

**IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS**

IN THE MATTER OF THE MARSHALL)
ISLANDS TRADITIONAL RIGHTS)
COURT RULES OF PROCEDURE)
)
)
_____)

Pursuant to the High Court's inherent power; Article VI, Subsections 1(1) and 1(2), of the Constitution; and Section 218(1)(e) of the Judiciary Act 1983, 27 MIRC Chp. 2, as amended,

IT IS HEREBY ORDERED that the Marshall Islands Traditional Rights Court Rules of Procedure are amended to read in the form attached hereto and shall be the rules governing all proceedings in the Traditional Rights Court as of May 25, 2017.

As the High Court noted in 1984 with respect to the initial promulgation of Traditional Rights Court rules of procedure, it must be kept in mind that these rules do not contain all the rules necessary to processing cases involving land matters. Persons filing cases in the courts regarding land matters must also follow the Marshall Islands Rules of Civil Procedure, the Marshall Islands Rules of Evidence, and other laws and rules, as applicable.

So Ordered and Entered: April 25, 2017.



Carl B. Ingram
Chief Justice, High Court

REPUBLIC OF THE MARSHALL ISLANDS

TRADITIONAL RIGHTS COURT RULES

OF

PROCEDURE

Adopted and Promulgated by

The High Court
of the
Republic of the Marshall Islands

Effective May 25, 2017

THE MARSHALL ISLANDS
TRADITIONAL RIGHTS COURT RULES OF PROCEDURE
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THE TRADITIONAL RIGHTS COURT RULES OF PROCEDURE

These rules are adopted and promulgated in accordance with the High Court's inherent powers; Article VI, Subsections 1(1) and 1(2) of the Constitution; and Section 218(1)(e) of the Judiciary Act 1983, 27 MIRC 218(1)(e).

Rule 1. Procedure for Invoking Jurisdiction. A party wishing to invoke the jurisdiction of the Traditional Rights Court shall in the party's complaint or the answer or other responsive pleading¹, or by written motion filed at any time after the commencement of the action and not later than 21 days after service of the last pleading, apply for certification of one or more questions to the Traditional Rights Court for resolution ("Application"). In such Application, a party shall specify the questions that the party wants certified, and any other party may, within 21 days after such application, move that other questions also be certified. The failure of a party to timely move for certification shall constitute a waiver of trial of such issues by the Traditional Rights Court. However, the High Court, upon a showing of excusable neglect or good cause, may extend the time for filing an Application.

Rule 2. Pre-Trial Conference and Statement. After the filing of the last Application for certification of a question, or the expiration of the time within which an Application can be filed, the Court, in its discretion, may order the counsel for the parties and any unrepresented parties to attend a MIRC Rule 16 pre-trial conference ("First Pre-Trial Conference"). It is the obligation of the parties to advise the Court when the last Application has been filed or time for filing the last Application has expired. The High Court at the First Pre-Trial Conference shall, among other things, issue an order directing the parties to meet, confer, and file with the Court a joint pre-trial statement or, failing agreement on a joint statement, separate pre-trial statements ("Pre-Trial Statement(s)"). The Pre-trial Statement shall in form comply with MIRC Rule 83 and shall contain the following:

- (a) Each attorney's and/or trial assistant's name and address, telephone and facsimile number, and email address or, if the party is not represented by counsel, the party's name and address, telephone and facsimile number, and email address;
- (b) Questions the party(ies) want the High Court to refer to the Traditional Rights Court for determination;
- (c) All facts agreed to by all the parties relating to the proposed questions; and it is the duty of counsel to affirmatively work toward agreement, if possible;

¹Any complaint, answer, cross-claim or counterclaim based upon rights in land under customary law and traditional practice shall comply with Special Rule of Civil Procedure No. 1 adopted and promulgated by the High Court July 31, 2006, attached hereto and incorporated herein as Exhibit A.

(d) All affidavits or other written statements of witnesses and a summary of all documents each party intends to submit to the Traditional Rights Court;

(e) A brief summary of the disputed facts together with the names and addresses of all witnesses each party intends to call;

(f) Any written authorities a party desires that the members of the Traditional Rights Court read regarding customary law and traditional practice in the Marshall Islands, or the land tenure system;

(g) The name of any Traditional Rights Court judge that a party challenges for cause and the grounds therefore and any other objections a party has to the Traditional Rights Court panel; and

(h) A brief statement identifying any related case known to have been decided by or pending in the courts or agencies of the Republic or of the United States Trust Territory of the Pacific Islands and any related Trust Territory land determinations. The statement must include the following: for cases: the caption, docket number and the nature of the relationship; and for land determinations: the date and subject land. Cases are deemed related if they involve the same parties, involve the same or closely related lands or issues, involve the same basic transaction or event, or have any other similarities of which the High Court should be aware. If a parties subsequently learns of a related case or land determination, the party must promptly file notice of it.

The failure of a party to comply with this rule may result in the imposition of such sanctions as the courts deem just, including the exclusion of documents, witnesses, and citations not included in the Pre-trial Statement, or an amendment thereto, and the waiver of objections to Traditional Rights Court judges.

Rule 3. Certification. If, after submission of the parties' Applications and Pre-trial Statements, the High Court is satisfied that a substantial question or questions have arisen in the case before it relating to matters within the jurisdiction of the Traditional Rights Court, then the High Court shall so certify and shall refer such questions to the Traditional Rights Court for determination and resolution. The High Court has the right to certify questions to the Traditional Rights Court on its own motion and to combine several cases for resolution by the Traditional Rights Court if they involve one or more questions common to each case.

Rule 4. Referral Order. The certification, and referral to the Traditional Rights Court, of any questions or issues as described above shall be made by an order of the High Court. Prior to certification, the High Court may, in its discretion, schedule an MIRCP Rule 16 pre-trial conference to, among other things, settle the form of the certification and referral order.

Rule 5. Method of Referral. The High Court shall cause the referral order to be

transmitted to the Chief Judge of the Traditional Rights Court.

Rule 6. Determination of Challenges to the Traditional Rights Court; Notice of Replacement of a Judge. The referring High Court judge shall decide any challenges to a Traditional Rights Court judge or panel. In the event that an ad hoc or pro tem Traditional Rights Court judge is appointed for the case, the referring High Court judge shall notify the parties of the judge's name and afford the parties an opportunity to challenge the appointment.

Rule 7. Procedures Before the Traditional Rights Court. Each Traditional Rights Court panel assigned to hear and determine a case shall meet at the call of the presiding judge. After the presiding judge has convened the court, the presiding judge shall open the case and proceed generally in the following manner:

- (a) The presiding judge will make certain that each Traditional Rights Court member has a copy of the High Court's file;
- (b) Each party will then be informed that the party may make a statement in which that party informs the court regarding the issues in the case and how it suggests the court resolve the questions presented;
- (c) Each party will then be permitted to present to the court its testimony and other evidence in the case. The plaintiff will be permitted to present its testimony and other evidence first, then the defendant thereafter. After the defendant has presented its testimony and other evidence, the plaintiff will be entitled to present further testimony and/or other evidence to refute any new testimony or other evidence presented by the defendant.
- (d) Each party will be permitted to present a final statement to the court summarizing what the party suggests the evidence shows and suggesting how the court should decide the questions before it and why. The plaintiff will summarize first, then defendant. After defendant's summary, plaintiff may reply to new matters brought up by defendant in its summary.
- (e) At any stage of its proceedings, the Traditional Rights Court may call or recall witnesses, ask questions of any witness or party, and require that additional evidence be presented to it.
- (f) If the Traditional Rights Court has any questions of law or procedure that they need answered before they determine the issues presented to them in the case, such questions may be presented in writing to the referring High Court judge and the referring judge may give either written answers to these questions, or may meet with the parties and the court in its courtroom and answer such questions of law and procedure, together with any other oral questions they may have on the record.

(g) After the court has resolved by majority vote the questions referred to it, it shall reduce its determinations into a writing entitled “Opinion of the Court” that shall give a specific answer to each question referred to it. This opinion shall be signed by all of the members of the court panel concurring in the opinion, and shall be transmitted to the High Court judge who referred the case, and a copy shall be sent to each of the parties to the case. A dissenting member may, if the member so desires, compose and transmit, with the majority opinion a “Dissenting Opinion.”

Rule 8. Alternative Hearing Procedure. At the request of the presiding Traditional Rights Court judge or the referring High Court judge, or upon motion by a party or the High Court Chief Justice, the Chief Justice, in the interest of justice and economy, may order that the Traditional Rights Court’s hearing of a case be made jointly with the referring High Court judge or the Presiding Judge of the District Court. At such a joint hearing the referring High Court, or District Court, judge and the panel of Traditional Rights Court members shall sit as judges for the hearing of all statements, evidence and summations in the case. The members of the panel, after the hearing, shall meet separately from the High Court, or District Court, judge to reach their own opinion in the case, and shall transmit same to the High Court as set forth in Rule 7(g). At any joint hearing under this rule, the hearing shall be conducted in accordance with the applicable rules, and the High Court, or District Court, judge shall make all rulings at the hearing and shall determine all rulings on evidence; provided, however, that the members of the Traditional Rights Court panel may ask questions of the witnesses and parties in accordance with the laws of procedure and evidence, and may request the High Court, or District Court, judge recall witnesses, call additional witnesses, or order the presentation of additional evidence. The High Court, or District Court, judge shall not participate with the Traditional Rights Court panel in any way in its deliberations on its opinion, except that the Traditional Rights Court panel may at any time ask questions of law or procedure of the High Court, or District Court, judge that must be answered in the presence of all of the parties. If a party or the party’s counsel is not reasonably available, the High Court, or District Court, judge may answer questions without counsel being present provided the questions and answer are recorded verbatim.

Rule 9. Procedure After Transmittal of Decision. After transmittal of the opinion of a panel of the Traditional Rights Court, the High Court judge shall examine the opinion to make certain that all of the questions referred to the Traditional Rights Court have been answered sufficiently to permit the case to be tried to its conclusion in the High Court without further referrals to the Traditional Rights Court. The High Court shall then set the case for hearing before itself, and allow the parties to make their presentations regarding the decision and regarding the status of the case, and such other or further proceedings as appear necessary to a final determination of the case. If, after such hearing, it appears to the High Court judge that it is in the best interests of justice that the questions referred to the Traditional Rights Court for determination be resubmitted for any valid reason, such as the failure to follow procedure, failure to completely answer any questions submitted to the court, or the apparent necessity of further opinions on additional questions by such court, then the High Court judge shall resubmit the case to the Traditional Rights Court, and absent good cause to the contrary to the same panel of the

Traditional Rights Court that made the original decision, together with necessary instructions. If there be no necessity for re-submission, then the High Court judge shall proceed to disposition of all of the issues in the case, including those questions submitted to the Traditional Rights Court, but the High Court, in disposing of the case before it, shall with respect to questions referred to the Traditional Rights Court rely on the record before the Traditional Rights Court and shall give substantial weight to the opinion of the Traditional Rights Court as required by the Constitution. (See Cont. Art. VI, Sec. 4). Should the High Court conclude that justice does not require that the Traditional Rights Court's resolution of any question submitted to it be binding upon the High Court in its resolution of the case before it and out of which the submitted questions arose, the High Court shall set forth in writing its reasons therefore and shall continue to determine the case without being bound by the Traditional Rights Court's opinion, but shall in any event give substantial weight to such opinion.

Rule 10. Place of Hearing. The hearings of the Traditional Rights Court shall be open to the public and shall be held in the Majuro Courthouse or such other places as the presiding judge of the panel determining each case shall decide. In selecting the place of hearing consideration should be given to important matters such as the availability of witnesses at a minimum expense, the location of the land in the case under consideration, the suggestions of the parties and/or their counsel, and the facilities available. All joint hearings with the High Court under Rule 8 shall be heard in the Majuro Courthouse unless the High Court judge in the case shall direct otherwise.

Rule 11. Administrative Matters; Clerk of the Court. The High Court shall appoint a clerk for the Traditional Rights Court who shall perform such functions as shall be designated by the High Court and/or the Chief Judge of the Traditional Rights Court. In case of conflict between the directions given to the Clerk of the Traditional Rights Court by the High Court and the Chief Judge of the Traditional Rights Court, the directions given by the High Court shall prevail and shall be followed by the clerk. In cases of disagreement as to court matters between the Clerk of the Traditional Rights Court and the Clerk of the Courts, the directions of the Clerk of the Courts shall prevail.

The Clerk of the Traditional Rights Court shall, at the direction of the High Court and/or Chief Judge of the Traditional Rights Court, give all notices required by the Chief Judge by law or by these rules and shall be responsible for all documents transmitted between the High Court and the Traditional Rights Court. The Clerk of Courts may aid the Clerk of Traditional Rights Court in the performance of the Traditional Rights Court's clerk's duties.

The hearings of the Traditional Rights Court shall be recorded or reported as may be from time to time ordered by the High Court. Until otherwise ordered, such hearings shall be tape-recorded when reasonably feasible, or summarized by the Clerk if recordation verbatim via recording mechanism is not reasonably feasible due to such things as lack of electricity or battery, faulty machinery, and similar types of misadventures. When the hearing is held jointly with the High Court its proceeding shall be recorded or reported in the same manner as are High

Court proceedings. Until otherwise provided, the opinion of the Traditional Rights Court shall be summarized according to the form attached to these rules as Exhibit B. The deliberations of the court shall not be recorded in any way — only the result of the deliberations shall be revealed.

Rule 12. Eminent Domain Proceedings. In those cases where land rights, or other private property, is being taken by the Government for public use, the High Court shall refer to the Traditional Rights Court for determination the question of whether the amount of compensation being offered by the government or other parties for such land rights or other private property is “just compensation” therefore, together with any questions related thereto that the High Court shall designate in its referral order, and its opinion shall be accorded substantial weight in the High Court’s determination of just compensation. In eminent domain proceedings the assignment of judges to a panel may be made without regard to whether such judges are from the chain where the land or other property is located. In eminent domain proceedings the High Court and the Traditional Rights Court should give strong consideration to the provisions of Rule 8 as it concerns joint hearings with the High Court so as to avoid undue repetition in the testimony of expert witnesses whose time is very costly to the Government and other parties. See Const. Art. II, Sec. 5(7); see also the Land Acquisition Act 1986, 9 MIRC Chp. 2.

Rule 13. Grounds for Disqualifications of Judges. Any judge of the Traditional Rights Court shall be disqualified from the hearing and determination of any case in which the judge has previously played a role or with respect to which the judge is otherwise disabled by any conflict of interest. See Cont. Art. VI, Sec. 1(6); see also Section 267 of the Judiciary Act 1983, 27 MIRC 267.

Rule 14. Majority Vote. All questions before the Traditional Rights Court shall be determined by a majority vote.

Rule 15. Rules of Evidence. The Marshall Islands Rules of Evidence shall govern proceedings of the Traditional Rights Court, except that the Traditional Rights Court may admit any evidence that is reasonably relevant to the question under its consideration, and except as follows:

(a) The court may receive affidavits in evidence provided the party offering the affidavits has given the opposing party or parties sufficient and timely notice so as to enable said party or parties the opportunity to either:

- (1) Obtain affidavits of their own from such witness;
- (2) Call such party as a witness; or
- (3) Otherwise obtain the attendance of such witness at the hearing.

Such affidavits should, however, not be received should there be any reason based on common sense and principles of fair play for not receiving them. For example, such affidavits should not be received if the person making the affidavits is a party or such affiant has been unwilling to answer questions asked by an opposing party and the cost of bringing the affiant to court would be too great a burden upon the opposing party.

(b) The court may take evidence by means of radio, telephone, radiogram, or electronic means after satisfying itself that the following requirements are met:

(1) That the identity of the witness is established through the Community Court judge or other reliable person; and

(2) The witness is placed under the proper oath and all parties are allowed their rights of direct and cross examination; and

(3) There are no particular circumstances in the case that would render the taking of such evidence obviously unfair to any party.

Any Traditional Rights Court panel may request from the High Court judge who referred the case to it rulings on any questions of evidence in its proceedings.

Rule 16. Suspension of Rules. In the interest of justice, or for other good cause, the High Court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

Rule 17. Rules Not to Affect Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the Traditional Rights Court as established by law.

Rule 18. Title. These rules may be known and cited as the Traditional Rights Court Rules of Procedure and TRCRP.

Rule 19. Effective Date of Rules.

(a) **Effective Date of the Re-promulgated Rules.** These rules, adopted by the High Court on July 31, 2006, shall take effect on August 31, 2006. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the High Court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedures apply.

(b) **Effective Date of 2009 Amendments.** The amendments adopted by the High Court on January 15, 2009, shall take effect on February 15, 2009. They govern all

proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the High Court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedures apply.

(c) Effective Date of 2017 Amendments. The amendments adopted by the High Court on May 25, 2017, shall take effect on that date. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the High Court their application in a particular action pending when the amendments take effect would not be feasible or would work injustice, in which event the former procedures apply.

SPECIAL RULE OF CIVIL PROCEDURE NO. 1

Pursuant to the High Court's inherent authority; Article VI, Subsections 1(1) and 1(2) of the Constitution; and Section 218(1)(e) of the Judiciary Act 1983, 27 MIRC 218, Special Rule of Civil Procedure No. 1 is amended to read as follows:

SPECIAL RULES OF CIVIL PROCEDURE

Rule 1. PLEADINGS AND PROCEDURES; RIGHTS IN LAND CASES

a. General Provisions.

(1) In any case before the High Court involving claims based upon customary land rights, the plaintiff shall state in the complaint (in addition to everything otherwise required):

(a) Who the plaintiff recognizes as the iroijlaplap, iroijedrik (if applicable), alap, and senior dri jermal of the land in question;

(b) Who the plaintiff recognizes as exercising iroijlaplap powers and what action that person has taken with regarding the dispute in question; and

(c) What action, if any, the plaintiff has taken to obtain a determination of the plaintiff's rights through traditional Marshallese channels, and the result of those efforts, or why the plaintiff considers it useless to try to have the matter determined through those channels.

(2) In the case of lands in Majuro Atoll which were under Iroij Laplap Jebrik Lukutwerak at the time of his death, plaintiff need not indicate who the plaintiff recognizes as having iroij laplap powers over the land in question or what action such person has taken regarding the dispute in question.

b. Pleading Custom.

(1) When a party to an action intends to rely on a particular custom relating to land rights, the party shall include in the party's pleading:

(a) A statement of the facts which the party intends to prove on trial; and

(b) A statement of the custom applicable to such facts.

(2) The parties will be expected, at a pre-trial conference, or in a responsive pleading or memorandum prior thereto, to state whether they are in agreement as to the existence of the custom set out in the pleadings, and if not in agreement, to state clearly in what respects they do

not agree.

c. Dismissal for Failure to Comply. If a complaint to which this rule applies fails to state the things required by the preceding paragraphs, the High Court may on its own initiative or upon motion by the defendant dismiss the complaint upon 14 days' notice to the plaintiff, and an opportunity to be heard, if the plaintiff does not appropriately amend the complaint within the 14-day notice period.

d. Waiver of Rule. The High Court may waive any or all of the provisions of this rule for good cause in any particular action whenever it deems justice so requires and may modify the above procedure by specific order as to any particular action when it believes that will promote expeditious justice.

e. Effective Date. This Special Rule, adopted by the High Court on April 25, 2017, shall take effect on May 25, 2017. It governs all proceedings in actions brought after it takes effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the High Court its application in a particular action pending when the amendment takes effect would not be feasible or would work injustice, in which event the former procedures apply.

So Ordered and Entered: April 25, 2017.



Carl B. Ingram
Chief Justice, High Court

**IN THE TRADITIONAL RIGHTS COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS**

_____)	CIVIL ACTION NO. 20____ - ____
)	
Plaintiff,)	
)	
VS.)	
)	
_____)	<u>OPINION AND ANSWER OF THE TRADITIONAL</u>
)	<u>RIGHTS</u>
Defendant.)	<u>COURT</u>
_____)	

MEMBERS OF COURT PANEL:

PLACE AND DATE OF COURT PANEL'S HEARING:

THE PARTIES' CONTENTIONS (Who is arguing about what, both facts and custom): _____

THE QUESTION(S) REFERRED BY THE HIGH COURT: _____

SUMMARY ANSWER (S): _____

FACTUAL FINDINGS UPON WHICH THE OPINION IN ANSWER IS BASED: _____

APPLICABLE CUSTOM: _____

ANALYSIS (applying custom to the facts): _____

WITNESSES:

EXHIBITS AND TANGIBLE EVIDENCE:

OTHER MATTERS THE PANEL BELIEVES SHOULD BE MENTIONED: _____

So Order and Entered:

PRESIDING JUDGE OF PANEL
Traditional Rights Court

JUDGE OF PANEL
Traditional Rights Court

JUDGE OF PANEL
Traditional Rights Court