

FEDERATED STATES OF MICRONESIA: COUNTRY REPORT ON HUMAN RIGHTS

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I INTRODUCTION

The Federated States of Micronesia (FSM) legal and regulatory frameworks are a direct import of United States of America laws which were used during the Trust Territory of the Pacific Islands (TTPI) period. Human rights protection is provided for under the TTPI and FSM Codes. These Codes embody sets of laws applicable for the regulation and control of human behaviours and practices and for upholding democratic institutions and processes. Human rights protection is enshrined generally under the Codes and Constitutions of the FSM national and state governments, albeit in generalised terms.

The TTPI Code was used during the transitional phase of the Micronesian Government¹ and up to the initial period² following the formation of the FSM Government. The TTPI Code is a comprehensive legal document, embodying a full range of public and civil laws as well as other laws required for the upholding of democratic principles and for maintaining the rule of law in the nation.

The TTPI Code was changed to the FSM Code in 1982. The 1982 edition contained both national and state laws. In 1997 the Code was revised by Public Law No 2-48 to include primarily laws having national application, thereby, completely replacing the original 1982 Code. Later revisions of the FSM Code further delineate and clarify laws that are within the jurisdiction of the FSM National Government and FSM State Governments. Laws that are exclusively within the jurisdiction of the states³ of the FSM under the Constitution were removed from the FSM Code to the states.

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1 The TTPI period covered the late 1940s to early 1970s.

2 This period covered the mid-1970s to early 1980s.

3 FSM states are Chuuk, Kosrae, Pohnpei and Yap.

The Constitution of the FSM is the expression of the sovereignty of the people and is the supreme law of the FSM. The Constitution states:⁴

We, THE PEOPLE OF MICRONESIA, exercising our inherent sovereignty, do hereby establish this Constitution of the Federated States of Micronesia. With this Constitution, we affirm our common wish to live together in peace and harmony to preserve the heritage of the past, and to protect the promise of the future. To make one nation of many islands, we respect the diversity of our cultures. Our differences enrich us. The seas bring us together, they do not separate us. Our islands sustain us, our island nation enlarges us and makes us stronger. Our ancestors, who made their homes on these islands, displaced no other people. We, who remain, wish no other home than this. Having known war, we hope for peace. Having been divided, we wish for unity. Having been ruled, we seek freedom. Micronesia began in the days when man explored seas in rafts and canoes. The Micronesian nation is born in an age when men voyage among stars; our world itself is an island. We extend to all nations what we seek from each: peace, friendship, cooperation and love in our common humanity. With this Constitution we, who have been the wards of other nations, become the proud guardian of our islands, now and forever.

The FSM Code and Constitutions⁵ combined to form the bodies of laws that guarantee the full protection of human rights and uphold democratic principles and the rule of law in the FSM.

By virtue of membership in the United Nations, the FSM abides by the UN Declaration of Human Rights (UDHR)⁶ and other human rights declarations, resolutions and treaties. Two international human rights treaties that are legally binding in the FSM are the Convention on the Rights of the Child⁷ and the Convention on the Elimination of All Forms of Discrimination of Women.⁸ These treaties provide leverage for law changes and formulation of new legislation in the FSM.

II PROTECTING RIGHTS IN THE PACIFIC

The theme of the Symposium, *Strategies for the Future: Protecting Rights in the Pacific*, is an illuminating one. Illuminating in the sense that it challenges us, Pacific Islanders, to question ourselves on "what and whose rights" we are to protect or promote. And if we are to develop processes, mechanisms and systems to protect a set of Pacific rights, we must know, be clear on and accept those rights that we ought to safeguard, to uphold and to promote human rights of future generations. There is an inherent danger in prioritising introduced rights over traditional duties,

4 Preamble to the Constitution of the Federated States of Micronesia 1975 [the Constitution].

5 Each of the FSM states of Chuuk, Kosrae, Pohnpei and Yap have their own Constitutions.

6 Universal Declaration on Human Rights (10 December 1948) UN Doc GA/Res/217A (III) [UDHR].

7 Convention on the Rights of the Child (20 November 1989) 1577 UNTS 3 [CRC].

8 Convention on the Elimination of all Forms of Discrimination Against Women (18 December 1979) 1249 UNTS 13 [CEDAW].

obligations and rights or vice versa, without subjecting these two sets of human rights paradigms to systematic sociocultural analysis.

The pre-eminence of statutory laws and individual human rights protection in our adopted legal and regulatory frameworks, and their application, have displaced collective or communal duties, obligations and rights inherent in indigenous common laws of the Pacific peoples, which have sustained communal peace, security and prosperity in the region. The displacement and exclusion of these sustainable values and practices from modern laws and democratic processes are the root causes of conflicts, corruption, nepotism, poor governance and maldevelopment in the region.

The Symposium's key objectives to identify key human rights challenges in the Pacific and identify strategies for strengthening national, regional and international mechanisms for enhanced protection of human rights are important to our deliberation on the theme of the symposium.

In the case of the FSM, the FSM Code and Constitutions allow for the respect and protection of customary and statutory laws and rights. Articles IV and V of the FSM Constitution⁹ established fundamental rights and traditional rights provisions. However, only the statutory rights are codified. Customary or traditional laws and rights have yet to be codified. Rights protection under statutory laws is transparent while customary rights are unclear or orally communicated for the most part. The latter has made human rights abuse, discrimination and violation difficult to resolve through statutory laws, given the prevailing cultural and social contexts of these rights violations. It is therefore critical for FSM to harmonise its national and state laws with its constitutional mandates, taking into consideration universal human rights principles and relevant traditional rights, to produce a harmonised, unified and culturally appropriate rights-based enabling legal framework and milieu.

The FSM people are opportunistic in nature. They are quick to assimilate influences that further their aims and goals and just as quick to discard such influences once their purposes are no longer needed or useful. Respect for human rights can also be viewed this way. In theory, FSM people subscribed to both individual and collective, communal laws and rights, but in practice, collective and communal rights pre-empt individual rights.

III SPECIFIC HUMAN RIGHTS PROVISIONS

A Article IV: Declaration of Rights

Individual or fundamental civil rights are fully protected under Article IV of the FSM Code. Relevant sections are summarised as follows:¹⁰

⁹ These same provisions are enshrined in the state constitutions but under different articles.

¹⁰ Revised FSM Code 1982.

Section 1: No law may deny or impair freedom of expression, peaceable assembly, association or petition.

Section 2: No law may be passed respecting an establishment of religion or impair the free exercise of religion, except that assistance may be provided to parochial schools for non-religious purposes.

Section 3: A person may not be deprived of life, liberty or property without due process of the law or be denied the equal protection of the laws.

Section 4: Equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language or social status.

Section 5: The right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure, or invasion of privacy may not be violated.

Section 6: The defendant in a criminal case has a right to a speedy public trial, to be informed of the nature of the accusation, to have counsel for his (her) defense, to be confronted with the witness against him (her), and to compel attendance of witnesses in his (her) behalf.

Section 7: A person may not be compelled to give evidence that may be used against him (her) in a criminal case, or be twice put into jeopardy for the same offense.

Section 8: Excessive bail may not be required, excessive fines imposed, or cruel and unusual punishment inflicted. The writ of habeas corpus may not be suspended unless required for public safety in cases of rebellion or invasion.

Section 9: Capital punishment is prohibited.

Section 10: Slavery and involuntary servitude are prohibited except to punish crime.

Section 11: A bill of attainder or ex post facto law may not be passed.

Fundamental individual rights pertaining to abuse, discrimination and violations committed within the home or in intimate relationships, though protected by statutory laws, are generally pushed aside, due to the strong influence of customary values and practices aimed at protecting social cohesion and communal harmony and survival.

B Article V: Traditional Rights

Traditional rights are protected under Article V of the Constitution:

Section 1: Nothing in this Constitution takes away a role or function of a traditional leader as recognised by custom and tradition, or prevents a traditional leader from being recognised, honoured, and given formal or functional roles at any level of government as may be prescribed by this Constitution or by statute.

Section 2: The traditions of the people of the Federated States of Micronesia may be protected by statute. If challenged as violative of Article VI, protection of Micronesian traditions shall be considered a compelling social purpose warranting such government action.

Section 3: The Congress may establish, when needed, a Chamber of Chiefs consisting of traditional leaders from each state having such leaders, and of elected representatives from states having no traditional leaders. The Constitution of a state having traditional leaders may provide for an active, functional role for them.

Similar provisions for the protection of customary rights are enshrined in each of the four state constitutions. Collective communal rights are commonly known as "duties and obligations" that are expected of each individual or groups of individuals to comply with within the context of the collective domain of the community in which he or she belongs. As part of the group or community, each member has equitable access to or use of resources for his enjoyment and survival. In return, he or she has to reciprocate these privileges by carrying out expected duties and obligations warranted by the group or community he/she belongs to. Consequences of non-compliance by a member are delivered to the member's family, group or community and can take various forms such as public shaming, withdrawal of resource access rights or use, demotion from elected positions, fines, or removal from the community. The enjoyment of individual rights is synonymous with communal harmony. This type of rights is recognised under the statutory laws of the FSM. The Preamble of the FSM national and state constitutions are clear on the interdependence between the statutory and traditional rights provisions.

Traditional laws and rights are of paramount importance in the application of laws and adjudication of rights abuses and violations. The challenge is whether FSM is to maintain the duality of its legal systems or to open it up to become a modified legal system that upholds both statutory and traditional laws appropriate for the special circumstances of the FSM, whose "heart and soul" is vested in its constitution. To harness an enabling rights-based agenda for the FSM out of its complimentary "duties and obligations" traditions is a challenge worth taking.

IV FSM HUMAN RIGHTS ISSUES

FSM laws are universally human rights compliant but they are outdated for the most part. FSM human rights issues originate from three major sources: poor governance and leadership capacity; weak law administrative and enforcement capacity; and outdated legal and political frameworks.

A Governance and Leadership Capacity

Governance and leadership in the FSM has dramatically weakened over the past ten years since independence. Nepotism, political interference and self-interest have perpetuated this cycle of ineffective leadership and poor governance and as a result, increasing social hardship, unsustainable livelihoods and lack of socio-economic opportunities are widespread, causing steady streams of out-migration of FSM citizens overseas and socio-economic hardship at home. This condition also

contributes to the lack of respect for democratic processes and the rule of law; the under-representation of women in appointed and elected leadership, and the alienation of the general public from engagement with elected leaders and the political process itself. Statistics to support these issues are not available, but some examples, are the absence of women in the FSM Congress since independence, and the predominant male control over the highest levels of the executive, legislative and judicial branches of national, and state and municipal government, including the public service.

Low constitutional and legal literacy rates, lack of civic education programmes in the school system, under-developed and weak media, absence of independent national human rights institutions and prevalence of strong customary and traditional governance and leadership practices inhibit citizens from exercising their constitutional and human rights and freedoms to be heard or involved in development, governance and leadership processes at all levels. As a result, the citizens' right to develop culturally, economically, legally, politically and socially is compromised. Major human rights issues include:

- (1) Citizens' right to a free and fair election is regularly curtailed due to closure of overseas voting polls or ad hoc changes to voter registration and absentee voting processes;
- (2) Lack of civic, legal and political education programmes or services;
- (3) Corruption and favouritism;
- (4) Political and social influences;
- (5) Financial manipulations and bribes;
- (6) Misappropriation or misuse of public funds;
- (7) Lack of a leadership code;
- (8) Lack of accountability and transparency of public leaders and servants;
- (9) Abuse of power and authority;
- (10) Public apathy; and
- (11) Absence of independent national human rights institutions such as the office of the Ombudsman.

B Weak Law Administration and Enforcement Capacity

Although the laws of the FSM are universally human rights compatible, and in spite of recent revisions to the FSM Code, there is concern that these revisions and law changes are not robust enough to adequately address and uphold democratic principles, human rights and the rule of law. This concern emanates from the fact that the FSM legal and regulatory frameworks have not been subject to independent professional legal audit or reform since adoption from the TTPI Code.

Effectiveness and efficiency of the current national legal and regulatory systems to keep up pace or adapt to international law reforms is a major constraint. Compounding this is the weak administrative and institutional capacity of the existing administration and enforcement agencies throughout the FSM. Such systemic weaknesses have resulted in:

- (1) Misuse of power and authority;
- (2) Right to due process of the law being regularly compromised;
- (3) Right to a fair and speedy trial not being followed;
- (4) Right to fair and equal compensation not being practised;
- (5) Right to paid maternity leave is not protected;
- (6) Right to free legal representation is lacking;
- (7) Right to be protected from and to receive fair redress for human rights abuse, discrimination and violations is not followed;
- (8) Domestic abuse and discrimination are prevalent, especially against women and children;
- (9) Punitive actions against whistleblowers and human rights advocates are applied by those in authority and power; and
- (10) There is tension between custom and women's rights.

C Outdated Legal and Political Frameworks and Systems

The FSM was established out of three sovereign island nations¹¹ to form a loose political federation under the Compact of Free Association Agreement between the United States and FSM. The FSM legal and political systems are basically mirror images of their counterparts in the United States. However, under the FSM loose federation principle, the FSM national government does not hold central authority or power over its state governments. It basically serves as a figurehead. The FSM state governments have equal representative authority and power in the governance and leadership of the FSM. This unique legal and political set-up has, to this day, maintained a system of governance and leadership that is rooted in state sovereignty and constituency influences and prerogatives. Public policies, decisions, programmes, services and resource allocations are decided by special executive and legislative state-constituency agenda more than for the public good of the nation.

While the FSM cultural, economic and social landscapes have changed due to globalisation and the market economy in particular, the FSM legal and political systems (loose federalism) have not

¹¹ Formerly the occupied island nations of Chuuk (Truk), Pohnpei (Ponape and Kosrae) and Yap.

kept pace with these changes. Some examples of human rights and institutional issues emanating from outdated, archaic laws and legislation include:

- (1) Increasing incidence and prevalence of hardships, poverty and socio-economic inequities;
- (2) Unsustainable livelihoods due to destructive cash-cropping practices and development projects;
- (3) Increasing human insecurity due to increasing cost of living, alienation from traditional resource ownership (especially land ownership), and HIV/AIDS;
- (4) Increasing role of religion in deepening poverty, human rights abuses and other social injustices;
- (5) Hiring and placement of officials in public posts without due process or merit;
- (6) Changing laws to suit specific requirements of appointed and elected leaders;
- (7) Enacting laws without accountable and transparent public hearing or disclosure;
- (8) Appropriation of public funds for social projects that have no accountable or transparent planning, implementation or reporting mechanisms; and
- (9) Use of public funds for personal uses or to gain political influence.

The foregoing issues are common occurrences because it is often economically, culturally, politically and socially unpopular to bring them to justice as human rights abuses and violations or even to view them as corruption and wrongdoings. Corruption, abuse of power, human rights violations and other systemic abuses are also allowed to take root and perpetuate because institutional weaknesses associated with outdated laws and political systems have not been subjected to necessary reform. There is a strong push to maintain the status quo as a means to centralise authority, power and wealth within an elitist political minority. Reforming legal and political systems are critical to:

- (1) address the root causes of corruption, human rights abuses, poor leadership and unsustainable economic and social status;
- (2) promote and uphold democratic principles, the rule of law and human rights; and
- (3) strengthen socio-economic and gender equality at all levels of the cultural, economic, legal and political milieu.

V STRATEGIES TO PROTECT HUMAN RIGHTS IN THE PACIFIC

The four pillars of the Pacific Plan¹² provide strategies and activities towards protecting Pacific cultural, economic, legal, political and spiritual rights. This mandate is succinctly prescribed in the Pacific Islands Forum Leaders' vision, which states:¹³

Leaders believe the Pacific can, should and will be a region of peace, harmony, security and economic prosperity, so that all of its people can lead free and worthwhile lives. We treasure the diversity of the Pacific and seek a future in which its cultures, traditions and religious beliefs are valued, honored and developed. We seek a Pacific region that is respected for the quality of its governance, the sustainable management of its resources, the observation of democratic values and for its defense and promotion of human rights. We seek partnerships with our neighbours and beyond to develop our knowledge, to improve our communications and to ensure a sustainable economic existence for all.

The Constitution states:¹⁴

With this Constitution, we affirm our common wish to live together in peace and harmony; to preserve the heritage of the past, and to protect the promise of the future. To make one nation of many islands, we respect the diversity of our cultures. Our differences enrich us. The seas bring us together, they do not separate us. Our islands sustain us; our island nation enlarges us and makes us stronger.

These vision statements underscore sustainability of Pacific nations and peoples through unity in diversity, spirituality and respect for democratic principles, human rights and the rule of law via a Pacific cultural lens.

A Legal and Political Reform

Protection of human rights in the FSM would truly be realised if its legal and legislative systems were reformed. Key strategies of reform would include:

- (1) An independent review of the national, state and municipal constitutions, charters or ordinances to make them compatible;
- (2) Establishment of an Office of Ombudsman;
- (3) Establishment of a Leadership Code;
- (4) Strengthening institutional and technical capacities of national human rights institutions and/or establish national human rights institution if none exists;

12 Pacific Islands Forum Secretariat *The Pacific Plan: For Strengthening Regional Cooperation and Integration* (2007) www.pacificplan.org (accessed 11 January 2009).

13 *Pacific Plan Forum Leaders' Vision Statement* available at www.asil.org/ (accessed 11 January 2009).

14 Preamble to the Constitution.

- (5) Adoption of a "no drop" policy;
- (6) Establishment of a Family Law or Act;
- (7) Establishment of enabling legislation to increase the number of women elected in the municipal, national and state legislatures and councils;
- (8) Establishment of statutes relative to Article V to clarify the role of culture and tradition, including the codification of traditional laws, rights and governance mechanisms, and where appropriate, enact cultural legislation and policies; and
- (9) Establish civic, legal and political education curricula into the education system at all levels.

B Regional Strategies for the Protection of Human Rights in the Pacific

The Pacific region is rich in cultural diversity and traditional values and practices that are rooted in reciprocal and holistic communal obligations and responsibilities aimed at promoting community harmony, peace and prosperity. This complementary partnership recognises and rewards individual and collective endeavours. The enjoyment of individual privileges and rights are dependent upon the integrity of the rights of the whole. Democratic principles and rights are essentially compatible with cultural and traditional rights, except that the right of the individual is more prominent in the modern rights framework.

Future strategies for protecting human rights in the Pacific has to include a rights-based framework that incorporates elements of modern and traditional rights and which recognises the value-added role of communal rights in indigenous communities. Key strategies for protecting human rights in the Pacific may include:

- (1) Codification of customary and traditional laws, rights and governance practices and mechanisms;
- (2) Modification of modern statutory laws as a result so that a unified system of law is used consistently and appropriately;
- (3) Establishment of the Pacific Regional Human Rights Tribunal or Court to adjudicate human rights abuses and corruption committed in member countries;
- (4) Establishment of a Pacific Regional Prison to house convicted persons;
- (5) Ratification of international human rights treaties;
- (6) Establishment of Pacific intellectual property mechanisms and polices, inclusive of patenting and copyright laws;

- (7) Establishment of Pacific Regional Human Rights Network, membership of which would come from governments, the private sector, media, NGOs, traditional councils, faith-based organisations, research and training institutions; and
- (8) Establishing a human rights desk within the Pacific Islands Forum.

The regional human rights strategies must be inclusive of national strategies identified by the Symposium.

VI CONCLUSION

Human rights in the Pacific are of two types: statutory and customary. Customary rights place high intrinsic value on reciprocity of individual rights with collective rights. Collective rights are of three types: duties, obligations and responsibilities. Statutory rights are centralised with individual rights. Individual rights are also of three types: civic, public and private rights. Each category follows its origin of creation, purpose, values and practices. They often operate in isolation of each other due to their distinctive natures. The challenge is to have in place a unified human rights model that is based on the diverse cultural, spiritual and democratic heritage of the Pacific.

