

# National Government of the Federated States of Micronesia

## SCOPING STUDY REPORT 2019

On the desirability, feasibility and options for the establishment of a  
Paris Principles-compliant National Human Rights Institution

Prepared by the Regional Rights Resource Team of the Pacific Community and the  
Asia Pacific Forum of National Human Rights Institutions



Pacific  
Community  
Communauté  
du Pacifique



ASIA PACIFIC FORUM  
ADVANCING HUMAN RIGHTS IN OUR REGION



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## PACIFIC COMMUNITY REGIONAL RIGHTS RESOURCE TEAM

Established in 1995, the Regional Rights Resource Team (RRRT) is the pioneer of human rights training in the Pacific region, working to build a culture of human rights and assisting nation states to commit to, and observe, international human rights standards. RRRT is the Human Rights Programme of the Pacific Community (SPC), working to provide technical assistance and training to assist the 22 Pacific Island member countries and territories of SPC to increase observance of international human rights standards through improved service delivery, access to justice, and effective governance. By providing policy advice, technical support and training services, RRRT responds to the region's human rights priority areas, such as gender equality, violence against women and children, disability rights, human rights reporting, and the elimination of all forms of discrimination.

**Contact:** Director Miles Young: [MilesY@spc.int](mailto:MilesY@spc.int)

**Romulo Nayacalevu** was a senior human rights adviser at SPC RRRT, and was formerly the National Human Rights Officer with the Pacific Regional Office of the United Nations High Commissioner for Human Rights. He undertook the 2017 NHRI scoping study conducted with the FSM national government and Pohnpei State.

**Dr Jayshree Mangubhai** is the Acting Team Leader at SPC RRRT and focal point for work on national human rights institutions. She has worked in the field of human rights and development in Australia, South Asia and the Pacific for the past 20 years, previously as a Senior Policy and Advocacy Officer with Christian Aid. She undertook the scoping study in Yap and Chuuk states in 2019.

**Contact:** [jayshreem@spc.int](mailto:jayshreem@spc.int)

**George Isom** is the SPC RRRT Country Focal Officer for FSM, based in Pohnpei. He supported the NHRI scoping studies both in 2017 and 2019.

**Contact:** [georgezi@spc.int](mailto:georgezi@spc.int)

## ASIA PACIFIC FORUM OF NATIONAL HUMAN RIGHTS INSTITUTIONS

The Asia Pacific Forum of National Human Rights Institutions (APF) is a membership organization representing independent national human rights institutions (NHRIs) across Asia and the Pacific that have been established in compliance with the minimum standards of the United Nations General Assembly endorsed "Principles relating to the status of National Institutions" (the Paris Principles). It is an independent non-profit organization that supports, through regional cooperation, the establishment and development of national institutions to protect and promote the human rights of the peoples of our region.

**Contact:** Director Kieren Fitzpatrick: [KierenFitzpatrick@asiapacificforum.net](mailto:KierenFitzpatrick@asiapacificforum.net)

**Roslyn Noonan** is an expert NHRI consultant to the APF. She is a former New Zealand Chief Human Rights Commissioner 2001–2011 and former Chairperson of the International Coordinating Committee for National Institutions (ICC), now the Global Alliance of NHRIs (GANHRI), 2010–2012. She undertook the 2017 NHRI scoping study conducted with the FSM national government and Pohnpei State.

**Contact:** [Roslyn.Noonan@gmail.com](mailto:Roslyn.Noonan@gmail.com)

**Dr Jill Chrisp** is an expert NHRI consultant to the APF. She worked previously as senior manager with the New Zealand Human Rights Commission and now is partner to a development consultancy working in the Asia-Pacific region. She undertook the scoping study in Kosrae State in 2019.

**Contact:** [drjillchrisp@extra.co.nz](mailto:drjillchrisp@extra.co.nz)



## ACKNOWLEDGEMENTS

The Asia Pacific Forum for National Human Rights Institutions and the Pacific Community's Regional Rights Resource Team acknowledge this bold and welcome initiative of the National Government of the Federated States of Micronesia to invite our offices to conduct a scoping study on the feasibility of establishing a national human rights institution. We recognize that this is a bold step, because it involves strong political will and commitment from the government to get to the point of recognizing the significance and importance of such an institution in the promotion and protection of the human rights of its people.

Special thanks go to the people we met during the consultations for generously sharing their time, knowledge and perspectives.

Our team was warmly welcomed by the many stakeholders, leaders and people of the Federated States of Micronesia on Chuuk, Kosrae, Pohnpei and Yap. They shared their aspirations, their opinions, their thoughts and their commitment to their rich traditions and customs. We have tried to faithfully reflect what we heard but acknowledge that, at best, we have captured only some of it. We acknowledge that continuing consultations with the states will be essential if the establishment of a national human rights institution is to progress.

We appreciated the support of the Secretary of the Department of Health, the Hon. Magdalena Walter, in organizing the programme. The support of the Secretary and Ms Norleen Oliver-Deorio and Mr Stuard Penias of the Social Affairs Division was also critical to the success of our mission. Likewise appreciated was the support of Mr Hans Skilling, Human Rights Focal Point for Kosrae State, Mr Angelino Rosokow, Chief of Public Affairs for Chuuk State, and Ms Linda Teteth, Women's Interest Officer for Yap State.



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**Jayshree Mangubhai (Dr)**  
**SPC RRRT**



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**Rosslyn Noonan (Ms)**  
**Asia Pacific Forum of National  
Human Rights Institutions**

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## ABBREVIATIONS

<b>A-G</b>	Attorney-General
<b>APF</b>	Asia Pacific Forum of National Human Rights Institutions
<b>CEDAW</b>	Convention on the Elimination of all forms of Discrimination Against Women
<b>CERD</b>	Convention on the Elimination of Racial Discrimination
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>FSM</b>	Federated States of Micronesia
<b>GANHRI</b>	Global Alliance of National Human Rights Institutions
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>NGO</b>	non-governmental organization
<b>NHRI</b>	national human rights institution
<b>NSDP</b>	national strategic development plan
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>PIFS</b>	Pacific Islands Forum Secretariat
<b>RRRT</b>	Regional Rights Resource Team
<b>SDG</b>	Sustainable Development Goals
<b>SPC</b>	Pacific Community
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UPR</b>	Universal Periodic Review



# EXECUTIVE SUMMARY and RECOMMENDATIONS

## EXECUTIVE SUMMARY

The Government of the Federated States of Micronesia (FSM), through the Secretary of the Department of Health and Social Affairs, the Hon. Magdalena Walter, requested assistance from the Pacific Community's Regional Rights Resource Team (RRRT) to assess the feasibility of, and options for, a national human rights institution (NHRI). In undertaking NHRI scoping assessments, RRRT works in partnership with the Asia Pacific Forum of National Human Rights Institutions (APF).

An RRRT and APF scoping team, consisting of Romulo Nayacalevu from RRRT and Rosslyn Noonan from APF, visited Pohnpei, FSM to consult with national and Pohnpei State government and other stakeholders from 16 to 22 July 2017. A strong recommendation from this visit was to have similar consultations in the other three states of FSM in order to understand more fully the challenges of a federated state (country), and to ensure state support for an NHRI should it be established. Hence, another RRRT and APF scoping team, consisting of Dr Jayshree Mangubhai from RRRT, and Dr Jill Chrisp from APF, visited Chuuk, Kosrae and Yap to consult with government and other stakeholders from 20 to 30 May 2019. The two scoping teams:

- held consultations with government officials (national and state governments), community and religious leaders, non-governmental organizations, members of the legal profession and other individuals;
- met with the ambassadors of both the United States of America and Australia;
- provided an initial briefing at the end of the 2017 visit to the Secretary of Health on the team's conclusions and recommendations; and
- provided an initial briefing at the end of the 2019 visit to the Acting Secretary of Health and the Secretary of Foreign Affairs on the team's conclusions and recommendations.

The islands of Micronesia were settled over 4000 years ago. Over the past 500 years they experienced Spanish, German, Japanese and American colonial rule. Since 1986, FSM has been an independent country of four states in free association with United States of America. FSM is made up of over 600 islands spread across over 1 million square miles of the Pacific Ocean.

FSM's four states are Chuuk, Kosrae, Pohnpei and Yap. While the four share some features, each also has distinctive languages, cultures and traditions.

The FSM Constitution specifies three levels of government: national, state and local. Article VIII on Powers of Government states:

Section 1. A power expressly delegated to the national government, or a power of such an indisputably national character as to be beyond the power of a state to control, is a national power.

Section 2. A power not expressly delegated to the national government or prohibited to the states is a state power.

FSM is a member of the United Nations and has ratified three human rights treaties: the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD).

During consultations, participants identified a range of human rights issues experienced by the people of FSM, and noted that there were only a few avenues available to deal with these issues. They discussed the key questions listed below.

- i. Is a national human rights institution needed in FSM? What value would it add?
- ii. Given the federal nature of FSM, how could an NHRI work at both national and state levels?
- iii. If established, what roles and responsibilities should an NHRI have?
- iv. What type of NHRI would be most appropriate to carry out these roles and responsibilities, taking into account resource constraints and other challenges?

This report records the views of people consulted, and shows the consensus reached on the mandate, responsibilities and functioning of an NHRI both at the national and state level. The views of the people reinforce the conclusion that consideration of the value and feasibility of an NHRI, a crucial accountability mechanism, is now timely.

## **RECOMMENDATIONS**

The SPC RRRT and APF scoping team makes the following recommendations for the consideration of the Government of the Federated States of Micronesia.

- The scoping team recommends the establishment of a national human rights institution with a human rights commission structure.
- The scoping team recommends national enabling legislation as the legal foundation for the NHRI.
- The scoping team further recommends that, in developing the legislation, agreement should be reached with each state, authorising the mandate of the NHRI to extend to and apply in each state.
- A full-time position of chief human rights commissioner should be created to lead the NHRI.
- A full-time position of commissioner for each of the four states should be created to co-lead the NHRI.

Criteria for the appointment of the chief human rights commissioner and commissioners should include:

- demonstrated human rights experience and evidence of success in achieving change;
- a deep understanding of FSM's cultures, traditions and languages;
- knowledge of FSM's national and state constitutions, and the roles, responsibilities and relationships of the national and state governments, the executive, legislative and judicial branches, and the public sector; and
- recognition by the community as a person of integrity, fairness and courage.

In considering the appointment of a chief human rights commissioner and the state commissioners, gender considerations should be taken into account to ensure that the NHRI reflects the plurality of FSM society.

Enabling legislation should provide a broad mandate to:

- promote and protect the human rights of every person in FSM; and
- foster the dignity, equality and security of everyone in FSM, including all citizens and residents, whether permanent or temporary, and women, children and people with disabilities.

The primary objectives of the national human rights institution should be to:

- advocate and promote respect for, and an understanding and appreciation of, human rights throughout FSM;
- encourage harmonious relations between individuals and among the diverse groups of FSM; and
- inquire into and report on alleged violations of human rights.

To fulfil its broad mandate to protect and promote human rights in accordance with the Paris Principles, the national human rights institution should have the following functions:

- a. provision of human rights advice;
- b. policy and legislative review;
- c. monitoring of state implementation of human rights commitments;
- d. thematic inquiries and investigations;
- e. detention monitoring;
- f. complaints handling and mediation;
- g. bringing proceedings before the court or being appointed as intervener or amicus curiae;
- h. engagement with international human rights mechanisms; and
- i. human rights education.

Enabling legislation should provide for general powers adequate for the NHRI to fulfil its mandate to promote and protect human rights in line with regional and global best practice.

To ensure compliance with the Paris Principles and to foster community trust in the institution, the enabling legislation should provide explicit guarantees of independence for the NHRI and for a transparent appointment process, involving an independent selection committee and defined selection criteria.

The scoping team notes that in establishing an NHRI, funding would desirably provide for the minimum of five commissioners, with a commissioner based in each state, a legal counsel, an educator and/or communicator and an administrator at the national level, and staff at the state level sufficient to support the commissioner to respond to local complaints and systemic issues and undertake human rights promotion.

The scoping team further recommends that if these recommendations are accepted in principle by the national government, then ongoing consultations should take place, as enabling legislation is developed, with the governments and communities of the four states to build consensus on the mandate, responsibilities and functioning of the NHRI at both national and state levels.

# INTRODUCTION

## BACKGROUND

1. The Government of the Federated States of Micronesia (FSM), through the Secretary of Health, the Hon. Magdalena Walter, requested the Pacific Community's Regional Rights Resource Team (RRRT) for assistance in assessing the feasibility of, and options for, a national human rights institution (NHRI). In undertaking NHRI scoping missions, RRRT works in partnership with the Asia Pacific Forum of National Human Rights Institutions (APF).
2. The islands of Micronesia were settled over 4000 years ago. Over the past 500 years, they experienced Spanish, German, Japanese and American colonial rule. Since 1986, FSM has been an independent country of four states in free association with United States of America. FSM is made up of over 600 islands, spread across over 1 million square miles of the Pacific Ocean.
3. The four states that make up FSM are Chuuk, Kosrae, Pohnpei and Yap. While they share some features, each also has distinctive languages, cultures and traditions.
4. The FSM Constitution specifies three levels of government: national, state and local. Article VIII on Powers of Government states:

Section 1. A power expressly delegated to the national government, or a power of such an indisputably national character as to be beyond the power of a state to control, is a national power.

Section 2. A power not expressly delegated to the national government or prohibited to the states is a state power.
5. FSM is a member of the United Nations and has ratified three of the nine core human rights treaties: the Conventions on the Rights of the Child (CRC), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD).
6. Like other small Pacific Island states, FSM faces the enormous challenges of distance and accessibility for its small, widely spread population, especially those beyond the state capital islands. Rising sea levels and climate change especially affect those islands and impact directly on the human rights of their inhabitants.
7. During consultations, participants identified a range of human rights issues experienced by the people of the FSM. They also identified mechanisms that had the potential to deal with aspects of human rights violations such as the courts, the Justice Ombudsman's Office, the Land Commission, public safety officers, the police, non-governmental organizations such as the Micronesian Legal Services Corporation, and traditional systems. However, they noted that there were few avenues to turn to for dealing comprehensively with the range of human rights issues they experienced.
8. Consideration of the value and feasibility of an NHRI, a crucial accountability mechanism, is now timely.

## METHODOLOGY

9. A scoping team, consisting of Romulo Nayacalevu from RRRT and Rosslyn Noonan from APF, visited Pohnpei, FSM to consult with national and Pohnpei State government officials and other stakeholders from 16 to 22 July 2017. A strong recommendation from this visit was to have similar consultations in the other three states in order to understand more fully the challenges of the federal state and to ensure state support for an NHRI, should it be established. Hence, another scoping team, consisting of Dr Jayshree Mangubhai and George Isom from RRRT and Dr Jill Chrisp from APF, visited Chuuk, Kosrae and Yap states to consult with government and other stakeholders from 20 to 30 May 2019.
10. The team was greatly assisted by Norleen Oliver-Deorio and Stuard Penias from the Department of Health and Social Affairs, FSM National Government.
11. While in the FSM the scoping team:
  - held consultations with government officials (national and state governments), community and religious leaders, non-governmental organizations, members of the legal profession, media and other individuals;
  - met with the ambassadors of both the United States of America and Australia;
  - provided an initial briefing at the end of the 2017 visit to the Secretary of Health on the team's conclusions and recommendations; and
  - provided an initial briefing at the end of the 2019 visit to the Acting Secretary of Health and the Secretary of Foreign Affairs on the team's conclusions and recommendations.
12. Desktop research for this report reviewed a range of resources. Key documents included the FSM national and state constitutions, relevant FSM laws and policies, FSM human rights cases, and FSM's Human Rights Treaty Bodies and Universal Periodic Review reports.
13. A full list of meetings/consultations (Appendix II) and a List of Documents (Appendix IV) are attached to this report.

# NATIONAL HUMAN RIGHTS INSTITUTIONS

## WHAT IS AN NHRI?

14. A national human rights institution (NHRI) is an independent state institution dedicated to promoting and protecting human rights in a country. An NHRI is a structure established by the state, but independent of government in the same way as the judiciary.
15. The “state” refers to all of the elements that form the nation of the Federated States of Micronesia, and which are essential to its functioning: Congress, the Executive and its state agencies, the courts, the state governments and their agencies.
16. An NHRI must be established in the FSM Constitution or by a specific law. It has to be able to work independently of government, although core funding should be provided by the government.
17. An NHRI has a broad mandate to promote and protect human rights. It advises the Congress, the government and others on how best to strengthen human rights for the people of its nation. An NHRI monitors how the government implements human rights standards. It is accessible to everyone, can deal with complaints, investigate human rights violations, and make recommendations.
18. NHRIs are a bridge between international human rights treaties that a state ratifies, and making those commitments real for everyone within that state.
19. Currently, 110 countries have an NHRI. In the Pacific region, Fiji, Samoa, Tuvalu, New Zealand and Australia have an NHRI. A number of other Pacific Island states, including the Republic of the Marshall Islands, Cook Islands, the Republic of Nauru and the Republic of Vanuatu, have also initiated scoping studies on the feasibility of setting up their own NHRIs.

## INTERNATIONAL STANDARDS FOR NHRIs

20. To gain international recognition and credibility, NHRIs are required to comply with a set of minimum United Nations standards that were adopted by the United Nations General Assembly in the “Principles relating to the status of National Institutions for the Promotion and Protection of Human Rights” (the Paris Principles).<sup>1</sup> The Paris Principles require:
  - establishment in the constitution or by law;
  - a broad mandate based on universal human rights standards;
  - responsibility to both promote and protect human rights;
  - independence from and autonomous of government;

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<sup>1</sup> General Assembly resolution 48/134 of 20 December 1993. See Appendix III.



- pluralism, with senior positions and staff that broadly reflect the different groups in the society;
- adequate resources provided by the government; and
- powers of investigation.

21. The Paris Principles also set out the functions and ways of working of NHRIs, including:

- providing advice and guidance to parliament, government and its agencies;
- investigating situations of human rights violations;
- monitoring government implementation of human rights standards;
- undertaking or advising on human rights education;
- contributing to the development of human rights jurisprudence by intervening in court cases and/or acting as amicus curiae;
- advocating for ratification of international human rights treaties;
- working with non-governmental organizations and civil society;
- being accessible to all; and
- in most cases, being able to receive complaints and use the range of dispute resolution tools (e.g. mediation, conciliation, referral, provision of information and advice) to resolve them.

## TYPES OF NHRIs

22. While a country can have only one internationally recognized NHRI, it is free to decide what type it should be. This decision should be informed by an examination of the country's existing human rights protection framework; its legal, political and cultural systems; and the availability of technical and financial resources.
23. There are four main types of NHRIs.

### i. Human rights commissions

Human rights commissions have a broad range of roles that may include:

- promoting human rights education and awareness of human rights;
- advising Parliament and the government;
- contributing to court proceedings that raise human rights issues;
- undertaking investigations or inquiries into human rights issues;
- contributing to the work of the UN human rights mechanisms;
- receiving and determining human rights-related complaints; and
- monitoring places of detention.

Human rights commissions are generally headed by a chief commissioner/ chairperson/ president and two or more commissioners who are appointed for a fixed term. They usually appoint a senior executive officer to head the staff. Commissioners are the public advocates for the promotion and protection of human rights. In the Pacific, the Fiji Human Rights and Anti-Discrimination Commission, and the New Zealand and Australian Human Rights Commissions are examples of this model.

## **ii. Ombudsman's office with a human rights mandate**

Ombudsman's offices are generally dedicated to supporting good administration. Most ombudsman's offices have powers of investigation, enabling them to look into alleged instances of maladministration. When they also have a broad mandate to promote and protect human rights, they qualify as an NHRI.

A broad human rights mandate brings with it the same functions as those of a human rights commission; in particular, the requirement to actively promote human rights, monitor, and provide advice and guidance on the implementation of human rights commitments.

Across the Asia-Pacific region, the Samoa Ombudsman's Office, Tuvalu Ombudsman's Office and the Timor-Leste Office of the Provedor are examples of ombudsman's offices with a full human rights mandate and the functions set out in the Paris Principles. As stated in a United Nations document on NHRIs, hybrid institutions can provide a "one-stop" service across a range of issues.<sup>2</sup> They can also allow for resources to be consolidated within a single institution.

Ombudsman's offices are usually headed by a single office-holder (the ombudsman) who is appointed for a fixed term. They may, however, include a chief ombudsman and one or two deputy ombudsmen, depending on the workload. In some places, as in Samoa and Timor-Leste, deputy ombudsmen are allocated particular areas of responsibility.

## **iii. Advisory and consultative bodies**

Advisory and consultative bodies are institutions that provide in-depth advice and recommendations to a government on a range of human rights issues. These bodies are often limited in their mandate and usually do not have specific powers to investigate complaints of alleged discrimination or breaches of human rights. Their role is usually limited to promotional programmes and activities. The French National Consultative Commission on Human Rights is an example of a consultative body.

## **iv. Research bodies**

Research bodies are often described as human rights "think tanks". They tend to have an academic focus that enables them to make expert contributions to the study of particular human rights issues. Like advisory and consultative bodies, research bodies generally lack the ability to receive and determine human rights-related complaints from individuals. The first incarnation of the Danish Institute for Human Rights was an example of a research body model, although now it has been transformed into a broad-based NHRI.

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<sup>2</sup> United Nations. 2010. National Human Rights Institutions: History, Principles, Roles and Responsibilities. New York and Geneva. Available at: [https://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI\\_en.pdf](https://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf)

# HUMAN RIGHTS CONTEXT IN FSM

## FSM's HUMAN RIGHTS OBLIGATIONS

### Constitutional framework

24. FSM's unique constitutional arrangement makes it the only independent Pacific state to have a set-up where each of the four states (Chuuk, Kosrae, Pohnpei and Yap) retain some degree of independence in terms of regulating their state affairs. However, as an independent nation, the FSM Constitution provides for the three branches of government at the national level. These include the Executive, headed by the President; the Legislature (Congress), headed by the Speaker; and the Judiciary, headed by the Chief Justice. Each state has its own constitution, which is structurally similar to the FSM Constitution, utilising the three co-equal branches of government.<sup>3</sup> Article 2 of the FSM Constitution affirms the supremacy of the constitution and an act of the government in conflict with the constitution is invalid.<sup>4</sup> The supremacy clause in the FSM Constitution is settled law, in that every decision or action by the national or state governments must adhere to the supremacy of the FSM Constitution. The FSM courts have provided some clarity on the supremacy clause.

#### *i. The supremacy of the constitution*

The FSM Constitution is the supreme law of FSM, and any actions taken by the government that conflict with the FSM Constitution are invalid to the extent of conflict. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 630-31 (Pon. 2002).<sup>5</sup>

#### *ii. State constitutions cannot control or restrict the actions of the national government*

A state constitution cannot control or restrict the actions of the national government, whose powers and limitations are derived solely from the national constitution, which is the supreme law of the land. Thus, a state constitution's protections cannot be invoked against the national government. FSM v. Aiken, 16 FSM Intrm. 178, 182 (Chk. 2008).<sup>6</sup>

#### *iii. State law cannot prevent the enforcement of a national statute*

The FSM Constitution's supremacy clause does not permit a state law to prevent the enforcement of a national statute that gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the constitution is founded. Barrett v. Chuuk, 16 FSM Intrm. 229, 234-35 (App. 2009).<sup>7</sup>

3 <http://fsm supremecourt.org/WebSite/fsm/>

4 <http://fsm supremecourt.org/WebSite/fsm/constitution/article2.htm>

5 Ibid

6 Ibid

7 Ibid

## **Declaration of rights**

25. Specific rights guaranteed are freedom of expression, peaceable assembly, association, or petition (Section 1); freedom of religion (Section 2); the right to life, liberty, property and equal protection of the laws (Section 3); non-discrimination on the grounds of sex, race, ancestry, national origin, language, or social status (Section 4); the right to privacy and freedom from unreasonable search, seizure (Section 5); the right to a speedy public trial (Section 6); the right to silence and freedom from double jeopardy (Section 7); freedom from cruel and unusual punishment (Section 8); prohibition of capital punishment (Section 9); and prohibition of slavery and involuntary servitude (Section 10).
26. Further to the constitutional protection of human rights above, Article V enshrines the protection of traditional rights and Article VI provides for the protection of universal suffrage.
27. Each of the four states has further protection of human rights within their state constitutions, as described below.

### **Chuuk Constitution<sup>8</sup>**

28. Article III of the Chuuk Constitution provides for the protection of the following rights (among others): freedom of expression; freedom of the press; the right to peaceful assembly and the freedom of association (Section 1); the right to life, liberty and property and the enjoyment of civil rights, including non-discrimination on the basis of race, religion, sex, language, dialect, ancestry, national origin or social status (Section 2); the right to privacy and freedom from unreasonable search and seizure (Section 3); the right to a speedy trial and the right to counsel etc. (Section 4); prohibition of capital punishment (Section 8); and the prohibition of slavery (Section 9).

### **Kosrae Constitution<sup>9</sup>**

29. Article II of the Kosrae Constitution includes, among others, protections for freedom of expression, peaceful assembly, association or petition (Section 1 (a)); the right to life, liberty and property and equal protection of laws (Section 1 (b)); equal protection without discrimination on the grounds of sex, race, ancestry, national origin, language or social status; and the right to privacy (Section 1 (d)).

### **Pohnpei Constitution<sup>10</sup>**

30. Article 4 of the Pohnpei Constitution provides for the protection of human rights. Among others are protections for freedom of speech (Section 1); freedom of association and petition (Section 2); equal rights (Section 3); due process of law (Section 4); freedom from unreasonable search and seizure (Section 8); rights of the accused (Section 9); prohibition of capital punishment (Section 11); and freedom of movement (Section 13).

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8 <http://fmsupremecourt.org/WebSite/chuuk/constitution/article03.htm>

9 <http://fmsupremecourt.org/WebSite/kosrae/constitution/a02.htm>

10 <http://fmsupremecourt.org/WebSite/pohnpei/constitution/article4.htm>

## **Yap Constitution**<sup>11</sup>

31. Article 2 of the Yap Constitution provides for the protection of the following fundamental human rights: freedom of expression and the right to assembly (Section 1); freedom of religion (Section 2); the right to privacy (Section 3); the right to life, liberty and property (Section 4); the right to a fair trial and due process (Section 5); and freedom from slavery (Section 10).

## **Legislative framework**

32. Each FSM state makes its own laws that regulate the protection of various human rights. However, at the national level, in recent years the government has passed key legislation:
- i. revised Criminal Code Act, regulating offenses that breach various forms of human rights and amount to criminal acts, including human trafficking. Each state has its own criminal laws;
  - ii. Trafficking in Persons Act of 2014 and the corresponding laws against trafficking in persons adopted in all four states in 2013;
  - iii. Maternity Leave Act (Public Law No. 16-15).
33. It is notable also that in terms of legislative reforms that attempt to bring FSM in compliance with international treaties, the states of Kosrae and Pohnpei have passed legislation in compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In particular, Kosrae has passed the Kosrae Family Protection Act (L.B. 10-20, L.D.3) and Pohnpei has amended its Pohnpei Code to include a new title 53 “Domestic Issues” and chapter 1 “Domestic Violence”, (L.B. 88-16). Chuuk State also has passed legislation in compliance with Convention on the Rights of the Child (CRC), in particular Chuuk State Law 12-14-18, which raises the age of consent from 13 to 18 years. Chuuk, Pohnpei and Yap have also passed laws in compliance with the Convention on the Rights of Persons with Disabilities (CRPD): Kosrae State Law 8-24, Pohnpei Disabilities State Law 5L-30-01, and Yap State Law 9-63.

## **INTERNATIONAL HUMAN RIGHTS COMMITMENTS**

### **Core human rights treaties**

34. FSM is a State Party to three core human rights treaties: CEDAW, which it acceded to on 1 September 2004; CRC, which it acceded to on 5 May 1993; and CRPD, which it ratified on 7 December 2016. Further, FSM ratified the Optional Protocols to the CRC, namely the Optional Protocol on the involvement of children in armed conflicts (on 26 October 2015) and the Optional Protocol on the sale of children, child prostitution and child pornography (on 23 April 2012).<sup>12</sup>
35. FSM signed the Convention against Torture, Inhuman and Degrading Treatment (CAT) on 15 September 2005.

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11 <http://fmsupremecourt.org/WebSite/yap/constitution/article2.htm>

12 [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=113&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=113&Lang=EN)



36. In April 1996, FSM submitted its initial report to the CRC Committee. FSM was reviewed before the CRC Committee in 1998 and the concluding observations of the Committee were issued in February 1998. Its second report to the CRC Committee, due in 2000, was submitted in January 2018. In this state report, FSM recognized that the country needs to establish an independent NHRI in order to streamline its human rights functions.<sup>13</sup>
37. In August 2015, FSM submitted its overdue initial and periodic reports to the CEDAW Committee. FSM was reviewed before the CEDAW Committee in 2017 and the Committee's concluding observations were issued in March 2017.<sup>14</sup> The Committee noted:

*10. The State party has translated the Convention into the main local languages and that it has carried out increased public outreach and awareness-raising campaigns to make women more aware than before of their rights and responsibilities. It notes with concern, however, that the Convention has not been given sufficient visibility as the legal basis for measures, including legislation and policy measures, to eliminate discrimination against women and promote gender equality in the State party.*

38. On the issue of an NHRI, the CEDAW Committee stated:

*18. The Committee notes with concern that the State party has not yet taken steps to establish an independent national human rights institution with a wide mandate to protect and promote women's human rights.*

*19. The Committee recommends that the State party establish, within a clear time frame, an independent national human rights institution in accordance with the principles relating to the status of national institutions (the Paris Principles), with a mandate to protect and promote the substantive equality of women and men.*

39. The CRPD initial state report, due in 2019, is in the process of being finalized.

## Universal Periodic Reviews

40. FSM has submitted its state reports and completed two cycles of the Universal Periodic Review (UPR)<sup>15</sup>, with its first review held in 2010 and the second review in 2015. The third review will be held at the 37th session of the Human Rights Council in 2020. In its first UPR, FSM received 93 recommendations, of which the following were on the establishment of an NHRI.

61.39. Adopt measures conducive to the creation of a national human rights institution in accordance with the Paris Principles (Mexico);

61.40. Establish a national human rights institution in cooperation with and with the assistance of the international community (Indonesia);

61.41. Study the possibility of establishing an independent national human rights institution to promote human rights (Argentina).

In its second UPR, FSM received 94 recommendations, of which the following were on the establishment of an NHRI.

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13 [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fFSM%2f2&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fFSM%2f2&Lang=en), para. 39

14 [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/countries.aspx?CountryCode=FSM&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/countries.aspx?CountryCode=FSM&Lang=EN)

15 <http://www.ohchr.org/EN/HRBodies/UPR/Pages/FMIndex.aspx>



62.38 Take immediate steps, including if necessary by requesting appropriate technical assistance, to establish an independent national human rights institution in accordance with the Paris Principles (Ireland);

62.39 Establish a national human rights institution in compliance with the Paris Principles (Portugal);

62.40 Strengthen its efforts in establishing a national human rights institution in accordance with the Paris Principles (Indonesia);

41. In its national report to the UPR, the government noted that:

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

Further, FSM requests and invites the international development partners and community:

*in general to consider providing partnership or assistance, in 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.<sup>16</sup>*

## SUSTAINABLE DEVELOPMENT GOALS

42. The FSM national government established a joint United Nations-government Sustainable Development Goals (SDGs) Working Group in 2016, comprising representatives from eight departments. The Working Group has approved an SDG localization annual work plan with a rollout process including though mainstreaming the SDGs into the FSM Strategic Development Plan. Progress is underway to address the challenge of raising awareness across the country on what the SDGs are and actions to work towards progressing those commitments.

## GOVERNMENT OFFICES WITH HUMAN RIGHTS OVERSIGHT

43. A UPR Taskforce was established by Presidential Order in May 2015 to coordinate the implementation of FSM's human rights commitments across government. The Taskforce currently comprises representatives of the FSM Departments of Health and Social Affairs, Foreign Affairs, Justice, Resources and Development, and Education; the Division of Statistics; and non-governmental organizations. The Taskforce also has taken it upon itself to plan activities with ministerial counterparts with the international human rights treaties in mind.

44. The Department of Health has the overall responsibility for human rights in FSM. Within the department are the Gender Division and the divisions that provide oversight for children and persons with disabilities. However, it is important to note that, because of the cross-cutting nature of human rights, other government departments that would have oversight on human rights issues as they relate to their department include the:

- Office of the President, with its general oversight functions and responsibilities;
- Department of Education, dealing with the right to education;

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16 [http://lib.ohchr.org/HRBodies/UPR/Documents/session9/FM/A\\_HRC\\_WG.6\\_9\\_FSM\\_1\\_Micronesia\\_eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session9/FM/A_HRC_WG.6_9_FSM_1_Micronesia_eng.pdf)

- Department of Justice, in terms of law and issues relating to justice (e.g. policing, courts, lawyers) as well as overseeing the National Trafficking Taskforce;
  - Department of Foreign Affairs, in terms of dealing with FSM's international human rights obligations and reporting;
  - Department of Resources and Development; and
  - Department of Transport, Communications and Infrastructure.
45. Further, the four state governments each have similar arrangements and, while they have oversight of the implementation of the human rights commitments of the country at the state level, it is the national government that must report on the implementation of human rights commitment on the ground.
  46. While these government departments have key human rights oversight, they do not provide the comprehensive role that an NHRI would provide for both government and the people of FSM generally. An independent NHRI would also alleviate the heavy demands placed on some of these government offices or ad hoc committees tasked with providing oversight of the government's implementation of its human rights commitments under the core treaties.
  47. It is important to note that an NHRI will not remove the key roles of these government agencies around human rights; rather it will complement, support and strengthen these existing ministries and departments while furthering the protection, promotion and respect of human rights within FSM's international and domestic human rights frameworks. As discussed previously in this report, an NHRI would work to strengthen the human rights culture of FSM, and ensure that the government's obligations to protect and promote human rights – as mandated in the FSM Constitution and the four state constitutions – are consistently carried out by the respective national and state level authorities.

## REGIONAL AND BILATERAL AGREEMENTS

48. FSM, as a key member of regional organizations, has also subscribed to various regional commitments that call for the protection and promotion of human rights. These regional commitments include the Pacific Leaders Gender Equality Declaration 2012, the Pacific Platform for Action on Gender Equality and Women's Human Rights 2018–2030, the Pacific Framework for the Rights of Persons with Disabilities 2016–2025, the 2015 Denarau Declaration on Human Rights and Good Governance, the Framework for Pacific Regionalism 2014, the Mauritius Strategy for the Implementation of the Barbados Plan of Action for the Sustainable Development of Small Island States, the Framework for Resilient Development in the Pacific and the Boe Declaration on Regional Security 2018. These regional agreements and commitments progress the collective decisions of Pacific Island leaders, including those of FSM, to advance the protection and promotion of human rights in the Pacific region.
49. The Framework for Pacific Regionalism, which replaced the Pacific Plan, notes the commitment of Pacific leaders, in particular to human rights:

*We embrace good governance, the full observance of democratic values, the rule of law, the defence and promotion of all human rights, gender equality, and commitment to just societies.<sup>17</sup>*

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<sup>17</sup> <https://www.forumsec.org/wp-content/uploads/2017/09/Framework-for-Pacific-Regionalism.pdf>

50. At the 47th Pacific Islands Forum Meeting held in 2016 in FSM, Pacific leaders endorsed, among other crucial development issues in the Pacific, the Pacific Framework for the Rights of Persons with Disabilities 2016–2025. The leaders acknowledged that disability continues to be an issue of significance for the region, reflecting on the region’s ability to protect the marginalized, as well as those who have been left behind in development processes. In terms of gender equality, the Pacific leaders also noted that:

*[S]ince the adoption of the 2012 Pacific Leaders Gender Equality Declaration (PLGED), regional progress on achieving gender equality has generally improved, albeit slowly. Common challenges include attitudinal and behavioural barriers, insufficient funding, and fragmentation and lack of coordination amongst agencies.<sup>18</sup>*

## **NATIONAL STRATEGIES, PLANS AND POLICIES THAT ENSHRINE HUMAN RIGHTS**

51. FSM’s various policies and plans articulate the government’s ongoing commitment to human rights. Key policies include the gender policy and the youth policy. FSM is also developing its draft national policy on ending violence against women. It is important that the government demonstrates that its policies are directed towards strengthening its commitment to protect and promote the human rights of its people, especially marginalized groups, such as persons with disabilities, young people and women. These policies can be further strengthened with a national institution that provides the government with advice and guidance on the implementation of these policies, as well as ensuring that the government’s actions are in line with its human rights commitments and obligations.

### **Strategic Development Plan 2004–2023**

52. The national UPR reports highlight the National Strategic Development Plan 2004–2023 (NSDP). The plan was developed in 2004, when FSM entered a new phase of the amended Compact of Free Association with the United States. The NSDP is the country’s primary national planning economic mechanism and comes in two volumes. The first volume covers the major components of the plan and presents an overview of FSM’s economy, policies and development strategies for each sector of the economy. The second volume contains the sector planning matrices. They are complementary of each other and should be used in cross reference with each other. The NSDP provides comprehensive analysis and addresses areas for improvement on crucial human rights areas and issues, including Section 7 dealing with the environment, Section 8 dealing with health, Section 9 dealing with education and Section 10 dealing with gender.

53. The gender section of the NSDP notes that:

*Women’s active participation in economic development is a prerequisite for economic equity and economic justice. They bring into these processes not only their knowledge and skills but also the “heart” and “soul” that ensure social justice for all. Women’s exclusion from the policy and decision making process bears significantly on limiting the capacity of FSM to successfully achieve its stated macro-economic policies adopted at the 2nd FSM Economic Summit. Engendering these processes and structures at all levels is likely to result in a more equitable and just development regime.*

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18 [http://www.forumsec.org/wp-content/uploads/2016/09/2016-Forum-Communique\\_Pohnpei\\_FSM\\_-8-10-Sept.pdf](http://www.forumsec.org/wp-content/uploads/2016/09/2016-Forum-Communique_Pohnpei_FSM_-8-10-Sept.pdf)

54. In its report to the UPR, the UN country team notes that:

*[I]n the [National] Strategic Development Plan 2004–2023 water and sanitation issues were given high priority, with significant fund for infrastructure development earmarked to the sector. Issues such as climate change — from awareness raising to the development of coastal management plans in all four States and of climate proof facilities and structures that support social and other services — were also addressed.<sup>19</sup>*

55. **National Gender Policy (2018–2023)**

The National Gender Policy aims to ensure that all women and men, and girls and boys in FSM states are respected and can reach their potential. The policy, endorsed at the FSM Women's Conference in 2016 and by President Christian in 2018, focuses on six goals: elimination of gender-based violence; better women's representation in decision-making; improved education outcomes; addressing barriers faced by women in the workforce; better healthcare and choices over fertility; and mainstreaming gender across government.

56. **FSM Disability Policy (2009–2016)**

The National Policy on Disability was the result of a wide stakeholder consultation throughout the states of FSM in March 2006. The consultations were coordinated and managed through the FSM Department of Health and Social Affairs. The outcome of these discussions represents the conclusions reached through the state and national consultation processes. This policy is now being reviewed.

57. **FSM National Youth Policy (2017–2023)**

The FSM National Youth Policy is the youth's national response to addressing their issues, and specifically refers to the rights and responsibilities of youth. It seeks to ensure opportunities to all youth to be active, responsible and self-reliant members of the community through the development of their full potential. The policy does so through nine strategic areas including education, health, economic development, justice and institutional strengthening.

58. **FSM Nationwide Integrated Disaster Risk Management and Climate Change Policy (2013)**

This policy, which complements FSM's Strategic Development Plan (2004–2023), was developed in recognition of the need to safeguard the development of FSM's people, resources and economy, now and in the future, against the risks posed by climate change. In order for this policy to be a success, there needs to be awareness of the climate change issues that affect the islands, and proactive responses to them, such as climate change mitigation efforts, disaster risk reduction strategies, and climate change adaptation.

## CULTURE, CUSTOMS AND TRADITIONS

59. Culture and traditions are revered in FSM, and are constitutionally protected in the national and state constitutions. Article V, Section 2 provides:

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

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<sup>19</sup> <https://www.ohchr.org/EN/HRBodies/UPR/Pages/FMindex.aspx>

This provision is mirrored in Article II, Section 2 of the Kosrae Constitution; Article V, Section 2 of the Pohnpei Constitution; Article IV, Section 1 of the Chuuk Constitution, and Article III, Section 2 of the Yap Constitution.

60. Each FSM state exhibits its own distinct culture and tradition, but there are also common cultural and economic bonds that are centuries old. For example, cultural similarities are evidenced in the importance of the traditional extended family and clan systems found on each island. Although united as a country, the people are actually a heterogeneous mixture, with different customs and traditions bound together by recent history and common aspirations. Cultural diversity is typified by the existence of eight major indigenous languages, and the people continue to maintain strong traditions, folklore and legends.<sup>20</sup>

## RELIGION

61. Christianity plays a central role in FSM. The two major religious groups are Catholics, 54.7%, and Protestants, 41.1.8%. Protestant churches include: Congregational, 38.5%; Baptist, 1.1%; Assemblies of God, 0.7%; Mormon, 1.5%; and other Christian, 1.9%; some 0.7% claim no religion, and 0.1% do not specify (2010 est).<sup>21</sup>

## CIVIL SOCIETY

62. There are 113 non-governmental organizations (NGOs) registered with the FSM Alliance of NGOs. According to a study conducted by the United National Development Program, most civil society organizations in FSM work largely on environmental issues. NGOs in FSM face many challenges, including lack of funding, financial literacy, capacity building and guidance from external partners.<sup>22</sup>

## MEDIA

63. The media are relatively small in FSM and the news media operate freely. These include a government newsletter, and several small, privately owned weekly and monthly newspapers. Freedom House, which assesses freedom of the press worldwide, ranks press freedom in FMS as free.<sup>23</sup> Freedom House notes that each state government runs its own radio station, and the Baptist Church runs a fifth station. Television stations operate in three of the four states. Cable television is available in Pohnpei and Chuuk states, and satellite television is increasingly common.<sup>24</sup>

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<sup>20</sup> <http://www.visit-micronesia.fm/about/index.html#05>

<sup>21</sup> Human Rights Situation Analysis; SPC, 2016, [http://rrrt.spc.int/images/PDF\\_Files/Human\\_Rights\\_In\\_The\\_Pacific\\_A\\_Situational\\_Analysis.pdf](http://rrrt.spc.int/images/PDF_Files/Human_Rights_In_The_Pacific_A_Situational_Analysis.pdf)

<sup>22</sup> Ibid, page 47

<sup>23</sup> Freedom House: <https://freedomhouse.org/report/freedom-world/2015/micronesia>

<sup>24</sup> Ibid



## CONSULTATIONS

64. The scoping teams met with representatives of the FSM national government and its agencies, representatives of the State Congress and Governments in the four states, local government mayors in Chuuk and Kosrae, civil society and faith leaders in the four states, members of the legal profession, law enforcement officials, media, regional and international intergovernmental organizations, and two embassies (see Appendix 2 for consultation list).
65. The consultations were wide-ranging, with four fundamental questions explored in detail.
  - i. Is a national human rights institution needed in FSM? What value would it add?
  - ii. Given the federal nature of FSM, how could an NHRI work at both national and state levels?
  - iii. If established, what roles and responsibilities should an NHRI have?
  - iv. What type of NHRI would be most appropriate to carry out these roles and responsibilities, taking into account resource constraints and other challenges?
66. Participants meeting with scoping team members emphasized the importance of involving the four states throughout the process of establishing an NHRI in order to ensure continuing support for an NHRI, should it be established, and to be able to ensure the NHRI that emerged represented the needs of the people across the country.

*“The NHRI is coming at a critical point as government is trying to reach the people to build an understanding on human rights, and also for people to hold government accountable for the treaties we have ratified.”*

Senator from Yap State



## CHUUK STATE

***We declare our solemn duty to uphold the principle of democracy, to protect our lands, waters, and cultures which sustain as and bind us together, to live together in peace and harmony, guided by law, custom, and tradition as one people, now and forever.***

***(Preamble to the Chuuk Constitution)***

Chuuk State is the most populous of FSM's states, with a population of around 49,000. The majority of the population lives around Chuuk Lagoon in 11 municipalities, although the state has a number of sparsely populated outer islands. The two major geographical and dialectical divisions of Chuuk Lagoon are Faichuuk, which comprises several islands in the western lagoon, and Namoneas comprising a number of islands in the eastern lagoon.

Chuuk State's constitutional arrangements parallel those of the other FSM states, with three co-equal branches of government: the executive, legislative, and judicial.

### RECOMMENDATIONS

Chuuk State stakeholders unanimously supported the establishment of an NHRI through enabling legislation at the national and state levels, with the conditions that it:

- reflect the state-based composition of the FSM;
- align with the cultural values of each state;
- has representation from, and a presence in, each state; and
- is of adequate mandate and status as required by the Paris Principles for NHRIs.

### KEY HUMAN RIGHTS CHALLENGES FACING CHUUK

Stakeholders identified a number of human rights issues, the following five being most frequently highlighted:

- while human trafficking laws exist, the practice remains;
- there is a lack of adequate basic services for the outer islands of Chuuk, including the lack of enjoyment of the right to safe drinking water, adequate educational and health facilities, unfair distribution of post-typhoon disaster relief;
- persons with disabilities do not fully enjoy their human rights, with especially the lack of services and support, and lack of accessibility to services;
- women are more vulnerable to human rights abuses, including domestic and other violence, lack of political participation; and
- there is inadequate protection of the rights of workers, including foreign workers in FSM.

## KEY THEMES FROM THE SCOPING VISIT

- Stakeholders highlighted the importance of safeguarding Chuukese customs and traditions, and recognized that an NHRI can play an important role in sensitively conducting conversations on the links between traditional or customary rights and human rights.
- Priority issues of the NHRI should be determined, and decisions should come from, and be informed by, the states.
- Emphasis was placed on ensuring adequate financial resources for the NHRI. Questions were asked about the cost of an NHRI and where the budget would come from, and how to make this a sustainable institution.
- The majority of the population do not know their rights, including their rights under the Chuuk Constitution and state laws, and where to go to address them. The NHRI can play a role in making people aware of their rights and better defining what these rights mean in their daily lives.

## PROPOSED NEXT STEPS

As a result of the scoping visit, the following steps were proposed:

- A resolution to be passed by the Chuuk House of Representatives in support of the establishment of an NHRI, with broad wording as reflected above. In June 2019 a resolution to this effect was introduced in the Chuuk House of Representatives and passed by a majority.
- Engage in consultations around the draft NHRI enabling legislation to ensure that it is an institution that works for the specific context of FSM.

## KOSRAE STATE

***We are one. We are rich. We are proud. We are strong. We are concerned. We are hopeful. We are determined.***

***(Preamble to the Kosrae Constitution)***

Kosrae State is 370 miles southeast of Pohnpei and has a population of around 6600. It is a mountainous island with dense jungle and is surrounded by a fringing reef. It is the only state in FSM without an outer island. The main natural resources come from the sea. Kosrae is also known for its citrus fruit and has agricultural potential due to its rich soils.

Kosrae State's constitutional arrangements parallel those of the other FSM states, with three co-equal branches of government: executive, legislative, and judicial.

### RECOMMENDATIONS

Kosrae State stakeholders unanimously supported the establishment of an NHRI through enabling legislation at the national and state levels, with the conditions that it:

- reflect the state-based composition of FSM;
- align with the cultural values of each state;
- has representation from, and a presence in, each state; and
- is of adequate mandate and status as required by the Paris Principles for NHRIs.

### KEY HUMAN RIGHTS CHALLENGES FACING KOSRAE

While stakeholders identified human rights issues across the spectrum of economic, social, cultural, civil and political rights, the following were most frequently highlighted:

- while human trafficking laws exist, the practice remains;
- women are vulnerable to human rights abuses, including violence, lack of political representation, and a lack maternity leave;
- ongoing discrimination against people living with disabilities, including those living with mental illness.
- young people are vulnerable to human rights abuses, including students missing school to work on fishing vessels, the lack of a voice, youth suicide; and
- resource shortages affecting health, responses to climate change and natural disasters, infrastructure, law enforcement, and conditions for prisoners.

## KEY THEMES FROM THE SCOPING VISIT

- State leaders acknowledge that they know little about NHRIs. However, they recognize their obligation to uphold the provisions of the human rights conventions to which FSM is a state party.
- Stakeholders are calling for a bottom-up approach where decisions come from, and are informed by, the state.
- The majority of the population do not know their rights. They are aware of the issues but do not know where to go to address them. The organizations that do exist have specific scopes and mandates such as the Micronesian Legal Services Corporation, Public Safety, and the courts.
- There is a lack of, and competing priority for, financial resources. Questions were asked about the cost of an NHRI and where the budget would come from.

## PROPOSED NEXT STEPS

As a result of the scoping visit, the following steps were proposed:

- A resolution to be passed by the Legislature (prior to the July National Congress) that supports the establishment of an NHRI with broad wording as reflected above.
- The establishment of an NHRI to be put on the agenda of the State and National Leadership Conference.
- A human rights committee to be established to coordinate and build the capacity of Kosrae State to progress the establishment of an NHRI.

## POHNPEI STATE

***[We] accept without hesitation the challenge and responsibility to serve as the guardians of our people and islands, both now and in the future; to protect and uphold the inalienable rights of our people  
(Preamble to the Pohnpei Constitution)***

Pohnpei State, made up of Pohnpei Island and eight outer islands, has a population of around 36,000 living in 11 municipalities. While the outer islands are low-lying, Pohnpei Island is mountainous, with the highest peak being almost 2600 feet. Pohnpei Island is the most economically developed of FSM's islands, and is where the capital, Palikir, is located.

Pohnpei State's constitutional arrangements parallel those of the other FSM states, with three co-equal branches of government: executive, legislative, and judicial.

### RECOMMENDATIONS

There was overwhelming support for the establishment of an NHRI from national and state government officials and civil society activists, with the conditions that it:

- cover both state and national governments and communities;
- handle people's human rights complaints and issues;
- build knowledge and understanding of human rights within the community and government agencies throughout FSM;
- monitor human rights across FSM; and
- undertake in-depth consultations with all state governments on the development of the legal provisions and structure of the NHRI.

### KEY HUMAN RIGHTS CHALLENGES FACING POHNPEI

Participants in the consultations identified many serious and persistent human rights issues, including:

- discrimination experienced by women and girls, including domestic and gender-based violence;
- the impact of climate change on agriculture, food security and other fundamental human rights;
- neglect of children's human rights, including unequal access to education and health services, with children in the outer islands being especially disadvantaged;

- youth unemployment;
- cultural stigma of disability, in which people with intellectual disabilities are treated as third-class citizens and there is no requirement for accessibility, even of government offices;
- workers' rights are weak and there are no unions;
- detainees are frequently treated as if they have no rights; and
- police brutality is experienced and there is no independent investigation into incidences.

## KEY THEMES FROM THE SCOPING VISIT

- Lack of knowledge about human rights within the community and within government agencies.
- Nowhere to go, except to court, with human rights issues.
- Importance of consultations with all four states and the need to ensure state and national governments are involved in the development of an NHRI.
- Concern about the resourcing of an NHRI.

## PROPOSED NEXT STEPS

- Following the first scoping study report, consultations should be undertaken in all four states.



## YAP STATE

***[We] recognize our traditional heritage and villages as the foundation of our society and economy; Realize our prosperity and welfare require an intelligent selection and integration of modern technology and institutions.  
(Preamble to the Yap Constitution)***

Yap State is the westernmost state in FSM, with a population of around 11,800. The state comprises both the four main Yap Islands, and 15 inhabited outer islands and atolls reaching to the east and south for 500 miles. There are five official languages in Yap: Ulithian, Woleaian, Satawalese, Yapese and English. Traditional leaders retain considerable influence in the lives of the people in Yap, with the Councils of Pilung and Tamol performing official functions with regard to traditions and customs.

Yap State's constitutional arrangements parallel those of the other FSM states, with three co-equal branches of government: executive, legislative, and judicial.

### RECOMMENDATIONS

Yap State stakeholders unanimously supported the establishment of an NHRI through enabling legislation at both the national and state levels, with the conditions that it:

- reflect the state-based composition of FSM;
- align with the cultural values of each state;
- has representation from, and a presence in, each state; and
- is of adequate mandate and status as required by the Paris Principles for NHRIs.

### KEY HUMAN RIGHTS CHALLENGES FACING YAP

Of the human rights issues that stakeholders mentioned, frequent reference was made to the following:

- women's vulnerability to human rights abuses, including violence and lack of political representation;
- displacement of persons from the outer islands to the main island due to sea level rise and the search for employment;
- child abuse, including sexual abuse;
- treatment of refugees and asylum seekers, including forced detention;

- caste system on main island of Yap, which traditionally had a reciprocal function, but today has changed with implications in terms of employment conditions and discrimination against those of a “low” caste status; and
- lack of adequate health facilities for everyone, both on the main island but particularly in the outer islands, and especially inadequate housing and support for patients with mental health issues who are housed in detention facilities among prisoners.

## KEY THEMES FROM THE SCOPING VISIT

- State leaders acknowledged they had very little prior knowledge of NHRIs. An NHRI comes at a critical point in the progress Yap wants to make to ensure people are aware of and enjoy their rights, and that government is more accountable in terms of ensuring its services reach the people.
- The NHRI needs to adopt a bottom-up approach where priority issues are determined and decisions come from, and are informed by, the states.
- From the recruitment process for the NHRI itself, measures would need to be established to ensure the full independence of the commissioners.
- There were concerns about where the budget for an NHRI would come from, and how to make this a sustainable institution. In the initial stages, the NHRI should develop a strategic plan to prioritize what it will work on, given the available human and financial resources, to deliver outcomes that increase public trust in the institution.

## PROPOSED NEXT STEPS

As a result of the scoping visit, the following steps were proposed:

- A resolution should be passed by the Yap House of Representatives in support of the establishment of an NHRI, with broad wording as reflected above.
- Engage in consultations around the draft NHRI enabling legislation to ensure that it is an institution that works for the specific context of FSM.

## OVERALL STAKEHOLDER DISCUSSION POINTS

*“ We need an institution to oversee the progress we make on human rights... check the gaps between our laws and policies and the reality on the ground... ensure we in government provide services to the people. ”*

Chuuk State Legislature, 2019

### I. Is a national human rights institution needed in FSM?

67. There was, perhaps surprisingly, overwhelming support for the establishment of an NHRI.

68. Initially, the first scoping team was told that communities would welcome the idea of an NHRI but that government agencies and community representatives may be resistant. Challenges to the concept are listed below.

- It is not needed, we have the courts.
- We have human rights guaranteed in the constitution.
- There are laws in place.
- We do not have the capacity.
- We do not have the money.
- Human rights are a Western concept.

*“ At the moment there is a ‘big wall’ between us and government. You can only get through this by family association or money. We need this kind of institution to bridge the gap. ”*

NGOs and FBOs of Kosrae State, 2019

69. In fact, the consultations revealed that people from all of the communities consulted and at all levels of government, while taking pride in the constitutional provisions, said, “No one currently is looking at human rights nationally.” The courts, they said, are difficult to access and are too expensive for most people; legal services only provide for a very limited number of cases; court cases take too long; and courts are often not the appropriate place to resolve human rights issues, which may be multi-faceted, impact a number of people and be better dealt with through an investigative approach and mediation rather than an adversarial contest.

### What value would it add?

70. Participants in the consultations identified many serious and persistent human rights issues that an NHRI needed to address.

71. At every consultation, the positions of women and girls and the discrimination they experience in all aspects of their lives were identified as the most pressing human rights issue, despite the fact that Micronesian society was matrilineal in the past. Domestic and gender-based violence is widespread. We were told many women and girls were unaware of their rights.

*“ It is absolutely necessary to establish an NHRI. Women often get our rights as second class citizens...There is a lack of information or education on laws, human rights, etc., hence the need to establish an NHRI...”*

Pohnpei Council of Women, 2017

72. On several occasions the scoping team heard that there was a general lack of knowledge and understanding about human rights across the population as a whole. Given the vibrant cultures and traditions across FSM, people spoke of the need for appropriate conversations on the links between traditional or customary rights and human rights. Understanding of human rights also was seen as beneficial for the people of FSM when they have to travel and move to other places, including the United States, to live, so they can know how to claim their rights wherever they go.

73. Other serious human rights issues raised at consultations included:

- the impact of climate change on agriculture, food security and other fundamental human rights;
- lack of basic services in many of the outer islands and atolls;
- neglect of children’s human rights, including unequal access to education and health services, and child abuse;

*“ The institution has to reach our outer islands, and to provide concrete and not abstract ideas on human rights... We need somewhere to look towards to get solutions to our problems ”*

Chuuk CSOs, 2019

- youth unemployment;
- no voice of, or for, children in decision-making;
- cultural stigma of disability; people with intellectual disabilities are treated as third class citizens and accessibility to services is an issue, even of government offices;
- workers’ rights are weak and there are no unions (e.g. teachers’ conditions were changed unilaterally);
- detainees are frequently treated as if they have no rights, and detention conditions are appalling in some places; and
- police brutality is experienced and there is no independent investigation, with any complaints being dealt with by the Commissioner of Police.

74. Those consulted said it was important for the people of FSM to have somewhere to go with their human rights issues. They wanted an NHRI that built knowledge and understanding in their communities and within government agencies.

*“ We need an institution to define more what our constitutional rights mean and made people more aware of the rights they have. ”*

Representative from Micronesian Legal Services Corporation, 2019

## II. Given the federal nature of FSM how could an NHRI work at both national and state levels?

*“ We need the commissioners to be located in the states, not sit in the national office. They need to be able to understand and reflect the reality of each of our states and our different customs and traditions. ”*

Yap State Legislature, 2019

75. Critical to the effectiveness of a national human rights institution in FSM will be its ability to engage with both national and state governments and their agencies. While the national government has the power to ratify international treaties, including human rights treaties, it is the state governments that have constitutional authority to implement the provisions of those treaties. The scoping team was told that there was no consultation with the states before ratification of the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child, unlike with the Convention on the Rights of Persons with Disabilities. As a result, participants said there is a disconnect between ratification and implementation.

76. If a national human rights institution is to be established, very careful consideration must be given to the most appropriate legal framework and, at the very least, formal agreements will need to be negotiated with each of the state governments authorising the NHRI's mandate to extend over their territories. The FSM Secretary for Justice indicated that his office would be happy to consider legal options in partnership with the states.

*“ An NHRI will need very ‘good’ person in the office including who can translate between the State’s culture, customs and priorities and national government. ”*

Mayors of Kosrae, 2019

77. Stakeholders also highlighted the importance of an independent NHRI, stressing the need for strong leadership and a strong legal foundation for independence.

## III. If established, what roles and responsibilities should an NHRI have?

*“ We recognise that we are already responsible for the rights of the people but want to make what is already in place, better. ”*

Kosrae State Legislature, 2019

78. In consultations, participants most frequently identified human rights advocacy, education and awareness raising, training and capacity building, handling of complaints, and investigations as the functions they hope an NHRI would undertake.

79. Participants saw several benefits of having an NHRI:

- **Accessibility** of an NHRI to the people of FSM, especially at the state level, on a range of human rights issues and concerns. The NHRI would be able to provide advice and support on the implementation of human rights on the ground.
- **Non-adversarial processes, remedies and solutions** – the benefits of finding mutually agreeable solutions in cases of conflict between various human rights, whether group rights or individual rights, instead of the parties having to go to court to settle their disputes.
- **Bridging the gap between international and national spheres** by the process of domestication of these international human rights instruments and the ability of the NHRI to engage with the community in simplifying and contextualizing human rights within FSM, including knowledge of national as well as state practices, cultures and traditions.
- **Providing human rights advice and guidance to the national and state governments**, other stakeholders and the community on a range of human rights issues and laws, including assisting national and state governments on the implementation of human rights obligations.
- **Monitoring implementation of human rights commitments** by the government of FSM.
- **Contextualizing human rights within FSM society, culture and traditions** – There were some perceptions that human rights are foreign, Western concepts and that they clash with traditional and religious values and belief systems of the peoples of FSM. A dedicated national institution could ensure that human rights are contextualized or synergised within the FSM cultural, religious and states context.
- **Training, capacity building and information sharing on human rights** – A number of those consulted acknowledged that a dedicated institution would assist them with training needs and capacity building, and would be an authoritative focal point for discussions on human rights. There was recognition of the need for more conversations about human rights on issues that affect the community, including an understanding of children's rights, women's rights, disability rights, domestic violence, rights that affect the community, cultural rights, and communal rights vs individual rights. The discussions recognized that there was a need for clarification and understanding of human rights in the community.

*The government, church and community leaders all  
needs to support this to make this institution work...*

*“ We need to ground the NHRI in the community  
and their experiences. ”*

FSM Department of Health and Social  
Affairs, 2019



#### **IV. What type of NHRI would be most appropriate to carry out these roles and responsibilities, considering the FSM federal structure, resource constraints and other challenges?**

80. The scoping team presented the four most common types of national human rights institutions. The most frequently raised issue related to how an NHRI would work within the FSM federal structure.
81. The second issue related to human capacity and resources generally, given the current challenges faced by FSM. The states suggested that the national government provide the budget for this national institution. Further, a formal process would need to be established to ensure financial resources for the NHRI flow smoothly from national down to the state offices without significant delays.
82. A third issue was whether the NHRI could be established within an existing national agency. The two mentioned were the Public Defender's Office and the Department of Justice.
83. The scoping teams acknowledged the added complexity of establishing an NHRI within a federal structure and agreed this would have to be the subject of further consultation with the states as the appropriate legal provisions were developed.
84. The scoping team explained the Paris Principles requirement of independence for an NHRI, which rules out the possibility of it being established within an existing agency.
85. With respect to resourcing, the scoping team agreed on the importance of high calibre appointment to lead and staff the NHRI, while noting that there are a number of very small NHRIs that are effective in promoting and protecting human rights. They also explained that, while the national government would be expected to provide core funding, there is also access to regional and international donors.

## RECOMMENDATIONS

Having regard to the issues raised in the consultations and taken account of the clear priorities and preferences expressed by those participating in the consultations, the SPC RRRT and APF scoping team makes the following recommendations for consideration by the Government of the Federated States of Micronesia:

- **an NHRI with a human rights commission structure, be established;**
- **national enabling legislation be the legal foundation for the NHRI;**
- **in developing the legislation, agreement be reached with each state, authorizing the mandate of the NHRI to extend to, and apply in, each state.**
- **a full-time position of chief human rights commissioner be created to lead the NHRI.**
- **a full-time position of commissioner for each of the four states be created to co-lead the NHRI.**

**Criteria for the appointment of the chief human rights commissioner and commissioners should include:**

- demonstrated human rights experience and evidence of success in achieving change;
- a deep understanding of FSM's cultures, traditions and languages;
- knowledge of FSM's national and state constitutions, the roles, responsibilities and relationships of the national and state governments, Congress, the Executive, the public sector and the judiciary; and
- recognition by the community as a person of integrity, fairness and courage.

In considering the appointment of a chief human rights commissioner and the state commissioners, gender considerations should be taken into account to ensure that the NHRI reflects the plurality of FSM society.

**Enabling legislation should provide a broad mandate to:**

- promote and protect the human rights of every person in FSM; and
- foster the dignity, equality and security of everyone in FSM; all citizens and residents, whether permanent or temporary, including women, children and people with disabilities.

**The primary objectives of the NHRI should be to:**

- advocate and promote respect for, and an understanding and appreciation of, human rights throughout FSM;
- encourage harmonious relations between individuals and among the diverse groups of FSM; and
- inquire into and report on alleged violations of human rights.

**To fulfil its broad mandate to protect and promote human rights in accordance with the Paris Principles, the national human rights institution should have the following functions:**

- a. provision of human rights advice;
- b. policy and legislative review;
- c. monitoring of state implementation of human rights commitments;
- d. thematic inquiries and investigations;
- e. detention monitoring;
- f. complaints handling and mediation;
- g. bringing proceedings before the court or being appointed as intervener or amicus curiae;
- h. engagement with international human rights mechanisms, and
- i. human rights education.

**Enabling legislation:**

Enabling legislation should provide for general powers adequate for the NHRI to fulfil its mandate to promote and protect human rights in line with regional and global best practice.

To ensure compliance with the Paris Principles and to foster community trust in the institution, the enabling legislation should provide explicit guarantees of independence for the NHRI and for a transparent appointment process, involving an independent selection committee and defined selection criteria.

**Staffing:**

The scoping team notes that in establishing an NHRI, funding would desirably provide for the minimum of five commissioners, with a commissioner based in each state, a legal counsel, an educator and/or communicator and an administrator at the national level, and staff at the state level sufficient to support the commissioner to respond to local complaints and systemic issues and undertake human rights promotion.

**Ongoing consultations:**

The scoping teams further recommend that if these recommendations are accepted in principle by the national government, then ongoing consultations should take place, as enabling legislation is developed, with the governments and communities of the four states to build consensus on the mandate, responsibilities and functioning of the NHRI at both national and state levels.

## NEXT STEPS

This report was submitted in draft to the Honourable Marcus Samo, Acting Secretary of the Department of Health and Social Affairs. Following his response it has been finalized.

We respectfully suggest that it be shared with those who participated in the consultations, in particular, the representatives of national and state government agencies.

Next steps will involve Secretary of the Department of Health and Social Affairs determining the appropriate process and timing to brief the President and all colleagues in the Executive and seek their endorsement in principle.

Both RRRT and APF are committed to continuing support of FSM in the process of establishing an NHRI. That support includes a readiness to undertake further consultations, in particular with all the state governments, on the basis of the final report and any initial decisions by the national government.

Scoping team members are grateful to have been given the honor of undertaking the responsibility to report on the desirability, feasibility and options for the establishment of a Paris Principles-compliant NHRI, and thank the FSM Government for this opportunity.

## APPENDIX I: SCOPING MISSION LETTER OF INVITATION



### DEPARTMENT OF HEALTH AND SOCIAL Affairs

FSM National Government  
Capitol Street, P.O. Box PS 70  
Palikir, Pohnpei 96941

**Federated States of Micronesia**

Tel: (691) 320-2619/2643/2872 • E-mail: [health@fsmhealth.fm](mailto:health@fsmhealth.fm) • Fax: (691) 320-5263

May 12, 2017, 2017

Nicol Cave  
Acting Director  
Secretary of the Pacific Community/ Regional Rights Resources team.

Subject: Request for Technical Assistance for Scoping Mission in the FSM

Dear Deputy Director,

Kaselehliab! I hope this letter finds you in great spirit and health. The purpose of this letter is to seek your support on a human rights scoping mission to be done in the FSM through the assistance of the Secretariat of the Pacific Community /Regional Rights Resource Team.

The FSM had concluded its 2<sup>nd</sup> Universal Period Report in 2015 and its 1<sup>st</sup> CEDAW constructive dialogue early this year and is being provided with the concluding observations from both presentations both of which have referenced to the need for an establishment of a national human rights institution (NHRI) for the FSM.

Having said that, I hope to get your joint support in availing this technical assistance from your office to assist FSM in scoping out the current situation within the country for this NHRI which will then inform the country the need and feasibility of establishing such a mechanism for monitoring human rights in the FSM.

Appreciate your favorable consideration to this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Magdalena Walter'.

Mrs. Magdalena Walter, MSN  
Secretary of Health & Social Affairs

## APPENDIX II: CONSULTATIONS

### OFFICES AND/OR STAKEHOLDERS CONSULTED IN POHNPEI 17–21 JULY 2017 AND 28–30 MAY 2019

Stakeholders	Institution or Organization
Secretary Hon. Magdalena Walter	FSM Department of Health and Social Affairs
Acting Secretary Dr Mayleen Ekiek	
Norleen Oliver Augustine Sue Stuard Penias	FSM Department Health and Social Affairs Social Affairs Division
Secretary Hon. Joses Gallen	FSM Department of Justice
Josephine Joseph (Department of Justice) Norleen Oliver (Department of Health and Social Affairs) Augustine Sue (Department of Health and Social Affairs)	FSM National Human Rights Task Force
Senator Ferny Perman, Chairman Health and Social Committee Esmond B. Moses, Vice Speaker Catherine M. Allen- Staff Attorney-FSM Congress	FSM Congress
Honorable Marcelo K. Peterson	Governor, State of Pohnpei
Senator Shelton Neth (Chair, Health and Social Affairs Committee) Senator Francisco Ionis Senator Soram (Vice Speaker) Speaker Salter Lohn (Nett Municipal Government)	Pohnpei State Legislature
Johnny Hadley	Chief of Administration and Planning
Lululeen Santos Santos Abraham	Pohnpei State Social Affairs



Stakeholders	Institution or Organization
Mavrick Does-Micronesian Productions Tewdy Liwy-COM FSM Santos Abraham-Pohnpei Department of Education (Vice President – Pohnpei Youth Council) George Donre-Pohnpei State Youth Coordinator Nathaniel Nanoto-Intern Student (Pohnpei State Social Affairs)	Civil society groups/youth groups
Susanna Sohs - President Maria Donre - Vice President Lululeen Santos - member Noriekka Lekka – intern Social Affairs	Pohnpei Women's Council
Chief Public Defender Lorrie Johnson-Asher	Office of Public Defender
Directing Attorney Salomon Saimon	Micronesian Legal Services Corporation, Pohnpei
Vicar Ken Urumolog, the Vicar of our Vicariate of Pohnpei-Kosrae Deacon Burdencio Andreas Deacon Mikel Dano Deacon Henry Donre Sister Christina Elias	Faith Leaders
Henry Philip- President Monique Panaligan-Vice President Pius Hadley Jr-Treasurer Linter Kihleng-member	Pohnpei Consumer Organisation
Marstella Jack	Attorney at law
Ambassador George Fraser	Australian Embassy
Ambassador Robert A. Riley	US Embassy
Lara Studzinski, Director	SPC Micronesian Regional Office
Secretary Hon. Kalwin Kephas	FSM Department of Education
Secretary Lorin S. Robert	FSM Department of Foreign Affairs
Jackson Soram Samson E. Pretrick Carson Mongkeya	FSM Department of Foreign Affairs

**OFFICES AND/OR STAKEHOLDERS CONSULTED IN CHUUK**  
**22–24 MAY 2019**

Stakeholders	Institution or Organization
Johnson Elimo	Governor Governor's Office
Angelino Rosokow	
Mondale Tim	
Teas Este (Parem Municipal)	Municipal Governments
James Rosokow	
Leon Fred (Udot Municipality)	
Mars Ludwig (Weno Municipality)	
Eurino Paul (Oneismw)	
Wilfred Soumwei (Kuttu)	
Stephen E (Fanapanges)	
Killion Juda (Fonotol Mayor)	
Danis Uta (Onoun Mayor)	
Jonas Smith Onou Municipality Mayor)	
Lukas London (Makur island)	
Larry Nereo (Piis Paneu Island)	
Consy kebe (Fanapanges)	
Sefet Salle (Fefen)	
Kasta Paul (Fefen Island)	
Danny Rescue Junior (MLSC)	Micronesian Legal Services Corporation/Public Safety/AG's office
Millilany Edmond (DPS)	
Sam A Bisalen (DPS)	
Kertos Herman (DPS)	
Mike Setile (DPS)	
Forlino Binios (DPS)	

Stakeholders	Institution or Organization
Testor Johnny (Bethen Church)	Church/Faith Groups
Kaster Sisam (Cathedral Parish)	
Tracy Meter	
Harris Rain	
Kenedy N	
Asaichy Sana (House of Rep, Vice Speaker)	State Legislature
Shining M. Sos (House of Rep)	
Sephet William (House of Rep)	
Wisney Nakayama (House of Rep)	
Roman Olopuy (Legislative Assistant)	
Narciso Sebastian (House of Rep)	
Benedict Tipeno (Chuuk Conservation Society)	NGO/civil society groups
Lucille M. Sain (Chuuk Conservation Society)	
Clarice Graham (Chuuk Conservation Society)	
Sarahlyn Nakamura (Chuuk Women's Council)	
Fanes M	Micronesia Legal Services
Niautek Billimom	
Jane Iwo	
Pastor Suzuki	
Danny Rescue Junior	
Bethwel Osonis	Chuuk Public Defender's Office

## OFFICES AND/OR STAKEHOLDERS CONSULTED IN KOSRAE 20–21 MAY 2019

Stakeholders	Institution or Organization
Governor, Mr Carson K. Sigrah	Kosrae State Government
Lt. Governor, Mr Arthy G. Nena	
Chief of Staff, Mr Rolinson Ned	
Acting Attorney General: Snyder Saimon	Attorney General's Office
Mayor of Tafunsak, Mr. Jackson Albert	Kosrea State Local Government (apologies: Mayor of Lelu, Mr Presley Abraham)
Mayor of Malem, Mr. Ruben Charley	
Mayor of Utwe, Mr. Canston Segal	
Director, Mr. Canney Palsis	Micronesian Legal Services Corporation
Legal Counsel, Mr. Arnold Benjamin	
Department of Health Acting/rep, Mr. Shiro Sigrah	Kosrae State departments
Department of Health/public health rep, Ms Salome Martin	
Department of Transportation & Infrastructure rep, Mr. Leandro Olano	
Department of Resources and Economic Affairs Director, Mr Gerson Jackson	
Department of Education, Mr Lugo Skilling	
Speaker of Legislature, Mr Tulensa Palik	Kosrae State Legislature
Floor leader of legislature, Mr Jarinston Charley	
Senator, Mr Bob Skilling	
Senator, Mr Rhinehart William	
Senator, Mr Salapsr Tilfas	
Senator, Mr Andy Andrew	
Senator, Mr Alokoa Sigrah	
Senator, Mr Sasaki George	
Senator, Mr Harry Jackson	
Senator, Mr Yamado Melander	

Stakeholders	Institution or Organization
Sepe Kephas - Dep of Ed, SpEd, KWA	Civil Society – NGOs & FBOs <ul style="list-style-type: none"> <li>• SpEd – Special Education</li> <li>• KWA – Kosrae Women’s Association</li> <li>• KIAC – Kosrae Inter Agency Committee</li> <li>• REA – Resource and Economic Affairs</li> <li>• KYDA - Kosrae Youth Development Assoc</li> <li>• PREP - Personal Responsibility Education Programme, D Health Services</li> </ul>
Shrue Kephas KWA, SpEd	
Lee Elesha Kosrae SpEd, KIAC	
Heidi Floyd - REA, Heroes of Tomorrow	
Dr Vita Skilling – KWA	
Harrison Seymour – KYDA	
Roxanne Charley – Red Cross	
MaryAnn B Nena – PREP, Dep Health Services	
Jack Nedlic – SpEd	
Barnabus Palsis – SpEd	
Moirra Palsis – SpEd	
Hans Skilling – Red Cross, KYDA, Human Rights Focal Point	
Public Safety Lt. Burdy Talley	Police Department
Court Administrator Mr. Marciano Waguk	Courts
Director Ms Lizina George	Media (Radio Station)

## OFFICES AND/OR STAKEHOLDERS CONSULTED IN YAP 20–21 MAY 2019

Stakeholders	Institution or Organization
Jesse J. Salalu	Lt Governor, Yap State
Linda Teteth	Yap State Women's Interest Office
Nina Van Breugel (Australian Volunteer)	
Elizabeth M. Phal (Yap Fusion)	Civil Society – NGOs <ul style="list-style-type: none"> <li>Yap Youth Association</li> <li>Our Yap</li> <li>Yap Catholic</li> </ul>
Lubuw D. Pongliyab (Our Yap)	
Jaylene Loobay	
Joshua T. Libyan Tun	
Alexander Ernest U Agapitin	
Danielle A. Dufuen	
Leann Gabriel	
Nicholas Unten	
Rachelle Bergeron	Yap Attorney General (Acting)
Quintina Letawerpiy	Yap Public Defender
John Mootmag	Yap Micronesian Legal Services
Georgelina Layan	
Senator Ted Rutun	Yap State Legislature
Speaker Vincent Figir	
Senator Masiwemai	
Senator Figirlaarwon	
Senator Jesse-Raglmar Sabolmar	
Senator Jerry Fagolimul	
Senator Kensley Ikosia	



Stakeholders	Institution or Organization
Dee Libian	Chief Clerk, Yap Legislature
Director Constantine Yowbalaw	Department of Youth and Civic Affairs
Laura Ngaden	Yap Women's Association, President
Jackie Lefagosai	Yap Chamber of Commerce
Lubuw D. Pongliab	Yap State Court

## APPENDIX III: THE PARIS PRINCIPLES

### PRINCIPLES RELATING TO THE STATUS OF NATIONAL INSTITUTIONS “PARIS PRINCIPLES”

#### Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
    - (ii) Any situation of violation of human rights which it decides to take up;
    - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
  - (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
  - (c) To encourage ratification of the above mentioned instruments or accession to those instruments, and to ensure their implementation;
  - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
  - (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;

- (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

### **Composition and guarantees of independence and pluralism**

4. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
  - (a) Non governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
  - (b) Trends in philosophical or religious thought;
  - (c) Universities and qualified experts;
  - (d) Parliament;
  - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
5. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
6. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

### **Methods of operation**

7. Within the framework of its operation, the national institution shall:
  - a. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
  - b. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
  - c. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations
  - d. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;
  - e. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
  - f. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

g. In view of the fundamental role played by the non governmental organizations in expanding the work of the national institutions, develop relations with the non governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

### **Additional principles concerning the status of commissions with quasi judicial competence**

8. A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:
  - a. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
  - b. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
  - c. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
  - d. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

## APPENDIX IV: SOURCE DOCUMENTS

**Constitution of the Federated States of Micronesia. Accessed at:**

<http://fsmlaw.org/fsm/constitution/constitution.htm>

**Constitution of the State of Chuuk. Accessed at:**

<http://www.fsmlaw.org/chuuk/constitution/entire.htm>

**Constitution of the State of Kosrae. Accessed at:**

<http://www.fsmlaw.org/kosrae/constitution/index.htm>

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