



Additional information provided by the Federated States of Micronesia in connection with the consideration of its initial to third periodic reports under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women

February 28, 2017

- (1) The Delegation of the Federated States of Micronesia (FSM) wishes to reiterate its appreciation to the Committee on the Elimination of All Forms of Discrimination Against Women for the dialogue, which took place on February 24, 2017.
- (2) During the dialogue, FSM offered, and the Committee accepted such offer, to provide additional information on the following:
 - a. Customary practices and traditions prevailing in FSM and their interface with civil law.
 - b. National Action Plan on anti-human trafficking.

A. On customary practices and tradition

- (3) Micronesian custom is not necessarily in conflict with the rule of law. As a matter of fact, the customary and traditional practices of Micronesians have sustained them all these years even before the formation of a constitutional government.
- (4) The FSM Supreme Court explained this quite clearly—“Micronesian custom, and the constitutional legal system established by the people of the FSM, flow from differing (not necessarily inconsistent) premises and purposes. These two systems, then, can be seen as supplementary and complementary, not contradictory. Each has a valuable role to perform, independent of the other.” Senda v. Semes, 8 FSM Intrm. 484, 499 (Pon. 1998).
- (5) Therefore, it is not fair to assume that customs and traditions that have long been practiced by the people on the islands must go and be replaced by conventional, modern rules. FSM is not resisting changes in society and in law where such changes are necessary. In fact, many changes are happening already in FSM based upon modern day development. Some changes in the law are taking place based on FSM’s commitment to binding treaties, such as human rights treaties. Other changes are brought about through public awareness, which the FSM Government encourages for its people.
- (6) So, what are these customary practices and how would these practices interface with civil law? Once again, the supreme court of the Federated States of Micronesia explained—that *[c]ustomary law is placed in neither an overriding nor inferior position by the FSM Constitution and statutes.* FSM v. Mudong, 1 FSM Intrm. 135, 139 (Pon. 1982).
- (7) *The constitutional government seeks not to override custom but to work in cooperation with the traditional system in an atmosphere of mutual respect.* In re Iriarte (II), 1 FSM Intrm. 255, 271 (Pon. 1982).
- (8) An example of local custom is the principle that a party who has benefited unjustly from another should, under certain circumstances, be made to repay the benefit. This a state law principle adopted in Pohnpei, which states that *Micronesian custom and*

tradition dictate that a party who has benefitted unjustly from another should be made to repay that benefit under certain circumstances. Accordingly, in a case involving recovery of money paid for undelivered goods because of conversion of funds, the court ordered judgment against those parties that benefited from the payment. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM Intrm. 337, 346 (Pon. 2004).

- (9) Another example of local custom having an impact upon civil law is the concept of “child.” Under Yapese custom, a 19-year old daughter who continues to live with her parents and perform household chores is considered as a child. As such, in a civil case of wrongful death, the court gave consideration to this concept in determining the appropriate amount of damages arising from the death of this child. Leeruw v. FSM, 4 FSM Intrm. 350, 366 (Yap 1990).
- (10) However, as explained during the dialogue, customary apology does not exculpate a person charged of assault. *Reconciliation is not a basis for dismissal of a criminal information. The law of our nation in this regard is clear. Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution.* Kosrae v. Nena, 12 FSM Intrm. 20, 22 (Kos. S. Ct. Tr. 2003). Emphatically, in the case of Nena, the prosecution moved to dismiss the charges because the offender and victim—who were father and daughter—had since reconciled, and, as the prosecution argued, reconciliation was encouraged for community and family harmony in all cases, regardless of the family relationship between the defendant and victim. The court dismissed this argument for being without merit.
- (11) Indeed, as shown by the illustrations above, customary practices do not furnish absolute rule of law. But where custom is not inconsistent with law, it shall be given effect. Otherwise, a practice that is in conflict with law is considered illegal. Even the constitution provides that any act in conflict with the constitution is invalid to the extent of conflict. See, Art. II Sec. 1, FSM Const. (“This Constitution is the expression of the sovereignty of the people and is the supreme law of the Federated States of Micronesia. An act of the Government in conflict with this Constitution is invalid to the extent of conflict.”)

B. On National Action Plan on anti-human trafficking

- (12) With respect to the National Action Plan (NAP) on combatting human trafficking, this plan is in a draft form, therefore, it cannot be shared with the committee until it is finalized and approved. Nonetheless, some of the key elements of this are explained below.
- (13) The NAP defines human trafficking as the trade of an individual for sexual, labor and/or commercial exploitation, against their will, for the economic benefit of the trafficker or exploiter, which has reached our shores. In fact, according to the United States of America’s three tier system that it established based on the *Trafficking Victims Protection Act (TVPA)* whereby each government is ranked according to the action and efforts maintained to combat human trafficking, FSM is in the inclusion of governments that do not fully comply with the minimum standards of the TVPA but are making significant efforts to do so placing FSM on Tier 2.

- (14) The NAP is structured to address the four pillars of human trafficking:
- a. *Prevention*: by dismantling human trafficking networks, building awareness and creating deterrence;
 - b. *Protection*: through rescue, services, and victim-centered criminal justice response;
 - c. *Prosecution*: of perpetrators and continue monitoring offenders; and
 - d. *Partnership*: between government departments/offices (customs, immigration, labor, police, and others), state governments, non-governmental organizations, faith-based organizations, women's groups, health professionals/services, legal services, traditional leadership, and others.
- (15) The last portion of the NAP outlines an action matrix where objectives are proposed under each of the four pillars of human trafficking with corresponding actions required to progress towards the respective objectives and the identification of lead agency or agencies responsible for these actions with specific indicators guiding the monitoring of these achievements.