

FEDERATED STATES OF MICRONESIA

Introduction

The Federated States of Micronesia (FSM) – comprised of the states of Pohnpei, Chuuk, Kosrae and Yap – is an independent country in free association with the United States of America (U.S.). FSM's four states are comprised of some 600 islands spread across approximately three million square kilometres of the Northern Pacific Ocean. According to the 2007 census, the country's population is 155,000. While small, the country is diverse, with some 15 different languages and large distances between and within the four constituent states.

The Micronesian islands (including Palau, the Northern Mariana Islands and the Marshall Islands) were successively colonised by Spain (1886-1899), Germany (1899-1914) and Japan (1914-1945). Following the Second World War, FSM was administered by the U.S. through the United Nations Trust Territory of the Pacific Islands (TTPI), up until its independence in 1986.

The FSM became unified and independent partly as a result of an agreement among the four former districts (Pohnpei, Chuuk, Yap, and Kosrae) of the Trust Territory of the Pacific Islands. The decision to unite was made through a TTPI-wide vote in 1978 on a Constitution approved in 1975 by parties from the entire territory. Palau and the Marshall Islands declined incorporation and became separate republics. The Northern Mariana Islands desired U.S. citizenship and completed a covenant agreement with the U.S. that provided an enhanced relationship (commonwealth) compared to Guam (the southernmost and largest Mariana island) that continued to function as an unincorporated territory of the U.S. under its *Organic Act of 1950*.

The 1975 Constitution was re-written in 1979 to fit the smaller jurisdiction, known as the FSM (absent Palau, the Marshall Islands and the Northern Mariana Islands).¹ Thus, FSM is in a Compact of Free Association with the U.S., an agreement which was renewed in 2004. Under the Compact, FSM is a sovereign country, but allows the U.S. to assume responsibility for defence and security. The U.S. also provides a range of grants and allows access by FSM Citizens to its social services.

The capital of FSM is situated in Palikir, Pohnpei. The Office of the President, the Supreme Court and Congress are also located there. In terms of governance, the operation of centralised institutions is difficult given the physical distance between the four states, as well as significant cultural differences. Despite being administered by the U.S. from 1945, the people of each island group had little to do with each other prior to independence.

¹Code of the Federated States of Micronesia at <<http://www.fsmlaw.org/fsm/code/index.htm>>





Other key developmental challenges facing the country are: scarce natural resources; a relatively undeveloped economy; high population density aggravated by a rapidly growing population; and an outmigration of skilled workers.

Section 1:

Principle 1 – Respect for the Law and the System of Government

- i) Respect for upholding of democratic processes and institutions, the rule of law and the independence of the judiciary and the legislature:
 - a) Allow for peaceful transfer of power; and

According to the Constitution,² citizens aged 18 years and above may vote in national elections. There are minimum periods of local residence and disqualifications for criminal convictions, mental incompetence, or insanity. Voting is by secret ballot. At present, there are no political parties.³ In 2007, elections were held according to the Constitution and encompassed voting for both two and four-year Congressional seats. The results of the election were scrutinised and certified by the National Elections Office.⁴ Emanuel Mori from Chuuk was elected by Congress as FSM's seventh President – replacing Joseph Urusemal. Alik Alik from Kosrae was elected Vice President.⁵

In a peaceful transfer of power, a special election was held on 27 May 2008 to fill the vacancy left when Emanuel Mori was selected by the FSM Congress to serve as FSM President for a term of four years. His seat in the Congress was filled by Tesime Kofot of Chuuk State. Three others contested the vacant seat. The election was trouble-free.⁶

- b) Respect and promote the separation of powers by ensuring the financial autonomy of the judiciary and Parliament, and ensure that the judiciary and Parliament are free from unlawful interference by the executive;

The Constitution establishes three separate branches of government at the national level – Legislature, Executive, and Judiciary.

The legislature of FSM is made up of a unicameral congress, comprised of 14 members elected by popular vote. Four of the Senators represent one state each, and serve four-year terms. The other Senators represent single member constituencies and serve terms of two years. The constituencies must be roughly equal and reapportioned every ten years. Each Senator is allotted one vote. At present, of the ten single member constituencies, six are allocated to Chuuk, four to Pohnpei, and two each to Yap and Kosrae.

Regarding the Executive, the President and Vice-President are elected by Congress and must be one of the state-based Senators. They serve four-year terms in the Executive, and replacements for their congressional seats are chosen through an additional, special election.

²Constitution of the Federated States of Micronesia.

³Constitution of the Federated States of Micronesia art VI.

⁴Pacific Islands Report, 27 March 2007.

⁵Radio New Zealand International, 11 May 2007.

⁶Federated States of Micronesia Government News and Public Statements, 6 June 2008.



The President may not serve more than two consecutive terms. The President and Vice President appoint a cabinet to assist them in their functions.⁷

The Judiciary is comprised of the Supreme Court and inferior courts. The Supreme Court is the highest court in the nation, comprised of the Chief Justice and up to five Associate Justices. The Chief Justice and Associate Justices are appointed by the President, pending approval of Congress with a two-thirds majority.⁸

The four states also have their own state governments and constitutions. Their structure is similar to that of the federal level, with separation of the executive, legislature, and judiciary. The Constitution sets out responsibilities for the national and state governments. National government responsibilities relate to issues of sovereignty, immigration and citizenship, taxation on income, trade, and to provide health and education services. Responsibilities and powers that are not specified as a national responsibility or prohibited to state governments are state-level responsibilities.⁹

Regarding the Legislature, Congress is the sole entity responsible for judging the election and qualification of its members; or disciplining them by a two-thirds vote.¹⁰ Bills passed by Congress are presented to the President for approval, upon which s/he has 10 days to present any objections to Congress, unless Congress is adjourned, upon which time the deadline is extended to 30 days. If objections are not presented within this period, the law is approved.¹¹

The Chief Justice of the Supreme Court is the highest-ranking administrator of the judicial system, and has the authority to make and amend rules governing the nation's courts.¹²

The President is responsible for timely submission of the annual budget to Congress. The budget must contain all information pertaining to expenditures, anticipated revenues, and funds available to the national government over the next fiscal year. Congress has the authority to alter the budget in any way. However, the President has the authority to veto an appropriation in bills passed by Congress.¹³

On 2 March 2008, President Mori partially vetoed a Congressional Bill that appropriated US\$3.8 million for public projects and social programs across the four states. He eliminated some US\$480,000 in line items, stating that they did not give priority consideration to national needs, reflecting state-level and community needs instead. During the Special Session of Congress (24 March – 8 April), Congress over-rode his partial veto and appropriated the entire amount. The President requested a greater degree of communication between the two branches of government with the aim of reducing disagreements at the point when legislation is to be passed into effect. He referred Congress members to eleven areas of national priority that were in need of funding, in particular social security, pensions, the health system and infrastructure, among others.¹⁴

ii) Upholding a just, fair and honest government through:

a) Respect for and enforcement of the decisions of courts and independent tribunals;

In 2008, there were no reported incidences of disrespect for Supreme or lower court decisions.



⁷ Constitution of the Federated States of Micronesia art IX, s 8, 10; art X, s 1.

⁸ Constitution of the Federated States of Micronesia art XI, s 1-2.

⁹ Constitution of the Federated States of Micronesia arts VIII, IX.

¹⁰ Constitution of the Federated States of Micronesia art IX, s 17.

¹¹ Constitution of the Federated States of Micronesia art IX, s 22.

¹² Constitution of the Federated States of Micronesia art XI, s 9.

¹³ Constitution of the Federated States of Micronesia art XII, s 2.

¹⁴ Federated States of Micronesia Government News and Public Statements, 15 April 2008.





b) Enforcement of lawful instructions and lawfully created policies;

In 2008, there were no reported incidents where lawful instructions and policies were not enforced by leaders.

c) Compliance with the letter and spirit of the laws, which are made for the benefit of the public;

The Constitution may be amended, subject to approval of three-quarters of the votes cast on that amendment, as well as votes covering three out of the four states. At least once every 10 years, Congress must submit the question, 'Shall there be a convention to revise or amend the Constitution?' to a popular vote. If the majority votes are affirmative, delegates to the Constitutional Convention must be chosen by the next election.¹⁵

In November 2008, the Speaker Isaac Figir and the Vice Speaker Resio Moses co-sponsored a Bill to add four designated seats in Congress for women, with the aim of increasing their representation in the legislature and government in general. This would require an amendment to the Constitution, as the number of Senators would increase from 14 to 18. If the bill is passed by Congress and signed by the President, a national referendum will be held on the matter.¹⁶

However, the situation regarding women is changing in some areas. In 2008, Palau elected two women to the Senate (seven ran) and three others ran for seats in the House but were not elected. In Guam, the 15-seat Legislature in 2008 saw five women run with four being elected. Judy Won Pat was elected by her colleagues to serve as speaker of the Legislature. Madeleine Bordallo ran unopposed in 2008 and will be serving her fourth consecutive term in the House of the U.S. Congress. These developments are positive steps when compared to FSM and other countries as reported in 1995 at the U.N. women's conference in Beijing, and more recently by the Inter-Parliamentary Union. Certainly, Sweden, Finland, Rwanda and Argentina, with over 40 per cent representation by women in their nations' parliaments, have set a standard for the rest of the world.

d) Disclosure of fraud, corruption and mal-administration, of which the leader has become aware;

In the *Inspection of the FSM Congress Budget for the Financial Years 2005-07* report released in 2008,¹⁷ the Public Auditor concluded:

... that processes used by the Congress in budgeting, appropriating and spending funds for their own operations did not establish clarity of purpose, accountability, and transparency... the processes used to allocate budgets for Delegation Offices is not transparent because it allows lump sum appropriations with no details. Further, we found most of the expenditures are not related to the operation of the Delegation Offices. The total amount used for Representation Funds is not transparent because the Senators increased their Representation Funds from the Delegation Office budget and Official Expense Allowances. In addition, we found that the Senators are not following FSM laws regarding conflict of interest issues, use of affidavits, and travel authorisations.

Furthermore, the Office of the National Public Auditor in its review, concluded that the 'Mission did not comply with FSM laws, regulations, policies and procedures in disbursing funds and submitting monthly operations fund reports. For example, the total operations fund budget and budget categories were over-spent'.¹⁸

¹⁵Constitution of the Federated States of Micronesia art XIV, S 1-2.

¹⁶Federated States of Micronesia Government News and Public Statements, 2 December 2008.

¹⁷Office of the National Public Auditor, Federated States of Micronesia, *Inspection of the Federated States of Micronesia Congress Budget (FY 2005-2007)* Report No. 2008-03 (2008).

¹⁸Office of the National Public Auditor, Federated States of Micronesia, *Review of the Federated States of Micronesia Permanent Mission to the United Nations (FY 2005-2007)* Report No. 2008-02 (2008) 2.



Additionally in the National Public Auditor's *Annual Report for Fiscal Year 2006* (the most recent available), Appendix V, the Public Auditor reviewed a number of audits. For example, in the 'Inspection of the Compact Trust Fund' he noted 'The Joint Trust Fund Committee (TFC) has not provided needed leadership, communication and coordination to meet the requirements of the Agreement'.¹⁹ The TFC was established months after the funds were deposited, key positions such as a money manager and auditor were not appointed in a timely manner, and administrative functions were not performed on schedule.²⁰

On the Customs and Tax Audit (CTA) for 2005, the Public Auditor noted a number of irregularities, which amongst others, included cash not being deposited in a timely manner, lack of proper security clearance over access to the CTA Field Office and not restricting access to authorised personnel, and lack of proper monitoring and oversight that created discrepancies in reconciling revenue collected by the CTA and the Treasury's General Ledger.²¹

The most recent audit of the FSM National Government Travel funds highlighted a number of irregularities.²² In many instances, officials were issued with funds to undertake official duty travel when monies made in advance for earlier duty travel had not been fully acquitted. Moreover, many claims for duty travel were incomplete. Outstanding monies issued in advance for duty travel amounted to some \$616,000. This was a result of the lack of proper monitoring of duty travel acquittals, which requires officials to reimburse the government through workable repayment arrangements to settle the debt. Repayment of outstanding monies advanced for duty travel is a standing policy of Department of Finance and Administration.²³

In September 2008, *The Kaselehlie Press* exposed an area of endemic maladministration in Chuuk State's Department of Education – lack of control and use of travel funds.²⁴ Investigations by the Office of National Public Auditor found that travel documents were submitted late, submissions lacked required documents and the Chuuk state travel office did not maintain proper files. As a result, the Office miscalculated travel advances, people other than teachers travelled, and it mischarged expenses.

In 2003, three Senators and two government officials were among 14 people charged with misuse of public funds over a five year period amounting to some \$1.2 million.²⁵ In a related trial, a former Senator was found guilty of medical fraud. The former Senator's incarceration was the first example where a government official was jailed for such a crime.²⁶ Another case, also involving a former Senator, resulted in a 30 month jail term.²⁷ His decision is being appealed.²⁸

In 2007, a former FSM diplomat was charged with 13 counts of criminal conduct including bribery, criminal conspiracy, tampering with public records and theft against the government. The diplomat was alleged to have tampered with and sold FSM passports for personal gain. In April 2009, the Supreme Court found the diplomat guilty on two counts and imposed a custodial sentence.²⁹

¹⁹Haser Hainrick, Office of the National Public Auditor, Federated States of Micronesia, *Annual Report for Fiscal Year 2006 with Highlights from Fiscal Years 2002 to 2005* (2007).

²⁰Ibid 44-45.

²¹Ibid 45.

²²Ibid.

²³Ibid 46-7.

²⁴*The Kaselehlie Press* (Pohnpei), 17 September 2008, 1.

²⁵Radio New Zealand International, 19 November 2003.


²⁶*The Kaselehlie Press* (Pohnpei), 26 April 2006.

²⁷Ibid.

²⁸Department of Justice, Government of the Federated States of Micronesia, *Federated States of Micronesia: Country Report* (2008) Pacific Islands Law Officers' Network <<http://www.pilonsec.org/www/pilon/rwpattach.nsf/VAP/712B446AA84F124A6F0833A09BD304C8>>-FSM+Country+Report+-+PILON+2008.pdf/\$file/FSM+Country+Report+-+PILON+2008.pdf> at 6 January 2009.

²⁹Federated States of Micronesia Government News and Public Statements, 4 May 2009.



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- e) **Refraining from exertion of pressure, and abuse of persons carrying out their lawful duties;**

There were no reports of undue pressure, and of abuse of persons carrying out their lawful duties in 2008.

- f) **Refraining from using any legal immunity or privilege as a cloak or shield for behaviour of a lower ethical standard than that reasonably expected of the leader by citizens;**

Articles 9 and 10 of the Constitution protect members of Congress from being arrested when attending Congress or while travelling to and from the sessions of Congress. The exceptions are for treason, felony, or breach of peace. Leaders did not resort to exercising this privilege in 2008.

- g) **Establishing and empowering bodies, such as an Ombudsman Commission;**

The FSM does not have an ombudsman or ombudsman-like organisation. Aggrieved persons take up complaints to an administrative review board or through the legal system.³⁰ In the latter case, the Micronesian Legal Services provides help.

- h) **Ensuring that the Auditor General reports directly and in a timely manner to Parliament/Congress;**

The Constitution provides for the appointment of a Public Auditor by the President with the advice and consent of Congress. The Public Auditor is independent of administrative control, but must report at least once a year to Congress. The duty of the Public Auditor is to inspect and audit accounts of all government entities, including public legal entities and non-profit organisations that receive funds from the government. Congress has the authority to remove a Public Auditor from office by a two-thirds majority vote.³¹ The incumbent Public Auditor is Haser Hainrick. The Public Auditor currently has a total of 15 professional officers. The last budget appropriation of 2006 saw some \$579,000 allocated to fund the task of auditing accounts, wherein a total of 20 audit reports were completed.³² Audits for 2008 were not yet available from the National Public Auditor.

iii) **Protection of fundamental human rights:**

Article IV of the Constitution provides for the protection of individuals' rights. It ensures that laws do not infringe on a person's freedom of expression, peaceful assembly, association or petition, religion, life, liberty or property and the equal protection of the laws, on property and privacy and to a fair trial. Further, the Constitution prohibits capital punishment, slavery and involuntary servitude, except to punish a crime, and citizens are allowed to travel freely throughout the FSM. Imprisonment for debt is not permitted.

Further, Chapter One of the Code of the Federated States of Micronesia contains the Bill of Rights, which sets out the rights of FSM citizens on matters such as freedom of religion, speech and press, as well as legal rights for due process such as *habeas corpus*.³³ The Bill of Rights further states that no law shall be enacted

³⁰Code of the Federated States of Micronesia, at <<http://www.fsmlaw.org/fsm/code/index.htm>>

³¹Constitution of the Federated States of Micronesia art XII.

³²Haser Hainrick, above n 18.

³³Code of the Federated States of Micronesia, at <<http://www.fsmlaw.org/fsm/code/index.htm>>



that discriminate on account of race, sex, language or religion, and that equal protection shall be applied to all individuals.

FSM is signatory to several international conventions such as the Convention on the Rights of the Child,³⁴ the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,³⁵ the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict,³⁶ and the Convention on the Elimination of All Forms of Discrimination Against Women.³⁷

In 2008, although there were no documented abuses of fundamental human rights in FSM, there were ongoing investigations in the Commonwealth of the Mariana Islands (CNMI) by 'Shared Hope International,' of human trafficking, especially of women and children. 'Shared Hope International' focuses on human trafficking, and has noted successful investigations and convictions in the CNMI and has determined that women and girls from FSM who go to Saipan looking for employment sometimes end up being exploited.³⁸

Section 2:

Principle 2 – Respect for Cultural Values, Customs and Traditions

i) Respect for cultural values, customs, traditions and indigenous rights and observation of traditional protocols in the exercise of power:

Cultural values, customs, traditions and indigenous rights, including observation of traditional protocols, are different between and within the four states of FSM, owing especially to Christian influences. Traditional chiefs are influential and strong in Yap and Pohnpei. In Kosrae, the chiefly system is absent. Within Chuuk, (the largest state - with almost half of the total population - spread over a number of islands within a vast lagoon) internal variations in culture and custom are greater than in the other states.

Article V of the Constitution provides for the protection and preservation through the recognition of the role and function of traditional leaders, including in formal or functional roles in government. Several mechanisms provide for roles in government. First, a state may set aside one of its 2-year term Senator seats for a traditional leader to occupy. In addition, a Chamber of Chiefs may be created by Congress when needed. The Chamber would consist of traditional leaders from states that opt to appoint them, as well as elected representatives from states that do not have traditional leaders, such as Kosrae State.³⁹

Article III of the Constitution of the State of Yap provides for two traditional councils to be given formal status in state law making. These are the Council of *Pilung* and the Council of *Tamol*. Hence, all proposed laws which concern tradition and customs of a function of a recognised traditional leader must be reviewed by these traditional councils. In practice, these councils have been active and influential in law making and policy making on matters relating to traditions. Further, these councils also play a political role in ensuring a stable socio-political environment. Article XII of the Constitution of the State of Yap requires traditions and customs to be taught in school. It also explains the presence of a strong chiefly

³⁴Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 530 (entered into force 2 September 1990).

³⁵Convention on the Rights of the Child: Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography, opened for signature 25 May 2000, 39 ILM 1285 (entered into force 18 January 2002).

³⁶Convention on the Rights of the Child: Optional Protocol on the Involvement of Children in Armed Conflicts, 2220 UNTS 161 open for signature 25 May 2000, (entered into force 12 February 2002).

³⁷Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

³⁸Radio New Zealand International, 30 April 30 2008.

³⁹Constitution of the Federated States of Micronesia, art V, s 3.





system, cultural values, customs and traditions in Yap. Cultural values, customs and traditions also influences and determines claims over titles for land. This protection is also afforded by the Constitution of Yap which specifically states that, ‘Title to land may be acquired only in a manner consistent with traditions and customs’.

Similarly, the Constitutions of the State of Pohnpei and Chuuk respect cultural values, customs and traditions. In the Constitution of the State of Pohnpei, this matter is found in the role of family and family obligations. For the State of Chuuk, it is similar to Yap, where a Council of *Pwopwissom* is established. The *Pwopwissom* is made up of the recognised traditional chief from each of the 13 election districts. They resolve civil disturbances by traditional means, enforce traditional customs, preserve everything of historical value peculiar to life and living in Chuuk, make recommendations on any matter, have the authority to set its own sessions, and elect its own officers.

Section 3:

Principle 3 – Respect for Freedom of Religion

i) Respect for religious belief and practice:

Article IV(2) of the FSM Constitution covers religious purposes. The Constitutions of three of the four States of FSM protect the freedom of religion. The exception is Pohnpei, whose Constitution is silent on the issue.

The Roman Catholic and Protestant Churches are the established denominations in FSM. New churches include: the Church of Jesus Christ and the Latter Day Saints (Mormons); Seventh-Day Adventist Church; Jehovah’s Witnesses; and the Assembly of God. In 2008, there were no reported infringements of the freedom of religion.

Section 4:

Principle 4 – Respect for People on whose behalf Leaders Exercise Power

i) Proper use of official powers:

There were no reports or cases of officials being prosecuted for the abuse of official powers in 2008. The legislative powers of the national government, which are vested in the Congress of the FSM, are set out in Article IX of the FSM Constitution. Section 2 of Article IX specifically defines 18 powers that are expressly delegated to Congress. They consist of the following:

- to provide for the national defence; to ratify treaties; to regulate immigration, naturalization and citizenship;
- to impose taxes and tariffs; to impose taxes on income; to regulate banking; to regulate navigation and shipping except within lagoons, lakes and rivers;
- to establish usury limits; to provide for a national postal system; to acquire and govern new territory; to govern the area set aside as the national capital;
- to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the FSM beyond 12 miles from island baselines;



- to establish and regulate a national public service system; to impeach and remove the President, Vice-President and justices of the Supreme Court;
- to define national crimes and prescribe penalties, having due regard for local custom and tradition;
- to override a Presidential veto by not less than 3/4 vote of all the state delegations, each delegation casting one vote; and
- to promote education and health by setting minimum standards, coordinating state activities relating to foreign assistance, providing training and assistance to the states and providing support for post-secondary educational programs and projects.

Furthermore, Congress exercises concurrently three powers with the states regarding: 1) the appropriation of public funds; 2) the borrowing of money on the public credit; and 3) establishment of systems of social security and public welfare.

ii) Honesty in dealing with the people and Parliament, with any misleading information corrected at the earliest practical opportunity:

There were no reported instances of misleading information being released and then later corrected in 2008. There is no evidence to show that the Executive or Congress acted to correct misinformation.

iii) Publicising information on legal wrongdoing, ethical lapses and false or misleading statements:

The FSM enjoys free media. This includes the privately owned The Kaselehlie Press, as well as the government-owned National Union. Furthermore, periodic reports on law and justice issues in the country are made as part of the Pacific Islands Law Officers' Network. In addition, information on government policies is readily available through the government's website and its information services. The reports of the Public Auditor are made available both in hard copy and on the internet. The Kaselehlie Press is a struggling operation and is able to survive because of the determination and dedication of its current editor.

iv) Giving priority to official duties over private interests:

As previously noted,⁴⁰ public officials and government employees sometimes do not spend government funds according to written policy. This happens partly because such maladministration benefits the persons involved. Similarly, the illegal use of funds by FSM's diplomat to the United Nations is an example of placing private interests above official duties.⁴¹

v) Performance of public duties uninfluenced by fear of personal cost or any hope of personal benefit:

There were no reports in 2008 to illustrate this point amongst FSM leaders.

vi) Public and private conduct that does not lead to a conflict of interest, or in which the fair and impartial exercise of duties might be compromised:

According to the Public Officials' Code of Conduct,⁴² conflict of interest is defined as follows:

- (1) A public official who willingly participates in a matter in which he or she knows or reasonably should know there exists a conflict of interest commits a crime;
- (2) A public official has a conflict of interest in a matter if the public official or a family member could benefit directly or indirectly from a decision on a matter over which that public official has influence or control, or if a matter over which a public official has influence or control relates it in a way to:

⁴⁰See above Section 1, ii), d).

⁴¹National Union (Kolonias), 22 May 2009, 2.

⁴²Code of the Federated States of Micronesia title 11, ch 5 at <<http://www.fsmlaw.org/fsm/code/index.htm>>





- a. A business or property the public official directly or indirectly owns or controls;
 - b. A business or property owned or controlled, directly or indirectly by a family member of the public official, or
 - c. A business or property in which the public official has a beneficial interest of any kind, whether through a trust or otherwise.
- (3) Nothing in this section is meant to interfere with the right of the public official or the family members of a public official to participate in public elections or in decisions of a community or group nature;
- (4) A person convicted under this section shall be imprisoned for not more than five years.

Micronesian society is family oriented. Important matters are done on a face-to-face basis. This has a strong bearing on conflict of interest, which is often difficult to distinguish in the exercise of public duties. In order to handle this problem and to help officials, the FSM national government developed strict 'Public Officials Code of Conduct' and 'Conflict of Interest' policies, which are law.

According to the Constitution, a member of Congress may not hold additional employment or another public office. During a term in Congress, and for three years thereafter, a member of Congress cannot be elected or appointed to a position or office created by a national statute during his term.⁴³ Public Servants are held to similar standards. The FSM Code (s.142) stipulates that public officials may not hold additional employment that can interfere with the exercise of their duties, nor may they accept monies above their stipulated salary in the conduct of their duties.

The public record contains some examples of conflict of interest and the breakdown of impartial exercise of public duties.⁴⁴

vii) Ensuring that public facilities are used only for public purposes, and not for personal purposes unless authorised by legislation or by a public decision of Cabinet:

There were no reports in 2008 wherein public facilities were used for personal purposes by leaders.

Section 5:

Principle 5 – Respect for Members of the Public

i) Treatment of members of the public honestly and fairly with proper regard for their rights and obligations:

In general, people are treated honestly and fairly, however where traditional systems remain strong and influential, cases of mistreatment of people by chiefs because of the difference in status often occurs. Increasing areas of concerns include those of women and their rights as per Article IV of the Constitution.

⁴³Constitution of the Federated States of Micronesia article IX, s 13.

⁴⁴See above section 4, V, para 3.



Principle 6 – Economy and Efficiency**i) Ensuring that public resources are not wasted, abused, or used improperly or extravagantly:**

The governance arrangements of FSM, comprising a central government and four state governments in addition to local governments has its bearing on economy and efficiency. These include rational and objective decisions on the allocation of resources in terms of national priorities, which can be overtaken by individual Senators' allegiances to their state. The use of a Congressional veto is often exercised to overrule the President's attempt to rationalise national spending. Where national resources are scarce, such behaviour based on regional affiliation can influence the potential for economic growth for a country, such as FSM, hampered by its remoteness, under-investment in infrastructure, and poor business climate.

Funding for FSM under the Compact Agreement is decreasing, and as a result the government is attempting to diversify the economy. In January 2008, a National Trade Facilitation Committee was established with participation from the government, private sector and NGOs to explore ways of diversifying the country's economic base, but to also live within its means, and is partly prompted by the change in the Compact of Free Association arrangements with the U.S.⁴⁵ Under the Compact of Free Association, FSM receives funding from the US. For the period 2004-23, this assistance is calculated to be about US\$2.3 billion.⁴⁶ Under this arrangement, annual grants for areas such as health, education, and private sector development will decrease, but contributions to a trust fund intended to provide a source of revenue to FSM after 2023 will increase annually.

Some fundamental concerns abound. According to the US Government Audit Office, FSM has limited potential to attain full financial autonomy or long-term economic development.⁴⁷ The economy is dependent on external assistance, and is caught with a public sector expenditure which together account for almost two-thirds of the country's GDP. The tax base which needs restructuring is limited, yet its public sector wage bill is increasing. With limited progress on reforming the tax system and a burgeoning wage bill, financial crisis has already been experienced in Chuuk and Kosrae. Along with problems of accountability on state expenditure, some state governments, in particular Chuuk and Yap, have been threatened with withholding of funds if they failed to meet reporting requirements.⁴⁸ For Chuuk, such a threat is not new, where wastage, abuse and inefficiency have been a chronic problem. In 2008, the U.S. Department of Insular Affairs withheld Compact funds for private development, environment and public sector capacity development. Funds were suspended because of financial irresponsibility (funds deficit, un-auditable conditions and unsustainable management practices). The suspension would be lifted once the U.S. Department of Interior receives a credible financial management plan and evidence of a properly functioning financial management regime.⁴⁹

The country has made limited progress in completing vital infrastructure projects. In April 2008, the FSM government had completed three planned infrastructure

⁴⁵Federated States of Micronesia Government News and Public Statements, 23 January 2008 <<http://www.fsmgov.org/press.html>>

⁴⁶David Gootnick, *Compact of Free Association: Micronesia Faces Challenges to Achieving Compact Goals* GAO-8-859T, Government Audit Office <<http://www.gao.gov/new.items/do8859t.pdf>> p 1.

⁴⁷Ibid.

⁴⁸Yap Department of Youth and Civic Affairs, 'Yap is Concerned Over Compact Sector Grant Allocations Withholding' *The Kaselehlie Press* (Pohnpei), 23 July 2008.

⁴⁹*The Kaselehlie Press* (Pohnpei), 20 August 2008. 2, 2-4.





projects and had only disbursed some 18% of planned expenditure. The holdup was largely due to disagreements between the different levels of government over priorities and implementation.

International assistance has been forthcoming to address structural inefficiencies. An IMF team visited Yap and Pohnpei in November 2008, to discuss the economic outlook and the policies needed to promote sustainable growth.⁵⁰ It made a number of important recommendations, including reducing the size of the government work force, tax reform, developing a more open foreign investment policy to attract investment and establishing commercial agriculture development.

Section 7:

Principle 7 – Diligence

i) Exercise of proper diligence, care, and attention:

‘There are 52 documented World War II shipwrecks and three oil tankers on the floor of Chuuk lagoon with an estimated 32,000,000 litres of oil still secured inside the sunken vessels. Illegal fishing practices such as using dynamite, storms and human activities are destabilising some of the wrecks, increasing the chances of an oil spill.’⁵¹ In 2008, scientists affiliated with Earthwatch discovered signs of an oil leak in Chuuk lagoon.

As an example of lack of diligence, the National Public Auditor, in his audit of the Pohnpei Economic Development Authority found, ‘the authority had incurred substantial losses from its operation from the prior periods and is currently struggling due to declining and unsuccessful projects. The Authority’s ability to operate and function might be affected without a reliable source of operation funds to defray its operation costs. This is raising doubts as to its ability to operate as a going concern’.⁵²

For ease of doing business in the Pacific, FSM was ranked 25th regionally and 113th globally of the 178 world economies ranked for 2006-7.⁵³ However, in 2007-08, FSM slipped back in the global rankings to 126 (out of 181). Recent tension between the Pohnpei State Government and Oceania Ltd is an example of the difficulty investors can face in FSM. Oceania Ltd is a US-based firm that is currently doing business in Pohnpei and wishes to expand by building a cannery that would employ an estimated 2,000 people. In addition, Oceania Ltd signed an agreement with Pohnpei’s Economic Development Authority to manage its port functions and cold storage facilities. However, the Governor of Pohnpei has supported a Chinese company which has interests in building a similar fish processing facility, causing conflict and confusion over the issue of the validity of the contract between the Pohnpei State Economic Development Authority and Oceania Ltd. The matter is before the FSM Supreme Court.⁵⁴ In the meantime, Oceania has halted its planned US\$80 million cannery project.

ii) Always seeking to achieve high standards of public administration:

In 2008, the National Public Auditor reported and notified the FSM Mission to the United Nations on over-spending and other improper expenditures. The UN

⁵⁰The Kaselehlie Press (Pohnpei), 26 November 2008 – 9 December 2008, 2.

⁵¹The Kaselehlie Press (Pohnpei), 20 August 2008 – 3 September 2008, 6.

⁵²The Kaselehlie Press (Pohnpei), 23 July 2008 – 5 August 2008, 2.

⁵³Fijilive, 26 May 2008.

⁵⁴The Kaselehlie Press (Pohnpei), 9 July 2008, 1, 3, 7.



Mission subsequently rectified the problems and provided audit reports for the years 2005, 2006, and 2007.

Improvements have also been noted in reporting and accounting on aid assistance. Exceptional note is for reporting on assistance from the People Republic of China⁵⁵

The National Public Auditor has made sustained efforts at improving the economy and efficiency of his office as well as in the national government, by having a regular schedule of training workshops and conferences. His *Annual Report for FY 2006* has a long list of such events for 2002, 2003, 2004, 2005 and 2006. For 2006 alone, there were 36 different training sessions, ranging from 'Conducting Performance Audits' to 'Transparency in the Public Sector'.⁵⁶

Section 8:

Principle 8 – National Peace and Security

i) Promotion of peace, security and harmony:

In April 2008, the FSM government launched a computerised border management system. It networks the National Immigration Office with the four states' immigration offices, four international airports as well as patrol ships. This will allow all arrivals and departures to be recorded, as well as alerts on potential threats to be maintained.⁵⁷ Other areas such as drug trafficking and peddling remain a problem. In 2008, marijuana was found in Majuro, Marshall Islands and led to the arrest of an FSM couple for allegedly selling marijuana to minors. Methamphetamine hydrochloride is another drug that is a problem in Micronesia with a laboratory found on Guam in 2008.⁵⁸

Aside from illicit drugs, monitoring of marine resources in partnership between neighbouring Micronesian states who share common international waters remains in existence. A cooperative exercise exists between FSM, Palau and the Republic of the Marshall Islands in monitoring fishing boats in the different Exclusive Economic Zones (EEZs). It involves the coordination of fast patrol boats (donated by Australia to the three jurisdictions) in conjunction with aircraft support from New Zealand and Australia. The purpose of the exercises has been to monitor fishing boats to see that they have up-to-date fishing licenses.

In early 2008, a number of fishing violations in FSM waters were documented.⁵⁹ Fishing vessels from Japan, China (PRC) and Taiwan were caught. While the two Japanese vessels were licensed, their violation was not having their VMS (Vessel Monitoring System) turned on so that they could be tracked by FSM marine officers. The Chinese vessel was not only unlicensed to fish in FSM waters, but it had caught a substantial number of sharks – 1,776 – as well as eight other species of fish, making up 543 individual fish on board when caught. These arrests were accomplished by the FSM marine police in cooperation with the U.S. Coast Guard and Australian officials. The FSM's EEZ also holds the world's last remaining stock of tuna in large quantity. The rising cost of fuel is a concern, as it has impact on the Micronesian states' ability to monitor its fish stocks.⁶⁰ Additional energy issues include finding sustainable alternative energy sources.⁶¹

⁵⁵*The Kaselehle Press* (Pohnpei), 11-24 June 2008, 13.

⁵⁶Haser Hairick, above n 18, appendix X.

⁵⁷Radio New Zealand International, 15 April 2008.

⁵⁸*Saipan Tribune*, 7 August 2008.

⁵⁹*The Kaselehle Press* (Pohnpei), 20 February 2008, 1, 5.

⁶⁰Radio New Zealand International, 7 July 2008.

⁶¹*Marianas Variety* (Saipan), 22 April 2008.





FSM also actively contributes to the regional peace and security effort. Two officers from the FSM National Police Force participated in the Regional Assistance Mission to the Solomon Islands (RAMSI) in 2008; a policy it has continued since 2006.⁶² In 2008, a Micronesian Regional Transnational Crime Unit (TCU) was opened in Palikir. It was a joint effort of Australia, the U.S, FSM and the sixth unit for the Pacific. Other units operate in Fiji, Samoa, Tonga, Vanuatu and Papua New Guinea. Police officials from Palau, the RMI and Kiribati also participated. The unit is designed to enable Micronesian police officials ‘to leverage resources to combat transnational crimes, including terrorism, money laundering, human trafficking, drug trafficking and sexual exploitation’.⁶³

A real problem that is immediate to FSM, which threatens the survival of the people of FSM is their access to fresh drinking water. Occasional periods of serious droughts in Micronesia serve to remind islanders of the importance of both the quantity and quality of their drinking water. In response, in 2008, Micronesian leaders, including traditional leaders (Palau, FSM and the U.S) met in Palau for the First Micronesian Watershed Learning Exchange conference, sponsored by The Nature Conservancy, to talk about steps to protect and manage their watersheds and best practices.

ii) Refusal to give or obey an illegal order to use force against another citizen:

Chapter 5 on Crimes against Public Administration, specifically subchapter III on ‘public corruption, threats and other improper influence on official and political matters,’ states that the following could constitute a crime if a person (presumably an official):

- threatens unlawful harm to any person with purpose to influence his or her decision, opinion, recommendation, vote, or other exercise of discretion as a public official, or a voter in any election, referendum, plebiscite of the FSM;
- threatens harm to any public official with purpose to influence his or her decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding
- threatens to harm any public official with purpose to influence him or her to violate his or her known legal duty, or
- privately addresses to any public official who has or will have an official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication with the purpose to influence the outcome on the basis of considerations other than those authorised by law.

The penalties under this section can extend to ten years’ imprisonment. There were no instances of this type of abuse of power in FSM in 2008.

Section 9:

Principle 9 – Respect for Office

i) Exercise authority and interact with people in a manner that is open, transparent, accountable, participatory and decisive but fair and equitable:

For 11 years, Caroline Islands Air (CIA), through an annual subsidy from the government of US\$165,000, had been serving the outer islands of FSM. In July 2008, the government removed the subsidy, arguing that the airline should operate as a private airline. In response to the decision of the government, the chairman of CIA and the pilot-cum CEO-mechanic resigned, effectively ending air services to

⁶²The Kaselehlie Press (Pohnpei), 27 October 2008.

⁶³The Kaselehlie Press (Pohnpei), 7-20 May 2008, 3.



the outer islands, including support for emergency medical airlifts. Travel to outer islands is limited to the use of ships.

In an effort to resolve this crisis, the FSM government explored a preferential loan program from China. If granted, this would allow officials to purchase two Harbin Y-12 aircraft costing \$9 million. But the issue of a pilot for the Harbin aircraft was not addressed.⁶⁴

ii) Seek to strengthen the integrity of a leader's Office and its effectiveness:

Strengthening the integrity of a leader's office takes place in many different ways. It could be in the way investigations are undertaken. For example, in 2008, the Pohnpei Police Commission hired an Internal Investigator to investigate complaints regarding the Police Force. The Investigator's office was relocated to the State Attorney's Office to ensure independence, impartiality and objectivity in the investigations.⁶⁵ Strengthening integrity could be pursued through broader action plans aimed at improving efficiency. For example, the FSM *National Strategic Development Plan (2004-2023)* amongst others, is aimed at strengthening the work of accountability institutions, including creating a one-stop centre to process complaints from the business community.⁶⁶

The importance of focusing on strengthening accountability institutions is illustrated by this story reported by *The Kaselehlie Press*,⁶⁷ about an audit completed in December 2008 by the National Auditor's office. The FSM Congress passed legislation over President Mori's veto that appropriated \$2.8 million from local revenues to fund social and economic development projects without defining the projects or what these terms meant. There were also numerous irregularities: 1) Congress members were inappropriately involved in administering funds they had made available – a violation of the Constitution that requires separation of powers. This means that Congress members cannot act to appropriate money and then participate in the process of implementing and administering the funds ('pitch and catch'). 2) Funds in the election districts were used for purposes other than for oversight. They were used for travel, trucks and cell phones. 3) Project control documents lacked clarity and completeness and were of limited usefulness as guides of controlling and managing project costs. As a result of the audit, the Department of Finance and Administration has mandated that changes be carried out and that no certifications and disbursements of funds will be made in the future for projects if control documents are not 'clear and fully defined.'



⁶⁴*The Kaselehlie Press* (Pohnpei), 23 July 2008.

⁶⁵*The Kaselehlie Press* (Pohnpei), 6 August 2008, 6.

⁶⁶*National Strategic Development Plan (2004-2023)* (FSM).

⁶⁷*The Kaselehlie Press* (Pohnpei), 7 January 2009, 1, 1-6.





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