NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

36TH CONSTITUTIOMAL REGULAR SESSION, 2015 **BILL NO.: 81ND1**

P.L. 2015-50

AN ACT

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

PART I – PRELIMINARY

Section 1. Short Title.

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

Section 2. Interpretation.

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

(a) "Child" shall mean any person who is below 18 years;

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

(i) When the child exhibits evidence of:

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

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

(C) Malnutrition;

(D) Failure to thrive;

(E) Poisoning;

(F) Fracture of any bone;

(G) Sub-dural hematoma;

(H) Soft tissue swelling;

(I) Extreme pain;

(J) Extreme mental distress;

(K) Gross degradation;

(L) Death; and

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

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

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

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

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

(c) "Committee" shall mean the Human Rights Committee established under the *Human Rights Committee Act 2015*;

(d) "Convention" shall mean the United Nations Convention on the Rights of the Child;

(e) "Maltreatment" shall mean any intentional or willful act resulting in physical, mental, or emotional harm to the child or any omission by a parent, guardian, or care-giver to protect children from such harm, and in general all forms of violence, aggression, cruel, degrading, or humiliating treatment of a child;

(f) "Minister" shall mean the Minister of Internal Affairs;

(g) "Ministry" shall mean the Ministry of Internal Affairs;

(h) "Narcotic drugs" shall have the corresponding definition in the *Narcotics Drugs (Prohibition and Control) Act 1987*;

(i) "other laws of the Republic" shall include Acts, regulations, policies;

(j) "Exploitation" shall mean:

(i) Sexual exploitation, including commercial sexual exploitation of children in the form of child prostitution, child sex tourism, child pornography, and child trafficking for these purposes;

(ii) Economic exploitation, including the worst forms of child labor, child begging, children's work and child domestic work not in accordance with the regulations of this Act; and

(iii) Other forms of exploitation, including all forms of slavery or practices similar to slavery, debt bondage or servitude;

(k) "Secretary" shall mean the Secretary of Internal Affairs;

(l) "Sexual abuse" of children shall mean any:

(i) Engagement or incitement of a child under the age of consent to participate in sexual activities in violation of Article 42 of this Law;

(ii) Engagement in sexual activities with a child in abuse of a position of trust or authority such as that of parent, guardian or care-giver;

(m) "Sexual activities" shall mean sexual intercourse and any other act performed on, by, with, or in front of a child where the presence or participation of the child is for the purpose of the sexual gratification of another person;

(n) "Parents" shall mean the natural, adoptive, or foster parents of a child;

(o) "Guardians" shall have the corresponding definition under the *Marshall Islands Guardianship Act 1984*;

(p) "Care-giver" shall mean any person other than a parent or guardian who factually cares for a child, due to a professional or non-professional relationship, in a permanent or temporary manner.

(q) "Human Rights Committee" means the Committee established under the Human Rights Committee Act 2015 responsible for the implementation and realization of human rights in the Republic.

Section 3. Application of this Act.

(1) This Act applies to every person in the Marshall Islands, irrespective of the person's nationality or citizenship.

(2) This Act binds the State, including every Government department and statutory authority and every person in the employment of the Government.

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.

Section 9. Right to Education.

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

(2) Corporeal punishment shall be prohibited.

Section 10. Protection of the Right to Privacy.

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

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

Section 11. Leisure and Play.

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

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

Section 12. Protection from Harmful Customary Practices.

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

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

Section 13. Right to Health.

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

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

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

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

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

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

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

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

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

Section 15. Children belonging to Minority Groups.

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

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

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

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

Section 16. Right to Safe Accommodation and Alternative Care.

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

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

(3) Alternative care shall comprise:

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

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

(c) Family-based care, meaning:

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

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

Section 17. Children with Disabilities.

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

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

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

(2) Abduction of children shall mean:

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

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

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

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

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

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

(c) Any other illicit purposes.

(5) Principle of Non-Punishment of Child Victims

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

1) A child in prostitution,

2) A child victim of sex tourism,

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

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

(6) Child victims of abduction, sale, or trafficking shall have access to the means of protection established in Part III of this Act and other laws of the Republic. Prevention activities shall include conducting research into the root causes of child abduction, sale, and trafficking and raising awareness on the issue.

PART III – IMPLEMENTATION AND APPLICATION

Section 19. Ministry's Obligations.

(1) In consultation with the Minister and Secretary, the Public Service Commission shall appoint appropriate staff qualified by education and experience to implement subsection (2).

(2) The Ministry shall have responsibilities including but not limited to

(a) serving as the Republic's operational focal point with respect to the Convention on the Right of the Child;

(b) rendering advice and guidance to the general public on child rights and child welfare;

(c) providing administrative and logistical support on issues involving children;

(d) raising awareness on the child right and child welfare;

(e) in collaboration with national or local police, undertaking assessments and investigations into allegations of child abuse and neglect;

(f) issuing licenses verified by the Human Rights Committee to child protection service providers;

(g) in collaboration with relevant public officials, keep a registry of children and other relevant data such as incidences, nature and scope of child abuse and neglect;

(h) Submitting periodic reports from the Committee to the International Committee on the Rights of the Child;

(i) other responsibilities specified in this Act.

Section 20. Human Rights Committee.

(1) Further to its functions under the Human Rights Committee Act 2015, the additional functions of the Committee in relation to the rights of the child shall be to:

(a) Advise the Cabinet on policies and strategies on child rights and child welfare;

(b) Advise the Cabinet on the making of regulations to further implement this Act;

(c) Seeking capacity-building opportunities for public officials dealing with children such as national or local police, nurses and doctors, and teachers;

(d) Verifying licenses for child protection service providers;

(e) Advise the Ministry to file for care orders or supervision orders with the High Court;

(f) Form a sub-committee to hear complaints related to child rights and child welfare;

(g) Refer instances of child abuse and neglect to the Office of the Attorney-General for prosecution;

(h) Report annually to the Cabinet on its activities in respect of the rights of the child;

(i) Prepare and finalize periodic reports to the International Committee on the Rights of the Child as required by the Convention;

(j) Perform any other functions conferred on the Committee by the Cabinet or the Minister.

Section 21. Role of Non-Governmental Organizations.

(1) The role of non-governmental organizations (NGOs) is as follows:

(a) NGOs may investigate the circumstances, behavior and conditions of upbringing of children, and assess without delay the needs of those who are believed to be living in unacceptable conditions, to be mistreated, or to have serious social problems.

(b) NGOs may advise the Ministry or Committee on the efficiency and effectiveness of human rights measures taken by the Government.

(c) NGOs shall apply those child protection measures provided in this Act which are most applicable at any time, and which are deemed the most suitable to safeguard their interests and welfare.

(d) NGOs may undertake other tasks they so choose with respect to the Convention, including raising awareness on child rights and child welfare.

(e) NGOs may develop and submit their own reports to the International Committee on the Rights of the Child with respect to the Republic's implementation of the Convention.

Section 22. Child Protection Service Providers.

(1) Child protection service providers shall carry out the system of child protection measures established under this Act and other laws of the Republic. Service providers shall include governmental and non-governmental child protection organizations and institutions, support families, and individuals.

(2) Law enforcement units specially trained in handling child protection cases and in dealing with children shall be established.

(3) Services shall include education and leisure activities, programs of support and assistance to parents, other family members, and guardians, measures of investigation and intervention in cases where children are at risk of neglect, abuse, maltreatment, and exploitation and in need of medical assistance, psychological counseling, legal aid, and safe accommodation and alternative care for actual or potential child victims.

Section 23. Licensing and Training for Child Protection Service Providers.

(1) In order to establish a child protection institution or organization or to render individual child protection services, a license must be obtained from the Committee through the Ministry. The requirements for the application to and the granting of licenses shall be specified under regulations.

(2) In order to obtain a license, service providers must abide by certain minimum standards of safety and hygiene as specified by law/regulation to protect the safety, health, development, and well-being of children.

3) Any person to be employed by a child protection service provider shall provide documents showing that she/he has never been convicted of an offense of child sexual abuse, child sexual or economic exploitation, child trafficking, of violation of care and education obligations. Any person who committed an offence against a child in violation of this Law Act not be employed or retained in any way by a child protection organization or institution and may not offer services as part of a support family or as an individual.

(4) All persons offering child protection services shall receive adequate and continuous training to prepare them for their work with children.

Section 24. Financial Responsibilities for the Ministry.

(1) The Minister shall ensure that a sufficient amount of its budget is available to fund the activities of the Ministry under this Act.

(2) If a case of child protection requires the intervention of the Ministry or Committee, parents or guardians may be ordered to pay for the protection and maintenance of the child, specifically the costs of the child's stay in a place of safe accommodation or in alternative care, unless they do not have the necessary financial resources.

Section 25. International Cooperation.

(1) The Committee, through the Ministry, shall coordinate with child protection authorities from other countries to achieve the objectives of this Act. It shall:

(a) Share best practices of child protection;

(b) Exchange information and cooperate in the implementation of laws regarding cases of child protection with a cross border aspect, such as inter-country adoption or its functional equivalents or guardianship, international child abduction, wrongful removal or retention of children, and child trafficking, regarding the identity and whereabouts of children and their parents, and data on organized crime;

(c) Cooperate with international organizations and participate in international efforts to promote respect for children's rights.

PART IV – CHILD PROTECTION MEASURES

Section 26. National Child Hotline.

(1) A national child hotline to which children can turn to ask for advice and support shall be established and operated by the Ministry. Its existence shall be widely publicized. Through

the national helpline, children shall be informed about the options available to them, including possibility to submit their case to the formal response system.

(2) Alternative mechanisms such as websites and the use of social media can be established instead or in addition to the national child helpline.

Section 27. Media.

(1) It shall be prohibited to show, sell, give as a gift, rent or promote to a child films, newspapers, magazines and other types of publications, in which cruel behavior, violence, erotica and pornography are promoted and which pose a threat to the development of a child.

(2) Films are those with a U.S. rating other than "G" or "PG" or any variation thereof.

(3) It shall be prohibited for a child to be in places where such films, newspapers, magazines and other types of publications are manufactured or shown.

(4) Any person or business which contravenes this Section shall be guilty of an offence and shall upon conviction be liable to a fine not exceeding $5,000 or a term of imprisonment for a period not exceeding 1 year, or both.

Section 28. Reporting Obligations.

(1)Any person who becomes aware of a situation or act which may amount to child neglect, abuse, maltreatment, and exploitation in the course of exercising their care for or work with children, shall immediately report the same to the Ministry whom will in turn contact national or local police notwithstanding any other law concerning occupational confidentiality to the contrary. Upon request, any such person is obligated to communicate all information that is likely to facilitate the investigation and to identify perpetrators or victims. Such persons are as follows:

(a) Any licensed or registered professional of the healing arts and any health-related occupation who examines, attends, treats or provides other professional or specialized services, including but not limited to physicians, psychologists, nurses, dentists and other health-related professionals;

(b) Employees or officials of any public or private school;

(c) Employees or officials of any public or private agency or institution, or other individuals providing social, medical, hospital or mental health services;

(d) Employees or officials of any law enforcement agency, including but not limited to the courts, police departments, correctional institutions, and parole or probation officers;

(e) Individual providers of child care, or employees or officials of any child care similar facility; and

(f) Employees of any public or private agency providing recreational or sports activities.

(2) Any other person not required to report under subsection (1) shall report the matter to the Ministry.

(3) Anyone providing such information in good faith shall be exempt from civil or criminal liability which may be linked to the act of reporting.

(4) The confidentiality of the information provided in accordance with subsections (1) and (2) of this Section shall be guaranteed. The identity and other personal details of the family member, care-giver, professional, or other person who provides the information and those of the affected child shall not be revealed. Reports may be made anonymously.

(5)The failure to report of persons who are under an obligation to do so according to subsection (1) shall be guilty of an offence and upon conviction be liable to a fine not exceeding $5,000.

Section 29. Investigation and Intervention Obligations.

(1) If the Ministry has reasonable grounds to suspect child abuse or a need for care and protection, the Secretary shall instruct the appropriate staff, accompanied by the national or local police, to enter and search the premises where the child is kept to investigate.

(2) If it is determined that the child has been abused or is in need of immediate care and protection, the Secretary shall instruct the appropriate staff, accompanied by the national or local police, to remove the child to a place of safety for a period of not more than 14 days.

(3) The child shall be brought before the High Court by the Ministry through the Office of the Attorney-General before the expiry of the 14-day period for an order to be made.

(4) Until the High Court makes its determination, it may commit the child to an approved residential home or to the care of a suitable person based on the recommendation of the Ministry.

Section 30. Care Order and Supervision Order.

(1) Care Order

(a) The High Court may issue a care order to the Ministry on an application by the Ministry.

(b) The care order shall remove the child from a situation where he/she is suffering or likely to suffer significant harm and shall transfer the parental rights to the Ministry.

(c) The Ministry shall take custody of the child and shall determine the most suitable place for the child which may be:

1) an approved residential home;

2) with an approved fit person; or

3) at the home of a parent, guardian or relative.

(d) The maximum duration of a care order shall be three years or until the child attains eighteen years, whichever is earlier, and the High Court may make an interim order or may vary the order.

(e) The High Court may make a further order that the parent, guardian or other person responsible for the child shall pay for the cost of maintaining the child.

(2) Supervision Order

(a) The High Court may issue a supervision order to the Ministry on an application by Ministry.

(b) The supervision order shall be aimed at preventing any significant harm being caused to a child while he/she remains at his/her family home in the custody of his/her parent, guardian or relative.

(c) The supervision order shall place a child under the supervision of the Ministry.

(d) The maximum duration for a supervision order shall be one year or until the child attains eighteen years, whichever is earlier.

Section 31. Administration and Monitoring of Alternative Care.

(1) All child protection service providers shall receive authorization from the Committee through the Ministry to provide alternative care.

(a) The Ministry shall administer a registry of all authorized providers of alternative care.

(b) Rendering services without the required authorization and registration shall constitute an offence resulting in a fine of up to $5,000.

(c) The authorization shall be regularly reviewed by the Ministry.

(2) Personnel working in the care facilities or institutions and private care-givers, shall be adequately trained to care for and educate children. Training shall include the children's rights, including the specific vulnerability of children to abuse, maltreatment, and exploitation and their rights to be protected therefrom.

(3) Children in alternative care shall have access to Committee where they can file complaints or concerns regarding their treatment or conditions of placement.

Section 32. Medical and Psychological Assistance, Rehabilitation and Reintegration Measures.

(1) A child who has been victimized by a violation of this Act or any other laws of the Republic shall be provided with free medical assistance in order that the child regain physical and mental health and recover from the physical or mental trauma he/she may have experienced.

(2) The child shall receive continued assistance to reintegrate into society. Such measures shall include medical and psychological care as well as educational and vocational consultation and training. The child shall be afforded continued mentoring and guidance to avoid re-victimization and social exclusion. The child shall also be afforded protection of the child from confrontation with the alleged perpetrator, the accommodation of the child in a place of safety, and the psychological preparation for possible future encounters.

(3) Measures described in subsection (2) of this Section shall take place in an environment favorable to the safety, health, and well-being of a child and shall carefully guard the child's right to privacy.

Section 33. Sanctions for Crimes Against Children.

(1) The penalties relating to crimes against children in other laws of the Republic shall apply.

(2) Notwithstanding subsection (1), enhanced penalties shall be applied in cases involving aggravated circumstances, including cases in which:

(a) The child suffers severe and/or long-lasting physical injury or psychological trauma as a consequence of the offense;

(b) The offence deliberately or by gross negligence endangers the life of the child or causes the death or suicide of the child;

(c) The child is especially vulnerable to the offense, such as immigrant children, very young children, and children with disabilities;

(d) The offense is committed on a regular basis or by an organized group or by a recidivist;

(e) The offense is committed by a person in a position of trust or authority in relation to the child or a person who is legally responsible for the child, such as a parent, guardian, or care-giver;

(f) The offense is transnational in nature;

(g) Weapons, drugs, or medication are used in the commission of the offence.

Section 34. Right to Fair Compensation.

(1) A child who has been victimized by a violation of this Act or other laws of the Republic has the right to be fully compensated for any damages suffered. This shall include fair and adequate compensation for:

(a) Moral damages, resulting from physical injury and psychological harm,

(b) Material damages, including expended work during the time of exploitation,

(c) Lost opportunities of education and vocational training, and

(d) Any other costs that the child may incur such as for medical, physical, psychological, or psychiatric treatment, including long-term therapy or rehabilitation, for legal services, housing, and transportation.

(2) A child whose rights have been violated according to this Act or other laws of the Republic shall have the direct right to enforce his/her claims for compensation in criminal, civil, or administrative procedures.

(3) A child shall be informed about the right to full compensation in a manner and language that the child can understand.

Section 35. Forfeiture of Assets.

(1) Anyone who violates a provision of this Act or other laws of the Republic shall forfeit all revenues and assets acquired through such acts and omissions and such revenues and assets shall be confiscated by the Government.

PART V – PROTECTION OF CHILDREN IN THE JUSTICE SYSTEM

Section 36. Principles for Judicial Proceedings Involving Children.

(1) Before participating in any judicial proceeding affecting the rights and interests of a child, including as party, accused, victim, or witness, the child shall be provided with all information necessary for him/her to make a confident and educated decision about the kind of participation in the proceedings and the possible consequences thereof. The information shall be provided in a child-friendly manner respecting the child's age, maturity, and capacity.

(2) The Government shall strive to ensure that all judicial proceedings shall be heard and conducted by specially trained law enforcement officials, judges, prosecutors, and lawyers.

Whenever available, these persons shall receive continuous training on the rights of children and the protection of the best interests of children.

(3) Alternatives to the formal and traditional judicial forum, such as mediation and other forms of alternative dispute resolution, shall be encouraged whenever these serve the child's best interests and whenever these guarantee the same level of legal safeguards.

(4) Experts able to assess the maturity, capacity, and wishes of the child shall be encouraged to participate in the proceedings and their views shall be taken into account when determining the child's best interests.

(5) Judges shall be obliged to take the child's views and wishes into account.

Section 37. Protection of Child Victims and Child Witnesses.

(1) Child victims and child witnesses participating in judicial proceedings, their parents, guardians, or care-givers shall be provided with information on:

(a) The available medical and psychological assistance and other child protection services;

(b) The procedures for the justice process, including the role of child victims and witnesses;

(c) The importance, timing, and manner of testimony and ways in which questioning will be conducted during the investigation and trial;

(d) The progress and disposition of the specific case, including the apprehension, arrest, and custodial status of the accused and any pending changes to that status;

(e) The prosecutorial decision, relevant post-trial developments, and the outcome of the case; and

(f) The existing opportunities to obtain reparation from the offender through the justice process, through alternative civil proceedings, or through other processes.

(2) Unless the child's participation in the proceedings is against the best interests of the child, it shall be encouraged through:

(a)Using appropriate surroundings and alternative out-of-court venues;

(b) *In-camera* proceedings;

(c) Clearing the courtroom or excluding certain individuals whose presence is likely to intimidate or humiliate the child or have an adverse effect on the child's participation;

(d) Allowing the support and/or presence of other people close to the child whose presence the child desires;

(e) Using one-way screens, closed-circuit television, or other forms of remote participation;

(f) Strictly limiting the use of irrelevant and intimidating cross-examinations of the child; and

(g) Admitting statements of the child given prior to the trial, such as statements to national or local police.

In order to avoid continued questioning of the child, it shall be possible to record the hearing of the child by electronic means or video and use the material at the subsequent proceedings in court.

(3) Parents, other family members, or guardians of a child victim or witness shall accompany the child and attend all stages of the proceedings. The court shall decide otherwise if

it deems the attendance of the parents or guardians to be contrary to the best interests of the child and thus prefers to hear the child alone.

(4) Direct contact, confrontation, and interaction between a child victim or child witness with an offender or alleged offender shall be avoided, unless at the request of the child when is not contrary to his/her best interests. Special protective measures shall be taken when the alleged offender is a parent, a family member, guardian, or care-giver.

(5) There shall be a presumption that a child is a capable witness subject to examination. The child's testimonies shall not be presumed invalid or untrustworthy by reason of the child's age alone.

(6) A child victim or witness may at any point in the proceedings withdraw her/his statement, report, or testimony without jeopardizing the trial of an alleged offender. A report or accusation of a child shall not be a prerequisite for the prosecution of an alleged offender.

Section 38. Children in Conflict with the Law.

(1) The minimum age of criminal responsibility shall be governed by the *Criminal Code, 2011*.

(2) Any child who is accused of having violated the laws of the Republic shall:

(a) Be informed promptly and directly of the charges against her/him;

(b) Have prompt access to free legal assistance;

(c) Have the matter determined without undue delay;

(d) Be presumed innocent; and

(e) Be neither compelled to give testimony nor to confess guilt.

Section 39. Sentencing Guidelines for Children in Conflict with the Law.

(1) The sentences for children convicted under the law shall prioritize their rehabilitation, education, and reintegration in society rather than punishment or retaliation.

(2) Criminal punishment, particularly imprisonment, shall be used only as a measure of last resort and shall be avoided whenever possible. It shall be prohibited to subject a child to capital punishment or life imprisonment without the possibility of release, or to inflict any other cruel or degrading penalties.

(3) In lieu of criminal punishment, or in addition to a sentence, the child court may order counseling, probation, reconciliation between perpetrator and victim, mentoring, educational programs for the prevention of future legal offences, and/or other measures appropriate to facilitate the child's development as a responsible member of society. These measures should be constructive and individualized responses to the child's offense and behavior and to his/her character.

(4) A child shall have the right to challenge the legality of his/her conviction before a superior court. Prison sentences shall be subject to periodic review to determine the continued need for incarceration and the possibility of a release on parole.

(5) Children shall be afforded the opportunity to clear or close their criminal record. Where the judge has been convinced that a child sentenced to penalty has proven himself/herself to be a law-abiding individual based on irreproachable conduct, the judge shall declare on his/her own motion or on application filed by the convicted person, the parent, guardian, or legal representative, that the entry be struck from the criminal record.

(6) Where appropriate, this Section is subject to the Juvenile Protection Act.

Section 40. Protection of Children Deprived of their Liberty.

(1) Children who are restricted in or deprived of their liberty shall be held in a manner that avoids harm to their dignity and is appropriate to their age. Those responsible for the care and guard of child detainees must protect them from physical, psychological, and sexual violence, respect their human rights, and ensure decent, humane, and just treatment.

(2) Parents, guardians, or care-givers of a child, shall promptly be informed about the child's detention, arrest, and any other form of restriction or deprivation of liberty. The notification shall also include the nature of the offence in respect of which the child has been arrested and shall inform that the child is entitled to legal assistance and counseling.

(3) Child detainees shall be kept separate from adult detainees.

(4) Children shall be able to maintain contact with parents, family members, and other persons close to the child through regular visits and correspondence.

(5) The child's rights to health, safety, and development, as provided under this Act and other laws of the Republic, shall be respected in detention settings. Discipline at detention places shall preclude torture, cruel, and degrading treatment. It shall be prohibited to subject a child detainee to additional punishment. The use of restraint or force shall only be allowed when the child poses an imminent threat of injury to her/himself or others, but never as punishment.

(6) Subject to good behavior, the child shall access to educational and vocational programs to help the child overcome difficulties that contributed to his/her commission of the criminal offence and prepare for the return to his/her community, family life, education, or employment after release.

(7) The relevant after care shall be provided to the child, including reintegration measures, such as continued mentoring and guidance tailored to the specific needs of the child

with the goal of enabling a dignified return of the child to her/his family, community, and social life and to prevent future commission of criminal acts.

PART VI – FINANCIAL PROVISIONS

Section 41. Child Protection Fund.

(1) The Child Protection Assistance Fund is established as a special revenue account within the National Treasury and under the control and supervision of the Ministry of Finance, which must provide for its administration in accordance with the *Financial Management Act of 1990.*

(2) The sources of the Fund consist of :

(a) money appropriate by the *Nitijela* in respect of the functions of the Ministry and the Minister under this Act;

(b) other moneys provided by the Cabinet for the work of the Ministry by way of grant or otherwise; and

(c) money paid to Government by any person or body, whether in or outside the Marshall Islands, for the work of the Ministry.

(3) If the sum available in the Find is not sufficient to meet the purposes stated in section 41(4).

(a) the Ministry may request the Nitijela to provide finance for the implementation of this Act in addition to the annual appropriation; and

(b) the Cabinet may:

(i) make available moneys from the contingencies Fund or by reprogramming; and

(ii) seek assistance from international and other sources.

(4) Money made available and received under subsection (3) must be credited to the Find.

(5) This section does not limit the authority of the Cabinet to apply for, administer or expend any grants, gifts, or payments or pass-through funds for the purpose of this Act.

(6) Fines payable under this Act are to be paid to the Ministry of finance and deposited into the General Fund of the Marshall Islands.

(7) The Funds must be used to contribute to expenses, including capital expenses, of:

(a) Government projects for children;

(b) accessibility measures, support services, awareness-rising, training, or any other measures required under this Act;

(c) representative organizations or persons with disabilities; and

(d) institutions that train supporters or personal assistants of persons with disabilities.

(8) The Secretary of Finance shall maintain proper accounts and records of the Fund, and the VIII, Section 5(4), of the Constitution.

PART VI – MISCELLANEOUS PROVISIONS

Section 42. Relationship with other Acts and International Conventions.

(1) In addition to the offences and penalties specified under this Act, offences relating to children and corresponding penalties in other laws of the Republic shall remain in effect.

(2) In the administration of this Act, the Ministry shall, to its fullest extent, execute its functions consistent with the provisions of the Convention and other international covenants and conventions dealing with human rights.

Section 43. Regulations.

(1) The Minister may, in accordance with the *Administrative Procedures Act*, may make regulations for the effective implementation of this Act.

(2) Notwithstanding subsection (1), the Minister shall consult with the Committee on appropriate provisions of the regulations.

Section 44. Severability.

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

Section 45. Repeal.

(1) The *Sale of Tobacco to Minors Act 1966*, *Child Abuse and Neglect Act*, and *Adult Film Act of 1994* are hereby repealed.

Section 46. Effective Date.

(1) This Act shall come 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.81ND1 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.81ND1 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.

P.L. 2015-50

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