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Federated States of Micronesia

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I. Methodology and consultation

1. The National Government of the Federated States of Micronesia created a task force and directed the Department of Foreign Affairs to take the lead on preparing a UPR national report for FSM. The UPR Task Force is composed of representatives from the Department of Justice, the Department of Health and Social Affairs, the Department of Education, the Office of National Archives, Cultural and Historic Preservation and the Office of the President, with support from the Office of Statistics, Budget, Overseas Development Assistance and COMPACT Management (SBOC).
2. Essential to the drafting of the report are consultations with the various National Agencies, State Governments, and non-governmental organizations (NGOs) and civic groups in the Nation.
3. The consultation process faced challenges primarily due to severe financial constraints. The geographical configuration of Micronesia is another impediment – as islands in FSM are spread over a vast ocean that makes in-country travel costly and time consuming – resulting in less than ideal opportunities for interactions between Government and its stakeholders.
4. In writing this report, the UPR Task Force considers the legal obligations of FSM under applicable legal instruments, the constitutions of the National and State Governments, prevailing legislations, jurisprudence set by the courts, and administrative policies and directives.

II. Background information

5. FSM is comprised of about 607 islands spread over approximately a million square miles in the Western Pacific Ocean. Its four major island states are known as Chuuk, Pohnpei, Yap and Kosrae. The total land area is 271 square miles, with an additional 2,776 square miles of lagoon area. The islands vary from large, high mountainous islands of volcanic origin to small atolls. FSM asserts sovereign rights over an extended continental shelf.
6. Based on 2000 Census,¹ the total population of FSM is at 107,008, with annual growth rate of about .26 per cent. Chuuk, the largest State, has 50 per cent of the total population, followed by Pohnpei, with 32 per cent, then by Yap with 11 per cent, and by the smallest state of Kosrae with 7 per cent. The population density in FSM is about 395 persons per square mile. Male life expectancy is 66.6 years, while 67.5 years for female population. FSM's population is among the youngest in the Pacific region – more than 50 per cent at ages 0 to 21. Protestant and Roman Catholic are the major religions. English is a commonly-spoken language and used in government proceedings.
7. FSM is a democratic federal State. It has three levels of government, consisting of a national government, state governments, and municipal governments. The National Government has a unicameral legislature (Congress of the Federated States of Micronesia). Congress has 14 members – 4 of whom are elected on the basis of state equality. The remaining members are elected by congressional districts, apportioned among the states on the basis of population. The President and Vice President of FSM are selected by, and among, the members of Congress. Only the 4 at-large members of Congress are eligible to

¹ Census for 2010 is ongoing.

become the President. The Supreme Court of the Federated States of Micronesia consists of a chief justice and not more than five associate justices.

8. Election process in FSM is conducted in accordance with democratic principles. The National Revised Election Act of 2005, codified as title 9 of the FSM Code, requires national elections to be held by secret ballot.

9. The previous national election which was held in March 2009 was generally peaceful, orderly and democratic. Regular polling places were established throughout the four states in FSM, where registered voters had their designated polling places at which to cast vote. Special polling places were established in Guam and in Honolulu, in order to accommodate eligible voters residing in those areas. Voters from other places outside of FSM cast their votes through absentee voting by mail. The conduct of the election process was transparent and was open to international observers. As part of improving the electoral system, FSM undertakes awareness campaigns and activities to promote equal opportunities among genders.

10. FSM became an independent country in 1986, following the termination of the Trusteeship Agreement between the United States and the United Nation Security Council. Upon gaining independence, FSM entered into a Compact of Free Association with the United States which took effect on November 4, 1986, pursuant to which the Government of the United States assumes military defense rights from, and provides financial assistance to, FSM. The original Compact had been in place between 1987 and 2003. Economic provisions of the Compact were amended in December 2003 to remain in effect until 2023.

11. The Constitution of the Federated States of Micronesia is the supreme law of the land. It sets out the powers of the National Government and the powers of the four State Governments. As the Constitution defines, “a national power consists of a power expressly delegated to the national government and a power of such an indisputably national character as to be beyond the power of a state to control. A power not expressly delegated to the national government or prohibited to the states is a state power.”² Among the powers exclusively delegated to the national government are the conduct of foreign affairs, interstate and foreign commerce, immigration, banking, and insurance.

III. Promotion and protection of human rights

A. Civil and constitutional rights

12. Human rights are the rights possessed by all persons to live a life of freedom and dignity. They are universal and inalienable and subject to national legislations.

13. FSM accepted the principles enshrined in the Universal Declaration of Human Rights and conventions to which FSM is a party, as manifested in the various domestic legal instruments, including the national constitution and statutes.

14. The FSM Constitution guarantees freedom of expression, peaceable assembly, association, petition, non-establishment of religion, and free exercise thereof. The Constitution explicitly recognizes the right of the people to education, health care, and legal services. Similar rights guaranteed to individuals are also found in the State constitutions.

15. Capital punishment is prohibited in FSM.

² Sections 1 and 2, article VIII.

16. Under the Judicial Guidance Clause in the FSM Constitution, FSM court decisions must be consistent with the constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. Art. XI Sec. 11, FSM Constitution.

17. The constitutions of the four States uniformly provide a constitutional declaration of rights, including freedom of speech, freedom from deprivation of life, liberty and property without due process, and right against discrimination. Other rights include right against unreasonable searches, seizure and invasion of privacy, and freedom from slavery, involuntary servitude, restriction on movement of residents, and imprisonment for debt.

B. Rights of accused

18. Any person charged of a crime is presumed innocent until proven guilty of a crime beyond a reasonable doubt. A criminal defendant is accorded a right to speedy public trial, to be informed of the nature of the accusation, to have a counsel for his or her defense, to be confronted with and to compel attendance of witnesses. Art. IV Sec. 6, FSM Constitution.

19. A criminal defendant enjoys rights against self-incrimination and against double jeopardy. Excessive bail, excessive fines and cruel and unusual punishment are prohibited.

20. The National Government provides free legal services to criminal defendants, through the Office of the National Public Defender which maintains branches in the four states.

C. Due process

21. FSM Constitution guarantees a right to due process before a person is deprived of life, liberty or property. Prevailing jurisprudence requires both substantive and procedural due process. Substantive due process forbids vague statutes in that persons of common intelligence must necessarily guess at their meaning and differ as to their application. FSM v. Nota, 1 FSM Intrm. 299 (Truk 1983). Procedural due process means a right to be heard, and demands impartiality on the part of adjudicators. Suldan v. FSM (II), 1 FSM Intrm. 299 (Pon. 1983).

22. Due process also requires a prior public posting of proposed implementing regulations, to invite comments from the public before any regulations take effect. FSM Administrative Procedures Act, title 17, FSM Code.

D. Equal protection/Prohibition against discrimination

23. FSM Constitution 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. Art. IV Sec. 4, FSM Constitution. FSM Supreme Court has consistently applied standards of review applicable to government action that poses impact on the non-discrimination provision in the constitution. These standards take into consideration the explicit guarantee of non-discrimination and constitutional safeguard of rights accorded to persons.³

³ The Supreme Court interprets that the constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated, or if the discrimination affects a fundamental right. The law is then subject to a strict scrutiny review, under which it will be upheld only if the government can demonstrate that the classification upon which that law is based bears a close rational relationship to some compelling governmental interest. But if the

E. Access to courts

24. Every person has freedom of access to judicial processes and remedies, for the redress a wrong and for an enforcement of right. Courts currently do not impose a filing fee on any type of cases, except for a bond requirement applicable to certain types of relief, for example, application for a temporary injunction.

25. Before being filed with the court, criminal matters are processed and investigated by the law enforcement agencies both at the National and State governments, subject to delineation of authority between the two levels of government as provided in the FSM Constitution.

26. Access to courts and speedy disposition of cases are facilitated by the establishment of FSM Supreme Court offices in all of the four States. Moreover, each of the States has a supreme court to handle cases that come under state jurisdiction.

F. Legal services

27. Legal services are available from private law firms existing in FSM, many of which are owned by expatriate attorneys. As to criminal cases, free legal assistance is afforded to criminal defendants as a matter of constitutional right. The National Government also pays annual budget subsidy to a law firm that handles civil cases pro bono on behalf of persons who cannot afford to hire a private attorney.

28. To promote availability of more legal professionals, the National Government encourages people, with scholarship assistance, to pursue study of law either in law schools abroad or through in a trial counselor program offered in the College of Micronesia–FSM which caters to the needs of those interested students in law but who do not have opportunities to enroll in any law school. Graduates from the trial counselor program will qualify to take the bar examination administered by the FSM Supreme Court.

29. Services of off-island attorneys may also be obtained for purposes of handling FSM court cases, provided that leave of court is obtained, and usually granted by the court, on a case-by-case basis.

G. Statutory and jurisprudential protection of civil rights

30. National laws give meaning and implement the broad language of civil rights protection found in the FSM Constitution.

31. To ensure observance of guaranteed civil rights, under national law, it is a crime for a *person* to willfully deprive another of, or injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of, or because of his or her having so exercised any right, privilege, or immunity secured to him or her by the constitution or laws of FSM. Chapter 7, title 11, FSM Code. By established jurisprudence, the term *person* includes governmental bodies. Plais v. Panuelo, 5 FSM Intrm. 204 (Pon. 1991).

32. To further strengthen enforcement, and to deter violation, of civil rights, national law allows the courts to impose penalties against civil right violators. A monetary award

law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. FSM Social Security Admin. v. Weilbacher, 7 FSM Intrm. 137, (Pon. 1995).

may include attorney's fee to the prevailing party under appropriate cases. Sovereign immunity is not a viable legal defense to a civil rights claim.

33. While FSM takes necessary steps to ensure compliance with, and to avoid violation of, civil rights, occasional violations occur. For this reason, the courts play a very important role in providing redress to civil rights victims. The FSM Supreme Court, in several cases, upheld the rights of the victims.⁴

34. To further give meaning to the constitutionally guaranteed rights, the FSM Supreme Court allows garnishment of funds held by the FSM National Government on behalf of State Governments in order for pay for court judgment rendered on civil cases in which State Governments are found liable for damages.⁵

35. Enforcement of civil rights protection is enhanced through cooperation and coordination between the National Government and State Governments through joint law enforcement agreements (JLEAs). JLEAs are instrumental in the detection and prevention of national offenses, arrests and detention of offenders, and in pursuing criminal investigations.

36. To build capacity of law enforcement officers, FSM has instituted the Police Academy where national and state police officers are trained on how to carry out their duties and responsibilities as law enforcers in a manner consistent with laws and civil rights. The Academy has produced several graduates over the years.

H. Protection of property and economic rights

37. The Federated States of Micronesia is also committed to protecting rights of both citizens and non-citizens in the field of commerce. The FSM Supreme Court upheld the right of non-citizens to civil compensation for destruction of their business resulting from a particular State action which is prohibited by national law. See, *AHPW v. FSM*, 12 FSM Intrm. 544 (Pon. 2004).

38. Moreover, on the basis of due process protection in the constitution, private property cannot be taken by the government for public purpose without just compensation.

I. Education

39. FSM stresses the importance of education as essential to human dignity and enjoyment of fundamental human rights.

40. Responsibility in providing educational services is concurrent between the National and State Governments. National government is mandated to provide educational standards

⁴ In *Tolenoa v. Alokoa*, 2 FSM Intrm. 247 (1986), the court ruled that actions of a police officer in punishing and humiliating him constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. The court also found liable a municipal government that employed untrained persons as police officers. See, *Moses v. Municipality of Polle*, 2 FSM Intrm. 270 (Truk 1986); *Alaphen v. Municipality of Moen*, 2 FSM Intrm. 279 (1986). Recent cases where the court accorded redress to victims included a detainee who was subjected to excessive force while in detention (*Herman v. Municipality of Patta*, 12 FSM Intrm. 130 (Chuuk 2003)); and a person placed under continued detention without any formal charges being filed against him in court (*Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM Intrm. 154 (Pon. 1995)).

⁵ Refusal by a state legislature to appropriate money in payment of a court judgment in civil rights action cannot be used as excuse from satisfaction of the judgment. *Chuuk v. Davis*, 13 FSM Intrm. 178 (App. 2005).

and evaluation performance, coordination, and technical assistance, and to serve as focal agency to receive and distribute foreign educational assistance to the states. The state governments on the other hand are responsible in managing the schools and in hiring and supervising teachers.

41. Primary schooling (grades 1-8) for children ages 6 to 13 is compulsory; while secondary schooling (grades 9-12) for ages 14-17 is non-compulsory. FSM is approaching universal school participation at the primary school with a gross and net enrolment ratio above 90 per cent.⁶

42. Based on the 2000 Census, literacy⁷ rate is in excess of 90 per cent, with the literacy rate for females slightly higher than for males.

43. High school education is free in all public high schools. The National Government pays a subsidy to private high schools to encourage in their continuing role to provide basic education to children.

44. Yet subject to severe financial restrictions, scholarship programs are available both in the National Government and State Governments. Congress recently enacted the National Merit Scholarship Program⁸ to fund undergraduate studies of qualified high school valedictorians.

45. With the use of Compact funding, construction of more public school buildings are underway, to improve the delivery of education services to the people and to complement limited classrooms and basic infrastructures. To the extent permitted by limited resources, updated education materials, textbooks and laboratories are provided to students as well. Considering that education is only one of the priority sectors in FSM, the Government realizes that the needs on education services cannot be fully addressed by current level of revenue, notwithstanding financial provisions in the Amended Compact.

J. Children

46. Child is uniformly defined under the state laws of Pohnpei, Chuuk, Kosrae and Yap as a person below 18 years of age. For Yap State, however, the term *child* may at times have a different meaning depending on its usage. For example, in a wrongful death claim involving a 19-year old girl who continued to live with her parents up to the time of her death, the FSM Supreme Court held that under Yapese custom, a 19-year old is considered as a child. Leeruw v. FSM, 4 FSM Intrm. 250 (Yap 1990).

47. FSM acceded to the Convention on the Rights of the Child (CRC) on May 5, 1993. FSM also signed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on May 8, 2002. Domestic ratification process for the two Optional Protocols will be completed soon.

⁶ According to 2000 Census data, gross enrolment ratio was 92.3 per cent (91.7 per cent male and 92.9 per cent female) at primary school. Net enrolment ratio was 96 per cent in 2009. At the high school level, gross enrolment ratio was 72.3 per cent (68.1 per cent male and 76.7 per cent female) while net enrolment ratio showed a figure of 69 per cent. Data available suggest that there is no systematic discrimination against girls in education.

⁷ Literacy is defined as ability to read and write, with understanding, a simple statement of everyday life.

⁸ Public Law No. 16-37, June 29, 2010.

48. FSM's obligations under the CRC are fulfilled through the various national and state legislations. State laws for Pohnpei, Kosrae and Chuuk require a person examining, attending, teaching or treating a child, and who has reason to believe that the child has suffered serious injury, to promptly make a report to the police. Civil and criminal immunity is granted by law to the reporter. Violation of a duty to report constitutes a crime. Moreover, Pohnpei has implemented a "no-drop policy" for criminal cases involving victims who are minors. Pursuant to such a policy, criminal charges are to be pursued in court whenever the victim involved is a minor.

49. Sale of cigarettes and tobacco products to a minor is prohibited. In the case of Yap, this prohibition applies to a person 17 years of age and younger. In Pohnpei, a person who owns, operates or controls a vending machine or other dispensing device that mechanically or electronically dispenses any tobacco product is required to maintain at all times physical supervision and control over such device to ensure that it is not used by a minor. Kosrae law specifically prohibits per-piece sale of cigarette.

50. Consumption by and sale of alcohol to a minor is prohibited by state law. For Kosrae and Pohnpei, sale of alcohol to persons below 21 years of age is prohibited.

51. Under Pohnpei State law, minors between ages 6 and 16 who do not attend, or who are habitually absent from, schools are considered as truants, for which the law provides a penalty. Parent, guardian or other person having responsibility for or care of minor whose attendance in school is compulsory shall be responsible for seeing that a minor is enrolled in school. In Chuuk, any person who is found to be encouraging, causing or contributing to delinquency of a child may be ordered by court after hearing to perform a specific act which falls within a duty owed to the child, and failure to perform as required by the court may constitute a basis for contempt of court proceeding.

52. Pohnpei law prohibits any juvenile from participating in any form of gambling, of which dice, playing cards, and billiards are examples, and in which stakes are money or property. A penalty is imposed on any person found to be encouraging, enticing or permitting a juvenile to violate the prohibition. In Kosrae, wagering by a minor is considered a misdemeanor. In Chuuk and Yap, gambling in any form except for charitable, educational or public fundraising purposes is prohibited by law.

53. The judicial procedures accord special treatment on minors, in that applicable procedures are made flexible whenever the defendant is a minor. The procedures to be applied are based on accepted practices of juvenile courts of the United States of America. An adjudication that a person is a delinquent child shall not constitute a criminal conviction under state law. A person adjudged to be a delinquent child may be confined in such place, under such conditions, and for such period as the court deems the best interests of the child require.

K. Women

54. FSM acceded with reservation to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as of October 1, 2002.⁹ Part of domestication of CEDAW provisions is Pohnpei state law creating a state family court to address domestic

⁹ FSM expressed reservation in that it is not at present in a position to take measures either required by Article 11(1)(d) of the Convention to enact comparable worth legislation, or by Article 11(2)(b) to enact maternity leave with pay or with comparable social benefits throughout the Nation. Reservation not to apply the provision of Articles 2 (f), 5, and 16 is further expressed. FSM considers itself not bound by Article 29 (1).

violence cases. State legislations specific to women are yet to be put in place. Nonetheless, FSM Constitution, as well as the constitutions of the four States, guarantees non-discrimination towards women as the Constitution explicitly states that equal protection of the law may not be denied or impaired on account of sex.

55. FSM has exerted best efforts to do away with the reservations as expressed in its CEDAW ratification. The reservation is partially addressed by the passage of Public Law No. 16-15, September 30, 2009, that allows paid maternity leave for national government women employees. The National Government has been working closely with the four states on the other two reservations, on Article 2(f), 5, and 16 and Article 29, paragraph 1.

56. FSM data shows equality in school enrollment between males and females. The ratio of girls to boys in primary schooling increased from 0.92 to 0.94 between 1994 and 2000¹⁰. In the secondary education the figures were 0.98 and 1.05, respectively. The indicator shows a ratio of 0.70 in 1994 and 1.07 in 2000 in tertiary education. Literacy rate (age 15 to 19) was 96.4 for females while it showed 94.5 per cent for males. The age group 20—24 years old showed a literacy rate of 95.6 per cent for females and 93.9 per cent for males in 2000. Literate females to males, ages 15-24 years was 96 per cent in 1994 and 97 per cent in 2000¹¹. The FSM Policy on compulsory education has assisted in female enrollments¹².

57. On the economic front, there is still room for women to improve their contribution to the Gross Domestic Product (GDP). The indicator ‘share of women in wage employment in the non-agriculture sector’ slightly declined from 14.8 percent in 1994 to 14.4 percent in 2000 although the decline was less than for men (their participation decreased from 33.3 percent to 29.4 percent, respectively).

58. FSM’s policy supports women empowerment, and their participation in the leadership and political processes and decision-making. This policy can be achieved through non-discrimination practices and policies and awareness advocacy. More women do hold important posts in the government. However, more inclusive response is expected with regard to women participation in politics. The proportion of seats held by women in the national and state government was less than 4 per cent in 2008.

L. Health

59. FSM is mindful of the people’s right to health care. The constitution mandates the national government to take every step reasonable and necessary to provide this service. Art. XIII Sec. 1, FSM Constitution.

60. A strategic development plan (SDP) which is a development blueprint for FSM sets goals for the Nation relating to health, with the Department of Health and Social Affairs (DHSA) as the primary and lead agency to address health issues. DHSA is divided into two divisions, to wit: Division of Health and Division of Social Affairs. The Division of Health addresses the goals to improve primary and secondary health care services, prioritize health promotion and to address major health problems, develop a sustainable health care finance mechanism, and to improve capacity and accountability system.

61. Pursuant to these goals, FSM implements an immunization program to avert the spread of major or communicable diseases. Children are required to complete immunization

¹⁰ 2000 Census data.

¹¹ *Ibid.*

¹² Historically there has been gender bias against women in education in the FSM with literacy rate being lower for women than for men. However, by 2000, the trend has been reversed and indicative figures show women under 30 with higher literacy rate than men.

before attending schools. The government provides free services for this program. The state governments on the other hand provide indispensable role and assistance in the implementation of health programs in their respective jurisdiction.

62. Both infant mortality¹³ and immunization rates are sensitive indicators of access to essential primary health care services. Under-five mortality rate¹⁴ measures overall standard of living as young children are susceptible to diseases related to poverty, inadequate access to quality water and sanitation, and substandard housing.

63. Census data in 2000 showed a sharp decline in infant mortality between 1969 and 1976 (from 68 in 1969 to 40 in 1996). The results from 2010 Census will allow generating more accurate infant mortality rate estimates up to 2015. Estimates for the FSM based on census data reveal a similar pattern for the indicator under-five mortality rate. It decreased from 95 in 1969 to 52 in 1996. The proportion of two-year old children completing all immunizations decreased from 74 per cent in 1999 to 63.4 per cent in 2008. Administrative data showed a slight decrease in the proportion of two-year old children immunized against measles (from 93 per cent to 91 per cent between 1999 and 2008). It is noted however that there is difficulty in obtaining clear data on immunization of children due to movement of families either from the outer islands to the main islands or abroad, and vice versa.

64. FSM further pursues specific health programs, namely, control and prevention of cancer, diabetes, tuberculosis, leprosy, HIV/AIDS, and other sexually-transmitted infections.

65. With regard to HIV/AIDS, since the first FSM resident was diagnosed with HIV in 1989, there have been a total of 37 cases reported so far. The cumulative prevalence rate (from 1989 to 2009) is 34.6. Through the Strategic Development Plan (SDP) for HIV/AIDS, and STIs, the FSM has adopted goals to prevent further spread of infection and to prevent and reduce the socio-economic impact associated with HIV/AIDS. HIV/AIDS programs are in partnership of the US Department of Health and Human Services, UN-AIDS, and SPC (Secretariat of Pacific Community). Both national and state levels prioritize prevention and community planning, surveillance, and care for persons living with HIV or AIDS.

66. Non-communicable diseases (NCDs) which include heart and cerebrovascular diseases, diabetes, cancers and chronic obstructive pulmonary diseases are the leading causes of death, illness, disability, off-island medical referral, and health care expenditures in the FSM. NCDs account for 8 of every 10 deaths that occur in the country. Assessments conducted in Pohnpei State in 2002 as well as in 2003 (with assistance from the World Health Organization, WHO) among adults ages 25-64 years revealed prospects of future morbidity and premature mortality.

67. FSM Department of Health, in partnership with the WHO, has developed implementation action plans to reduce risks of morbidity and mortality, by curbing smoking across all age groups and in both genders (targeting the younger age groups), by promoting healthy diets, and by inculcating a culture of taking regular exercise.

¹³ The infant mortality rate refers to deaths among children under the age of one year per 1,000 live births.

¹⁴ The under-five mortality rate measures infant deaths and deaths among children 1-4 years of age per 1,000 live births.

M. Environment

68. FSM recognizes the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the influences of population growth and redistribution, cultural change, resource exploitation, and expanding technological advances, as well as the importance of restoring and maintaining quality of the environment. For low-lying Pacific island nations like FSM, environmental preservation is critical to people's survival, culture and way of life, food security and economic development. Hence, the FSM Environmental Protection Act (title 25, FSM Code) sets forth a policy for FSM to use all practicable means and measures in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations.

69. A national environmental management strategy review was developed in 1993 (NEMS Review) for the management of FSM's biologically diverse forests, coral reefs and natural environment. In 1992, FSM signed the Convention on Biological Diversity (CBD) and which was ratified by Congress in 1994. During the FSM Economic Summit in 1998, FSM agreed to aim for sustainable development through strengthening of environmental planning, introduction of economic accounting for non-renewable resource depletion, the strengthening of participatory community planning and resource management, and the preservation, development and revitalization of the unique and diverse cultures in FSM.

70. In 1995, Presidential Order #14 was issued establishing an interdepartmental body called Environmental Management and Sustainable Development Council. The council was comprised of representatives from Fisheries, Agriculture, Tourism and Sustainable Development units of the Department of Economic Affairs, the Department of Finance and Administration, the Department of Justice, and the Department of Transportation, Communication and Infrastructure. Representatives from the non-governmental organizations, namely Nature Conservancy (TNC) and the Conservation Society of Pohnpei (CSP), were also part of the Council.

71. The Council undertook a consultative process that resulted in the formulation of a blue print for environmental management, called the National Biodiversity Strategy and Action Plan (NBSAP). Later in 2004, during the 3rd FSM Economic Summit, the NBSAP was further refined upon the adoption of the National Strategic Development Plan (SDP), mainstreaming environmental considerations into the economic and infrastructure development budget of the Nation.

72. In 2006, FSM signed on to the Micronesia Challenge, along with the Republic of Marshall Islands, Republic of Palau, Guam and Northern Mariana Islands, which has for its goal, to effectively conserve at least 30% of the near-shore marine and 20% of the forest resources across Micronesia by 2020.

73. In May 2009, the Five-Year Environment Sector Plan was prepared in order to prioritize activities to be undertaken from 2010 to 2014 for funding out of the Amended Compact. Its proposed activities are directly linked to the SDP, which, in turn, includes the specific strategic goals, outcomes and activities for the environment sector. A previous analysis indicated that most activities in the last five years were not focused and consequently contributed less to the overall strategic goals of the sector. The Five-Year Plan identifies projects that need to be prioritized within the Environment Sector in the SDP. Those will be undertaken with funding from the Amended Compact environment sector during the planning period (2010-2015).

N. Human Rights and the Millennium Development Goals (MDGs)¹⁵

74. FSM joined the United Nations in building the commitment to promote economic and social development, eradication of many dimensions of poverty, peace and security, gender equality, and sustainable human development. FSM signed the Millennium Declaration in September 2000. Since then, many efforts have been made in order to progress towards achieving the MDGs. In 2004, a group was designated in the national government to serve as the FSM MDG Task Force to produce the first MDG Report for FSM.

75. Linking human rights and MDGs still is and will continue to be a challenge for FSM, as with many developing countries. For FSM, the operational mechanism in which the connection is made has been not yet well clarified and understood.

76. By definition, human rights are wider in scope differently from the MDGs that are more limited with their focus primarily being on key human development areas. Human rights are universal, therefore, target all countries. By contrast, the MDGs are mostly directed to developing countries. While human rights are mandatory and legally-binding through ratifications of conventions, the MDGs recommend a set of key development objectives with non-mandatory targets. There is no deadline for human rights whilst the MDGs, targets and indicators must be achieved by 2015.

77. Nevertheless, human rights and MDGs are interdependent and share common values and principles, such as promoting human well-being and honoring dignity of people, empowerment, participation and national ownership.

78. Moreover, FSM and the United Nations Development Programme (UNDP) entered into a basic agreement to govern UNDP's assistance to the country through the Country Programme Action Plan (2008-2012), which was signed on 2nd December 2008. The programme seeks to facilitate the implementation of the Strategic Development Plan (SDP) and to strengthen the linkages with the Pacific Plan. Additionally, it has three strategic outcome areas, to wit: (i) Poverty Reduction and the MDGs; (ii) Good Governance and Human Rights; and (iii) Environment and Sustainable Management.

79. Efforts have been made to assist the national and state governments in FSM in developing their capacity to plan, budget, implement and monitor the achievement of the MDGs¹⁶ by: finalizing the First National MDG Report; developing the capacity of departments/offices and agencies to regularly collect, analyze, monitor and report on disaggregated data that will reveal socio-economic trends towards progress on MDG and

¹⁵ In September 2000, world leaders committed their nations to the Millennium Declaration (resolution 55/2) to uphold the principles of human dignity, equality and equity at the global level as well as the regional level. They also were committed to a new global partnership to reduce extreme poverty and settled out a series of time-bound targets that have become known as the Millennium Development Goals (MDGs). The MDGs are eight goals to be achieved by 2015 and are designed to: (1) eradicate extreme poverty and hunger; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria and other diseases; (7) ensure environmental sustainability; (8) develop a global partnership for development. The MDGs are broken down into 21 targets which, in turn, are measured by 60 indicators.

¹⁶ Considerable efforts have been made in the area of Poverty Reduction and the MDGs through the project "Millennium Development Goals Capacity Building Initiative in FSM (2008-2011)", signed by the FSM Government and the United Nations Development Programme in May 2008. The project has been implemented by the Office of Statistics, Budget & Economic Management, Overseas Development Assistance & Compact Management (SBOC).

national/state development goals; and finally assisting with the development of a MDG based on National strategic plan (Strategic Development Plan, SDP) that is linked to specific sector strategies and budget allocations to ensure the necessary resources are allocated to the appropriate sectors (Millennium Development Goals Capacity Building Initiative in the Federated States of Micronesia, SBOC, September 2009).

IV. Identification of achievements, best practices and challenges

A. Implementation of CEDAW

80. Since FSM's accession to CEDAW in October 2002, noticeable progress has been achieved towards improving protection of women's rights. Foremost, the FSM Constitution guarantees non-discrimination on account of sex, and this constitutional protection is mirrored in the constitutions of the four States. Government's attitudes towards women have evolved as well, as a growing number of women have opportunities to assume more political and decision-making positions in government.

81. Recognizing the growing involvement and the importance of women taking more active role in government, a legislative bill is currently pending in Congress, to propose a constitutional amendment in order to reserve to women certain Congressional seats. Furthermore, in September 2009, a national legislation was approved allowing maternity leave benefit, albeit limited only to national government employees. Kosrae State also grants maternity leave benefits for government employees.

82. On the other hand, FSM continues to face a number of challenges and constraints. Notwithstanding the lack of concrete statistics, there appears a growing recognition that violence against women is a source of concern in FSM. Observations made during recent women conferences held in Kosrae and in Chuuk pointed to domestic violence as a growing social issue. Determining whether this concern is a mere perception or indeed a reality requires verifiable data and statistics.

83. FSM faces constraints in gathering of data to verify domestic violence and the overall implementation of CEDAW, not due to reluctance of the part of government but because of a number of factors including financial restrictions. Capacity, another factor, in compiling, interpreting and reporting data specific to women issues needs to improve.

84. Pohnpei has introduced Family Violence Act, which is currently at legislative stage. But the formulation of specific social legislations and policies for women requires comprehensive and focused analysis on the most appropriate legislative strategy to fulfill FSM's obligations under the CEDAW. This is another area that FSM needs assistance to bring meaningful improvement, particularly because tremendous amount of resources which FSM has very limited at this time are imperative.

85. FSM recognizes the importance of more intensified advocacy campaigns in order to raise the level of awareness on the rights of women and their roles in society.

B. Implementation of CRC

86. As explained earlier in this report, the constitutions of the national and state governments afford broad application to protection of rights of children. In the areas of education and health, several statutory measures in place are geared towards protecting the interests and well-being of children, for example, compulsory education.

87. Nonetheless, certain gaps in the domestic laws exist wherein FSM recognizes needs and opportunities for improvement, particularly on inter-country adoption. It is further noted that anti-human trafficking measures, particularly as impacting on children's rights, are yet to be legislated.

88. Similar to the challenges faced in implementing CEDAW, implementation of CRC needs data gathering for purposes of documentation and reporting, as well as to serve as a basis for policy formulation. It is envisaged that more capacity building initiatives and assistance, domestically and internationally, will be made available in order for FSM to achieve the objectives and ideals set by the CRC.

C. Micronesian traditions and customs

89. Customs and traditions are often alluded to as impetus behind human rights concerns perceived in FSM. Hence, it requires some degree of elucidation in this report. FSM has sets of cultural values and traditions that have been in existence for many generations. These values involve the protection of human life, maintenance of peace and harmony with nature, and are deeply ingrained in the Micronesian culture. For this reason, the Judicial Guidance Clause in the FSM Constitution is an explicit reminder to the courts, and hence to the government, to render decisions consistent with Micronesian customs and traditions. Art. XI Sec. 11, FSM Constitution.

90. Micronesian families are characterized by extended family units, whereby spouses and children are protected. Harm or abuse committed against a family member is considered an offense against the whole family and not just against an individual member. Respect for elders is instituted as part of cultural tradition. Disrespect can lead to familial rebuke.

91. A system of peaceful settlement of dispute is widely practiced and observed by the people. This traditional practice is instrumental in maintaining peace among families and clans.

92. Respect for authorities is a part of cultural tradition. Law enforcement agents and officers are accorded esteem. Cases in the past involving abusive actions by public officers were dealt with through either administrative sanction taken against the violators or judicial adjudication of civil damages to the victims.

93. Micronesian culture places value on the role of women in society. Micronesian societies emphasize matrilineal system, except for a few islands in Kosrae, Pohnpei and Yap. Identities, titles, land rights, and property inheritance are acquired or handed to succeeding generation through matrilineal lines. This provides women with a special recognition and value in the Micronesian culture, and allows them to exercise considerable influence over domestic affairs. As previously indicated, women holding important posts in government are growing in number.

D. Communication and media

94. FSM recognizes the role of media in nation building and people empowerment. People enjoy freedom of expression and communication. Public and private radio stations and print media operate in the Nation. With modern technology, increasing number of individuals become more acquainted and comfortable with internet access, whereby public discussions on matters involving government and society are carried out.

95. FSM Telecommunication Corporation, a government-owned entity, has recently started providing high-speed internet service in Pohnpei, owing to a fiber-optic

connectivity. Plans for similar internet service for the other States are underway, to bridge the digital divide internally and externally.

E. Impact of climate change

96. A great deal of time and resources have been invested on planning and implementing strategies in order to give meaning to FSM's policy towards the environment. The rich and diverse cultures and traditions of the people are at risk of being eroded as a result of modern practices within, and more importantly outside of, the Nation.

97. Climate change has dramatically impacted not only the people's right to life, food, water, property, quality standard of living, and self-determination, but also the survival of a cultural heritage and patrimony of Micronesians. Severe weather events, coral bleaching, changes in rainfall patterns, changes in occurrence of vector borne diseases are among the noticeable effects attributable to climate change. These effects have a great impact on agriculture in the FSM where low-lying atolls experience salt water intrusion into agricultural land and destruction of staple food crops. The fragile terrestrial and marine ecosystems that provide for the mainly subsistence economy have become vulnerable to the adverse consequences of climate change. The ever-so-scarce land sees erosion, landslides, and fires due to droughts. Water shortages, especially felt in low-lying atolls, resulted from the increased magnitude of droughts and changes in climatic patterns.

98. The December 2008 tidal surge experienced in the islands in FSM was a demonstration of altered patterns of weather. Many inhabitants lost their houses and farms to the inundation of sea water.

99. FSM recognizes its primary responsibility to protect the rights of its citizens, and is taking some steps in addressing climate change impacts. A nationwide climate change policy has been adopted to guide national decisions on this issue. Additionally, a food security policy was formulated, which is inextricably linked to the objectives of climate change policy.

100. FSM is encouraging its population to become aware of climate change, and its implications to society and economy. FSM joins in the call for all nations in the world to assume global responsibility in order to bring about meaningful protection of human rights. Absent a coordinated approach to address climate change will mean a continuing infringement on human rights especially for small island nations like the FSM.

101. The impacts of climate change are felt foremost by people on the low-lying, fragile ecosystems on atolls of the FSM while the causes are from industrialized processes in carbon-emitting countries.

F. Disability

102. Strong customary practices and extended family traditions assume an important role in taking care of disabled members of the population. Nonetheless, the government also provides for assistance through an ongoing programs specifically designed to address the special needs of disabled persons.

103. Under the FSM Special Education Act of 1993, FSM recognizes its obligation to provide special education and necessary supplementary services to children with disability. Special education program is a specially designed instruction at no cost to the parents to meet unique needs of children with disability, including instruction conducted in the classrooms, homes, hospitals and institutions. Children with disability includes individuals from birth through age 21 who are evaluated as having mental retardation, hearing and

visual impairments, serious emotional disturbance, other health impairments, learning disabilities, deaf-blindness, or multiple impairments, and who because of those impairments need special services.

104. FSM desires to further build local capacity to effectively identify specific needs, opportunities and strategies in handling disability issues. The special education program utilizes highly specialized and technical skills that are not available locally. The growing cost of outsourcing most of the required specialized services to support the program is a critical factor that impedes the ability of the government in fully addressing concerns relating to disability.

105. FSM's non-governmental partners also need empowerment in order to assist the government in its efforts towards implementing social, cultural and legal solutions to the desires, aspirations, and interests of people with disability, including for their livelihood support and infrastructure.

G. Health support services and infrastructure

106. Health is a constitutionally required basic service as a matter of right. State governments assume primary role in its delivery to the public, with the assistance and policy direction from the National Government. FSM employs many expatriate medical professionals while it is in a stage of building capacity for its local workforce. Hence, cost remains a serious strain on the already burdened financial resources of the Nation. More health facilities such as hospitals, equipment, and dispensaries are needed to adequately address the needs of the population.

H. Education

107. While the Government considers education to be a critical investment on human capacity and resources, much remain to be desired in terms of improving school curricula, by incorporating socially relevant issues such as on environment, climate change, food security, human rights, and public accountability and transparency.

108. FSM continues to strive towards standardizing the quality of teaching staffs, particularly because about 35% of teachers are without appropriate credentials. Equally urgent need that FSM is facing is improvement of educational facilities and equipment, including updated teaching materials, student textbooks, and laboratories.

109. FSM needs to address social issues that impact mostly on student population and youth, such as teen pregnancy, alcohol, drugs, and truancy. There is no information indicating these issues to have reached a significant proportion, but the government will nonetheless take them into consideration as a preventive, if not remedial, strategy.

I. Unemployment

110. There are no recent statistics on unemployment, except for 2000 Census which indicated FSM unemployment rate at 22 per cent, up from 16 percent in 1994. Unemployment was highest in Chuuk at 34 per cent, followed by Kosrae with 17 per cent, Pohnpei at 12 per cent, and lowest in Yap at 4 per cent.

111. Limited job opportunities in FSM impose constraints on the furtherance of rights of the people to life, liberty and property. Foreign investments and improved economic conditions are necessary in order for employment opportunities to flourish. Manufacturing

industry that complements the primary sectors in the economy, namely fishery, tourism and agriculture, must develop.

V. Priorities, initiatives and commitments

112. FSM will remain active in the community of nations and international forums as partner in the advocacy of human rights issues, especially those that significantly impact its people's welfare.

113. FSM envisages that it shall review its present international commitments under various human rights conventions. Many of these international instruments need further national legislations to be drafted and passed by Congress. Some of the required legislations in the areas of environment, health and social affairs are currently in the drafting stage.

114. FSM endeavors to consider core international conventions to further protect human rights for possible accession and ratification, keeping in mind that those conventions will possibly require commitment of resources to conform to the standards set forth therein.

115. FSM will also take appropriate steps to progress in the ratification process for the Optional Protocol to the Convention on the rights of the Child on the sale of children, child prostitution and child pornography, which it signed on May 8, 2002; and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which it signed on May 8, 2002.

VI. Request to the International Community

116. Under the present organizational structure, FSM does not have an independent human rights agency, or an ombudsman, that advocates human rights issues and interests. By an executive order, the Department of Justice is mandated to enforce national laws, including civil rights protection. Yet another mandate of the Department is to represent the National Government in all civil actions and proceedings. The resultant potentially conflicting duties of the Department of Justice make it imperative to put in place a separate human rights body.

117. Notwithstanding the need for a national human rights agency, FSM continues to struggle amidst challenging economic situation, and in the face of a desire for meaningful progress in numerous aspects of its national development strategy. Mindful of severe restrictions on financial and economic opportunities, it strives for capacity building in order to advance core human rights values.

118. FSM invites its international development partners and the community of nations in general to consider providing partnership or assistance, on the following areas:

- (a) Establishment of a human rights body that facilitates advocacy of human rights and needed reforms and initiatives both in the government and community levels;
- (b) Technical assistance to the government to alleviate the constraints faced on the protection of rights of women and children through legislative and policy reforms; and
- (c) Advancement of global climate change policies and initiatives in order to at least blunt the severe impacts of climate change on the people's lives, properties and development aspirations.