

# Marshall Islands



CEDAW Legislative Compliance Review



# Legislative Compliance of Marshall Islands

## 5.1 Overview

This Chapter examines and assesses the legislative compliance of the Marshall Islands with CEDAW. The Marshall Islands ratified CEDAW on 2 March 2006. Ratification placed an obligation on the Marshall Islands to work towards the modification of its constitution and legislation to accord with the articles of CEDAW. However, given that ratification occurred relatively recently, it is recognised that the Marshall Islands is at the beginning of its compliance process and that legislative compliance will be achieved through gradual and incremental change. The assessment of the Marshall Islands is based on the 113 indicators identified in Chapter One and should be read in conjunction with the commentary on each indicator included in that Chapter. In sum, the Marshall Islands has achieved full compliance with 39 indicators, partial compliance with 19 indicators and no compliance in relation to the remaining 55 indicators. The next section provides a brief synopsis of the findings of the review. Following the synopsis is a series of tables, each related to an article of CEDAW, and each containing the relevant indicators, the level of compliance achieved by the Marshall Islands (i.e. yes, no or partial compliance), the relevant legislation and finally where required, a brief commentary explaining how the legislation does or does not meet the indicator.

It should be noted that the Marshall Islands legislative review was conducted using all materials available at the time, and that although every effort was made to obtain the most recent and up-to-date legal material, it is possible that there will be errors or omissions.

## 5.2 Synopsis of Findings

1. Article 2 requires States Parties to guarantee a range of fundamental rights and freedoms to women in their constitutions including substantive equality and freedom from discrimination on grounds of sex, marital status, sexual orientation, HIV status and disability. The Constitution of the Marshall Islands guarantees the rights and freedoms of all citizens in most of the areas required by CEDAW including freedom from discrimination on the ground of sex. It does not, however, extend anti-discrimination protection to include indirect discrimination (enabling challenge to a rule that appears to apply to a group of people in the same way but in practice places on particular members of that group a burden not faced by the majority) nor does it protect women on the basis of disability, HIV, and marital status. Further, although the constitution guarantees men and women the equal *protection* of the law, it does not guarantee equal benefits or outcomes as required by CEDAW.
2. Articles 2 and 3 together mandate the establishment by legislation of national bodies and machinery to monitor the implementation of law and policy to foster the advancement of women. The Marshall Islands, to date, has not instituted such a mechanism. However, although not established with enabling legislation, (which leaves it vulnerable during times of political or economic upheaval) the Marshall Islands has established a Women and Development Division located in the Ministry of Internal Affairs.

3. Article 2 condemns discrimination against women in all its forms and obligates States Parties to eliminate discrimination against women without delay. General Recommendation 19, issued by the CEDAW Committee makes explicit that the definition of discrimination includes gender violence and recommends that 'sanctions, penalties and compensation' be introduced in relation to all gender based violence. Sexual assault is a form of gender violence as it is overwhelmingly perpetrated against girls and women, and therefore must be prevented and remedied, as far as possible, through legislative means. The Marshall Islands, since the introduction of a new sexual assault regime in its Criminal Code in 2005 is largely compliant with the indicators relating to sanctions and penalties. The new sexual assault offences contain five major categories of sexual assault. The two most serious categories with a 25 year maximum sentence include first, sexual penetration of women by *strong* compulsion (force or threat of force) and any sexual penetration of girls under 16 (152A) and second, continuous sexual offences against a child under 16 perpetrated by someone in a position of trust (152E). The next category is penetration by compulsion (absence of consent, threat of non physical harm) or sexual contact by *strong* compulsion whilst the final category relates to more minor acts of sexual assault. The Code represents a best practice model of sexual assault graded according to the seriousness of harm and inclusive of the variety of ways in which women are sexually violated.
4. The admission of the prior sexual history of a victim in order to establish that she consented to the sexual act in question is a discriminatory common law rule which perpetuates the myth that a victim's previous sexual relationship with either the accused or other actors makes it more likely she consented. The Marshall Islands has legislated against the use of evidence of the victim's prior sexual conduct with persons other than the accused but evidence of sexual conduct with the accused can still be admitted if offered to prove consent. Although partially compliant with CEDAW the implication remains that past consensual relations with the accused can be used to imply consent in the case at hand. The Marshall Islands has however, in full compliance with CEDAW, legislated against both the necessity for corroboration (independent evidence such as that of a witness that connects the accused person with the crime) and any requirement for proof of resistance by the victim in sexual offence prosecutions.
5. There is no defence in sexual assault prosecutions enabling the accused to claim that he did not know the girl was not of legal age and consent is not available as a defence for any offence against a girl under 16. This amounts to partial rather than full compliance because age of majority recognised by CEDAW is 18 unless, under the law applicable to the child, majority is attained earlier.
6. Minimum sentences and mandatory prosecution ensure that sexual violence against women is treated seriously. However, the Marshall Islands does not have mandatory prosecution or minimum sentences for sexual assault offences. Bail, which should not be granted if there is any risk to a sexual assault victim, is available as a matter of entitlement only if the charge is murder. However, in partial compliance with CEDAW, the court can deny bail if there is reasonable grounds to believe the person will be offensive to the public which could include risk to a sexual assault victim.
7. Although General Recommendation 19, which relates to violence against women, identifies



domestic violence as a form of discrimination that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men, the Marshall Islands is yet to incorporate domestic violence offences into its criminal laws. In addition it does not provide mandatory prosecution for domestic violence offences as required by CEDAW.

8. Infanticide (in contrast to abortion which refers to the destruction of a foetus) refers to the killing of a child by its mother. Full compliance with CEDAW requires that an offence of infanticide replaces a charge of murder or manslaughter and has a reduced sentence recognising the societal pressures that lead women to kill their children. Women who do so should not be held accountable to charges of murder or manslaughter. The Marshall Islands does not have an offence of infanticide in its criminal code thereby rendering any woman in this situation subject to a charge of murder or manslaughter which carries penalties ranging from 5 years to life imprisonment.
9. Article 4 requires that special measures provisions be introduced into national constitutions and legislation. The Marshall Islands has not incorporated affirmative action provisions into its constitution or any legislation for the advancement of women. The lack of special measures is detrimental for women because they are an equality measure with real potential to redress historical discrimination and achieve substantive equality for women.
10. Article 5 requires States Parties to abolish or modify customary practices that discriminate against women. The Marshall Islands Constitution legitimises customary law in a variety of situations. It creates the Council of Iroij which can request reconsideration of any

Bill that affects customary law, it preserves customary law in relation to land tenure and finally it can declare by Act customary law which cannot in turn be challenged by Article II (Bill of Rights). The *Domestic Relations Act*, which governs separation, divorce, maintenance and custody, declares customary marriages to be outside the provisions of the Act. Such customary law cannot be challenged even if it discriminates against women. The status given to customary law coupled with the absence of a provision that guarantees the precedence of equality law over custom leaves women in the Marshall Islands with uncertain legal recourse against discriminatory custom.

11. Article 6 requires States Parties to suppress all forms of trafficking in women and exploitation of women in prostitution whilst Articles 2 and 11 require the elimination of discrimination against women in employment. Cumulatively, these articles mandate both the protection of sex workers from exploitation whilst also affording them the rights and protections of other workers. In a first for the Pacific, the act of soliciting is an offence in the Marshall Islands for both sex workers (male and female) and their clients. Although this does introduce formal equality between men and women, full compliance with CEDAW requires that sex workers are not criminalised. The Marshall Islands also criminalises the aiding and abetting of prostitution and the operation of organised premises. However, research and experience shows that organised premises rather than street work are safer for sex workers and therefore legalising brothels and implementing safeguards that are present in other workplaces would provide greater safety for sex workers and the community. Although the Marshall Islands has adopted a rigorous approach to exploitation in prostitution

- particularly when threats or force are used to procure women and girls, imposing a significant penalty of 25 years, its approach is less rigorous when there is no penetration or when penetration is procured through 'reckless compulsion' attracting a penalty of only 5 years imprisonment. There are no offences for trafficking or sex tourism in the Marshall Islands, in non-compliance with CEDAW.
12. Article 7 obligates States Parties to take all appropriate measures to eliminate discrimination in women's political and public lives. Universal suffrage and equal legal rights for women to political representation *has* been achieved in Marshall Islands. However, to date only one woman has served as a member of parliament and therefore full compliance with CEDAW requires the introduction by legislation of minimum quotas for women to ensure higher numbers of women enter parliament and participate in the governance of their country. Further, candidacy on the Council of Iroij established by the Constitution to advise Cabinet and to request the Legislature to reconsider any Bill affecting customary law is limited to paramount chiefs or those with similar status. Whilst women can become members of the Iroij and have done so, the numbers of women are nevertheless significantly less than men.
  13. Article 8 requires States Parties to ensure that women have equal opportunities to represent their governments at the international level. Although there is no legal barrier preventing women from representing their governments in the Marshall Islands, the low numbers of women who do so means that full compliance with this article requires the introduction of quotas to raise participation.
  14. Article 9 requires States Parties to eliminate discrimination in the areas of nationality, citizenship and domicile and the Marshall Islands has achieved equality in this area.
  15. Article 10 obligates States Parties to ensure women equal rights and opportunities in the field of education. The Constitution recognises the right of the people to education and accepts the obligation to take every reasonable step to provide these services. The provision of compulsory education is essential to ensure girls are equally prioritised and not discriminated against in education and the Marshall Islands has introduced compulsory schooling at both primary and secondary levels. However, since females do not participate equally in tertiary education in the Marshall Islands, full compliance with Article 10 requires the government to adopt special measures for the advancement of women in education which it has not yet done. A prohibition on the expulsion of pregnant students is also required to ensure that girls are not discriminated against by educational institutions due to their pregnant status.
  16. Article 11 requires States Parties to eliminate sex discrimination in the field of employment and to place specific guarantees that protect the labour rights of women in legislation. Whilst discussions with the ILO are continuing to encourage the introduction of a comprehensive employment code, the Marshall Islands has not yet created legislation mechanisms to protect the employment and labour rights of workers. There are therefore no anti-discrimination provisions, no maternity leave provisions (the ILO recommends a period of 14 weeks maternity leave and CEDAW recommends that this period be paid), no protection for dismissal because of pregnancy, no sexual harassment

protection (see below), no breaks for mothers to enable them to nurse young children during work hours. Conversely, however, and in compliance with CEDAW, women's employment choices are not restricted in the Marshall Islands as in other Pacific countries leaving women free to lawfully undertake night work, manual work and to work in mines.

17. The CEDAW Committee in General Recommendations 12 and 19, which both relate to violence against women, identifies sexual harassment in the workplace as a form of discrimination against women. General Recommendation 19 defines sexual harassment as unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands whether by words or actions. Such actions can be humiliating for the recipient and are discriminatory when they create a hostile work environment. Protection from sexual harassment is absent in the Marshall Islands and there is no scope for a remedy as permitted under the criminal code as in the Solomon Islands; or in human rights legislation as provided in Fiji; or in public sector legislation as available in Papua New Guinea.
18. Article 12 requires States Parties to ensure that women have access to health care services including those related to family planning. In accordance with CEDAW, the Constitution of the Marshall Islands guarantees the right of the people to health care. Further, in compliance with CEDAW there is no legislation in the Marshall Islands that criminalises abortion, making it and the FSM the only two Pacific Island countries to decriminalise abortion. However, despite the absence of legal barriers, access to safe abortion facilities remains limited.
19. Article 13(b) of CEDAW provides that women should be afforded equal rights to bank loans, mortgages and other forms of financial credit free from discrimination. Although there is no legislative barrier to women in the Marshall Islands accessing such services, discrimination continues to hinder women from obtaining credit and loans to purchase property or businesses, interfering with their autonomy and ability to earn a livelihood. Article 13(c) of CEDAW requires that women have an equal right to participate in recreational activities, sports and all aspects of cultural life and there are no legislative barriers in the Marshall Islands preventing women from doing so.
20. Article 14 obligates States Parties to put in place measures to ensure the equality of rural women. Rural women often play a significant role in the economic survival of their families and communities although they are frequently disadvantaged in areas such as land ownership, health, education and housing to name a few. The achievement of substantive equality for rural women and compliance with CEDAW requires special measures provisions to be incorporated into legislation. However, the Marshall Islands is yet to implement such measures.
21. Article 15 requires States Parties to guarantee women equality before the law and equal rights to participate in all aspects of civil life. The Marshall Islands provides for the equal protection of the law (the right of all persons to be treated equally by the law). In addition there are no legislative barriers in the Marshall Islands, to women's participation in court and tribunal processes nor are women denied the right. The Marshall Islands is therefore fully compliant with Article 15.

22. Article 16 obligates States Parties to remove discrimination in family and personal laws including marriage, separation, divorce, maintenance, child custody, property division, paternity and inheritance.
23. The CEDAW Committee in General Recommendation 21, which concerns equality in marriage and family relations, has nominated 18 as the minimum age of marriage for both males and females. However, the Marshall Islands has nominated 18 as the age of marriage for males and 16 for females and is therefore non-compliant. Although registration of marriages is required as is the equal consent of both parents in the marriage of minors, bigamy, however, is not prohibited and customary marriages are exempt from the legislative requirements, leaving the Marshall Islands largely non-compliant in the area of marriage.
24. Fault based divorces, which require proof of a matrimonial offence such as desertion or habitual rape, place women in the difficult position of having to provide evidence of situations that may be humiliating, embarrassing, or that may interfere with their dignity and privacy. Women also face discrimination in proving fault, particularly cruelty and adultery if they choose not to be witnesses or they do not wish to attend court. Divorce in the Marshall Islands is permitted either on fault based criteria (including adultery, desertion and cruelty) or on the basis that there has been a two year separation. Forgiveness, which can include restoration of marital rights, will prevent a divorce from proceeding. As this provision does not take into account the possible power imbalance between the spouses and, in addition, as customary marriages fall outside the divorce requirements, the Marshall Islands is largely non-compliant in the area of divorce.
25. The CEDAW Committee in General Recommendation 19 (23) (which deals with violence against women, in relation to Articles 16 and 5 of CEDAW) states that a lack of economic independence or an inability to gain custody of their children upon separation forces many women to stay in violent or difficult relationships. The Marshall Islands *does* provide for maintenance orders during separation and after divorce for both children and spouses. However, the criteria by which the court determines the amount of the order is 'justice' and 'the best interests of all'. This leaves the basis on which maintenance is to be provided largely to the discretion of the court and does not comply with the CEDAW recommended standards of need, the means of both parties, the financial commitments of both parties to themselves and others, their respective capacities to earn and the needs of any children for whom maintenance is sought.
26. In General Recommendation 21 the CEDAW Committee states that the division of marital property should include recognition of non-financial contributions during a marriage such as raising children, caring for elderly relatives, and discharging household duties. Property division upon divorce, like maintenance and custody, is determined in the Marshall Islands on the basis of 'justice' and 'the best interests of all'. This is unlikely to lead to a property settlement in which women's non-financial contributions to the marriage are recognised. De facto relationships, including same-sex relationships, are not recognised in the Marshall Islands leaving women without any support and right to an equal division of property after the breakdown of a relationship.



27. The best interests of the child as the paramount consideration is universally accepted as the principle on which custody determinations should be based, according to Article 16(f) of CEDAW, General Recommendation 21 and the *Convention on the Rights of the Child* 1989. Although the Marshall Islands includes ‘the best interests of all’ in the criteria to determine custody and access issues this does not place the child’s interests as paramount.
28. Article 16 also requires that legislation embodies inheritance laws that apply equally to males and females. There is no legislation dealing with inheritance leaving it instead to be determined according to custom. Although inheritance in the Marshall Islands is matrilineal, which means that land and property is passed through females, men still control of many aspects of land and property. Additionally, the failure to incorporate equal inheritance rights into the legislation means that women are vulnerable to any change in customary practices.
29. A series of tables detailing the Marshall Islands’ compliance with CEDAW is provided in the following pages. Each table relates to an article of CEDAW and contains the applicable indicator(s), the level of compliance achieved, the relevant legislation and finally where required, a brief commentary explaining how the Constitution and the legislation of the Marshall Islands does or does not meet the indicator.

# Marshall Islands: Detailed Analysis of Indicators

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.1 Does the Constitution guarantee fundamental rights and freedoms to men and women equally including in the political, economic, social, cultural, civil or any other field?	Partial	<i>Constitution of the Marshall Islands 1979, Article II, s 1-16.</i> All citizens are entitled to the following fundamental rights. Freedom of thought, speech, press, religion, assembly, association and petition; freedom from slavery and involuntary servitude, freedom from unreasonable searches and seizure due process and fair trial, just compensation for loss of land rights, freedom from cruel and unusual punishment, habeas corpus, freedom from post facto laws and bill of attainder, the quartering of soldiers, conscription, the right to equality before the law, freedom from discrimination, the right to personal autonomy and privacy, access to judicial and electoral processes, health care, education and legal services and responsible and ethical government. But Article X s 1 states that no action on the basis of a breach of fundamental rights and freedoms can invalidate the customary law or traditional practice concerning land tenure.	The rights protected include most of those required by CEDAW. There is therefore substantial compliance with this indicator but <ul style="list-style-type: none"> <li>Substantive equality is not a guaranteed right.</li> <li>The rights are subject to customary law and practice in relation to land.</li> </ul>
1.2 Is there a constitutional guarantee of substantive equality between men and women?	Partial	<i>Constitution of the Marshall Islands 1979, Article II, s 12.</i> All persons are entitled to the equal protection of the law.	A guarantee of equal protection of the law requires that law is equally in substance and application but does not guarantee equal benefits or outcomes as required by CEDAW.
1.3 Does the Constitution contain an anti-discrimination clause on the ground of sex/gender?	Yes	<i>Constitution of the Marshall Islands 1979, s 12(2).</i> No law and no executive action shall either expressly or in its practical operation discriminate on the basis of gender.	
1.4 Does the Constitution contain an anti-discrimination clause on the ground of marital status?	No		
1.5 Does the Constitution contain an anti-discrimination clause on the ground of sexual orientation?	No		
1.6 Does the Constitution contain an anti-discrimination clause on the ground of HIV status?	No		
1.7 Does the Constitution contain an anti-discrimination clause on the ground of disability?	No		

<b>ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN</b> <b>ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION</b>			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.8 Does the breadth of anti-discrimination clause encompass direct and indirect discrimination?	Yes	<i>Constitution of the Marshall Islands 1979, s 12(2)</i> . No law and no executive or judicial action shall either expressly or in its <i>practical operation</i> discriminate.	The words 'practical operation' enables claims of indirect discrimination. For example, in a situation where a rule appears to apply to a group of people in the same way but in its <i>practical operation</i> places on particular members of that group a burden not faced by the majority a claim may still be pursued. This recognises that discrimination does not always manifest in obvious or direct ways but may be disguised within policies or practices which appear to apply to all persons equally.
1.9 Does the anti-discrimination clause bind public authorities and institutions?	Yes	<i>Constitution of the Marshall Islands 1979, Article II, s 12(2)</i> . Applies to law, executive and judicial action.	
1.10 Does the anti-discrimination clause bind any person, organisation or enterprise?	No		
1.11 Are sanctions imposed for breach of anti-discrimination provisions?	Yes	<i>Constitution of the Marshall Islands 1979, Article I, s 4(b)</i> . Any court resolving a case or controversy implicating a provision of the Constitution has power to make all orders necessary and appropriate to ensure full compliance with the provision and enjoyment of its benefits.	
1.12 Are there specific domestic violence offences in criminal law legislation (Penal Code)?	No	<b><i>Criminal Code [Cap 1] 1966</i></b> <ul style="list-style-type: none"> <li>• s 113. Assault - \$100 or 6 months imprisonment.</li> <li>• s 114. Aggravated assault - 10 years imprisonment.</li> <li>• s 115. Assault and battery - \$100 or 6 months imprisonment.</li> <li>• s 116. Assault and battery with a dangerous weapon - 5 years imprisonment.</li> </ul>	These provisions do not embrace the variety of situations that constitute domestic violence. Some have low penalties although aggravated assault is seriously regarded. The provisions, however, fall short of compliance with this indicator.

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.13 Is stalking a criminal offence?	No		
1.14 Is a restraining order available in situations of sexual and domestic violence regardless of marital status?	No		
1.15 Is there mandatory prosecution for domestic violence offences?	No		
1.16 Does the criminal law legislation contain a broad range of sexual assault offences graded on the basis of seriousness to the victim?	Yes	<p><b>Criminal Code [Cap 1] 1966</b></p> <ul style="list-style-type: none"> <li>• <b>s152A</b> Sexual assault in the first degree (a) Sexual penetration by strong compulsion (threat, dangerous instrument, force) or (b) with person under 16 - 25 years imprisonment.</li> <li>• <b>s 152B.</b> Sexual assault in the second degree. (a) Sexual penetration by compulsion (absence of consent, threat of public humiliation, property damage or financial loss) or (b) with person mentally incapacitated or (c) by person employed in correctional facility or a law enforcement officer with resident, prisoner etc – 10 years imprisonment.</li> <li>• <b>s 152C.</b> Sexual assault in the third degree. (a) recklessly subjects another person to an act of sexual penetration by compulsion or (b) knowingly subjects another person under 16 or (c) mentally defective to sexual contact (touching intimate parts of unmarried other whether directly or through clothing) or (d) person employed in correctional facility subjects prisoner to sexual contact by self or another or (e) knowingly by strong compulsion has sexual contact with another person - 5 years imprisonment.</li> <li>• <b>s 152D.</b> Sexual assault in the fourth degree. (a) knowing sexual contact by compulsion (b) knowing exposure of genitals (c) knowing trespass for surveillance for sexual gratification - 1 year imprisonment.</li> <li>• <b>s 152E.</b> Continuous assault of minor. Person who resides with or has access to minor under 16 and engages in 3 or more acts of penetration or sexual contact - 25 years imprisonment.</li> </ul>	<p>The new sexual assault regime is compliant with the indicator. It includes a comprehensive range of offences which capture the variety of ways in which women and girls are sexually assaulted and grades them according to the gravity of harm to the victim. Note:</p> <ul style="list-style-type: none"> <li>• The sentences are generally low for offences which do not involve forceful penetration of adult women. Research suggests coercive penetration can be as harmful as violent assaults.</li> <li>• 18 is the recommended age of majority and no offence should require strong compulsion and compulsion for girls under 18.</li> </ul>



ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
1.17 Does the definition of rape and/or sexual assault offences include penetration of non-penile objects to anus, vagina and mouth?	Yes	<i>Criminal Code [Cap 1] 1966 s 151(13)</i> . Sexual penetration means vaginal, anal and deviate sexual intercourse, fellatio, cunnilingus, anilingus or any intrusion of any part of a persons body or any object into the genital or anal opening of another persons body. No emission is required.	
1.18 Is there an offence of incest in the criminal law legislation for girls and women? If there is no offence of incest then there is full compliance with this indicator.	Yes		The Criminal Code of the Marshall Islands does <i>not</i> contain an offence of incest for women and girls and is therefore in full compliance with this indicator and with CEDAW. Charging women and girls with incest is discriminatory because it does not recognise that incest primarily occurs within a context of unequal power relations.
1.19 Have the terms indecency, carnal knowledge, defilement and insulting modesty been removed from the criminal law legislation?	Yes		To be compliant with this indicator, these terms should not be used in the criminal law legislation. The new sexual assault regime does not contain any of these terms and instead uses the terms sexual penetration and sexual contact. It is therefore in full compliance with the indicator.
1.20 Is consent specifically defined in the criminal law legislation outlining coercive circumstances?	Yes	<i>Criminal Code [Cap 1] 1966</i> . <ul style="list-style-type: none"> <li>• <b>s 151(2)</b>. Compulsion includes a threat that places a person in fear of public humiliation, property damage or financial loss.</li> <li>• <b>s 151(14)</b>. Strong compulsion includes (a) threats that put person in fear of bodily injury to self or other (b) dangerous instrument (c) physical force.</li> </ul>	
1.21 Is there a legislative prohibition on use of prior sexual conduct to establish consent?	Partial	<b>Evidence Act 1989, Rule 412</b> <ul style="list-style-type: none"> <li>• (a). Evidence generally inadmissible if (1) offered to prove that any alleged victim engaged in other sexual behaviour; and</li> </ul>	This provision is substantially compliant with the indicator but: <ul style="list-style-type: none"> <li>• Past sexual conduct with the accused is</li> </ul>

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<p>(2) offered to prove any alleged victim's sexual pre-disposition. But</p> <ul style="list-style-type: none"> <li>• (b)(1.) Admissible if (B) evidence of specific instances of sexual behaviour by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and (C) evidence the exclusion of which would violate the constitutional rights of the defendant.</li> </ul>	admissible in relation to proving consent which allows the prosecution to imply that past consent equates to consent in the current case.
1.22 Is there a legislative prohibition on requirement for corroboration?	Yes	<i>Criminal Code [Cap 1] 1966, s 153(2)</i> . There is no requirement that the testimony of the victim be corroborated for prosecution of any sexual offence.	
1.23 Is there a legislative prohibition on a requirement to provide proof of resistance?	Yes	<i>Criminal Code [Cap 1] 1966, s 153(3)</i> . A victim need not resist the actor for prosecution of any sexual offence.	
1.24 Is there a defence of honest and reasonable belief that the victim is of legal age? If there is no such defence then there is full compliance with this indicator.	Yes	<i>Criminal Code [Cap 1] 1966, s 153(1)</i> . If criminality of conduct depends upon a child being younger than 16, it is no defence that the defendant reasonably believed the child to be 16 or over.	To be compliant with this indicator, there should be no defence available to the perpetrator of 'honest and reasonable belief that the victim is of legal age'. This defence places the onus on the minor to reveal her age rather than on the perpetrator to ascertain age. The legislation specifically states that <i>no</i> defence of honest and reasonable belief that the victim is of legal age is applicable and therefore is fully compliant with the indicator.
1.25 Is a defence of consent unavailable in relation to a victim under 18?	Partial	<i>Criminal Code [Cap 1] 1966 s 152A(1)(b), s 153C(1)(b)</i> . Defence of consent is unavailable for a victim under 16.	Although defence of consent is unavailable for a victim under 16, 18 is the CEDAW recommended age of majority.
1.26 Is there an exemption from prosecution for marital rape? If there is no such exemption, then there is full compliance with the indicator.	Yes		To be compliant with this indicator, men should not be exempted from being prosecuted for marital rape. If the Criminal Code contains a law which protects men from being

ARTICLE 1: DEFINITION OF DISCRIMINATION AGAINST WOMEN ARTICLE 2: OBLIGATION TO ELIMINATE DISCRIMINATION			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			charged with marital rape, then there is no compliance with this indicator. The Criminal Code in the Marshall Islands does <i>not</i> exempt husbands from prosecution for marital rape and is therefore in full compliance with this indicator and with CEDAW.
1.27 Is there mandatory prosecution for sexual offences?	No		
1.28 Is bail unavailable for sexual offences if risk to victim?	Partial	<i>Criminal Procedure Code 1966, s 44(1)</i> . Other than murder in the first degree person entitled to be released on bail unless reasonable ground to believe will be offensive to the public.	'Offensive to the public' could be interpreted to mean a risk to the safety of a sexual assault victim.
1.29 Are there minimum sentences for sexual offences?	No	All sentences are for a term of imprisonment 'not exceeding' the maximum prescribed sentence.	
1.30 Is there a provision in the criminal law legislation which states that customary practices of forgiveness shall not affect criminal prosecution or sentencing?	No	<i>Criminal Code [Cap 1] 1966, s 181</i> . In imposing or suspending the execution of sentences, or in suspending the imposition of sentence and granting probation, due recognition shall be given to the customs of the inhabitants of the Republic.	The legislation specifically <i>provides</i> for custom to affect criminal sentencing but note: <i>Rules of Criminal Procedure, 2005. Rule 32 (i)(4)(B)</i> . Before imposing sentence, the court must address any victim of a crime of violence or sexual abuse who is present at sentencing and must permit the victim to speak or submit any information about the sentence.
1.31 Is there legislative provision for compensation for victims of sexual and domestic violence?	Yes	<i>Criminal Code [Cap 1] 1966, s 185</i> . If a defendant is convicted of a wilful wrong causing damage to another, the court may, in lieu of or in addition to other lawful punishment, order restitution or compensation to the person damaged.	
1.32 Does the criminal law legislation allow for infanticide to replace a charge of murder or manslaughter?	No		
1.33 Does the definition of infanticide include environmental and social stresses?	No		

**ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
3.1 Is there legislation establishing national human rights machinery charged with promoting and protecting human rights including women rights?	No		
3.2 Is there legislation establishing a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women?	No		A Women and Development Division is located in the Ministry of Internal Affairs. Although not established by legislation and therefore subject to removal in times of economic or political instability, it is empowered to monitor policy and law for the advancement of women.

**ARTICLE 4: ACCELERATION OF EQUALITY BETWEEN MEN AND WOMEN**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
4.1 Does the Constitution contain a temporary special measures provision?	No		
4.2 Are special measures exempt from discrimination on the grounds of sex, marital status, sexual orientation, HIV status and disability?	No		



## ARTICLE 5: SEX ROLES AND STEREOTYPES

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
5.1 Is there a provision in the Constitution which gives precedence to a constitutional guarantee of equality if there is a conflict between custom and equality law?	No	<p><b><i>Constitution of the Marshall Islands 1979</i></b></p> <ul style="list-style-type: none"> <li>• <b>Article III</b> creates the Council of Iroiji which can request the reconsideration of any Bill that affects customary law, traditional practice of land tenure.</li> <li>• <b>Article X s 1.</b> Preserves customary law that relates to tenure of land over any of the fundamental rights and freedoms in Article II.</li> <li>• <b>Article X s 2(1).</b> Empowers Parliament to declare by Act the customary law however 2(2). Cannot defeat a claim in Article II (Bill of Rights).</li> </ul> <p><b><i>Customary Law Commission Act 1989.</i></b> Establishes a Commission to declare by Act the customary law.</p> <p><b><i>Domestic Relations Act 1988, s 105.</i></b> Provisions of the Act do not apply to any annulment, divorce, or adoption effected in accordance with local custom, nor shall any restrictions or limitations be imposed upon the granting of divorces in accordance with local custom.</p>	Customary law has constitutional legal status in the Marshall Islands and is also incorporated into legislation. Although there are anti-discrimination provisions in the Constitution which women can call upon, the absence of a constitutional guarantee of the precedence of equality over customary law in the event of any conflict, results in non-compliance with this indicator.

## ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.1 Is the act of soliciting decriminalised?	No	<b><i>Prostitution Prohibition Act 2001</i></b> <ul style="list-style-type: none"> <li>• s 503(1). Any person who engages in prostitution - \$5,000 or 2 years imprisonment, or both.</li> <li>• s 503(2). Any person who patronises prostitution - \$5,000 or 2 years imprisonment, or both.</li> </ul>	The provision is formally equal as it criminalises both the sex worker and the client and applies equally to men and women. It does not however satisfy the indicator which requires that women are not punished for engaging in sex work.
6.2 Is aiding and abetting consensual acts of soliciting decriminalised?	No	<b><i>Prostitution Prohibition Act 2001,</i></b> <ul style="list-style-type: none"> <li>• s 503(3). Any person who promotes prostitution - \$10,000 or 5 years, or both.</li> <li>• s 504(1). Any room, building or other structure regularly used for prostitution activity is prohibited as a public nuisance - \$100 or 6 months (2). If the owner of the room, building or structure knew or had reason to believe that the premises were being used regularly for prostitution activity, the court may order the premises not be occupied or used for up to one year. (3). All persons, including owners, lessees, officers, agents, inmates or employees, aiding or facilitating such a nuisance may be made defendants.</li> </ul>	Criminalising those who aid and abet prostitution does not assist women who work in this field to carry out their work in a non-exploitative and protected environment.
6.3 Is it a criminal offence to procure any woman without consent or any girl under 18?	Partial	<b><i>Criminal Code [Cap 1] 1966</i></b> <ul style="list-style-type: none"> <li>• s 152A(1)(a). Knowingly subjects person to sexual penetration by another by strong compulsion (threat of bodily injury, dangerous instrument or physical force) - 25 years.</li> <li>• s 152B(1)(a). Knowingly subjects person to sexual penetration by another by compulsion (absence of consent or threat of fear of humiliation, property damage or financial loss) - 10 years.</li> <li>• s 152C(1)(a). Recklessly subjects person to sexual penetration by another by compulsion - 5 years.</li> <li>• s 152C(1)(a). Recklessly subjects person to sexual penetration by another by compulsion - 5 years.</li> <li>• s 152C(1)(a). Knowingly subjects fewer than 16 to sexual contact with another - 5 years.</li> <li>• s 152D(1)(a). Knowingly subjects a person to sexual contact with another by compulsion - 1 year.</li> </ul>	<ul style="list-style-type: none"> <li>• These offences do not specifically relate to procurement but would capture some instances of the exploitation of women and girls. Full compliance however requires specific targeted offences.</li> <li>• It is discriminatory to require compulsion or strong compulsion for an offence applying to children under 18. This is because consent should not be a defence in relation to sexual offences of children.</li> </ul>

## ARTICLE 6: EXPLOITATION OF WOMEN

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
6.4 Does employment legislation including occupational health and safety legislation protect sex workers?	No		
6.5 Is the trafficking of women prohibited?	No		
6.6 Is sex tourism prohibited?	No		

## ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.1 Is there an equal right to vote?	Yes	<ul style="list-style-type: none"> <li><i>Constitution of the Marshall Islands 1979, Article IV, s 3(1)</i>. Universal suffrage for all citizens over 18.</li> <li><i>Elections and Referenda Act 1980, s 105, s 106</i>. Universal suffrage for all citizens over 18.</li> </ul>	
7.2 Is there equal eligibility for political representation?	Partial	<ul style="list-style-type: none"> <li><i>Constitution of the Marshall Islands 1979 Article IV s 4(1)</i>. Every voter 21 or over is qualified to be a candidate for election to the Nitijela (Parliament).</li> <li><i>Elections and Referenda Act 1980, s 108(1)</i>. Every eligible voter who has attained the age of 21 years is qualified to be a candidate for election as a member of the Nitijela for any electoral district.</li> </ul> <p>However</p> <ul style="list-style-type: none"> <li><i>Constitution of the Marshall Islands 1979, Article III</i> creates the Council of Iroij. Election to the Council of Iroij is limited to those recognised by customary law or traditional practice as having rights and obligations analogous to those of <i>iroijlaplap</i> (paramount chiefs). The Council may (a) consider any matter of concern to the Marshall Islands and may express its opinion to the Cabinet, and (b) request the reconsideration of any bill, which the Nitijela has adopted on its third reading, affecting the Marshall Islands' customary law or any traditional practice or land tenure or any related matter.</li> </ul>	The Council of Iroji is empowered to comment on all legislation that concerns customary law. Election is limited to those of chieftain status. Although there is no formal barrier to women becoming chiefs they rarely do.
7.3 Is there legislative provision for minimum quotas of women in Parliament?	No		Only one woman has served as a member of parliament in the Marshall Islands. The introduction of minimum quotas by legislation is essential to achieving substantive equality in this area.
7.4 Do women have an equal right to participate in NGOs?	Yes		No legal barrier to equal participation.

## ARTICLE 7: POLITICAL AND PUBLIC LIFE

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
7.5 Is there legislation (other than Charitable Societies legislation) enabling NGOs to register and mobilise to promote the advancement of women, without political interference?	No		<i>Cooperatives Act</i> 1993. Provides for the establishment and registration of organisations but their purpose must be economic.

## ARTICLE 8: INTERNATIONAL REPRESENTATION AND PARTICIPATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
8.1 Do women have equal opportunity to represent government at international level and participate in work of international organisations?	Partial		Although there is no legal barrier to equal participation few women <i>do</i> represent government at the international level. The introduction of a quota system by legislation would ensure full compliance with this indicator.

## ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.1 Do women have an equal right to acquire, change or retain their nationality?	Yes	<i>Citizenship Act</i> 1984 [43 MIRC Cap 4] <ul style="list-style-type: none"> <li>• s 403. By naturalisation.</li> <li>• s 409. By registration.</li> </ul>	
9.2 Does marriage to a non-national or change of husband's nationality affect wife's nationality? If there is no change to a wife's nationality after marriage there is full compliance with this indicator	Yes		To be compliant with this indicator, the marriage of a woman to a non-national should not affect her nationality. The legislation does <i>not</i> alter the nationality of female citizen upon marriage and therefore there is full compliance with this indicator and with CEDAW.
9.3 Do both spouses have an equal right to residency, citizenship and employment when spouse is a non-national?	Yes		



## ARTICLE 9: NATIONALITY AND CITIZENSHIP

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
9.4 Do both spouses have equal rights in determining nationality of children?	Yes		
9.5 Do women have an equal right to obtain passport?	Yes	<b>Registration of Persons Act 1989, s 1616(1).</b> Every person who is a citizen of the Marshall Islands, is resident in Marshall islands, is 18 or over is eligible for registration and s 1613. Every registered person is eligible for an identity card.	

## ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.1 Does the legislation guarantee women and girls equal access to education?	Yes	<ul style="list-style-type: none"> <li><b>Constitution of the Marshall Islands 1979, Article II, s 15.</b> The government of Marshall Islands recognises the right of the people to education and the obligation to take every step reasonable and necessary to provide these services.</li> <li><b>College of the Marshall Islands Act 1992, s 207.</b> The College of the Marshall Islands shall have a representative governance structure to insure institutional autonomy, academic freedom, principles of equity, and insulation from political interference in order to serve the public interest.</li> </ul>	This provision provides a constitutional guarantee of the right to education of all citizens and the government is obligated to take reasonable and necessary steps to provide these services.
10.2 Is there legislation that creates special measures for the advancement of women in education?	No		

## ARTICLE 10: EDUCATION

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
10.3 Is there compulsory primary education for girls and boys?	Yes	<p><i>Education Act 1991,</i></p> <ul style="list-style-type: none"> <li>• <b>s 320(1).</b> A child at 4 on or prior to the commencement date of any school year shall be eligible to enrol in, and commence elementary level education in any school in the Republic.</li> <li>• <b>s 322(1).</b> Parent, guardian or any other person having custody of a child under 18 must ensure that s/he attends elementary or secondary level school upon attaining eligibility during any given school year (2) If fail to do so without good cause or reasonable explanation, (c) can be found delinquent under the Juvenile Procedure Act and placed on probation.</li> </ul>	
10.4 Is there compulsory secondary education for girls and boys?	Partial	<p><i>Education Act 1991</i></p> <ul style="list-style-type: none"> <li>• <b>s 324.</b> A public high school entrance examination shall be administered to all eighth-grade students as a means of determining eligibility for public high school. Secondary education, consisting of Grades 9 through 12, shall be provided to students who qualify for admission to high school and who continue to meet Ministry and school standards.</li> <li>• <b>s 322(1).</b> Parent, guardian or any other person having custody of a child under 18 must ensure that s/he attends elementary or secondary level school upon attaining eligibility during any given school year. (2) If fail to do so without good cause or reasonable explanation (c) Can be found delinquent under the Juvenile Procedure Act and placed on probation.</li> </ul>	Secondary education is only for those students that qualify for admission and may favour boys.
10.5 Is family life (reproductive and sexual health) education compulsory in schools?	No		
10.6 Is there a legislative prohibition on expulsion from school because of pregnancy?	No		

## ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.1 Are there anti-discrimination provisions in employment legislation on the grounds of sex, marital status, pregnancy, sexual orientation and HIV status with sanctions?	No		
11.2 Are there special measures provisions for women in employment?	No		
11.3 Do women enjoy equal conditions of work in relation to leave, superannuation and Workers Compensation?	Partial	<ul style="list-style-type: none"> <li>• <i>Social Security Act, 1990</i>. Provides workers and self-employed workers benefits for old age and disability and surviving spouses and surviving children of deceased or self-employed workers support after the loss of the family's income.</li> <li>• <i>Minimum Wage Act 1986, s 402. (a)</i>. Employee does not include a casual worker or family employee.</li> </ul>	<p>Equal provision for men and women.</p> <p>The Minimum Wage Act does not apply to casual workers and family employees which are categories of work in which women are typically employed.</p>
11.4 Does the legislation provide sexual harassment protection from employers and co-workers?	No		
11.5 Does the definition of sexual harassment encompass the breadth of unwanted behaviours?	No		
11.6 Does the legislation contain an equal pay provision?	No		
11.7 Does the legislation contain pay equity provisions?	No		
11.8 Does the legislation provide for an equal retirement age?	No		
11.9 Are there restrictions on women's choice of employment? If there are no restrictions on women's choice of employment then there is full compliance with this indicator.	Yes		To be compliant with this indicator, there should be no restrictions on a woman's choice of employment. There are no legislative restrictions on women's choice of employment in the Marshall Islands. This is in full compliance with the indicator and CEDAW. This is similar to all other Pacific countries except the FSM.

## ARTICLE 11: EMPLOYMENT

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
11.10 Does the legislation provide for health protection during pregnancy?	No		
11.11 Does the legislation provide paid maternity leave of not less than 14 weeks?	No		
11.12 Does the legislation provide protection from dismissal because of pregnancy or maternity leave?	No		
11.13 Does the legislation guarantee the provision of childcare by employer or state?	No		
11.14 Does the legislation provide reasonable nursing time during work hours?	No		

## ARTICLE 12: HEALTH CARE AND FAMILY PLANNING

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
12.1 Do women have access to safe and legal abortion facilities?	Partial	<i>Constitution of the Marshall Islands 1979, Article II, s 15.</i> The government of Marshall Islands recognises the right of the people to health care and the obligation to take every step reasonable and necessary to provide these services.	There is partial compliance with this indicator because (in compliance with CEDAW) there is no legislation in the Marshall Islands that criminalises abortion. However, whilst the Constitution guarantees the right of the people to health care, access to abortion is severely limited because abortion is performed by a limited number of physicians in the Marshall Islands only to save the life of a pregnant woman or to preserve her physical or mental health. Prior to an abortion, a woman must receive counselling and sign a form indicating that she will utilise family planning services following the abortion. Full compliance with this indicator requires that abortion be readily available.

**ARTICLE 13: ECONOMIC AND SOCIAL BENEFITS**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
13.1 Do women have an equal right to family benefits regardless of marital status?	Yes		There is no comprehensive social security system in Marshall Islands
13.2 Do women have an equal right to receive bank loans, mortgages and financial credit?	Yes		No legislative barrier to receive bank loans, mortgages and financial credit.
13.3 Do women have an equal right to participate in recreational activities, sports and cultural life?	Yes		No legislative barrier to participate in recreational activities, sports and cultural life.

**ARTICLE 14: RURAL WOMEN**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
14.1 Is there legislation that provides for special measures to advance substantive equality for rural women?	No		Many women in the Marshall Islands live in rural communities and it is crucial that the Marshall Islands incorporates special measures into either the national constitution or legislation to advance substantive equality.

## ARTICLE 15: EQUALITY BEFORE THE LAW AND CIVIL MATTERS

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
15.1 Does the Constitution guarantee equality before the law?	Yes	<i>Constitution of the Marshall Islands 1979, Article II, s 12(1).</i> All persons are equal under the law.	
15.2 Do women have an equal capacity in civil matters – can women sue?	Yes		No legal barrier to women's right to sue.
15.3 Do women have an equal right to participate in courts and tribunals at all stages?	Yes		No legal barrier to women's right to participate in court proceedings.
15.4 Do women have an equal right (regardless of marital status) to conclude contracts and administer property?	Yes		No legal barrier to women's right to conclude contracts and administer property.
15.5 Do women have an equal right to be executors or administrators of estates?	Yes	<i>Probate Code 1966.</i>	No legal barrier to women's right to be executors or administrators of estates.
15.6 Is there legislation nullifying all contracts and instruments that limit women's legal capacity?	No		No specific prohibition on discriminatory contracts.
15.7 Do women have an equal right to choose residence and domicile?	Yes	<i>Domicile Act 1984, s 802.</i> Domicile is deemed granted if (1)(a). The person has a place of abode in the Republic; and (b) either (i) intends to make the Republic a permanent home; or (ii) if infant or other person incapable of forming the requisite intent, legal guardian appointed intends to make the permanent home of such infant or other person in the Republic.	



## ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.1 Does the legislation guarantee entry into marriage with full and free consent?	No	<i>Births, Deaths and Marriages Registration Act 1988, s 434.</i> A marriage contracted between citizens in accordance with recognised customs, shall be valid.	<ul style="list-style-type: none"> <li>Customary marriages may include arranged marriages without full and free consent.</li> <li>There is no provision that provides that marriages cannot take place under duress, force or coercion.</li> </ul>
16.2 Does the legislation allow marriages to be nullified if they took place under force, duress or undue influence?	No		
16.3 Is there an equal minimum age of 18 for marriage?	No	<i>Births, Deaths and Marriages Registration Act 1988</i> <ul style="list-style-type: none"> <li>s 428 (a). Male 18 and female 16.</li> <li>s 434. The provisions of this Part shall not apply to marriages contracted between citizens in accordance with recognised customary practice. A marriage contracted between citizens in accordance with recognised customs is valid.</li> </ul>	The age of marriage is different for males and females. Further, as the specified age limits are not relevant in customary marriages, girls may marry at ages much less than CEDAW's recommended age of 18.
16.4 Is there a legislative prohibition on child marriage?	Partial	<i>Births, Deaths and Marriages Registration Act 1988</i> <ul style="list-style-type: none"> <li>s 428 (a). A valid marriage requires that the male is 18 and the female 16.</li> <li>s 434. The provisions of this Part shall not apply to marriages contracted between citizens in accordance with recognised customary practice. A marriage contracted between citizens in accordance with recognised customs, shall be valid.</li> </ul>	Full compliance would require- <ul style="list-style-type: none"> <li>The age of 18 for females.</li> <li>Customary marriages not exempt from this requirement.</li> </ul>
16.5 Does the legislation require registration of marriage in official registry?	Partial	<i>Births, Deaths and Marriages Registration Act 1988</i> <ul style="list-style-type: none"> <li>s 431. The marriage of every person marrying in the Republic shall be registered by the Registrar of the Atoll in which the marriage took place by entering in the register kept for that Atoll such particulars concerning the marriage.</li> <li>s 434. The provisions of this Part shall not apply to marriages contracted between citizens in accordance with recognised customary practice. A marriage contracted between citizens in accordance with recognised customs is valid.</li> </ul>	There is no requirement for customary marriages to be registered.
16.6 Does the legislation prohibit bigamy?	Yes	<i>Criminal Code [Cap 1] 1966, s 117.</i> 5 years.	

## ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.7 Do women have an equal right to choose a family name?	Yes		
16.8 Is the consent of both parents equal in marriage of minors?	Partial	<p><b><i>Births, Deaths and Marriages Registration Act 1988</i></b></p> <ul style="list-style-type: none"> <li>• <b>s 428(b).</b> Where the female is between 16 and 18 one of her parents or her guardian shall consent to her marriage.</li> <li>• <b>s 434.</b> The provisions of this Part shall not apply to marriages contracted between citizens in accordance with recognised customary practice.</li> </ul>	Although the consent requirements are equal in the formal law customary marriages are exempt from these requirements.
16.9 Are both spouses equal in ownership, acquisition, management, administration, enjoyment and disposition of property?	Partial	<ul style="list-style-type: none"> <li>• <b><i>Real and Personal Property Act [24 MIRC Ch 1] 1966.</i></b> Equal right to own property.</li> <li>• <b><i>Probate Code 1966.</i></b> Equal right to make a will and dispose of property as choose.</li> <li>• <b><i>Constitution of the Marshall Islands 1979, s 12(2).</i></b> No law and no executive action shall either expressly or in its practical operation discriminate on the basis of gender.</li> </ul> <p>However Article X s1 states that no such action can invalidate the customary law or traditional practice concerning land tenure.</p>	<ul style="list-style-type: none"> <li>• Despite equality in the formal law and a matrilineal inheritance system, women are not fully equal in ownership, acquisition, management, administration, enjoyment and disposition of property. The control and use of land and other resources often fall on Marshallese men, who are looked upon to provide for and to protect their families.</li> <li>• Land tenure continues on the basis of custom and cannot be challenged on the basis that it breaches the anti discrimination clause.</li> </ul>
16.10 Does the legislation provide for a maintenance and custody order during separation, based on need?	Partial	<p><b><i>Domestic Relations Act 1988,</i></b></p> <ul style="list-style-type: none"> <li>• <b>s 110.</b> While an action for annulment or divorce is pending, the Court may make temporary orders for the support of children, for support of either party, as it deems 'justice' and the 'best interests of all concerned' may require.</li> <li>• <b>s 105.</b> Act does not apply to any divorce effected in accordance with local custom, nor shall any restrictions or limitations be imposed upon the granting of divorces in accordance with local custom.</li> </ul>	<p>Although there <i>is</i> provision for maintenance during separation it does not fully comply with the indicator because:</p> <ul style="list-style-type: none"> <li>• Assessment is not based on criteria such as respective earning capacity and means, needs of both parties and other commitments. The absence of such criteria to</li> </ul>

ARTICLE 16: PERSONAL AND FAMILY LAW			
INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
			<p>guide judicial discretion leaves women without a guarantee of maintenance based on need.</p> <ul style="list-style-type: none"> <li>Customary marriages fall outside the legislation in non-compliance with CEDAW.</li> </ul>
16.11 Is there legislation to enable women to occupy the marital home when settlement is not possible or in situations of domestic violence?	No		
16.12 Does the legislation provide an order for restitution of conjugal rights? If there is no such order then there is full compliance with this indicator.	Yes		<p>To be compliant with this indicator, the legislation should not allow the courts to provide an order for restitution of conjugal rights. The legislation does <i>not</i> provide for orders for restitution of conjugal rights (which are discriminatory as they take away a woman's autonomy to choose when and with whom she has sexual relations). There is therefore full compliance with this indicator and with CEDAW.</p>
16.13 Does the legislation provide for no-fault divorce?	No	<p><b><i>Domestic Relations Act 1988</i></b></p> <ul style="list-style-type: none"> <li><b>s 115.</b> (1) Adultery, cruel treatment, desertion, use of intoxicating liquor or drugs, sentencing to imprisonment for three years, insanity, leprosy, the separation of the parties for two consecutive years without cohabitation, wilful neglect by the husband to provide suitable support for his wife when able to do so (2) Divorces from marriages may be granted under this Part due to irreconcilable differences which have caused the irremediable breakdown of the marriage.</li> <li><b>s 105.</b> Act does not apply to any divorce effected in accordance with local custom, nor shall any restrictions or limitations be imposed upon the granting of divorces in accordance with local custom.</li> </ul>	<ul style="list-style-type: none"> <li>Fault based criteria for divorce disadvantages women who are more likely to be in untenable situations and have difficulty establishing cruelty or adultery.</li> <li>Customary marriages fall outside the legislation in non-compliance with CEDAW.</li> <li>Forgiveness does not take into account the power imbalance between the parties.</li> </ul>

## ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
		<ul style="list-style-type: none"> <li><b>s 117.</b> No divorce shall be granted where the ground for the divorce has been forgiven by the injured party. Such forgiveness may be shown by express proof or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights.</li> </ul>	
16.14 Is there a duty on the court to promote reconciliation? If there is no such a duty then there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not impose a duty on the court to promote reconciliation between estranged spouses. Such a duty is discriminatory and non-compliant because it removes women's choices or reduces their autonomy to choose to leave a relationship. The legislation does <i>not</i> place a duty on the court to promote legislation and therefore is in full compliance with the indicator and with CEDAW.
16.15 Does the legislation provide for an equal division of property after divorce including recognition of unpaid contribution; future needs and future earning capacity calculated?	Partial	<i>Domestic Relations Act 1988, s 110.</i> In granting or denying an annulment or a divorce, the Court may make such orders for the disposition of either or both parties' interest in any property in which both have interests, as it deems justice and the best interests of all concerned may require.	The criteria of 'justice and the best interests of all concerned' does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties. It provides no criteria for the calculation of women's non financial contributions.
16.16 Does the legislation provide for the payment of child support upon divorce based on need?	Partial	<i>Domestic Relations Act 1988, s 110.</i> The Court may make an order for the support of children as it deems 'justice' and the 'best interests of all concerned' may require.	As above in 16.10
16.17 Does the legislation provide maintenance for ex-spouse based on commitments, income, earning capacity, assets?	Partial	<i>Domestic Relations Act 1988, s 110.</i> The Court may make orders for the support of either party, as it deems 'justice' and the 'best interests of all concerned' may require.	As above in 16.10
16.18 Is custody and access to children based on best interests of child regardless of relationship of parents?	No	<i>Domestic Relations Act 1988, s 110</i> The Court may make such orders for custody of minor children as it deems justice and the best interests of all concerned may require.	Although the best interests of the child is relevant it is not paramount and is therefore non-compliant with the indicator.

## ARTICLE 16: PERSONAL AND FAMILY LAW

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.19 Does the legislation provide damages for adultery? If there is no provision for damages, then there is full compliance with this indicator.	Yes		To be compliant with this indicator, the legislation should not provide damages for adultery. The legislation does <i>not</i> provide a right to damages for adultery and therefore is in full compliance with the indicator and with CEDAW. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interferes with their autonomy.
16.20 Do women have equal rights to guardianship, wardship, trusteeship and adoption?	Yes	<i>Adoptions Act 2002 s 811(1)</i> . Any person of the age of majority, whether married or single, or a husband and wife jointly, may petition to adopt a child. (2) A petitioner shall be at least 15 years older than the child to be adopted. However note <ul style="list-style-type: none"> <li>• <i>s 811(3)</i>. Same sex couples are, or an individual living as a member of a same sex couple is, not eligible to petition the court for the adoption of any children.</li> </ul> <i>Marshall Islands Guardianship Act 1984, s 209</i> . The judge may in his discretion appoint any person who is qualified to act as guardian.	Women have equal rights to apply for adoption except when they are in same-sex relationships.
16.21 Does the legislation recognise de facto rights (including same-sex couples) on the same basis as marriage?	No	Same-sex couples are specifically excluded from adoption. See 16.20.	
16.22 Does the legislation provide an order for establishing parentage?	No		
16.23 Does the legislation provide for a contribution to pregnancy and childbirth costs by father to unmarried mother?	No		
16.24 Does the legislation provide child support payable for children born outside of marriage?	No		

**ARTICLE 16: PERSONAL AND FAMILY LAW**

INDICATOR	COMPLIANCE	RELEVANT LEGISLATION	COMMENTARY
16.25 Does the legislation provide for equal rules of inheritance?	No		There is no legislation dealing with intestate succession in the Marshall Islands and succession is determined by customary law. Although the Marshall Islands has a matrilineal system which means that land rights are acquired through women, the failure to incorporate equal rights into the legislation leaves women vulnerable to change in customary practices.
16.26 Is there legislation requiring the application of CEDAW and CRC to domestic family law when relevant?	No		