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2
3 **AN ACT**
4

5 to declare the rights of children and provide for their protection, promotion, enforcement, and
6 implementation in the Republic of the Marshall Islands as required under the United Nations
7 Convention on the Rights of the Child.

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9 **PART I – PRELIMINARY**

10 **Section 1. Short Title.**

11 This Chapter may be cited as the Child Rights Protection Act, 2015

12 **Section 2. Interpretation.**

13 (1) In this Chapter, unless the context requires:

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15 (a) “Child” shall mean any person who is below 18 years;

16 (b) “Child abuse or neglect” shall mean the acts or omissions of any person which
17 have resulted in the physical or psychological health or welfare of a child to be
18 harmed, or to be subject to any reasonably foreseeable, substantial risk of being
19 harmed. The acts or omissions are indicated for the purposes of reports by
20 circumstances which include but are not limited to the following:

21 (i) When the child exhibits evidence of:

22 (A) Substantial or multiple skin bruising or any other internal
23 bleeding;

24 (B) Any injury to the skin causing substantial bleeding;

25 (C) Malnutrition;

26 (D) Failure to thrive;

27 (E) Poisoning;

1 (F) Fracture of any bone;

2 (G) Sub-dural hematoma;

3 (H) Soft tissue swelling;

4 (I) Extreme pain;

5 (J) Extreme mental distress;

6 (K) Gross degradation;

7 (L) Death; and

8 Such injury is not justifiably explained, or when the history given
9 concerning such conditions or death is at variance with the degree or type of such
10 condition or death, or circumstances indicate that such condition or death may not
11 be the product of accidental occurrence; or

12 (ii) When the child has been the victim of sexual contact or conduct,
13 including but not limited to sex crimes or other forms of sexual exploitation as
14 provided under the this Act or the *Criminal Code*; or

15 (iii) Where there exists injury to the psychological capacity of the child as
16 is evidenced by an observable and substantial impairment of the child's ability to
17 function; or

18 (iv) When the child is not provided in a timely manner with adequate food,
19 clothing, shelter, psychological care, physical care, medical care, or supervision;
20 or

21 (v) When the child is provided with narcotic drugs, alcohol or tobacco
22 products.

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- 1 (c) "Committee" shall mean the Human Rights Committee established under the
2 *Human Rights Committee Act 2015*;
- 3 (d) "Convention" shall mean the United Nations Convention on the Rights of the
4 Child;
- 5 (e) "Maltreatment" shall mean any intentional or willful act resulting in physical,
6 mental, or emotional harm to the child or any omission by a parent, guardian, or
7 care-giver to protect children from such harm, and in general all forms of
8 violence, aggression, cruel, degrading, or humiliating treatment of a child;
- 9 (f) "Minister" shall mean the Minister of Internal Affairs;
- 10 (g) "Ministry" shall mean the Ministry of Internal Affairs;
- 11 (h) "Narcotic drugs" shall have the corresponding definition in the *Narcotics Drugs*
12 *(Prohibition and Control) Act 1987*;
- 13 (i) "other laws of the Republic" shall include Acts, regulations, policies;
- 14 (j) "Exploitation" shall mean:
- 15 (i) Sexual exploitation, including commercial sexual exploitation of children
16 in the form of child prostitution, child sex tourism, child pornography, and
17 child trafficking for these purposes;
- 18 (ii) Economic exploitation, including the worst forms of child labor, child
19 begging, children's work and child domestic work not in accordance with
20 the regulations of this Act; and
- 21 (iii) Other forms of exploitation, including all forms of slavery or practices
22 similar to slavery, debt bondage or servitude;
- 23 (k) "Secretary" shall mean the Secretary of Internal Affairs;

- 1 (l) "Sexual abuse" of children shall mean any:
- 2 (i) Engagement or incitement of a child under the age of consent to
- 3 participate in sexual activities in violation of Article 42 of this Law;
- 4 (ii) Engagement in sexual activities with a child in abuse of a position of trust
- 5 or authority such as that of parent, guardian or care-giver;
- 6 (m) "Sexual activities" shall mean sexual intercourse and any other act performed on,
- 7 by, with, or in front of a child where the presence or participation of the child is
- 8 for the purpose of the sexual gratification of another person;
- 9 (n) "Parents" shall mean the natural, adoptive, or foster parents of a child;
- 10 (o) "Guardians" shall have the corresponding definition under the *Marshall Islands*
- 11 *Guardianship Act 1984*;
- 12 (p) "Care-giver" shall mean any person other than a parent or guardian who factually
- 13 cares for a child, due to a professional or non-professional relationship, in a
- 14 permanent or temporary manner.
- 15 (q) "Human Rights Committee" means the Committee established under the Human
- 16 Rights Committee Act 2015 responsible for the implementation and realization of
- 17 human rights in the Republic.

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19 **Section 3. Application of this Act.**

20 (1) This Act applies to every person in the Marshall Islands, irrespective of the person's

21 nationality or citizenship.

22 (2) This Act binds the State, including every Government department and statutory

23 authority and every person in the employment of the Government.

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Section 4. Objectives.

- (1) The objectives of this Act are:
 - (a) to protect children from discrimination, exploitation and any other physical, emotional or moral harm or hazards;
 - (b) to provide care and protection to children who are in need of care and protection; and
 - (c) generally, to promote the protection, development and welfare of children.

Section 5. Principles.

- (1) In lawful relations that affect a child, the rights and best interests of the child shall take priority.
- (2) In all activities in regard to a child, irrespective of whether they are carried out by national or local government institutions, public organizations or other natural or legal persons engaged in the care and upbringing of the child, and the courts and other law enforcement institutions, the ensuring of the best interests of the child shall take priority.
- (3) Protection of the rights of the child shall be realized in collaboration with the family, national and local government institutions, public organizations and other natural and legal persons.

Section 6. Guarantees of the Rights of the Child.

Guarantees for the rights of the child shall be as determined by the Constitution, this Chapter, other rules and policies, and relevant international covenants and conventions enforced in the Republic.

PART II – RIGHTS OF THE CHILD

Section 7. Legal Assistance and Access to Justice.

(1) Pursuant to Article II of the Constitution, a child shall be afforded legal assistance for the realization and protection of his/her rights.

(2) In order to ensure the child's access to justice, it shall be provided that:

(a) Legal assistance is free-of-charge if the child has no legal representation;

(b) Legal assistance adheres to the principles of non-discrimination and the best interests of the child, including informing the child about the legal proceedings in a way that the child understands;

(c) The privacy of the child is protected and the child's identity is not released to the public; and

(d) Other necessary protective measures for child victims and child witnesses.

(3) Children accused of having violated the law shall have their cases heard pursuant to the *Juvenile Procedure Act*.

Section 8. Right to Parental Care.

(1) A child shall have a right to live with and to be cared for by his/her parents.

(2) Subject to subsection (1), where the High Court determines in accordance with the law that it is in the best interests of the child to be separated from his/her parent, the best alternative care available shall be provided for the child.

(3) Where a child is separated from his/her family without the leave of the High Court, the Government shall provide assistance for reunification of the child with his/her family.

(4) The recording of families in need of assistance shall be organized by the Office of the Rights of the Child.

1 **Section 9. Right to Education.**

2 (1) Every child has the right to education which would develop his/her cultural
3 knowledge, intellect, abilities, views, moral and social responsibility.

4 (2) Corporeal punishment shall be prohibited.

5 **Section 10. Protection of the Right to Privacy.**

6 (1) No child shall be subjected to arbitrary or unlawful interference with his/her privacy
7 or family, nor to unlawful attacks on his/her reputation.

8 (2) The child has the right to protection of the law against such interference or attacks.

9 **Section 11. Leisure and Play.**

10 (1) The child's right to leisure, recreation, and play, appropriate to her/his age, physical
11 and mental development shall be protected. The child's participation in sports, cultural events,
12 art, and other leisure activities shall be promoted.

13 (2) Any forced or harmful involvement of children in political or religious activities, in
14 social, cultural, and sporting events, and in contests in which the child's appearance is evaluated
15 shall be prohibited.

16 **Section 12. Protection from Harmful Customary Practices.**

17 (1) A child shall be protected against any social, cultural, ritual, or traditional practice
18 that is harmful to his/her safety, health, development, or well-being.

19 (2) A minimum age for marriage shall be established under the Registration of Births,
20 Deaths and Marriages Act.

21 **Section 13. Right to Health.**

22 (1) The Government recognizes the right of the child to the enjoyment of the highest
23 attainable standard of health and to facilities for the treatment of illness and rehabilitation of

1 health. The Government shall strive to ensure that no child is deprived of his/her right of access
2 to such health care services.

3 (2) Parents and guardians shall not be allowed to intentionally refuse any required
4 preventive or necessary medical exam and treatment for their child regardless of their religious
5 and moral beliefs. In case of such refusal, a court may order the parents or guardians to provide
6 the child with the required treatment.

7 (3) Without prejudice to the progress of science, any type of scientific experimentation
8 that is detrimental to the child's life, health, or personal development shall be prohibited even if
9 the child and/or her/his parents or guardians consent to the procedure.

10 **Section 14. Protection from Narcotic Drugs, Alcohol and Tobacco Products.**

11 (1) Children shall be protected from the use of narcotic drugs, alcohol and tobacco
12 products.

13 (2) The use or engagement of children in the production, distribution, or trafficking of
14 such substances shall be prohibited.

15 (3) Any person contravening this Section or inducing a child to use these substances shall
16 be guilty of an offence and upon conviction shall be liable to a fine of \$5,000 or imprisonment of
17 not more than one year, or both.

18 (4) Relevant authorized national or local officials shall display conspicuously in or at any
19 public place or business premises, including retail shops, wholesale shops, hotel lobbies, movie
20 theaters, restaurants, small take-out shops, schools and other national or local buildings, an
21 advertisement to the general public on the this Section and the dangers relating to the use of
22 narcotic drugs, alcohol and tobacco products.

23 **Section 15. Children belonging to Minority Groups.**

1 (1) Children belonging to national, ethnic, religious, and linguistic minorities shall be
2 protected from neglect, abuse, maltreatment, and exploitation.

3 (2) In particular, it shall be prohibited to –

4 (a) Restrict or exclude the child from full, active, and effective participation and
5 inclusion in society; and

6 (b) Deny opportunities for education, development, health, and self-realization
7 equal to those of children not belonging to a minority group.

8 **Section 16. Right to Safe Accommodation and Alternative Care.**

9 (1) Child victims and children at risk of neglect, abuse, maltreatment, and exploitation
10 shall be entitled to find accommodation in a place of safety. This right shall include temporary
11 and long-term accommodation of the child in such a place of safety and the relevant aftercare.

12 (2) To guarantee this right, the various forms of alternative care shall be established by
13 law/regulation. They shall be operated by governmental or non-governmental child protection
14 service providers or in cooperation of both.

15 (3) Alternative care shall comprise:

16 (a) Informal care, meaning any private arrangement provided in a family
17 environment, whereby the child is looked after on an ongoing or indefinite basis by
18 relatives or other persons close to the child in their individual capacity, at the initiative of
19 the child, her/his parents, or other person without this arrangement having been ordered
20 by the High Court;

21 (b) Formal care, meaning all care provided in a family environment which has
22 been ordered by the High Court, and all care provided in a residential environment
23 whether or not as a result of administrative or judicial measures;

1 (c) Family-based care, meaning:

2 1) kinship care within the child's extended family or other persons close to
3 the child, and

4 2) foster care, where children are placed by the High Court in the domestic
5 environment of a family other than the child's that has been selected, qualified,
6 approved, and supervised for providing such care;

7 **Section 17. Children with Disabilities.**

8 (1) The rights of children with disabilities and the protection, promotion and enforcement
9 of those rights are provided under the Rights to Persons with Disabilities Act.

11 **Section 18. Prohibition of the Abduction, Sale of and Trafficking in Children.**

12 (1) The abduction, sale of, and trafficking in children for any purpose or in any form
13 shall be prohibited and established as punishable offenses.

14 (2) Abduction of children shall mean:

15 (a) Unlawfully removing a child from his/her place of residence by means of
16 force, threat, deception, abuse of power, or enticement, or

17 (b) Unlawfully taking a child away from the legal custody of the child's parents,
18 guardian or care-giver, whether committed, facilitated, or coordinated inside the Republic
19 or involving transit to or through the Republic. This includes cases of abduction in which
20 one of the actors is a parent of the child.

21 (3) Sale of children shall mean any act or transaction, including the offering, delivering,
22 or accepting of a child by whatever means, whereby the custody over the child is transferred by a
23 person or group of persons to another for remuneration or any other consideration.

1 (4) Trafficking in children shall mean the recruitment, transportation, transfer, harboring
2 or receipt of children, whether or not by means of threat or use of force, other forms of coercion,
3 abduction, fraud, deception, the abuse of power or a position of vulnerability, or the giving or
4 receiving of payments or benefits to achieve the consent of the parents, guardian, care-giver or
5 any other person having control over the child, for the purpose of exploitation, including for the
6 purpose of:

7 (a) Economic exploitation and forced or compulsory labor, including the worst
8 forms of child labor, children's work not in accordance with the regulations of this Law,
9 child begging, child domestic work, and exploitative participation in sporting events;

10 (b) Sexual exploitation, child prostitution, child sex tourism, child pornography,
11 and participation in sexually oriented performances and establishments;

12 (c) Any other illicit purposes.

13 (5) Principle of Non-Punishment of Child Victims

14 (a) A child which became victim of sexual exploitation, including:

15 1) A child in prostitution,

16 2) A child victim of sex tourism,

17 3) A child victim of the production, distribution, or consumption of child
18 pornography, and

19 4) A child victim of trafficking shall not be criminalized for any unlawful
20 act committed as a direct result of being a child victim of exploitation, such as
21 engaging in prostitution, using false documents, or entering the country without
22 documentation, and no punishment may be inflicted on her/him.