

Convention on the Rights of the Child
Shadow Report Submission:
**Indigenous Children's Rights
Violations in the Marshall Islands**

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Violations of Indigenous Children’s Rights in the Marshall Islands

I. Reporting Organization

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*; and on its website: www.cs.org.

II. Background Information

Aolepān Aorōkin Majeļ, or the Republic of the Marshall Islands (“RMI”) in English is an island state in the Pacific spread out over 29 coral atolls, comprising 1,156 individual islands and islets, which are all part of the larger island group of Micronesia.¹ After nearly 40 years under US administration as part of the UN Trust Territory of the Pacific Islands, the Marshall Islands attained independence in 1986 under a Compact of Free Association.² The RMI continues to have significant ties to the US, which provides about 60 percent of the RMI’s annual national budget.³ The Marshall Islands also have a unique relationship with the US on account of the fact that the islands were the location of several US nuclear tests from the 1940s to the 1960s--the effects of which continue to be problematic to this day.⁴ Many Marshallese (or *ri-Majol*, as they refer to themselves)⁵ are rightfully wary of the US’ involvement in the RMI because they believe that the US misled their government about the full extent of the effects of the nuclear testing. Specifically, the US failed to disclose internal reports that all 22 populated atolls in the RMI received dangerous levels of fallout prior to concluding the Compact of Free Association, with its limited support for medical care and compensation.⁶ To be noted, Cultural Survival, in it’s

¹ *The World Factbook: Marshall Islands*. Central Intelligence Agency, 14 Nov. 2017, www.cia.gov/library/publications/the-world-factbook/geos/rm.html. [hereinafter World Factbook]

² Ibid.

³ *Marshall Islands Rejects U.S. State Department Report On Human Trafficking*. Pacific Islands Report, 21 July 2016, www.pireport.org/articles/2016/07/21/marshall-islands-rejects-us-state-department-report-human-trafficking. [hereinafter: PI Report RMI Human Trafficking]

⁴ World Factbook

⁵ Duke, Michael R. “Marshall Islanders: Migration Patterns and Health-Care Challenges.” *Migrationpolicy.org*, Migration Policy Institute, 22 May 2014, www.migrationpolicy.org/article/marshall-islanders-migration-patterns-and-health-care-challenges. [hereinafter MPI Article]

⁶ Johnson, Barbara Rose. *Environment, health, and other human rights concerns associated with nuclear weapons testing, fallout, involuntary displacement, human subject experimentation, and the failure to achieve durable solutions that protect the environment and safeguard the rights of the people of the Marshall Islands* at 2. Cultural Survival, 15 Sept. 2014, www.culturalsurvival.org/sites/default/files/media/upr_statement_by_cpe_-_rmi_nuclear_issues-1.pdf. [hereinafter: CS Report]

2014 report to the Universal Periodic Review, outlined these issues and made a number of recommendations regarding the legacy of nuclear testing.⁷

The RMI became a party to the Convention on the Rights of the Child (“CRC” or “the Convention”) in 1993.⁸ The RMI has yet to sign or ratify any of the optional protocols to the treaty. Under the RMI Constitution, ratified international instruments such as the CRC do not automatically have the force of law.⁹ Rather, such treaties must be incorporated into national law through domestic legislation. Although the RMI ratified the CRC in 1993, the Convention has not been directly incorporated into domestic law.¹⁰ The RMI was absent from the assembly at the time of voting on the UN Declaration on the Rights of Indigenous Peoples, along with several other Pacific islands states.¹¹ It is unclear whether this absence was a deliberate abstention or not. The RMI has also not ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.¹² The RMI is one of only eight states that has ratified four or fewer international human rights treaties.¹³ Of particular significance to this report, the US is now the only state in the UN system that has not ratified the CRC.¹⁴

The latest census in the RMI was completed in 2011 and indicated that the RMI had a total population of 53,158.¹⁵ The median age was 20.6 years,¹⁶ and children under age 15 made up 39.9% of the population, or approximately 21,210 people.¹⁷ Information from 2006 indicated that 92.1% of the population identified as indigenous Marshallese, 5.9% identified as mixed-Marshallese, and 2% as other.¹⁸ The RMI is thus considered an Indigenous nation.

⁷ Ibid

⁸ *Ratification Status by Country: Marshall Islands*. UN OHCHR,

www.tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=109&Lang=EN.

⁹ “No treaty or other international agreement which is finally accepted by or on behalf of the Republic on or after the effective date of this Constitution shall, of itself, have the force of law in the Republic” Constitution of the Marshall Islands, Article V, Section 1(4), available at http://www.paclii.org/mh/legis/consol_act/cotmi363/.

¹⁰ *Access to Justice for Children: Marshall Islands*. Child Rights International Network, July 2014, www.crin.org/sites/default/files/marshallislands_access_to_justice.pdf. [hereinafter CRIN Access to Justice]

¹¹ *General Assembly Adopts Declaration On Rights Of Indigenous Peoples*. United Nations, 13 Sept. 2007, www.un.org/press/en/2007/ga10612.doc.htm.

¹² *Ratifications of C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)*. International Labour Organization, www.ilo.org/dyn/normlex/en/f?p=1000%3A11300%3A0%3A%3ANO%3A11300%3AP11300_INSTRUMENT_ID%3A312314.

¹³ *Ratification of 18 International Human Rights Treaties*. OHCHR, indicators.ohchr.org/.

¹⁴ “UN lauds South Sudan as country ratifies landmark child rights treaty.” *UN News Center*, United Nations, 4 May 2015, www.un.org/apps/news/story.asp?NewsID=50759.

¹⁵ *Republic of the Marshall Islands 2011 Census report* at 13, Secretariat of the Pacific Community, 2012, www.prism.spc.int/images/census_reports/Marshall_Islands_Census_2011-Full.pdf. [hereinafter RMI Census]

¹⁶ Ibid. at 20.

¹⁷ Ibid. at 19.

¹⁸ World Factbook.

III. Ongoing Rights Violations

A. Displacement and Environmental Degradation as a Result of Nuclear Testing (Articles 24, 27, 29, 30)

One of the most socially and culturally dangerous trends in the RMI is the displacement of the ri-Majol from their traditional homes to urban centers, the United States, and resettlement camps as a result of the US' nuclear testing in the country.¹⁹ Nuclear radiation continues to be a problem in the country that causes significant displacement, usually for health-related reasons, and children are particularly vulnerable. Today, the majority of nuclear survivors from Bikini and Rongelap live in exile, largely on borrowed or rented Marshallese land on Kwajalein, Majuro, Kili, in Hawaii and the continental US.²⁰ This mass displacement is also an existential threat to traditional Indigenous culture, as many ri-Majol struggle to maintain their cultural identity far from home. For a sense of the scale of the problem, approximately one-third of the RMI's population has relocated to the US.²¹

The United Nations Special Rapporteur (UNSR) on the implications for human rights of the environmentally sound management and disposal of hazardous substances and waste, Mr. Calin Georgescu, observed in his mission report on the RMI that the human rights consequences of nuclear contamination involve, at the most fundamental levels, the loss of a healthy environment that sustains a viable, culturally distinct, Pacific Island way of life.²² He also noted that given the degree of contamination and remediation limitations, return to a traditional self-sufficient way of life in heavily contaminated atolls like Rongelap is impossible.²³ In less-contaminated areas, the UNSR concluded that the Marshallese lack the means, infrastructure, and technical capacity to find durable solutions to the dislocation to their Indigenous ways of life.²⁴

Furthermore, during and after the nuclear tests, the US withheld much of the information associated with its military activities, especially their classified documentation on nuclear and biochemical weapons tests, fallout patterns, environmental contamination, and related consequential damages for human and ecosystem health, thus significantly limiting the notion of

¹⁹ CS Report at 7.

²⁰ Johnson, Barbara Rose. *Environment, health, and other human rights concerns associated with United States nuclear weapons testing, involuntary displacement, human subject experimentation, and the failure to achieve durable solutions that protect the environment and safeguard the rights of the people of the Marshall Islands*. Cultural Survival, May 2015, https://www.culturalsurvival.org/sites/default/files/media/upr_statement_by_cpe_-_united_states-1.pdf. [hereinafter: US UPR Report]

²¹ MPI Article.

²² US UPR Report.

²³ US UPR Report.

²⁴ US UPR Report.

damage and the related obligation to repair harm to what was already in the public realm.²⁵ It was not until 1999, for example, when the US notified the RMI Government and the Nuclear Claims Tribunal established by the US-RMI Compact Agreement that fallout from the 1954 Bravo detonation had blanketed the entire nation, significantly endangering the health of all 22 populated atolls and islands.²⁶ A nation-wide medical monitoring and treatment program was warranted, yet, to this day, the US only acknowledges and minimally funds a medical program to monitor and treat the radiation-related disease of people who had lived on four atolls (Rongelap, Utrik, Bikini, Enewetak).²⁷

Given the immense degree of contamination in the larger terrestrial and marine environment, many areas remain officially off-limits. Without the ability to access all the resources on all the islands in the Atoll, a return to a culturally-vibrant, self-sufficient and healthy way of life seems impossible, a sentiment influenced in part by the experience of the 600 or so people who have been able to return to Enewetak--one of the larger islands that had to be evacuated due to the nuclear tests.²⁸ Today in Enewetak, a significant portion of the atoll's natural resources are too radioactive to handle and residents struggle to survive. A significant amount of their diet consists of USDA food supplements.²⁹ While residents of other outer islands are able to earn modest income from coconut oil, copra, traditional foods, and handicraft production, products from Enewetak are not safe and will not be accepted by the national copra processing plant.³⁰ In short, the promise of reclaiming a culturally-vibrant way of life in this heavily polluted context has been difficult to achieve. Daily life is a struggle.

Ri-Majol such as Lemeyo Abon have testified that:

Today in the Marshall Islands there is no oncologist to treat the many cancers that have become too common in our lives. Chemotherapy or radiation treatment for cancer does not exist in the Marshall Islands so we have to leave the country for treatment. Because the US denies that our radiation exposures have affected the health of children and their children, only a few people are eligible for government-funded medical treatment for their radiogenic cancers, disease, and conditions.³¹

²⁵ Johnson, Barbara Rose, and Brooke Takala. *Environmental Disaster and Resilience: The Marshall Islands Experience Continues to Unfold*. Cultural Survival, Sept. 2016, www.culturalsurvival.org/publications/cultural-survival-quarterly/environmental-disaster-and-resilience-marshall-islands-0.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ CS Report at 4.

Mores Abraham has also shared her tragic story of losing both of her parents to radiation-related diseases and how the process of seeking medical care forced her family to relocate:

My father contracted rheumatic fever as a child in Ujelang and died in 2009 in Hawai'i as a result of rheumatic heart disease. Papa and Mama had gone to Hawai'i at that time to seek medical treatment... In 2012 Mama developed a sore on her head. The doctor in Enewetak gave her antibiotics. The doctor gave her 6 antibiotics for nearly four months. She came to Majuro on her own and went to the 177 [radiation] clinic where the doctor gave her more antibiotics. We sent her to Hawai'i to see the doctors there... She went through chemotherapy but the cancer was too advanced by that time. In July 2013 we brought her back to Majuro to live with us and she died October 11, 2013. She really suffered through her treatments and was in so much pain at the end.³²

These are just two of many stories of sickness, displacement, and profound suffering that the ri-Majol have faced on account of the US' nuclear tests. Though the tests were many decades ago, the ri-Majol continue to experience health issues, environmental degradation, and displacement to this day. Children continue to be particularly sensitive to the negative health effects caused by radiation, and displacement robs young ri-Majol of opportunity to live their Indigenous culture.

B. Sex Trafficking (Articles 19, 34, 35, 36)

Marshallese children are vulnerable to sex trafficking and forced prostitution, often in connection with visiting foreign vessels.³³ The country's high rates of tourism and low standard of living makes it particularly vulnerable to these problems.³⁴ Nevertheless, the RMI is not a party to the UN's Protocol to Prevent the Trafficking in Persons.³⁵ The government rarely investigates or prosecutes sex trafficking crimes, and oftentimes appears to ignore the problem altogether.³⁶

The Committee on the Rights of the Child ("the Committee") noticed in its last concluding observations that the RMI failed to include information on measures taken to prevent sexual exploitation of children in their national report.³⁷ In the RMI's state party report for this session,

³² CS Report at 5-6.

³³ *Freedom in the World 2016: Marshall Islands*. Freedom House, 1 Dec. 2016, www.freedomhouse.org/report/freedom-world/2016/marshall-islands. [hereinafter Freedom House RMI]

³⁴ United Nations, Committee on the Rights of the Child, *Concluding Observations: Marshall Islands*, CRC/C/MHL/CO/2 at 68 (19 November 2007), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/MHL/CO/2&Lang=En. [hereinafter: CRC Concluding Observations]

³⁵ "Status of Treaties: Chapter XVIII 12.a." *United Nations Treaty Collection*, United Nations, 12 June 2017, www.treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-12-a&chapter=18&lang=en.

³⁶ Freedom House RMI

³⁷ CRC Concluding Observations at 68.

it claimed that “Currently, there are no documented cases of children involved in prostitution, pornography or sex trafficking.”³⁸

Such a finding is inconsistent with the US Department of State’s determination in 2016 that the RMI is a “Tier 3” trafficking country, the worst possible ranking.³⁹ The report found that the RMI is both a source and destination country for children subjected to sex trafficking.⁴⁰ According to the report, RMI girls are recruited by foreign business owners to engage in prostitution with crew members of foreign fishing and transshipping vessels that dock in the capital Majuro.⁴¹

Despite publicly denying the existence of a problem, the RMI passed and enacted the Child Rights Protection Act in 2015, which addressed the gap in criminalization of domestic child trafficking in the RMI.⁴² Article 251 of the RMI Criminal Code prohibits transnational forms of human trafficking and prescribes penalties of up to 10 years’ imprisonment for the trafficking of children.⁴³ The RMI government also helped facilitate two anti-trafficking trainings in which seventeen victim service providers received victim protection and identification training in January 2016, and 75 law enforcement officials and lawyers received anti-trafficking law enforcement training in March 2016.⁴⁴ In addition, the government’s National Task Force on Human Trafficking conducted anti-trafficking awareness outreach to over 1,500 high school students, college students, government officials, and the general public in RMI’s two major cities.⁴⁵ However, despite all of the government’s efforts to increase enforcement and raise awareness on this issue, there has not been any trafficking prosecutions in the RMI for five consecutive years.⁴⁶

IV. Selected Concluding Observations from RMI’s 2007 CRC Review

³⁸ United Nations, Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention: Marshall Islands*, CRC/C/MHL/3-4 at 198, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMHL%2F3-4&Lang=en. [hereinafter: CRC Consideration of RMI Report]

³⁹ PI Report RMI Human Trafficking.

⁴⁰ “2016 Trafficking in Persons Report.” *Marshall Islands*, U.S. Department of State, www.state.gov/j/tip/rls/tiprpt/countries/2016/258818.htm. [hereinafter: 2016 Trafficking Report]

⁴¹ *Ibid.*

⁴² Marshall Islands Sessional Legislation, Child Rights Protection Act, 2015, available at http://www.paclii.org/cgi-bin/sinodisp/mh/legis/num_act/crpa2015252/crpa2015252.html?stem=&synonyms=&query=child%20rights%20protection%20act.

⁴³ Marshall Islands Sessional Legislation, Criminal Code, Section 251, 2011, available at http://www.paclii.org/cgi-bin/sinodisp/mh/legis/num_act/cc201194/cc201194.html?stem=&synonyms=&query=criminal%20code.

⁴⁴ 2016 Trafficking Report.

⁴⁵ 2016 Trafficking Report.

⁴⁶ *Ibid.*

At the end of the RMI's last CRC review, the Committee noted that the RMI did not provide replies to the list of issues and, for the second time, did not send a delegation to the concluding dialogue. Nevertheless, the Committee made the following observations and recommendations relevant to this report:⁴⁷

- *The Committee recommends that the State party take effective measures to harmonize its domestic legislation, which includes customary law, with the provisions and principles of the Convention.*
- *The Committee notes that the Marshall Islands is party to two of the nine core international human rights treaties. Although Parliament seems to have approved the ratification of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee is concerned at the information that the instruments of ratification for these four treaties have not been submitted to the Secretary-General of the United Nations.*
- *The Committee recommends that the State party develop a comprehensive, rights-based national plan of action, covering all areas of the Convention on the Rights of the Child.*
- *The Committee remains concerned that no independent body exists to monitor the implementation of the Convention and receive individual complaints in cases of violations of the rights of the child.*
- *The Committee recommends that the State party develop a system for the comprehensive collection of data on all areas of the Convention in a way that allows for disaggregation and analysis.*
- *The Committee is concerned at the limited human and financial resources available at the community level to provide assistance to families, as well as at the breakdown of family structures.*
- *The Committee remains concerned at the many children in urban areas who are left unattended at home and notes that, owing to recent and rapid urbanization, assistance from extended family support networks is not always available.*
- *While noting with satisfaction the enactment of the Adoption Act 2002, which regulates intercountry adoptions, and the establishment of the Central Adoption Authority (CAA), the Committee remains concerned at the continued practice of “customary adoptions” by family members, as well as at the lack of accompanying measures to prevent illegal intercountry adoptions.*
- *While noting that corporal punishment is prohibited in schools by the Rules and Regulations of the Ministry of Education (1992) and that it is unlawful as a disciplinary*

⁴⁷ CRC Concluding Observations.

measure under the revised Penal Code, the Committee is concerned that it remains lawful in the family and that it is not formally prohibited in alternative care settings.

- *The Committee is concerned at the reduction and subsequent termination of social work services, as well as at the lack of funding under the Compact Agreement available for child-abuse prevention. The Committee is further concerned at the absence of a legal system adapted to the needs of young victims of abuse and neglect.*
- *Furthermore, the Committee is concerned at the increase in incidents of child abuse and neglect, especially in urban areas. It also remains concerned at the lack of data, appropriate measures, mechanisms and resources for the prevention of and fight against domestic violence, including child sexual abuse, and the absence of public debate and awareness-raising on this issue.*
- *The Committee regrets the absence of information in the State party's report on measures taken to prevent sexual exploitation of children, in the light of the low standard of living and the high rate of tourism in the country which could be conducive to its occurrence.*

V. Recommendations from the Universal Periodic Review

The following recommendations from the RMI's 2015 UPR, all of which were accepted, are also relevant to the Committee:⁴⁸

- *75.40 Adopt and implement the Child Protection Bill, preventing children from becoming victims of child abuse and publicly raising awareness for their rights (Germany);*
- *75.68 Take the measures necessary to review its domestic legislation in order to guarantee the free and compulsory birth registration of all children born in the country (Argentina);*
- *75.70 Build on the Domestic Violence Prevention and Protection Act and the National Gender Policy to implement more concrete programmes and policies to combat violence against women and children, and to promote the full and equitable participation by women in society (Singapore);*
- *75.74 Continue combating violence against women and children by prohibiting the right to use force and severe corporal punishment of children at home, and effectively enforcing the existing laws in this area, especially the Domestic Violence Prevention and Protection Act (Thailand);*
- *75.82 Pursue efforts undertaken to prevent and more effectively punish acts of domestic violence committed against women and children, through strengthening the legislative arsenal and the resources allocated to the judiciary, police force and justice (France);*

⁴⁸ United Nations, Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Marshall Islands, A/HRC/30/13* (20 July 2015), available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>.

- *75.85 Prohibit corporal punishment of children in all settings, including the home, and repeal the authorization of the use of force to correct children's misconduct in the Criminal Code (Sweden);*
- *75.86 Reform its legislation with a view to establish the prohibition of all forms of corporal punishment of children, an indispensable component for the prevention and elimination of violence against children, as well as for the respect for children's rights, dignity and physical integrity (Brazil); and*
- *75.87 Adopt legislation to prohibit all forms of corporal punishment of children in all settings, and explicitly repeal the right to use force for "prevention or punishment of the minor's misconduct" and for the maintenance of "reasonable discipline" in the Criminal Code (Namibia).*

VI. Questions

- What actions has the government taken to persecute sex trafficking crimes involving children?

VII. Recommendations

- Continue to document the health and environmental implications of nuclear testing on the RMI.
- That RMI government seeks further support from international bodies to encourage the United States to provide deeper compensation from the US for nuclear testing.
- Publicly endorse the UN Declaration on the Rights of Indigenous Peoples.
- Ratify ILO Convention No. 169.
- Become a party to the UN Protocol to Prevent the Trafficking in Persons.
- Submit the instruments of ratification for the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Secretary-General of the United Nations.
- Invite the UNSR on the Rights of Indigenous Peoples to visit the RMI.
- Create an oversight mechanism to ensure that the RMI's anti-sex-trafficking laws are properly enforced.
- Provide children with child-sensitive mechanisms to lodge complaints in case they are victims of violence.