

## MAJOR LAW AND JUSTICE ACHIEVEMENTS

### RMI COURTS SYSTEM

- Under its constitution, RMI has a Westminster style government with 33 members of Parliament (Nitijela). Article VI of the Constitution provides for a judiciary “ independent of the legislature and executive powers.” The judiciary comprises of 5 levels of court as well as a Judicial Service Commission. The courts include the Supreme Court of Justice, the High Court, the Traditional Rights Court, District Court and the Community Court.
- A significant challenge which the judiciary has been dealing with pertains to the sustained increase in the demand on judge time and judiciary resources arising from cases involving corporations, maritime matters , and the enforcement of foreign judgments. Such demand take valuable time and resources from other cases. Even a few cases can require weeks of judge time in the High Court and the Supreme Court to resolved. In 2018, the only cases heard by the SCT were four non-resident corporate, enforcement of judgments, and maritime cases.
- Part of the sustained increase in the demand on judge time as well as judiciary resources is attributed to the continuing growth of the RMI Ship Registry and Trust Company, which in turn invites more non-resident disputes to be heard by the high Court and Supreme Court.
- A noted district court judge Hon Milton Zakios retired after 51 years of working, first when the Marshall Islands was part of the Trust Territory and later as district court judge under RMI jurisdiction.

RMI Judiciary Decisions 2018-2019: Summary of Selected Cases/Decisions: [2018-2019](#)

[Supreme Court](#)

1. *Asignacion v Rickmers Genoa Schiffahrtsgesellschaft MbH & Cie Kg*, SCT Civil 16-03 (06/20/18): Decision on Appeal. The Supreme Court affirmed the High Court decision that the case is barred by the statute of limitations. “Asignacion admits that he failed to file suit within the two-year RMI statute of limitations. His sole argument is that the statute is equitably tolled based on his prosecution of the suit in Louisiana. ‘Equitable tolling applies when the plaintiff is prevented from asserting a claim by wrongful conduct on the part of the defendant, or when extraordinary circumstances beyond the plaintiff’s control made it impossible to file a claim on time.’ *Stoll v. Runyon*, 165 F. 3d 1238, 1242 (9th Cir. 1999).”
2. *Chubb, et al., v Eleni Maritime Ltd and Empire Bulkers Ltd. (1)*, SCT Civil 18-05 (07/18/18): In its Order Denying Request to Vacate and/or Modify “Order Dismissing Interlocutory Appeal,” the Supreme Court held that the High Court’s partial summary judgment order is not a “final decision” from which an appeal lies as of right. That order is interlocutory. Marshall Islands precedent has held the Supreme Court is without power to entertain an interlocutory appeal absent certification by the High Court pursuant to MIRC Rule 54(b ). Certification was not obtained.
1. *MYIAC Edtn, Panama v Arce and Alfaro*, SCT Civil 17-06 (07/30/18): In its Opinion, the Supreme Court affirmed the High Court’s order denying two Costa Rican defendants’ motion to set aside a default judgment. The Supreme Court held that the complaint’s explicit allegations of fraud against a Polish lawyer were sufficient to support a reasonable inference that the two Costa Rican defendants had also engaged in fraudulent or deceitful behavior affecting two RMI corporations, *i.e.*, persons, thereby bringing them within the reach of the RMI’s long-arm jurisdiction statute, 27 MIRC 251(1)(n).
2. *Mongaya v AET MCV BETA LLC, et al. (1)*, SCT Civil 17-03 (10/10/18): Opinion. The Supreme Court affirmed the High Court’s Order Granting Defendants’ Motions to Stay Action Pending Arbitration. Prior to working on a vessel registered in the RMI, a Filipino sailor signed a Philippine Overseas Employment Administration Contract (POEA), which required the sailor, if injured, to participate in arbitration in the Philippines. The vessel owner and vessel operator were not signatories on the POEA contract. After the sailor was injured, the defendants sought to enforce the arbitration provision. At the time of the High Court decision, the RMI had acceded to but had not yet enacted the Convention of the Recognition and Enforcement of Foreign Arbitral

Awards. The Supreme Court held that non-signatories can enforce a contractual arbitration provision under the doctrine of equitable estoppel.

3. *Samsung v Focus and Karamehmet (4)*, SCT Civil 18-02 (09/06/18): In an Amended Opinion, the Supreme Court affirmed the High Court's order dismissing Samsung's action for enforcement of a foreign judgment. The High Court dismissed the enforcement action as (i) it did not have personal jurisdiction over the debtor, Karamehmet, nor (ii) was his property, shares of stock in Focus, located in the Republic. Mere ownership of shares in a Marshall Islands corporation does not constitute ownership of property in the Marshall Islands.
4. *Highland Floating Rate Opportunities Fund, et al. v. Dryships Inc., et al.*, SCT Civil 18-10 (09/09/19): In its Opinion, the Supreme Court affirmed the High Court's decision dismissing the plaintiffs' complaint for lack of standing to sue. The High Court had dismissed the complaint on several grounds, including lack of standing.
5. *Ishiguro v. Imam Joyia & Ahamadiyya Muslim Jama'*, SCT Civil 17-01 (09/10/19): In its Opinion, the Supreme Court affirmed the High Court's decision granting summary judgment in favor of Imam Joyia and the Ahamadiyya Muslim Jama'. The main issue presented on appeal was whether the Marshallese custom of *Drien Bujirok* required Ishiguro's consent, as senior dri jermal, to a ground lease modification reducing the annual lease payment of \$1,000.00 to the significantly lower amount of \$1.00. The ground lease and amendment were signed by Ishiguro's predecessor, Nena, as both alap and senior dri jermal. Nena held the senior dri jermal rights by virtue of a 1989 agreement between Nena and Ishiguro. The High Court found that Ishiguro failed to raise a genuine issue of material fact as his being the senior dri jermal at the time the lease and amendment were signed and that the custom of *Drien Bujirok* applied.
6. *Samuel v Chief Electoral Officer, et al.*, SCT Civil 18-01 (09/26/19): In its Opinion, the Supreme Court affirmed the High Court's decision in HCT CA 2016-121 on other grounds. Appellant Samuel was a candidate in the November 2015 election for mayor of the Majuro Atoll Local Government ("MALGOV"). However, he received fewer votes than one of his opponents, appellee Laddie Jack. Samuel petitioned appellee Chief Electoral Officer ("CEO") for a recount. Without ruling the recount petition, the CEO certified that Jack had won the race. Under the MALGOV Constitution, Section 8(1), the term of office of mayor commences on the day after the day on which his election or appointment is certified. After the certification, Jack assumed office as the mayor of MALGOV. Samuel sued the CEO for certifying the results before his recount petition

was resolved. Samuel maintained that until his recount petition was resolved, he was the holdover mayor of Majuro. Samuel argued that allowing Jack to serve as mayor on a “premature certification” would be an absurd result and that the Court should interpret Section 8(1) to avoid such a result. The Supreme Court found that the CEO’s certification of the election prior to resolving the recount petition was invalid, and “concluded that because Jack was unquestionably elected mayor, there is no basis whatsoever for removing Jack from that office and reinstating Samuel. As such, Samuel is left without any possible relief.” On these grounds, the Supreme Court affirmed the High Court’s decision in HCT CA 2016-121 on other grounds.

#### HIGH COURT DECISIONS: 2018 -2019. Summary of Selected Decisions Only.

1. *Samsung Heavy Industries Co. Ltd. v Focus Investment Ltd. and Mehmet Emin Karmehmet*, CA 2017-081 (02/07/18): The Court granted defendant Karmehmet’s Motion to Dismiss, holding that to maintain an action to enforce a foreign judgment, a plaintiff must demonstrate (i) that the court has personal jurisdiction over the defendant debtor or (ii) that the defendant debtor’s property can be found in the forum. On the facts presented, the Court concluded that it did not have personal jurisdiction over Karmehmet, a non-resident. Plaintiff Samsung could not demonstrate the Court had either general jurisdiction or specific jurisdiction over Karmehmet..
2. *RMI v Antolok*, Cr 2017-020 (02/07/18): The Court granted the Republic’s motion to use **hearsay evidence** at the preliminary hearing, holding that the admission of hearsay testimony in a preliminary hearing does not violate the defendant’s constitutional right to confront the witness, because the confrontation clause is a trial right that does not extend to preliminary hearings.
3. *Samuel v CEO, et al.*, Cr 2017-037 (08/31/18): This case is a challenge to the 2015 mayor’s election for the Majuro Atoll Local Government. Under the Elections and Referenda Act 1980, 2 MIRC Chp. 1 (“Elections Act”), the Electoral Administration headed by Chief Electoral Officer Robson Y. Almen (“CEO”) conducted the election on November 16, 2015. Appellant Samuel was a candidate for mayor, as was the eventual winner, Ladie Jack. The Court took judicial notice that of the 4,705 votes cast in the mayoral race, Ladie Jack received 2,285 votes, and Mudge Samuel received 2,132 votes. The difference in votes for Ladie Jack and Samuel was 153, i.e.,

3.25% of the votes cast. Under Section 180 of the Elections Act, Samuel requested that the CEO re-count the votes for the Majuro mayor election, and under Section 188(2) of the Elections Act he requested that the CEO refer to the High Court alleged violations of the rights of voters to vote. The CEO rejected Appellant Samuel's requests. Samuel claimed the CEO erred in rejecting his two requests. The Court, however, concluded that CEO did not err in rejecting Samuel's request for a re-count under Section 180 because Samuel had failed to show that a re-count would address any of the issues he raised or that there was a "substantial possibility" the election results would be affected by a re-count.

4. *Highland Floating Rate Opportunities Fund, et al. v. Dryships Inc., et al.*, CA 2017-198 (09/27/18): The Court granted the defendants' motions to dismiss for lack of standing, holding that with the re-domiciling and subsequent reorganization of the corporate debtor UDW and the discharge of UDW's loans, the plaintiff lenders lost their status as creditors of UDW and, therefore, no longer had standing to sue UDW's officers and directors for alleged fraudulent conveyances that gutted UDW of cash to pay the loans.
5. *Akhmedova v Akhmedov, et al.*, (1) CA 2018-160 (11/02/18): This is an action for the enforcement of a foreign money judgment. The petitioner, Akhmedova, is seeking enforcement an English court's money judgment against her former husband, Akmedov, and others. The Court in an order granting and denying motions to dismiss concluded as follows: (1) it had personal jurisdiction over two foreign corporations that registered as RMI foreign maritime entities and used their status as such to avoid the payment of the foreign money judgment; (2) it did not have personal jurisdiction over a third corporation and Akhmedov, a non-resident; and (3) the foreign money judgment was not a judgment for marital support or a penalty.
6. *Dieron v. Star Trident XII, LLC*, (1), CA 2017-245 (11/15/18): This is an action by a Filipino seafarer for personal injuries suffered in the course of his employment upon a vessel registered in the RMI. The seafarer sued the vessel owner but not the vessel manager with whom he had signed a contract to work on the vessel. The employment contract with the vessel manager contains an arbitration clause and a choice of law cause. The vessel manager moved to intervene to enforce the arbitration clause and the choice of law clause. The Court granted the vessel manager's motion to intervene. The vessel manager's and vessel owner's motions to compel arbitration and stay the matter remained pending.

7. *Dieron v. Star Trident XII, LLC, (2)*, CA 2017-245 (11/23/18): In the above action by a Filipino seafarer for personal injuries, the Court granted the vessel and the vessel manager's motion to compel arbitration and stay the matter under seafarer's contract with the vessel manager to work on the vessel.

2019

1. *Akhmedova v. Akhmedov, et al. (2)*, CA 2018-169 (9/17/19): The petitioner, Akhmedova, filed this action against her former husband, Akhmedov, and corporate respondents for the enforcement of two English money judgments dividing their marital assets. On motions to dismiss for lack of personal jurisdiction, the Court dismissed the case as to Akhmedov and two corporate respondents.
- 2.
3. LEGISLATIVE ENACTMENTS AND BILL 2018-2019.SELECTED ACTS AND BILLS.

1. *DECLARATION AND ISSUANCE OF THE SOVEREIGN CURRENCY ACT 2018 .*

This is an Act to declare and issue a digital decentralized currency as legal tender of the Marshall Islands for all debts, public charges, taxes, and dues. Its purpose is to declare and issue a digital decentralized currency based on blockchain technology as legal tender of the Republic of Marshall Islands. "Sovereign" or "SOV" is a digital decentralized currency based on blockchain technology, which will be issued by the Ministry of Finance, in accordance with this Act and shall be legal tender of the Republic of Marshall Islands. The commencement date is February 26, 2018.

2. *FRAMEWORK ON STRATEGIC COOPERATION AND PARTNERSHIP (IMPLEMENTATION) ACT, 2018*

The Act was enacted to provide for the implementation of the Framework on Strategic Cooperation and Partnership, by giving force and effect of law. It came into force on November 19, 2018 Source: P.L. 2018-91 The Framework would be construed and applied in a manner consistent with the provisions of the Constitution and the laws of the Republic of the Marshall Islands. It is a symbolic recognition of the time-tested

and friendly relationship between RMI and ROC, underpinned by historical and cultural ties.

*GOVERNMENT-EMPLOYMENT RETIREMENT PLAN ACT, 2019*

An enactment to provide for the establishment of a Government-Employee Retirement Plan with a qualified US fund management firm, and to create the authorization and regulation of the Government Retirement Fund of the Republic of the Marshall Islands.

*MARSHALL ISLANDS EMPLOYMENT EQUAL OPPORTUNITY ACT, 2017*

An enactment to ensure that all employees of a person or other entity doing business in the Republic of the Marshall Islands are treated equally in regard to obtaining employment benefits. Employee benefits shall include, medical, dental, vision and pharmaceutical insurance, life insurance, retirement and pension. Any person or other entity who violates a provision of this Act shall be liable to a monetary in the amount not less than \$5,000 and not more than \$50,000. An action to enforce the civil penalty against the person or entity may be commenced by the Attorney General or the affected employee or employees.

*REFERENDUM (CONSTITUTIONAL AMENDMENT) ACT, 2018*

An ACT to provide for the holding of Referendum pursuant to paragraph (4) of Article XII of the Constitution, to be conducted throughout the Republic of the Marshall Islands, pursuant to Article XII, Section 4, paragraph (4) of the Constitution, a national referendum among all qualified voters on the proposed amendments to the Constitution. The referendum shall be conducted in accordance with the Election and Referenda Act of 1980. The referendum shall be conducted on the date fixed by the Speaker of the Nitijela.

*RESTATEMENTS OF THE LAW (REFERENCE) ACT, 2018* Nitijela passed this Act to expressly provide that the courts of the Republic may look to, without being bound by, the American Law Institute's Restatements of the Law for a statement of the common law. Further, except as otherwise provided under customary law and traditional practice, the Constitution, or Acts of the Nitijela, the courts of the Republic may look to, without being bound by, the American Law Institute's Restatements of the Law for a statement of the

common law, and shall adapt them to the needs of the Republic taking into account the circumstances in the Republic from time to time.

*UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY IMPEMENTATION ACT, 2018* An enactment to implement the UNCITRAL Model Law on Cross-Border Insolvency to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

(a) Cooperation between the High Court and other competent authorities of the Republic and foreign States involved in cases of cross- border insolvency;

(b) Greater legal certainty for trade and investment;

(c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor; (d) Protection and maximization of the value of the debtor’s assets; and

(e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment. This Act applies where assistance is sought in the Republic by a foreign court or a foreign representative in connection with a foreign proceeding.

The Act does not apply to a proceeding concerning entities, such as banks and insurance companies, that are subject to a special insolvency regime in the Republic and the Republic wishes to exclude from this Act.

*UNICITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION ACT, 2018* An Act to implement the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which convention was acceded to by the Republic on November 6, 2006, but as yet has not been enacted into law. The proposed law is patterned after the UNCITRAL Model Law on International Commercial Arbitration.

*UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT, 2018.* This is an Act to adopt the Uniform Foreign Money-Judgments Recognition Act with certain modifications and to provide the exclusive bases for the recognition of foreign money judgments. It applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending, or subject to appeal. [P.L. 1996-23, §3.]

### GENDER EQUALITY ACT, 2019

This is an Act to create a new Chapter under Title 26 of the MIRC to recognize, protect, promote and enforce the human rights and fundamental freedoms of all women and girls , on equal basis with men and boys, and to further implement the legal obligations of the Marshall Islands as a State Party to the Convention on the Elimination of All Forms of Discrimination against Women; and to make related provisions.

### NITIJELA RESOLUTION 81

At the 40th Constitution Regular Session, 2019 Nitijela passed Resolution 81 calling on Nitijela to adopt the Report from Columbia University titled “ Radiation in Parts of Marshall Islands is higher than Chernobyl” that was conducted and published in 2019, taking into consideration the three studies published in Proceedings of the National Academy of Sciences (PNAS) by a Columbia research team, which showed that the concentration of nuclear isotopes on some of the island was well above legal exposure limit established in agreement between the U.S and RMI.

### NITIJELA RESOLUTION 83

At the 40th Constitution Regular Session, 2019, Nitijela passed Resolution 83 requesting Nitijela to declare National Climate Crisis as Low Lying Coral Atoll Nation, taking into consideration the Intergovernmental Panel on Climate Change’s Special Report of Global Warning of 1.5 degree centigrade and highlighting extreme vulnerability and special circumstances facing low lying coral attols such as the RMI.

### SIGNIFICANT REFORM: 2017-2019

- A Fourth Constitutional Convention was held at the Marshall Islands in 2017 in which 23 proposals were considered by its members/delegates to amend the Constitution of the Marshall Islands. Later, the parliament proposed further amendments to the Constitutional Convention Act, 2015, to include two additional proposals making a total of 25 proposals.
- The Constitutional Convention members recently adopted 8 Proposals with 11 Proposals not supported and four proposals yet to be considered. Although the members of the Constitutional Convention members have adopted the Proposals, it

still has to be approved by voters in a referendum by two-thirds before it can be enforced. This referendum is expected to take place sometime after the Constitution Convention ceases. The Post Concon Committee appointed the Speaker of Nitijela to plan and implement the referendum is looking at July 2020

### Adopted Proposals

#### Among the proposal of significance and adopted

- Proposal No. SC1 - Article XI, Section 402(1) (b):. By a vote of 36-0, Con-Con agreed to increase the number of years a person must be a resident in the RMI to qualify for citizenship involving being a parent of the Marshallese child and legally married to a Marshallese from three years to 10 years.
- Proposal No.SC 22 – 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. 22 inserted by P.L 2016-09.]
- Proposal No. SC16 - Article VI, Section 403: This amendment proposal to amend the Constitution’s provisions on the Traditional Rights Court was adopted by Con-con by a vote of 34-1. The proposed amendment, Article VI, Section 4 (3) provides the Traditional Rights Court with original Jurisdiction to determine disputes relating to titles or land rights or to other legal interests depending wholly or partially on customary law and traditional practice in the Republic of the Marshall Islands.
- Proposal No. SC17 - 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.
- Proposal No. SC18 - 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

- Proposal No. 19 – 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.]

The last part of the proposal which requires a President candidate to be natural born citizen was introduced after the High Court Niedenthal’s landmark case which states, naturalized citizens have a Constitutional right to run as candidates for the Nitijela (parliament). In that case Judge Dinsmore Tuttle granted Jack Niedenthal's motion for summary judgment on Wednesday, declaring that Mr Niedenthal qualified to be a candidate for election as a member of the Nitijela.

- Proposal No. 21 – 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. 21 inserted by P.L 2016-07.]
- Proposal No. 23. – Article I, Section 4 (7): To amend Article I, Section 4 (7)- The proposed amendments provide an exception which allows persons in a criminal case such as the wife to be compelled to give testimony against her husband.

The adopted proposals must be approved by two-thirds of votes validly casted in the referendum, before in the Amendments can be enforced. This referendum is expected to take place after the Constitution Convention ceases.

#### Proposals that were rejected

Among the proposals that were rejected by the Concon were:

- Proposal No. 23-Article VIII, Section 15 (2) ,to amend 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 the International Best Practise and United Nations Resolutions. The Con-con members did not support this proposal.

- 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.
- 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.
- 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.
- 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.
- 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.
- Proposal No. SC13 - 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.

*RMI TREATY STATUS BETWEEN 2018 AND 2019*

The following list indicates RMI’s status with respect to various international treaties and conventions between 2018 and 2019.

| Treaty/Conventions  | Done at and Date   | Status                |
|---|--------------------|-----------------------|
| International Covenant on Civil & Political Rights (CCPR) | New York, 12/16/66 | 01/19/2018. Accession |
|   | New York, 12/16/66 | Accession             |

|   |                                |                          |
|---|--------------------------------|--------------------------|
| International Covenant on Economic, Social & Cultural Rights (ICESCR)   | New York 12/21/65              | 04/08/2019. Accession    |
| International Convention on Elimination of Racial Discrimination  | Geneva 06/24/12                | 12/12/2018. Ratification |
| World Intellectual Property   |                                |                          |
| Beijing Treaty on Audio Visual Performances   | Marrakesh Morocco 27 June 2013 | 12/12/2018 Accession     |
| Marrakesh Treaty to facilitate access to published works for persons who are Blind, Visually Impaired or Otherwise Print Disabled |                                |                          |

*RMI Removed from EU List of Non Cooperative Jurisdictions*

On 10 October 2019, the European Union agreed to remove the Republic of the Marshall Islands from the EU list of non-cooperative jurisdictions for tax purposes. The Republic passed the necessary reforms to implement the commitments it had made to improve by the end of 2018 its tax police framework through the introduction of economic substance requirements ( eg: tax transparency and responsiveness to information exchange requests). In consequence, RMI will be moved from Annex I of the conclusions to Annex II as the country continues to be compliant to established commitments and criteria.

OFFICE OF THE ATTORNEY GENERAL

- Section 3 of Article VII of the RMI Constitution delineates the duties and responsibilities of the Attorney General and grants the Attorney General the authority to institute, conduct, or discontinue any criminal offence in the Republic. The Attorney General Act also empowers the AG to deal- communicate and correspond- directly with any agencies or organizations outside of the RMI on behalf of the RMI government.
- The Public Service Commission appoints the AG in consultation with the President of the Republic. Pursuant to *Section 605 of the Attorney General Act*, the Criminal Division of the AG's Office is charged with the responsibility to render prosecution services in the Marshall Islands.
- An active and crucial division of the Office includes the Civil Division which handles, among others, registration of corporations, government contracts, government leases agreements and all other forms of agreements, and citizenship issues.
- The Attorney General advises President and Cabinet, Ministries, public agencies and State Owned Enterprises, and has supervising authority over Labor Department and the Department of Immigration, and liaises closely with all national/public safety bodies including national and local police, and ports authority.

#### New Attorney General

- After almost a year, the Office of the Attorney General finally welcomed this month its new Attorney General, Richard Hickson. The new Attorney General is not new to the Marshall Islands. He was an associate judge in the RMI High Court when he left for his home country, Australia in 2000. Prior to that he was an attorney at the Office of the Attorney General, and later served as Legal Counsel to the Nitijela (Parliament). He was appointed by Cabinet onto a number of national commissions of inquiry. Mr. Hickson will soon be joined by his wife and children from Australia .

#### *Staff*

Until recently, the professional staff status of the Office which originally stood at 10 attorneys has been reduced to its current status of 5, including the Attorney General. Two of the attorneys have been on temporary leave since July as required by Public Service

Commission regulation for candidate standing for national elections. One attorney is on a one-year educational leave in Hawaii. Two others have opted to transfer to the Micronesian Legal Service. The reduction by 50 percent of the professional work force has placed a strenuous load upon the remaining attorneys at both the criminal and civil divisions.

### Criminal Cases Filed

During the last fiscal year, the High Court of the Republic of the Marshall Islands heard and disposed 29 cases filed by the Criminal Division of the Office of the Attorney General. Twenty-three (23) of these were filed in Majuro and six (6) in Ebeye. A breakdown in terms of their specific offences and gender and juvenile involvement may be found in Annual Report of the High Court 2018-2019.

- *Cases Removed to the RMI Supreme Court.*
  - The Division has been involved in preparing against appeals by defendants in one (1) criminal case and the (3) civil cases. The hearing for the first case, *Appellant Alee Phillip v The Republic* 2018 has been deferred to 2020. The appealed is against the sentencing by the High Court of a 16-year juvenile who was found guilty for the murder of a father and his three-year daughter, and for sexually assaulting the daughter prior to killing her, received a sentence of 50 years imprisonment.
  - The remaining three cases are associated with national and local elections. The case of *Mudge Samuel v CEO Robson*) which dates back to 2015 general election, and was heard in August this year in which the SCT affirmed the decision of the High Court in favor of the Republic. The Supreme Court decision issued in late September 2019 affirmed the ruling of the High Court.
  - The other two cases: *Betwell Lekka v CEO Ben Kiluwe* ( Civil Action 2019-046) and *Konou and Lehman v. CEO Ben Kiluwe and Johnathen Kawakami* ( Civil Action 2019-069), were consist of complaints filed by plaintiffs against the Chief Election Officer, in opposition to P.L 2016-028 which eliminated voting by postal ballots for Marshallese citizens residing outside of the Marshall Islands. The High Court had agreed, through a motion by the Defendant Republic to consolidate both cases being identical in nature, and to have them removed to Supreme Court for judicial review for interpretation and effect. *See SCT opinion below*

## CORRUPTION

### *Corruption: Fraud cases on the increase*

- In its latest Semi Annual Audit Report early September 2019, the Auditor General stated that the number of fraudulent activity by government officials tripled in 2019 compared to its earlier report to Nitijela in January. A total of 13 news allegations of theft of government money, bribery and abuse of public office are currently under investigation by the Auditor's General's Office. There is now a total of 27 investigations by the auditor's office into fraudulent activity in government over the past 12 months. The office continues to pursue investigations until there is sufficient evidence for probable cause for conviction or civil recovery proceeding before the cases are referred to the Office of the Attorney General for prosecution.
- The Criminal Division of the Attorney General has also reviewed approximately 6 reports from the Office of the Auditor General involving fraudulent practices by employees of both national, local government and SOE agencies. These include complaints associated with Public School System( PSS), Arno Atoll local government, Marshall Islands Social Security Administration (MISSA), Historical and Preservation Office (HPO), Majuro Energy Company (MEC) and Environmental Protection Agency (EPA). The PSS and local government cases are awaiting trial hearing in August and September this year. The alleged accused/suspects in the remaining four have all fled abroad to the United States. The Division is completing the necessary review of these reports and will prepare filing in court as soon as it receives from the Office of the Auditor General affidavits for each of the case reviewed.
- The Office of the Attorney General has sought and has been assured of support from the U.S if it were to consider seeking the assistance of the United States Government in extraditing those involved.
- RMI/Office of the Attorney General is a member of the PILON Working Group on Corruption.
- In August this year, RMI Chief Prosecutor attended and participated among other WG members in a two-day PILON sponsored workshop on Corruption. The workshop focused on a review of the WG's main working paper for submission at the PILON Annual Meeting in Apia, Samoa.

## CYBERCRIME

- RMI Office of the Attorney General is a member of the PILON Working Group on Cybercrime.

The following laws address Cybercrime related activities:

- Criminal Code Act 2011
- Anti- Money Laundering Regulation, 2002
- Banking Act 1987
- Securities and investment Act ; 18 MIRC Ch 1].
- Trust Act 1994 [50 MIRC Ch1].

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In June of 2018, two of the RMI prosecutors attended a PILON sponsored cybercrime workshop in the Kingdom of Tonga which covered all aspects of evidence gathering and prosecution involving online child abuse. This is a particularly new area in prosecution for RMI and is a serious threat to the region on account of its global nature and therefore the complicated jurisdictional issues involved.

- In June of 2019, three prosecuting attorneys from the Office of the Attorney General attended a three- day meeting sponsored by PILON in Vanuatu. The meeting was well attended by experts in the field of cybercrime prosecution including representatives from INTERPOL, Budapest Convention, USDJ senior prosecutor and FBI special agents, and special expertise personnel from New Zealand and Australia. Discussions included presentation and analysis of individual country cases.
- To date, RMI does not have a completed cybercrime legislation- online child abuse offences and other cybercrime offences including anti-money laundering- which deficiency has, and could impede the ability of the Republic to prosecute alleged abusers. The existing legislative draft was written 10 years ago will need to be revisited and redrafted with assistance from Budapest Convention experts.
- Latest information and updates from FBI indicated that even though the total amount of money hacked out of RMI Trust Fund kept in an investment bank abroad in 2018 has been fully recovered, the investigation to determine the final culprits would still be continuing.

## SEXUAL AND GENDER BIAS VIOLENCE (SGBV)

- RMI Office of the Attorney General is a member of PILON Working Group on SGBV.
- In the month of May, 2019, one of the prosecuting attorneys from the Office joined team with an associate judge from the RMI High Court and attended a PILON sponsored workshop in Apia, Samoa on issues and evidentiary challenges associated with SGBV.
- As member of the WG, the Office continues to participate in teleconferencing as well as contribute to the review of the SGBV manual of principles and legislative drafts aimed at minimizing duress for the victim of sexual assault while enhancing where appropriate the victim's rights to protection as a victim in court.
- RMI relies substantially on Criminal Code 2011 and Child's Rights and Protection Act 2015 for prosecution.

#### A Mixture of Cybercrime and SGBV.

- Earlier this year, RMI prosecution filed criminal charges against 5 individual male persons for sexual assault against a 21 years old woman whom they found lying intoxicated on the ground some distance from a pub. One of the accused had videotaped the assault using his phone and uploaded the video images on the internet which went viral. Difficulty arose when the images from the phone used to videotape were erased and could not be recovered. Provisions from the RMI Criminal Code 2011 were used to prosecute. Four of the accused pleaded guilty as charged, confessed and agreed to an individually stipulated settlement which included terms of imprisonment. The remaining accused is presently deciding on whether to settle or go for bench trial.

#### COLLABORATION WORK

##### *Collaboration with USDJ In Arresting and Deporting or Extraditing Persons charged in U.S.*

- In May 2018, an extradition request was received by the Office of the Attorney General from the U. S Department of Justice and State Department, via Ministry of Foreign Affairs and the U.S. Embassy in Majuro. The request sought assistance in extraditing a Marshallese citizen who was once serving with the U. S forces in Afghanistan. The Attorney General invited the Criminal Division to assist prepare the

necessary documentations in support of an arrest warrant by Cabinet and High Court. The Attorney General, in collaboration with officers of the MIDP, successfully arrested the concerned individual on behalf of the United States Government.

- In late September 2019, the Office of the Attorney General joined forces with RMI Director of Immigration, the National Police, U.S embassy in Majuro and U.S embassy on Manila , Philippines, and U. S Marshalls from Hawaii, in arresting and deporting a United States citizen in response to a request for assistance from the U.S Department of Justice. The person involved had fled the United States in 2015 and was, until his arrest hiding out in the Marshall Islands in order to escape prosecution in the United States courts for 15 counts on child molestation in Darien, Connecticut, United States. At the time of his arrest, he was living in Majuro with an unsuspected local Marshallese family.
- In the same month of September 2019, the Office of the Attorney General collaborated with the U.S embassy in Majuro, special agent from U.S embassy in Manila, and the commanding authority at the U.S Military Base in Kwajalein Atoll in arresting and deporting a U.S citizen employed at the base on illicit-drug related charges.

#### *Collaboration with U.S Drug Enforcement Agency*

- In collaboration with the U.S. Embassy in Majuro, the Criminal Division was finally able to secure in May 2018, the assistance of two (2) agents of the U.S. Department of Drug Enforcement Agency (DEA) in Guam, to visit Majuro and to examine the haul of about 18 kilos of suspected cocaine found in Enewatak, and which were confiscated by Enewatak local police and officials of Enewatak local government. The confiscated packages containing the suspected substance were weighed, tagged and labeled for identification. They were then accompanied from Enewatak local police to Majuro by a senior MIDP police investigator to Majuro police station where they were kept until the arrival of the two DEA agents. All of the packages were taken by the DEA agents to Guam and from there, sent to DEA labs in mainland USA for testing. Results of test received confirmed a high cocaine content level.
- Further collaboration between DEA and Office of the Attorney General occurred earlier this year when two DEA officers visited Majuro at the invitation of our Office

to examine and collect another haul of over 40 kgs of suspected cocaine discovered on one of the beaches in Ebeye, Kwajalein.

#### Collaboration over Unregistered Guns

- During the month of June 2019, the Criminal Division of the Attorney General met with appropriate officials from the United States Embassy, Majuro to discuss ways by which unregistered guns and other firearms may be located, and their legality with respect to ownership and registration properly determined.

#### Collaboration over prostitution activities.

- The Office of the Attorney General held discussions in June this year with officials of the U.S embassy over the question of prostitution activities in Majuro and how the apparent lack in RMI effort to pursue and prosecuted these activities could effect RMI's tier- status as determined by the United States. The U.S. officials were advised that these unlawful activities were being pursued in discreet and secrecy because of an earlier exposure by the Marshall Islands Journal which led to the immediate closure of these operations by their owners. The consensus reached at the meeting was that there should be greater level of information-sharing between the Office and the U.S Embassy but with guarded confidentiality, and that the U.S could offer training for police officers involved in investigating crimes of these nature.

### HUMAN TRAFFICKING

#### First Human Trafficking Case Filed

- For the first time, the Office of the Attorney General was able to file charges against human trafficking offences. Certain individuals – residing both in the United States and in Marshall Islands -were charged of human trafficking in connection with illegal adoption of babies born to Marshallese mothers. These mothers were lured by the accused by prior to birth, to travel to U.S in order to give birth there. The accused were charged, inter alia, with unlawful recruitment, offering financial incentives to secure consent of victims (birth mothers) residing in the RMI, promising to pay travel expenses to the United States in violation of existing and United States law. The filing of human trafficking charges attracted regional and international media including Voice Of Australia and BBC, London.
- Further, the Office of the Attorney General Criminal Division coordinated, organized and hosted a week-long visit from 5 attorneys/ prosecutors, FBI agents,

and State Department officials from Utah and Arkansas, in collaboration with the U.S. embassy, Majuro. The visiting U.S. officials conducted interviews of 9 Marshallese women witnesses and teleconferencing their live testimonies to the United States.

The Marshallese women witnesses were known or suspected to have been involved as birth-mothers or had information relating to human trafficking activities in violation of RMI and US laws. The visit was found to be useful to the RMI Criminal Division with respect to information pertinent to its work in this area. Prosecution of the case in the state of Utah has commenced.

- In late 2018, two senior attorneys from the RMI Office the Attorney General met in Hawaii with a Hawaii High Court judge responsible for hearing adoption cases, and obtained information and insights on the extent of adoption in connection with Marshallese birth mothers either residing in the state of Hawaii or coming into the state for delivery purposes.

#### *U.S District Court Charged Woman Trafficking Marshallese Birth Mothers.*

- Federal authorities arrested and charged a woman in Springdale, Arkansas early this month for bringing pregnant women from the Marshall islands to the United States illegally to have babies who were then fraudulently adopted. The woman was charged in the U.S. District Court with aiding and abetting alien smuggling which is a violation of the Compact of Free Association agreement between the United States and Republic of the Marshall Islands which allows Marshallese to freely enter the U.S. to work but specifically prohibits entering for the purpose of delivering babies.
- RMI prosecution filed its first human trafficking case in March this year charging certain operators ( RMI citizens residing in Arkansas) for aiding and abetting birth-mothers to travel to give birth in Arkansas.
- U.S private lawyers implicated in the unlawful adoption operation take advantage of lenient Arkansas state legislation which allows U.S. adopting parents to take the child within minutes of delivery leaving no opportunity for the birth-mother to reconsider her decision to adopt. The adopted child has an option at 18 years of age to decide on whether her/she would wish the adoption to continue!

#### *Arrest to American lawyer involved in illegal adoption*

- An American lawyer from the United States was arrested on 8 October 2019 in the State of Utah and was charged in Utah, Arizona and Arkansas with 11 felonies related to adoption scheme. Among the charges were *communication fraud, human*

smuggling and sale of a child. Over three years, the accused attorney recruited 40 pregnant women from the Marshall Islands and transported them to the United States, and paid them to give up their children. Because he failed to disclose the nature of the scheme to the mothers, he was charged, among others with communication fraud.

#### *New Jail to Hold Women and Youth*

- After decades of having no jail specially designed to accommodate women and youth convicted of a criminal offence, the RMI government finally laid the ground-work for the construction of a new jail and a modern police station. The multi-purpose complex will cost approximately \$1.4 million. In the past, convicted women and youth were placed under house arrest or under curfew restrictions over a period of time. However, proper supervision was difficult to manage on a regular basis. In some cases, the accused would often resist admitting to the crime, or agreeing to terms in a plea agreement knowing that a jail term would not be an option.

#### AMENDMENT BY NITIJELA REMOVING VOTING METHOD OF USING POSTAL BALLOT FOR RMI CITIZENS RESIDING OUTSIDE OF RMI -RULED BY SCT AS CONSTITUTIONAL

##### *Amendment to Election Referenda Act ( Amendment ) 1 1980. Eliminating Voting by Postal Ballot for RMI Citizens Residing Abroad.*

- P. L. 2016-28 eliminated the method of voting by postal ballot by Marshallese citizens residing outside of the Republic.
- The question underlying the removal of the cases to the SCT : *Do RMI citizens residing outside of the RMI have a constitutional right to vote by postal ballot, or otherwise.*
- As this report was being written, the Office of the Attorney General received a summary and full decision of the RMI Supreme Court's opinion. The SCT ruled that the Nitijela amendment against the postal ballot is constitutional. That is, an RMI citizen residing outside to the Marshall islands does not have a constitutional right to vote by postal ballot or by any other method. However, under the principle of universal suffrage he /she still has a constitutional right to vote regardless of where he/she might be on the election date.
- Because the legislative amendment has eliminated the postal ballot as a method of voting, without providing an alternative , an unreasonable burden therefore has arisen and has imposed a burden (cost to travel to the RMI in order to vote). That is, it has

created a burden for the entitled voter residing outside of the RTMI to exercise his or her constitutional right to vote. Therefore, the amendment is unconstitutional.

- SCT viewed any action remedy the situation at this point in time as being too late in light of the approaching national election on November 18. It decided therefore, to return the case to the High Court.
- SCT also observes that the amendment has created classes /categories of voters: those who cannot vote by postal ballot - RMI citizen residing overseas - and those who can still vote by postal ballots - confined voters and temporary residents -who may not be RMI at the time of the election. The differentiation creates implication for the principle 'equal protection under the law.' However, it determined that the extent of the deprivation of a resident's right as a category did not require the highest level of strict scrutiny.