TITLE 2 - ELECTIONS AND REFERENDA
CHAPTER 4 - CONSTITUTIONAL CONVENTION

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

CONSTITUTIONAL CONVENTION ACT, 2015

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TITLE 2 - ELECTIONS AND REFERENDA
CHAPTER 4 - CONSTITUTIONAL CONVENTION

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

CONSTITUTIONAL CONVENTION ACT, 2015

AN ACT to provide for a Constitutional Convention, prescribing its powers, duties and functions and for matters connected therewith

Commencement:			*October 19, 2015*
Source:			*P.L. 2015-46*
Amended by:	*P.L 2016-06*	*P.L. 2016-07*	*P.L 2016-08*
P.L 2016-09	*P.L 2016-19*	*P.L 2016-25*	*P.L 2017-41*
P.L 2017-42	*P.L 2017-43*	*P.L 2017-44*	*P.L 2017-51*

PART I - PRELIMINARY

§401. Short Title

This Act may be cited as the Constitutional Convention Act, 2015.

§402. Interpretation.

In this Act, unless the context otherwise requires:

(a) "**Committee**" means the Pre-Convention Committee established under this Act;

(b) "**Convention**" means the Constitutional Convention established herein;

(c) "**Speaker**" means the Speaker of the Nitijela;

(d) "**President**" means the President of the Constitutional Convention.

§403. Intent.

(1) Whereas the Nitijela is tasked with the responsibility at least once every ten years to report on the advisability of amending the Constitution or calling or holding a referendum on the question of calling or holding a Constitutional Convention, and that a Special Committee appointed by the Speaker of the Nitijela pursuant to Nitijela Resolution No.3 of 2013;

(2) Whereas the Special Committee had compiled a report on the advisability of amending certain parts of the Constitution, and presented to the Nitijela, and on January 20, 2014 adopted the report;

(3) Whereas all proposals, including those referenced under the Nitijela Special Committee 2013 Report are reproduced in the document attached herewith as Schedule 1; and

(4) Now therefore, it is the duty of the Nitijela in accordance with Article XII Sections 1, 2 and 4 of the Constitution to provide for the holding of a Constitutional Convention as follows.

PART II – CONSTITUTIONAL CONVENTION

§404. The Convention.

There is hereby created in accordance with Article XII Sections 1, 2 and 4 of the Constitution a convention to be known as the Marshall Islands Constitutional Convention and referred hereinafter as "the Constitutional Convention".

§405. Members .

The Constitutional Convention shall consist of 45 members of who shall be elected as follows:

(1) Thirty three (33) members to be elected from the electoral districts in the same manner as provided in Article IV Section 402 of the Constitution, as follows:

(a) Majuro shall be represented by five (5) members;

(b) Kwajalein shall be represented by three members;

(c) Aillinglaplap shall be represented by two members;

(d) Arno shall be represented by two members;

(e) Jaluit shall be represented by two members;

(f) Mili shall be represented by one member;

(g) Ebon shall be represented by one member;

(h) Lib shall be represented by one member;

(i) Namdrik shall be represented by one member;

(j) Maloelap shall be represented by one member;

(k) Wotje shall be represented by one member;

(l) Likiep shall be represented by one member;

(m) Ailuk shall be represented by one member;

(n) Aur shall be represented by one member;

(o) Namu shall be represented by one member;

(p) Wotho shall be represented by one member;

(q) Enewetak and Ujelang shall be represented by one member;

(r) Kili Bikini Ejit shall be represented by one member;

(s) Rongelap shall be represented by one member;

(t) Mejit shall be represented by one member;

(u) Utrik shall be represented by one member;

(v) Lae shall be represented by one member;

(w) Ujae shall be represented by one member;

(x) Jabat shall be represented by one member.

(2) 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 custom and traditional practice;

(3) In addition to subsection (1) above, twelve (12) other members who are of Iroij descent shall be represented by four (4) Iroijs and or Leroijs, elected in the following manner:

(a) Railik Chain (excluding Enewetak and Ujelang) shall be represented by four (4) Iroijs and/or Leroijs, elected in the following manner:

(i) one Iroij or Leroij from the domain (mojen) of Laelang Kabua;

(ii) one Iroij or Leroij from the domain (mojen) of Jeimata Kabua;

(iii) one Iroij or Leroij from the domain (mojen) of Loeak;

(iv) one Iroij or Leroij from the domain (mojen) of Litokwa;

(b) Enewetak and Ujelang shall be represented by one Iroij or Leroij;

(c) Mili shall be represented by one Iroij or Leroij;

(d) Arno shall be represented by one Iroij or Leroij;

(e) Mejit shall be represented by one Iroij or Leroij;

(f) Majuro shall be represented by one Iroij or Leroij;

(g) Airok Maloelap shall be represented by one Iroij or Leroij;

(h) Aur, Wotje, Utrik, Maloelap and Ailuk shall all be represented by one Iroij or Leroij;

(i) Likiep shall be represented by one Owner; **[amended by P.L 2017-41]**

§406. Qualification.

The qualifications to become a member of the Constitutional Convention shall be the same as those required to qualify as a member of the Nitijela, as set out under Article IV Section 404 of the Constitution.

§407. Elections.

(1) The election of members to the Constitutional Convention shall be governed by the provisions of the *Elections and Referenda Act 1981* and the provisions of such Act shall apply mutatis mutandis to the conduct of such elections. The election of Iroij and Leroij under Section 405(3) of this Chapter shall be by consensus. "Consensus" has the same meaning under the Election and Referenda Act.

(2) All persons who are qualified to vote pursuant to the Constitution and the Elections and Referenda Act, 1981 shall be eligible to vote at this election.

(3) The elections anticipated herein shall be conducted within a reasonable time from the passage of this Act. **[amended by P.L 2016-25]**

§408. Vacancies.

(1) Notwithstanding the provisions of the *Elections and Referenda Act 1981*, in the event of a vacancy occurring during the course of the Constitutional Convention, such vacancy shall be filled by the candidate who polled the next highest number of votes.

(2) In the event Subsection (1) does not apply because of successful candidate was unopposed, the Chief Electoral Office shall proceed under the provisions of Section 139 of the Election and Referenda Act, as provided in Section 107 of this Act, and shall set a time for nominations under Section 146 as soon as practicable:

(a) If the vacant seat is unopposed; the Chief Electoral Officer shall declare that person to be elected pursuant to Section 149 of the Election and Referenda Act;

(b) If there is more than one candidate, and the Chief Electoral Officer determines that a special election is impracticable, before the conclusion of the Constitutional Convention, no special election shall be held. **[amended by P.L 2017-43]**

§409. Pre-Convention Committee.

(1) There is hereby established a Pre-Convention Committee which shall consist of seven (7) members as follows:

(a) the Speaker of the Nitijela or his designee, who shall also serve as chairman of the Committee;

(b) six (6) other members appointed by the Speaker.

(2) The Pre-Convention Committee shall act as the Coordinating Committee and shall ensure accommodation, Convention administrative facilities and staffs are organized for the proper commencement and functioning of the Convention.

(3) The Committee may be assisted by the staff of the Nitijela as and when the Chairman deems it necessary.

§410. Session of the Convention.

(1) The Convention shall convene in Majuro within one month of the date of the election of the members and shall remain in session for a period of not more than thirty (60) sitting days. The term "sitting days" as used herein shall have the same meaning as defined under the Rules of the Procedures of the Nitijela, or may include such other days in which a Committee of the Constitutional Convention conducts hearing or official business relating to the Constitutional Convention.

(2) Provided the above sitting days in Subsection 1 shall not exceed to subsequent year.**[Sitting days increase from 30 to 60 by P.L. 2016-25][§1 is amended by P.L 2017-42][amended by P.L 2017-51]**

§411. President of the Convention.

(1) The Speaker shall preside over the initial meeting of the Constitutional Convention to elect the President of the Convention from amongst the membership of the Convention and shall thereafter vacate the Chair in favor of the President of the Convention.

(2) The President of the Convention shall preside over all sessions of the Convention and ensure the proper conduct of the meetings of the Convention.

(3) In the event that the President is temporary unable to perform his duties, he or she may designate from amongst the membership of the Convention, another member to perform such functions until such time that he or she is able to assume responsibility.

§412. Procedures of the Convention.

The Convention may adopt its own rules of procedure. The Convention may refer to the Rules of Procedures of the Nitijela for guidance, or in the case where a matter is not provided for in its own rules.

§413. Duties of the Convention.

(1) The Convention shall consider all proposals adopted by the Nitijela pursuant to this Act, as per Schedule 1 of this Act.

(2) The Convention shall not consider or adopt amendments that are not related to or inconsistent with, the proposals referred to it for

consideration by the Nitijela pursuant to Article XII, Section 404(3) of the Constitution.

(3) Upon the completion of the duties of the Convention, the President of the Convention shall forthwith, notify the Speaker of the amendments or proposals it has adopted for submission to a referendum.

§414. Powers of the Convention.

(1) The Convention shall have the following powers:

(a) the power to procure and receive all evidence, written or oral and to examine witnesses;

(b) the power to issue subpoenas requiring the attendance of witnesses or the productions of books, documents or any other items of interest related to the work of the Convention;

(c) the power to require that witnesses be sworn under oath or affirmation;

(d) the power to administer or cause to be administered an Oath or Affirmation.

(2) The Convention may request information from any government department and it shall be the duty of a government department to produce such information, except where in the opinion of the Head of the Department such information is considered confidential in the interests of National Security.

PART III – GENERAL PROVISIONS

§415. Issues of Subpoenas.

(1) Every subpoena issued by the Convention shall be issued under the hand of the President of the Convention or such other member authorized by the President and shall be executed or served by the Department of Public Safety.

(2) Every person served with a subpoena to appear before the Convention or to produce books, documents or other items of interest related to the work of the Convention shall appear before the

Convention for such purposes promptly at the time and place specified in the subpoena.

§416. Contempt.

(1) Any person who, without justification cause:

(a) fails to obey a subpoena issued under this Act;

(b) refuses to be sworn or affirmed for the purposes of the Convention, shall be liable for contempt.

(2) The President of the Convention shall have the authority to refer the matter to the Office of the Attorney-General for prosecution.

§417. Staff of the Convention.

The Convention may employ such staff or consultant as it may deem necessary for the proper functioning of the Convention.

§418. Compensation.

(1) Members of the Convention who are employees of the Public Service Commission shall be entitled to leave with pay.

(2) All members of the Convention shall be entitled to a sitting allowance at the Rates of one hundred dollars ($150.00) per sitting day.

(3) Any such increase relating to the above subsection (2) shall be within the amount that has been appropriated for the Constitutional Convention.

(4) Members of the Convention who are residents of Ebeye and other Outer islands shall be entitled to the necessary travel expenses and per diem at the standard government rate for Majuro Atoll, in addition to the sitting allowance.

(5) Staff of the Convention who are employees of the Public Service shall be entitled to leave with pay, while staff who are not employees of the Public Service shall be entitled to renumeration as determined by the Convention at such rates compatible with the salary rates in the Public Service Commission. **[amended by P.L 2016-25 to increase the sitting allowance from $75.00 to $100.00] [Further amended by P.L 2017-42 to increase from $100.00 sitting allowance to $150.00 and insert new §3]**

§419. Appropriation.

(1) A Fund in the initial amount of eight hundred thousand dollars ($800,000.00) shall be appropriated to defray expenses incurred in the elections to the Convention, the administration of the Convention, the allowances, fees and per diem of the members and staff of the Convention and any other cost related to the work of the Convention.

(2) The Fund shall be appropriated as the direct charge on the General Fund.

§420. Administration of Funds.

(1) The funds allocated for the purposes of this Act, shall be determined by the Speaker of the Nitijela jointly with the Secretary of Finance strictly for the purposes of this Act. The Speaker of the Nitijela shall ensure that all receipts, invoices and any other records of expenditures of such funds are maintained.

(2) The funds so allocated shall remain available until the work of the Convention has been concluded. Any balance remaining un-expended shall be transferred to the General Fund. **[amended by P.L 2017-51]**

§421. Effective Date

This Act shall take effect in accordance with the Constitution and the Rules of Procedures of the Nitijela.

SCHEDULE

(Section 403(3))

SUMMARY OF PROPOSALS

I: PROPOSALS THAT MAY BE EFFECTED BY NITIJELA INITIATIVE AND REFERENDUM

1. Proposal No. SC1 - Article XI, Section 402(1)(b), Citizenship by Registration: this subsection be amended to add the further requirement that a person applying for citizenship pursuant to this provision be married to the Marshallese spouse of the child upon whom citizenship is based;

2. Proposal No. SC2 - Article XI, Section 402(1)(c) be clarified by defining the term "interest of justice" to relate only to issue of descent and in not to extend beyond the 7th generation on descendants. This clarification can be defined under Article XIV, Section 1.

II; PROPOSALS THAT REQUIRE NITIJELA INITIATIVE, CONSTITUTIONAL CONVENTION AND REFERENDUM

1. Proposal No. SC3 - Article V, Section 402, Composition of the Cabinet: To amend Article V, Section 402 by the inclusion of a Vice-President as a member of the Cabinet.

2. Proposal No.SC4 – Article V, Section 403, The President: To amend this Section to provide for the direct election of the President by the people, rather than by the Nitijelā, and to provide for the added qualification that a candidate to the Presidency be a natural born citizen and for other matters connected therewith.

3. Proposal No. SC5 - Article V, Creation of Office of the Vice President: To amend Article V to provide for the creation of an office of Vice President, the direct election by the people of the Vice President, the qualifications thereto which shall include the proviso that a candidate to the Vice-Presidency be a natural born citizen, the duties and functions of said office and other matters pertaining thereto.

4. Proposal No. SC6 - Article V, Section 407, Vote of No Confidence in the Cabinet: To amend this Section by the removal of the provisions relating to removal of Cabinet and the President by motion for and vote of no confidence and the substitution thereof with provisions providing for the removal of the President,

Vice-President, or individual members of the Cabinet on the same grounds and in the same manner in which a judge of the High Court or Supreme Court is removed and for other matters relating thereto.

5. Proposal No. SC7 - Article X, Section 1, Traditional Rights of Land Tenure Preserved: To amend Subsection (2) to prohibit the sale of customary land except in instances where the bwij has expired.

6. Proposal No. SC8 - Article X, Traditional Rights: To amend this Article by inclusion of a provision which restricts the sale and ownership of land to citizens and the RMI Government.

7. Proposal No. SC9 - Article IV, Membership of the Nitijela: To amend Section 1 for the purpose of reserving 6 seats from the current 33 seats and from within the following electorates to be contested exclusively by women candidates: 2 from Majuro, 1 from Kwajalein, 1 from Ailinglaplap, 1 from Arno and 1 from Jaluit.

8. Proposal No. SC10 - Article VIII, Section 406, The Annual Appropriations Bill: To amend this section by the inclusion of language which provides a mandate that any and all Annual Appropriations Bill be balanced.

9. Proposal No. SC11 - Article VIII, Section 408, Supplementary Appropriations Bill: To amend this section by the inclusion of language which provides a mandate that any and all Supplementary Appropriations Bill be balanced.

10. Proposal No. SC12 - Article II, Section 412, Equal Protection and Freedom From Discrimination: To amend Article II, Section 412(2) to include "sexual discrimination" as a basis of discrimination.

11. Proposal No. SC13 - Article III, Section 1, The Council of Iroij: To amend Subsection (2) by increasing the total membership of the Council of Iroij by the inclusion of one additional iroij member from Mili Atoll.

12. Proposal No. SC14: Article III, Section 405, The Chairman and Vice-Chairman of the Council of Iroij: To amend Subsection (3)(a) to provide that the Chairman and Vice Chairman shall vacate their seats on the entry into office of a new Chairman or Vice-Chairman elected four (4) years thereafter, when the Council of Iroij first meets in that calendar year.

13. Proposal No. SC15 - Article VI, Section 403, The Traditional Right Court: To amend this Section to confer original jurisdiction in the Traditional Rights Courts to determine controversies relating to the customary law, traditional practices, land rights and titles or other related customary or traditional matters.

14. Proposal No. SC16 - Article VIII, Section 403, the Attorney General: to amend this Section to allow for the instituting, conducting or discontinuing any proceedings by a separate and independent office or body relating to fraud, misuse of public funds, misconduct in office, abuse of office, bribery, corruption, or other ethical conduct contrary to law by elected or high officials.

15. Proposal No. SC17 - To make appropriate provisions in the Constitution to provide for the establishment of an Office of the Ombudsman, the duties and responsibilities of such office, the manner of appointment, and removal, tenure and compensation.

16. Proposal No. 18 – To amend Article IV, Section 4 by adding a new section 3 and insert it after section 2 to stringent the requirements or the qualifications of candidates to the Nitijela to read as follows:

(3) Any person who is qualified to be a candidate must have land rights by birth and be of natural born citizen. **[Proposal No. SC19 inserted by P.L 2016-06.]**

17. Proposal No. 19 – Article X of the Constitution of the Republic: To amend Article X for inclusion of a new section to be inserted under Article X to provide for traditional dispute resolution of land tenure system in the Republic of the Marshall Islands.

(1) Any disputes regarding customary and traditional land tenure and traditional practices, and involving title, right and interest to land within a *Bwij* or *Bōtōktōk*, or between *Bwij* or *Bōtōktōk*, in the Republic shall, first and foremost, be resolved within the *Mojen, Mōñā* or *Bed*, by the Iroijlaplap, Iroijerik – where applicable, Alap and Senior Dri Jerbal.

Provided however, where any:

(a) Disputes regarding the Iroijerik title, right and interest, discussions shall be held between the Iroijlaplap, Alap and Senior Dri Jerbal;

(b) Disputes regarding the Alap title, right and interest, discussion shall be held between the Iroijlaplap, Iroijerik – where applicable, and Senior Dri Jerbal;

(c) Disputes regarding the Senior Dri Jerbal title, right and interest, discussion shall be held between the Iroijlaplap, Iroijerik – where applicable and Alap, and;

(d) Disputes regarding the Iroijlaplap title, right and interest, discussion shall be held between the Iroijerik – where applicable, Alap and Senior Dri Jerbal.

(2) The final determination from the *Mojen, Mōñā* or *Bed* regarding disputes between the titleholders pursuant to subsections (a), (b) and (c) above, shall be decided by the Iroijlaplap, and appealable to the Traditional Rights Court, only upon clear and convincing evidence that it was reached erroneously.

(3) The final determination from the *Mojen, Mōñā* or *Bed* regarding the Iroijlaplap title, right and interest shall be decided by the Iroijerik – where applicable, Alap and Senior Dri Jerbal, collectively. This Decision is appealable to the Traditional Rights Court. **[Proposal No. SC20 inserted by P.L 2016-08.]**

18. Proposal No. 20 – Article IV, Section 2 (1): To amend Article 4, Section 2(1) by including Enenkio Island as part of the electoral district with which it is closely associated in the Republic of the Marshall Islands to read as follows:

Narikrik, Erikub, Jemo, Taka, Bikar, Bokak, Enenkio, 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. **[Proposal No. 20 inserted by P.L 2016-07.]**

19. Proposal No. 21 – To amend Article XI, Section 2 (b) to stringent and prolong the period of resident as one of the citizenship requirements, from 3 to 10 years to read as follows:

(b) that he has been a legal resident in the Republic for not less than 10 years, and is the parent of a child who is a citizen of the Republic or…"**[Proposal No. 21 inserted by P.L 2016-09.]**

20. Proposal No. 22. – Article I, Section 4 (7): To amend Article I, Section 4 (7) which gives legal protection of witnesses giving evidence against himself, spouse, parent, child, or sibling, etc to read as follows:

(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. Notwithstanding, where:

(a) an allegation of violence is against the spouse or partner;

(b) an allegation of violence against a person who was at the material time under the age of eighteen years;

(c) an alleged sexual offence against a victim who was at the material time under the age below 18 years; or

(d) the person is attempting, conspiring or aiding and abetting, counselling and procuring to commit the offences in the categories above,

a person may be compelled to testify against his or her spouse, parent, child, or sibling. **[Proposal No. 23 inserted by P.L 2016-19]**

21. Proposal No. 23. - Article VIII, Section 15(2) of the Constitution of the Republic of the Marshall Islands to provide for the Auditor-General the ability to determine all matters relating to the employment of staff to bring the OAG in line with international best practice and United Nations Resolutions. To enable the Auditor-General to responsible for employment and termination of staff, Article VII, Section 15(2) of the Constitutions of the Public Service is amended to read as follows:

" The Auditor-General may exercise his responsibilities under paragraph (1) of this Section either in person or through Officers who are subordinate to him, acting in accordance with his general or special instruction."