NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

36TH CONSTITUTIONAL REGULAR SESSION, 2015

BILL NO.: 80ND1

P.L. 2015-49

AN ACT

to create a new Chapter under Title 10 of MIRC in order to establish a Human Rights Committee; to provide for its membership, functions, powers and administration; to establish a complaints mechanism for the redress of human rights violations, and for related purposes.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS:

PART I - PRELIMINARY

Section 1. Short Title.

This Chapter may be cited as the Human Rights Committee Act, 2015.

Section 2. Interpretation.

In this Chapter, unless the context otherwise requires:

"**Bill of Rights**" means the Bill of Rights contained in Article II of the Constitution of the Republic of the Marshall Islands;

"**CEDAW**" means the Convention on the Elimination of All Forms of Discrimination against Women as adopted by the United Nations on 18 December 1979 and entering into force on 3 September 1981;

"**Committee**" means the Human Rights Committee established section 4;

"**complainant**" means a person who submits a complaint to the Committee under this Act;

"**CRC**" means the Convention on the Rights of the Child as adopted by the United Nations on 20 November 1989 and entering into force on 2 September 1990;

"**CRPD**" means the Convention on the Rights of Persons with Disabilities as adopted by the United Nations on 13 December 2006 and entering into force on 3 May 2008;

"**human rights**" means the rights embodied in the Universal Declaration of Human Rights as adopted by the United Nations on 10 December 1948, the core international human rights treaties, other international human rights instruments, and the rights and freedoms set forth in the Bill of Rights;

"**human rights treaty bodies"** means the United Nations Committees of independent experts of recognized competence in human rights, who are nominated and elected by States Parties to monitor implementation of the core international human rights treaties;

"**international human rights treaties**" means the CEDAW, CRC and CRPD, to which the Marshall Islands is a State Party, and any other core or other international human rights treaties to which the Marshall Islands may become a State Party;

"**Minister"** means the Minister in assistance;

"**respondent"** means the person against whom a complaint is made under this Act;

"**UN Human Rights Council"** means the inter-governmental body within the United Nations responsible for strengthening the promotion and protection of human rights around the world, addressing and making recommendations on situations of human rights violations, and discussing thematic human rights issues and situations that require its attention;

"**UPR"** means the Universal Periodic Review;

"Working Group" means the Working Group established under section 9.

Section 3. Purpose.

The purpose of this Act is to:

(a) establish a multi stakeholder body to promote the human rights of all persons living in the Marshall Islands;

b) promote the implementation of international human rights standards, including international human rights treaties to which the Marshall Islands is a State Party;

(c) promote an inclusive and coordinated cross-sectoral approach to the implementation of human rights reporting and programs;

(d) promote understanding of and compliance with the Bill of Rights and legislation promoting human rights, including the Domestic Violence Protection and Prevention Act 2011, the Child Protection Act 2015, and the Rights of Persons with Disabilities Act 2015; and

(e) establish a complaints mechanism for the redress of human rights violations.

PART II - HUMAN RIGHTS COMMITTEE

Section 4. Establishment of the Human Rights Committee.

(1) The Human Rights Committee, formerly known as the Resources Development Committee, is established.

(2) The Committee comprises multi-stakeholder members from the following Government offices, private sector, and civil society organizations:

(a) Chief Secretary, who is the Chairperson;

(b) Secretary of Internal Affairs, who is the Vice Chairperson;

(c) Secretary of Foreign Affairs;

(d) Secretary of Resources and Development;

(e) Secretary of Health;

(f) Secretary of Education;

(g) Secretary of Finance;

(h) Attorney-General;

(i) Public Defender;

(j) Police Commissioner;

(k) Clerk of *Nitijela*;

(l) Director, Economic Planning Policy and Statistics Office;

(m) Director, National Training Council;

(n) Director, Women United Together Marshall Islands;

(o) Director, Youth to Youth in Health;

(p) President, Marshall Islands Persons with Disabilities Organization;

(q) President, Chamber of Commerce.

(3) In addition, the Committee may invite representatives of in-country development partners, members of professional organizations or academia, or other persons with specialist knowledge or experience in human rights to:

(a) provide specialist advice that may be required by the Committee; and

(b) attend meetings of the Committee.

(4) In inviting persons under subsection (3), the Committee must ensure gender balance and adequate representation of persons with disabilities and other Civil Society Organizations.

Section 5. Functions of the Committee.

The Committee is responsible for the following:

(a) providing a consultative forum to address human rights issues;

(b) supporting the development of policy, legislative, administrative and other measures, including national strategic plans of action and monitoring tools, to progressively implement international human rights standards;

(c) monitoring implementation of international human rights obligations;

(d) providing advice and making recommendations, including setting out the implications of any proposed law or any proposed policy, to Cabinet on matters relating to compliance with human rights standards;

(e) preparing national reports to the UPR and human rights treaty bodies in a timely manner and according to the relevant guidelines, and following up on recommendations by all international human rights mechanisms;

(f) receiving and investigating complaints of human rights violations, in accordance with the complaints procedure under Part IV;

(g) resolving complaints by settlement and referring unresolved complaints to the Attorney General's Office for further action;

(h) promoting the mainstreaming of the rights of women, children, persons with disabilities, and other vulnerable groups, into sectoral development plans and strategies;

(i) coordinating inclusive consultations, including inviting and receiving representations, on human rights with:

(i) a broad range of stakeholders, including children, women, persons with disabilities, the elderly, and other marginalized groups; and

(ii) representative organizations of stakeholders under paragraph (i).

(j) supporting and strengthening the implementation of existing human rights programs;

(k) promoting awareness and education programs about human rights;

(l) directing the work of the Working Group and other sub-committees;

(m) reporting to the relevant Ministry on the outcome of any research, investigation, treaty report, complaint hearing, or other activity conducted by the Working Group or other sub-committee;

(n) through the Minister, advocating for sufficient human and financial resources to carry out the above functions;

(o) performing such other functions as are conferred on it by this Act or any other Act.

Section 6. Powers to appoint sub-committee; and power to delegate.

(1) The Committee may appoint one or more sub-committees to deal with any specific human rights issue in detail.

(2) A sub-committee appointed under subsection (1) must be gender balanced and include one or more relevant representative organization.

(3) The Committee may delegate any of its functions to the Working Group established under section 9 or a sub-committee appointed under subsection (1).

Section 7. Functions of the Chairperson.

The Chairperson, or in his or her absence, the Deputy Chairperson, is responsible for:

(a) the efficient discharge of the Committee's functions;

(b) calling meetings and notifying Committee members;

(c) inviting specialists to attend meetings when required by the Committee;

(d) chairing Committee meetings according to the agenda;

(e) ensuring all discussion items end with a decision, action or definite outcome;

(f) reviewing and approving the draft minutes of meetings before distribution;

(g) discussing and tabling with relevant Ministers, decisions taken by the Committee; and

(h) any related matters.

Section 8. Meetings of the Committee.

(1) The Committee must meet on the third week of every other month or when called by the Chairperson, at a time and place the Chairperson appoints.

(2) The Chairperson may call a special meeting, on receiving a written and signed request from at least five members.

(3) At any meeting, a quorum is formed by five members of which at least two members must not hold positions in Government.

(4) The Chairperson must preside at every meeting at which he or she is present, and in the absence of the Chairperson, the Deputy Chairperson must preside.

(5) If the Chairperson and Deputy Chairperson are both absent from a meeting, other members present must elect one (1) of them to preside at the meeting.

(6) At every meeting, the Chairperson or other person presiding has a deliberative vote, and in the case of an equality of votes, the Chairperson or other person presiding has a casting vote.

(7) Every question arising at a meeting must be put to a vote and decided by a majority of votes cast by members.

(8) Subject to other provisions of this Act, the Committee may regulate its procedures in such manner as the Committee considers fit.

(9) The decisions of the Committee on implementation of international human rights standards and treaties to which the Marshall Islands is a State Party must be published in the Gazette.

Section 9. Working Group of the Committee.

A Working Group of the Committee is established and consists of the following:

(a) Secretary of Internal Affairs, who is the Chairperson;

(b) Deputy Chief Secretary;

(c) Assistant Secretary for Program Policy and Assessment, Ministry of Internal Affairs

(d) Assistant Secretary for Multilateral Affairs, Ministry of Foreign Affairs;

(e) Chief of Trade, Ministry of Resources and Development;

(f) Assistant Secretary for Policy, Planning & Assessment, Ministry of Health;

(g) Director of Research, Evaluation & Standards, Ministry of Education;

(h) Assistant Attorney-General;

(i) Assistant Public Defender;

(j) Legislative Counsel, *Nitijela*

(k) Assistant Police Commissioner, Department of Public Safety;

(l) Chief of Statistics, Economic Planning Policy and Statistics Office;

(m) Director, National Training Council;

(n) Director, Women United Together Marshall Islands;

(o) President, Marshall Islands Persons with Disabilities Organization;

(p) Health Adolescent Development Coordinator, Youth to Youth in Health;

(q) Any other member appointed by the Committee, as appropriate.

Section 10. Functions of the Working Group.

The functions of the Working Group include the following:

(a) receiving instructions or directions from the Committee for the implementation of Committee decisions;

(b) developing national strategic plans of action for the implementation of rights under the core international human rights treaties to which the Marshall Islands is a State Party;

(c) assisting the Committee in the formulation and dissemination of human rights policies, practices and procedures, including consultation with civil society and other stakeholders;

(d) reporting, in writing, to the Committee on progress made with regards to implementation of Committee decisions, including providing advice and recommendations;

(e) preparing and coordinating UPR reports to the UN Human Rights Council and national reports to human rights treaty bodies;

(f) advising and making recommendations to the Committee on ratification of international human rights treaties and Optional Protocols to which the Marshall Islands is a State Party;

(g) researching best practices for implementing human rights standards;

(h) performing such other functions as are conferred on it by the Committee, this Act, or any other Act.

Section 11. Functions of the Chairperson of the Working Group.

The Chairperson of the Working Group is responsible for:

(a) the efficient discharge by the Working Group of its functions;

(b) calling meetings and notifying Working Group members;

(c) inviting specialists to attend meetings when required by the Working Group or as requested by the Committee;

(d) reviewing and approving draft minutes before distribution;

(e) chairing Working Group meetings according to the agenda;

(f) ensuring all discussion items end with a decision, action or definite outcome;

(g) reporting on Working Group meeting outcomes in a timely manner to the Chairperson of the Committee.

Section 12. Appointment of complaints sub-committees.

(1) Upon receipt of a complaint under Part IV, the Chairperson, after consulting the Committee, may appoint a complaints sub-committee as follows:

(a) Gender Rights Complaints Sub-Committee to handle complaints relating to a violation of a right under the CEDAW;

(b) Child Rights Complaints Sub-Committee to handle complaints relating to a violation of a right under the CRC;

(c) Disability Rights Complaints Sub-Committee to handle complaints relating to a violation of a right under the CRPD;

(d) any other complaints sub-committee required to deal with a complaint in any other specific human rights area.

(2) A complaints sub-committee must comprise three members, one of which must be a legal practitioner.

(3) Members of a complaints sub-committee must:

(a) be independent and have no conflict of interest relating to the complaint; and

(b) have appropriate qualifications or experience, as prescribed by the Committee, in the particular area of human rights to which the complaint relates.

(4) For the purpose of subsection (3) (a), an independent person is a person who is not employed by Government or does not represent Government in any capacity.

(5) Subject to other provisions of this Act, a complaints sub-committee may regulate its procedures in such manner as it considers fit.

Section 13. Functions of complaints sub-committees.

The functions of a complaints sub-committee include -

(a) receiving complaints referred to it by the Committee;

(b) investigating and inquiring into complaints and all related matters in accordance with the complaints procedure under Part IV;

(c) seeking assistance or advice, as necessary, from relevant persons; and

(d) resolving complaints by settlement, where possible, and recommending to the Committee the referral of unresolved complaints to the Attorney-General for further action.

PART III - ADMINISTRATION

Section 14. Secretariat.

(1) The Community Development Office of the Ministry of Internal Affairs is the Secretariat of the Committee and the Working Group.

(2) The functions of the Secretariat include the following:

(a) organize meetings of the Committee, Working Group, and other sub-committees;

(b) prepare agendas and other necessary documents for the Committee, Working Group, and other sub-committees;

(c) issue notices for meetings at least one week in advance and ensure agendas and documents are attached;

(d) prepare minutes and summary records of meetings of the Committee, Working Group, and other sub-committees;

(e) distribute minutes and summary records to members of the Committee, Working Group, and other sub-committees no more than 7 working days after each meeting;

(f) ensure that Committee decisions and developments (or other related matters, as instructed by the Chairperson) are published in the Gazette once approved by the Committee;

(g) undertake other functions as directed by the Chairperson of the Committee, Working Group, or other sub-committees, respectively.

Section 15. Confidentiality.

Unless otherwise authorized by this Act or any other Act, all information obtained through the Committee, Working Group, complaints sub-committee, or other sub-committee, must be kept confidential.

PART IV - COMPLAINTS

Section 16. Complaints about human rights violations.

(1) A person may make a complaint, including a representative complaint on behalf of other persons with a similar cause of complaint, to the Committee about an alleged violation of human rights.

(2) Subject to subsection (3), a complaint must be made in writing, within six months of the date of the alleged violation.

(3) The Committee may extend the period under subsection (2) if the complainant shows that he or she:

(a) was not aware, within the six month period, of the alleged violation; or

(b) was unwilling or unable to make a complaint, within the six month period, due to

the nature of the violation.

(4) Upon receipt of a complaint, the Chairperson of the Committee, after consulting the Committee, must appoint a complaints sub-committee in accordance with section 12 to handle the complaint.

(5) Subject to subsection (6), all proceedings of a complaints sub-committee are confidential and must not be made public, unless parties to the complaint agree in writing.

(6) The outcome agreed and duly signed by the parties and the complaints sub-committee may be published if the parties to the complaint and the complaints sub-committee agree in writing.

Section 17. Decision whether to investigate.

A complaints sub-committee must investigate any complaint received by it, unless before commencing or during the investigation it decides not to do so because -

(a) the complaint is not within the jurisdiction of the Committee;

(b) the complaint is manifestly ill-founded or not sufficiently substantiated;

(c) the complainant, or a person acting on his or her behalf, has brought proceedings relating to the same matter in a court or tribunal;

(d) the complainant has available another remedy or channel of complaint that the complainant could reasonably be expected to use;

(e) the complainant has not a sufficient interest in the complaint;

(f) the person alleged to be aggrieved does not desire that the complaint be investigated or withdraws the complaint; or

(g) the complaint has been delayed too long to justify any investigation.

Section 18. Investigation.

(1) A complaints sub-committee, after receipt of a complaint, must decide as soon as reasonably practicable what further evidence it requires, if any, and invite the respondent to respond to the complaint in writing.

(2) If the complaints sub-committee considers that the complaint is manifestly ill-founded or not sufficiently substantiated, or that in all the circumstances of the complaint, it is unnecessary to take further action, the complaints sub-committee may decide to take no further action.

(3) If the complaints sub-committee decides not to proceed, it must advise the complainant of the decision in writing, giving reasons for the decision.

(4) If the complaints sub-committee decides to proceed to investigate the complaint, it must advise the complainant, any other person claiming to be aggrieved, and the respondent, that the complaints sub-committee intends to investigate the complaint, and must:

(a) give details of the complaint;

(b) invite the respondent to respond to the complaint within a specified period (being not less than 21 days);

(c) advise the parties that upon receipt of any response or upon expiration of the time allowed, the complaints sub-committee may seek any further information in relation to the complaint or response; and

(d) advise the parties that in the absence of any response, the complaints sub-committee may make a recommendation in respect of the complaint.

Section 19. Settlement.

(1) At any time after receipt of a complaint, and any time during investigation of a complaint, a complaints sub-committee may assist the parties to reach a settlement.

(2) A settlement means an agreement between the parties on actions that will settle the matter and includes:

(a) the payment of compensation;

(b) the tendering of an apology; or

(c) any other response to the complaint that the complaints sub-committee recommends or to which the parties agree.

(3) As part of a settlement, the complaints sub-committee may request a satisfactory assurance by the respondent of the non-repetition of the conduct that was the subject matter of the complaint or any similar conduct.

(4) If the parties reach a settlement, the complaints sub-committee must record the settlement in writing and supply a copy to the complainant and respondent.

Section 20. Procedure if no settlement.

(1) If the parties are unable to reach a settlement, the complaints sub-committee must make a preliminary recommendation for resolving the complaint, which may:

(a) be based on information already held;

(b) be based on any further information requested and supplied by the complainant or the respondent; or

(c) follow a hearing or any other reasonable procedure the complaints sub-committee

specifies.

(2) The complaints sub-committee must:

(a) advise the parties of the preliminary recommendation, and what further action, if any, the complaints sub-committee proposes should be taken by either or both parties; and

(b) provide the parties with a reasonable opportunity to advise acceptance or rejection of the recommendation and proposal for further action, if any.

(3) After receiving views or representations of the parties, or having provided a reasonable opportunity to provide views or representations, the complaints sub-committee may, if the parties have reached a settlement, issue a recommendation that is to be final between the parties, and the complaints sub-committee must advise the parties accordingly.

Section 21. Referral to the Attorney-General.

(1) The Committee may take appropriate legal action if it decides that:

(a) a person or group of persons is engaged in a practice that is in violation of this Act;

(b) there is a significant violation of human rights which raises issues of public interest;

(c) no other method of dealing with an issue or complaint is likely to be successful; or

(d) it does not have the competency or resources to investigate the complaint or the complaint is outside its jurisdiction.

(2) On the direction of the Committee, the Chairperson of the Committee may refer to the Attorney-General, with a view to prosecution, any suspected offense under this Act or any other Act.

(3) Upon the application of any of the parties to a complaint or on the direction of the Committee, the Chairperson of the Committee may refer the complaint to the Attorney-General if:

(a) a complaints sub-committee is unable to make a final recommendation on the complaint; or

(b) the respondent to the complaint has not complied with the terms of a final recommendation within 30 days or any longer time the Committee allows.

(4) The Attorney-General must decide, in a timely manner, whether a complaint received under subsection (3) should proceed by way of prosecution for an offence under this Act or any other Act.

(5) No evidence is admissible in any court of any information, statement or admission disclosed or made during the course of any proceedings of the complaints sub-committee during any attempt to reach a settlement.

(6) The Attorney-General may dismiss a matter brought before it which it considers manifestly ill-founded or not sufficiently substantiated.

PART V - OFFENSES AND PENALTIES

Section 22. Offenses and Penalties.

(1) A person must not:

(a) provide false or misleading information to the Committee, a complaints sub-committee, or other sub-committee in the exercise of its functions under this Act;

(b) assault, obstruct, or hinder a person acting on the authority of the Committee, a complaints sub-committee, or other sub-committee; or

(c) obstruct or hinder, in any other way, the work of a complaints sub-committee.

(2) A representative of a member of the Committee, Working Group, complaints sub-committee, or other sub-committee, must not:

(a) contravene section 15 by releasing, without authorization, confidential information; or

(b) use, for personal gain (or the gain of any other person), any information obtained through the Committee, Working Group, complaints sub-committee, or other sub-committee.

(3) A person who contravenes subsection (1) or (2) commits an offense, and on conviction is liable to a fine not exceeding $5,000 or to imprisonment for a term not exceeding one year, or both.

(4) In addition to the offenses and penalties specified under this Act, offenses and corresponding penalties relating to violations of human rights in the Bill of Rights and other legislation, including the following, apply:

(a) Domestic Violence Protection and Prevention Act 2011;

(b) Child Protection Act 2015;

(c) Rights of Persons with Disabilities Act 2015;

(d) Criminal Code.

Section 23. Protection from liability.

No action lies against the following in respect of an act or omission done in good faith in the performance of a function under this Act:

(a) the Committee;

(b) the Working Group;

(c) a complaints sub-committee;

(d) any other sub-committee;

(e) a person acting under an authority conferred by the Committee.

PART VI - MISCELLANEOUS

Section 24. Regulations.

(1) The Minister, with the approval of Cabinet, may make regulations necessary or expedient for giving full effect to this Act and its administration.

(2) The Minister must consult with the Committee before making regulations.

Section 25. Transitional and Savings.

At the commencement of this Act:

(a) all actions, proceedings, and decisions of the Committee lawfully taken by or on behalf of the Resources Development Committee, continue in effect as if taken by the Committee;

(b) any agreement or other business arrangement lawfully entered into by the Resources Development Committee, continues as if entered into by the Committee; and

(c) persons acting in a supportive or advisory capacity to the Resources Development Committee continue in such capacity for the Committee.

Section 26. Severability.

If any provision of this Act is deemed to be unconstitutional, the other provisions remain in full force and effect.

Section 27. Effective Date.

This Act comes into force in accordance with Article V, section 21, of the Constitution and the Rules of Procedures of the *Nitijela*.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No.80ND1 was passed by the Nitijela of the Republic of the Marshall Islands on the 29th day of September, 2015; and

2. That I am satisfied that Nitijela Bill No.80ND1 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 19th day of October 2015.

Attest:

Hon. Donald F. Capelle	**Lena Tiobech**
Speaker	Clerk
Nitijela of the Marshall Island	Nitijela of the Marshall Islands