

Article

Ejab Mantin Majel:¹ Corporal Punishment in Public Schools in the Marshall Islands

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I. INTRODUCTION

Nestled deep in the equatorial Pacific Ocean, roughly at the midpoint between Hawaii and Australia, is a tiny pacific island nation that no one has heard of.² With a population of roughly 70,000,³ the Republic of the Marshall Islands is made up of twenty-nine atolls and five islands scattered across more than 750,000 square miles of ocean.⁴ The country is split into two

1. “Ejab mantin majel” is a Marshallese phrase that means, “It’s not Marshallese custom/culture.” See PETER RUDIAK-GOULD, *WORLDTEACH MARSHALLESE LANGUAGE MANUAL* 35, 53 (2004).

* Law Clerk, United States District Court, Southern District of California. I am forever grateful to the people of Jabor, Jaluit for their unwavering kindness and hospitality during my time in the Marshall Islands. I owe an especially large debt of gratitude to the Williams family for allowing me to stay in their home for nine months and for treating me as one of their own. Komolol nan aolep im jeraman nan aolep.

2. See *Marshall Islands*, *WORLD ATLAS*, <http://www.worldatlas.com/webimage/countrys/oceania/mh.htm> (last visited Nov. 11, 2015); Gunnar Garfors, *Marshall Islands; Fishing Paradise, Diving Heaven*, *GLOBETROTTING GALORE BY GUNNAR GARFORS* (Mar. 23, 2013), <http://www.garfors.com/2013/03/marshall-islands-diving-and-fishing.html> (“You haven’t even heard about the country? You are not alone. Marshall Islands is the 5th least visited country in the world.”). Unlike other tropical destinations that are used to an influx of western visitors, tourism is scarce in the Marshall Islands. See generally THE SCH. OF TRAVEL INDUS. MGMT. - UNIV. OF HAW. AT MANOA, *TOURISM DEVELOPMENT IN THE MARSHALL ISLANDS* i-iv, http://tim.hawaii.edu/sites/www.tim.hawaii.edu/files/marshallislands1990_executivesummary.pdf.

3. See *Australia-Oceania: Marshall Islands*, *THE WORLD FACTBOOK* (Oct. 28, 2015), <https://www.cia.gov/library/publications/the-world-factbook/geos/rm.html> (estimating the population of the Marshall Islands to be 72,191 as of July 2015).

4. See *Geography*, *RMI EMBASSY US*, <http://www.rmiembassyus.org/Geography.htm> (last visited Nov. 11, 2015). An atoll is “an island that is made of coral and shaped like a ring.” *Atoll*, *MERRIAM-WEBSTER* (12th ed. 2016).

chains of islands: the Ratak chain; and the Ralik chain, which have some of the most spectacular snorkeling and scuba diving on the planet.⁵ Moreover, though little known, the Marshall Islands is also home to some of the world's best surfing.⁶ Yet, despite the Marshall Islands' stunning coastline and spectacular options for travel and ocean sports, violence against children in public schools is an epidemic in the country.⁷

Article 28 of the Convention on the Rights of the Child (the "Convention") provides that "States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention."⁸ The Marshall Islands signed the Convention on April 14, 1993, and ratified it on October 4, 1993.⁹ The country submitted its initial State Party Report to the Committee on the Rights of the Child (the "Committee") on March 18, 1998, and its second periodic State Party Report on December 7, 2004.¹⁰ Both reports assert that corporal punishment in public schools is rare, and that when it does occur, it is handled appropriately.¹¹ However, these

5. See *Geography*, *supra* note 4. Ratak means "sunrise," and Ralik translates to "sunset." *Id.*; Garfors, *supra* note 2 ("It is probably the best diving, snorkeling and fishing nation in the world.").

6. See, e.g., *Kelly Slater's Secret Atoll*, SURFER, <https://www.youtube.com/watch?v=SbKVhbRupus> (last visited Nov. 11, 2015). Although difficult to confirm, during my time living in the Marshall Islands, I surfed a reef break that I am almost certain had never been surfed before. Rest assured, however, for the surfers reading this Article, I would not dare disclose the precise location of my secret spot nor the location of the wave in the video of Kelly Slater surfing in the Marshall Islands.

7. A recent survey by UNICEF of thirty-four locations in the Marshall Islands found that corporal punishment in schools was used at all thirty-four locations. See UNICEF Pacific, *Child Protection Baseline Report Republic of Marshall Islands* (Jun. 2012), http://www.unicef.org/pacificislands/RMI_baseline_20th_Mar.pdf.

8. Convention on the Rights of the Child, Nov. 29, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

9. Status of Treaty, Convention on the Rights of the Child (Apr. 10, 2016), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf> [hereinafter Status of CRC].

10. See Marshall Islands, *Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Initial Reports of States Parties Due in 1995*, U.N. Doc. CRC/C/28/Add.12 (Nov. 1, 1998) [hereinafter First State Party Report]; Marshall Islands, *Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Second Periodic Reports of States Parties Due in 2000*, U.N. Doc. CRC/C/93/Add.8 (Aug. 24, 2005) [hereinafter Second State Party Report].

11. See First State Party Report, *supra* note 10, ¶ 87; Second State Party

reports are deceptive as to the actual harsh realities faced by public school children in the country.

I lived in the Marshall Islands from July 2011 to May 2012. For nine of those months, I was an elementary school English teacher on Jabor, the most populous island in the Jaluit Atoll.¹² Although the people of Jabor are some of the most wonderful people I have ever met, my time in the Marshall Islands was the most challenging experience of my life,¹³ in large part because of the amount of corporal punishment I witnessed at my school.¹⁴ In sharp juxtaposition to the spectacular surf and the warmth of the Marshallese people, I regularly saw school officials commit violence against children.¹⁵

This Article addresses the failure of the Marshallese government to adhere to its obligations under Article 28(2) of the Convention.¹⁶ Part II provides a brief history of the Marshall Islands from before World War I until the present day. Part III addresses the Convention in depth with an emphasis on Article 28(2). Part IV discusses the Marshall Islands' relationship to the Convention and more specifically Article 28(2), including the country's interactions with the Committee during its two

Report, *supra* note 10, ¶ 67–69.

12. See *Jaluit Atoll*, MARSHALL ISLANDS GUIDE, <http://www.info.marshallislands.com/atolls-a-l/jaluit-atoll/> (last visited Nov. 15, 2015). Jaluit is in the Ralik chain of islands. See RMI EMBASSY US, *supra* note 4.

13. Yes, even more challenging than law school.

14. By contrast, this experience also provided me with some of the more humorous moments of my life, such as when a fourth grader raised his hand during story time and exclaimed, “Teacher! I am poop!” See Justin Behraves, *October 3rd, 2011: Day 75 in Country, Day 52 in Jabor, Jaluit*, JUSTIN BEHAVESH MARSHALL ISLANDS YEAR (Oct. 3, 2011, 4:53 AM), <http://justinbehravesh.tumblr.com/page/11>.

15. See, e.g., Justin Behraves, *May 3rd, 2012: Day 290 in Country, Day 254 in Jabor, Jaluit*, JUSTIN BEHAVESH MARSHALL ISLANDS YEAR (May 3, 2012, 11:52 PM), <http://justinbehravesh.tumblr.com/page/2> (describing an incident between a student and another teacher, who was also her father).

16. See CRC, *supra* note 8, art. 28(2) (“States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.”). I do want to be clear, however, that this Article should not be construed as a criticism of the Marshallese people. During my time in the Marshall Islands, I was shown nothing but immense kindness from the people with whom I lived and worked. Marshallese people are some of the most amazing humans on this planet, and I am incredibly grateful for their generosity while I lived there. This Article should only be read as a criticism of the government structures that allow corporal punishment to permeate public schools in the country.

2017

reporting cycles, legislation addressing Article 28(2), and the actual realities of public school children in the country. Part V concludes the article.

II. A HISTORY OF THE MARSHALL ISLANDS

To give context to the Marshall Islands' relationship to the Convention, this section of the article briefly addresses the history of the country. For purposes of clarity, this part is broken into four time periods: pre-World War I, the events surrounding World War I and World War II, post-World War II until the country gained independence in 1979, and 1979 to the present day.

A. PRE-WORLD WAR I

The first Micronesian navigators are estimated to have landed in the Marshall Islands between 500 B.C.E. and 2000 B.C.E.¹⁷ Micronesians were and are incredibly skilled navigators, who could travel long distances by canoe.¹⁸ The islands were originally named "Aelon Kein Ad," in Marshallese, which translates to "our islands."¹⁹ In 1494, the ownership of all of Micronesia was given to Spain through the Treaty of Tordesillas.²⁰ In a subsequent journey to the Spice Islands,

17. See *History*, RMI EMBASSY US, <http://www.rmiembassyus.org/History.htm> (last visited Jan. 16, 2016).

18. See *Marshall Islands Profile – Timeline*, BBC NEWS (Jan. 16, 2016), <http://www.bbc.com/news/world-asia-15598732>; see also Kim Tingley, *Sixth Sense*, N.Y. TIMES MAGAZINE, Mar. 20, 2016, at 54–58, 102–04 (documenting the attempt of three western researchers to explain the ingenuity of Marshallese navigation).

19. See *History*, *supra* note 17.

20. *Id.* One scholar provided a poignant commentary as to the mentality of colonizers during the time period of this treaty:

Based on the assumed superiority of European culture, the colonial expeditions set out to conquer the Western Hemisphere. As far as the Spanish and Portuguese were concerned, the only treaties relevant to the process of colonization were treaties between themselves; the most important being the Treaty of Tordesillas of 1494 which ratified Pope Alexander VI's decision regarding the allocation of lands in the Western hemisphere between the two powers. Agreements with indigenous peoples, under these theories, were not considered part of international law, since only recognized nation-states could enter into compacts binding under the (European) law of nations.

Siegfried Wiessner, *American Indian Treaties and Modern International Law*, 7 ST. THOMAS L. REV. 567, 572 (1995).

Spaniard Alvaro Saavedra came across the Marshall Islands in 1529.²¹ In 1592, Spain formally laid claim to the country.²²

The islands became known as the Marshall Islands in 1788.²³ This name was given by British Naval Captain William Marshall,²⁴ who had “sailed through the area on the Scarborough while transporting convicts for New South Wales between Botany Bay and Cathay.”²⁵ Following several trade developments with Germany during the mid-1800s, Germany annexed the Marshall Islands in 1885, giving Spain \$4.5 million.²⁶

B. WORLD WAR I AND WORLD WAR II

After joining Britain and British allies in World War I, Japan was able to take control of some Pacific Islands from Germany in 1914, including the Marshall Islands.²⁷ In 1920, after World War I, Japan was given a mandate by the League of Nations to govern the Marshall Islands.²⁸ Japan retained the possession of the Marshall Islands even after it withdrew from the League of Nations in 1934.²⁹ As Japan readied itself for World War II, the islands of Mili, Maloelap, Wotje, Kwajalein, and Jaluit were developed into military bases.³⁰ The

21. See *History*, *supra* note 17.

22. See *Marshall Islands Profile – Timeline*, *supra* note 18.

23. See *History*, *supra* note 17; see also *Marshall Islands Profile – Timeline*, *supra* note 18.

24. See *History*, *supra* note 17.

25. *Id.*

26. *Id.*

27. See *Marshall Islands Profile – Timeline*, *supra* note 18. Japan joined the Allies through a treaty with Britain. See *Japan Profile – Timeline*, BBC NEWS (Aug. 11, 2015), <http://www.bbc.com/news/world-asia-pacific-15219730>. The “Allied Powers” or “Allies” were “those countries allied in opposition to the Central Powers (Germany, Austria-Hungary, and Turkey) in World War I or to the Axis Powers (Germany, Italy, and Japan) in World War II.” *Allied Powers, International Alliance*, ENCYCLOPAEDIA BRITANNICA (15th ed. 2003).

28. See *History*, *supra* note 17. The League of Nations, which no longer exists, “was an international organization, headquartered in Geneva, Switzerland, created after the First World War to provide a forum for resolving international disputes.” See *The League of Nations, 1920*, OFFICE OF THE HISTORIAN, U.S. DEP’T OF STATE, <https://history.state.gov/milestones/1914-1920/league> (last visited Nov. 1, 2016).

29. See *History*, *supra* note 17.

30. See *id.* Today, the Jaluit Atoll is still home to spectacular World War II ruins, which I had the great fortune to visit during my time living on Jabor.

development of these military bases created “a north-south line of defense in the Marshalls” for Japan.³¹

On February 3, 1944, the United States took control of the Marshall Islands from the Japanese.³² The events leading up to the capture of the Marshall Islands by the U.S. occurred fairly swiftly:

[Admiral] Raymond Spruance led the 5th Fleet from Pearl Harbor on January 22, 1944, to the Marshalls, with the goal of getting 53,000 assault troops ashore two islets: Roi and Namur. Meanwhile, using the Gilberts as an air base, American planes bombed the Japanese administrative and communications center for the Marshalls, which was located on Kwajalein, an atoll that was part of the Marshall cluster of atolls, islets, and reefs.

By January 31, Kwajalein was devastated. Repeated carrier- and land-based air raids destroyed every Japanese airplane on the Marshalls. By February 3, U.S. infantry overran Roi and Namur atolls. The Marshalls were then effectively in American hands—with the loss of only 400 American lives.³³

The capture of the Kwajalein Atoll was not an insignificant event in World War II.³⁴ Rather, this was “the first capture of prewar Japanese territory and pierced the Japanese defense perimeter, paving the road to Tokyo.”³⁵ The seizing of Kwajalein

31. See *History*, *supra* note 17; see also *This Day in History, February 3, 1944, World War II, U.S. Troops Capture the Marshall Islands*, HISTORY, <http://www.history.com/this-day-in-history/u-s-troops-capture-the-marshall-islands> (last visited Nov. 28, 2015) [hereinafter *This Day in History*] (“Non-Japanese, including Christian missionaries, were kept from the islands as naval and air bases—meant to threaten shipping lanes between Australia and Hawaii—were constructed.”).

32. See *This Day in History*, *supra* note 31.

33. *Id.* The United States forces that captured Kwajalein have been called “the most powerful invasion force ever assembled up to that time.” See *History, KWAJALEIN TODAY*, <http://kwajtoday.com/History.aspx> (last visited Sept. 28, 2016).

34. See *History*, *supra* note 33.

35. *Id.* The significance of the capture of the Marshall Islands to the Marshallese people should not be underestimated. According to the stories I heard from Marshallese people, if the United States had not taken control of the Marshall Islands, Japanese forces were poised to commit genocide of the Marshallese. For this reason and others, visitors from the United States are

also eliminated major bases and severed lines of communication for the Japanese.³⁶ After the Japanese surrendered in 1945, the Marshall Islands were kept under the administration of the United States Military until 1947.³⁷

C. POST-WORLD WAR II TO 1979

After World War II, in the wake of dropping atomic bombs on Hiroshima and Nagasaki, President Truman “issued a directive to Army and Navy officials that joint testing of nuclear weapons would be necessary ‘to determine the effect of atomic bombs on American warships.’”³⁸ The Bikini Atoll, in the newly U.S.-controlled Marshall Islands, was chosen for this testing based on its distance from regular air and sea travel.³⁹ All 167 inhabitants of Bikini were evacuated to facilitate this testing.⁴⁰ In what was known as “Operation Crossroads,” from 1946 until

treated with utmost respect by Marshallese people, even to this day. As an example, whenever I attended any gathering or party in Jabor, I was always served first. This remained true even if the gathering was in honor of someone else.

36. *Id.*

37. *Id.*

38. See JACK NIEDENTHAL, FOR THE GOOD OF MANKIND: A HISTORY OF THE PEOPLE OF BIKINI AND THEIR ISLANDS 2 (2d ed. 2001); see also *Bombing of Hiroshima and Nagasaki*, HISTORY, <http://www.history.com/topics/world-war-ii/bombing-of-hiroshima-and-nagasaki> (last visited Nov. 30, 2015).

39. *See id.*

40. See Zohl de Ishtar, *Poisoned Lives, Contaminated Lands: Marshall Islanders are Paying a High Price for the United States Nuclear Arsenal*, 2 SEATTLE J. SOC. JUST. 287, 288 (2004). To initiate the evacuation of the Bikinians in February 1946, the military governor of the Marshalls, Commodore Ben H. Wyatt:

[T]raveled to Bikini. On a Sunday after church, he assembled the Bikinians to ask if they would be willing to leave their atoll temporarily so that the United States could begin testing atomic bombs “for the good of mankind and to end all world wars.” King Juda, then the leader of the Bikinian people, stood up after much confused and sorrowful deliberation among his people, and announced, “We will go believing that everything is in the hands of God.”

NIEDENTHAL, *supra* note 38, at 2. Although the more subtle details of Operation Crossroads are beyond the scope of this Article, Jack Niedenthal’s book provides a harrowing account of the struggles of the people of Bikini as a result of this evacuation and the subsequent nuclear testing on their islands. *See generally id.*

1958, the United States dropped sixty-seven nuclear warheads on the Bikini and Enewetak Atolls.⁴¹

In 1947, not long after commencing nuclear testing in the country, the Marshall Islands became “one of six entities in the Trust Territory of the Pacific Islands . . . established by the United Nations with the U.S. as the Trustee.”⁴² At the time, this agreement was the only strategic trust that the United Nations had ever created.⁴³ This agreement mandated the United States to “promote the economic advancement and self-sufficiency of the inhabitants, and to this end . . . regulate the use of natural resources; encourage the development of fisheries, agriculture, and industries; protect the inhabitants against the loss of their lands and resources; and improve the means of transportation and communications.”⁴⁴

Nuclear testing continued for over a decade following the establishment of Trust Territory of the Pacific Islands.⁴⁵ In 1965, the Congress of Micronesia was formed.⁴⁶ This Congress was established by the United States Government “in preparation for greater self-governance in Micronesia”⁴⁷ and with the notion that the Trust Territory of the Pacific Islands would collectively determine its political future.⁴⁸ Despite aspirations for uniformity, however, the political goals of the various nations of the Trust Territory of the Pacific Islands were not the same.⁴⁹ The Marshall Islands eventually withdrew from the Congress of Micronesia in 1973 to seek independence and subsequently

41. See Ishtar, *supra* note 40, at 288. The testing was no small endeavor for the United States, as it involved “242 naval ships, 156 aircraft, 25,000 radiation recording devices and the Navy’s 5,400 experimental rats, goats and pigs,” as well as over 42,000 U.S. personnel. See NIEDENTHAL, *supra* note 38, at 2–3.

42. See *History*, *supra* note 17.

43. See NIEDENTHAL, *supra* note 38, at 4.

44. See Trusteeship Agreement for the Former Japanese Mandated Islands art. 6.2, July 18, 1947, 61 Stat. 3301, 8 U.N.T.S. 189. Despite its language regarding protecting Micronesians from loss of their land, as noted by one commentator, this agreement actually permitted the displacement of Marshallese people during nuclear testing. See NIEDENTHAL, *supra* note 38, at 4 (“The people of Bikini have long seen the irony in the conduct of the Trust Territory agreement that allowed the bombing of their homeland and that forced them into starvation on Rongerik Atoll.”).

45. See *Marshall Islands Profile – Timeline*, *supra* note 18.

46. See *History*, *supra* note 17.

47. See *Marshall Islands Profile – Timeline*, *supra* note 18.

48. See Chimene I. Keitner & W. Michael Reisman, *Free Association: The United States Experience*, 39 TEX. INT’L L.J. 1, 36 (2003).

49. *Id.*

rejected a constitution that was created for Micronesia.⁵⁰ The Marshall Islands' first constitution was adopted in 1978, and the country became self-governing in 1979.⁵¹ In 1982, the country was officially named the Republic of the Marshall Islands.⁵²

D. 1979 TO THE PRESENT DAY

In 1983, Marshallese citizens voted to approve the Compact of Free Association with the United States (the "Compact"), which was approved by the United States Congress in 1986 and went into effect that year.⁵³ The Compact gives the Marshall Islands "its sovereignty and provides for aid and US defense of the islands in exchange for continued US military use of the missile testing range at Kwajalein Atoll."⁵⁴ The Compact was renewed in 2003 to provide \$3.5 billion to the Marshall Islands and the Federated States of Micronesia over the course of twenty years.⁵⁵ Currently, the United States gives approximately \$70 million annually to the Marshall Islands under the Compact.⁵⁶

The Marshall Islands' trusteeship status was terminated in 1990, and it joined the United Nations in 1991.⁵⁷ Yet today, despite its independence, the Marshall Islands continues to struggle by finding itself as a developing nation that cannot rid itself of western influence.⁵⁸ Indeed, in many ways the country is currently a perplexing hybrid of old island traditions and

50. See Keitner & Resiman, *supra* note 48, at 37; *Marshall Islands Profile – Timeline*, *supra* note 18.

51. See *History*, *supra* note 17.

52. *Id.*

53. *Id.*

54. *Id.*

55. See *Marshall Islands Profile – Timeline*, *supra* note 18. The effect of the impending expiration of the Compact should not be understated. The country has been dependent on foreign aid for so long that it is hard to imagine how it could sustain itself without regular funds flowing in from the United States. Indeed, Marshallese people I spoke with appeared to be in denial of the upcoming expiration of the Compact. On one occasion, I debated at length with a very well-educated Marshallese man regarding the impending termination of the Compact. Despite my insistence, he was unwilling to accept that the money coming from the United States as a result of the Compact would eventually stop.

56. See *U.S. Relations with Marshall Island*, U.S. DEP'T OF STATE, BUREAU OF E. ASIAN AND PAC. AFFAIRS (Feb. 4, 2015), <http://www.state.gov/r/pa/ei/bgn/26551.htm>.

57. See *History*, *supra* note 17.

58. See *infra* note 59.

selective adoption of western ideals.⁵⁹ Moreover, the country's dependence on foreign aid, lack of exports or tourism, and unreliable infrastructure make economic growth difficult.⁶⁰ But despite its struggles in establishing its economy in any sort of sustainable way, the Marshall Islands is a wonderful place to visit.⁶¹

59. An American who spent a year living in the Marshall Islands describes the cultural hybrid as follows:

At the end of the day, what this mixed legacy meant was that no one really knew if life was better now than in the past. Behind the confident proclamations by foreigners and natives, there was an unacknowledged schizophrenia. Western visitors regretted the demise of yet another glorious indigenous society at the hands of imperialism, missionization, and globalization. Meanwhile, they worked for organizations whose stated mission was to help modernize the country and connect it to the outside world. Natives felt Western values had killed their traditional harmony. Yet when I asked them specifically about pre-Christian days, they praised the missionaries for saving them from heathen barbarism—and they happily earned and displayed American dollars, collected Western goods, and welcomed *ribelles* like myself. There was a phrase in Marshallese, *bwiin-eppallele*, “the smell of America,” the odor of imported things. That plasticky aroma was toxic but also narcotic. Who could blame them if they guiltily opened the box?

PETER RUDIAK-GOULD, *SURVIVING PARADISE: ONE YEAR ON A DISAPPEARING ISLAND 178–79* (2009). This hybrid is additionally shown in the structure of the government of the Marshall Islands, which is “based on a parliamentary system and includes a Council of Iroij [kings] that may request reconsideration of any bill affecting customary law or traditional practice.” See Keitner & Reisman, *supra* note 48, at 48 (internal citations omitted). As a more subtle example of this hybrid phenomenon, the host family that I lived with would frequently serve me meals of wonderful local fruit next to Spam.

60. See *U.S. Relations with Marshall Island*, *supra* note 56; CENT. INTELLIGENCE AGENCY, *Marshall Islands*, in *THE WORLD FACTBOOK* (2015).

61. Indeed, there are a lot of lessons that can be learned from the ways in which the country operates. For example, while living in the country, I never saw a single homeless person. The sharing and community-oriented culture would never permit this. By contrast, in 2013 there were an estimated 610,042 homeless people in the United States. See U.S. DEP'T HOUS. & URBAN DEV., OFFICE OF CMTY. PLANNING AND DEV., *THE 2013 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS 6* (2013), <https://www.hudexchange.info/resources/documents/ahar-2013-part1.pdf>.

Given this sharp contrast between homelessness in the Marshall Islands and the United States, my question to the reader is: which is the more advanced country?

III. THE CONVENTION ON THE RIGHTS OF THE CHILD

A. A BRIEF HISTORY OF THE CONVENTION

The League of Nations was the first international body to address the rights of children.⁶² In 1924, the Assembly of the League of Nations gave its endorsement to the Declaration of the Rights of the Child, or the Declaration of Geneva.⁶³ Drawing from the experiences of World War I, the Declaration of Geneva contained five provisions, respectively addressing development of children, care for children in need, giving relief to children in times of distress, protecting children against exploitation, and fostering in children the importance of serving others.⁶⁴ Notably for our purposes here, the Declaration of Geneva did not address corporal punishment of children, let alone corporal punishment of children in public schools.⁶⁵

62. See SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 13 (1999).

63. *Id.*

64. See Geneva Declaration of the Rights of the Child, *adopted* Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924). The Declaration of Geneva contains the following text:

By the present Declaration of the Rights of the Child, commonly known as "Declaration of Geneva," men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

- The child must be given the means requisite for its normal development, both materially and spiritually;
- The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;
- The child must be the first to receive relief in times of distress;
- The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
- The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

Id. As noted by one commentator, this declaration reflected the attitudes toward children at the time, as "[i]t is replete with acts which must be done to or for the child, but is silent as to what the child is allowed to do." See Cynthia Price Cohen, *The Developing Jurisprudence of the Rights of the Child*, 6 ST. THOMAS L. REV. 1, 9 (1993).

65. See Geneva Declaration of the Rights of Child, *supra* note 64.

The events that subsequently took place during World War II caused substantial suffering among children.⁶⁶ In light of this, “immediate efforts were made by the General Assembly of the newly established United Nations to adopt a revised declaration of the rights of the child.”⁶⁷ On November 20, 1959, the General Assembly adopted a revised version of the Declaration of Geneva.⁶⁸ Spanning just over one page in length, the Declaration of the Rights of the Child (the “Declaration” or “CRC”) contains ten principles in total.⁶⁹ Like the Declaration of Geneva, the Declaration does not address corporal punishment of children in public schools.⁷⁰ Nevertheless, Principle 7 of the Declaration outlines a child’s right to education:

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavor to promote the enjoyment of this right.⁷¹

Likewise, Principle 9 mandates that “[t]he child shall be protected against all forms of neglect, cruelty and exploitation.”⁷² Read in conjunction, these principles appear to create a right for children to have an education that is free from

66. See DETRICK, *supra* note 62, at 14.

67. *Id.*

68. *Id.* (citation omitted).

69. See G.A. Res. 1386 (XIV), Declaration of the Rights of the Child (Nov. 20, 1959).

70. See *id.*

71. *Id.*

72. *Id.*

cruelty. But given the lack of an explicit reference to school discipline, combined with generally accepted morals at the time the Declaration was written, the creation of such a right was unlikely.⁷³

The writing and drafting of the Convention took place over the course of eleven years, beginning with a draft written by Poland.⁷⁴ The United Nations Commission on Human Rights subsequently created “an informal open-ended working group on the question of a convention on the rights of the child.”⁷⁵ The fact that this working group was “open-ended” meant that participation was allowed by any of the forty-three states that were represented in the United Nations Commission on Human Rights.⁷⁶ After eleven sessions, the working group finalized the text of the Convention in December 1988.⁷⁷

On November 20, 1989, the thirty-year anniversary of the adoption of the Declaration, the General Assembly adopted the Convention and opened it for signature, ratification, and accession.⁷⁸ The Convention entered into force on September 2, 1990.⁷⁹ At the time of writing this Article, there are 196 States

73. Nevertheless, the Declaration was a progressive step for children in comparison to the Declaration of Geneva. *See* DETRICK, *supra* note 62, at 14 (“The principles of the Declaration are formulated in terms of rights of children and, besides the material needs of the child, the child’s immaterial needs are also given attention.”).

74. *See id.* at 14–18. In 1976, the General Assembly had declared that 1979 would be the International Year of the Child to celebrate the twenty-year anniversary of the adoption of the Declaration. Poland’s original draft of the Convention was written as part of its preparations for this commemoration. *See Treaties and States Parties to Such Treaties: Convention on the Rights of the Child, 20 November 1989*, INT’L COMM. OF THE RED CROSS, <https://www.icrc.org/ihl/INTRO/540?OpenDocument> (last visited January 24, 2016). For the full history of the drafting of the Convention, see DETRICK, *supra* note 62, at 14–18.

75. *See* DETRICK, *supra* note 62, at 16.

76. *Id.* at 17. It is interesting to note that a consensus was required by the working group; thus, “at no time during the course of the [Convention’s] drafting was a proposal taken to vote.” *Id.*

77. *Id.* at 16, 18.

78. *See* CRC, *supra* note 8.

79. *Id.* Three Optional Protocols to the Convention have also subsequently been adopted and opened for signature, respectively addressing children’s involvement in armed conflict, child prostitution and pornography and the sale of children, and a communications procedure that allows for children to file complaints for violations of the rights afforded to them by the Convention. *See Committee on the Rights of the Child*, UNITED NATIONS HUM. RTS, OFFICE OF THE HIGH COMM’R, <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRC>

Parties to the Convention.⁸⁰ This broad acceptance of the Convention has been described as “almost . . . universal ratification, a feat achieved for the first time in the history of the international human rights standard-setting activities of the United Nations.”⁸¹

B. GENERAL PROVISIONS OF THE CONVENTION

Although the specific focus of this paper is Article 28, some general information regarding other provisions of the Convention is helpful in laying the foundation for the discussion to follow. At the outset, it is interesting to note that the Convention only bears a minor resemblance to the Declaration.⁸² As pointed out by one commentator, the Convention “totally revised the previously accepted notion of children’s rights.”⁸³

Spanning fifteen pages in total, the Convention contains three separate parts with a total of fifty-four articles.⁸⁴ While a comprehensive review of the entire Convention is beyond the scope of this Article, a few provisions of the Convention are worth noting. First, the preamble to the Convention, though over a page in length, interestingly does not address education or protecting children from violence.⁸⁵ Additionally, although it may seem obvious to the reader, Article 1 of the Convention makes it clear that “[f]or the purposes of the present Convention, a child means every human being below the age of eighteen years

Index.aspx (last visited Jan. 24, 2016).

80. See Status of CRC, *supra* note 9.

81. See DETRICK, *supra* note 62, at 1 (internal citations and footnote omitted). It is worth noting that although the United States is a signatory to the Convention, it has not ratified the Convention. See Status of CRC, *supra* note 9.

82. See Cohen, *supra* note 64, at 3.

83. *Id.* This commentator describes the differences between the Declaration and the Convention as the single exception to the following pattern of drafting United Nations human rights treaties:

First, a declaration outlining the relevant rights [is] drafted and adopted. It [is] then followed by the drafting of a treaty, which would make the rights enumerated in the declaration legally binding on those countries that would become States Parties to the treaty. In nearly every case, the treaty has simply restated the rights that had been previously agreed upon in the declaration.

Id. (footnote omitted).

84. See CRC, *supra* note 8.

85. See *id.* para. 1–11 [Preamble].

unless under the law applicable to the child, majority is attained earlier.”⁸⁶

With respect to those articles other than Article 28 that address violence against children, three are worth mentioning here. The first of these is Article 3, where the Convention states that “[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”⁸⁷ While this Article does not expressly mention violence against children, implicit within the words “the best interests of the child” is arguably a duty to abstain from such violence. More explicit, however, is the text of Article 19, which provides in part as follows:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.⁸⁸

Article 37 similarly indicates that “[n]o child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”⁸⁹ Thus, in addition to the specific protections of Article 28, Articles 19 and 37 create more broadly applicable protections for children from violence.

Article 43 of the Convention establishes the Committee on the Rights of the Child.⁹⁰ The Committee consists of ten experts selected by states parties who serve four-year terms and meet annually.⁹¹ States parties to the Convention have a reporting

86. *Id.* art. 1. In the Marshall Islands, the age of majority is eighteen. See *Marshall Islands*, GLOB. RES. & INFO. DIRECTORY, <http://legacy.fosigrid.org/occeania/marshall-islands> (last visited Feb. 6, 2016).

87. CRC, *supra* note 8, art. 3(1).

88. *Id.* art. 19(1). The Committee has confirmed that Article 19 applies in educational settings. MIEKE VERHEYDE, ARTICLE 28: THE RIGHT TO EDUCATION 60 (Andre Alen et al. eds., 2006) (internal citation omitted).

89. CRC, *supra* note 8, art. 37(a).

90. *Id.* art. 43(1).

91. *Id.* art. 43(1), (2), (6), (10). The experts are to be “of high moral standing and recognized competence in the field covered by this Convention.” See *id.* art.

requirement to the Committee under Article 44.⁹² Specifically, the Convention provides that a report is to be submitted to the Committee within two years of a State party ratifying the Convention and every five years after that.⁹³ These reports are to address “the measures [states parties] have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights.”⁹⁴ As discussed in detail below, the Marshall Islands’ two reports to the Committee unfortunately did not fully and accurately address the gravity of the problem of corporal punishment in public schools in the country.⁹⁵

C. ARTICLE 28

Article 28 of the Convention reads in its entirety as follows:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

43(2).

92. *See id.* art. 44.

93. *See id.* art. 44(1)(a)–(b).

94. *Id.* art. 44(1). Article 44 further states that “[r]eports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.” *Id.* art. 44(2). Thus, states parties appear to be given a little leeway when it comes to compliance with the Convention.

95. *See* First State Party Report, *supra* note 10; Second State Party Report, *supra* note 10.

- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.⁹⁶

Article 28(2), which is the focus of this Article, was included “as a result of a Polish proposal that a paragraph on school discipline should be included in the Convention,” and this was supported by the Soviet Union and Ukraine.⁹⁷ This subsection is somewhat unique with regard to international treaties.⁹⁸ Specifically, no other major human rights convention directly discusses humane school discipline.⁹⁹ Rather, before the adoption of the Convention, the use of corporal punishment could only be challenged as violating “the general prohibition on torture, cruel, inhuman and degrading treatment and punishment.”¹⁰⁰

96. CRC, *supra* note 8, art. 28.

97. See GERALDINE VAN BUEREN, *THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* 249 (1995).

98. See DETRICK, *supra* note 62, at 489.

99. *Id.*

100. See VAN BUEREN, *supra* note 97, at 249. This subsection thus creates new protections for children in addition to the existing international protections. *See id.*

As observed by one scholar, Article 28(2) creates both affirmative and negative duties on states parties.¹⁰¹ On the one hand, states parties are affirmatively obligated under this subsection to protect children from corporal punishment.¹⁰² On the other hand, states parties are negatively obligated to not interfere with a child's rights at school under this Article.¹⁰³ Article 28(2), moreover, works in conjunction with Articles 19 and 37, discussed above.¹⁰⁴ Specifically, the words "in conformity with the present Convention" in this subsection refers to Articles 19 and 37, which, as mentioned, provide protections for children from violence.¹⁰⁵ Notably, the Committee has specifically indicated "the incompatibility of corporal punishment, as well as any other form of violence, injury, neglect, abuse or degrading treatment, with the provisions of the Convention, in particular Articles 19, 28 paragraph[s] 2 and 37."¹⁰⁶

In sum, the Convention on the Rights of the Child was a ground-breaking piece of international law. Article 28(2) of the Convention created new protections for children from corporal punishment in public schools, which had never before been addressed by international standards. As discussed below, however, the Marshall Islands continues to fail to adhere to this important provision.

IV. THE MARSHALL ISLANDS' ADHERENCE TO ARTICLE 28(2)

This part of the article addresses the Marshall Islands' relationship with and adherence to Article 28(2) of the Convention. This section contrasts the country's formal stated adherence to Article 28(2) with the inadequacies of its legislation addressing corporal punishment and the actual realities of corporal punishment in its public schools.

101. See VERHEYDE, *supra* note 88, at 64.

102. *Id.*

103. *Id.*

104. *Id.* at 60; see also VAN BUEREN, *supra* note 100, at 249 ("The duty in article 28(2) of the Convention on the Rights of the Child is strengthened by article 19(1) of the same treaty . . .").

105. See CRC, *supra* note 8, arts. 19(1), 37(a); VERHEYDE, *supra* note 88, at 60 (citing DETRICK, *supra* note 62, at 489).

106. See Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: Zimbabwe, ¶ 18, U.N. Doc. CRC/C/15/Add.55 (June 7, 1996).

A. INTERACTIONS WITH THE COMMITTEE DURING THE TWO
REPORTING CYCLES

1. Reporting Cycle I

As mentioned above, the Marshall Islands signed the Convention on April 14, 1993, and subsequently ratified it on October 4, 1993.¹⁰⁷ The country's First State Party Report was submitted on March 18, 1998, and the Committee published its concluding observations on October 26, 2000.¹⁰⁸

a. State Party Report

The Marshall Islands' First State Party Report spans thirty-seven pages in total.¹⁰⁹ In the first section of its report entitled "General Measures of Implementation," the country quite candidly admits that "[t]he Government has not taken specific measures to harmonize national law with the Convention."¹¹⁰ This statement is qualified in the following sentence, where it states that "with few exceptions, the laws and policies of the Marshall Islands are consistent with the Convention's provisions."¹¹¹ The report then lists three areas of national law that need improvement, but corporal punishment is not one of them.¹¹²

With regard to corporal punishment, the Marshall Islands unfortunately does not address Article 28, let alone subsection 2 of this Article, anywhere in its initial report.¹¹³ Nor do the words "corporal punishment" make an appearance.¹¹⁴ The report does boldly state, however, that "[t]he ill-treatment of children at

107. See Status of CRC, *supra* note 9.

108. See Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: Marshall Islands, U.N. Doc. CRC/C/15/Add.139 [hereinafter First Reporting Cycle Concluding Observations] (Oct. 26, 2000); First State Party Report, *supra* note 10.

109. See First State Party Report, *supra* note 10.

110. *Id.* ¶ 1.

111. *Id.*

112. See *id.* ("Those areas where the national laws of the Marshall Islands need improvement include laws regarding child labour, sexual consent and marriage, and the naming of the natural father of a child born out of wedlock.").

113. See *id.*

114. See *id.*

school has not been an issue. The Marshall Islands is a relatively nonviolent society. On the rare occasions that teachers mistreat students, school administrators counsel or terminate the teachers.”¹¹⁵ This statement is bolstered by a later part of the report, which opines that “[t]here are no harmful traditional practices currently observed in the Marshall Islands.”¹¹⁶ As discussed below, however, corporal punishment in public schools in the Marshall Islands remains a significant problem. Thus, these statements do not provide justice to the school children who are regularly subjected to this treatment.

b. Concluding Observations

In its concluding observations during the first reporting period, the Committee began by addressing some of the challenges faced by the Marshall Islands in implementing the Convention:

The Committee acknowledges that socio-economic and geographic difficulties facing the State party, as well as customary practices and traditional attitudes, have impeded the full implementation of the Convention. In particular it notes the challenges faced by the State party in implementing adequate programmes and services for children in its dispersed island communities, some of which are isolated, very difficult to reach and have few inhabitants.¹¹⁷

The Committee showed concern, however, with how the laws of the Marshall Islands “do not fully reflect the principles and provisions of the Convention” and advised that the country take steps to do so.¹¹⁸ It additionally noted “with concern that there is no independent body to monitor observance of the implementation of children’s rights with a view to promoting and protecting them and to deal with individual complaints concerning all children’s rights not only violations of law” and recommended the creation of such a body within the country.¹¹⁹

115. *Id.* ¶ 87.

116. *Id.* ¶ 150.

117. See First Reporting Cycle Concluding Observations, *supra* note 108, ¶ 7.

118. *Id.* ¶¶ 8–9.

119. *Id.* ¶¶ 16–17.

With regard to corporal punishment, the Committee noted that it was “concerned that the use of corporal punishment within the family, schools, other institutions, and generally within society is not expressly prohibited by law.”¹²⁰ To this end, the Committee made the following recommendations:

In light of articles 19, 28(2) and 37 of the Convention, the Committee recommends that the State party adopt appropriate legislative measures to prohibit the use of any form of corporal punishment within the family, schools and other institutions. It also encourages the State party to develop measures to raise awareness about the negative effects of corporal punishment and ensure that alternative forms of discipline are administered in families, schools and other institutions in a manner consistent with the child’s dignity and in conformity with the Convention.¹²¹

Thus, during the first reporting period, the Marshall Islands hardly addressed corporal punishment, and when it did so, it dismissed it as a non-issue. The Committee, to its credit, directly addressed this issue, prompting the country to engage in deeper discussion during the second reporting cycle.

2. Reporting Cycle II

During the second reporting cycle, the Marshall Islands submitted its State Party Report on December 7, 2004.¹²² The Committee subsequently published its concluding observations on November 19, 2007.¹²³

120. *Id.* ¶ 36.

121. *Id.* ¶ 37.

122. *See* Second State Party Report, *supra* note 10.

123. *See* Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding Observations: Marshall Islands, U.N. Doc. CRC/C/MHL/CO/2 (Nov. 19, 2007) [hereinafter Second Reporting Cycle Concluding Observations].

a. State Party Report

Like its First State Party Report, the Marshall Islands' Second Periodic Report spans thirty-seven pages in total.¹²⁴ In the beginning of the report, the country indicates that it has taken actions to harmonize its laws with the Convention and lists several legislative efforts toward that end, which included the Child Abuse and Neglect Act and the amended Criminal Code.¹²⁵ With regard to the Criminal Code, the Second State Party Report indicates that, as amended, this code "prohibits the use of corporal punishment against children as a disciplinary measure."¹²⁶ As discussed in further detail below, however, this description of the Criminal Code is inconsistent with what the code actually says.¹²⁷ Unlike the First State Party Report, which does not address corporal punishment, the Second State Party Report devotes half of a page to the topic.¹²⁸ The report begins by addressing the Committee's unease with the prevalence of corporal punishment in the country and discussing the structures that are in place to prevent corporal punishment:

The Committee's concern with respect to the use of corporal punishment in families and state institutions is acknowledged. Under the Child Abuse and Neglect Act, it is not permissible to subject children to physical or psychological harm.^[129] The Act also provides for training of community and professional groups, counselling for victims and perpetrators, and public education to prevent abuse. The Rules and Regulations of the Ministry of Education also prohibit corporal punishment (defined as "hitting, kicking, slapping or any other means of brutal punishment").¹³⁰

124. Second State Party Report, *supra* note 10.

125. *Id.* ¶¶ 22–26.

126. *Id.* ¶ 22.

127. See *supra* Part IV.B.3. To the contrary, the amended Criminal Code actually outlines broad circumstances where school teachers may use force on children. See Child Abuse and Neglect Act, 31 MIRC c 1, § 3.08(2)(a)–(b) (RMI).

128. See Second State Party Report, *supra* note 10, ¶ 67–69; First State Party Report, *supra* note 10.

129. As discussed below, it is debatable whether the Child Abuse and Neglect Act actually contains such a prohibition. See discussion *infra* Part IV.B.1.

130. Second State Party Report, *supra* note 10, ¶ 67.

The country then admits its difficulties in addressing this problem:

While appropriate child abuse legislation is in place, reporting, investigative and monitoring functions have not yet been sufficiently developed. The Government is also aware that more work is needed to educate the public about the harmful consequences of corporal punishment. The CRC Focal Point at the Ministry of Internal Affairs employed at the Ministry of Health are working on community education programs, with support from international agencies and local NGOs.¹³¹

Lastly, the report discusses the occurrence of corporal punishment in public schools and the alleged mechanisms in place to address the issue:

With respect to corporal punishment in schools, there are very few reported instances of this occurring. When these situations are reported to a school Principal, the matter is fully investigated and appropriate disciplinary action is taken. In [serious] cases, the Principal informs the Secretary of Education. Since 1999, the Public Service Commission has been responsible for teacher employment; infractions are now dealt with by the [Public Service Commission]. The [Ministry of Education] believes school administrators and teachers need to develop better understanding of the [Convention on the Rights of the Child] and child rights principles.¹³²

Although it was important for the Marshall Islands to acknowledge the problem of corporal punishment in this report, this final paragraph describes very idealist structural mechanisms. It is questionable whether these mechanisms are actually regularly implemented in the country on a widespread basis.¹³³

131. *Id.* ¶ 68.

132. *Id.* ¶ 69.

133. For example, the Principal at my school rarely provided any follow up, let alone an investigation, when I brought corporal punishment to her attention. I can only imagine that this lack of action by school administrators is even worse on more isolated outer islands than the one I lived on.

b. Concluding Observations

In its concluding observations, the Committee again recognized “the challenges faced by the State party in implementing adequate programmes and services for children in its dispersed island communities,” noting that “[s]ome of these islands are isolated, very difficult to reach and have few inhabitants.”¹³⁴ While acknowledging that some of its prior recommendations had been implemented, the Committee noted that other recommendations had not been given sufficient follow up, including those regarding child abuse and neglect.¹³⁵ The Committee also noted the progress the Marshall Islands had made to ensure that its legislation conforms with the Convention, but expressed concern “that not all principles and provisions of the Convention are covered by the State party’s legislation.”¹³⁶

Addressing corporal punishment, the Committee provided the following observations:

While noting that corporal punishment is prohibited in schools by the Rules and Regulations of the Ministry of Education (1992) and that it is unlawful as a disciplinary measure under the revised Penal Code, the Committee is concerned that it remains lawful in the family and that it is not formally prohibited in alternative care settings.¹³⁷

The Committee then provided suggestions for addressing corporal punishment, including the following:

(a) Explicitly prohibit all forms of corporal punishment in the family and in institutional settings and alternative care systems as a matter of priority;

134. See Second Reporting Cycle Concluding Observations, *supra* note 123, ¶ 5.

135. See *id.* ¶ 6.

136. See *id.* ¶ 8. As discussed below, the country’s legislation does not go nearly far enough to comport to the principles outlined in the Convention or to address the issue of corporal punishment. See discussion *infra* Part IV.B.

137. See Second Reporting Cycle Concluding Observations, *supra* note 123, ¶ 41. Again, as discussed below, it is questionable whether the amended Criminal Code actually prohibits corporal punishment. See *supra* Part IV.B.3.

(b) Sensitize and educate parents, guardians and professionals working with and for children by carrying out public educational campaigns about the harmful impact of corporal punishment, and promote positive, non-violent forms of discipline as an alternative to corporal punishment;

(c) Provide children with child-sensitive mechanisms to lodge complaints in case they are victims of violence, including corporal punishment.¹³⁸

It is interesting to note, however, that such suggestions do not address the issue of corporal punishment in public schools. This lack of discussion, coupled with the Committee's earlier statements regarding the Rules and Regulations of the Ministry of Education, seem to imply that the Committee is satisfied that the country is properly addressing this issue.

In sum, a reading of the Marshall Islands' State Party Reports and the Committee's concluding observations across both reporting periods suggests that the country has resolved the issue of corporal punishment in public schools to the satisfaction of the Committee. However, if this is the case, the Committee is gravely mistaken. Despite any legislation or submissions to the Committee that state otherwise, corporal punishment in public schools in the Marshall Islands remains widespread.¹³⁹

B. LEGISLATION ADDRESSING ARTICLE 28(2)

The Marshall Islands has three pieces of legislation that arguably address the concerns raised in Article 28(2) of the Convention: the Child Abuse and Neglect Act, the Public School System Act, and section 3.08 of the Criminal Code.

1. Child Abuse and Neglect Act

The Child Abuse and Neglect Act, passed on October 1, 1991, defines child abuse or neglect as "the acts or omissions of

138. See Second Reporting Cycle Concluding Observations, *supra* note 123, ¶ 42.

139. See UNICEF Pacific, *supra* note 7, at 113.

any person that have resulted in the physical or psychological health or welfare of a child to be harmed, or to be subject to any reasonably foreseeable, substantial risk of being harmed.”¹⁴⁰ The definitions section lists a number of circumstances constituting an “act or omission.”¹⁴¹ This legislation creates a duty on “employees or officers of any public or private school” to orally report to the Secretary of Health or the Chief of Police when they “have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future.”¹⁴² It also creates a written reporting requirement following the initial oral report.¹⁴³

Failing to report child abuse or neglect can create liability under the Child Abuse and Neglect Act in the form of a \$500 fine.¹⁴⁴ This legislation additionally requires that those who have committed child abuse or neglect be subject to educational programs:

Persons who are found to have committed child abuse or neglect shall, in addition to any other provision or penalty, be required to attend the public education programs developed in accordance with . . . this Section, and shall receive mandatory counseling and other treatment, including treatment for alcohol or drug abuse as necessary and appropriate, to prevent further abuse or neglect.¹⁴⁵

While the Child Abuse and Neglect Act was an important legislative step in creating a duty on public officials, including schoolteachers, to report instances of child abuse, it does not go far enough. Specifically, it does not create any sort of civil liability for teachers who commit corporal punishment, other than the education requirement addressed above. Rather, civil fines appear to be limited to those who fail to report child abuse or neglect.¹⁴⁶ And it is questionable whether such penalties are

140. See Child Abuse and Neglect Act, 26 MIRC c 5, § 502(2) (RMI).

141. See *id.* § 502(2)(a)–(e). Included in these are “substantial or multiple skin bruising,” *id.* § 502(2)(a)(i), and “any injury to skin causing substantial bleeding.” *Id.* § 502(2)(a)(ii).

142. See Child Abuse and Neglect Act, 26 MIRC c 5, § 503(1) (RMI).

143. See *id.* § 503(3).

144. See *id.* § 512(1).

145. See *id.* § 510(3).

146. See *id.* § 512(1).

actually an incentive for those who work in public schools in the Marshall Islands to report corporal punishment.¹⁴⁷

2. Public School System Act

The Public School System Act is the only piece of Marshallese legislation that directly mentions corporal punishment in public schools.¹⁴⁸ Specifically, this legislation dictates that “[c]orporal Punishment is prohibited in the public school system.”¹⁴⁹ While this express prohibition of corporal punishment may seem promising, it is severely limited by the language of the Criminal Code, discussed below.¹⁵⁰

3. The Criminal Code

In addition to the Child Abuse and Neglect Act and the Public School System Act, the Criminal Code of the Marshall Islands addresses the issue of the use of force by public school teachers in the country.¹⁵¹ But rather than creating liability, the Criminal Code creates exceptions where such force is permissible:

The use of force upon or toward the person of another is justifiable if:

...

147. While my experiences are purely anecdotal, the principal at my school most certainly did not engage in oral or written reporting when I informed her of my concerns regarding corporal punishment at the school. It is possible the principal reacted this way because such instances did not rise to the level of those acts specifically addressed in the Child Abuse and Neglect Act. *See id.* § 502(2)(a)–(e). However, a more likely explanation is that she and other public school administrators are not properly trained about the provisions of this legislation.

148. *See* Marshall Islands Public School System Act, 14 MIRC c 3 (RMI).

149. *See id.* § 324(3).

150. *See* GLOB. INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, CORPORAL PUNISHMENT OF CHILDREN IN THE MARSHALL ISLANDS 2–3 (Oct. 2015), <http://www.endcorporalpunishment.org/assets/pdfs/states-reports/MarshallIslands.pdf> (noting that the prohibition on corporal punishment in the Public School System Act is undermined by the Criminal Code).

151. *See* Criminal Code, 31 MIRC c 1 (RMI).

(2) the actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and:

(a) the force is reasonable and the actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and

(b) the degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under Subsection (1)(b) of this Section[.]¹⁵²

Read literally, this section of the Criminal Code appears to create broad circumstances in which public school teachers are permitted to use force against children.¹⁵³ Specifically, so long as the force is reasonable, the teacher thinks force is necessary, and the force is not grossly excessive, such force is permissible.¹⁵⁴ It is difficult to imagine a scenario where the use of mild or even moderate force against a child could lead to criminal punishment of a teacher under this standard.

To put in context this broad grant of permission to use of force against children by public school teachers, it is troubling to note that the Marshall Islands' Second State Party Report asserts that the Criminal Code "prohibits the use of corporal punishment against children as a disciplinary measure."¹⁵⁵ Unfortunately, this portion of the State Party Report does not cite to a specific provision of the Criminal Code that addresses corporal punishment.¹⁵⁶ Nor do the words "corporal punishment"

152. *See id.* § 3.08(2)(a)–(b). Under Subsection (1)(b), parents or guardians may use force so long as "the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress or gross degradation." *Id.* § 3.08(1)(b). This is a very high standard; there are many forms of moderate force that would appear to not contravene this portion of the statute.

153. *See id.* In many regards, this section of the Criminal Code creates an affirmative right to use force as opposed to an exception to criminal liability.

154. *See id.*

155. *See* Second State Party Report, *supra* note 10, ¶ 22.

156. *See id.*

appear anywhere in the Criminal Code.¹⁵⁷ Without more guidance from those who prepared the Second State Party Report as to what portion of the Criminal Code addresses corporal punishment by public school teachers, this statement in the Second State Party Report was either the product of negligence in drafting the document or was intentionally written to mislead.¹⁵⁸

In sum, the legislation addressing corporal punishment in the Marshall Islands is manifestly insufficient to adhere to Article 28(2) of the Convention. The Child Abuse and Neglect Act creates virtually no liability for perpetrators of corporal punishment, other than its education requirements. The Public School System Act bans corporal punishment, but provisions of the Criminal Code that permit the use of force significantly undermine this prohibition.¹⁵⁹ The Marshall Islands needs to do significantly more legislatively if it wants to take the mandates of the Convention seriously.

C. THE PREVALENCE OF CORPORAL PUNISHMENT IN THE MARSHALL ISLANDS

Despite becoming a State party to the Convention over twenty years ago, corporal punishment in Marshallese public schools remains a tremendous problem.¹⁶⁰ Recent surveys conducted by UNICEF in thirty-four locations in the country demonstrate that between 24 percent and 49 percent of those surveyed “admitted that ‘teachers in the school in the community hit, smack, pinch, kick, flick, pull or twist children’s

157. See Criminal Code, 31 MIRC c. 1, §§ 1.01–310.3 (RMI).

158. It could be that the Second State Party Report was referring to § 230.3 of the Criminal Code. It provides that:

A parent, guardian, or other person supervising the welfare of a child under the age of eighteen years commits a felony of the third degree if he or she commits child abuse or neglect. As used in this Section, “child abuse or neglect” has the definition specified in the Child Abuse and Neglect Act, 26 MIRC chapter 5.

31 MIRC c 1, § 230.3. But even if this section or others could be liberally construed as prohibiting corporal punishment, such liability is negated by the broad exception provided in section 3.08(2).

159. See GLOB. INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, *supra* note 150, at 2–3.

160. See Status of CRC, *supra* note 9.

ears.”¹⁶¹ By contrast, 84 percent of another group surveyed by the organization believed that school officials do not use corporal punishment.¹⁶² UNICEF has acknowledged the discrepancies in its data, but correctly notes that “further evidence exists to prove the use of corporal punishment in schools. Through [overall location observation notes] and from briefings with enumerators, *all areas surveyed reported the use of corporal punishment in the schools.*”¹⁶³ The organization then gives disturbing examples of this regrettably widespread national phenomenon:

In one school, a teacher punched a kindergartner in the nose. It should be noted that this island had a high number of respondents that stated a community plan exists to protect children On one island, the principal and many teachers use corporal punishment and have not listened to the requests of parents, PTA members and traditional leaders to stop. The matter has been turned over to the Ministry of Education.¹⁶⁴

Further, the hard data and anecdotal evidence regarding the widespread use of corporal punishment is supported by the fact that only 78 percent of a group of children surveyed indicated that they feel safe at school.¹⁶⁵

Moreover, despite the strong assertion by the Marshall Islands in its reporting documents to the Committee that incidents of corporal punishment are investigated, this is not the case.¹⁶⁶ While teaching in the Marshall Islands, I brought corporal punishment to the attention of school administrators to no avail.¹⁶⁷ And even more egregious is that corporal

161. See UNICEF Pacific, *supra* note 7, at 23, 113.

162. See *id.* at 37.

163. *Id.* at 113 (emphasis added) (internal footnote omitted).

164. *Id.* at 113 n.29. Equally as astonishing as the anecdotes in this report, during my time in the country I heard rumors of teachers using staplers on children’s heads as a form of punishment.

165. *Id.* at 41. Thirty-seven percent of the same group indicated that they had been physically abused at least once in the past month; the majority of this abuse was perpetrated by members of their families. See *id.* at 119.

166. See Second State Party Report, *supra* note 10, ¶ 69 (“When these situations are reported to a school Principal, the matter is fully investigated and appropriate disciplinary action is taken. In [serious] cases, the Principal informs the Secretary of Education.”).

167. When I brought to the attention of my principal corporal punishment by other teachers, she failed to conduct any sort of follow-up investigation or

punishment in public schools in the Marshall Islands is actually encouraged.¹⁶⁸ During my time as an elementary school English teacher in the country, I was told by community members, fellow teachers, and my principal to use force on my students as a method of addressing their misbehavior. This encouragement even took place in front of students.¹⁶⁹ This can hardly be considered an “appropriate measure[] to ensure that school discipline is administered in a manner consistent with the child’s human dignity” as required by Article 28(2) of the Convention.¹⁷⁰

It is apparent the Marshall Islands clearly fails to adhere to Article 28(2) of the Convention. Its State Party Reports indicate that corporal punishment by public school teachers is rare, and that when it does occur, it is handled properly. Nevertheless, the data compiled by UNICEF, along with anecdotal evidence, strongly dispute this. Moreover, the country’s legislative attempts to prohibit corporal punishment have been meager at best and are significantly undermined by the broad exception for the use of force created by the Criminal Code. All of these factors lead to the regrettable conclusion that the country is not properly addressing the important mandates of this subsection of the Convention.

take any disciplinary action, contrary to the assertions made in the Second State Party Report. *See id.* Worse still, a representative of the Ministry of Education came to conduct a site visit at my school during my time in the country. I notified him of the prevalence of corporal punishment by teachers at the school. He told me that he would address the issue with my fellow teachers at a training he was going to conduct with us during his stay. He did not.

168. As noted by another American volunteer who taught in an elementary school in the Marshall Islands, “[C]orporal punishment was an option. The parents not only accepted it, but encouraged it.” *See* RUDIAK-GOULD, *supra* note 59, at 108.

169. On one occasion, when I was bringing a student to his mother because he could not behave in my classroom, a fellow teacher saw what was happening, left his classroom full of students, and began to yell at me to slap the child in the face. *See* Justin Behraves, *March 20th, 2012: Day 243 in Country, Day 210 in Jabor, Jaluit*, JUSTIN BEHAVESH MARSHALL ISLANDS YEAR (Mar. 20, 2012), <http://justinbehraves.tumblr.com/page/11>.

170. *See* CRC, *supra* note 8, art. 28(2). Indeed, I undertook the task of creating a rulebook for Jabor Elementary School during the time I taught there. This rulebook made it clear that corporal punishment was not to be used on students. Thankfully, it was adopted by the parent-teacher association at the school. I can only hope that it has prevented further violence against children.

V. CONCLUSION

It was an important step for the Marshalls Islands to ratify the Convention on the Rights of the Child in 1993. However, the country has not yet properly addressed the requirements of Article 28(2) of the Convention. Adequate legislation creating stronger civil and criminal liability and an elimination of the provisions of the Criminal Code providing exceptions for the use of force would be key first steps in this regard. Moreover, an acknowledgement by the Marshall Islands of the prevalence of corporal punishment during the next reporting period to the Committee on the Rights of the Child would demonstrate to the international community that the country understands how serious this issue is. But, ultimately, a broader rethinking of the culture of violence that has permeated public schools is necessary to effect real change because, despite assertions to the contrary, corporal punishment is not Marshallese custom.¹⁷¹

171. In justifying the viewpoint that using corporal punishment on children is acceptable, community members would often tell me that it was Marshallese custom to do so. However, further inquiry into the traditions of the country demonstrate that, historically, this has not been the case.