



36th PACIFIC ISLAND LAW OFFICERS NETWORK
FEDERATED STATES OF MICRONESIA
COUNTRY REPORT

I. OUTLINE OF STRUCTURE AND GOVERNANCE OF LAW AND JUSTICE SECTOR

FSM Department of Justice is the legal arm of the FSM National Government mandated to enforce all laws of the nation, including, but not limited to the following:

1. Investigate and prosecute violations of national laws;
2. Represent, advise and defend the national government in all administrative, civil and criminal matters including appeals;
3. Draft bills, resolutions, other measures to be submitted for Congressional action and review and advice the President on bills passed by FSM Congress;
4. Draft and review contracts for legal sufficiency;
5. Enforce all national laws including Immigration, labor, election laws and regulations;
6. Provide legal advice or legal opinion to Departments, Office and Agencies of national government.

The functions and duties of the Division of Law include:

1. Advising the President and other Executive Officials on interpretation and application of the national laws;
2. Issuing of legal opinion about questions of law submitted by the President, Members of Congress, Heads of FSM Department, Offices and Agencies.
3. Drafting of bills, resolutions, presidential proclamation, orders, agreements, contracts and other legal instrument for executive branch;
4. Review and advice the President on bills passed by Congress;
5. Review and advice on international agreements and treaties, including the Compact of Free Association.

The functions and duties of the Division of Litigation include:

1. Prosecute violation of national laws;
2. Represent the national government in civil, administrative, tax or any proceedings where the national government is a party.

The function and duties of the Division of National Police include:

1. Enforce national laws
2. Investigate violations of national laws and regulations
3. Maintain central record of identification and other info related police services
4. Provide police training and assistance to State Police
5. Provide protection services to President, Vice President and other government officials
6. Patrol and secure national government facilities and properties
7. Maritime surveillance of FSM EEZ and marine jurisdiction
8. Enforce fisheries and maritime laws
9. Coordinate and Conduct Search and Rescue Operations

Function and duties of the Division of Immigration and Labor include:

1. Secure entry ports of FSM
2. Regulate entry of aliens in FSM and their presence in FSM
3. Issues passports, entry permits, and labor permits
4. Enforce immigration and labor laws

Functions and duties of the Division of Registrar of Corporation include:

1. Maintain a register of corporation;
2. Promulgate regulations pertaining to major corporations
3. Review application for incorporation and make recommendation approve/disapprove
4. Monitor and oversee compliance of corporation laws

Function and duties of the Human Trafficking (HT) Coordinator include:

1. Investigate anti-human trafficking cases and provide report to the Secretary of Justice.

2. Coordinate technical assistance relating to anti-human trafficking, protection programs for victims and witnesses, and training of personnel to investigate human trafficking cases.
3. Recommend the passage of regulation or amendment of law in order to strengthen anti-human trafficking protection and program in FSM.
4. Facilitate the establishment of victim's shelter throughout the nation and recommend funding sources.
5. Prepare training programs, briefing papers, and public awareness campaign materials to educate the public on the fight against human trafficking.

State Attorney General's Office

FSM has a federal system of government comprised of four state governments and a national government. The four states governments are Pohnpei, Kosrae, Chuuk and Yap State Government. Each respective state government has its own executive, legislative and judiciary branch. Each state also has its own State Attorney General's Office.

FSM Constitution delegated certain enumerated powers to national government while all other powers not otherwise prohibited by the Constitution are reserved to the states. For instance, the area of sexual and gender based violence are relegated to the state governments.

II. MAJOR LAW AND JUSTICE SECTOR ACHIEVEMENTS

FSM Department of Justice

In previous country report, FSM reported five (5) divisions under the umbrella of Department of Justice—Division of Law, Division of Litigation, FSM Immigration & Labor, FSM National Police and FSM Registrar of Corporation. This year, a new inclusion to implement the anti-human trafficking laws is the Anti-Trafficking Coordinator position.

FSM Department of Justice is in process to complete an amendment to the Presidential Executive Order No. 1, which if approved by the President will expand the functional mandates of FSM Department of Justice establishing a Division of Anti-Human Trafficking as well as a Division of International Law. FSM is anticipating the amendment to be approved by the President before the end of this year.

Additionally, FSM Congress has approved the personnel budget for FSM Department of Justice to include two additional assistant attorney general positions under the Division of Litigation. We are hoping that in the near future, FSM Congress will expand operational budget to include another two assistant attorney general positions for the Division of Law.

2017 FSM POLICE ACADEMY

In today's modern law enforcement world, police training is as important as any other profession. Without properly trained police officers, our society could not successfully function. Police officers must be trained extensively in federal and state law, investigation, evidence collection, prisoner handling, defensive tactics, customer service and many other areas of law enforcement.

Without proper training in all requisite areas, our officers would be considered nothing more than a rogue gang out on the streets strong-arming everyone else. Law enforcement is a profession, and through our police training, we expect peace and social order in our communities.

In our previous report, we reported a lot of deficiencies in police work that ultimately effect carriage of justice in FSM. The 2017 Police Academy is a training medium we hope to improve the functions and performance of the national, state and local police in FSM. Thirty-three (33) Police cadets successfully completed the rigorous training. DOJ's aspiration is to conduct a police academy every year to improve capacity of its police force.

FSM Supreme Court

By the passage of Public Law No. 19-166, FSM National Government has increased the salary for the Chief Justice and Associate Justices of the FSM Supreme Court. The salary increased represents emphasis on incentives to improve the pace of case adjudication by increasing the salary of all national justices. It is also part of the national effort to improve its justice system thereby assuring foreign investors that their properties and interests are well secured by law should they decide to invest in FSM.

III. SIGNIFICANT COURT DECISIONS

The following two cases highlighted Weapons Control and Human Trafficking as two of the areas in which the FSM Department of Justice continues to stay focused on:

FSM v. Pinom Mazawa, Criminal No. 2016-1509 and FSM v. Pinom Mazawa, Criminal No. 2015-1507;

In this case, the FSM prosecuted two individuals who used handguns to rob and terrorize seven fishermen who were fishing at night. The defendants discharged their weapons into the water before taking the fishermen's boat, leaving them to tread water home for some 7-8 hours.

2) FSM v. Cortez Benedicto and Rieta Eram, Criminal No. 2015-1513

In this second case, FSM prosecuted two defendants for engaging in human trafficking of a minor child. Sentencing is scheduled for later this month of October.

IV. SIGNIFICANT LEGAL REFORM

Amendment to title 24 of the FSM Code (Marine Resource Act of 2002)

1. Public Law No. 19-167

This year FSM Congress passed Congressional Bill 19-194, which became Public Law No. 19-167 as signed by the President on April 18, 2017. Effectively, the new law ban commercial fishing or any exploitation of marine resources within the twelve-mile area seaward of the territorial sea. Put another way, the new law prohibits any commercial fishing or any type of exploitation of natural resources within the 12 miles zone after the territorial waters of FSM EEZ. Violation of this new law is punishable by a civil penalty of not less than \$15,000 and not more than \$50,000.¹

2. Public Law No. 19-169

This new law became effective on April 18, 2017 and it amends Title 24 of the FSM Code as well. The impetus of the amendment is to enable the national government to enforce national fishery laws and regulations not only on the EEZ but also on adjacent high seas in consistent with the obligation of the Federated States of Micronesia in conservation and management measures under international and regional conventions.

The new amendment, inter alia, domesticates obligations under Third Implementing Arrangement of the Parties to the Nauru Agreement and enforce such to all commercial fishing vessels flagged or licensed to undertake commercial fishing or related fishing activities or any exploitation of marine resources within FSM EEZ and the high seas. For instance:

- i. Closure of Fishing in neighboring high seas
- ii. Closure of the use of Fish Aggregate Devices (FAD) in FSM EEZ and High Seas
- iii. Improved protection measures for fisheries observers

Amendment to Title 36 FSM Code (P.L. 20-35)

1. The current Title 36 predates the constitutional government of FSM. It was enacted by the Trust Territory Government and carried over to the present government. It is therefore an archaic law that lacks important legal aspects such as:
 - a. substantive provisions governing the formation, registration, operation, and administration of corporation;
 - b. adequate protection for shareholders, clear rights and duties of directors with respect to shareholders and the corporation itself; and
 - c. uncertainties at various stages of corporate existence and business operation that generates potential disputes between and among shareholders, directors and officers.

The new law addresses the weaknesses of the old law by adding the substantive rights, adequate protections for stakeholders.

¹ So far FSM has filed a civil complaint for civil damages and forfeiture of vessel against a fishing company for allegations of infracting the new law.

Amendment to Title 18 of the FSM Code

- I. To establish additional maritime zones, extension of continental shelf and baselines as recognized by the Law of the Sea Convention, to bring Title 18 in conformity with contemporary norms and practices under international law, to incorporate treaty obligations assumed by the Federated States of Micronesia such as maritime boundary delimitation treaties with neighboring nations, and for other purposes.

Kigali Amendment under the Montreal Protocol on Substances that deplete the ozone layer. The Kigali Amendment was adopted by the 28th meeting of the Parties to the Montreal Protocol held in Kigali, Rwanda from October 10-15, 2016. This Amendment reflects another global commitment to stop climate change, specifically to phase down the production and usage of hydro fluorocarbons (HFCs). HFCs are man-made chemicals that are primarily used in air conditioning, refrigeration, and foam insulation, and are powerful greenhouse gases that can be thousands of times more potent than carbon dioxide in contributing to climate change. This Amendment to the Montreal Protocol could be the single largest real contribution the world has made so far towards keeping the global temperature rise well below 2 degrees Celsius, a target agreed at the Paris Climate conference last year. FSM and other Pacific countries are deeply vulnerable to climate change—losing our islands and our people. With this amendment, FSM is fully committed to continue its leadership it has taken on such issue over the years to support and implement the goals of the Amendment.

V. PILON STRATEGIC PRIORITIES

Cybercrime

As of last year, FSM submitted a Cybercrime bill to 19th FSM Congress, however submission was at the end of the term of the 19th Congress and so the bill was not acted on. After FSM's participation in the recent cybercrime workshop in Tonga on May 2017, FSM will revise the bill to reflect new and important aspects absorbed in Tonga during the workshop. FSM is working progressively in its preparation for re-submission of the revised bill to FSM Congress.

For the year of 2017, FSM has experienced 3 incidents where government funding is lost due to computer related forgery or fraudulent activities. FSM feels that it will require consultancy and drafting assistance in this area to come up with a comprehensive legislative bill.

Also important is the need to capacitate our legal and law enforcement personnel to be versed, capable and have the ability to implement and enforce anti cybercrime laws.

Environmental Crime and Corruption

Amendment to Title 55 FSM Code (Public Law No. 19-156)

Public Law No. 19-156 provides the Public Auditor the powers to investigate allegations of non-compliance in public office, misuse of public resources, financial crime, financial corruption, or

any other breach of the national law or regulations, involving national public funds. Public Auditor may conduct a preliminary inquiry to determine reasonable cause warranting investigation.

If there is cause to undertake investigation, public auditor may undertake investigation and shall liaise with Department of Justice during the course of investigation and further to advise DOJ the result of such investigation.

Whistleblower Protection or Public Disclosure

FSM believes that for small pacific island societies with communal values, a significant component to combat corruption is the existence of a secured reporting system. FSM believes that a strong reporting system and especially the protection of reporting persons since they are the pivotal source of information uncovering corruption. Accordingly, FSM is committed to commence work on Whistleblower Protection or Public Disclosure law to strengthen accountability and corruption reduction in the public and private sectors.

With the whistle blowing guiding principles developed by the Environmental Crime & Corruption working group, FSM is ready to use the tool to at least commence policy consideration and further preparation of a draft bill. FSM will commence work in this endeavor hoping that a bill could be introduced to FSM Congress by midyear 2018.

Sexual and Gender-Based Violence

Once again, sex crimes and violence against women and children are areas relegated to the state government of FSM to oversee. Accordingly, all four state governments of FSM, Chuuk, Kosrae, Pohnpei and Yap, have their own separate criminal codes or crimes act that proscribe sexual and gender violence crimes as well as prescribing penalty or punishment thereof. Nevertheless, FSM National Government plays a vital role to facilitate and coordinate joint-effort in addressing SGBV issues in FSM.

The focus is still on the offences of sexual assault, sexual abuse and domestic violence. Criminal Code of all four states of FSM acknowledged sexual assault and sexual abuse as crimes. So far only Kosrae State has had passed Family Protection Act. The Act acknowledges domestic violence as a crime committed by a family member against another family member. It pierced the customary law veil or perception that law enforcement should not interfere with domestic problems within a family. The Family Protection Act waive the husband and wife evidentiary privileged to allow a spouse to testify against the other spouse in SGBV cases.

FSM continues its focus in the following detail areas:

- a. Under reporting
- b. Victims withdrawing complaint, refusing to testify;

- c. No “no drop” policy for all the states;
- d. Husband/Wife Privilege – wife can’t be compelled to give evidence against husband
- e. Effective prosecution is rare because, in many cases, victims decided against initiating legal charges against a family member due to family pressure, fear of reprisal, or the belief that police would not actively get involved in what is seen as a private family problem.
- f. Use of traditional approaches as primary response to domestic violence, such as customary reconciliation and forgiveness ceremony
- g. Sentences of sexual offences are relatively light (e.g. five years for imprisonment insufficient punishment and deterrent
- h. In Pohnpei, an offender cannot be charged with sexual assault and sexual abuse if the complainant cohabits with the offender in an ongoing voluntary sexual relationship or if the offender is married to the complainant.

Key focus areas for Sexual Abuse remain:

- a. Consent required. In all four states is the intentional sexual contact with a person who is under the age of 13, and in the case of Pohnpei the age of 15, with the result that it is lawful to have sexual contact with girls aged 13 (or aged 15 in the case of Pohnpei) and under
- b. All the states, except Kosrae, there is a defense with respect to sexual contact where the offender can claim that he did not know the victim was under the age of thirteen. This erroneously places the burden on the minor to reveal her age rather than upon the offender to ascertain her age.
- c. Yap State Constitution, Article II, Section 6, states “No person shall be compelled in any criminal case to be a witness against himself, or against a member of his family as prescribed by law, or be twice put in jeopardy for the same offense.
- d. Need to improve capacity for forensic and other evidential testing;

Despite work to improve statutory law, there is still need of training in enforcement, prosecution and/or implementation of domestic violence law. We are hoping that Pohnpei, Chuuk and Yap State will take appropriate steps like Kosrae State to improve SGBV laws and implementation thereof.

VI. SIGNIFICANT ISSUES AFFECTING THE LAW AND JUSTICE SECTOR, AND OPTIONS TO ADDRESS THESE ISSUES

Funding is a prevalent problem when it comes to effective and efficient administration of law and justice. There is a need to expand the human resources (lawyers, prosecutors, police officers, judges or justices) for both the national and state governments. For instance, FSM Department of Justice have only 4 assistant attorney generals that are responsible for legal support to 8 National Departments and 6 national agencies. Although expanded, 6 attorneys responsible for the litigation division for the whole FSM National Government still fall short considering the number of cases and litigation matters comes to the Department of Justice.

Financial constraints also contributed to lack of capacity building for the human resources with the law and justice sector. In the justice sector, lawyers, judges, law enforcement personnel and others require continuing education to keep up with world rapidly changing due to technological innovation and globalization. There is no system of continuing education or training for lawyers both in national and state level. The need is there, but fiscal support is absent.

We are working closely with National Department of Foreign Affairs and Department of Education to tap into free trainings relevant for the law and justice sector. FSM also is taking heed of the free trainings often offered by United States, Australia, New Zealand, China and others.

FSM is working closely with New Zealand to sponsor a comprehensive legal and law enforcement training next year.

VII. SIGNIFICANT INITIATIVES/PROJECTS

FSM is working closely with New Zealand MPI MCS Advisory Team to hold a comprehensive training in the year 2018 tentatively to encompass the following areas:

1. Compilation of prosecution files to an evidential standard for use in court
2. Court room procedures
3. Court room advocacy-Theory and practice
4. Analysis of evidence
5. Giving evidence in court
6. Cross examination of defense witness
7. Drafting and writing submissions

Additionally, as part of the Australian Legal Policy Champion Training, FSM is planning to hold its national workshop on the course and invite all relevant law and justice sector personnel in the state and municipal governments.

Planning and scoping is still undergoing and we will advise when specific dates and scope of training are finalized.

VIII. TECHNICAL LEGAL ASSISTANCE

Date	Names	Venue
Feb 17-March 06, 2017	Tax Sharing Information Training/MRA Global Forum	Geneva
March 12-21, 2017	Joining Instructions General Management Course	Australia
April 23-29, 2017	UNODC training in Russia in Preparing for the FSM Peer Review under Chapter 2 and 5 of UNCAC	Russia
April 23-30, 2017	Pacific regional Maritime Domain Awareness	Australia
April 24-28, 2017	Niue Treaty Information System Training	Fiji
April 26-28, 2017	Pacific Regional MDA Workshop	Australia
April 30-May 14, 2017	PTCN Team Leaders Meeting	Australia
May 14-21, 2017	Regional Command Control and Coordination	Cook Island
May 15-20, 2017	Maritime Boundary Workshop	Australia
May 21-26, 2017	PILON cybercrime workshop	Tonga
Jun-2017	Anti Corruption Workshop	Nadi Fiji
Jun 25-30, 2017	Regional Prosecutors and Marine Control Surveillance Advisors Training	Solomon Islands
Jun-September 2017	Marine Technical Propulsion Course	Australia
August 23-25, 2017	Meeting of the Pacific Legislative Drafters Forum	Tonga
Sept 04-08, 2017	Micronesia Transitional Crime Unit Workshop	CNMI, Saipan
Sept 16-25, 2017	Pacific Investigation Program	Palau
Nov 16-24, 2017	RIMF training	Fiji
Trainings held in Pohnpei 2017		
Firearm's Certification Training		
First Aid Training		
Identification Training		

Use of Force Training		
Hazardous and Safety Training		
Emergency and Disaster Drill Training		

IX. Contact information for key law and justice agencies

Agency	Contact Person	Position	Phone number and email
FSM Department of Justice	Joses R. Gallen	Secretary/Attorney General	(691) 320-2644/2608
FSM Supreme Court	Dennis Yamase	Chief Justice	(691) 320-2357
FSM Public Defender's Office	Lorrie Johnson-Asher	Chief/ Director	(691) 320-2648
FSM Public Auditor's Office	Haser Hainrick	FSM Public Auditor	(691) 320-2863
Kosrae State Attorney General's Office	Jeffrey Tilfas	Attorney General	(691) 370-3043
Chuuk State Attorney General's Office	Sabino Asor	Attorney General	(691) 330-2572
Pohnpei State Attorney General's Office	Dana W. Smith	Attorney General	(691) 320-2356