



**FEDERATED STATES OF MICRONESIA
COUNTRY REPORT**

39TH Pacific Islands Law Officers' Network (PILON)
Annual Meeting

5 November 2020

Hosted by: Australia Attorney General's Department

I. INTRODUCTION:

1. On behalf of the Attorney General, Secretary Jose R. Gallen of the Department of Justice of the Federated States of Micronesia, I have the pleasure of presenting to the distinguished Delegates of the 39th Pacific Islands Law Officers' Network (PILON) Meeting, the country report of the Federated States of Micronesia for 2020.
2. First, on behalf of the Government of the Federated States of Micronesia, I would like to express FSM's gratitude and congratulatory greetings to the PILON Secretariat and the Attorney General's Department of Australia for their leadership and hard work in preparing for and hosting this historic PILON annual meeting virtually.
3. The FSM acknowledges that it is not an easy task to organize virtual meetings, and for that, FSM commends all the hard-working hands that were involved in the preparations for this PILON annual meeting.
4. The year 2020 has definitely steered all the nations of the world, especially the Pacific small island nations, into uncharted waters due to the Covid-19 Pandemic. Covid-19 has drastically impacted our economies, and it has caused us to adopt restrictive measures to prevent the introduction of the virus into the FSM.
5. Restrictive measures put in place, including closure of borders and social distancing measures, have adversely impacted FSM's efforts towards achieving the key strategic objectives of PILON due to the inability to effectively move supplies and personnel within the four states of the FSM.
6. Despite these challenges and uncertainties posed by the Covid-19 Pandemic, FSM is still working hard to ensure access to justice is not hindered by adopting special measures such as telephonic conferences and hearings.
7. In the FSM, there are five (5) taskforces, which include the National Taskforce and one State Taskforce for each of the four States. It is not easy work for the leadership in these different taskforces to always see eye to eye on the restrictive measures being put in place, but fortunately, the leadership has been successful so far in keeping the Covid-19 out of FSM's shores and we are truly grateful for that.
8. It is our hope that the discussions we have in this virtual PILON annual meeting will assist PILON members further in their law and justice developments.

9. It is also FSM's hope that these discussions will assist member States in their efforts towards the key strategic objectives (corruption, cybercrime, and sexual and gender-based violence) during this Pandemic.

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Jesse S. Mihkel
Assistant Attorney General
Department of Justice, FSM

II. Major law and justice sector achievements

10. As a matter of background information, it is extremely relevant to outline the organization of the Department of Justice, which is the legal arm of the FSM National Government.
11. In previous reports, FSM reported that there are five (5) Divisions under the umbrella of the FSM Department of Justice. Today, FSM is pleased to report that the Department of Justice has grown. Both the Division of Immigration and Labor and the Division of National Police has split into two separate divisions. Another new addition is the Division of Anti-Human Trafficking Services.
12. Currently, the Department of Justice has eight (8) divisions in total, which includes the following: 1) Division of Law; 2) Division of Litigation 3) Division of Immigration and Passport Services; 4) Division of Labor; 5) Registrar of Corporations; 6) Division of Investigation and Protective Services; 7) Division of Border Control and Maritime Surveillance; and 8) Division of Anti-Human Trafficking Services.
13. The functions and duties of the Division of Law include:
 - a. Advising the President and other Executive Officials on the interpretation and application of national laws in the performance of their public duties;
 - b. Issuing legal opinions on questions of law submitted by the President, members of Congress, and Heads of Departments, Agencies and Offices;
 - c. Drafting bills and resolutions, regulations, Presidential proclamations and orders, agreements, contracts, and other legal instruments for the Executive Branch;
 - d. Reviewing and advising the President on bills passed by Congress and presented to President for his approval;
 - e. Advising the Department of Foreign Affairs on legal aspects of relations with the United States of America and other nations; and
 - f. Reviewing and advising on international agreements and treaties, including the Compact of Free Association.
14. The functions and duties of the Division of Litigation include:
 - a. Instituting criminal investigations and proceedings against any person, business, or legal entity accused of violating the laws of the FSM, which is not limited to the FSM Constitution, code, treaties, and regulations;

- b.** Representing and defending all civil actions and proceedings involving the FSM or its employees in their official capacities, including any subsequent appeals;
 - c.** Representing and defending all appeals of adverse actions made by the respective departments to suspend, demote, or dismiss an employee of the FSM;
 - d.** Advising the FSM and respective departments regarding out-of-court settlements; and
 - e.** In conjunction with the FSM National Police, enforce and administer all the FSM Supreme Court case sentences, the FSM Penal or Prison System, including administration of all Joint Law Enforcement Agreements with the States.
- 15. The functions and duties of the Division of Immigration and Passport Services include:
 - a.** Regulating entry of aliens into the FSM and their presence therein;
 - b.** Managing and supervising the Border Management System and planning for its needed update;
 - c.** Managing and regulating the identification of FSM Nationals and recommending system to facilitate the protection of their rights in FSM; and
 - d.** Maintaining the security and quality of FSM passports and coordinating with or recommending to Secretary of Justice ways to improve the processing of passport applications and renewals.
- 16. The functions and duties of the Division of Labor include:
 - a.** Reviewing applications for foreign labor permit;
 - b.** Coordinating with FSM States with respect to their respective demands for foreign labor and facilitate meeting such demands;
 - c.** Promoting labor development and recommend specific programs to the Secretary of Justice concerning effective and practical ways of promoting labor development;
 - d.** Implementing licensing of recruiters of FSM citizens to work abroad; and
 - e.** Reviewing labor contracts and investigating complaints on their possible or suspected violations.
- 17. The functions and duties of the FSM Registrar of Corporations include:

- a.** Maintaining a register of corporations in consultation with the Department of Justice;
 - b.** Promulgating regulations pertaining to major corporations pursuant to Section 321 of Title 54 of the FSM Code, as amended;
 - c.** Providing the business incorporation review and approval recommendations process for the FSM Government; and
 - d.** Monitoring and overseeing compliance of corporations with corporate laws of the FSM.
18. The functions of the Division of Investigation and Protective Services include:
- a.** Providing security detail and protection to airport facilities, passengers, and other persons therein and to national assets, buildings and properties;
 - b.** Conducting criminal investigation on matters referred to it by the Attorney General or his Assistants and such matters that are referred by the Public Auditor to the Secretary of Justice for examination and possible criminal investigation or prosecution;
 - c.** Providing timely update to the Secretary of Justice on all pending or ongoing investigations on a periodic basis or upon direction by the Secretary of Justice;
 - d.** Following up, investigating and inquiring suspicious transactions reports referred to by the Financial Institutions under the Anti-Money Laundering law;
 - e.** Providing protective security detail to the President on a 24/7 basis, or as may be required and requested for the security needs of the Vice President and other high government officials. Protective detail may be provided to visiting foreign dignitaries and other VIPs upon request to the Secretary of Justice through Foreign Affairs;
 - f.** Providing security to national elections upon request and coordination with Secretary of Justice;
 - g.** Conducting general law enforcement activities and functions normally assigned to the National Police including the enforcement of national laws and regulations; and
 - h.** Coordinating with State and Municipal law enforcement authorities, as may be necessary or essential, to preserve public peace, public order and general welfare of the population.

19. The functions and duties of the Division of Border Control and Maritime Surveillance include:
- a.** Enforcing Title 18 and Title 24 of the FSM Code, conducting surveillance operation and maritime security patrol over the territorial sea, exclusive economic zone, contiguous zone and continental shelves and any extensions thereof, of the FSM;
 - b.** Conducting joint maritime patrol with other countries to enforce fisheries laws and regulations and cooperating with international law enforcement partners;
 - c.** Exercising the security and protective functions of Customs and Quarantine as integrated and centralized border security and law enforcement jurisdiction of the FSM Government;
 - d.** Conducting search and rescue (SAR) operations during emergency situations and on request by State authorities, and providing emergency responses when needed, including medivacs;
 - e.** Managing and allocating patrol boat assets of the FSM and making recommendations to Secretary of Justice with respect to maintenance and usage of the Maritime Surveillance Revolving Fund;
 - f.** Providing assistance to National Election Director during national elections, subject to cooperation and timely request for assistance;
 - g.** Providing update on SAR operations and informing Secretary of Justice on any material information regarding the status, condition, activities and deployment of patrol boats; and
 - h.** Keeping Secretary of Justice fully informed of status of border security of FSM, providing regular briefing on any security issues or threats on any part of the nation, and presenting intelligence information that may be material to the maritime or border security of the nation.
20. The functions and duties of the Division of Anti-Human Trafficking Services include:
- a.** Coordinating with the National Police and investigating reports and complaints involving possible cases of trafficking in persons or such other offenses relating to human trafficking;
 - b.** Interviewing witnesses, gathering evidence, and reporting to Secretary of Justice on the progress of criminal investigations;

- c. Developing plans or training programs for investigators specializing in investigating human trafficking;
 - d. Prepare, develop, and recommend to Secretary of Justice programs for protection of victims and witnesses of human trafficking cases and to report the establishment of shelters or homes for human trafficking victims;
 - e. Conducting public awareness campaigns on issues involving trafficking in person and human smuggling with civil society and NGO's; and
 - f. Coordinating with other public departments, agencies, and offices of national and state governments in relation to activities of combatting human trafficking.
21. In previous reports, FSM reported that FSM Congress has approved personnel budget for the FSM Department of Justice to include two additional Assistant Attorneys General under the Division of Litigation. Today, FSM is pleased to report that personnel budget has also been approved by Congress for two additional Assistant Attorneys General under the Division of Law.
 22. Additionally, with the split of the National Police into two separate divisions, Division of Investigation and Protective Services and Division of Maritime Surveillance, additional police officers were also recruited to man the two Divisions.
 23. The new addition of the Division of Anti-Human Trafficking also resulted in additional recruitment of necessary personnel, including an Assistant Secretary on Anti-Human Trafficking and an Anti-Human Trafficking Coordinator.
 24. Other highlights in the law and justice sector include the recent interception of contraband by FSM's Customs and Tax Administration (CTA) in the months of September and October of this year, 2020. In September 2020, CTA authorities from the Customs Field Office in Yap carried out routine physical inspections of cargo containers at the Waab Commercial Dock in Yap State. During their routine inspection, the Customs Officers discovered undeclared boxes of gun parts and a bow and arrows. In October 2020, CTA authorities from the Customs Field Office in Pohnpei discovered six thousand rounds of ammunition while carrying out routine physical inspections of cargo containers in Kolonia.

III. Significant court decisions

25. Immediately prior to CTA's successful interception of contraband in September and October of this year 2020, FSM has successfully prosecuted two cases involving importation of contraband through FSM's borders in August and September, 2020. The first case is the case of *FSM v. Quleen Saimon*, wherein Quleen Saimon was charged with the offense of illegally importing ammunition in a passenger's checked-in luggage. The

second one is the case of *FSM v. Watson Panuel*. Watson Panuel was charged with and convicted of illegally importing ammunition through the FSM Post Office. Quleen Saimon was convicted and sentenced to six months partially suspended sentence, with ten days to serve in the Pohnpei State jail. She was also fined \$300. Watson Panuel was convicted and sentenced to six months partially suspended sentence, with twenty days to serve in the Pohnpei State jail. He was also fined \$600.

26. In previous reports, FSM reported to PILON that the *Blue House* case in Guam prompted the passing of FSM's anti-human trafficking laws. Today, FSM is proud to report that a number of human trafficking prosecutions have taken place and resulted in a good number of convictions of human trafficking offenses. One of such cases is the case of *FSM v. Shiro*, 21 FSM R. 627 (Chk. 2018). On February 17, 2016, the Government of the FSM filed charges against four defendants, namely: Onori Sino, Kachura Angken, Taisiro Loves, and Luck Shiro. All four defendants were charged with the offense of trafficking in children in violation of Sections 612 and 616 of Title 11 of the FSM Code. All four defendants were church leaders and considered respected leaders in the community, and the victim was a 15-year old girl at the time the offenses took place. Several times and on different occasions in the year 2015, the defendants lured the 15-year old girl and induced her to have sexual intercourse with them for promises of payment of either money or goods. Trial was held on January 6 and 7, 2018, after which the court found that the government has met its burden in proving beyond reasonable doubt the elements of the charges against the defendants and convicted and sentenced them accordingly.
27. Another case worthy of mention is the ongoing prosecution relating to the murder of the former Acting Attorney General of Yap State, the late Rachelle Bergeron. Rachelle Bergeron joined the Yap Attorney General's Office in 2015 and soon afterwards became the Acting Attorney General for Yap and also served on Yap's human trafficking taskforce. During her tenure at Yap's AG Office, Bergeron worked cases on labor trafficking, domestic abuse, and gender-related violence, and it was believed that she was targeted because of the work she was doing. She was gunned down in October of 2019. Two individuals have been charged with the murder of Bergeron, and the case is still pending before the courts, the delay of which is mainly due to the border closures and inability for lawyers, judges and witnesses to move around the States as a result Covid-19 Pandemic.

IV. PILON strategic priorities

A. Cybercrime

28. With respect to cybercrime and cybersecurity, FSM has previously reported that a Cybercrime bill was submitted to the 19th FSM Congress but was unfortunately not acted

upon as it was submitted near the end of the term of the 19th Congress. FSM is pleased to report that DOJ is currently reviewing and finalizing FSM's legislative bill on cybercrime, which was drafted in 2019.

29. This working draft bill on cybersecurity is still within the Executive Branch for final fine-tuning before transmittal to Congress for consideration and passing. FSM has participated in numerous cybercrime workshops, the most recent of which is the Cybercrime Conference held in the FSM in January, 2020, and these workshops has greatly contributed to the development of this working draft.
30. FSM acknowledges that due to the Covid-19 Pandemic, the FSM government and other countries of the Pacific has gone online and started utilizing virtual platforms for continued coordination and cooperation, exacerbating the urgent need to have a cybercrime and cybersecurity Act in place. It is FSM's hope that the cybercrime working draft bill will be finalized soon and tabled in the FSM Congress in the near future.

B. Corruption

31. FSM acceded to the United Nations Convention Against Corruption (CAC) in 2012, and since then has committed to eradicating corrupt practices of government officials.
32. FSM remains steadfast and committed to upholding the principles enshrined by the UNCAC to combat and eradicate corruption within the government. There are provisions under the FSM Criminal Code, which can be found under Title 11 of the FSM Code, prohibiting corruption within the government and providing penalties for corrupt acts of government officials.
33. FSM's draft bill on whistle-blowers' protections is also being worked on within the Executive Branch of the FSM Government. This bill intends to enact protective measures under Title 11 of the FSM Code to protect government employees who report corruption and other misconduct of high officials within the FSM National Government. Such whistle-blowers will be free from adverse actions by their superiors pertaining to their employment.

C. Sexual and Gender-Based Violence (SGBV)

34. The national laws of the FSM, including the Criminal Code under Title 11 of the FSM Code, as amended, do not address sexual offenses as this is an area of the law which is relegated to the States.
35. Sexual and gender-based violence crimes fall under the jurisdiction of the four State governments of the FSM. Nevertheless, the FSM National Government plays a vital role to facilitate and coordinate joint-effort in addressing SGBV issues in FSM.

36. The Criminal Codes of all the four States of the FSM have provisions criminalizing sexual assault and sexual abuse. The State of Pohnpei has recently passed a law (S.L. No. 9L-105-19) which sets the minimum age of consent at eighteen (18) years. This law was passed by the 9th Pohnpei Legislature on February 18, 2019 and was signed into law by the Governor of Pohnpei State on March 20, 2019.
37. The language of Pohnpei S.L. No. 9L-105-19 is gender-neutral, and it provides that any person who intentionally has sexual contract or sexual penetration with another person who is less than 18 years of age shall be guilty of sexual abuse. Similar provisions also exist under Chuuk State law by the enactment of Chuuk State Law 12-14-18 in 2018.
38. Pohnpei S.L. No. 9L-105-19 also sets the minimum age for a person to enter into a valid marriage. This law provides that no person who is under 18 years of age may enter into a legal state of marriage in the State of Pohnpei. Any purported marriage involving a person who is below 18 years of age, whether by civil ceremony, religious ceremony, traditional customs or any other means, is invalid.
39. The Pohnpei State Legislature also passed Pohnpei's Domestic Violence Act on November 7, 2017, and the same was signed into law by the Governor of Pohnpei State on December 12, 2017. The Pohnpei Domestic Violence Act aims to preserve and promote harmonious relationships in domestic affairs and to prevent the perpetration of acts of violence within the families of Pohnpei State. The evidentiary rules regarding spousal privileges do not apply to any proceedings involving domestic violence in which the victim is the spouse of the perpetrator.

V. Significant issues (including COVID-19) impacting the law and justice sector, and options to address these issues

40. Lack of adequate funding and lack of required expertise are prevalent issues affecting the law and justice sector of FSM. There is a need to expand the human resources (lawyers, prosecutors, police officers, judges or justices) for both the national and state governments.
41. An essential element of the law and justice sector is continued legal education (CLE). Lawyers, judges, and other law enforcement personnel have to undertake continued legal education to keep themselves updated on the development of laws in FSM. There is no such system of continued legal education within the FSM, and one must endeavor to keep educating oneself on the legal developments.
42. In the absence of sufficient funding to address these issues, the only options for FSM is to tap into free trainings that are relevant to the law and justice sector. In addition, FSM is also reliant upon its key partners, including the United States, Japan, China, and other developed nations which provide financial assistance and technical training to FSM.

43. As previously mentioned, Covid-19 has negatively impacted the FSM in many ways, including the law and justice sector. Border closures have made it extremely difficult to move supplies and personnel between the States of the FSM.
44. In FSM, judges, lawyers, police officers and witnesses are often required to travel from one State to another to handle cases that are to be heard in that State. However, in the context of Covid-19, this has been almost impossible, and many pending cases have their deadlines and scheduled hearings postponed due to the inability to move personnel across the States.
45. In many cases, the courts have adopted special measures to address this issue, including, but not limited to, telephonic conferences wherein both parties, located in different States, are able to present their arguments for that particular hearing. There has also been an experience where the accused is in one state and the defense attorney is in a different state. In that case, in addition to the telephonic conference, the court made sure that the accused and his defense attorney have a separate secure line over which they can communicate about the proceedings and the accused's options.
46. Serious challenges have also been posed towards FSM's protection of its borders and its maritime zones in the context of Covid-19. The main most effective method of making sure fishing vessels comply with the laws and regulations governing activities within its maritime zones is by placing human observers on board fishing vessels. The Covid-19 Pandemic has prompted the FSM Government to pull back most, if not all, its observers on-board fishing vessels to protect them from the Covid-19. This has affected FSM's ability to ensure that fishing vessels remain compliant with the FSM laws and regulations while carrying out fishing activities within FSM's boundaries.

VI. Significant initiatives/projects involving the member country and its law and justice sector

47. From September 28, 2020 to October 1, 2020, the Division of Anti-Human Trafficking Services conducted its 2nd Annual Anti-Human Trafficking Conference. Over the four-day period, an overview of human trafficking and views from a wide range of speakers were shared. Key speakers include the Chief Justice of the FSM Supreme Court and representatives from the Pohnpei State Legislature. Fictitious human trafficking scenarios were drawn up for group discussions and activities. The human trafficking conference covered an overview of human trafficking, views from the Courts and law-making bodies, and the enforcement aspects and health implications of human trafficking.
48. FSM has initiated efforts to gain membership in the International Criminal Police Organization (INTERPOL). FSM is expecting and hoping this initiative to be finalized in the INTERPOL's next meeting, which is scheduled to take place in December of this

year, 2020, in Abu Dhabi. FSM seeks support from PILON country members towards FSM's proposed membership in INTERPOL.

49. FSM is also proud to report to the PILON community that FSM has completed all negotiations with its neighboring states in delineating their overlapping maritime zones. These treaties were successfully negotiated and deposited with the United Nations Division for Ocean Affairs and the Law of the Sea (UN DOALOS). In its submission to DOALOS, FSM also submitted a statement to the effect that FSM is not obligated to update its baselines even if the baselines are changed due to the impacts of climate change and sea level rise.
50. FSM also has ongoing extension of continental shelf projects. One of the continental shelf claims, which is the Ontong Java Plateau – a joint submission together with PNG and Solomon Islands – was favorably recommended by the UN Commission on the Limits of the Continental Shelf.

VII. Technical legal assistance

51. On September 3, 2020, the FSM DOJ and other executive departments participated in a virtual webinar for discussions on the issue of right to information/freedom of information. This virtual webinar was facilitated by the United Nations Pacific Regional Anti-Corruption Project (UN-PRAC), in partnership with experts from Pacific jurisdictions, including Australia, New Zealand and Vanuatu. There were four key speakers on right to information/freedom of information in the virtual webinar. The first speaker focused on the principles of right to information/freedom of information as enshrined in the Universal Declaration of Human Rights (UDHR). The second, third and fourth speakers shared experiences in New Zealand, Vanuatu and Australia, respectively, relating to their right to information laws and how enforcement of these laws can be improved to better secure people's rights to information.
52. FSM continues to require further technical assistance from its partners, including the PILON community. FSM DOJ has identified that there is an urgent need for technical assistance in relation to its deep sea mining framework. The National Seabed Resources Act has been enacted by the 20th Congress and signed into law by the FSM President in July, 2018. It is FSM's hope that its partners, including PILON, could provide assistance/guidance in the implementation of its seabed resources legal framework.
53. Further technical assistance is also needed human trafficking, drug trafficking, and international ships and crews registry. FSM looks forward to further trainings sponsored by its partners, including PILON, targeted towards training of prosecutors and police investigation trainings in these areas.

VIII. Contact information for key law and justice agencies

Agency	Key responsibilities	Contact person and position	Phone number and email
FSM Department of Justice	DOJ is the legal arm of the FSM National Government, mandated to enforce all laws of the nation.	Joses R. Gallen – Secretary/Attorney General	(691) 320-2644/2608
FSM Supreme Court	Interpret the laws of FSM and hear and decide cases	Dennis K. Yamase – Chief Justice	(691) 320-2357
FSM Congress Attorney	Advise Congress members on bills, resolutions, and other matters before Congress and drafting Congress instruments	Lam Dam – Legislative Counsel	(691) 320-
FSM Public Defender’s Office	Represent accused persons in criminal cases	Timoci Romanu – Acting Chief/Director	(691) 320-2648
FSM Public Auditor’s Office	Audit financial accounts and activities of FSM funds and prepare audit reports	Haser Hainrick – Public Auditor	(691) 320-2863
Kosrae State Attorney General’s Office	Enforce the laws of the State of Kosrae	Aliksa B. Aliksa – Attorney General	(691) 370-3043
Chuuk State Attorney General’s Office	Enforce the laws of the State of Chuuk	Sabino Asor – Attorney General	(691) 330-2572
Yap State Attorney General’s Office	Enforce the laws of the State of Yap	Eliesa Tuiloma – Acting Attorney General	(691) 350-2105

Pohnpei State Attorney General's Office	Enforce the laws of the State of Pohnpei	Monaliza Abello Pangelinan – Acting Attorney General	(691) 320-2356
Customs & Tax Administration Chuuk Field Office	Collecting levies and taxes, protecting FSM's borders and facilitating trades	Cathy Mori – Deputy Assistant Secretary	(691) 330-4482
Customs & Tax Administration Yap Field Office	Collecting levies and taxes, protecting FSM's borders and facilitating trades	Francis Gilpong – Deputy Assistant Secretary	(691) 350- 2272
Customs & Tax Administration Kosrae Field Office	Collecting levies and taxes, protecting FSM's borders and facilitating trades	William Mongkeya – Deputy Assistant Secretary	(691) 370-3010
Customs & Tax Administration Pohnpei Field Office	Collecting levies and taxes, protecting FSM's borders and facilitating trades	Kohler Carl – Deputy Assistant Secretary	(691) 320-5508