



MARSHALL ISLANDS

Legal System	Constitution	Bill of Rights	Country Structure	Form of Government
Common Law Statutory Law Customary Law	Written	Yes	Single State	Republic

1. INTRODUCTION

1.1. Marshall Islands and Modern Slavery (Human Trafficking)

The Republic of the Marshall Islands is a sovereign democratic State. It became independent from the United States of America in May 1979.

The Constitution of the Marshall Islands of 1979, as amended, provides for the President to be Head of State,¹ the executive authority of the Republic to be vested in the Cabinet (which includes the President and other appointed Ministers),² and the legislative power of the Republic to be vested in the Nitijela (the parliament consisting of 33 elected members) and to be exercised through legislation.³ This includes human trafficking laws.

The Constitution provides for fundamental rights.⁴ No person shall be held in slavery or involuntary servitude, and no person shall be required to perform forced or compulsory labor.⁵

These rights are enforced through the Constitution and domestic legislation including, in the case of human trafficking, the Prohibition of Trafficking in Persons Act 2017 (**PTP Act**),⁶ and the Child Rights Protection Act 2015 (**CRP Act**).⁷

According to the 2021 U.S. State Department Trafficking in Persons Report (**2021 TIP Report**):

The Government of the Marshall Islands does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. These efforts included finalizing its national action plan; continuing an investigation into a government official; hiring an additional social worker; and continuing to fund some protection services available to victims, if identified.⁸

¹ Constitution of the Republic of the Marshall Islands, article V, section 3(1), available at: https://www.constituteproject.org/constitution/Marshall_Islands_1995.pdf?lang=en.

² *Id.*, article V, sections 1(1) and 2(1).

³ *Id.*, article IV, sections 1(1) and 2(1).

⁴ *Id.*, article II.

⁵ *Id.*, article II, section 2.

⁶ Prohibition of Trafficking in Persons Act 2017, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

⁷ Child Rights Protection Act 2015, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102767&p_count=7&p_classification=04.

⁸ U.S. Dep’t of State, Trafficking in Persons Report 381 (2021), available at: <https://www.hsl.org/?abstract&did=855864>.

However, the Government needs to improve law enforcement, victim protection, and public awareness. The Government did approve and begin to implement a national action plan in 2021.

Furthermore, according to the U.S. State Department's 2021 TIP Report:

Human traffickers exploit domestic and foreign victims in Marshall Islands, and traffickers exploit Marshallese victims abroad. Traffickers exploit Marshallese women and girls, and may also exploit East Asian women and girls, in sex trafficking in the Marshall Islands; some of these women and girls have also been confined and subjected to forced childbearing as part of international fraudulent adoption schemes. Hotel and bar staff and family members recruit and transport women and girls and exploit them in sex trafficking with foreign construction workers and crewmembers of foreign fishing and transshipping vessels that dock in Majuro.⁹

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Traffickers also exploit some of these foreign fishermen in conditions indicative of forced labor on ships in Marshallese waters.¹⁰

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Limited reports indicate some Marshallese searching for work in the United States experience indicators of trafficking, such as passport confiscation, excessive work hours, and fraudulent recruitment. Some Marshallese children are transported to the United States, where they are subjected to situations of sexual abuse with indicators of sex trafficking.¹¹

The Marshall Islands Human Rights Committee has multi-stakeholder members from various government offices, the private sector, and civil society organizations. It monitors the implementation of international human rights obligations; prepares national reports to the Universal Periodic Review and human rights treaty bodies; follows up on recommendations by international human rights mechanisms; receives and investigates complaints of human rights violations; resolves complaints by settlement; and refers unresolved complaints to the Attorney General's Office for further action. Refer to Section 8 for further details.

The National Task Force on Human Trafficking is also a multi-stakeholder group consisting of government, non-governmental organizations (**NGOs**), and international organization officials. It is responsible for implementing the national action plan.

1.2. Marshall Islands' Policy and Legal Position

The Constitution of the Marshall Islands is the supreme law of the Republic of Marshall Islands.¹² Any inconsistent law is void to the extent of the inconsistency (Article 1, Section 2, subsection 1).¹³ Article II provides for fundamental rights,¹⁴ and the Attorney General may seek redress for any violations of those

⁹ *Id.* at 382.

¹⁰ *Id.*

¹¹ *Id.*

¹² Constitution of the Republic of the Marshall Islands, article I, section 1, available at: https://www.constituteproject.org/constitution/Marshall_Islands_1995.pdf?lang=en.

¹³ *Id.*, article I, section 2(1).

¹⁴ *Id.*, article II.

rights.¹⁵ In the case of trafficking in persons, the PTP Act¹⁶ and the CRP Act¹⁷ supplement the fundamental rights set forth in the Constitution.

The Marshall Islands has ratified or acceded to UN and other conventions protecting fundamental human rights.

2. OVERVIEW OF MARSHALL ISLANDS' LEGAL APPROACH TO COMBATING MODERN SLAVERY AND HUMAN TRAFFICKING

2.1. Marshall Islands' Regional and International Law Obligations

2.1.1. Fundamental human rights

The Marshall Islands is a party to the UN conventions safeguarding fundamental human rights. It has ratified, or acceded to, the International Covenant on Economic, Social and Cultural Rights (2018);¹⁸ the International Convention on the Elimination of All Forms of Racial Discrimination (2019);¹⁹ the Convention on the Elimination of All Forms of Discrimination against Women (2006),²⁰ and its Optional Protocol (2019),²¹ and related inquiry procedure (2006);²² the Convention on the Rights of the Child (1993),²³ its Optional Protocol related to a communications procedure (2019),²⁴ and its Optional Protocol related to the

¹⁵ *Id.*, article I, section 4(a).

¹⁶ Prohibition of Trafficking in Persons Act 2017, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

¹⁷ Child Rights Protection Act 2015, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102767&p_count=7&p_classification=04.

¹⁸ International Covenant on Economic, Social and Cultural Rights: Signatories, United Nations Treaty Collection, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4.

¹⁹ International Convention on the Elimination of All Forms of Racial Discrimination: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang_en.

²⁰ Convention on the Elimination of All Forms of Discrimination against Women: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4.

²¹ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8-b&chapter=4&clang_en.

²² Inquiry procedure, Committee on the Elimination of Discrimination Against Women, available at:
<https://www.ohchr.org/en/hrbodies/cedaw/pages/inquiryprocedure.aspx>.

²³ United Nations Convention on the Rights of the Child: Signatories, United Nations Treaty Collection, available at:
https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4.

²⁴ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure: Signatories, United Nations Treaty Collection, available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11-c&chapter=4&clang_en.

Sale of Children, Child Prostitution and Child Pornography (2019);²⁵ and the Convention on the Rights of Persons with Disabilities (2015).²⁶

The Marshall Islands has also ratified the International Labour Organization's (ILO) Worst Forms of Child Labour Convention (No. 182).²⁷

2.1.2. Slavery and trafficking

The Marshall Islands has ratified the UN Convention against Transnational Organized Crime,²⁸ but not the related Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,²⁹ and the related Protocol Against the Smuggling of Migrants by Land, Sea and Air.³⁰

2.1.3. Effect under Marshall Islands' law

The Cabinet is responsible for conducting the foreign affairs of the Republic: Provided that the Cabinet shall not accept any treaty without the approval of the Nitijela, signified by resolution (Article V, section 1, subsection 3(d) of the Constitution).³¹

No treaty or other international agreement which is finally accepted by or on behalf of the Republic shall, of itself, have the force of law in the Republic (Article V, section 1, subsection 4 of the Constitution).³²

2.2. Human Rights Protections Under Marshall Islands' Law

The Constitution provides for fundamental rights in its Article II Bill of Rights and provides a mechanism for enforcement of those rights.³³ The Human Rights Committee Act 2015 also provides a process for complaints against broader human rights violations.³⁴

²⁵ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography: Signatories, United Nations Treaty Collection, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11-c&chapter=4&clang=_en.

²⁶ Convention on the Rights of Persons with Disabilities: Signatories, United Nations Treaty Collection, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&clang=_en.

²⁷ C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182.

²⁸ United Nations Convention against Transnational Organized Crime: Signatories, United Nations Treaty Collection, available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en.

²⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: Signatories, United Nations Treaty Collection, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18.

³⁰ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, United Nations Treaty Collection, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18.

³¹ Constitution of the Republic of the Marshall Islands, article V, section 1(3)(d), available at:

https://www.constituteproject.org/constitution/Marshall_Islands_1995.pdf?lang=en.

³² *Id.*, article V, section 1(4).

³³ *Id.*, article II.

³⁴ Human Rights Committee Act 2015, section 1216, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102769.

Article 11, section 2, provides that no person shall be held in slavery or involuntary servitude nor shall any person be required to perform forced or compulsory labor.³⁵

Article I, section 4, provides that, subject to the Constitution's limitations on the judicial power, (a) the Attorney General and all persons directly affected by a violation of the Constitution have the right to sue; (b) the courts of general jurisdiction have the power to make all orders necessary to secure compliance with the Constitution; and (c) the Government is not immune from suit for its own actions or its agents' actions.³⁶

Article II, section 18, provides that: 1. "No right secured by the Bill of Rights may be denied or abridged, whether directly through the imposition of force or penalty, or indirectly through the withholding of privilege or benefit"; and 2. "Any provision of the Bill of Rights may be invoked either as a defense to a civil or criminal proceeding or as a basis for legal or equitable relief against any actual or threatened violation."³⁷

The Human Rights Committee receives and investigates general human rights complaints (which would include all types of trafficking in persons). It seeks a settlement of the complaint or, if no settlement is reached, it then refers the complaint to the Attorney General for further action (Part IV of the Human Rights Committee Act).³⁸

2.3. Criminalization of Modern Slavery

The PTP Act provides for trafficking in persons criminal offenses.³⁹ Refer to Section 3.

The CRP Act provides for trafficking of children offenses.⁴⁰ Refer to Section 3.4.2.

2.4. Supply Chain Reporting

No laws or policies in the Marshall Islands require reporting of human trafficking in supply chains or oblige private businesses to control their supply chains to hinder human trafficking.

2.5. Investigation, Prosecution, and Enforcement

2.5.1. *Investigation and prosecution of criminal offenses*

The Marshall Islands Rules of Criminal Procedure, as ordered by the High Court Chief Justice and made effective on 1 January 2021, provide that the prosecution of an offense (other than criminal contempt) must be initiated by an information signed by a government prosecutor or by a complaint made under oath by a police officer before a judge or clerk of the courts or by a citation signed by a police officer.⁴¹ A felony must

³⁵ Constitution of the Republic of the Marshall Islands, article II, section 2(1), available at: https://www.constituteproject.org/constitution/Marshall_Islands_1995.pdf?lang=en.

³⁶ *Id.*, article II, section 4.

³⁷ *Id.*, article II, section 18.

³⁸ Human Rights Committee Act 2015, part IV, available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102769.

³⁹ Prohibition of Trafficking in Persons Act 2017, available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

⁴⁰ Child Rights Protection Act 2015, available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102767&p_count=7&p_classification=04.

⁴¹ Marshall Islands Rules of Criminal Procedure, title II, rule 3(a)-(e), available at: <https://rmicourts.org/wp-content/uploads/2020/12/201203-MIRCrP-2021-Final.pdf>.

be arraigned and tried on an information.⁴² A misdemeanor may be tried on an information or a complaint.⁴³ A misdemeanor, tried in the first instance in the District Court or a Community Court, may be tried on a citation.⁴⁴ This is followed by an arrest warrant or a summons on the person charged if there is probable cause that the person committed the offense.⁴⁵

Under the Criminal Code section 1.04(2), a felony is a crime or offense that is punishable by imprisonment for a period of more than one year.⁴⁶ Every other crime is a misdemeanor.⁴⁷

Parts II and III of the Criminal Procedure Act set out the search-and-seizure powers for police officers and their powers of arrest.⁴⁸

2.5.2. Mutual assistance/international cooperation

The Marshall Islands signed a Compact of Free Association with the United States of America in 1986.⁴⁹ The two countries negotiated an amended Compact, which was signed in 2003 and entered into force in 2004.⁵⁰ The relationship of free association continues indefinitely. Although free to conduct its own foreign affairs, the Government handles its foreign relations under the terms of the amended Compact. Under the amended Compact, the United States has full authority and responsibility for security and defense of the Marshall Islands, and the Government of the Marshall Islands is obligated to refrain from taking actions that would be incompatible with these security and defense responsibilities.

The U.S. Department of Defense, under the Military Use and Operating Rights Agreement, a subsidiary government-to-government agreement of the Compact, received permission to use parts of the lagoon and several islands on Kwajalein Atoll.⁵¹ The agreement allows the United States continued use of the U.S. Army Garrison Kwajalein Atoll missile test range until 2066 with an option until 2086.⁵² Another major subsidiary agreement of the original Compact provides for settlement of all claims arising from the U.S. nuclear tests conducted at Bikini and Enewetak Atolls from 1946 to 1958.⁵³

⁴² *Id.*, title II, rule 3(a).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*, title II, rule 4(a).

⁴⁶ Criminal Code 2011, section 1.04(2), available at: http://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/2011/2011-0059/CriminalCode2011_1.pdf.

⁴⁷ *Id.*, sections 1.04(1) and (3).

⁴⁸ Criminal Procedure Act, parts II and III, available at:
https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1966/1966-0016/CriminalProcedureAct_2.pdf.

⁴⁹ Compact of Free Association between the Government of the United States of America and the Government of the Republic of the Marshall Islands, available at: <https://www.doi.gov/oa/about/compact>.

⁵⁰ Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, available at: <https://2009-2017.state.gov/documents/organization/173999.pdf>.

⁵¹ Compact of Free Association, Military Use and Operating Rights, between the United States of America and the Marshall Islands, available at: <https://www.state.gov/wp-content/uploads/2019/02/04-501.3-Marshall-Islands-Com-Military-Use-wRelAgmtCS.pdf>.

⁵² *Id.*, article X, section 3.

⁵³ 48 U.S. Code § 1921b - Agreements with and other provisions related to the Republic of the Marshall Islands, available at: https://www.law.cornell.edu/uscode/text/48/1921b#h_1.

The United States provides the Marshall Islands with approximately USD 70 million annually through FY 2023, including contributions to a jointly managed trust fund and financial assistance from other U.S. federal grants. The trust fund will provide an annual source of revenue after FY 2023. The governments of the United States and Marshall Islands established a Joint Economic Management and Financial Accountability Committee with members from both governments to strengthen management and accountability with regard to assistance provided under the amended Compact, and to promote effective use of the funding provided.

Marshall Islands participates in the North Pacific regional aid program provided by Australia and the bilateral funding programs with Australia. Those programs include aid for education, governance, accountability, clean water, and sanitation. The Pacific Women Shaping Pacific Development initiative also seeks to enhance women's empowerment in cooperation with an NGO named Women United Together Marshall Islands.

The Marshall Islands participates in Pacific collaborative and information exchange organizations, including the Pacific Immigration Development Community, the Pacific Islands Chiefs of Police, and the Customs Oceania Organization. People trafficking is one focus of these organizations.

3. MARSHALL ISLANDS' FEDERAL CRIMINAL OFFENSES RELATING TO SLAVERY, SLAVERY-LIKE CONDITIONS, AND HUMAN TRAFFICKING

3.1. Overview of Criminal Offenses

The Prohibition of Trafficking in Persons Act 2017 (**PTP Act**) provides trafficking in persons offenses for slavery and slavery-like practices.⁵⁴

Section 1005 provides that any person who:

- (a) recruits, transports, transfers, harbors, or receives another person;
- b) by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- (c) for the purpose of exploitation of that person;

shall be guilty of the offense of trafficking in persons, and upon conviction shall be subject to a term of imprisonment not exceeding fifteen (15) years, and a fine not exceeding ten thousand dollars ([USD]\$10,000), or both.⁵⁵

Additional offenses related to trafficking are set forth for:

(A) An accomplice "upon conviction, shall be liable to a term of imprisonment of not more than fifteen (15) years, and a fine of not more than five thousand dollars ([USD]\$5,000), or both";⁵⁶

⁵⁴ Prohibition of Trafficking in Persons Act 2017, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

⁵⁵ *Id.*, section 1005.

⁵⁶ *Id.*, section 1011(1).

- (B) “A corporation or other entity whose management knowingly participates as an accomplice or accomplices in the crime of trafficking in persons shall be guilty of an offense and, upon conviction, shall be liable to a fine in an amount not exceeding two hundred fifty thousand dollars ([USD]\$250,000)”;⁵⁷
- (C) A person who organizes or directs trafficking, “upon conviction shall be subject to a term of imprisonment of no less than fifteen (15) years, and a fine of not more than ten thousand dollars ([USD]\$10,000), or both”;⁵⁸
- (D) A person attempting trafficking “upon conviction shall be subject to a term (sic) imprisonment of not more than seven (7) years and, a fine of not more than five thousand dollars ([USD]\$5,000) or both”;⁵⁹ and
- (E) A person who aids and abets trafficking “upon conviction, shall be subject to a term of imprisonment of not more than seven (7) years and a fine of not more than five thousand dollars ([USD]\$5,000) or both.”⁶⁰

Section 1015 provides offenses related to travel or identity documents:

- (1) Any person who without lawful authority makes, produces, or alters any travel or identity document, whether actual or purported, in the course or furtherance of any offense under this Act, shall be guilty of an offense and upon conviction shall be subject to a term of imprisonment of not more than fifteen (15) years, and a fine of not more than ten thousand dollars ([USD]\$10,000), or both.⁶¹
- (2) Any person who obtains, procures, destroys, conceals, removes, confiscates, withholds, alters, replicates, possesses, or facilitates the fraudulent use of another person’s travel or identity document, with the intent to commit or to facilitate the commission of an offense under this Act, shall be guilty of an offense and upon conviction shall be subject to a term of imprisonment of not more than fifteen (15) years, and a fine of not more than ten thousand dollars ([USD]\$10,000), or both.⁶²

Section 1006 defines offenses for unlawful exploitation:

- (1) Exploitation within the meaning of this Act shall include: (a) the exploitation of the prostitution of others or other forms of sexual exploitation; (b) forced or coerced labor or services including bonded labor and debt bondage; (c) slavery or practices similar to slavery; (d) servitude including sexual servitude; (e) the removal of organs; [and] (f) other forms of exploitation.⁶³
- (2) If the person subjected to exploitation is a child, exploitation shall also include: (a) the use of procuring or offering of a child for illicit or criminal activities; (b) the exploitation of the prostitution of others or other forms of sexual exploitation; (c) the use in armed conflict; (d) work that, by its nature or by the circumstances in which it is carried out, is likely to harm the health or safety of children; (e) the employment or use in work of a child who has not reached

⁵⁷ *Id.*, section 1011(2).

⁵⁸ *Id.*, section 1012.

⁵⁹ *Id.*, section 1013.

⁶⁰ *Id.*, section 1014.

⁶¹ *Id.*, section 1015(1).

⁶² *Id.*, section 1015(2).

⁶³ *Id.*, section 1006(1).

the applicable minimum working age for the employment or work; [and] (f) other forms of exploitation.⁶⁴

Section 1010 states that it is not a defense that the trafficked persons consented to the intended exploitation or that the intended exploitation did not occur.⁶⁵

Section 1003(1) sets out a number of definitions:

(a) “Abuse of a position of vulnerability” refers to any situation in which the persons involved believe they have no real and acceptable alternative but to submit; or it means taking advantage of the vulnerable position in which a person is placed as a result of fear, coercion, infliction of physical or emotional harm, or influence.

* * *

(c) “Accomplice” includes any person, natural or otherwise, that supports, contributes to, funds, or provides material resources, and any other assistance in any form, to support the commission of an offense under this Act.

(d) “Child” means any person below the age of eighteen.

(e) “Commercial carrier” is a legal or a natural person who engages in the transportation of goods or people for commercial gain.

(f) “Coercion” means the threat or use of force, and some forms of non-violent or psychological threats or use of force, including but not limited to (i) threats of harm or physical restraint of any person; (ii) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; (iii) abuse or any threat linked to the legal status of a person; [and] (iv) psychological pressure.

(g) “Deception” includes any conduct that is intended to deceive a person; or it is any deception by words or by conduct.

(h) “Debt bondage” means the status or condition arising from a pledge by debtors of their personal services or those of a person under their control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or if the length of those services is not limited and defined.

(i) “Exploitation of prostitution of others” is the unlawful obtaining of financial or other material benefit from the prostitution of another person.

(j) “Forced labor or services” includes all work or service that is exacted from any person under the threat of any penalty and for which the persons concerned have not offered themselves voluntarily.

(k) “Prostitution” has the same definition used in the Prostitution Act: the person engages or offers or agrees to engage in “sexual conduct” with another person in return for something of value to be received by the person or by a third person.

⁶⁴ *Id.*, section 1006(2).

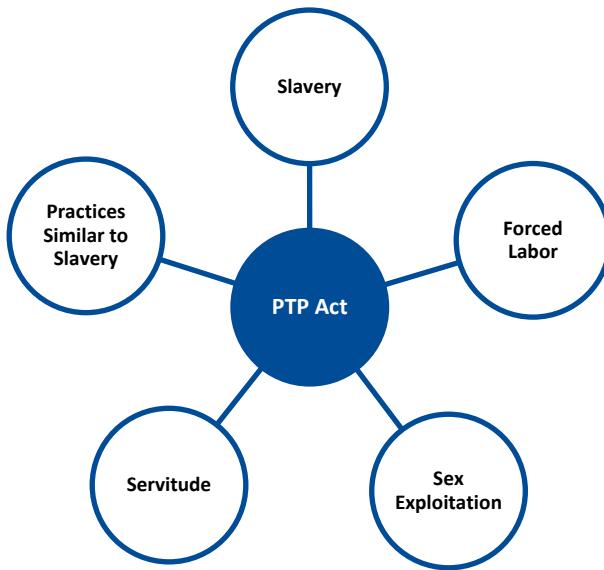
⁶⁵ *Id.*, section 1010.

* * *

(n) “Servitude” occurs when a person cannot escape from or change the labor conditions or the obligations to work or provide services.

(o) “Sexual Exploitation” means the obtaining of financial or other benefits through the involvement of another person in prostitution, sexual servitude, or other kinds of sexual services, including pornographic acts or the production of pornographic materials.

(p) “Slavery” is the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised, or the status or condition of a person over whom control is exercised to the extent that the person is treated like property.⁶⁶



3.2. Slavery Offenses Under the Criminal Code

3.2.1. General

Article II, Section 2, subsection 1, of the Constitution provides that no person shall be held in slavery.⁶⁷

Section 1006 of the PTP Act includes slavery in its definition of exploitation.⁶⁸ Consequently, the trafficking in persons offense in section 1005 includes slavery.⁶⁹

⁶⁶ *Id.*, section 1003(1).

⁶⁷ Constitution of the Republic of the Marshall Islands, article II, section 2(1), available at: https://www.constituteproject.org/constitution/Marshall_Islands_1995.pdf?lang=en.

⁶⁸ Prohibition of Trafficking in Persons Act 2017, section 1006, available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

⁶⁹ *Id.*, section 1005.

3.2.2. Extraterritorial application

Section 1004 provides that the PTP Act shall apply to any offense: (a) committed within the territory of the Republic of the Marshall Islands; (b) committed on board a vessel or aircraft that is registered under the laws of the Republic of the Marshall Islands at the time the offense was committed; (c) committed partly within and partly outside the Republic; (d) committed outside the Republic, provided that either the perpetrator or a victim is a citizen of the Republic, or both the perpetrator and the victim are citizens of the Republic.⁷⁰

3.3. Slavery-Like Offenses in Marshall Islands' Legal Order

3.3.1. Servitude

Article II, Section 2, subsection 1, of the Constitution prohibits involuntary servitude.⁷¹

Because Section 1006 of the PTP Act includes servitude in the definition of exploitation, the trafficking in persons offense in section 1005 punishes servitude.⁷²

3.3.2. Forced labor

Article II, Section 2, subsection 1, of the Constitution prohibits forced or compulsory labor.⁷³ The term “forced or compulsory labor” does not include: (a) any labor required by the sentence or order of a court; (b) any other labor required of a person lawfully detained if reasonably necessary for the maintenance of the place of detention; or (c) any service required by law in lieu of compulsory military service.⁷⁴

Section 1008 of the PTP Act provides that any person who knowingly uses or profits from labor or services prohibited by Section 1006 is guilty of an offense and, upon conviction, is subject to a term of imprisonment of not more than fifteen (15) years, a fine not exceeding ten thousand dollars ([USD]\$10,000), or both.⁷⁵

Also, Section 1006 of the PTP Act includes forced labor in its definition of exploitation, so that the trafficking in persons offense in section 1005 penalizes forced labor.⁷⁶

3.3.3. Deceptive recruiting for labor or services

Section 1005 of the PTP Act includes deceptive recruiting in the trafficking in persons offense.⁷⁷

⁷⁰ *Id.*, section 1004.

⁷¹ Constitution of the Republic of the Marshall Islands, article II, section 2(1), available at: https://www.constituteproject.org/constitution/Marshall_Islands_1995.pdf?lang=en.

⁷² Prohibition of Trafficking in Persons Act 2017, sections 1005 and 1006, available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

⁷³ Constitution of the Republic of the Marshall Islands, article II, section 2(1), available at: https://www.constituteproject.org/constitution/Marshall_Islands_1995.pdf?lang=en.

⁷⁴ *Id.*, article II, section 2(2).

⁷⁵ Prohibition of Trafficking in Persons Act 2017, section 1008, available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

⁷⁶ *Id.*, sections 1005 and 1006.

⁷⁷ *Id.*, section 1005.

3.3.4. Early and forced marriage

For a marriage to be valid, at the time of the marriage the male must be not less than 18 years of age and the female not less than 16 years of age. Where the female is between 16 and 18 years of age, one of her parents or her guardian must consent to her marriage (section 428 of the Births, Deaths and Marriages Registration Act 1988).⁷⁸ These requirements do not apply to marriages between citizens in accordance with recognized customary practice. A marriage contracted between citizens in accordance with recognized customs is valid.⁷⁹

However, section 1012 of the Child Rights Protection Act 2015 protects children against any social, cultural, ritual, or traditional practice that is harmful to their safety, health, development, or well-being.⁸⁰ The Births, Deaths and Marriages Registration Act must establish a minimum age for marriage.

In addition, forced marriage is not identified in the definition of exploitation in section 1006 of the PTP Act. However, that definition includes practices similar to slavery.⁸¹ Arguably, forced marriage is a practice similar to slavery and, therefore, included, though not expressly named, in the definition of exploitation. If so, then Section 1005 of the PTP Act includes forced marriage in the trafficking in persons offense.⁸²

3.3.5. Debt bondage

The trafficking in persons offense in section 1005 penalizes debt bondage, which is included in Section 1006 of the PTP Act's definition of exploitation.⁸³

3.3.6. Any other relevant offenses

Except as set out in Section 3.1., Marshall Islands has no other relevant slavery-like offenses.

3.3.7. Extraterritorial application of the offenses

Refer to Section 3.2.2.

3.4. Human Trafficking/Smuggling-Related Criminal Offenses

3.4.1. International and domestic trafficking/smuggling of people

Section 1005 of the PTP Act penalizes trafficking in persons.⁸⁴

⁷⁸ Births, Deaths and Marriages Registration Act 1988, section 428, available at: https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1988/1988-0010/BirthsDeathsandMarriagesRegistrationAct1988_2.pdf.

⁷⁹ *Id.*, section 434.

⁸⁰ Child Rights Protection Act 2015, section 1012, available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102767&p_count=7&p_classification=04.

⁸¹ Prohibition of Trafficking in Persons Act 2017, section 1006, available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

⁸² *Id.*, section 1005.

⁸³ *Id.*, sections 1005 and 1006.

⁸⁴ *Id.*, section 1005.

Section 180 of the Immigration Act covers people smuggling.⁸⁵ It provides:

- (1) Any person who aids, abets, incites, counsels, or procures any other person to (a) enter the Republic without a visa or permit; or (b) breach any condition of a permit; or (c) obtain a permit fraudulently, is guilty of an offense and is liable to imprisonment for a term not exceeding 3 years, a fine not exceeding [USD]\$5,000 or both.⁸⁶
- (2) Any person who brings any other person into the Republic, having reasonable grounds to know that the entry of that other person would be in contravention of any provision of this Chapter, or Regulation made thereunder, is guilty of an offense and is liable to imprisonment for a term not exceeding 5 years, a fine not exceeding [USD]\$10,000 or both.⁸⁷

3.4.2. International and domestic trafficking in children

Section 1007 of the PTP Act provides a specific offense for trafficking in children.⁸⁸ It provides:

- (1) Any person who: (a) recruits, transports, transfers, harbors, arranges, or receives a child; (b) for the purpose of exploitation of that child; shall be guilty of an offense of trafficking in persons, and upon conviction shall be subject to a term of imprisonment not exceeding twenty (20) years, and a fine not exceeding fifteen thousand dollars ([USD]\$15,000), or both.⁸⁹
- (2) The consent of the victim or the parent or a person having legal or de facto control of a child victim of trafficking to the intended exploitation set forth in subsection (1) shall be irrelevant, and shall not constitute a defense against any prosecution under this Act.⁹⁰

Also, Section 1018 of the Child Rights Protection Act 2015 (**CRP Act**) prohibits the abduction, sale, or trafficking of children:

- (1) The abduction, sale of, and trafficking in children (defined as any person under 18 years of age) for any purpose or in any form shall be prohibited and established as punishable offenses.⁹¹
- (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 caregiver, 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.⁹²

⁸⁵ Immigration Act 2006, section 180, available at: https://rmparliament.org/cms/images/LEGISLATION/PRINCIPAL/2006/2006-0062/ImmigrationAct2006_2.pdf.

⁸⁶ *Id.*, section 180(1).

⁸⁷ *Id.*, section 180(2).

⁸⁸ Prohibition of Trafficking in Persons Act 2017, section 1007, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

⁸⁹ *Id.*, section 1007(1).

⁹⁰ *Id.*, section 1007(2).

⁹¹ Child Rights Protection Act 2015, section 1018(1), available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102767&p_count=7&p_classification=04.

⁹² *Id.*, section 1018(2).

(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.⁹³

(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, caregiver 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; or (c) Any other illicit purposes.⁹⁴

Section 1033 of the CRP Act provides for enhanced penalties for aggravated circumstances arising in crimes against children:

(1) The penalties relating to crimes against children in other laws of the Republic shall apply.⁹⁵

(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 offense 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 caregiver; (f) The offense is transnational in nature; or (g) Weapons, drugs, or medication are used in the commission of the offense.⁹⁶

Section 1042 of the CRP Act provides that, in addition to the offenses and penalties specified under this Act, offenses relating to children and corresponding penalties in other laws of the Republic shall remain in effect. Moreover, the Ministry must execute its functions consistently with the provisions of the United Nations Convention on the Rights of the Child and other international covenants and conventions protecting human rights.⁹⁷

3.4.3. Victim harboring

Section 1005 of the PTP Act prohibits victim harboring.⁹⁸

⁹³ *Id.*, section 1018(3).

⁹⁴ *Id.*, section 1018(4).

⁹⁵ *Id.*, section 1033(1).

⁹⁶ *Id.*, section 1033(2).

⁹⁷ *Id.*, section 1042.

⁹⁸ Prohibition of Trafficking in Persons Act 2017, section 1005, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

3.4.4. Extraterritorial application of human trafficking and smuggling offenses

Refer to Section 3.2.2.

3.5. Online Exploitation of Children Offenses

The trafficking in persons offenses in section 1005 of the PTP Act and in section 1018 of the CRP Act penalize online exploitation of children.⁹⁹ Refer to Section 3.1 for the penalties on conviction of the offenses involving children and Section 3.4.2.

3.6. Child Sex Tourism Offenses

The trafficking in persons offenses in section 1005 of the PTP Act and in section 1018 of the CRP Act also prohibit and punish child sex tourism.¹⁰⁰ Refer to Section 3.1. for the penalties on conviction of the offenses involving children and Section 3.4.2.

4. MARSHALL ISLANDS’ SUPPLY CHAIN REPORTING LEGISLATION

No laws or policies in Marshall Islands require reporting of human trafficking in supply chains or oblige private businesses to control their supply chains to hinder human trafficking.

5. FORCED LABOR: OVERVIEW OF MARSHALL ISLANDS’ APPLICABLE EMPLOYMENT AND MIGRATION LAWS

5.1. Employment Law Rights for Victims of Human Trafficking and Forced Labor

In general, victims of forced labor and trafficking do not have any employment law rights in the Marshall Islands.

5.2. Applicability of Employment Legislation in the Context of Forced Labor or Trafficking

The only statutory employment law in the Marshall Islands of general application is the Minimum Wage Act 1986, as amended.¹⁰¹ That Act defines employer and employee in section 402:

(a) “employee” means any person who performs any type of work under contract with an employer, but does not include a casual worker or family employee, or employees who are

⁹⁹ *Id.*; Child Rights Protection Act 2015, section 1018, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102767&p_count=7&p_classification=04.

¹⁰⁰ Prohibition of Trafficking in Persons Act 2017, section 1005, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03; Child Rights Protection Act 2015, section 1018, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102767&p_count=7&p_classification=04.

¹⁰¹ Minimum Wage Act 1986, available at: https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0015/MinimumWageAct1986_3.pdf.

employed by the United States Army Kwajalein Atoll or by its contractors or their agents or other employees employed by the U.S. Government;

(b) “employer” means any person, corporation or organization licensed under the laws of the Republic to provide goods and services to the public, who engages the services of an employee for a wage, and includes the Government of the Marshall Islands;

* * *

(d) “Private employer” means any employer other than the Government of the Marshall Islands and includes any statutory or public corporation to which Article VII of the Constitution of the Marshall Islands does not apply.¹⁰²

A victim of forced labor or trafficking may be an “employee” under the Minimum Wage Act if the victim performs under a “contract,” but a victim can claim under that Act only if the trafficker falls within the definition of an employer, which is a licensed person who engages an employee for wages. If no wages are paid or the person is not licensed, no claim for minimum wages is available. Many victims could face this problem.

The Public Service Regulations provide for conditions of employment, including leave entitlements, for employees employed in the Public Service of the Republic of the Marshall Islands.¹⁰³ These Regulations would not apply to victims of forced labor or trafficking because the Public Service does not engage in forced labor or trafficking.

5.3. Statutory Rights

The only generally available statutory right conferred on employees who receive wages is a minimum wage under the Minimum Wage Act.¹⁰⁴

Certain rights also are available to seamen under the Seamen’s Protection Act.¹⁰⁵ That Act defines seamen as all members of a crew and officers other than the master and pilots, employed or engaged in any capacity on board any vessel.¹⁰⁶ Under this definition, a seaman could include a victim.

5.3.1. Rights to minimum wages, entitlements, and other applicable minimum standards

5.3.1.1 Minimum wages

Section 403 of the Minimum Wage Act provides that, effective as of September 8, 2018, the minimum wage for every employee of the Government of the Marshall Islands or any private employer shall be USD 3.00

¹⁰² *Id.*, section 402.

¹⁰³ Public Service Regulations of the Republic of the Marshall Islands, available at: <https://rmicourts.org/wp-content/uploads/Public-Service-Regulations-2011.pdf>.

¹⁰⁴ Minimum Wage Act 1986, section 403, available at: https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0015/MinimumWageAct1986_3.pdf.

¹⁰⁵ Seamen’s Protection Act, available at: https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1970/1970-0019/SeamensProtectionAct_1.pdf.

¹⁰⁶ *Id.*, section 202(h).

per hour. If the assessment of the Task Force appointed by the Cabinet agrees, then the minimum wage can increase by USD 0.50 per hour until the minimum wage reaches USD 4.00.¹⁰⁷

Additionally, in the event the Task Force's assessment submitted to the Cabinet does not support an increase in the minimum wage, then the Cabinet shall request the Nitijela by resolution to halt any subsequent increase.¹⁰⁸

The Cabinet also may exempt qualified export-oriented projects from the minimum wage.¹⁰⁹

5.3.1.2 *The Labor (Minimum Conditions) Inquiry Act 1983*

This Act established a Board of Inquiry to inquire into minimum conditions of employment for workers in the Republic.¹¹⁰ The Board is comprised of members appointed by the Cabinet, with the approval of the Nitijela signified by resolutions.¹¹¹ The membership must include representatives of the Government of the Marshall Islands as an employer, of Government employees, of employers in the private sector, and of employees in the private sector. There must be equal representation of each of those categories.¹¹² The Board is to make recommendations on minimum conditions of employment taking into account International Labour Organization (ILO) conventions.¹¹³

The Republic joined the ILO in 2007 but has adopted very few conventions. Apart from minimum wages, the Republic has no minimum conditions of employment of general application, but the ILO is encouraging the Marshall Islands to adopt additional conventions and conform their laws to those conventions.

5.3.1.3 *Work right/permit*

Section 103 of the Labor (Non-Resident Workers) Act 2018 states that every citizen of the Republic has the right to be employed in the Republic at any time.¹¹⁴ Any provision of this Act that is inconsistent with that right shall not apply to citizens of the Republic.¹¹⁵

Section 108 of that Act prohibits any person who is not a citizen of the Republic from undertaking employment in the Republic unless that person has a work permit or is exempt from the requirement to hold a work permit.¹¹⁶ Exempted persons include U.S. citizens.¹¹⁷

¹⁰⁷ Minimum Wage Act 1986, section 403(1), available at:

https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0015/MinimumWageAct1986_3.pdf.

¹⁰⁸ *Id.*, section 403(2).

¹⁰⁹ *Id.*, section 403(3).

¹¹⁰ Labor (Minimum Conditions) Inquiry Act 1983, section 503, available at:

https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1983/1983-0030/LaborMinimumConditionsInquiryAct1983_1.pdf.

¹¹¹ *Id.*, section 504(1).

¹¹² *Id.*, section 504(2).

¹¹³ *Id.*, section 506.

¹¹⁴ Labor (Non-Resident Workers) Act, 2018, section 103(1), available at:

https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/2018/2018-0068/LaborNon-ResidentWorkersAct2018_1.pdf.

¹¹⁵ *Id.*, section 103(2).

¹¹⁶ *Id.*, section 108(1).

¹¹⁷ *Id.*, section 108(2)(c).

5.3.1.4 Seamen's rights

The Seamen's Protection Act provides special protections for seamen:

Wages shall commence on the day specified and agreed to in the shipping articles or at the time of presence on board the vessel for the purpose of commencing work, whichever first occurs, and shall terminate on the day of discharge or termination of the articles.¹¹⁸

In the absence of any agreement to the contrary, the shipowner or the master of the vessel shall pay to every seaman his wages within two (2) days after the termination of the articles, or at the time when the seaman is discharged, whichever is first.¹¹⁹

A seaman is entitled to receive in local currency, on demand, from the master one-half of his wages actually earned and payable at every intermediate port where the vessel shall load or deliver cargo before the voyage is ended, but not more than once in any ten-day (10) period. In case of wrongful failure to pay a seaman his wages on demand, the seaman becomes entitled to a payment of full wages earned.¹²⁰

Every master shall deliver to the seaman, before paying off, a full and true account of his wages and all deductions to be made therefrom on any account whatsoever, and in default shall, for each offense, be liable to a penalty of not more than [USD]\$25.¹²¹

Any seaman who has signed shipping articles and is afterward discharged before the commencement of the voyage or before one month's wages are earned, without fault on his part justifying such discharge and without consent, shall be entitled to receive in addition to his earned wages a sum equal in amount to one month's wages as compensation.¹²²

It shall be unlawful to pay any seaman wages in advance of the time when they are actually earned, or to pay such advance wages or make any order or note or other evidence of the indebtedness therefor to any other person, or to pay any person for the shipment of any seaman when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the provisions of this Section shall be punished with a fine of not more than [USD]\$50.¹²³

It shall be lawful for the master and any seaman to agree that an allotment of a portion of the seaman's earnings may be payable to a spouse, children, grandchildren, parents, grandparents, brothers or sisters, or to a bank account in the name of the seaman.¹²⁴

Every master and seaman shall be entitled after twelve (12) months of continuous service on a vessel or for the same employer to receive and shall take an annual paid vacation equivalent to:

¹¹⁸ Seamen's Protection Act, section 205(1), available at:

https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1970/1970-0019/SeamensProtectionAct_1.pdf.

¹¹⁹ *Id.*, section 205(2).

¹²⁰ *Id.*, section 205(3).

¹²¹ *Id.*, section 205(4).

¹²² *Id.*, section 206.

¹²³ *Id.*, section 209(1).

¹²⁴ *Id.*, section 209(2).

- (a) in the case of masters and officers, not less than twelve (12) days base wages; and
- (b) in the case of other members of the crew, not less than eight (8) days base wages.¹²⁵

Every seaman shall be entitled to a minimum of five (5) paid holidays per year.¹²⁶

In the event a seaman is unable to take the benefits of Subsections (1) and (2) hereof for paid vacation or holiday, then that person shall be entitled to double time pay for each vacation day or holiday, as measured by eight (8) hours that person was unable to take, as certified by the master.¹²⁷

No seaman shall by any agreement forfeit his lien upon the ship or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled, and every stipulation by which any seaman consents to abandon his right to his wages in the case of the loss of the ship or to abandon any right which he may have obtained in the nature of salvage shall be wholly void and inoperative.¹²⁸

No right to wages on the part of any seaman shall be dependent on the earning of freight by the vessel; provided, that nothing in this Section shall be construed to prevent any profit-sharing plan by which officers and crew are to be compensated with profits in addition to their established wages.¹²⁹

In relation to the members of the crew on a vessel engaged in foreign trade: (a) the normal hours of work in port and at sea shall be eight (8) per day; provided, that Saturdays and Sundays shall be included as weekdays; (b) work performed over and above the eight-hour period shall be considered as overtime and shall be compensated for at overtime rate; (c) a reasonable number of men shall be employed to promote safety of life at sea and to avoid excessive work burdens; and (d) whenever the master of any vessel shall fail to comply with this Section, he shall be liable to a penalty not exceeding [USD]\$100.¹³⁰

Any seaman who is put ashore at a port other than the one where he signed the shipping articles and who is put ashore for reasons for which he is not responsible, shall be returned as a crew member or otherwise, but without expense to him: (a) at the shipowner's option, to the port at which he was engaged or where the voyage commenced or to a port of the seaman's own country; or (b) to another port, agreed upon between the seaman and the shipowner or the master. However, in the event that the seaman's contract period of service has not expired, the shipowner shall have the right to transfer him to another of the shipowner's vessels to serve thereon for the balance of the contract period of service.¹³¹

Any seaman whose period of employment is terminated by reason of completion of the voyage for which he was engaged or by expiration of his contract period of employment shall

¹²⁵ *Id.*, section 211(1).

¹²⁶ *Id.*, section 211(2).

¹²⁷ *Id.*, section 211(3).

¹²⁸ *Id.*, section 212.

¹²⁹ *Id.*, section 213.

¹³⁰ *Id.*, section 219.

¹³¹ *Id.*, section 220(1).

be entitled to repatriation, at no expense to him, to the port at which he was engaged or to such other port as may be agreed upon.¹³²

The right to repatriation shall be lost by failure of the seaman to request repatriation within one week from the time that he is in condition to be repatriated.¹³³

A seaman shall forfeit his right of repatriation in case of: (a) desertion; (b) entering into a new agreement with the same owner after his discharge; (c) entering into a new agreement with another owner within one week after his discharge; (d) criminal offenses under Sections 224 (drunkenness, neglect of duty), 225 (desertion) and 226 (incitement to revolt, mutiny or riot) of this Chapter; or (e) unjustifiable repudiation of the shipping articles.¹³⁴

Claims arising out of the shipping articles are subject to a one year prescription.¹³⁵

The following rights of action are subject to a two year prescription: (a) the right of action for death of a seaman caused by wrongful act, neglect or default on the high seas; (b) claims of the shipowner against the master for acts committed during the performance of his duties; and (c) all other tort claims.¹³⁶

All other claims are subject to a three year prescription.¹³⁷

The period of prescription of the claims laid down in the preceding Subsections runs from the time when the right of action accrues.¹³⁸

5.3.2. *Claims available in relation to misrepresentations and “sham” arrangements*

The Republic of the Marshall Islands has no applicable laws.

5.3.3. *Claims available in relation to unlawful deductions, loans, and debt bondage*

No regulations prohibit unlawful deductions from wages, except as the Seamen’s Protection Act sets out.

5.3.4. *Remedies*

Section 404 of the Minimum Wage Act provides that any private employer who pays any employee less than the minimum wage prescribed by Section 403 of this Act is guilty of an offense and, upon conviction, liable to a fine not exceeding USD 1,000 or in default, to a term of imprisonment not exceeding six months. In addition, the Court shall recover and pay to the employee all wages in arrears.¹³⁹

¹³² *Id.*, section 220(2).

¹³³ *Id.*, section 220(3).

¹³⁴ *Id.*, section 221.

¹³⁵ *Id.*, section 231(1).

¹³⁶ *Id.*, section 231(2).

¹³⁷ *Id.*, section 231(3).

¹³⁸ *Id.*, section 231(4).

¹³⁹ Minimum Wage Act 1986, section 404, available at:

https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1986/1986-0015/MinimumWageAct1986_3.pdf.

5.4. Rights to a Safe Workplace and Compensation Associated With Injuries or Illness

No statute obligates an employer to provide a safe workplace. The common law duty of care applies to employers.

5.4.1. *Workers' Compensation Act 2016*

The Workers' Compensation Act applies to Employees employed by Employers.¹⁴⁰ The definitions are:

“Employee” means any natural person who, under the common law rules applicable in determining the employer-employee relationship, has entered into or works under a contract with an employer in any capacity, excluding that of an independent contractor, whether the contract is express or implied, oral or written, requiring the personal execution of any work or labor and includes all employees of the Government of the Republic of the Marshall Islands, Local Governments, any firm, company, partnership, corporation, association, joint venture, religious organization, or other entity, and all elected officials and self-employed workers.¹⁴¹

“Employer” means any natural person, self-employed worker, the Government of the Republic of the Marshall Islands, Local Governments, any firm, company, partnership, corporation, association, joint venture, religious organization, or other entity that employs or on whose behalf are employed any employee.¹⁴²

Victims of forced labor and trafficking may be an “Employee” as defined, and a trafficker may be an “Employer” as defined. If it applies, the Workers’ Compensation Act provides a number of rights and benefits to injured employees:

Compensation shall be payable under this Act in case of disability or death of an employee, but only if the disability or death results from an injury sustained while engaged in employment.¹⁴³

If a worker who has been hired in the Republic receives personal injury by accident arising out of and in the course of his employment, he or she shall be entitled to compensation according to the law of the Republic even though such injury was received outside the Republic.¹⁴⁴

* * *

¹⁴⁰ Workers’ Compensation Act, 2016, available at:

https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0107/WorkersCompensationAct2016_1.pdf.

¹⁴¹ *Id.*, section 703; Marshall Islands Social Security Administration Act, section 103(s), available at: <https://rmimissa.org/wp-content/uploads/2020/10/SS-Act.pdf>.

¹⁴² Workers’ Compensation Act, 2016, section 703, available at:

https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0107/WorkersCompensationAct2016_1.pdf; Marshall Islands Social Security Administration Act, section 103(t), available at: <https://rmimissa.org/wp-content/uploads/2020/10/SS-Act.pdf>.

¹⁴³ Workers’ Compensation Act, 2016, section 704(1), available at:

https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/2019/2019-0107/WorkersCompensationAct2016_1.pdf.

¹⁴⁴ *Id.*, section 704(2).

No compensation shall be payable under this Chapter to the employee if the injury was proximately caused by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself, herself or others.¹⁴⁵

Compensation shall be payable irrespective of fault as to the injury.¹⁴⁶

In the case of an employer who is a subcontractor or jobber in the construction or garment manufacturing industries the contractor or fisheries industry (sic) shall be liable for and shall secure payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payments.¹⁴⁷

The employer shall furnish to the injured employee such remedial treatment, care, and attendance under the direction of a qualified physician or surgeon or other recognized practitioner, nurse or hospital, as the nature of the injury or the process of recovery may require, including medicines, crutches, artificial limbs and other apparatus and vocational rehabilitation services.¹⁴⁸

The employer must pay specified benefits for permanent total disability, temporary total disability, permanent partial disability, or temporary partial disability, as the case may be.¹⁴⁹

If the injury causes death, the employer must pay disability benefits in the amounts and for the benefit of the family members specified in the Act, including reasonable funeral expenses not exceeding [USD]\$1,200.¹⁵⁰

Sections 713 and 720 contain the procedure for making claims.¹⁵¹

Every employer shall secure the payment of compensation under this Chapter by insuring and keeping insured the payment of such compensation with an authorized general casualty insurer.¹⁵²

5.4.2. Seamen's Protection Act

The Seaman's Protection Act provides benefits for injuries or sickness of seamen on board a vessel.¹⁵³

In the event of disabling sickness or injury while a seaman is on board a vessel under signed shipping articles, or off the vessel pursuant to an actual mission assigned to him by, or by the authority of the master, the seaman shall be entitled to:

(a) full wages, as long as he is sick or injured and remains on board the vessel;

¹⁴⁵ *Id.*, section 704(4).

¹⁴⁶ *Id.*, section 705(2).

¹⁴⁷ *Id.*, section 705(3).

¹⁴⁸ *Id.*, section 708(1).

¹⁴⁹ *Id.*, section 709.

¹⁵⁰ *Id.*, section 710.

¹⁵¹ *Id.*, sections 713 and 720.

¹⁵² *Id.*, section 733(1).

¹⁵³ Seamen's Protection Act, section 214, available at:

https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1970/1970-0019/SeamensProtectionAct_1.pdf.

(b) medical and surgical treatment and supply of proper and sufficient medicines and therapeutical appliances, until medically declared to have reached a maximum cure or to be incurable, but in no event more than thirty (30) weeks from the day of the injury or commencement of the sickness;

(c) an amount equal to board and lodging up to a maximum period of thirty (30) weeks, and one-third (1/3) of his base wages during any portion of such period subsequent to his landing from the vessel but not to exceed a maximum period of sixteen (16) weeks commencing from the day of injury or commencement of the sickness; and

(d) repatriation including, in addition, all charges for his transportation, accommodation and food during the journey and his maintenance up to the time fixed for his departure.¹⁵⁴

The shipowner or his representative shall take adequate measures for safeguarding property left on board by a sick, injured, or deceased seaman.¹⁵⁵

The seaman shall not be entitled to any of the above benefits: (a) if such sickness or injury resulted from his willful act, default or misconduct; (b) if such sickness or injury developed from a condition which was intentionally concealed from the employer at or prior to his engagement under the articles; (c) if he refuses medical treatment for such sickness or injury or is denied such treatment because of misconduct or default; or (d) if at the time of his engagement he refused to be medically examined.¹⁵⁶

The seaman shall have a maritime lien against the vessel for any wages due him under this Section.¹⁵⁷

Notwithstanding anything contained in Part V of the Civil Procedure Act, whenever the death of a seaman, resulting from an injury, shall be caused by wrongful act, omission, neglect or default occurring on board a vessel, the personal representative of the deceased seaman may maintain a suit for his damages, for the exclusive benefit of the deceased's wife, husband, parent, child, or dependent relative, against the vessel, person or corporation which would have been liable if death had not ensued.¹⁵⁸

In the case of death of a seaman occurring on board the vessel or in case of his death occurring on shore if, at the time, he was entitled to medical care and maintenance at the shipowner's expense, the shipowner shall be liable to defray reasonable local funeral expenses and make payment of the base wages of the deceased seaman up to the end of the month in which the death occurs.¹⁵⁹

¹⁵⁴ *Id.*, section 214(1).

¹⁵⁵ *Id.*, section 214(2).

¹⁵⁶ *Id.*, section 214(3).

¹⁵⁷ *Id.*, section 214(4).

¹⁵⁸ *Id.*, section 215.

¹⁵⁹ *Id.*, section 218.

5.5. Access to Justice and Practical Issues Associated With Enforcing Social Legislation

Greater awareness by the general population and police officers about the criminal offenses for trafficking in persons could improve access to justice, as would additional resources for protection services. The Government also could make victims of forced labor or trafficking more aware of their rights and claims available under the law.

As there have been few prosecutions, prosecution is not an effective deterrent at this time.

5.6. Interaction Between Employment Law and Migration

5.6.1. *Employment rights affected where employment is unlawful under migration law*

Victims of forced labor or trafficking who are workers or employees under the employment laws may bring claims under the employment laws even if they are in breach of migration law.

5.6.2. *Rights/remedies available under applicable migration law and regulations*

Migration law does not provide any rights or remedies to trafficked victims, but the PTP Act provides immunity from prosecution under migration law to trafficked persons, subject to the Attorney General's discretion to remove the immunity.¹⁶⁰ Refer to Section 7.

5.7. Employment Laws and Child Labor

Employment laws do not deal with child labor.

Section 204 of the Seamen's Protection Act prohibits the employment of children under the age of 16 years on Marshall Islands vessels engaged in foreign trade, except on vessels on which only members of the same family are employed, school-ships, or training ships.¹⁶¹

6. GOVERNMENT PROCUREMENT RULES

The Procurement Code Act 1988 regulates procurement by government bodies of goods and services in the Marshall Islands.¹⁶²

Under that Act, the Government generally should award contracts by competitive sealed bidding¹⁶³ to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids.¹⁶⁴

¹⁶⁰ Prohibition of Trafficking in Persons Act 2017, section 1009, available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

¹⁶¹ Seamen's Protection Act, section 204, available at:

https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1970/1970-0019/SeamensProtectionAct_1.pdf.

¹⁶² Procurement Code Act 1988, available at: https://rmiparliament.org/cms/images/LEGISLATION/PRINCIPAL/1988-0033/ProcurementCodeAct1988_2.pdf.

¹⁶³ *Id.*, section 124.

¹⁶⁴ *Id.*, section 125(7).

Where the use of competitive sealed bidding is either not practicable or not advantageous to the Government, the Government may use competitive sealed proposals.¹⁶⁵ The Government must award the contract to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Government, taking into consideration price and the evaluation factors set forth in the Request for Proposals. The evaluation cannot use any other factors or criteria.¹⁶⁶

Preference is given to Marshall Islands contractors in general.¹⁶⁷

Section 165 of the Procurement Code Act 1988 provides for debarment:

(1) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Chief Procurement Officer or the head of a Purchasing Agency, after consultation with the Using Agency and the Attorney-General, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The same officer, after consultation with the Using Agency and the Attorney-General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months. The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the Policy Office.¹⁶⁸

(2) The causes for debarment or suspension include the following:

- (a) conviction for commission of a criminal offense as an incident to obtaining or attempt to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (b) conviction under Marshall Islands statutes for cheating, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Government contractor;
- (c) conviction under Marshall Islands unfair business practices or antitrust statutes arising out of the submission of bids or proposals;
- (d) violation of contract provisions, as set forth below, of a character which is regarded by the Chief Procurement Officer or the head of a Purchasing Agency to be so serious as to justify debarment action: (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or (ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (e) any other cause the Chief Procurement Officer or the head of a Purchasing Agency determines to be so serious and compelling as to affect responsibility as a Government

¹⁶⁵ *Id.*, section 126(1).

¹⁶⁶ *Id.*, section 126(7).

¹⁶⁷ *Id.*, sections 184 and 185.

¹⁶⁸ *Id.*, section 165(1).

contractor, including debarment by another governmental entity for any cause listed in regulations of the Policy Office; and

(f) for violation of the ethical standards set forth in Part XIII of this Act.¹⁶⁹

The Government could use Paragraph (a), (b), or (e) of Section 165 to suspend or debar a bidder convicted of trafficking in persons.¹⁷⁰

However, the Act does not require tenderers to covenant that their businesses do not use trafficked workers or that they do not use goods made by trafficked persons. The Government, if it chose, nevertheless could require such covenants in their contracts or make those factors part of the criteria for evaluation of bids.

7. RESTITUTION AND VICTIM COMPENSATION

Article 1, section 4, of the Constitution provides that the Attorney General acting on behalf of a person complaining of a violation of rights under Article II of the Constitution may seek orders from a court for compensation and other relief.¹⁷¹ The court is empowered to make all necessary and appropriate orders.¹⁷²

Section 1009 of the PTP Act provides trafficking victims with some protection from immigration and other offenses committed by them as a result of their trafficking:

(1) A victim of trafficking in persons shall not be held criminally punishable for offenses committed by them, to the extent that such involvement is a direct consequence of their situation as trafficked persons.¹⁷³

(2) Notwithstanding the provisions of the Immigration Act 2006, a victim of trafficking in persons who is a foreign citizen shall not be held criminally liable for immigration offenses established under the Immigration Act, if entry into the Republic without lawful approval was occasioned by the fact that such person was a victim of an offense under this Act, and to the satisfaction of the Director of Immigration.¹⁷⁴

(3) The Director of Immigration may cause to be issued to victims of trafficking under these circumstances, with the approval of the Minister for Justice, temporary visas or other temporary authorization allowing the presence of said victims in the Republic, pending investigations and or the prosecution of said cases.¹⁷⁵

¹⁶⁹ *Id.*, section 165(2).

¹⁷⁰ *Id.*, section 165(2)(a), (b), and (e).

¹⁷¹ Constitution of the Republic of the Marshall Islands, article I, section 4(a), available at: https://www.constituteproject.org/constitution/Marshall_Islands_1995.pdf?lang=en.

¹⁷² *Id.*, section 4(b).

¹⁷³ Prohibition of Trafficking in Persons Act 2017, section 1009(1), available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=109288&p_count=2&p_classification=03.

¹⁷⁴ *Id.*, section 1009(2).

¹⁷⁵ *Id.*, section 1009(3).

(4) Notwithstanding that, the Attorney General may exercise his or her authority to deport any victim of trafficking if he or she sees it best under the current circumstances.¹⁷⁶

Section 1017 of the PTP Act authorizes benefits and services to trafficking victims:

(1) The relevant authorities may provide the basic benefits and services described below to victims of trafficking in persons in the Republic without regard to the immigration status of such victims.¹⁷⁷

(2) Assistance may include: (a) Safe and appropriate accommodation; (b) Necessary medical treatment, including where appropriate, free optional confidential testing for HIV/AIDS and other sexually transmitted diseases; (c) Counseling assistance on a confidential basis and with full respect for the privacy of the person concerned, in a language that he or she understands; (d) Information regarding legal assistance to represent his or her interests in any criminal investigation¹⁷⁸

(3) In appropriate cases and to the extent possible, assistance shall be provided to the accompanying dependents of the victim.¹⁷⁹

Section 1020 of the PTP Act allows the courts to order offenders to compensate their victims:

(1) Where an offender is convicted of an offense under the Act, the Court may order the offender to pay compensation to the victim, in addition to, or in place of, any other punishment ordered by the Court.¹⁸⁰

(2) The aim of an order for compensation shall be to make reparation to the victim for the injury, loss or damage caused by the offender. An order for compensation may include payment for or towards: (a) Cost of medical, physical, psychological or psychiatric treatment by the victim; (b) Cost of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence; (c) Lost income and due wages according to national law and regulations regarding wages; (d) Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process; and (e) Any other costs or losses incurred by the victim as a direct result of being trafficked and reasonably assessed by the Court.¹⁸¹

Sections 1018(5) and 1018(6) of the CRP Act protect exploited children from prosecution for crimes they have committed as a result of their exploitation and provide for services:

5 (a) A child which became victim of sexual exploitation, including: (i) A child in prostitution, (ii) A child victim of sex tourism, (iii) A child victim of the production, distribution, or consumption of child pornography, and (iv) A child victim of trafficking shall not be criminalized for any unlawful act committed as a direct result of being a child victim of

¹⁷⁶ *Id.*, section 1009(4).

¹⁷⁷ *Id.*, section 1017(1).

¹⁷⁸ *Id.*, section 1017(2).

¹⁷⁹ *Id.*, section 1017(3).

¹⁸⁰ *Id.*, section 1020(1).

¹⁸¹ *Id.*, section 1020(2).

exploitation, such as engaging in prostitution, using false documents, or entering the country without documentation, and no punishment may be inflicted on her/him.¹⁸²

(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.¹⁸³

Section 1032 of the CRP Act also provides medical, psychological, educational, and other services to victimized children:

(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.¹⁸⁴

(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.¹⁸⁵

(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.¹⁸⁶

Section 1034 of the CRP Act gives exploited children the right to compensation for their damages:

(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.¹⁸⁷

(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.¹⁸⁸

¹⁸² Child Rights Protection Act 2015, section 1018(5)(a), available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102767&p_count=7&p_classification=04.

¹⁸³ *Id.*, section 1018(6).

¹⁸⁴ *Id.*, section 1032(1).

¹⁸⁵ *Id.*, section 1032(2).

¹⁸⁶ *Id.*, section 1032(3).

¹⁸⁷ *Id.*, section 1034(1).

¹⁸⁸ *Id.*, section 1034(2).

(3) A child shall be informed about the right to full compensation in a manner and language that the child can understand.¹⁸⁹

8. MARSHALL ISLANDS' MULTIDISCIPLINARY/INTERAGENCY COOPERATION APPROACH

The Human Rights Committee Act 2015 established the Human Rights Committee.¹⁹⁰ The Committee consists of: (a) the Chief Secretary, who is the Chairperson; (b) the Secretary of Internal Affairs, who is the Vice Chairperson; (c) the Secretary of Foreign Affairs; (d) the Secretary of Resources and Development; (e) the Secretary of Health; (f) the Secretary of Education; (g) the Secretary of Finance; (h) the Attorney General; (i) the Public Defender; (j) the Police Commissioner; (k) the Clerk of Nitijela; (l) the Director, Economic Planning Policy and Statistics Office; (m) the Director, National Training Council; (n) the Director, Women United Together Marshall Islands; (o) the Director, Youth to Youth in Health; (p) the President, Marshall Islands Persons with Disabilities Organization; and (q) the President, Chamber of Commerce.¹⁹¹ The Act also established a Working Group.¹⁹²

The Committee is responsible for various activities: (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) preparing national reports to the Universal Periodic Review and human rights treaty bodies, and following up on recommendations from international human rights mechanisms; (e) receiving and investigating complaints of human rights violations; and (f) resolving complaints by settlement and referring unresolved complaints to the Attorney General's Office for further action.¹⁹³

The National Task Force on Human Trafficking is also a multi-stakeholder group of government, NGOs, and international organization officials. It is responsible for implementing the national action plan.

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¹⁸⁹ *Id.*, section 1034(3).

¹⁹⁰ Human Rights Committee Act 2015, section 1204(1), available at:
https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=102769.

¹⁹¹ *Id.*, section 1204(2).

¹⁹² *Id.*, section 1209.

¹⁹³ *Id.*, section 1205.

