so declared may include any provisions which, in the opinion of the Nitijela, are necessary or desirable to supplement the established rules of customary law or to take account of any traditional practice.

(2) This Section shall not be construed to authorize the making of any law that would defeat an otherwise valid claim under Article II.

(3) The Nitijela shall not proceed further than the first reading of any Bill or amendment to a Bill which, in the opinion of the Speaker, makes provision for any declaration pursuant to paragraph (1) of this Section unless a joint committee of the Council of Iroij and the Nitijela has been afforded a reasonable opportunity to make a report on the matters dealt within that Bill or amendment, and any such report has been published. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands']**

## ARTICLE XI

### CITIZENSHIP

#### Section 1. **Persons Becoming Citizens.**

(1) A person who, immediately before the effective date of this Constitution, was a citizen of the Trust Territory shall on that date become a citizen of the Republic of the Marshall Islands, if he or either of his parents has land rights.

(2) A person born on or after the effective date of this Constitution shall be a citizen of the Republic if:

(a) at the date of his birth, either of his parents is a citizen of the Republic: or

(b) he is born in the Republic and is not at his birth entitled to be or become a citizen of any other country.

(3) In case of doubt, an application for a declaration that any person is, pursuant to this Section, a citizen of the Republic may be made to and ruled on by the High Court. **[By way of Constitutional amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'; that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

#### Section 2. **Persons Who May Be Registered as Citizens.**

(1) Unless disqualified pursuant to paragraph (3) of this Section, any person who is not a citizen of the Republic of the Marshall Islands shall become a citizen by registration if, upon application, the High Court is satisfied either:

(a) that he has land rights; or

(b) that he has been resident in the Republic for not less than 3 years, and is the parent of a child who is a citizen of the Republic; or

(c) that he is of Marshallese descent, and that in the interests of justice his application should be granted.

(2) A person who has attained the age of 18 years shall not be registered pursuant to this Section as a citizen of the Republic, until he has taken an oath or made an affirmation of allegiance to the Republic.

(3) In the interests of national security or policy with respect to dual citizenship, the Nitijela may by Act provide for the disqualification of any class of persons who would otherwise be entitled to be registered as citizens pursuant to this Section, but who have not already been so registered. **[By way of Constitutional Amendment #1,**

**the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'; that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

### **Section 3. Powers of the Nitijela regarding Citizenship.**

The Nitijela may make provision by Act:

- (a) for the acquisition of citizenship of the Republic of the Marshall Islands by registration in cases not falling within Section 2 of this Article;
- (b) for the acquisition of citizenship of the Republic by naturalization;
- (c) for depriving of citizenship of the Republic, consistently with Article II, any class of persons who are citizens of the Republic only by reason of provision made by Act pursuant to this Section;
- (d) for depriving of citizenship of the Republic any class of persons who are citizens of the Republic and are or have become citizens of another country otherwise than by marriage;
- (e) for the express renunciation by any person of citizenship of the Republic. **[By way of Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic of the Marshall Islands'; that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic']**

## **ARTICLE XII**

### **AMENDMENT OF THE CONSTITUTION**

#### **Section 1. Power to Amend the Constitution.**

Any amendment of this Constitution shall become law only pursuant to this Article.

#### **Section 2. Classification of Amendments.**

(1) Any amendment of this Article, or of Articles I, II, or X, or of the principles of apportionment set forth in paragraph (4) of Section 2 of Article IV, or any amendment abolishing or altering in any fundamental respect (such as by altering the composition or method of selection or tenure) of any institution or office of government to which this paragraph applies, shall become law only in compliance with the provisions of Section 4 of this Article.

(2) Paragraph (1) of this Section shall apply to:

- (a) the Council of Iroij;
- (b) the President;
- (c) the Nitijela;
- (d) the Speaker and the Vice-Speaker;
- (e) the Cabinet;
- (f) the Supreme Court;
- (g) the High Court;
- (h) the Traditional Rights Court;
- (i) the Judicial Service Commission;
- (j) the Public Service Commission;
- (k) the Auditor-General;
- (l) the Chief Secretary;
- (m) the Attorney-General;
- (n) the Secretary of Finance.

(3) Any amendment not governed by paragraph (1) of this Section may become law pursuant to Section 3 or Section 4 of this Article, and Section 2 of Article IV may also be amended in accord with its provisions.

### **Section 3. Amendment by Action of the Nitijela and Referendum.**

Amendments of this Constitution made pursuant to this Section shall originate in the Nitijela, and, subject to this Section, shall be considered and disposed of as if they had been proposed by Bill. Any such amendment must first be approved on the second and third readings by at least two-thirds of the total membership of the Nitijela, provided that at least 60 days shall have elapsed between the second and third readings. Thereafter the amendment shall be valid for all intents and purposes as part of this Constitution if duly certified by the Speaker as having been so approved by the Nitijela and also by a majority of the votes validly cast in a referendum of all qualified voters, such referendum to be held as prescribed by Act.

### **Section 4. Amendment by Constitutional Convention and Referendum.**

(1) Amendments of this Constitution made pursuant to this Section shall be valid for all intents and purposes as part of this Constitution if duly certified by the Speaker as having been submitted to the people by a Constitutional Convention and approved by two-thirds of the votes validly cast in a referendum of all qualified voters, such referendum to be held as prescribed by Act pursuant to paragraph (4) of this Section or by the Chief Secretary pursuant to paragraph (10) of this Section.

(2) A Constitutional Convention may be convened only pursuant to this Section; shall be composed of members fairly representing all the people of the Republic of the Marshall Islands; shall be specially elected by qualified voters; shall number at least 10 more than the total membership of the Nitijela; shall be organized and shall proceed according to its own internal rules; and shall notify the Speaker of such amendments as it may adopt for submission to a referendum.

(3) It shall be beyond the authority of a Constitutional Convention to consider or

adopt amendments that are unrelated to or inconsistent with the proposals presented to it by the Nitijela or by referendum.

(4) Upon receiving the Speaker's certification that notice has been duly received in accord with paragraph (2) of this Section, it shall be the duty of the Nitijela, as soon as practicable, to provide by Act for a referendum among all qualified voters on the amendments submitted by the Constitutional Convention.

(5) The Nitijela may at any time provide by Act, stating the proposed amendments to be considered, for the holding of a Constitutional Convention, provided that such Act is approved at both the second and the third readings by two-thirds of the total membership of the Nitijela.

(6) The Nitijela may at any time provide by Act, stating the proposed amendments to be considered, for the holding of a referendum among all qualified voters on the question of calling a Constitutional Convention to consider such proposed amendments.

(7) Upon receiving a petition signed by not less than 25 percent of all qualified voters calling for a referendum on the question of holding a Constitutional Convention to consider the amendments proposed in the petition, the Speaker shall certify to the Nitijela that such petition has been received.

(8) It shall be the duty of the Nitijela, as soon as practicable after receiving the Speaker's certification under paragraph (7) of this Section, to provide by Act for a referendum among all qualified voters on the question of holding a Constitutional Convention to consider the amendments proposed in the petition.

(9) Upon the approval of a majority of the votes validly cast in a referendum held pursuant to paragraphs (6) or (8) of this Section, as duly certified by the Speaker, it shall be the duty of the Nitijela to provide by Act for the convening of a Constitutional Convention in accord with paragraph (2) of this Section as soon as practicable.

(10) If the Nitijela fails to provide for the holding of a referendum or Constitutional Convention within 60 days after the Speaker's certificate calling for the same is duly given, the Chief Secretary shall, by writing signed by him and countersigned by the Attorney-General, make provision for the holding of such referendum or Constitutional Convention as soon as practicable.

(11) The expenses of holding a referendum or a Constitutional Convention in accordance with provision made by the Chief Secretary pursuant to paragraph (10) of this Section shall be a charge on the General Fund:

Provided that the amount payable pursuant to this paragraph shall not, in the case of a referendum, exceed the amount expended in conducting the voting at the last preceding general election, and, in the case of a Constitutional Convention, exceed 2 percent of the total amount of money appropriated by the Nitijela in the last preceding financial year.

## **Section 5. Certification by the Speaker.**

Whenever a certificate of the Speaker is required by this Article as a precondition of the validity of an amendment, the Speaker shall give such a certificate upon being satisfied that the amendment has been approved in compliance with the requirements of this Constitution, and with any applicable law.

## **Section 6. Duty to Report.**

It shall be the duty of the Nitijela to make provision, at least once every ten years, for a report on the advisability of amending this Constitution, or of calling, or holding a referendum on the question of calling, a Constitutional Convention for the purpose of proposing amendments to this Constitution, and to publish that report.

# **ARTICLE XIII**

## **TRANSITIONAL**

### **Section 1. Existing Law to Continue.**

(1) Subject to this Constitution:

- (a) the existing law shall, until repealed or revoked, and subject to any amendment thereof, continue in force on and after the effective date of this Constitution;
- (b) all rights, obligations and liabilities arising under the existing law shall continue to exist on and after the effective date of this Constitution and shall be recognized, exercised and enforced accordingly.

(2) Any right, obligation or liability expressly acquired on behalf of the people of the Marshall Islands acting through their elected representatives shall become, on and after the effective date of this Constitution, a right, obligation or liability of the Government of the Marshall Islands.

(3) Nothing in paragraphs (1) or (2) of this Section shall affect the extent to which any right, obligation or liability of the Administering Authority, or of the Government of the Trust Territory or of the Marshall Islands District of the Trust Territory shall become, on and after the effective date of this Constitution, a right, obligation or liability of the Government of the Marshall Islands.

### **Section 2. Municipal Councils to be Local Governments.**

Every Municipal Council, whether chartered or not, existing immediately before the effective date of this Constitution shall be a local government for the purposes of Article IX.

### **Section 3. Transition to Government under this Constitution.**

Notwithstanding any other provision in this Constitution, and only for so long as their terms require, this Constitution shall have effect subject to any transitional provisions either made as described in Section 5 of this Article by the Marshall Islands Nitijela, or made as described in Section 7 of this Article by or pursuant to resolution of the Constitutional Convention, for the purpose of enabling any institution or officer of the government of the Marshall Islands District of the Trust Territory to function, as from the effective date of this Constitution, as an institution or officer of the Government of the Marshall Islands, or for the purpose of otherwise enabling this Constitution to function in an orderly manner as from its effective date.

### **Section 4. Conformity with the Trusteeship Agreement.**

Notwithstanding any other provision in this Constitution, and only for so long as the Trusteeship Agreement extends to the Marshall Islands as part of the law of the Marshall Islands, this Constitution shall have effect subject to any transitional provisions made as described in section 5 of this Article by the Marshall Islands Nitijela for the purpose of enabling the Government of the Marshall Islands under this Constitution to be conducted in conformity with the Trusteeship Agreement.

### **Section 5. Provisions Made by the Marshall Islands Nitijela.**

For all or any of the purposes referred to in Section 3 or Section 4 of this Article, the applicable transitional provisions shall be those made, before the effective date of this Constitution, by Act of the legislature of the Marshall Islands District of the Trust Territory, known as the Marshall Islands Nitijela. confirmed by Order of the Secretary of the Interior of the United States.

### **Section 6. Implementation of a Compact of Free Association with the United States.**

For the purpose of achieving consistency between this Constitution and any provision of a Compact of Free Association between the Government of the Republic of the Marshall Islands and the Government of the United States, and only for so long as that provision is in force, this Constitution shall have effect, notwithstanding any of its other provisions, subject to such provisions for that purpose as may be made by Act and be duly certified by the Speaker as having been approved by a majority of the votes validly cast in any plebiscite in which the people of the Marshall Islands also approve that Compact of Free Association.

### **Section 7. Residual Responsibility of the Constitutional Convention.**

If at any time before the effective date of this Constitution transitional provisions for all or any of the purposes referred to in Section 3 of this Article are adopted by or

pursuant to a resolution of the Constitutional Convention, in the exercise of its responsibility to make adequate provision for the exercise of governmental functions, those transitional provisions shall have effect for all intents and purposes as part of this Constitution, and shall prevail over any inconsistent provisions made as described in Section 5 of this Article.

## ARTICLE XIV

### GENERAL

#### Section 1. **Definitions.**

In this Constitution, unless the context otherwise requires:

'Child' includes adoptive child;

'Constitutional Convention', in relation to Article XIII, means the Constitutional Convention by which this Constitution was adopted; and, in relation to Article XII, has the meaning assigned to it in that Article;

'Customary law' means any custom having the force of law in the Republic of the Marshall Islands; and includes any Act declaring the customary law;

'Debt charges' include interest, sinking fund charges, the repayment or amortization of debt, and all expenditure in connection with the raising of loans on the security of the revenues of the Republic or of the General Fund, and the service and redemption of the debt thereby created;

'Existing law' means the law in force in the Marshall Islands immediately before the effective date of this Constitution: and includes any legislative or executive instrument having the force of law made or passed before that effective date and coming into force on or after that effective date;

'Financial year' means the year beginning on 1 October or such other period of twelve months as may be prescribed by Act:

'General election' means an election of all the members of the Nitijela held pursuant to Section 12 or Section 13 of Article IV;

'Joint committee' means a committee of members of the Council of Iroij and of the Nitijela, acting jointly:

'Joint conference' means a joint conference between members of the Council of Iroij and members of the Nitijela;

'Land rights' mean any right in any land in the Republic under the customary law or any traditional practice:

'Member of the Nitijela' means a person who has been declared elected to represent any electoral district and is holding office as a member of the Nitijela; and, unless the context otherwise requires, every reference in this Constitution to a member of the Nitijela shall, during any period between the dissolution of the Nitijela and the first meeting of the Nitijela after a general election, be read as a reference to a person who was a member of the Nitijela immediately before that dissolution;

'Municipal ordinance' means any ordinance duly enacted before the effective date of this Constitution by any municipality in the Republic, in exercise of powers granted under the laws of the Trust Territory of the Pacific Islands;

'Parent' includes adoptive parent;

'President elect' means the member of the Nitijela who has been elected to the office of President pursuant to Section 3 of Article V, in the period between that election and the time when he is either appointed to office or his election ceases to have effect, pursuant to Section 4 of Article V;

'Qualified voter' means a person having the right to vote in any electoral district at an election of a member or members of the Nitijela;

'Total membership,' in relation to the Nitijela, means the total number of members of the Nitijela provided for in or pursuant to Section 2 of Article IV; 'Vote of no confidence' means a motion of no confidence in the Cabinet made, voted upon and carried by a majority of the total membership of the Nitijela. **[By way of**

**Constitutional Amendment #1, the term 'Marshall Islands' as that term is first used herein, was replaced with the term 'Republic' of the Marshall Islands'; that Amendment also replaced the term 'Marshall Islands' as it appears subsequently herein, with the term 'Republic' However, Amendment #1 specifically exempted from its terms reference to the Marshall Islands in defining the term 'Existing Law']**

**Section 2. Persons Performing the Functions of an Office.**

A reference to the holder of any office provided for in this Constitution includes any person who, for the time being, is performing the functions of that office pursuant to law.

**Section 3. Determination of Quorum and Right to Vote.**

In any case where this Constitution prescribes the number of the members of any body which shall constitute a quorum, that number shall include the member of that body who is for the time being presiding over its deliberations; and that member shall have the right to vote on any question.

**Section 4. Dates, Days and Periods of Time.**

(1) In any case where this Constitution prescribes a date, or a means of fixing a day, or a period of time, for the performance of any duty or for the happening of any event or for any other purpose:

(a) that day, or the last day of that period shall be calculated by excluding the day from which any period of time begins to run;

(b) if that date or day or the last day of that period falls on a Sunday or a public holiday it shall be deemed to fall on the next day that is not a Sunday or a public holiday.

(2) In any case where the date or day prescribed by or pursuant to this Constitution for any election or for the meeting of any session of the Nitijela has passed, and no valid

election has been held or no session of the Nitijela has met, that election shall be held or that session of the Nitijela shall meet as soon thereafter as practicable; and if no other means is provided by or pursuant to this Constitution for fixing a new date or day for that election or the meeting of that session of the Nitijela, a new date or day may be fixed by the High Court.

#### **Section 5. Authentic Text.**

The Marshallese and English texts of this Constitution shall be equally authentic, but, in case of difference, the Marshallese text shall prevail.

#### **Section 6. Effective Date of this Constitution.**

Subject to the prior approval of this Constitution by a majority of the votes validly cast in a referendum, the effective date of this Constitution shall be May 1, 1979.

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#### **Note:**

A referendum was held on 11 December 1990, on Constitutional amendments pursuant to Article XII, Section 4 of the Constitution, the Constitutional Amendments (Referendum) Act 1990 (P.L. 1990-100), and the Elections and Referenda Act 1980 (P.L. 1980-20, as amended). The following Constitutional Amendments and operative provisions were adopted at a Constitutional Convention held in Majuro, the Republic of the Marshall Islands, from 19 February 1990 to 17 April 1990, pursuant to Article XII, Section 4 of the Constitution, and were approved by two-thirds of the votes validly cast in said referendum of all qualified voters. Certification of the Amendments was made on 14 March 1991, pursuant to Article XII, Section 4(1) of the Constitution and Section 5(2) of the Constitutional Amendments (Referendum) Act 1990 (P.L. 1990-100).

#### Amendment No. 1.

The Constitution is amended by inserting the words 'Republic of the' before the words 'Marshall Islands' where they appear, or appear for the first time in the Title, the Preamble and any Section of the Constitution, and by substituting the word 'Republic' for the words 'Marshall Islands' where they appear for a second time or more in the Preamble and any Section of the Constitution, except in the case of Article X, Section 1(4) and the definition of 'existing law' in Article XIV, Section 1(1); and the effect of this amendment shall be as if the Constitution had always so referred to 'the Republic of the Marshall Islands' or 'the Republic.'

#### Amendment No. 2

The third paragraph of the Preamble of the Constitution is amended as follows:

'This society has survived, and has withstood the test of time, the impact of other cultures, the devastation of war, and the high price paid for the purposes of international peace and security. All we have and are today as a people, we have received as a sacred heritage which we pledge ourselves to safeguard and maintain, valuing nothing more dearly than our rightful home on the islands within the traditional boundaries of this archipelago.'

Amendment No. 35

Article X, Section of the Constitution is amended by adding the following new paragraph (4):

'(4) Nothing in this Constitution shall be construed so as to preclude its application to every place within the traditional boundaries of the archipelago of the Marshall Islands.'

Amendment No. 40.

Any amendment to the Constitution adopted by this Constitutional Convention and duly certified by the Speaker in accordance with Article XII, Section 4(1), as having been approved by two-thirds of the votes validly cast in a referendum of all qualified voters:

(a) shall, as provided by that Section, be valid for all intents and purposes as part of the Constitution, subject only to such grammatical and numerical changes as may be necessary to enable the text of the Constitution as amended to be read as a consistent whole; and

(b) shall enter into force on the date of the Speaker's certificate.

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