

REPUBLIC OF THE MARSHALL ISLANDS

Introduction

The Republic of the Marshall Islands (RMI) consists of 26 low-lying coral atolls and 5 single coral islands spread out over two million square kilometres of the central Pacific Ocean. The atolls and islands form two roughly parallel archipelagos referred to as the Ratak (sunrise) Chain and the Ralik (sunset) Chain. The RMI has two heavily populated urban centres: Kwajalein Atoll (which also hosts a United States (US) missile testing facility) and Majuro Atoll (the capital and commercial centre). The population of approximately 53,000 has a median age of 19.2 and consists mostly of indigenous Marshallese. Three quarters of the population resides on Kwajalein and Majuro.

The RMI is a constitutional republic in 'free-association' with the US. The Constitution establishes a mixed parliamentary-presidential system of government. Elections for national parliament (the *Nitijela*) and local government mayors and council members are held simultaneously every four years under universal adult suffrage. The 2007 elections were the eighth set of elections since the Constitution was adopted in 1979. While the RMI does not have formally established political parties, two political groupings have dominated national politics since the late 1990s: the United Democratic Party (UDP), which ruled from 2000 to 2007, and the *Aelon Kein Ad* (AKA) party, which ruled from 1996 to 1999.

The RMI has very strong economic and diplomatic relations with the US. The Compact of Free Association between the two nations, first entered into in 1986 and amended in 2004, articulates political, strategic and economic cooperation and relations.

Elections in November 2007 ushered in a new coalition government in January 2008, headed by former Speaker Litokwa Tomeing. The coalition included members of the AKA party and several independent Members of Parliament (MPs). The new coalition government adopted a motto of '*Armij Mokta*' (people first) and pledged to place the interests of the people ahead of all other interests and to focus the government's efforts on resolving longstanding social and economic problems.

RMI leaders faced a number of challenges in 2008, including a major fuel and food crisis that forced the President to declare the country's first-ever State of Economic Emergency in July (fuel prices jumped by 65 per cent in the first six months of 2008). The problems endured in 2008 set the platform for the work of the new Government. President Tomeing established a Commission of Inquiry which spent several months investigating the elections and recommended several improvements to the electoral system.¹ The Government also faced the costly challenge of reviving the national airline, which had discontinued all operations in mid-2007. The *Armij Mokta* motto included a promise to improve many

¹Government of the Marshall Islands, *Marshall Islands Commission of Inquiry Releases Findings and Recommendations* (2008)





longstanding infrastructure and utility problems on Ebeye, Kwajalein (the second urban centre and home to some 12,000 residents). An 'Ebeye Situation Report' was prepared by a team commissioned by the Cabinet in early 2008 and several key recommendations from that report were implemented by the end of the year.²

In October, ten months into the new administration, a motion of no confidence was introduced by members of the United Democratic Party (UDP), the former ruling majority and the former party of President Tomeing. The motion was later withdrawn, but it was disruptive. For example, several major energy-related events and initiatives, including a high-level technical assistance mission from the Asian Development Bank were either postponed or cancelled.

In 2008, RMI leaders had to urgently resolve a looming December 18 deadline for the reconciliation of land lease arrangements between Kwajalein landowners and the Government (for the continued use of Kwajalein for the US missile testing facility). After intense lobbying and diplomatic dialogue, the US granted the RMI a five-year extension on the deadline to allow more time for the issue to be resolved internally. In December, several atolls and islands were inundated with high wave action, which prompted leaders to organise relief efforts (including efforts to secure disaster assistance from the US through the Compact). In summary, with these economic, political and natural disaster challenges, 2008 presented a difficult year for the leaders of RMI.

Section 1:

Principle 1 – Respect for the Law and the System of Government

- i) Respect for and upholding of democratic processes and institutions, the rule of law and the independence of the judiciary and the legislature to:
 - a) Allow for the peaceful and lawful transfer of power;

As reported widely by the media in late 2007 and early 2008, and as documented in reports issued in 2008 by the Commission of Inquiry,³ and the Pacific Islands Forum Election Observer Team,⁴ the 2007 national elections were beset by many problems.

A number of legal and administrative challenges arose from the 2007 elections, especially the counting and recounting of votes. Major controversies broke out in several atolls, with narrow margins between the top two candidates (such as Likiep Atoll). Disputes became particularly intense when election officials made the decision to add in previously uncounted ballots during the recount process; in at least one case, this led to a reversal of previously announced results.

Another problem during the elections stemmed from the handling of postal ballots. The Commission of Inquiry discovered that administrative mismanagement delayed the mailing of postal ballots to Marshallese residents in the US, which in turn resulted in many voters missing the postmark deadline for submission of their ballots. As a result, hundreds of ballots were disqualified and could not be counted, consequently disenfranchising many Marshallese voters residing in the US.

Media reports on the elections quoted a number of officials and witnesses who

²Government of the Marshall Islands, *Ebeye Situation Report 2008* (2008).

³Government of the Marshall Island, above n1.

⁴Pacific Islands Forum Election Observer Team, *Report of the Pacific Islands Forum Election Observer Team to the Republic of the Marshall Islands' Nitjela (Parliamentary) Elections* (2007)

<<http://www.yokwe.net/ydownloads/Reportso8/2007RMIelectionobserver.pdf>> at 17 July 2008



described the entire process as ‘tainted’ and ‘highly suspect’. The election problems complicated and delayed the election outcomes for a number of jurisdictions and many still argue that at least several candidates were ‘robbed’ of their election victories.⁵

The principle conclusion of the Commission of Inquiry was that while the initial causes of the problems stemmed from improper actions of the then-Minister of Internal Affairs, compounding factors included politically-influenced recruitment decisions of the Public Service Commission and inexperience of the Chief Electoral Officer and staff. It is safe to say that the poorly managed elections of 2007 threatened the principle of free, fair and open transfer of power in the RMI.

Despite the challenges posed by the elections, the transfer of power was made with the *Nitijela* selecting as President former Speaker Litokwa Tomeing, who defeated President Kessai Note by an 18 to 15 vote. Tomeing is the third *iroij* (traditional chief) to serve as President of the RMI. Another chief, Jurelang Zedkaia, was chosen as the Speaker of the *Nitijela*. The election results did not produce an outright majority to form government in the *Nitijela*, and forced Tomeing to assemble a coalition government, with Cabinet members selected from both major parties along with several independents.

- b) Respect and promote the separation of powers by ensuring the financial autonomy of the judiciary and Parliament, and ensure that the judiciary and Parliament are free from unlawful interference by the executive;**

Article VI of the Constitution establishes the independence of the Judiciary. In 2008, there were no reports of unlawful interference by the Executive in the Judiciary or the *Nitijela*. There were no significant changes in financial appropriations to the Judiciary and Parliament in 2008.

ii) Upholding a just, fair and honest government through:

- a) Respect for and enforcement of the decisions of the courts and independent tribunals;**

There were no reported cases of violation of court judgments in 2008.

- b) Enforcement of lawful instructions and lawfully created policies;**

RMI has in place the *Ethics in Government Act 1993* which calls for the creation of a Government Ethics Board⁶. However, this body is not active. The *Ethics in Government Act* also calls for *Nitijela* members to promulgate Ethics Regulations to further strengthen the Act and ethics rules. As of 2008, (15 years after the passage of the Act) this has not happened. In another example, the Public Accounts Committee (PAC), established by the Constitution to ensure that all public funds are used properly and effectively, remained inactive and had not met for nearly a decade. The PAC met in 2008 to review public spending and audits for the first time since the late 1990s. Yokwe Online reported on the inactivity of the Committee in 2006.⁷

- c) Compliance with the letter and spirit of the laws, which are made for the benefit of the public;**

Refer to instances reported in section b) above.

⁵*Marianas Variety* (Saipan), 7 January 2008.

⁶*Ethics in Government Act 1993* (Marshall Islands) ch 17.

⁷Yokwe Online, (2008) <http://www.yokwe.net/>



d) **Disclosure of fraud, corruption and mal-administration, of which the leader has become aware;**

Matters like fraud, corruption and mal-administration and how public officials and government employees are to be guided are set out in the *Ethics in Government Act 1993*. The details are discussed in another section below. However, in terms of disclosure, this is expressed in regard to conflict of interest. Principle (6) of the Ethical Conduct states that:

Public officials and Government employees shall give due disclosure of any conflict of interest such official or employee has or may have in the performance of his or her duties and recuse himself or herself of any involvement on the matter in his or her capacity as such an official or employee.

The *Criminal Code* [31 MIRC Ch 1] sets out provisions for disclosure of corruption, in particular, private gain. Some of these activities are defined as criminal offences. These include bribery (Part VI), counterfeiting (Part XI), forgery (Part XIII), larceny (Part XVI), misconduct in public office (Part XX) and private gain by public officers and employees (Part XXVII). The process for disclosure is discussed under s.173 on “private financial gain by public officials or government employees”:

- (1) Any public official or Government employee who uses his color of office to obtain private financial gain for himself or any member of his immediate family, either directly or indirectly, shall be guilty of a crime and upon conviction shall be liable to a fine not exceeding three (3) times the estimated value of that gain or \$10,000, whichever is greater, or a term of imprisonment not exceeding five (5) years, or by both such fine and imprisonment.
- (2) In adopting this section, it is the intention of the Nitijela that where there is a conflict of interest that will likely result in private financial gain, such public official or Government employee who stands to gain must:
 - (a) disclose in good faith all material facts relating to such gain; and
 - (b) recuse himself or herself from further involvement in the matter on behalf of the Government immediately upon becoming aware of the conflict of interest.
- (3) In the event there is a directly involved Government board of directors or other similar body of representatives of which that public official or Government employee is a member, disclosure should be made to that board or other such body. In the event there is no such board or other body, disclosure should be made to all public officials and Government employees who are directly involved in the referenced matter on behalf of the Government. In the event there is no such public official or Government employee directly involved in the referenced matter then to the public official's or Government employee's delegate who will assume the duties on his or her behalf.

The 2008 US State Department Human Rights Report for the RMI states that while the law provides criminal penalties for official corruption, in 2008 “the government did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. Corruption was a serious problem.”⁸

The *Ethics in Government Act 1993* established a Government Ethics Board to ensure compliance with the ethics principles and called for the promulgation of regulations specifying ethical restrictions and requirements for public officials and Government employees. There are no reports of the Government Ethics Board. Regulations in the Act that are required to be promulgated to date have not been acted upon.

Annual financial audits conducted by the Public Auditor (or commissioned by the Public Auditor but carried out by private auditors) are the only consistent and recurring process by which any form of mismanagement has been detected,

⁸U.S. Department of State, 2008 Human Rights Report: Marshall Islands. Bureau of Democracy, Human rights, and Labor, (2009) <<http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119047.htm>> at 1 April 2009.



documented and reported. In 2008, as in most years, a number of audits of public entities uncovered improper use of public funds (to varying degrees of materiality). The 2008 financial year audit of the national Government was the first one without any major qualifications.

e) Refraining from exertion of pressure, and abuse of persons carrying out their lawful duties;

There are occasional episodes of inappropriate exertion of pressure and influence on persons carrying out their lawful duties (including the above mentioned improper behaviour of the former Minister of Internal Affairs). As reported by the *Marshall Islands Journal*,⁹ and in the 2008 *Human Rights Report* by the US State Department,¹⁰ in late 2008, an Environmental Protection Agency (EPA) employee was criticised and subsequently terminated after making public comments on a matter pertaining to a conflict of interest arising from the Cabinet appointment of an employee of a construction firm to serve as the Chairman of the EPA Board (the Board has responsibility for regulating development and construction permits).

f) Refraining from using any legal immunity or privilege as a cloak or shield for behaviour of a lower ethical standard than that reasonably expected of the leader by citizens;

Legal immunity or privileges are set out in the Constitution for the traditional council – the Council of *Iroij* and the *Nitijela*. Article III, Section 10 on the Council of Iroij sets out the privileges of the Council. Section 10 (1) states that:

“Neither the Council of Iroij 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”.


Similarly, Article III, Section 16(1)-(4) sets out the 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) ... 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.

⁹*Marshall Islands Journal* (Majuro), 2008.

¹⁰U.S. Department of state, above n 8.



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- (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.

There were no reported cases of abuse of legal immunity.

- g) Establishing and empowering bodies, such as Ombudsman Commission, to independently investigate public complaints against government actions;**

The RMI does not have an Ombudsman or an ombudsman-like office. *The Ethics in Government Act 1993* provides a comprehensive code of ethics for officials and employees, including the establishment of the Government Ethics Board to oversee compliance. The Board comprises of the Attorney General, Chief Secretary and Auditor General. This body is not performing its functions.

Where the complaints are serious and have implications beyond individual complaints, inquiries are set up to look into the matter. In early 2008, following the poorly-run 2007 national elections, the President established a Commission of Inquiry to investigate and review the elections with a view to improving the electoral process (as described above). The President announced that the establishment of the Commission was done to avoid a repeat of the 2007 elections and to restore confidence in the electoral process. Members of the Commission included the Attorney General (Chairman) and several private sector representatives. The Commission was tasked to prepare and deliver to the President a report that analysed a range of issues, including election preparations, voter education, polling, postal ballot, and post-election activities (including recounts, petitions, and administration of ballots).¹¹

Sessions of the Commission, including several intense and heated discussions with witnesses, were aired on public radio. The Commission completed its report, which included numerous policy and administrative recommendations for action by the President and Government.

- h) Ensuring that the Auditor-General reports directly and in a timely manner to Parliament/Congress;**

The Auditor-General's reporting and audit responsibilities are set out in Article VIII Section 15(1)-(6) of the Constitution. Section (4) allows the Auditor-General to report directly to Parliament (*Nitijela*) and Section (5) protects its independence.

- (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; and,
- (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.

In 2008, the Auditor-General's office reported directly and in a timely manner to the *Nitijela*. While the Auditor-General performed its basic functions in 2008, the office remains under-resourced and under-staffed and has not had an Auditor-General in place since 2007. The *Nitijela* Public Accounts Committee held some meetings in 2008, but had not met for many years prior to 2008.

¹¹Yokwe Online, 11 February 2008.



iii) Protection of fundamental human rights:

The RMI is committed to upholding and protecting certain fundamental human rights. Article II of the Constitution on the Bill of Rights provides for a comprehensive coverage of fundamental rights. These rights are set out in 18 sections and cover the following:

- Freedom of thought, speech, press, religion, assembly, association, and petition;
- Slavery and involuntary servitude;
- Unreasonable search and seizure;
- Due process and fair trial;
- Just compensation;
- Cruel and unusual punishment;
- Habeas corpus;
- Ex -post facto laws and Bills of Attainder;
- Quartering of soldiers;
- Imprisonment for debt;
- Conscription and conscientious objection;
- Equal protection and freedom from discrimination;
- Personal autonomy and privacy;
- Access to judicial and electoral processes;
- Health, education, and legal services;
- Ethical government;
- Other rights, and
- Invoking Bill of Rights provisions.

However, a number of critical human rights issues continue to raise concern. In 2008, the most critical areas of concern (as documented in the 2008 US State Department Human Rights Report for RMI,¹² the Commission of Inquiry on the 2007 National Elections,¹³ the Demographic and Health Survey Report,¹⁴ and other sources) included: poor prison conditions; weak enforcement of anti-corruption laws; nepotism in government hiring; interference by elected officials in the prosecution of certain people; selective prosecutions; violence against women; severe child under-nutrition; weak protection of persons with disabilities; no provisions for the rights of workers to strike, for collective bargaining or for trade union organisation; no law setting minimum age for employment; no law concerning maximum hours of work or occupational safety and health; and poor access to government information.

Section 2:

Principle 2 – Respect for Cultural Values, Customs and Traditions

i) Respect for cultural values, customs, traditions and indigenous rights and observation of traditional protocols in the exercise of power:

The RMI Constitution preserves and protects its cultural, traditional and indigenous values, rights and interests. Article III of the Constitution establishes a 12 member Council of *Iroj* (chiefs) to protect these values, rights and interests. Specifically, the Council may consider any matter of concern to the RMI and may present its consideration to the Cabinet; including, the reconsideration of any Bill affecting customary law, or any traditional practice, or land tenure, or any related matter, which has been adopted on the third reading by the *Nitijela*.

¹²U.S. Department of State, above n 8.

¹³Government of the Marshall Islands, above n 1.

¹⁴Economic Policy, Planning and Statistics Office, Government of the Marshall Islands, *Marshall Islands 2007 Demographic Health Survey 2007, Summary Report (2008)*





Article VI, Section 4 establishes the Traditional Rights Court which determines questions relating to titles, land rights or other legal interest on customary law and traditional practices in the RMI. The decisions taken by the Traditional Rights Court are not binding unless the court concludes that justice so requires. Article X of the Constitution on traditional rights protects traditional rights over land tenure and also calls on the *Nitijela* to legislate on customary law to supplement the established rules of customary law or to take account of any traditional practice.

One such law is the *Customary Law and Language Commission Act 2004* and a series of Customary Law acts (all are included under Title 39 of the RMI Revised Code), and the *National Archives Act 1989* and the *Historic Preservation Act* (under Title 45 of the RMI Revised Code).

There were no reported instances of these protections, institutions, rights and interests over-riding or violating other elements of the law and system of government in 2008.

Section 3:

Principle 3 – Respect for Freedom of Religion

i) Respect for religious belief and practice:

Article II of the Constitution on the Bill of Rights protects freedom of thought, speech, press, religion, assembly, association and petition. Every person has the right to the free exercise of religion. Furthermore, nothing prevents 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. Discrimination based religion is not permitted. The *Council of Churches Act 1991* established the Council of Churches to promote the interests and rights of religious organisations and to provide specific social assistance.

An attempt was been made by some members of the *Nitijela* in 2007 and 2008 to discriminate against Islam by proposing an amendment to the Constitution. This group of MPs proposed to re-define of the word ‘religion’ in the Constitution by limiting it to Christianity. The MPs considered Islam a threat to the peace and security of the RMI.

There were no other reports of religious discrimination or violations of religious freedom in 2008.

Section 4:

Principle 4 – Respect for People on whose behalf Leaders Exercise Power

i) Proper use of official powers:

Article IV of the Constitution defines the powers of the *Nitijela*, in particular, the legislative power of the RMI and is to be exercised by Acts of Parliament. The *Nitijela* has 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.

Article V, Section 1 (3) of the Constitution on the Executive defines the powers of the Cabinet which include but not be limited to the following powers, functions, duties and responsibilities:

- (a) the general direction and control of the government of the Republic;
- (b) 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) 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) 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) 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 power of reprieve and pardon;
- (g) 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) 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) 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) make such contracts and other instruments on behalf of the Government of the Republic as it considers necessary.

In 2008, there was also widespread public discussion on corporate governance weaknesses in the RMI's numerous state-owned enterprises and agencies. A number of rules of transparency and accountability that are expected to be followed by the national government are not always enforced on enterprises and agencies, and sometimes this leads to conflicts and disagreements over power and authority. In 2008, this issue was highlighted in a rift that developed between members of the Cabinet and the National Telecommunications Authority (NTA), an enterprise owned mostly by the Government over NTA's decision to directly compete against a privately owned television station¹⁵. As reported in the media, members of Cabinet felt that NTA management was abusing its monopoly position in its decision to launch a new television service.

ii) Honesty in dealing with the people and Parliament, with any misleading information corrected at the earliest practical opportunity:

There were no reported instances of incorrect information purposely used to mislead the public.



¹⁵Giff Johnston, 'It's the NTA show', *Marshall Islands Journal* (Majuro), 5 September 2008.



iii) **Publicising information on legal wrongdoing, ethical lapses and false or misleading statements:**

As described in Section 1, the detection, prosecution and reporting of fraud, corruption, and mal-administration remains weak in the RMI.

iv) **Giving priority to official duties over private interests:**

The *Ethics in Government Act 1993* provide for a comprehensive code of ethics for Government officials and employees. It also establishes the Government Ethics Board to oversee compliance. Under this Act, an employee is defined as any employee of the Government, and includes any person who holds a commission of appointment, as a consultant. Government is defined as any national or local governmental branch, agency, commission, board, authority, or government wholly-owned or controlled corporation. A distinction is drawn between Government officials and employees, and public officials. The latter are persons elected pursuant to the *Elections and Referenda Act 1980*, as amended, and who are then in office.

The Principles of Ethical Conduct are set out in Part II of the *Ethics in Government Act 1993*. These are as follows:

To ensure that every citizen can have complete confidence in the integrity of the Government, each public official and Government employee shall respect and adhere to the fundamental principles of ethical conduct set forth below and to those which may be specified in regulations promulgated under this Chapter by the Government Ethics Board. Failure to so adhere shall result in a breach of ethical standards and, in addition, may constitute an offense under the Criminal Code, as amended, or otherwise.

- (1) A public official or Government employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing official business with, or conducting activities regulated by such official's or Government employee's agency or department, or whose interests may be substantially affected by the performance or nonperformance of duties;
- (2) A public official or Government employee shall not accept, as a public official or Government employee, any gifts or other items of monetary value from any person wherein the total value of such item or items over the course of one year is in excess of \$100 and wherein such acceptance is not related to any particular official action or business and is not related to any activities regulated by such official's or employee's agency or department and whose interests will not be substantially affected by the performance or nonperformance of duties;
- (3) Any gift or other item received as a public official or Government employee shall be reported to Cabinet within thirty (30) days following receipt of such gift or other item;
- (4) Public officials and Government employees shall put forth honest effort in the performance of their duties;
- (5) Public officials and Government employees shall not use public office for private gain;
- (6) Public officials and Government employees shall give due disclosure of any conflict of interest such official or employee has or may have in the performance of his or her duties and recuse himself or herself of any involvement on the matter in his or her capacity as such an official or employee;
- (7) Public officials and Government employees shall not use or take advantage of public office to commit any illegal acts;



- (8) Public officials and Government employees shall not violate the laws of the Republic or regulations promulgated thereunder;
- (9) Public officials and Government employees shall protect and conserve government property and shall not use it for other than authorized government activities;
- (10) Public officials and Government employees shall not engage in outside employment or activities that conflict with official government duties and responsibilities;
- (11) Public officials and Government employees shall satisfy in good faith their obligation as citizens; and
- (12) Public officials and Government employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this Chapter or in any regulations promulgated hereunder.

Some of these actions are criminalised under the *Criminal Code* [31 MIRC Ch 1], specifically under the title Public Officers and Employees in Part XXVII s.170-175 of the *Criminal Code*. They cover misconduct in public office, bribery, private financial gain and receipt of unauthorised payments, including penalties, and, except for s.173, are set out below in full:

§171. Misconduct in public office

(1) Every person who, being an employee or public official of the Government, commits any illegal act under color of public office is guilty of a crime and upon conviction shall be liable to a fine not exceeding three (3) times the value of any amount obtained or sought by the illegal act or \$1,000, whichever is greater, or a term of imprisonment not exceeding one (1) year, or by both such fine and imprisonment. Upon a second conviction of the same or another crime wherein the defendant was adjudged guilty as a public official or Government employee, the defendant shall be liable to a fine not exceeding three (3) times the value of any amount obtained or sought by the illegal act or \$1,000, whichever is greater, or a term of imprisonment not exceeding three (3) years, or by both such fine and imprisonment.

(2) Every person who, being a public official or Government employee, willfully and without lawful excuse fails to perform his duties of office is guilty of a crime and upon conviction shall be liable to a fine not exceeding \$1,000 or a term of imprisonment not exceeding one (1) year or both.

Upon a second conviction of the same or another crime wherein the defendant was adjudged guilty as a public official or Government employee, the defendant shall be liable to a fine not exceeding \$1,000 or term of imprisonment not exceeding three (3) years, or both.


§172. Bribe of public officials and government employees

(1) Every person who gives or offers as a bribe to any public official or Government employee anything the theft of which would be petty larceny is guilty of a crime and upon conviction shall be liable to a fine not exceeding \$100 or a term of imprisonment not exceeding six (6) months, or both.

(2) If the theft of the thing given or offered in Subsection (1) would be grand larceny, upon conviction the person shall be liable to a fine not exceeding three (3) times the value of such bribe or \$1,000, whichever is greater, or a term of imprisonment not exceeding five (5) years, or by both such fine and imprisonment.

(3) Every person who is a public official or Government employee and who asks, receives or agrees to receive any bribe upon any agreement or understanding that his vote, opinion or action upon any matter then pending, or which may be brought before him in his capacity as a public official or Government employee, shall be influenced thereby, is guilty of





a crime and upon conviction shall be liable to a fine not exceeding three (3) times the value of such bribe or \$5,000, whichever is greater, or a term of imprisonment not exceeding five (5) years, or by both such fine and imprisonment.

§174. Receipt of unauthorized rewards gratuities and emoluments

(1) Any public official or Government employee who knowingly asks, receives or agrees to receive any reward, gratuity or emolument or any promise thereof excepting such as may be authorized by law for doing an official act, is guilty of a crime and upon conviction, if the theft of such reward, gratuity or emolument would constitute petty larceny, shall be liable to a fine not exceeding \$100 or a term of imprisonment not exceeding six (6) months, or both.

(2) If the theft of the reward, gratuity or emolument referred to in Subsection (1) would be grand larceny, upon conviction the person shall be liable to a fine not exceeding three (3) times the value of the reward, gratuity or emolument or \$1,000, whichever is greater, or a term of imprisonment not exceeding five (5) years, or by both such fine and imprisonment.

§175. Termination of employment for felonious acts

(1) Any person adjudged guilty of a felony is prohibited from being a Government employee for a period of two (2) years from the date of judgment, unless this section is specifically waived by the Cabinet by resolution.

(2) Any public official who is adjudged guilty of a felony shall thereupon be disqualified from being a public official and shall immediately resign from office. In addition, such public official shall be prohibited from being a Government employee for a period of two years from the date of judgment, unless this section is specifically waived by Cabinet by resolution.

(3) Any person who becomes a Government employee in violation of this Section is guilty of a crime and upon conviction, shall be liable to a fine not exceeding \$500 or a term of imprisonment not exceeding six (6) months, or both.

(4) Any public official or Government employee who knowingly employs, as a Government employee, a person who has been prohibited from such employment in accordance with this Section is guilty of a crime and upon conviction shall be liable to a fine not exceeding \$500 or a term of imprisonment not exceeding six (6) months, or both.

While the letter of the laws do not prohibit public officials from holding and running private businesses, the spirit of the laws discourage any activities that may present potential conflicts of interest and the prioritisation of private interests over official duties.

As mentioned (see Section 1(f)), the Cabinet appointment of the Chairman of the Environment Protection Agency (EPA) constituted such a case. While at the helm of the EPA – an independent statutory authority and key agency mandated with protecting the environment of the Marshall Islands – the Chairman also remained a senior employee of one of RMI's biggest firms with interests in civil, mechanical, electrical, marine and construction services. In the course of carrying out his duties, the Chairman would have been required to review projects proposed by his employer. This appointment caused considerable controversy. One EPA employee's contract was allegedly terminated after he published a statement in the *Marshall Islands Journal* on the potential for conflict of interest of the appointment. The Office of the President directed the Attorney-General to conduct an investigation into this issue.¹⁶ At the end of 2008, the investigation was still underway.¹⁷

¹⁶*Marshall Islands Journal* (Majuro) 3 October 2008.

¹⁷U.S. Department of State, 2008 *Human Rights Report: Marshall Islands. Bureau of Democracy, Human Rights and Labour*, (2009) <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119047.htm> at 1 April 2009.



v) **Performance of public duties uninfluenced by fear of personal cost or any hope of personal benefit:**

Refer to Principle (5) of the Ethical Conduct under the *Ethics in Government Act 1993* and the provisions under the Criminal Code covering public officials and employers set out elsewhere above.

As reported in the Commission of Inquiry Report on the 2007 National Elections¹⁸, political interference into the performance of appointed officials did take place, in particular with the interference by a former Cabinet minister into the decision making authority of the Public Service Commission (during its selection of a Chief Electoral Officer).

vi) **Public and private conduct that does not lead to a conflict of interest, or in which the fair and impartial exercise of duties might be compromised:**

Refer to the Principles of Ethical Conduct (6) and (10) in the *Ethics in Government Act 1993* and the provisions set out for public officials and employers in the Criminal Code stated elsewhere above.

vii) **Ensuring that public facilities are used only for public purposes, and not for personal purposes unless authorised by legislation or by a public decision of Cabinet:**

Refer to the Principles of Ethical Conduct (9) in the *Ethics in Government Act 1993* and the provisions set out for public officials and employers in the Criminal Code stated elsewhere above.

Anecdotal evidence shows that some public officials do use their positions to benefit their private interests and political constituents, in particular and commonly on the improper use of public works assets and equipment.

Section 5:

Principle 5 – Respect for Members of the Public

i) **Treatment of members of the public honestly and fairly with proper regard for their rights and obligations.**

The underlying policy upon which the *Ethics in Government Act 1993* stands is fair and honest treatment of members of the public. This is set out in Part I of the Act as shown below.

- (1) The Nitijela of the Republic of the Marshall Islands declares and recognizes the right of the people to a responsible and an ethical government and the obligation of the government to take every step reasonable and necessary to conduct government in accord with a comprehensive code of ethics, consistent with Article II, Section 16 of the Constitution.
- (2) The Nitijela of the Republic of the Marshall Islands further declares and recognizes that it is the policy of the Government, in recognition of its constitutional obligation to the people, to govern in such manner as to foster public confidence in the integrity of the Government, and that public service is a public trust, requiring public officials and Government employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

There was no report of members of the public being treated dishonestly without regard for their rights and obligations.

¹⁸Government of the Marshall Islands, above n 1.



Principle 6 – Economy and Efficiency

i) Ensuring that public resources are not wasted, abused, or used improperly or extravagantly:

Investments in financial and development resources in RMI are not translating into significant improvements in major development outcomes, as documented in the RMI 2008 National Millennium Development Goals Progress Report,¹⁹ and other recent analyses. Altogether, in 2008 the RMI and its leaders saw continued fundamental challenges in the economic and efficient use of public resources.

The country is facing increasingly challenging economic and fiscal conditions, with 2008 considered as one of the most challenging years for the overall economy in recent history. High inflation on fuel and food prices prompted the President to declare the country's first-ever State of Economic Emergency. The year 2008 was the fifth year of the amended Compact with the US (which began in FY2004), and it was the first year for the RMI to have seen strong downturns in key macroeconomic indicators, with contractions seen in real GDP growth, formal employment, public sector revenues and expenditures, and aggregate wages and salaries. The RMI saw a 15 per cent jump in CPI inflation in 2008.

The US and Taiwan combined, continue to provide more than two-thirds of the national budget revenues, with over 90 per cent of health and education spending in the country financed by the US alone. Early in his administration, President Tomeing indicated his intention to request an increase in annual funding from Taiwan. Under a pact between RMI and Taiwan, RMI is to receive \$10 million in annual grant assistance. In addition to this, RMI receives ancillary aid (including occasionally one-off grants and emergency assistance), scholarships, and technical assistance. Furthermore, Taiwan has agreed to contribute \$50 million to the Compact Trust Fund over the course of the amended Compact period (through 2023).²⁰

Recent economic and fiscal analyses of the RMI (conducted by the International Monetary Fund²¹, the Asian Development Bank²², RMI government organisations and other entities²³) have continued to highlight the RMI's very high and unsustainable public payroll, which reached approximately \$34 million in 2008, equivalent to nearly 25 per cent of the national budget.

Official travel is an issue with significant impact on government budget. As documented in recent audit reports for the RMI, Government spending on travel and per diem grew from \$1.8 million to \$3.6 million between FY2001 and FY2007, a 95 per cent increase. Between FY2000 and FY2007 the Government spent some \$24 million on travel and per diem.²⁴ While health and education spending remain the highest (with each of the sectors receiving around US \$20 million annually), many areas considered less-essential continue see increasing public expenditure.

In 2008, the IMF reiterated warnings given in previous IMF reports and other reports over sustainability of the RMI's fiscal situation. These reports raise several key issues that require the immediate attention and action of leadership. These include tax reforms to improve enforcement and collections and a closer look at poverty implications of current taxes. The IMF estimates that the RMI is under-

¹⁹Government of the Marshall Islands, *National Millennium Development Goals: Progress Report* (2008).

²⁰Radio New Zealand International, 9 March 2008.

²¹International Monetary Fund, *Article IV Report: Marshall Islands* (2008).

²²Asian Development Bank, *Country Strategy and Program Update: Marshall Islands* (2007).

²³These include economic policy memos from the Economic Policy, Planning, and Statistics Office.

²⁴Eight reports – Government of the Marshall Islands, *Independent Auditors' Reports on Internal Control and Compliance: Year Ended September 30, 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007.*

collecting on its major taxes at upwards of \$10 million annually. Problems are also seen in the administration of public resources at the local government level, with many local governments remaining un-auditable year after year. The Majuro Atoll Local Government went into court-ordered receivership in 2008 as a result of a lawsuit brought against it by the Marshall Islands Social Security Administration (over its failure to meet legally required social security and health fund tax contributions).²⁵

Another major issue discussed by the IMF, the US Government Accountability Office (GAO) and other reports relates to the long-term sustainability of the Compact Trust Fund. IMF officials in 2008 strongly recommended that the RMI ensure annual budget surpluses so as to begin contributing more to the trust fund. Analysis by the GAO has suggested that the trust fund is not likely to meet expectations (in terms of annual contributions to the annual budget) once Compact grant assistance expires in 2023. Financial modelling on the trust fund suggests that the RMI must take stronger steps to manage its financial resources more prudently and to build the Fund over the next 15 years.

A number of recent analyses have argued strongly for a new round of fiscal and economic reforms to address the RMI's near-term fiscal sustainability problems as well as medium to long-term structural challenges.

Section 7:

Principle 7 – Diligence

i) Exercise of proper diligence, care, and attention:

In general, the need for exercising proper diligence, care and attention and to achieving high standards of public administration is noted by RMI leaders who are working to improve the situation. However, a number of issues continue to raise concern in this area, including the long-overdue appointment of a new Auditor-General. An appointment of an Auditor-General would help ensure that public accounts are properly reconciled, misuse and wastage is detected and acted on, and accountability is upheld.

Moreover, as reported widely in the media, the operations and safety of the national airline, Air Marshall Islands (AMI), continues to be of great concern. AMI was grounded for nearly nine months from mid 2007 to early 2008 due to mechanical and other problems. Taiwan contributed over \$2 million to the operations of AMI in 2008, although no major reform efforts have been made to improve the operations and financial viability of the company.

As mentioned, the IMF and other entities that have studied tax and revenue issues in the RMI have highlighted large discrepancies in tax collections due to poor enforcement. It is estimated that upwards of \$10 million in additional tax revenue should be collected, according to one estimate by the IMF.²⁶

Strong public concern was also expressed in 2008 over the viability of the urban centres' basic electricity systems. The high fuel inflation seen in 2008 led to a cash shortage in the two main utilities (on Majuro and Ebeye), prompting fears of rolling blackouts that would directly impact the economy and social conditions.

²⁵Yokwe Online, 31 December 2008.

²⁶*Marianas Variety* (Saipan), January 14 2009.





The RMI's main electric utility, the Marshalls Energy Company, has encountered cash flow problems, which have in turn drastically limited the amount of funds it has available to purchase diesel fuel for generators.²⁷

ii) Always seeking to achieve high standards of public administration:

Assessments by the World Bank²⁸ and the Asian Development Bank²⁹ for 2008 gave the RMI relatively low ratings on the quality of public administration. Recent studies have exposed areas where the quality of public administration are in need of improvement, including education, health, environmental protection, and in the promotion and protection of women's and children's rights.

One area of public administration that continues to receive scrutiny is public health. At present, nearly one-third of the Marshallese population lives in the US. In 2008, a number of media reports in Honolulu and the mainland US featured stories about 'high-risk' Marshallese that were entering the US and bringing with them contagious conditions such as tuberculosis. Programs are underway to provide basic assistance (at the household level) in the areas of renewable energy and water, but issues with respect to solid waste management, waste water treatment, and drinking water quality continue to pose health hazards. In addition, there is debate between state governments in the US and the federal government as to who should assume the cost of providing health services to Marshallese and other citizens from the Freely Associated States.³⁰

Following eight years of negotiations, the Marshall Islands has qualified to receive funding from the European Union. The country is set to benefit from more than US \$2.2 million to improve access to solar power and water, as well as improving service delivery capacity of non-profit organisations.³¹

Section 8:

Principle 8 – National Peace and Security

i) Promotion of peace, security and harmony:

The *Public Safety Act 1988* establishes the Department of Public Safety which consists of a Police Force, Fire services, prison and a sea patrol. RMI has a small sea patrol force and relies primarily on the US for its defence (as provided for under the Compact).

ii) Refusal to give or obey an illegal order to use force against another citizen:

There were no known instances of this in the RMI in recent years.

Section 9:

Principle 9 – Respect for Office

i) Exercise authority and interact with people in a manner that is open, transparent, accountable, participatory and decisive but fair and equitable:

Access to basic information such as public audit reports was difficult in 2008. Financial accountability has generally improved, with the number of audit qualifications falling sharply in recent financial audit reports.³² Performance

²⁷Yokwe Online, 24 June 2008.

²⁸World Bank, *Governance Indicators 2008: Marshall Islands* (2008) <http://info.worldbank.org/governance/wgi/sc_chart.asp> at 10 January 2009.

²⁹Asian Development Bank, *Country Performance Assessment: Marshall Islands* (2008) Asian Development Bank <<http://www.adb.org/Documents/CAPs/RMI/0100.asp>> at 12 October 2008

³⁰*Marianas Variety* (Saipan), 31 March 2008.

³¹*Marianas Variety* (Saipan), 17 April 2008.

³²Between FY2003 and FY2007 the total number of audit findings was steadily reduced from 33 to 15, based on official RMI audit reports (Five reports – Government of the Marshall Islands, *Independent Auditors' Reports on Internal Control and Compliance: Year Ended September 30, 2003; 2004; 2005; 2006; 2007*).



audits are not conducted and the benefits and returns on the relatively abundant resources going into various government ministries and agencies remains a major concern. Moreover, urban-rural, male-female and other disaggregated indicators show strong discrepancies and inequities in economic and social advancements.³³

The longstanding failure of the RMI to dramatically improve development outcomes is contributing to the loss of confidence among many people in the ability of their leaders to bring about progress and is raising concern among the RMI's closest development partners.

Under a previously agreed-to arrangement between the US and the RMI, a new long-term land use agreement for Kwajalein Atoll was to be finalised by the end of 2008. However, an ongoing disagreement between the RMI government and the Kwajalein landowners over the terms of the lease has prevented a full settlement of the issue between all parties.³⁴

ii) Seek to strengthen the integrity of a leader's Office and its effectiveness:

The *Ethics in Government Act 1993* and other laws, intend to maintain and strengthen the integrity of public office. The RMI does not have a Code of Conduct for Leaders, although some effort was made under a UNDP technical assistance project in late 2005, to adopt a comprehensive Code of Conduct for members of Nitijela. After intense discussion and debate, the initiative was shelved by Nitijela members who did not want such a Code of Conduct to be used against them³⁵. As discussed above, the *Ethics in Government Act 1993*³⁶ is ineffective.



³³Economic Policy, Planning and Statistics Office, Government of the Marshall Islands, 2006 *Community Survey*

<<http://yokwe.com/index.php?name=News&file=article&sid=1567>> (2006); Economic Policy, Planning and Statistics Office, above n 14.

³⁴Yokwe Online, 30 June 2008.

³⁵Government of the Marshall Islands, *Republic of the Marshall Islands Social and Economic Report 2005* (2006)

³⁶*Ethics in Government Act 1993* (Marshall Islands) ch 17, s 17.





Economic Policy, Planning and Statistics Office, Government of the Marshall Islands, *2006 Community Survey*

<<http://yokwe.com/index.php?name=News&file=article&sid=1567>> (2006)

Government of the Marshall Islands, *Ebeye Situation Report 2008* (2008)

Government of the Marshall Islands, *Independent Auditors' Reports on Internal Control and Compliance: Year Ended September 30, 2000*

Government of the Marshall Islands, *Independent Auditors' Reports on Internal Control and Compliance: Year Ended September 30, 2001*

Government of the Marshall Islands, *Independent Auditors' Reports on Internal Control and Compliance: Year Ended September 30, 2002*

Government of the Marshall Islands, *Independent Auditors' Reports on Internal Control and Compliance: Year Ended September 30, 2003*

Government of the Marshall Islands, *Independent Auditors' Reports on Internal Control and Compliance: Year Ended September 30, 2004*

Government of the Marshall Islands, *Independent Auditors' Reports on Internal Control and Compliance: Year Ended September 30, 2005*

Government of the Marshall Islands, *Independent Auditors' Reports on Internal Control and Compliance: Year Ended September 30, 2006*

Government of the Marshall Islands, *Independent Auditors' Reports on Internal Control and Compliance: Year Ended September 30, 2007*

Government of the Marshall Islands, *Marshall Islands Commission of Inquiry Releases Findings and Recommendations* (2008)

<<http://www.yokwe.net/ydownloads/Reportso8/COI.pdf>> at 15 August 2008

Government of the Marshall Islands, *National Millennium Development Goals: Progress Report* (2008)

Government of the Marshall Islands, *Republic of the Marshall Islands Social and Economic Report 2005* (2006)

International Monetary Fund, *Article IV Report: Marshall Islands* (2008)

Pacific Islands Forum Election Observer Team, *Report of the Pacific Islands Forum Election Observer Team to the Republic of the Marshall Islands' Nitjela (Parliamentary) Elections* (2007)

<<http://www.yokwe.net/ydownloads/Reportso8/2007RMlelectionobserver.pdf>> at 17 July 2008

2. Legislation

Constitution of the Republic of the Marshall Islands

Criminal Code (Marshall Islands)

Council of Churches Act 1991 (Marshall Islands)

Customary Law and Language Commission Act 2004 (Marshall Islands)

Ethics in Government Act 1993 (Marshall Islands)

Historic Preservation Act (Marshall Islands)

National Archives Act 1989 (Marshall Islands)

3. Other Sources

Johnston, Giff, 'It's the NTA show', *Marshall Islands Journal* (Majuro), 5 September 2008

Marshall Islands Journal (Majuro), 2008

Marianas Variety (Saipan), 7 January 2008

Marianas Variety (Saipan), 31 March 2008

Marianas Variety (Saipan), 17 April 2008

Marianas Variety (Saipan), January 14 2009

Radio New Zealand International, 9 March 2008

U.S. Department of State, *2008 Human Rights Report: Marshall Islands. Bureau of Democracy, Human rights, and Labor*, (2009) <<http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119047.htm>> at 1 April 2009

World Bank, *Governance Indicators 2008: Marshall Islands* (2008) <http://info.worldbank.org/governance/wgi/sc_chart.asp> at 10 January 2009

Yokwe Online, 11 February 2008

Yokwe Online, 24 June 2008

Yokwe Online, 30 June 2008

Yokwe Online, 31 February 2008

Yokwe Online, 31 December 2008

BIBLIOGRAPHY

I. Articles/Books/Reports

Asian Development Bank, *Country Performance Assessment: Marshall Islands* (2008) Asian Development Bank <<http://www.adb.org/Documents/CAPs/RMI/0100.asp>> at 12 October 2008

Asian Development Bank, *Country Strategy and Program Update: Marshall Islands* (2007)

Economic Policy, Planning and Statistics Office, Government of the Marshall Islands, *Marshall Islands 2007 Demographic Health Survey 2007, Summary Report* (2008)

