



**Convention on the Elimination  
of All Forms of Discrimination  
against Women**

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**Committee on the Elimination of Discrimination  
against Women**

**Consideration of reports submitted by States parties under  
article 18 of the Convention**

**Initial to third periodic reports of States parties due in 2013**

**Federated States of Micronesia\***

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*Note:* The present document is being circulated in English, French and Spanish only.

\* The present document is being issued without formal editing.

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## **Acknowledgement**

Funding for the initial consultation done in the Federated States of Micronesia states for this report was made by possible by UN-Women.

## **Abbreviations and acronyms**

Art.	Article
CWC	Chuuk Women Council
FSM	Federated States of Micronesia
HSA	Health and Social Affairs
KWA	Kosrae Women Association
NGO	Non-governmental organization
PWC	Pohnpei Women Council
s.	Section
SDP	Strategic Development Plan
SBOC	Statistics, Budget, Overseas Development Assistance and Compact Implementation
UNDP	United Nations Development Programme
US	United States
YWA	Yap Women Association

## Reporting on the Convention

1. Upon accession to the Convention on the Elimination of all forms of Discrimination against Women (hereinafter “Convention”) on 1 September 2004, the Federated States of Micronesia became a State Party to the Convention. This is the first report by the Government of the Federated States of Micronesia on the implementation progress of the Convention, and as such, represents its combined initial to third periodic reports covering the period until October 2013.

2. Upon accession to the Convention, the Government of the Federated States of Micronesia made reservations in relation to Articles 2(f), 5, 11(1)(d), 11(2)(b), 16, and 29(1) of the Convention. Specifically, the Government of the Federated States of Micronesia stated that “it is not at present in a position to take the measures required” to implement Articles 11(1)(d) and 11(2)(b); that, as “trustee of the heritage of diversity within its States under Article 5 of its Constitution, the [] Government reserves the rights not to apply the provisions of Articles 2(f), 5 and 16 to the succession of certain well-established traditional titles, and to marital customs that divide tasks or decision-making in purely voluntary or consensual private conduct”; and that it “does not consider itself bound by the provisions of Article 29, paragraph 1 of the Convention, and takes the position that any dispute relating to the interpretation or application of the Convention may only be submitted to arbitration or to the International Court of Justice with the agreement of all parties to the dispute.” Some positive changes have occurred since making these reservations, but the Government of the Federated States of Micronesia has yet to decide to withdraw these reservations.

3. This report by the Government of the Federated States of Micronesia will not only address the successful progress of the Government’s implementation of the Convention, but also the challenges which remain to hinder the full development and advancement of women in the Federated States of Micronesia. The first part of the report focuses primarily on the context of the Federated States of Micronesia, including its geography, people, government, economy, society and women’s development. The second part of the report presents a Commentary on the implementation of individual Articles of the Convention by the Federated States of Micronesia.

## Part I: Background

4. The Federated States of Micronesia (hereinafter “FSM”) is comprised of four major island groups totalling 607 islands in the North Pacific Ocean and forming four states in the federation: Chuuk, Kosrae, Pohnpei, and Yap.



5. The FSM was colonized by Spain, Germany, and Japan in the 19th century and the first half of the 20th century, and was administered as a United Nations strategic trusteeship by the United States of America after World War II. The FSM adopted a Constitution by plebiscite in 1979 and entered into a Compact of Free Association with the United States of America in 1986 as an independent and sovereign State. Today, the FSM has its own Government and leadership similar to the structure and system of the United States Government.

6. Chuuk, Kosrae, Pohnpei and Yap all have their own state constitutions, elected officials, and policies, in part because of dispersed geographic make-up of the FSM. The capital of the FSM is Palikir, Pohnpei. The National Government is located in Pohnpei, and it is the entity that represents all the four states of the FSM in international relations. The President of the FSM is head of state. The President governs with the assistance of a Vice President and a cabinet that includes Secretaries of the seven Executive Departments and Directors and Heads of eleven independent offices. The FSM has a unicameral Congress with 14 Members representing the four states of Chuuk, Kosrae, Pohnpei and Yap. Ten Members are elected into office every two years, and the other four are elected every four years. The FSM Supreme Court is the highest judicial body in the country, with a Chief Justice presiding along with several Associate Justices. Each of the four states in the FSM has a State Court system.

7. The people of the FSM are ethnically Micronesian, although each person in the FSM is known as Chuukese, Kosraean, Pohnpeian or Yapese depending on which of the four states she is from. The official language of the FSM is English, but each state has its own native language(s). The population of the FSM is over 100,000. The population lives partly on a subsistence basis — particularly farming and fishing — but the FSM economy is largely dependent on annual financial assistance from the United States of America pursuant to a Compact of Free Association between the two countries. Under the Compact of Free Association, FSM citizens can enter and live in the United States indefinitely and without visas. FSM citizens emigrate to the United States in search of better life opportunities, particularly education and employment. The currency used in the FSM is the United States dollar.

**FSM's Population**

<i>Total Population</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
All persons	102 843	52 193	50 650

*Source: 2010 FSM Census.*

*Total Population by Age Group, FSM*

<i>Age group</i>	<i>Total</i>	<i>Male</i>	<i>Female</i>
All persons	102 843	52 193	50 650
Under 5 years	12 073	6 142	5 931
5 to 9 years	11 939	6 138	5 801
10 to 14 years	12 685	6 517	6 168
15 to 19 years	11 988	6 238	5 750
20 to 24 years	9 361	4 906	4 455
25 to 29 years	7 648	3 843	3 805
30 to 34 years	6 591	3 397	3 194
35 to 39 years	5 947	2 928	3 019
40 to 44 years	5 583	2 719	2 864
45 to 49 years	5 191	2 642	2 549
50 to 54 years	4 624	2 302	2 322
55 to 59 years	3 612	1 875	1 737
60 to 64 years	2 292	1 169	1 123
65 to 69 years	1 193	536	657
70 to 74 years	925	388	537
75 to 79 years	665	263	402
80 to 84 years	330	132	198
85+ years	196	58	138
Median age	21.5	21.1	21.9

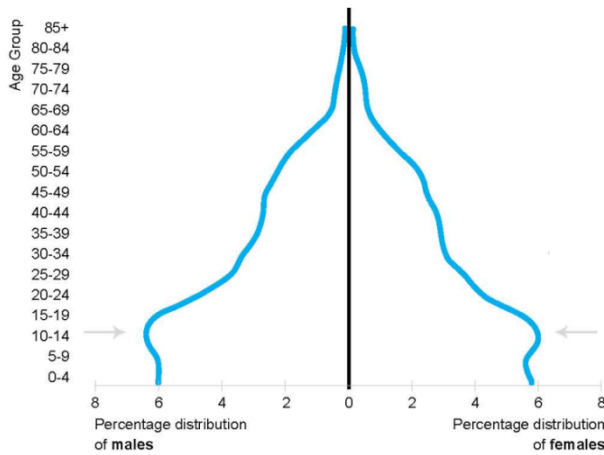
*Source: 2010 FSM Census.*

*Population by State*

<i>State</i>	<i>Total</i>	<i>Males</i>	<i>Females</i>
Total	102 843	52 193	50 650
Yap	11 377	5 635	5 742
Chuuk	48 654	24 835	23 819
Pohnpei	36 196	18 371	17 825
Kosrae	6 616	3 352	3 264

*Source: 2010 FSM Census.*

**FSM: The country is experiencing a 'youth bulge' – a demographic trend where the proportion of adolescents and young people increases significantly compared to other age groups**



Source: FSM 2010 Census of Population and Housing, S.B.O.C

**Children in the Federated States of Micronesia, An Atlas of Social Indicators**

A total of 44,144 children aged 0 to 17 years live in FSM, representing 43 per cent of the total population. Number of children 0-17 years by age group and State, 2010

State	0-4 years	5-9 years	10-14 years	15-17 years	Total number of children
Chuuk	5 998	5 757	6 040	3 622	21 417
Pohnpei	4 115	4 202	4 490	2 590	15 397
Yap	1 160	1 192	1 329	745	4 426
Kosrae	800	788	826	490	2 904
FSM	12 073	11 939	12 685	7 447	44 144

	Total population	Children as percentage of total population
Chuuk	48 654	44 per cent
Pohnpei	36 196	43 per cent
Yap	11 377	39 per cent
Kosrae	6 616	44 per cent
FSM	102 843	43 per cent

Source: FSM 2010 Census of Population and Housing, S.B.O.C.



## Education

Education in the Federated States of Micronesia is compulsory for all children, including those with disabilities, from ages six to fourteen or until completion of grade eighth. Secondary schooling (grades 9-12) is not compulsory. The National Department of Education is responsible for setting standards, including teacher certification, school accreditation, and school assessments. Departments of Education at the State level are responsible for direct educational services including curriculum development. Complementing the public education system, religious groups run privately funded elementary and secondary schools.

According to data from the latest Census, some 85 per cent of primary school-aged children attended school in 2010, compared to only 55 per cent of secondary school-aged children. There are, however, significant disparities between and within the four States. The data suggest little progress over the last decade: the national primary school attendance rate remained virtually unchanged between 2000 and 2010 while participation in secondary schooling declined. The country has, however, achieved gender parity in primary education but boys tend to be disadvantaged at the secondary level.

*\*Source: Children in the FSM/An Atlas of Social Indicators.*

### General Enrolment Rates by level, sex and state

Level	FSM	Yap	Chuuk	Pohnpei	Kosrae
Student enrolment					
Elementary	97.0	101.8	91.9	101.9	101.2
Male	96.0	102.9	89.8	101.5	101.4
Female	98.1	100.6	94.1	102.3	100.9
High school	76.0	94.6	65.6	82	92.7
Male	72.5	100.4	59.4	78.6	93
Female	79.9	88.3	72.3	85.8	92.4

*Source: 2010 FSM Census, unpublished data.*

### School Attainment percent

Person 25+ years	FSM	Yap	Chuuk	Pohnpei	Kosrae
No School and Below Grade 1	8.1	6.6	11.4	5.4	2.2
Male	7.3	2.7	10.1	6.4	1.5
Female	8.8	10.1	12.7	4.5	2.9
Elementary graduate	72.6	78.9	68.1	73.9	84.8
Male	75.7	90.2	70.4	74.7	90.9
Female	69.6	68.5	65.8	73.1	78.8
High school graduate	36.2	59.3	27.9	35.1	55.3
Male	40.9	73.5	30.4	38.2	68.4

<i>School Attainment percent</i>					
<i>Person 25+ years</i>	<i>FSM</i>	<i>Yap</i>	<i>Chuuk</i>	<i>Pohnpei</i>	<i>Kosrae</i>
Female	31.6	46.3	25.5	31.9	42.4
College graduate or higher	11.8	16.3	7.0	14.6	22.0
Male	14.4	22.3	8.1	17.0	29.6
Female	9.3	10.9	5.8	12.1	14.5

Source: 2010 FSM Census.

### Disability Labour Statistics

<i>Indicator</i>	<i>Male</i>	<i>Female</i>	<i>Total (for both sexes)</i>
1. Number of employed persons by sex, age and disability status			
Disabled			
15-24	104	104	208
25-39	394	355	749
40-59	1 442	1 261	2 703
60+	396	369	765
<b>Total</b>	<b>2 336</b>	<b>2 089</b>	<b>4 425</b>
Non-disabled			
15-24	2 572	2 613	5 185
25-39	5 823	5 680	11 503
40-59	4 955	4 866	9 821
60+	435	419	854
<b>Total</b>	<b>13 785</b>	<b>13 578</b>	<b>27 363</b>
2. Number of unemployed persons by sex, age and disability status			
Disabled			
15-24	56	42	98
25-39	83	59	142
40-59	156	123	279
60+	26	10	36
<b>Total</b>	<b>321</b>	<b>234</b>	<b>555</b>
Non-disabled			
15-24	1 300	1 018	2 318
25-39	1 239	969	2 208
40-59	560	449	1 009
60+	17	22	39
<b>Total</b>	<b>3 116</b>	<b>2 458</b>	<b>5 574</b>

<i>Indicator</i>	<i>Male</i>	<i>Female</i>	<i>Total (for both sexes)</i>
<b>3. Number of persons with disabilities employed by main sector</b>			
Manufacture	35	64	99
Agriculture	467	429	896
Services	947	693	1 640
Other(s)	887	903	1 790
<b>4. Number of persons with disabilities employed by employment status</b>			
Full-time employed			
Part-time employed			
Formal sector	1 187	872	2 059
Informal sector	1 149	1 217	2 366

*Source: 2010 Census, Statistics, SBOC Office.*

### **Labour Force**

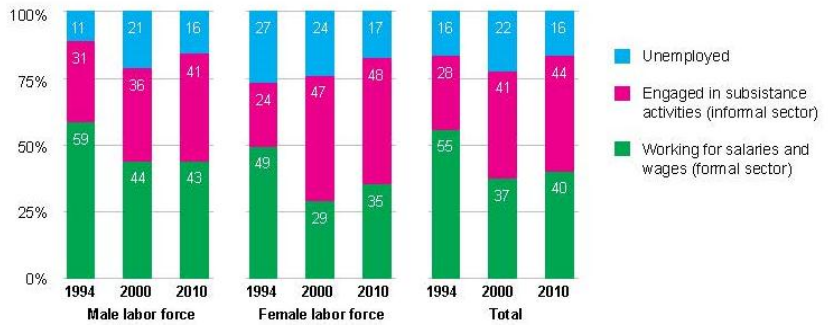
*Selected labour force indicators by sex and state*

<i>Indicator</i>	<i>FSM</i>	<i>Yap</i>	<i>Chuuk</i>	<i>Pohnpei</i>	<i>Kosrae</i>
Labour force participation rate	57.3	67.3	53.2	60.2	53.3
Male	66.1	69.1	62.7	70.3	62.9
Female	48.4	65.7	43.3	49.9	43.6
Unpaid workers and subsistence workers	16 658	2 406	7 917	6 000	335
Male	9 081	903	4 644	3 359	175
Female	7 577	1 503	3 273	2 641	160
Unemployment rate (15+ years)	16.2	6.0	24.6	9.0	23.0
Male	15.5	7.4	23.7	7.6	20.7
Female	17.0	4.6	26.0	11.0	26.3
Unemployment rate	16.2	6.0	24.6	9.0	23.0
Male	15.5	7.4	23.7	7.6	20.7
Female	17.0	4.6	26.0	11.0	26.3

*Source: 2010 FSM Census.*

**Subsistence sector employment has significantly increased among both men and women since 1994**

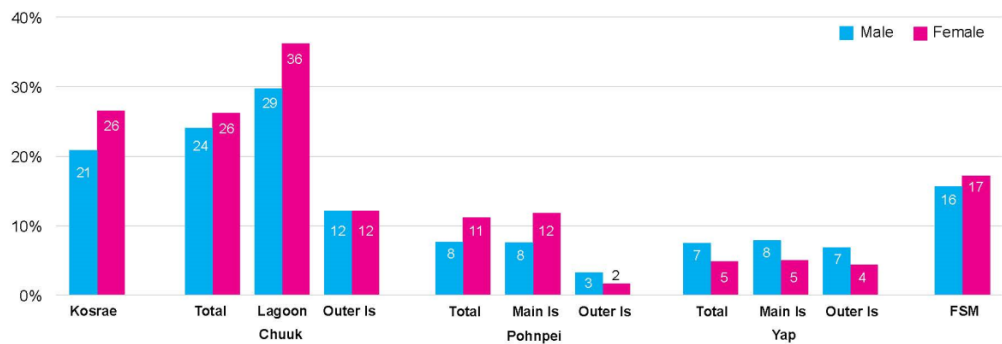
Distribution (%) of labor force by type of employment and by sex, 1994-2010



Source: FSM Censuses

**Wide geographic and gender disparities exist in unemployment**

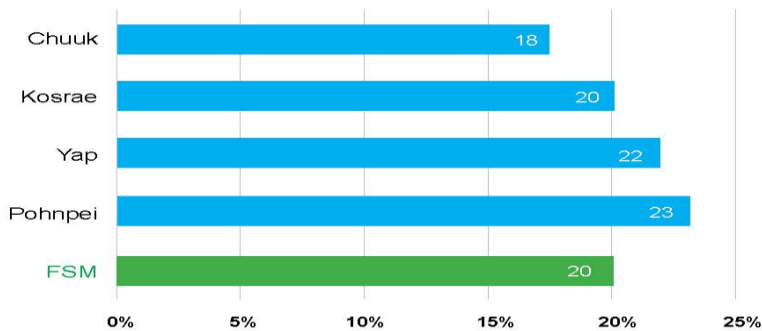
Unemployment rate by State and sex, 2010



Note: The FSM defines the unemployment rate as the proportion of the labor force who were not employed or engaged at a formal job or subsistence activities, in the week before the census.  
Source: FSM 2010 Census of Population and Housing, S.B.O.C

**Nationwide, one in five households are headed by women; from 18% in Chuuk to 23% in Pohnpei**

Percentage of households headed by females by State, 2005



Source: FSM 2005 Analysis of Poverty from HIES, UNDP

## Part II: Commentary on Articles of the Convention

### Article 1: Definition of Discrimination against Women

#### Legal Context

8. There are four distinct constitutions for the four FSM states, along with a National Constitution. The FSM National Constitution is the supreme law of the land, and the four separate state constitutions subscribe to the principles of the National Constitution.

9. Equal protection clauses are found in all the five constitutions, which guarantee fundamental rights and freedoms conferred upon all citizens regardless of sex, race, ancestry, national origin, language, religion or social status.

10. FSM Constitution, Article IV, section 4 states that, “*Equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status.*”

11. Kosrae State Constitution, Article II, section 1(c) states that, “*Equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status.*”

12. Pohnpei State Constitution, Article IV, section 3 states that, “*No law or other government action may deny or impair the equal rights of all persons on account of gender, race, ancestry, national origin, religion, language, or social status. No person may be denied the equal protection of the law.*”

13. Chuuk State Constitution, Article III, section 2, states that, “*No person may be deprived of life, liberty, or property without due process of law, be denied equal protection under the law, be denied the enjoyment of civil rights, or be discriminated against in the exercise of civil rights, on account of race, sex, religion, language, dialect, ancestry, national origin, or social status.*”

14. Yap State Constitution, Article II, section 4 states that, “*No person shall be deprived of life, liberty, or property, without due process of law, or be denied the equal protection of the laws, or be denied the enjoyment of his civil rights, or be discriminated against in the exercise thereof, on account of race, sex, religion, language, ancestry, or national origin.*”

15. The FSM Code<sup>1</sup> also has a Bill of Rights under Title 1, Chapter 1 which provides for the following:

- §101. Freedom of religion, speech and press; Right of assembly and petition.
- §102. Slavery and involuntary servitude.
- §103. Unreasonable search and seizure.
- §104. Due process of law; Double jeopardy; Self-incrimination; Trial; Assistance of counsel; Capital punishment.
- §105. Bills of attainder, etc.
- §106. Excessive bail; Excessive fines; Cruel and unusual punishments.

<sup>1</sup> All the states codes do not have a Bill of Rights Act.

- §107. Discrimination on account of race, sex, language or religion; Equal protection.
- §108. Freedom of migration and movement.
- §109. Education.
- §110. Imprisonment for failure to discharge contractual obligation.
- §111. Writ of habeas corpus.
- §112. Quartering of soldiers.
- §113. Trade and property rights.
- §114. Local customs.

16. The constitutions also give legal status to customary law by virtue of the following:

a. FSM — Art. V, s.2. The traditions of the people of the Federated States of Micronesia may be protected by statute. If challenged as violative of Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action.

b. Kosrae State — Art. II, s.2. The State Government shall protect the State's traditions as may be required by the public interest.

c. Pohnpei State — Art. V, s.2. The Government of Pohnpei shall respect and protect the customs and traditions of Pohnpei. Statutes may be enacted to uphold customs or traditions. If such a statute is challenged as violating the rights guaranteed by this Constitution, it shall be upheld upon proof of the existence and regular practice of the custom or tradition and the reasonableness of the means established for its protection, as determined by the Pohnpei Supreme Court.

d. Chuuk State — Art. IV, s.1. Existing Chuukese custom and tradition shall be respected. The Legislature may prescribe by statute for their protection. If challenged as violative of Article III, protection of Chuukese custom and tradition shall be considered a compelling social purpose warranting such governmental action.

e. Yap State — Art. III, s. 2. Due recognition shall be given to traditions and customs in providing a system of law, and nothing in this Constitution shall be construed to limit or invalidate any recognized tradition or custom.

## **Article 2: Policy Measures**

17. The rights as enumerated above under Article 1 include most of those required by the Convention. However, there is no right to the highest attainable standard of physical and mental health.

18. It is acknowledged that substantive equality is not a guaranteed right.<sup>2</sup> A guarantee of equal protection of the law requires that the law does not discriminate

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<sup>2</sup> Substantive equality is an underlying principle of the Convention. It recognizes that equal treatment is not equivalent to identical treatment, and that it is necessary to treat women and men differently according to their circumstances to assert their equal worth and to enhance their capabilities to participate in society as equals. See *Declaration of Principles of Equality, 2008, Equal Rights Trust, London.*

in its application but does not guarantee equal benefits or outcomes as required by the Convention.

19. There is no anti-discrimination clause on the grounds of sexual orientation, HIV or health status, marital status, or disability, and the breadth of the anti-discrimination clauses do not encompass direct and indirect discrimination. Only Pohnpei State has HIV Law, 2008.

20. For example, 51 PC 3-107(9) of the Annulment and Divorce chapter provides that one of the grounds for divorce is:

*“Wilful neglect by the husband to provide suitable support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation.”*<sup>3</sup>

21. This provision is discriminatory to women by reinforcing the stereotype that wives are the property of the husband by virtue of the fact that the husband shall provide suitable support.

22. There is no stand-alone anti-discrimination law in the Federated States of Micronesia.

23. Criminal sanctions may be imposed for breach of the anti-discrimination provisions at the national level<sup>4</sup> but none at state levels.<sup>5</sup>

24. The anti-discrimination clauses bind public authorities and institutions as well as private persons as follows:

- 1 FSM Code s.107. No law shall be enacted in the Trust Territory which discriminates against any person on account of sex;<sup>6</sup> 11 FSMC, s.702 (1)(a). All persons shall be entitled, without discrimination on the grounds of gender, to the full and equal enjoyment of goods, services, facilities, privileges, advantages, and accommodations of (i) any department, agency, or institution of the FSM; or (ii) any public accommodation (establishment which provides lodging, is engaged in selling food, beverage, or gasoline to public, any place of recreation, amusement, exhibition, sightseeing, or entertainment which is open to public, any facility for the public transportation of persons or goods) which affects commerce (travel, trade, traffic, transportation, communication, and all other forms of commerce among States, or between any State and any foreign country).<sup>7</sup>
- Kosrae State — None.

<sup>3</sup> Title 51 of the Pohnpei State Code.

<sup>4</sup> 11 FSMC 701(1). A person commits a crime if willfully, whether or not acting under the color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of any right, privilege, or immunity secured to him by the Constitution or laws of the FSM, the laws of the Trust Territory of the Pacific Islands, or the Constitution or laws of the United States of America which are applicable to FSM — 10 years imprisonment.

<sup>5</sup> Chuuk State — No sanctions; Kosrae State — No sanctions; Ponpei State — No sanctions; Yap State — No sanctions.

<sup>6</sup> Binds the legislature but not public authorities and institutions.

<sup>7</sup> Binds public institutions that provide goods, services, facilities, privileges, advantages, and accommodations including places of recreation and transportation.

- Pohnpei State — Article 4, s. 3 of the constitution provides that no law or government action may deny or impair the equal rights of all persons on account of gender.<sup>8</sup>
- Chuuk State — Article III, s.2 of the constitution provides that no person may be discriminated against in the exercise of civil rights.<sup>9</sup>
- Yap State — Art. II, s.4 provides that no person shall be discriminated against in the exercise of his civil rights on account of sex.<sup>10</sup>

25. Much of the provisions are inconsistent with the provisions of the Convention. The legal and regulatory system of the Federated States of Micronesia, including the states, and all the mechanisms for the creation, interpretation and enforcement of customary law and community practices does not effectively guarantee the elimination of discrimination against women. There are many discriminatory provisions particularly in relation to sexual offenses against women in the penal codes and conditions of employment in the labour laws.

26. The penal codes do not contain any specific offenses for domestic violence. Only Kosrae State has recently enacted a stand-alone domestic violence legislation.<sup>11</sup> It is currently being implemented and people of Kosrae are aware of the consequences that this legislation will bring.

27. There is no legislation, yet, that imposes the following:

- Mandatory prosecution for domestic violence offenses or offenses that amount to domestic violence;
- Stalking;
- Provision for restraining order; however, the Pohnpei Women Council and their members have been lobbying to the Pohnpei State Legislature to pass their Family Protection Act for the past 2 years.

28. The FSM National Government has not legislated in the area of personal criminal offenses only because it does not have jurisdiction by virtue of the FSM Constitution.<sup>12</sup>

29. 61 Pohnpei Code, chapter 5 provides the following:

- s 5.132. Assault or battery with a dangerous weapon if bodily injury — 10 years imprisonment, \$10,000, or both, if not 5 years imprisonment, \$5,000 or both.
- s 5.133. Unlawful and intentionally strikes, beats, wounds and does serious bodily harm. \$10,000, 10 years imprisonment or both.
- s 5.131. Mayhem is cutting, biting, or slitting the nose, ear, or lip, or cutting off or disabling the tongue, or putting out or destroying an eye, or cutting off

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<sup>8</sup> Does not bind private persons, only public bodies.

<sup>9</sup> The Constitution does not expressly specify who is bound by the anti-discrimination clause but it implies that it encompasses all aspects of a persons' life and is not limited to public authorities.

<sup>10</sup> The Constitution does not expressly specify who is bound by the anti-discrimination clause but it implies that it encompasses all aspects of a person's life.

<sup>11</sup> Enacted in March 2014 by Kosrae State legislature. (Kosrae Family Protection Act L.B. No.10-20 L.D.3).

<sup>12</sup> However as domestic violence is a matter of public welfare it does have the power to legislate and therefore is non-compliant with the Convention.



or disabling a limb or any member or part of another person with intent to maim or disfigure — 10 years imprisonment, \$10,000, or both.

- s 5.134. Unlawful and intentionally strikes, beats, wounds and does bodily harm. \$500, 2 years imprisonment or both.
- s 5.136. Unlawful and intentionally offers or attempts to strike, beat, wound. \$100, 6 months' imprisonment or both.

30. These provisions do not embrace the variety of situations that constitute domestic violence. Some have low penalties although aggravated assault and mayhem are seriously regarded. The provisions, however, fall short of compliance with this indicator.

31. Title 12 of the Chuuk State code, chapter 4 provides as follows:

- s 2057(1). Assault with a dangerous weapon if he attempts to cause or purposely causes bodily injury to another person with a dangerous weapon — five years' imprisonment, \$5,000.00, or both.
- s 2058. Offence of assault to unlawfully offers or attempts, with force or violence, to strike, beat, wound, or do bodily harm to another — three years imprisonment, \$100.00, or both.
- s 2059 (1). Offence of assault and battery to unlawfully strike, beat, wound or otherwise do bodily harm to another — six months' imprisonment, \$250.00 or both.
- s 2060 (1). Mayhem if with intent to maim or disfigure, does cut, bite, or slit the nose, ear, or lip, or cut off or disable the tongue, or put out or destroy an eye, or cut off or disable a limb or any member of another person — three years' imprisonment, \$1,000.00, or both.

32. Although the general assault provisions could be used in situations of domestic violence they fall short of compliance because the provisions do not embrace the variety of situations that constitute domestic violence, and the penalties are low.

33. 11 Yap State Code, chapter 2 states as follows:

- s.207. Aggravated assault is an attempt to cause serious bodily injury to another or causes serious bodily injury intentionally, knowingly, or recklessly under circumstances showing extreme indifference to the value of human life — 5 years imprisonment, \$5,000.00, or both.
- s.209. Assault is offering or attempting, with force or violence, to strike, beat, wound, or to do bodily harm to another — 6 months imprisonment or \$100 or both.
- s.210. Assault and battery is striking, beating, wounding, or otherwise doing bodily harm to another — 3 years imprisonment, \$100 or both.
- s.211. Mayhem is cutting, biting, or slitting the nose, ear, or lip, or cutting off or disabling the tongue, or putting out or destroying an eye, or cutting off or disabling a limb or any member or part of another person with intent to maim or disfigure — 3 years imprisonment, \$100 or both.
- s.213. Threaten any crime of violence with purpose to terrorize — 6 months imprisonment, \$100 or both.

34. These provisions are not targeted at domestic violence and do not embrace the variety of situations that constitute domestic violence. All have low penalties and fall short of compliance with this indicator.
35. The penal codes do not contain a broad range of sexual assault offenses graded on the basis of the seriousness to the victim.
36. 13 Kosrae State code chapter 3:
- s 13.311. Sexual assault is intentionally subjecting another person to sexual penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct — If serious bodily or psychological injury — 10 years imprisonment, \$20,000, or both. If not — 5 years imprisonment, \$10,000, or both.
  - s 13.312. Sexual abuse is intentionally having sexual contact with another person who is less than 13 years old or causing the person to have sexual contact with the offender. Sexual contact means any touching of the sexual or other intimate parts of another done with the intent of gratifying the sexual desire of either party — 3 years imprisonment, \$5,000 or both.
37. The sexual assault offences whilst providing some protection for women who are victims of sexual violence are not fully compliant with the indicator because:
- The sentences are low implying that sexual assault is not a serious offence. In particular 5 years for a rape that does not cause serious injury is an insufficient punishment and deterrent. Regardless of the level of injury rape is a violation of personal integrity which should be severely punished.
  - Although penetration is widely defined there are no other offences and therefore many of the ways in which women are sexually violated are excluded.
  - Improper sexual contact applies only for girls under 13 with the result that it is lawful to have sexual contact with girls 13 and over. This is discriminatory.
38. 61 Pohnpei State Code, chapter 5 provides:
- s.5.141 (1). Sexual assault is intentionally subjecting another person to sexual contact or penetration, or forcing another person to make a sexual penetration on himself or another or on an animal, without the other person's consent, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct — If serious bodily or psychological injury — 10 years imprisonment, \$10,000, or both. If not — 5 years imprisonment, \$5,000, or both.
  - s.13.312. Sexual abuse is intentionally having sexual contact or sexual penetration with another person who is 15 years old or less causing the person to have sexual contact or penetration with the offender. Sexual contact means any touching of the sexual or other intimate parts of another done with the intent of gratifying the sexual desire of either party — 5 years imprisonment, \$5,000 or both.

39. The provisions on sexual assault offences, whilst providing some protection for women who are victims of sexual violence, are not fully compliant with the Convention because:

- The sentences are low implying that sexual assault is not a serious offence. In particular 5 years for a rape that does not cause serious injury is an insufficient punishment and deterrent. Regardless of the level of injury rape is a violation of personal integrity which should be severely punished.
- Although penetration is widely defined there are no other offences for persons over 15 and therefore many ways in which women are sexually violated are excluded from the Act.
- Improper sexual contact applies only for girls under 16 with the result that it is lawful to have sexual contact with girls 16 and over. This is discriminatory.

40. 32. 12 Chuuk State Code chapter 4 provides that:

- s.2053 (1). Offence to intentionally subject another person to sexual penetration, against the other person's will, or under conditions in which the defendant knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct (2)(a). If a dangerous weapon was used by the defendant — nine years imprisonment, \$10,000, or both (b) otherwise five years imprisonment, or \$5,000, or both.
- s.2054 (1). A person commits the offence of sexual abuse if he intentionally has sexual contact with another person who is less than 13 years old or causes such a person to have sexual contact with him — 5 years imprisonment, \$5,000.00, or both.

41. The provisions on sexual assault offences, whilst providing some protection for women who are victims of sexual violence, are not compliant with the indicator because:

- The sentences are light implying that sexual assault is not a serious offence. In particular 5 years for a rape that does not cause serious injury is an insufficient punishment and deterrent. Regardless of the level of injury rape is a violation of personal integrity which should be severely punished.
- Although penetration is widely defined there are no other offences and therefore many of ways in which women are sexually violated are excluded from the Act.
- Improper sexual contact applies only for girls under 16 with the result that it is lawful to have sexual contact with girls 16 and over. This is discriminatory.

42. 11 Yap State code, chapter 2 provides that:

- s.205. Offence to intentionally subject another person to sexual penetration by force or engage in sexual penetration with another person whom he knows is mentally or physically incapable of resisting or understanding the nature of his conduct, or who is an accomplice or accessory to the sexual assault by a third person If serious bodily or psychological injury to the victim results or if a dangerous weapon was used by the defendant — ten years, \$10,000.00, or

both. If such injury does not result and no weapon was used — 5 years imprisonment, \$5,000.00, or both.

- s.206 (a). Offence to intentionally have sexual contact with another person who is less than thirteen years old or causes such a person to have sexual contact with him — 10 years imprisonment, \$10,000.00, or both.

43. The provisions on sexual assault offences, whilst providing some protection for women who are victims of sexual violence, are not compliant with the indicator because:

- The penalties are low implying that sexual assault is not a serious offence. In particular 5 years for a rape that does not cause serious injury is an insufficient punishment and deterrent. Regardless of the level of injury rape is a violation of personal integrity which should be severely punished.

44. Although penetration is widely defined there are no other offences for girls and women over 13 and therefore many of ways in which women are sexually violated are excluded from the legislation.

45. Improper sexual contact applies only for girls under 13 with the result that it is lawful to have sexual contact with girls 13 and over. This is discriminatory.

46. Sexual penetration requires force and therefore will not constitute an offence if it occurs through duress, threats or coercion.

47. The penal codes define rape and/or sexual offences to include penetration of non-penile objects to anus, vagina and mouth.

48. 13 Kosrae State Code chapter 3 at s.13.311. Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of penetration of the genital, anal, or oral opening of another to any extent and with any object whether or not there is an emission.

49. 61 Pohnpei State Code chapter 5 at s.5.141 (4). Sexual penetration is sexual intercourse, cunnilingus, fellatio, anal or oral intercourse, or the causing of penetration of the genital or anal opening of another to any extent and with any object whether or not there is an emission.

50. 12 Chuuk State Code Part I, chapter 4 at s. 2051. Sexual penetration means sexual intercourse, cunnilingus, fellatio, or anal intercourse, or the causing of penetration to any extent and with any object of the genital or anal opening of another whether or not there is any emission.

51. 11 Yap State Code chapter 2 at s. 201(f). Sexual penetration means sexual intercourse, cunnilingus, fellatio, or anal intercourse, or the causing of penetration to any extent, and with any object, of the genital or anal opening of another.

52. The offense of incest for women and girls is addressed as follows:

- Kosrae — Title 13 s.13.505. Incest is engaging in sexual intercourse with a person within the second degree of blood relationship. Incest is a category one felony.
- Pohnpei — Title 61, s.7-102. Every person who knowingly engages in sexual intercourse contact or penetration with grandparent, parent, brother, sister, children or their children guilty of incest. 3 years or \$3,000 or both.

- Chuuk — Title 12, s.2055. Every person who shall unlawfully engage in sexual intercourse with another of such a close blood relationship or affinity that marriage between the two who so engage is prohibited by law or custom, shall be guilty of incest — 3 months; provided, however, that the burden of proof of such relationship or affinity shall rest with the prosecution.
- Yap — Title 11, s.602. Offence to unlawfully engage in sexual intercourse with another of such a close blood relationship or affinity that marriage between the two who so engage is prohibited by law or custom — 3 years imprisonment.

53. The above provisions are discriminatory because they contain an offence of incest which applies to girls and women, and not in compliance with the Convention. The offence is discriminatory because:

- No girl under 18 should be charged with any sexual offence and there is no exception on the basis of age.
- An offence of incest against women and girls fails to recognize the power imbalance between girls and women and male relatives. Incest is typically perpetrated by men against girls and women in non-consensual coercive circumstances.

54. The terms indecency, carnal knowledge, defilement and insulting modesty have been removed from the criminal legislation in all the states. However, consent is not specifically defined in the penal codes.

55. The use of prior sexual conduct to establish consent is provided as follows:

56. Kosrae Rules of Evidence, Article IV, Rule 412(a)(b). In a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behaviour of an alleged victim, or evidence of a victim's past sexual behaviour is not admissible unless such evidence other than reputation or opinion evidence is (a) Past sexual behaviour with persons other than the accused, offered by the accused with respect to the source of semen or injury; or (b) Past sexual behaviour with the accused and is with respect to whether the alleged victim consented.

57. Pohnpei — None

58. Chuuk Rules of Evidence, Article IV, Rule 412 (a)(b). In a criminal case in which a person is accused of rape or of assault with intent to commit rape, reputation or opinion evidence of the past sexual behaviour of an alleged victim, or evidence of a victim's past sexual behaviour is not admissible unless such evidence other than reputation or opinion evidence is (a) Past sexual behaviour with persons other than the accused, offered by the accused with respect to the source of semen or injury; or (b) Past sexual behaviour with the accused and is with respect to whether the alleged victim consented; Rule 412 (c) If the person accused intends to offer evidence of specific instances of the alleged victim's past sexual behaviour, the accused shall make a written motion and the court shall order a hearing in chambers to determine if such evidence is relevant and if its probative value outweighs the danger of unfair prejudice.

59. Yap — FSM Rules of Evidence, Article IV, Rule 412. (a)(b). In a criminal case in which a person is accused of rape or of assault with intent to commit rape,

reputation or opinion evidence of the past sexual behaviour of an alleged victim, or evidence of a victim's past sexual behaviour is not admissible unless such evidence other than reputation or opinion evidence is (a) Past sexual behaviour with persons other than the accused, offered by the accused with respect to the source of semen or injury; or (b) Past sexual behaviour with the accused and is with respect to whether the alleged victim consented. (c) If the person accused intends to offer evidence of specific instances of the alleged victim's past sexual behaviour, the accused shall make a written motion and the court shall order a hearing in chambers to determine if such evidence is relevant and if its probative value outweighs the danger of unfair prejudice.

60. The use of prior sexual history to establish consent is discriminatory as it perpetuates a view that a previous relationship or history of promiscuity makes it "more likely" that a woman consented to the act in question.

61. There is no legislative prohibition for the requirement for corroboration and proof of resistance, therefore, this discourages the women and young girls of FSM to further challenge their cases.

62. 13 Kosrae State Code, s 13.311. Sexual assault is intentionally forcing another person to make a sexual penetration on another, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting.

63. 61 Pohnpei State Code, s 5.142. Sexual assault is intentionally subjecting another person to penetration or sexual contact without the persons consent or under circumstances in which the offender knows or should know that the other person is mentally or physically incapable of resisting.

64. 12 Chuuk State Code, s 2053.(1) Offence to intentionally subject another person to sexual penetration, against the other person's will, or under conditions in which the defendant knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct.

65. 11 Yap State Code, s 205. Sexual assault is intentionally forcing another person to make a sexual penetration on another, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting.

66. These provisions imply that physical resistance is expected. Sexual assault victims may not be able to physically resist an armed or threatening perpetrator or may be immobilized by fear and power imbalances.

67. The penal codes provide a defence of honest and reasonable belief that the victim is of legal age, which places the onus on the minor to reveal her age rather than on the perpetrator to ascertain her age.

68. Kosrae State – Not a defence

69. 61 Pohnpei State Code, s.6-142(2). It is an affirmative defence that the defendant reasonably believed the child to be older than fifteen.

70. 12 Chuuk State Code, s 2054 (2). It is an affirmative defence to the offence of sexual abuse that the defendant reasonably believed the child to be older than 13.

71. 11 Yap State Code, s 206(b). It is an affirmative defence that the defendant reasonably believed the child to be older than 13.
72. Marital rape is not an offense in the penal codes of Pohnpei State, but it is an offense in Kosrae, Yap and Chuuk States.
73. 61 Pohnpei State Code, s. 5.141(2). A defendant cannot be convicted of a sexual assault if cohabiting with complainant in an ongoing voluntary sexual relationship or the complainant is their spouse of the defendant unless accomplice to an assault by a third person or separated.
74. 61 Pohnpei State Code s. 5.142. A defendant cannot be convicted of sexual abuse if married to the complainant.
75. Men should not be exempt from being prosecuted for marital rape. The Pohnpei State Code does exempt both married and de facto spouses from prosecution for marital rape. A failure to criminalize sexual assault in either marriages or de facto relationships suggests an obligation upon women to submit to sexual relations at any time which is discriminatory.
76. The penal codes do not provide for mandatory prosecution of sexual offenses, and bail is available for defendant of sexual offenses even if there is a risk to the victim. There is no minimum sentences for sexual offenses, and the codes state that customary practices of forgiveness shall be given due recognition by the court.
77. 6 Kosrae State Code, s.6.4901. In imposing or suspending the sentence, or in suspending the imposition of sentence and granting probation, the Court gives due recognition to the State's custom and tradition.
78. 12 Chuuk State Code, s.6001. In imposing or suspending the execution of sentences, or in suspending the imposition of sentence and granting probation, due recognition shall be given to the customs of the inhabitants of the State of Chuuk.
79. Pohnpei State — None
80. 11 Yap State Code, s.1101. In imposing or suspending the execution of sentences, or in suspending the imposition of sentence and granting probation, due recognition shall be given to the customs of the inhabitants of the State of Yap.
81. There is to some degree legislative provision for compensation of victims of sexual and domestic violence. They are as follows:
- 6 Kosrae State Code, s 6.4904. Upon conviction of a wilful wrong causing damage to another, in lieu of or in addition to other lawful punishment, the Court may order restitution or compensation to the owner or person damaged.
  - 64 Pohnpei State Code, s 1.105. Upon conviction of a wilful wrong causing damage to another, in lieu of or in addition to other lawful punishment, the Court may order restitution or compensation to the person damaged.
  - 12 Chuuk State Code, s. 2059 (3). It shall be mandatory to compensate any bodily injury by the accused when convicted for assault and battery. The Court shall have the power to determine the amount and the manner in which such restitution be satisfied accordingly. Section 6006 provides that if a defendant is convicted of a wilful wrong causing damage to another, a court, may, in lieu of or in addition to other lawful punishment, order restitution or compensation to the owner or person damaged.

- 11 Yap State Code, s.1106 (a). If a conviction is based upon a wilful wrong causing damage to another, a court may, in lieu of or in addition to other lawful punishment, order restitution or compensation to the owner or person damaged.
- None of the penal codes allow for infanticide to replace a charge of murder or manslaughter, and the definition of infanticide does not include environmental and social stresses.

### **Application of the Law**

82. It is acknowledged that the provisions in the constitutions are not in full conformity with the Convention in that they do not guarantee substantive equality. They apply only to the public sphere, and this is not an expanded definition of discrimination as contained in the Convention.

83. The definition of discrimination provided in the constitutions is not sufficiently broad to be interpreted as being compatible with the definition in the Convention.

84. The reliance on the various penal codes offenses to prosecute domestic violence is generally regarded as not being appropriate for the ongoing and serious nature of domestic violence. Furthermore, as indicated hereinabove, the penalties are quite low given the circumstances surrounding the commission of domestic violence. The customary practice of forgiveness and avoidance of confrontation between in-laws enables the continuation of domestic violence and potentially provides no consequences for the offender, and therefore fails to recognize the pressure placed on women by families, religion and custom to return to their husbands after they have been subjected to domestic violence.

85. The sexual abuse offenses in the penal codes are discriminatory by definition and also by penalties provided. The availability of the affirmative defence implies that a sexual offense committed against a girl is an excusable act if the victim appears to be older than the age of consent, and the perpetrator reasonably believes that to be the case. The law is unfairly biased on the assumption that girls should always look their age, and fails to consider the position of the offender in contrast to the victim. The range of offenses is not broad enough to provide adequate protection for women.

### **Government Partnerships with Civil Society Organizations**

86. The National and State Governments have, since 2010, funded biennial conferences on women to mobilize action on issues across the nation and educate policy makers about gender mainstreaming in national and state policy formulation plans. These conferences bring in women from all the four states to discuss emerging issues in environment, health, economy and business, education, government, culture and religion. Themes covered during the conferences are guided by the progress of the states to implement their development goals as well as the United Nations Millennium Development Goals.

87. The FSM Department of Health has utilized its relationships with the women groups in the FSM states by setting up coalitions and committees in which women represent the National Government in off-island meetings or conduct the on-island meetings, and take the necessary information out from the National Government



into the local communities. There are organized People with Disabilities Organizations/Associations in the FSM states that also communicate with the Department on issues dealing with Disability and the Government: two Disabled People's Organization in the States of Pohnpei and Yap, and a Parents of Special Children network in Chuuk. Kosrae State is currently organizing a Disabled People's Organization. Each State has its own youth groups which sometimes come under the umbrella of the State's Youth Council. When they need to communicate at the international level or government's assistance, they go through the National Youth Office.

88. The National Government is currently working with the Secretariat of the Pacific Community to develop the first Gender Policy for the nation. Consultations are being carried out at the present time. There is a National Gender Development and Human Rights Office currently located within the FSM Department of Health and Social Affairs. This Office houses the programs of Youth, Women, Disability, Senior Citizens/Aging, and Sports as well as Human Rights Treaties and Conventions. The National Gender Development and Human Rights focal point communicates and collaborates with the four states' Social Affairs counterparts.

89. A bill was introduced in the FSM Eighteenth Congress to create an Office of Gender Affairs to be an independent entity, separate and distinct from the Department of Health and Social Affairs and all other Departments of the National Government Executive Branch. This Office would "enable the female citizens of the Federated States of Micronesia to participate fully in their own education and training, in the workforce, and in the leadership and development of their communities and this Nation" (FSM CB18-118).

90. The Pohnpei State Government donated land and building to the Pohnpei Women Council to provide refuge space for victims of domestic violence and human trafficking. Pohnpei State Social Affairs under the Governor's Office also has the position of Women's Interest Officer that works closely with the Pohnpei Women Council (PWC) as well as the other women's groups in the other States. Pohnpei Women Council is the umbrella for all the 29 women's associations of Pohnpei.

91. The Kosrae State Government donated land and funding for the construction of a day care centre for working mothers in Kosrae. The President of the Kosrae Women Association (KWA) is given an office space at the Governor's Office and gets information out to the local community women as well as from them out to the other states through that same channel.

92. The Chuuk Women Council (CWC) is also the umbrella organization for all the different women's organizations in Chuuk. CWC runs a centre that provides capacity building skills to promote Chuukese women in leadership and business and offers education on health and gender issues as well as environment, culture and tradition. CWC works closely with the state government to raise awareness, provides services and training for gender-related issues, and acts as the gender development coordinator at the state level.

93. The Yap State Government has donated space and matching funds for the construction of a multipurpose centre for the Yap Women's Association. Yap's Women's Interest Officer shares a building space with Yap Youth Office. Those two offices liaise between the state government and the local youth and women's groups.

### **Article 3: The Development and Advancement of Women**

#### **Legal Context**

94. There is no legislation that establishes a national human rights machinery charged with promoting and protecting human rights including women's rights. There is no legislation that establishes a funded body to monitor the implementation of non-discriminatory law and policy for the advancement of women. It is acknowledged that enforcement of the rights and freedoms through the court process is expensive and time consuming. Furthermore, the formal justice system is not accessible to many women due to geographical dispersion and resource scarcity, as well as — according to most women — general fear of the court system.

95. Public Auditor's offices at the national and state governments, except Chuuk State, do play a role in the investigation of reported alleged misconduct of public officials and other public servants, but do not extend to breaches of fundamental rights and freedoms.

96. The only mechanism to seek redress for a breach is through the State Courts or the FSM Supreme Court.<sup>13</sup>

97. The FSM Government is not a party to the Convention's Optional Protocol therefore its citizens do not have the opportunity to communicate directly with the Convention Committee.

### **Article 4: Acceleration of Equality between Men and Women**

#### **Legal Context**

98. The FSM Constitution and the state constitutions do not contain temporary special measures provisions. Consequently, there are no exemptions required for temporary special protection measures.

#### **Temporary Special Measures for Women in Congress**

99. In 2010, the 16th FSM Congress introduced a bill to amend the FSM National Constitution to provide for reserved seats for women in Congress.<sup>14</sup> This bill was never acted upon and by the 16th Congress.

100. In 2012, yet another attempt was made and a new bill was introduced for the same purpose, except there was a temporary clause caveat.<sup>15</sup> Although this bill was actually brought forward for a vote in Congress, it did not garner the necessary numbers to pass.

101. In 2014, the same bill has resurfaced and is currently pending with the 18th FSM Congress.

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<sup>13</sup> Municipal level courts may also hear cases upon application by petitioners.

<sup>14</sup> C.B. 16-10: To propose an amendment to the Constitution of the Federated States of Micronesia, for the purpose of increasing the representation of women in Congress by increasing the number of at-large seats in Congress, and reserving said seats for women, and for other purposes.

<sup>15</sup> C.B. 17-47: To propose amendments to the Constitution of the Federated States of Micronesia, for the purpose of guaranteeing the representation of women in Congress by creating additional at-large seats in Congress reserved for women, and for other purposes. The reserved seats would be terminated upon 20 years after Constitutional amendment.

## Article 5: Sex Roles and Stereotyping

### Legal context

102. FSM placed a reservation on Article 5 of the Convention when it ratified the Convention in 2004 therefore there has been no implementation done at national or state level to progress this article.

## Article 6: Suppression of the Exploitation of Women

### Legal Context

103. The act of soliciting by either males or females is a criminal offense in the following states:

- 12 Chuuk State Code, s 9025. Sex work is prohibited in Chuuk State — one year imprisonment, \$500, or both.
- 61 Pohnpei State Code, 8-112. Offence to engage in sex work, 6 months' imprisonment, \$500 or both.
- Yap and Kosrae States have decriminalized sex work.

104. Aiding and abetting consensual acts of soliciting is a criminal offense in the following states:

- 61 Pohnpei State Code, s 8-112. Offense to aid in sex work, 6 months' imprisonment, \$500 or both.
- 12 Chuuk State Code, s. 9025. In any way taking part or aiding in sex work is prohibited in Chuuk State — one year imprisonment, \$500, or both.
- Yap and Kosrae States — not an offense.

105. It is an offense to procure any woman or girl under the age of 18 in the following states:

- 13 Kosrae State Code s.13.311. Sexual assault includes intentionally forcing another person to make a sexual penetration on another, against the other person's will, or under conditions in which the offender knows or should know that the other person is mentally or physically incapable of resisting or understanding the nature of his conduct — If serious bodily harm 10 years imprisonment, \$20,000, or both. If not 5 years imprisonment, \$10,000 or both.
  - s 13.312. Sexual abuse includes causing the person to have sexual contact with the offender. Sexual contact means any touching of the sexual or other intimate parts of another done with the intent of gratifying the sexual desire of either party — 3 years imprisonment, \$5,000 or both.
- 61 Pohnpei State Code, s. 8-111(2). Causing, inducing, persuading or encouraging any person by promises, threats violence or by any device or scheme to engage in sex work. 1 year imprisonment, \$500 or both.
- 12 Chuuk State Code, s 9025. In any way taking part in sex work is prohibited in Chuuk State — one year imprisonment, \$500, or both.
- Yap State has not legislated in this area.

106. None of the states or the national Government has legislated on occupational health and safety to protect those who engage in sex for monetary or material gain.

107. The trafficking of women is a criminal offense at national and state levels, which enacted anti-trafficking laws in 2012. (FSM Public Law #17-38 which defines crimes relating to trafficking in persons and related offenses and prescribing appropriate penalties)

108. FSM Code Title 11 enacted the Trafficking in Persons Act of 2012 which includes sex tourism.

### **Application**

109. The FSM and state governments have not modified their laws to respond to the requirements of the Convention and prostitution and sex work are still offenses in the penal codes. Women performing sex work to support their families are not protected in this area.

## **Article 7: Political and Public Life**

### **Legal Context**

110. In the FSM, every citizen who meets the age requirement is eligible to vote and run for public office.

111. The FSM Constitution provides an equal right to vote. Article VI, s 1. provides that “A citizen of 18 years may vote in national elections.”

i. 9 FSMC 1, s.102 provides that “Every citizen of the FSM is eligible to vote for Members of the Congress of the FSM if (1) 18 years of age or older on the day of the election (2) a resident or domiciliary of the State of Kosrae, Pohnpei, Chuuk, or Yap and a registered voter therein for at least 30 days immediately preceding the election (3) not currently under a judgment of mental incompetency or insanity (4) not currently under parole, probation, or sentence for any felony for which he or she has been convicted by any court of the FSM. There is equal eligibility for political representation. Under 9 FSMC 2, s. 202 it provides that “To be eligible for election as a Member of the Congress of the Federated States of Micronesia, a person shall (1) have attained the age of 30 years on the day of the election; (2) be a resident for at least five years of the State from which he is elected; (3) be a citizen of the FSM for at least 15 years (4) not be under a judgment of mental incompetency or insanity; and (5) not have been convicted of a felony.”

ii. However, FSM Constitution Art. V, s 1 provides that “Nothing in Constitution takes away function of traditional leader as recognized by custom or prevent traditional leader from being recognized honoured and given formal or functional roles at any level of government.”

- Pohnpei — Cons. Article 6, s 1. A citizen of the Pohnpei who has attained the age of eighteen, and has not committed a felony for which he is on parole or probation or under a sentence shall be entitled to vote.

i. 4 Pohnpei State Code, s 4-101(1). A citizen of Pohnpei, 18 years not on parole, mentally competent is qualified to vote in elections.

ii. 10 Pohnpei State Code s.5-101(1). To be elected governor or lieutenant, citizen of Pohnpei by birth, at least 35, and not convicted of a felony.

°s. 5-101(2). To be eligible for the legislature at least 25, citizen of Pohnpei for 25 years and not convicted of a felony.

- Chuuk — Constitution of the State of Chuuk 1989, Article XII, s 2. A citizen of the FSM who is a resident of the State of Chuuk and has attained the age of 18 may vote in the State.

i. 13 Chuuk State Code, s.1102. Every person not confined to a mental institution, nor judicially declared insane, nor committed under a sentence of imprisonment, who is a citizen of the FSM over 18 years of age, who is a resident of Chuuk is entitled to vote at any primary, general, runoff, special, or local election to be held within the State of Chuuk.

- Kosrae — Cons. Article III, s 1. A citizen of the FSM who is a domiciliary of the State, has attained the age of eighteen, and is registered to vote in the State is entitled to vote in secret in all State Government elections, subject only to a residence requirement and disqualification for mental incompetence and conviction of a crime which shall be prescribed by law.

i. Kosrae State Code [Title 3, Part I, Cap 1] 1997, s 3.1204(1). To register to vote a person is (a) a citizen of the FSM and (b) a domiciliary of the State; and (c) at least eighteen years of age on or before the next election and (d) a resident of the district of registration for any ninety consecutive day period prior to the date of registration.

- Yap State, Cons. Article IV, s 1. A citizen of the FSM who has attained the age of 18 years and is registered to vote in the State shall be qualified to vote in state elections.

i. 7 Yap State Code s.102. Every citizen of the FSM shall be entitled to vote in every election conducted under the provisions of this title who (a) Is 18 years of age or older on the day of an election (b) Has fulfilled the residence requirements for registration (c) Is not currently under judgment of mental incompetency or insanity entered in a court of competent jurisdiction (d) Is not currently under parole, probation, or sentence for any felony and (e) Is registered to vote under the provisions of this title.

112. Equal eligibility for political representation:

- 9 FSM Code, s. 202. To be eligible for election as a Member of the Congress of the Federated States of Micronesia, a person shall (1) have attained the age of 30 years on the day of the election; (2) be a resident for at least five years of the State from which he is elected; (3) be a citizen of the FSM for at least 15 years (4) not be under a judgment of mental incompetency or insanity; and (5) not have been convicted of a felony.

- But Article V, s 1. Nothing in Constitution takes away function of traditional leader as recognized by custom or prevent traditional leader from being recognized honoured and given formal or functional roles at any level of government.

- Constitution of Kosrae, Article IV s 6. No person is eligible to serve as a Senator unless he has been, at the time of election or appointment, a citizen of

the FSM for not less than 10 years, a resident of the State for not less than 5 consecutive years immediately preceding the election, and a resident of his electoral district for a period of not less than one year immediately preceding the election or appointment, and is able to read and write, and is not less than twenty-five years of age on the day of election.

- 10 Pohnpei State Code [Title 10, Cap 4] 2006,
  - s 5.101(1). To be elected governor or lieutenant, citizen of Pohnpei by birth, at least 35, and not convicted of a felony.
  - s.5-101(2). To be eligible for the legislature at least 25, citizen of Pohnpei for 25 years and not convicted of a felony.
- 13 Chuuk State Code, s. 1304(1). No person is eligible to serve as a Representative unless at least 25 years of age, or as a Senator unless at least 35 years of age, on the day of election; was a born Chuukese, has been a resident and registered voter of the Representative District or Senatorial Region from which elected for at least 5 years prior to the day of election, and is a citizen of the FSM.
- No specific prohibition in Yap State against women to stand for elections.

113. None of the governments has promulgated laws or policies that provide for minimum quotas for women in parliament or legislatures.

114. There are no laws prohibiting women from participating in non-governmental organizations, therefore all the states have umbrella organizations hosting various women non-governmental organization groups.

115. There are no specific laws barring non-governmental organizations from registering and mobilizing to promote the advancement of women without political interference.

#### **Women in Congress and Legislatures**

116. There are 14 seats at the National Congress, all currently occupied by male Members.

117. Despite equal eligibility to enter parliament, no woman has yet served as a representative in the state legislatures of Kosrae and Yap. Twice, a woman ran for a seat in the FSM Congress for Chuuk State but did not succeed. Two women currently serve as senators in the Pohnpei State Legislature. A minimum quota is a means of achieving representation of women in parliament leading to substantive equality.

#### **Women in Traditional Leadership Positions**

118. Most women have traditional titles by virtue of birth right, inherited through clan lineage and and/or through their marriage and based on the status of their husbands. With the geographical make-up of the FSM and the FSM's diverse cultures, there is great variation in cultural practices and norms across the country that affects the traditional statuses and roles of women. Traditionally, women in the FSM were the landowners because the land is inherited through the mother's clan, and so their roles included overseeing the responsibilities over the land which was taken care of by their male relatives. Some of the old traditional roles of women and men in the FSM included: taking care of the family and children at home, the

production of staple food crops/cultivation of the land, fishing and gathering of seafood, climbing of breadfruit and coconut trees to gather food and drink, and the manufacturing of valued traditional goods.

119. Traditional leaders can be given formal and functional roles at any level of government. Although there are no formal barriers to women becoming traditional leaders, they rarely do.

## **Article 8: International Representation and Participation**

### **Legal Context**

120. There are no legal barriers to women having equal opportunity to represent governments at the international level and participate in the work of international organizations.

### **Participation of Women**

121. Women have participated at regional and international levels since the FSM attained self-governing status in the 1980s. Today, the decision to send representation depends on the type of conference or seminar and who is currently in charge of that area. If a woman is responsible for the area in question, then she attends as government representative.

122. In the 1990's, a female represented the FSM Government as a staff at the South Pacific Regional Environment Program (SPREP).

123. In 1991, the first female was sent to work at the Asian Development Bank in Manila, and another one followed in early 2000.

124. Presently, there are:

- 4 women seated in the current administration's cabinet: Secretary of Health and Social Affairs, Secretary of Justice, Postmaster General, and Director of Statistics, Budget and Economic Management, Overseas Development Assistance and Compact Management (SBOC);
- A FSM female works at the World Bank in Washington, D.C.;
- A female is the Ambassador/FSM Permanent Representative to the United Nations and is based in New York City;
- The FSM has a female Associate Justice;
- A state female Associate Justice;
- A Municipal female Associate Justice;
- A state female Attorney General;
- 2 state women senators;
- 3 women are foreign country honorary consuls to the FSM;
- A female CEO of Development Bank;
- A few females served as State Directors of Education; — Different women in all the states currently have positions as Councilwomen, Bank Managers, Administrators and Directors of various offices and agencies

## **Article 9: Nationality and Citizenship**

### **Legal context**

125. The FSM Constitution provides that a woman has equal right to acquire nationality.

- FSM Cons. Article III, s.1. A person who is a citizen immediately prior to the effective date of the Constitution is a citizen and national of FSM.

126. Marriage to an alien or change of husband's nationality does not affect the wife's nationality. FSM Government is in full compliance with the Convention's requirements in this regard.

127. Both spouses have equal rights to residency, citizenship and employment when married to a non-national because there are no legal barriers in place.

128. Both spouses have an equal right to determine the nationality of children.

- FSM Cons. Article III, s 2. A person born of parents one or both of whom are citizens of the FSM is a citizen and national of the FSM by birth.

129. In FSM, women have an equal right to obtain a passport. There are no legal barriers.

- 50 FSM Code, s 202. No passport shall be granted to any person other than a citizen of the Federated States of Micronesia.

### **Application**

130. The FSM Government regulates nationality and citizenship issues so none of the state governments have any laws or policies that affect women's nationality or citizenship requirements.

## **Article 10: Education**

### **Legal context**

131. Women and girls have equal access to education as their male counterparts because there are no legal impediments in place.

132. The FSM Constitution, Article IX, s.2(r) provides that the FSM Congress has the power to promote education by setting minimum standards, providing training and assistance to the states and providing support for post-secondary educational programs and projects.

133. 40 FSM Code, National Student Loan Revolving Fund Act 1982:

- s.325. It is important to identify and educate more of the talented young men and women of the FSM in order to provide the fullest development of their mental resources and technical skills. This subchapter establishes an ongoing fund to provide long-term, low-interest loans from a revolving fund to qualified students who are in need of such financial assistance in order to pursue a full-time course of study at an institution of higher education.
- s.327. Loans shall be made only to a student who (1) is a citizen of the FSM (2) is in need of the amount of the loan to pursue a course of study on a full-time



basis as an undergraduate, graduate, or professional student at an institution of higher education; and (3) has been accepted for enrolment as a full-time student at an institution of higher education or in the case of a student already attending such an institution, is in good standing at such institution and is carrying a full-time academic work load.

- 1 FSM Code 1997 s. 109. Free elementary education shall be provided throughout the nation.
- Kosrae — Cons. Article XII, s 1. The State Government shall promote education.
  - Compulsory Education is provided pursuant to 12 Kosrae State Code s.12.102. A person attends a public or private school from his sixth through his fifteenth years, or until his graduation from elementary school, whichever occurs earlier. But note the Department of Education may delay a student's entry in school for one year if it cannot accommodate the student because of inadequate facilities or an insufficient number of personnel.
- Pohnpei — Cons, Article 7:
  - s (1). The Government shall provide compulsory free educational services.
  - s (2). The Government will establish and execute comprehensive plans for the continual improvement of educational standards and services.
- 18 Pohnpei State Code:
  - s.1-102. The legislature declares and recognizes the right of the people to education and the obligation of the state to take every step reasonable and necessary to provide education.
  - s.10-104(1). Authorization for a monetary sum for vocational training for women by any public or private educational institution.
- Chuuk — Cons., Article X, s 2. The State Government shall provide for the establishment, management, and support of a state-wide system of public schools which shall, within the limits of its resources, provide an education of quality and relevancy, free from sectarian control and available to all persons in the State of Chuuk.
- Yap — Cons., Article XII, s 2. The State Government shall provide for public education and schools. Public elementary education shall be free.

134. There is no legislation across the board that creates special measures for the advancement of women in education.

135. In the FSM, there is compulsory primary education for girls and boys across the board, and penalties are provided for.

- 12 Kosrae State Code s 12.102. A person attends a public or private school from his sixth through his fifteenth years, or until his graduation from elementary school, whichever occurs earlier. But note the Department of Education may delay a student's entry in school for one year if it cannot accommodate the student because of inadequate facilities or an insufficient number of personnel.

- 18 Pohnpei State Code, s. 1-111. All minors 6-16 shall attend either a public or private school.
- Chuuk Cons., Article X. s 1. Free compulsory public elementary shall be provided in the State of Chuuk as prescribed by statute.
- 16 Yap State Code s. 202(a). All children required to attend elementary school in the school district in which he resides. (b). Attendance at school shall be obligatory. (c). Any parent, guardian or other person having responsibility under custom for the child whose attendance at school is obligatory shall send the child to school — \$25.00 for each day the child is absent from school.

### **Application**

136. None of the state governments has legislated on the inclusion of compulsory reproductive and sexual health education in the school curriculums. The FSM National Government has the authority to set minimum standards in this regard, but it has not made any progress towards a more comprehensive family life curriculum.

137. The key education target is to achieve universal primary education for all children in the FSM. To this quantitative target, the FSM has added a qualitative dimension — all children to achieve competency in the core subjects taught in FSM schools.

138. The FSM has made steady progress in expanding school enrolment. Net primary enrolment for the 2007-2008 school year exceeded 96 per cent with only sporadic evidence of gender bias.

139. High school participation levels have boosted literacy levels — now in excess of 95 per cent for young adults aged 15-24 years. However, the FSM falls short of its own domestic target for quality of instruction and learning. Among 8th graders sitting the FSM National Exam during the 2008-2009 school year, only 40 per cent tested at the level of competent (or higher) in reading and 37 per cent tested as competent (or higher) in literature. Prior year standardized test found even worse results for math (16 per cent competent) and natural science (6 per cent competent).

140. Gender measures women's progress toward equality in the areas of education, employment and politics. The ratio of girls to boys at the various levels of schooling indicates that FSM women have generally achieved equality in education evidenced by ratios of girls to boys in:

- Primary school, 0.96;
- Secondary school, 1.02;
- College of Micronesia-Federated States of Micronesia, 1.14.

### **Children with Disabilities**

141. According to the FSM Disability Policy 2009-2016, Disability is defined as “a physical or psychological impairment that limits or deprives interaction with society, peers and family and often results from social, cultural, physical and economic barriers that have developed in society.”

142. Each state government has its own program for children with disabilities, although the children are only taken care of until the age of 21. Then they are on their own.

### Education and Pregnancy

143. Although pregnant girls are not expelled from school, there are no specialized health facilities on public school campuses to assist a pregnant girl therefore this itself forces a pregnant girl to leave school. Students, however, are exposed to education and awareness campaigns done by State Public Health Departments on teenage pregnancy and birth control contraceptives. Sometimes, the young teenage girls are escorted by their mothers into the Public Health clinic to be advised and given birth control contraceptives.

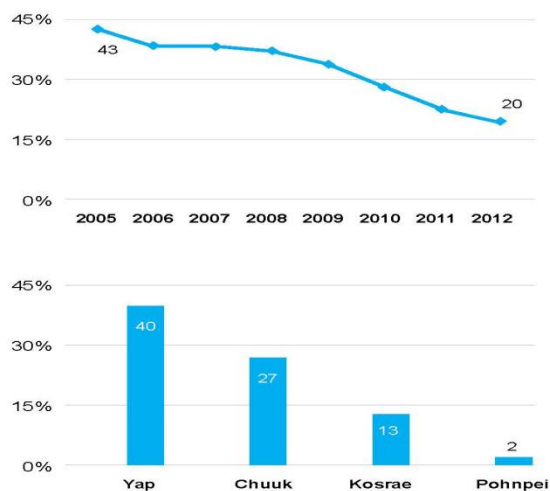
144. The FSM Youth Program coordinates the Abstinence Program for Youth in the states as well as the Personal Responsibility Education Program (PREP) that look out for the youth's best interest and health.

145. At the College of Micronesia-FSM (two year post-secondary), there is a staff nurse and a small clinic to provide health services and health needs to students, including pregnant girls, but counselling services are non-existent.

### Education Staff Levels

146. The Education departments in all the states are staffed primarily by women as classroom teachers.<sup>16</sup> There are more male school principals than females in the FSM. There are numerous Staff Development training and workshops available for teachers and educators to retrain and refresh their skills. There is also a program available for teachers who never had a chance to finish college to go back to school and earn a certificate or degree. The question, however, remains: who among the teachers and what subject/course they teach should be prioritized to receive scholarship or aid from the Government to further their education? It is because of lack of credentials that teachers are deemed as unqualified.

**FSM has made strong progress in addressing the lack of qualified teachers; though Yap and Chuuk still have critical shortages**  
Percentage of teachers who do not have a postsecondary degree by year and by State, 2012



Source: FSM JEMCO Education Indicators Reports, 2005-2012

<sup>16</sup> Management roles include head teachers in the primary school education level and vice principals and principals in the secondary education level.

## Article 11: Employment

### Legal Context

147. The various pieces of legislation which cover employment in the Federated States of Micronesia do not provide sanctions for discrimination on the grounds of sex, marital status, pregnancy, sexual orientation and HIV status. The legislation provides some degree of special measures for the advancement of women in employment but only for those in the public service and therefore do not provide special measures for non-public employees.<sup>17</sup> Employment protection legislation is very limited.

148. The equality between male and female employees is dependent on what type of work is being performed. There are no provisions for the protection of domestic workers, which are primarily women who are FSM citizens.<sup>18</sup>

149. There are no anti-discrimination laws in the FSM under the employment legislation.

- 52 FSM Code, s 116. No employee in the public service shall be suspended, demoted, dismissed, laid off, or otherwise discriminated against because of sex, marital status, race, religious or political preference, place of origin, or ancestry.
- 18 Kosrae State Code, s.18.106. No employee in the public service shall be suspended, demoted, dismissed, laid off, or otherwise discriminated against because of sex, marital status, race, religious or political preference, place of origin, or ancestry.
- 9 Pohnpei State Code, s 2-106(2). No employee in the public service systems shall be suspended, demoted, dismissed, laid off, retired early, or otherwise discriminated against because of sex, race, religion, age, political affiliation, ancestry, family or place of origin.
- 9 Chuuk State Code, s. 1013. (2). No employee in the Public Service shall be suspended, demoted, dismissed, laid off, retired or otherwise discriminated against because of sex, marital status, race, religious or political affiliation, place of origin, or ancestry.
- 8 Yap State Code, s.123(b). No employee in the Public Service shall be suspended, demoted, dismissed, laid off, or otherwise discriminated against because of sex, race, religion, language, ancestry, social status, or place of origin.

150. The special measures for women are limited only to those who work in the public service and do not include domestic workers and those in private employment.

- 52 FSM Code, s.113.(1). The State Public Service System shall provide equal opportunity for all regardless of sex, race, religion, language, ancestry, social status, or place of origin.

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<sup>17</sup> 52 FSM Code, s.113 (1). The State Public Service System shall provide equal opportunity for all regardless of sex, race, religion, language, ancestry, social status, or place of origin.

<sup>18</sup> Labor law prohibits the importation of domestic workers from outside the FSM.

- 18 Kosrae State Code, s 18.103. (1)The State Public Service System shall provide equal opportunity for all regardless of sex, race, religion, political affiliation, ancestry or place of origin.
- 9 Pohnpei State Code, s 2-104(1). The Pohnpei Public Service System shall provide equal opportunity for all regardless of sex, race, age, religion, political affiliation, ancestry, family or place of origin.
- 9 Chuuk State Code, s 1011. The State Public Service System shall be administered in accordance with the merit principles of (1) Equal opportunity for all regardless of sex.
- 8 Yap State Code, s.121(a). The State Public Service System shall provide equal opportunity for all regardless of sex, race, religion, language, ancestry, social status, or place of origin.

151. The legislation in all the states and FSM Government do not guarantee women equal conditions of work including leave, superannuation and worker's compensation.

- 52 FSM Code, s.403 Employees Health Insurance Plan (1). All full-time employees of the National Government of the FSM may participate in the plan.
- 53 FSM Code, Federated States of Micronesia Social Security Acts:<sup>19</sup>
- s.603(8). Employment means any service by an employee for an employer incorporated or doing business within the FSM irrespective of where such employment is performed, except family employment.
- s.603(9). Family employment means employment of a worker by a member of the household, a parent or a son or daughter.
- Kosrae State — no similar provision.
- 19 Pohnpei State Code, s.3-103(4)(a). Employee excludes an immediate family member employed by the employer and therefore such persons are not provided with minimum wage, maximum hours and wage discrimination protection. 17 Pohnpei State Code
  - s 4-104(4). Employee must work more than 20 hours per week to receive benefits under the health care plan.
  - s 4-104(4). Dependent includes spouse but not de facto.
- Chuuk State — None
- Yap State — None

152. In all the governments, there is no legislation against sexual harassment and therefore sexual harassment has not been defined in the employment laws.

153. For equal pay provisions, only Pohnpei State has legislation providing for equal pay while other States are silent on this.

154. 19 Pohnpei State Code, s.3-106. No employer shall discriminate in any way in the payment of wages between the sexes.

<sup>19</sup> Prohibits a widow from gaining full time employment if she is receiving benefits.

155. Although some states have attempted to provide for an equal retirement age, retirement is dependent upon the mandatory retirement age in the FSM Social Security Act. Only Chuuk and Pohnpei have legislated on this.

- 9 Pohnpei State Code, s.2-107(1). Any employee of the public service, upon reaching the age of 60 years, must retire from public service in the calendar year during his or her attainment of 60 years.
- 9 Chuuk State Code, s.1202(1). Any employee of the Chuuk State Public Service System, upon reaching the age of 60 years, shall retire from the Public Service.

156. In the FSM, there are no legal restrictions on a woman's choice of employment, and women may choose freely where they wish to be employed as long as they possess the requisite qualifications.

157. In all the employment laws, there are no health protections for women during pregnancy, and paid maternity leave duration is less than 6 weeks.<sup>20</sup> There is no legislation to guarantee the provision of childcare by employer or the state.

### **Application**

158. The number of women in the labour force nearly doubled between 1994 and 2000 although most of the increase occurred in the subsistence (fisheries-agriculture) sector. The 2000 FSM Census showed that for every two men working in a wage-salary job, there was only one woman. This supports the assertion made by women that despite anti-discrimination provisions in the National Constitution and the law, women face many obstacles to entering and advancing in the labour market.

159. Moreover, FSM women have not yet achieved equal pay for equal work. On average for every \$1 earned by men, women earn \$0.87. The differential is evident in both public and private sectors.

160. The FSM Strategic Development Plan (SDP) notes that “persistent cultural and traditional values and practices hinder women's active participation in power and decision-making processes and structures.” Women have not yet broken through barriers that keep them out of elected office. To date, no woman has ever been elected into the FSM National Congress nor to state legislatures in Kosrae and Yap.

161. According to UNDP, the FSM is one of only three countries worldwide with the dubious distinction of having never elected a woman into the national congress (UNDP, 2010). The slow progress in the political arena has resulted in a serious move to create reserve seats for women in the National Congress.

### **Maternity Leave**

162. FSM National Government employees are entitled to 6 weeks paid maternity leave. (P.L. 16-15) (verify with Personnel: paid vs. unpaid maternity leave)

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<sup>20</sup> In Yap, Kosrae, Chuuk and the national government, there is maternity leave provision of not more than 6 weeks. In Pohnpei State, there is no provision for maternity leave and sick leave is used in lieu of maternity leave.

### **Women in the Public Service**

163. While participation in the labour force has increased especially in the public sector employment, there are still significant gender gaps in participation rates, occupational levels and wages.

### **Constraints to participation in formal employment**

164. In earlier decades, women were constrained from formal employment due to various factors. Unequal sharing of household responsibilities meant that women spend most of their time in the home and were restricted from performing economic activities.<sup>21</sup> Currently, women are employed outside of the home and have extra roles to play at home as well as in the community. They earn income and contribute to the family's wellbeing.

### **Policy**

165. There are no known policies or measures that have been instituted in the public service to increase employment opportunities for women in the public service and in particular in senior management positions. The FSM National Government is an equal opportunity provider and men and women can both apply to a similar job opening.

166. At the national level, a woman was appointed FSM Permanent Representative to the United Nations in 2011, and three others were appointed to head the Office of Statistics, Budget, Overseas Development Assistance and Compact Implementation (SBOC), the Department of Justice and the Department of Health and Social Affairs.<sup>22</sup>

167. There is no work and safety legislation across the country. The FSM National Government needs to establish minimum standards for health and safety legislation so that each state may legislate according to its own circumstances. What is being used now at the work and school places are guidelines set up by each establishment, but there is no uniform policy across the board.

## **Article 12: Equality in Access to Health Care**

### **Legal Context**

168. There are no safe and legal abortion facilities in the country despite the absence of legislation criminalizing abortion in the country. The constitutions do require the governments to promote health.

- FSM Cons., IX s 2. Congress has the power to promote health by setting minimum standards.
- Kosrae Cons., Article XII, s. 1. The State Government shall promote health.
- Pohnpei Cons., Article 7, s. 4(1). The government of Pohnpei shall provide health care services for the public.

<sup>21</sup> This is also a part of the stereotype where women have the bulk of domestic roles.

<sup>22</sup> Ambassador Jane Chigiyal at the United Nations, Evelyn Adolph for SBOC, April Skilling for Justice Department and Dr. Vita Skilling for Department of Health and Social Affairs.

- Chuuk Cons., Article X, s 6. The State Government shall provide for the protection and promotion of health, and shall ensure, within the limits of its resources, that no person is discriminated against in the distribution of medical care, or is refused medical care because of that person's inability to pay.
  - 12 Chuuk State Code, s. 2068(1). Abortion means the intentional or knowing destruction of the life of an unborn child, or the intentional or knowing expulsion or removal of an unborn child from the womb of the mother other than for the purpose of producing a live birth, or removing a dead foetus, or to save the life of the mother.
  - s.2068(2). It is unlawful for a person (medical doctor, the mother herself, or an individual person) to perform, or cause to perform an abortion — 9 years imprisonment.<sup>23</sup>
- Yap Cons., Article XI, s 1. The State Government shall provide for the protection and promotion of the public health.

### **Application**

#### **Access to Health Services**

169. Although there is a constitutional guarantee that no person shall be discriminated against in the distribution of medical care, abortion is a criminal offense. This denies women access to safe medical facilities for the purposes of abortion unless it is to save the life of the mother and there is therefore no compliance with the indicator.

170. The location of the main hospital in town in each state also makes it a challenge for many women in the rural areas to get to the hospital due to transportation difficulties. However, there are health dispensaries in the communities that are attended by Health Assistants. During outreach and funding avails, physicians and nurses accompany visiting Health Program teams.

#### **Women with Disability**

171. There are no laws in place that mandate building codes to ensure public places are accessible to women with disability. Many government places such as the hospitals and workplaces are not fully accessible to women and families with disability. There is ongoing consultation by the National Government with the States in seeking support for the ratification of the Convention of the Rights of People with Disabilities so that changes may take place for the betterment of the FSM people in the near future.

#### **Sexually Transmitted Infections and HIV and AIDS**

172. Pohnpei State enacted an HIV law in 2008. The other states have not passed similar legislation. However, there are no laws which criminalize having HIV.

173. In 2007, the FSM Government introduced a bill to criminalize the intentional transmission of HIV but it never garnered the necessary support and did not make it into law.

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<sup>23</sup> Only Chuuk State has criminalized abortion in the country.



174. HIV screening and testing is free to the public and is administered at Public Health Departments in all the four states.

### **Family Planning**

175. In 2013, there were 8,953 women Family Planning users in the FSM, and the number will continue to rise as education and awareness increase.

176. The women groups within the four states advocate for safe family planning and other health issues through awareness activities that take place all year long.

177. Family Planning services and methods are free to the public at the Public Health facilities in all four states.

### **Reproductive Health**

178. The FSM's network of state-based family planning clinics and Community Health Centres, serving publicly-funded family planning clients, along with a few private providers, are the foundation for providing high quality reproductive health services to the nation's population, particularly women of child-bearing age. By providing contraceptive and family planning services and information, the Government saves significant costs that would have been incurred from medical care and social services for high risk and unintended pregnancies.

### **Demographic indicators**

#### **Chuuk**

179. There are 10,806, (22 per cent of the female population) women of child-bearing ages between 15-44 years that live in the state.

#### **Kosrae**

180. Of the total Kosrae population of 6,616 residents, women of Kosrae ages 15-44 years comprise 20.6 per cent of the total female population.

#### **Pohnpei**

181. The population of Pohnpei is 35,981 residents. There are 8,250 women of child-bearing age between 15-44 years comprising 46.4 per cent of the female population.

#### **Yap**

182. There are 2,545 women between 15-44 years, which is 44 per cent of the total female population.

183. Women experience high rates of maternal morbidity and mortality as a result of teenage pregnancies, high parity, poor birth spacing (less than 24 months between pregnancies), child bearing complications, malnutrition, poor or non-existent prenatal care and late entry of expectant mothers into the health care system. These problems are exacerbated by rapid population growth, overcrowding, social and family problems but can be eliminated by effective use of family planning.

**Infant Mortality Rate**

184. The infant mortality rate of FSM was reported as 10.2 per 1000 live births in 2010. These are primarily hospital reported deaths as infant deaths in the outer islands in the dispensaries may not be included. Hospital reported infant deaths were primarily neonatal deaths due to prematurity and congenital anomalies. This is a significant decrease from the infant mortality rate of 19 in 2004 and 17 in 2008. In 2010, the highest infant mortality rates were recorded in Chuuk, followed by Kosrae, then Yap then Pohnpei. Neonatal mortality increased in 2010 at the rate of 11/1000 as compared to 9.3/1000 in 2009.

**Mental Health**

185. The FSM Behavioural Health and Wellness Program administers funding to the mental health programs in the states which provide treatment and preventive services. All these services are provided free to substance abuse and mental health clients.

**Obstacles to Health Care**

186. Health services on outer islands and rural areas are often difficult to provide due to the following factors:

- The remote and widely dispersed geographical nature of the country;
- Lack of needed trained personnel;
- Poor transport and communication facilities;
- Limited financial resources; and
- Lack of available information.

**Article 13: Economic and Social Life****Legal Context**

187. Women have equal right to family benefits regardless of marital status. Social Security benefits are provided through the national Social Security System,<sup>24</sup> and s.301 of the FSM Social Security Act provides eligibility to all employees who work and pay into the system.

**Women and the Economy**

188. Economic vulnerability of women is sometimes worsened by the fact that more than half of the women in the country who work as domestic help do not pay into the Social Security System because they do not make as much earnings in order to report as tax obligations.

189. Women's domestic work is not reported as part of national GDP assessment and therefore their contributions to overall economic development are under reported.

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<sup>24</sup> FSM Social Security Administration, through Title 53 of the FSM Code.

### **Women and Land**

190. In the FSM, there are both patrilineal and matrilineal societies. In matrilineal societies such as in Chuuk, Pohnpei and Kosrae, women inherit customary land and contribute to decision-making over land management even though the lands are taken care of by their male relatives. In patrilineal societies, the decisions over land are made by men and can be transferred to whomever they wish to give the land.

191. This has started to change over the years as families become more nuclear in size and both husband and wife work in the formal sector. Decisions over land ownership and right to land ownership are gender neutral now.

### **Access to Credit**

192. There are no legal impediments for women to receive a loan, but given that most loan applications require collateral, women are highly discouraged by this factor because of their uncertainty as to what constitutes adequate collateral. Women who want to start up a small business may not be able to access credit due to absence of adequate security or collateral. However, there are women who have started their own small loan stores or fast-cash businesses so that other women could borrow money from them and pay back at minimum rates.

### **Women in Business**

193. In 2013, some women business owners in Chuuk State and Pohnpei State mobilized and formed the Women in Business Network (WIBN). Kosrae State and Yap State have been invited to join the network. There are women members of the States' Chambers of Commerce.

194. Although the number of women business owners has increased nationally, businesses are still referred to as "their" business and not just hers alone, due to the male dominant culture and the stereotype that women are considered to have primarily domestic and productive roles while men have responsibilities outside the home. There is no law that specifically prohibits the registration or establishment of a business to one specific gender.

## **Article 14: Rural Women**

### **Legal Context**

195. There is no legislation that provides for special measures to advance substantive equality for rural women. This is despite the fact that the majority of the population lives in rural areas and outlying islands.

### **Women in rural areas**

196. Many women live in rural areas and it is crucial that the FSM incorporates special measures into either the national constitution or legislation to advance substantive equality.<sup>25</sup>

<sup>25</sup> The same can be said for the four state governments.

**Access to Health Care**

This is where many women face hardships because some of the dispensaries in the outer islands are poorly equipped with medicine and staff. In a case in Chuuk for example, a dispensary is an extension of a private home, and given the sensitivities surrounding women's health issues, it is not often easy for a woman to visit the dispensary at a private home.<sup>26</sup> It becomes more challenging when a woman needs medical attention after hours and cannot visit the dispensary because it is part of a private home and the family members have returned for the day to rest.<sup>27</sup> Physical exams are not available at the dispensaries in the outer islands.

197. In Yap, first time mothers living in the outer islands are always med-evacuated to the main hospital to ensure, in the event complications are encountered during childbirth, that the medical staff and facility are readily available to the new mother.

198. Health system factors include a lack of available financial resources at the state level for more health care providers, for building improvements to support private clinics and for family planning activities. Limited hours of services, provider attitudes and insufficient supervision and training of outer island health assistants are also barriers.

199. Client related barriers include personal and cultural fear of side effects and health care providers, concerns about confidentiality, inability of schooling girls and working women to attend clinic during the regular 8-5.00 p.m. hours of operation and limited resources for transportation.

200. Cultural attitudes by both providers and clients are barriers to seeking family planning services. In small societies where everyone is either related or know each other, female clients are reluctant to seek advice from their older or male relatives. In some states, health assistants, especially male health assistants, are reluctant to provide a broad choice of contraceptives to women and provide mainly condoms to males.

201. Many FSM teenagers encounter significant barriers to accessing family planning services in all four states. There are concerns about confidentiality and disclosure, lack of affordability to access care and societal attitudes towards teenage premarital sex. Often public health clinics are not private enough to safeguard the privacy and anonymity of the teenage client and teens are concerned about being seen seeking family planning information, counselling and services.

**Access to Education**

202. In the rural areas on the main islands, education is available to primary and secondary level students. Post-secondary (college) is also available. In the outer islands, there are school buildings but teachers, students and textbook and other school supplies are limited.

203. There is no prohibition on girls attending school, but because there are extreme living conditions and food scarcity, girls are often tasked to go to the taro patches and gather food. Sometimes this is done during school hours.

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<sup>26</sup> Women in Micronesia are extremely conscious about their bodies so it is a sensitive issue to visit a private home to seek medical attention.

<sup>27</sup> A Chuukese woman said she could never visit a dispensary in the outer islands for physical check-up.

204. In Chuuk, there are no school facilities on some of the islands and students have to commute by boat to get to the neighbouring school.

#### **Access to Justice**

205. There are municipal courts in the rural areas but the staff and presiding justices are often non lawyers and they do not have access to legal resources, so often decisions are made through customary reconciliation processes.

206. Law enforcement officers also have limited capacity to apprehend and incarcerate offenders, so most of them walk the streets freely.<sup>28</sup>

#### **Civil Society, Churches and non-governmental organizations**

207. Churches are the most dominant force in the outer islands. There is very little movement on the formation of non-governmental organizations, and civil society work is non-existent. However, some civil society organizations on the main islands do extend advocacy work for the outer islands, especially on environment and food security issues.

#### **Access to Banking Services**

208. There are no banks in the outer islands at all.

#### **Infrastructure**

209. Communication infrastructure is limited to CB radios on most of the outer islands. There has been extensive ongoing work by FSM Telecom to install internet dishes to enable the residents of the outer islands to access the internet.

210. The Secretariat of the Pacific Community is also undertaking energy projects to install solar power systems.

### **Article 15: Equality before the law and in civil matters**

#### **Legal Context**

211. FSM Cons., Article IV. 3, 4. A person may not be denied the equal protection of the law on account of sex.

- FSM Code 1997 [Title 1. Cap 1] s 107. A person may not be denied the equal protection of the law on account of sex.
  - Equal protection of the law requires that both females and males are treated equally before the law.
- Chuuk Const., Article III, s 2. No person may be denied equal protection under the law.
- Kosrae Cons., Article II, s 4. No person shall be denied the equal protection of the laws on the ground of sex.

<sup>28</sup> A recent incident occurred on one of the outer islands of Pohnpei involving sexual assault of a young girl. Customary apology was made and the offender was jailed for a couple days and released. A few months later, he did the same thing to another young girl. The offender is still living on that island, without any limited liberty.

- Pohnpei Cons., Article 4, s 3. No person shall be denied the equal protection of the law.
- There is no similar provision in the Yap constitution.

212. A guarantee of equal protection of the law also constitutes a guarantee of equality before the law. However, due to cultural manifestations, women are treated differently than men because our cultural norms dictate that men are to be treated as the dominant sex, so naturally they are given leadership roles.

213. There are no legal barriers to a woman's right to sue, and women have an equal right to participate in courts and tribunals at all levels, conclude contracts and administer property, function as executors and administrators of estates, and choose their residence and domiciliary.

214. There is no legislation that nullifies all contracts and instruments that limit women's legal capacity as required by the Convention and therefore no prohibition on discriminatory contracts.

#### **Women in the Law**

215. There is no specific association for women lawyers although they are members of the FSM Lawyer Association. Altogether there are less than 10 female lawyers (formally trained) and less than 10 female trial counsellors as well. Many of the female lawyers practicing before the courts are expatriate attorneys on short term contracts with the Government.

216. Although women are entitled to serve as members of the judiciary, only one woman is currently serving as an Associate Justice<sup>29</sup> at the National Supreme Court, another one serving as an Associate Justice<sup>30</sup> at the State Court in Pohnpei, and another woman serving as the Chief Justice<sup>31</sup> at the municipal level in Pohnpei. There are no other female justices in the entire country.

#### **Access to Legal Services and Information**

217. Women have access to legal services. The Micronesian Legal Services Corporation (MLSC) provides free legal advice to clients on a variety of legal issues. However, the service is also available to male clients and when a male client is suing on a domestic dispute for example, the service is not available to the spouse and she must seek legal advice elsewhere. Most of the time, it is the woman who cannot afford the private legal service as she does not have regular income to pay for the service.

218. The FSM Office of the Public Defender also provides free legal service for criminal matters. This service is available to all regardless of sex or status.

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<sup>29</sup> Justice Beaulen Carl-Worswick.

<sup>30</sup> Justice Maycleen David Anson.

<sup>31</sup> Chief Justice Antonia Amor of Uh Municipal Court in Pohnpei.

## Article 16: Equality in Marriage and Family Life

### Legal Context

219. The FSM Government does not have jurisdiction to regulate personal and family law. However, the FSM Court has concurrent jurisdiction to hear disputes based on the diversity jurisdiction provided in the constitution.<sup>32</sup> The FSM Court will apply state law depending on the venue of the court.

220. 23 Chuuk State Code, s. 1042. Marriage contracts between parties, both of whom are citizens of the FSM solemnized in accordance with recognized custom shall be valid.<sup>33</sup>

- s. 1021(1). In order to make valid the marriage contract between two non-citizens or between a non-citizen and a citizen of the FSM the male at the time of contracting the marriage be at least 18 years of age and the female at least 16 years of age.
- s. 1024. Marriage contracts between parties, both of whom are citizens of the Federated States of Micronesia solemnized in accordance with recognized custom, shall be valid.
- s. 1025 (1)(2). It shall be the duty of every person authorized to perform marriages to send a copy of the marriage certificate, not later than ten days after the granting of the same, to the Clerk of Courts to be recorded in the marriage register.
- s. 1024. Marriage contracts between parties, both of whom are citizens of the persons married, their ages and the date of marriage, shall be sent to the Clerk of Courts, who shall record the same in the marriage register.
- s. 1021(1). If the female is less than 18 years of age she must have the consent of at least one of her parents or her guardian.
- Chuuk Cons., Article III, s 4. Traditional rights over all reefs, tidelands, and other submerged lands, including their water columns, and successors' rights are recognized. The legislature may regulate their reasonable use.
- 23 Chuuk State Code. While an action for annulment or divorce is pending, the court may make temporary orders for custody of minor children for their support, for support of either party as it deems justice and the best interests of all concerned may require covering any of these matters pending final decree.
  - s. 1081(1)-(9). Divorce granted for adultery, cruel treatment, neglect or personal indignity, wilful desertion for one year, habitual intemperance, imprisonment for three years, insanity for three years or more, leprosy, the separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent, wilful neglect by a husband to provide suitable support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation.

<sup>32</sup> FSM Cons., Art. XI(b) The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction in cases arising under this Constitution; national law or treaties; and in disputes between a state and a citizen of another state, between citizens of different states, and between a state or a citizen thereof, and a foreign state, citizen, or subject.

<sup>33</sup> Customary marriages may include arranged marriages without full and free consent.

- s. 1083. No divorce if the injured party has forgiven the ground for the divorce. Proof of forgiveness may be by an express showing or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights. Forgiveness implies a condition that the forgiven party treat the forgiving party with conjugal kindness. If the forgiven party commits an act constituting a similar ground for divorce or is guilty of conjugal unkindness sufficiently habitual and gross to show that he has not accepted or fulfilled the conditions of forgiveness in good faith, revocation of forgiveness and revival of the ground for divorce results.
- s. 1084. The Court may not issue a decree of divorce for adultery when the adultery is with the procurement or connivance of the plaintiff.
- s. 1042. In granting or denying an annulment or a divorce, the court may make such orders for the disposition of either or both parties' interest in any property in which both have interests, as it deems justice and the best interests of all concerned may require.
- s. 1402(1). Any suitable person who is not married, or is married to the father or mother of a child, or a husband and wife jointly may by decree of court adopt a child not theirs by birth, and the decree may provide for change of the name of the child.

- 23 Chuuk State Code, s.1003. Does not apply to any adoption effected in accordance with local custom.

221. 16 Kosrae State Code, s.16.101.(1) A marriage performed in the State is valid, if: (a). The male at the time of marriage is at least 18 years of age and the female at least 16 years of age.

- s.16.103. A person makes and preserves a record of each marriage performed by him, and within ten days after the marriage he sends a copy of the marriage certificate to the Division of Planning and Statistics.
- s.16.101 (1) A marriage performed in the State is valid, if (b) Neither party has a lawful living spouse.
- s 16.101(1)(a). If the female is less than 18 years of age, the marriage must have the consent of at least one of the female's parents or her guardian.
- 6 Kosrae Code s.6.3202. While an action for annulment or divorce is pending, the Court may make a temporary order for custody of a minor child, for its support, for support of a party, as it finds justice and the best interests of all concerned may require.
  - s 6.3207(1)-(9).Divorce granted for adultery, cruel treatment, neglect or personal indignity, wilful desertion for one year, habitual intemperance, imprisonment for three years, insanity for three years or more, leprosy, the separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent, wilful neglect by a husband to provide suitable support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation.
  - s 6.3209. The Court does not issue a decree of divorce if the injured party has forgiven the ground for the divorce. Proof of forgiveness may



be by an express showing or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights. Forgiveness implies a condition that the forgiven party treat the forgiving party with conjugal kindness. If the forgiven party commits an act constituting a similar ground for divorce or is guilty of conjugal unkindness sufficiently habitual and gross to show that he has not accepted or fulfilled the conditions of forgiveness in good faith, revocation of forgiveness and revival of the ground for divorce results.

- s 6.3210. The Court may not issue a decree of divorce for adultery when the adultery is with the procurement or connivance of the plaintiff.
- s 6.3102. The Court may grant adoption of a child to a suitable unmarried person, a person who is married to the father or mother of the child, or a husband and wife jointly. The decree may provide for a change of the child's name.
- s 6.3106. Except as otherwise provided herein, this chapter does not place a restriction or limitation on an adoption occurring by tradition.
- s 6.3703(1). The father and mother of an incapacitated person are jointly and severally the natural guardians of his person and property. If either parent dies or abandons the family or is incapable for any reason to act as guardian, the guardianship is transferred upon the other parent. When the parents live apart, the court may award guardianship to either of them, having special regard to the interests of the incapacitated person.
- Intestate succession is determined by customary law. Although Kosrae has a matrilineal system which means that land rights are acquired through women, the failure to incorporate equal right into the legislation leaves women vulnerable to change in customary law.

222. 51 Pohnpei Code s 2.101.(1) A marriage performed in the State between two non-citizens or a non-citizen and a citizen is valid, if the male at the time of marriage is at least 18 years of age and the female at least 16 years of age.

- s 2.105. Marriage between two citizens in accordance with recognized custom is valid.
- s2.105. A marriage certificate must be sent within ten days after the marriage (including customary marriages) to the Clerk of the Pohnpei Supreme Court to be recorded in the marriage register.
- s 2.101(2). A marriage performed in Pohnpei is valid if neither party has a lawful living spouse.
- 61 Pohnpei Code, s.7-101. Bigamy a criminal offence — 3 years imprisonment.
- 51 Pohnpei Code s. 2-101(1). If the female is less than eighteen years of age, the marriage must have the consent of at least one of her parents or her guardian.
  - s 3.102. While an action for annulment or divorce is pending, the Court may make a temporary order for custody of a minor child, for its support, for support of a party, as it finds justice and the best interests of all concerned may require.

- 3.107(1)-(9). Divorce granted for adultery, cruel treatment, neglect or personal indignity, wilful desertion for one year, habitual intemperance, imprisonment for three years, insanity for three years or more, leprosy, the separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent, wilful neglect by a husband to provide suitable support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation.
- s 3.109. The Court does not issue a decree of divorce if the injured party has forgiven the ground for the divorce. Proof of forgiveness may be by an express showing or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights. Forgiveness implies a condition that the forgiven party treats the forgiving party with conjugal kindness.
- s 6.3210. The Court may not issue a decree of divorce for adultery when the adultery is with the procurement or connivance of the plaintiff.
- s 1.105. Customary divorce is exempt from the above provisions.
- s 3.102. In granting or denying a decree of an annulment or a divorce, the Court may make an order for the disposition of property in which both parties have an interest, as it finds justice and the best interests of all concerned may require.
- 3.102. In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of a minor as it finds justice and the best interests of all concerned may require.
- s 3.102. In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of a party, as it finds justice and the best interests of all concerned may require.
- s 3.102. In granting or denying a decree of an annulment or a divorce, the Court may make an order for custody of a minor child as it finds justice and the best interests of all concerned may require.
- s 6.3102. The Court may grant adoption of a child to a suitable unmarried person, a person who is married to the father or mother of the child, or a husband and wife jointly. The decree may provide for a change of the child's name.
- s 1.105. Customary adoption is exempt from the above provisions.

223. Yap State has not legislated in the area of marriage so there is no legislation that guarantees entry into marriage with full and free consent. There is no legislation that allows marriages to be nullified if they took place under force, duress or undue influence. There is no minimum age for marriage and therefore no prohibition on child marriage. Registration of marriage in official registry is not legally required and bigamy is not an offense.<sup>34</sup>

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<sup>34</sup> Yap State applies the FSM Family law.

- Yap Cons., Article XIII, s 3. Title to land may be acquired only in a manner consistent with traditions and customs.<sup>35</sup>
- 16 FSM Code, s.1622. While an action for annulment or divorce is pending, the court may make temporary orders for custody of minor children for their support, for support of either party as it deems justice and the best interests of all concerned may require covering any of these matters pending final decree.
- s 1614. Nothing contained in this chapter shall apply to any divorce effected in accordance with local custom.
- s 1626. (1)-(9). Divorce granted for adultery, cruel treatment, neglect or personal indignity, wilful desertion for one year, habitual intemperance, imprisonment for three years, insanity for three years or more, leprosy, the separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent, wilful neglect by a husband to provide suitable support for his wife when able to do so or when failure to do so is because of his idleness, profligacy or dissipation.
- s 1628. The Court does not issue a decree of divorce if the injured party has forgiven the ground for the divorce. Proof of forgiveness may be by an express showing or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights. Forgiveness implies a condition that the forgiven party treats the forgiving party with conjugal kindness. If the forgiven party commits an act constituting a similar ground for divorce or is guilty of conjugal unkindness sufficiently habitual and gross to show that he has not accepted or fulfilled the conditions of forgiveness in good faith, revocation of forgiveness and revival of the ground for divorce results.
- s 1629. The Court may not issue a decree of divorce for adultery when the adultery is with the procurement or connivance of the plaintiff.
- s 1614. Nothing contained in this chapter shall apply to any divorce affected in accordance with local custom.
- s 1622. In granting or denying a decree of an annulment or a divorce, the Court may make an order for support of a minor as it finds justice and the best interests of all concerned may require.
- s 1632. Any suitable person who is not married, or is married to the father or mother of a child, or a husband and wife jointly may by decree of court adopt a child not theirs by birth, and the decree may provide for change of the name of the child.

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<sup>35</sup> The legislation does not guarantee equality to both spouses in the ownership, acquisition, management, administration, enjoyment and disposition of property. Land tenure in Yap is instead based on custom. However, since it is a matrilineal inheritance system women may not be disadvantaged in relation to the acquisition of land. [FROM CLEMENT: As I note in a previous comment, Yap Proper has a patrilineal land inheritance system.] However, the control and use of land and other resources often fall on Yap men, who are looked upon to provide for and to protect their families. Further, the failure to guarantee equality in the legislation leaves women vulnerable to changes in custom and therefore there is not consistent with the Convention's requirements.

- s 1634 (1). No adoption shall be granted under this subchapter without the child proposed for adoption appearing before the court, and the adoption shall be granted only if the court is satisfied that the interests of the child will be promoted thereby.
- s 1614. Nothing contained in this chapter shall apply to any adoption effected in accordance with local custom.<sup>36</sup>

224. Yap has not legislated in the area of inheritance leaving it to be determined by custom. Although Yap has a matrilineal system which means that land rights are acquired through women, the failure to incorporate equal rights into the legislation leaves women vulnerable to change in customary practices. Compliance with this article therefore requires the introduction of legislation providing equal inheritance rights for men and women.

#### **Application of the law**

225. The exemption of registration of marriages in some states reduces the utility of registration in preventing bigamy and child marriage given that these are more likely to occur in customary law.

226. The legislation does not provide a right to damages for adultery and therefore is in full compliance with the indicator and with the Convention. Damages for adultery are discriminatory as they seek to punish the sexual behaviour of consenting adults and interfere with their autonomy.

227. In Chuuk, there is no provision that states that marriages cannot take place under duress, force or coercion.

228. Age of marriage is not equal in Chuuk. The age of marriage for females is 16 below the Convention's recommended age of 18.

229. The legislation does not guarantee equality to both spouses in the ownership, acquisition, management, administration, enjoyment and disposition of property. Although land tenure is based on a matrilineal inheritance system women are not fully equal in the ownership, acquisition, management, administration, enjoyment and disposition of property. The control and use of land and other resources often falls on Chuukese men, who are looked upon to provide for and to protect their families. Further, the failure to guarantee equality in the legislation leaves women vulnerable to changes in custom and therefore there is no compliance with this indicator.

230. Child support and maintenance suits in all the states are almost always difficult to pursue due to lack of confidence and social support services for women. Assessment is not based on criteria such as respective earning capacity and means, needs of both parties and other commitments. The absence of such criteria to guide judicial discretion leaves women without a guarantee of maintenance based on need. Pohnpei has had some successful cases of mothers winning child support.

231. Fault based criteria for divorce disadvantages women who are more likely to be in untenable situations and have difficulty establishing cruelty or adultery.

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<sup>36</sup> Although adoption is equal in the legislation, custom is excluded from these provisions and may discriminate against women.

232. Forgiveness does not take into account the power imbalance between the parties and denies the autonomy of both parties to choose sexual relations without such consequences.

233. The courts in the FSM are always promoting reconciliation between estranged spouses, and such a duty is discriminatory and non-compliant because it removes women's choices or reduces their autonomy to choose to leave a relationship. The legislation does not place a duty on the court to promote reconciliation and there is therefore full compliance with this indicator and with the Convention.

234. The criteria of 'justice and the best interests of all concerned' does not provide sufficient guidance in relation to earning capacity, commitments and needs of the parties. It provides no criteria for the calculation of women's non-financial contributions.

## Summary

235. This report marks a very significant step for the Federated States of Micronesia. The Members of the FSM Congress who encouraged the signing of the Convention in 2004 helped elevate the FSM in the international human rights scene. Their vision for bettering the lives of their countrywomen built the foundation of this report.

236. Numerous times throughout the years, planning for the compilation of this report occurred, but attempts to move forward with it never picked up momentum. All are past experiences and lessons learnt.

237. There are many areas where the lives of women in the FSM are improving and making progress, such as providing input in the work of state and national governments and making their presence known in private sectors as well as local communities. Women are contributing more to their families' wealth, health and safety by promoting and protecting the rights of their daughters, sisters and mothers. They are educating themselves and their families.

238. Many challenges still remain, however, including barriers that slow down the progress of women at work, in school, and at home. Culture will remain an integral part of life in the FSM. Discrimination still exists. Stereotypes will always be parts of life. They are what differentiate one another in the FSM. The women of the FSM need to look beyond these and know how to encourage one another in order to improve each other's lives.

239. The FSM Government recognizes that more work is needed still. Programs need to advance, plans need to be revisited, and policies and laws need to be strengthened. Like many other aspects of life however, change takes time, and some move quicker than others, but with much-needed commitment and support women and their families can live healthier and prosperous lives in the future.

240. \*Non-governmental organization Shadow Report: The Government of the Federated States of Micronesia is grateful to all the non-governmental organization members who contributed their time and ideas to the preparation of this report. The FSM also acknowledges that non-governmental organizations may wish to write a shadow report and encourages them to do so.

241. Special Acknowledgement to the Members of the FSM Congress who ratified the Convention in September of 2004.

**List of Stakeholders Consulted by Contractor:**

- Chuuk Women Council
- Kosrae Women Association
- Pohnpei Women Council
- Yap Women Association
- 4 FSM State Departments of Education
- 4 FSM State Statistics Offices
- 4 FSM State Health Departments
- 4 FSM State Attorney General's Office
- 4 FSM State Courthouses
- UPR Task Force:
- Eleanor S. Mori
- Josephine Joseph
- Alissa Takesy
- Stacy Yleizah
- Reference Page
- MAP OF FSM Source: [www.visit-micronesia.fm](http://www.visit-micronesia.fm)
- [http://en.wikipedia.org/wiki/History\\_of\\_the\\_Federated\\_States\\_of\\_Micronesia](http://en.wikipedia.org/wiki/History_of_the_Federated_States_of_Micronesia)
- <http://www.visit-micronesia.fm/about/index.html>
- <https://www.cia.gov/library/publications/the-world-factbook/geos/fm.html>
- SBOC website: <http://sboc.fm/index.php?id0=Vm0xMFIWbFdTbKpQVmlSU1lrVndVbFpyVWtKUFVUMdk>: An Atlas of Social Indicators, FSM 2005 HIES Household Income Expenditure Survey, FSM 2010 Census.