

PACIFIC ISLANDS LAW OFFICER'S NETWORK
(PILON)

FEDERATED STATES OF MICRONESIA
COUNTRY REPORT

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Vanuatu

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Introduction

The Federated States of Micronesia (FSM) is an independent sovereign nation comprising of the island states of Chuuk, Kosrae, Pohnpei and Yap. FSM is geographically situated just above the equator about 2,500 miles southwest of Hawaii and about 1,800 miles north of eastern Australia above Papua New Guinea.

The FSM Department of Justice (hereinafter “DOJ”) is the legal arm of the FSM National Government responsible for the legal affairs of the FSM National Government. The Department is headed by the Secretary of Department of Justice, Hon. Maketo Robert. Generally, the mission of the DOJ is to:

1. Enforce the laws of the nation;
2. Prosecute national crimes and defend the national government from liability;
3. Secure the territorial borders; (Immigration, Quarantine, etc.)
4. Protect FSM resources (e.g. NORMA)
5. Regulate foreign investment;
6. Advise national government on legal matters.

Responsibilities

In order to accomplish its mission DOJ is divided into four Divisions. The Division of Law advises the Executive branch and its boards, authorities and agencies on all legal matters. Furthermore, it drafts bills, review acts and other legal instruments/documents involving the national government. The Division of Litigation defends and prosecutes cases on behalf of the national government. The Division of Immigration and Labor controls the entry and exit of aliens and facilitates the entry and exit of citizens in the FSM and regulates the activities of alien workers. The Division of National Police investigates violations of the national laws, with a special emphasis on violations in the Exclusive Economic marine Zone (EEZ). The Division of Registrar of Corporation regulates establishment and functioning of private and public corporation, business organization and entities within the FSM.¹

Division of Law

Division of Law advises the government on all legal matters pertaining FSM laws. Currently, there are three Assistant Attorney Generals that manned this division. Each attorney is responsible for provision of legal services to the departments, offices and agencies of the national government allocated under his legal supervision. Functions provided by the Division of Law include:

¹ This authority is shared with the state governments.

- Legal Direction. Issue legal opinion to the national government departments, offices and agencies to provide guidance, direction and resolution of legal issues.
- Legal Review
Review all contracts or agreements for legal sufficiency. These include contract for construction and employment, lease agreement for office space and land, etc. The division also reviews international and regional treaties/convention and advises on legal implications of becoming a party or not. The division is also responsible to make assessment on treaty obligations.
- Legal Drafting
The division of law is heavily involved in legal drafting. It drafts legislative bills for various purposes, whether to enact a new law or to amend an existing law or to appropriate public funds for public expenditure. The division also drafts resolutions. A resolutions is a formal request by the Office of the President to Congress (Parliament) seeking legislative advice and consent on various matters including the nomination of a government official (e. g. cabinet member, Board member of a government agency or authority), or the ratification or accession to a international treaty, or the formal acceptance of a financial assistance, aid, grants donated by a foreign government.

The division of law is also responsible for drafting of regulations and promulgation thereof. The division is often tasked to work with a particular department, agency or office of the national government in drafting of its regulation or proposed amendment to existing regulations. The division also drafts employment contract, construction contract, lease agreement, and memorandum of agreement or understanding.

- Review of Congressional Bills
Division of law reviews all congressional bills to determine legal sufficiency or defects and advice the President on its findings. The division is required to attend all public hearings to justify and/or to clarify the content of a bill or a resolution particularly those that are submitted by the President Office to Congress for legislative review and action.

Division of Litigation

Division of Litigation handles all criminal and civil cases for the national government. The division is currently manned by two Assistant Attorney Generals. DOJ is in the process of recruiting another lawyer for this division.

Some Significant Cases

- *FSM v. Marehalau, et al.* “FSM Passport Fraud Scheme”.

Former FSM Ambassador to the U.S. Mr. Jesse B. Marehalau of Yap and FSM Employee Enrico Calderon of the Philippines were charged with 13 Charges of criminal conduct including bribery, criminal conspiracy, over-obligation of government funds, tampering with public records and information and theft against the government. Defendants are alleged to have tampered and sold sample FSM passports maintained at the FSM Embassy in Washington D.C. for personal financial gain. This resulted in the illegal smuggling of more than 50 Filipino citizens into the United States from December 2004 until January 2006. Calderon admitted that each smuggled person had paid at least \$10,000. The matter is set for trial in May 1, 2009.

- FSM v. Kansou, et al. Criminal Case No. 2003-1508
Former FSM Senator Roosevelt Kansou and Frank Cholymay were tried and found guilty of conspiracy of theft and misuse of public funds in this matter. Defendants were sentenced to 30 months imprisonment. Defendants have filed their notice of appeal which is scheduled to be heard in 2009.
- FSM v. Phillip, et al.
Mr. Phillip was the manager of Aquaculture center located in the state of Kosrae. Mr. Phillip and his secretary have been charged with the theft and misuse of public money worth of more than \$30,000 USD.
- 2007/2008 Fisheries Matters

<i>1.</i>	Date Arrested	Vessel Name	Vessel Type	Date Case Filed	Trial Date	Settlement	Remarks
<i>2.</i>	<i>4/12/07</i>	<i>Jin Feng Tsair 1</i>	<i>LL</i>	<i>Case still with AGs office</i>			<i>Cited by FSS Micronesia for Transshipment at sea and ordered to sail directly to Yap Port but fail to do so.</i>
<i>3.</i>	<i>8/ /07</i>	<i>Jinn Jian Lih 22</i>	<i>LL</i>	<i>Case settled out of Court</i>		<i>\$115,000</i>	<i>Arrested by FSS Independence in August 2007 for VMS switched off and Misreporting of Catch.</i>

4.	8/12/07	Sun Big 3	F/C			\$100,00 0	Seized in port Pohnpei for Turning off VMS when first arrived at Pohnpei Port on Aug 12,2007
5.	10/25/07	Jin Hui 6	P/S	Cited in Pohnpei		\$1,000	Failure to display license in the wheel house
6.	10/30/07	Jin Hui 2	P/S	Case settled out of court		\$250,00 0	Misreporting of catch.
7.	12/18/07	Jih Yu 612	P/S	Case settled out of court	Case close on Dec 24,07	\$75,000	illegal transshipment at sea and misreporting of catch.
8.	12/19/07	HF 88	P/S	Case settled out of court	case closed on Dec 31,07	\$150,00 0	illegal transshipment at sea and misreporting of catch.
9.	1/11/08	Win Sheng	F/C	Case settled on out of court	Case closed on Feb 28,08	\$1000	Citation for failure to display permit in the bridge.
10	1/18/08	Fu Yuan Yu 096	L/L	Case settled out of Court	Case closed on July 4,08	\$500,00 0	Illegally fishing in FSM EEZ without valid fishing license
11	2/12/08	Koshin Maru # 31	L/L				failure to turn on VMS in FSM EEZ.
12	1/13/08	Koyo Maru # 8	L/L	Case Settled out of Court		\$17,000	
13	3/1/08	Fu Kuan 606	P/S	Case settled out of court	Case close 3/7/08	\$115,00 0	Misreporting of catch
14	6/11/08	Qiong Qiong Hai 08066	Net boat				Fishing within territorial sea.

15	7/21/08	Kim Der Cheng	LL	Case settled	Case Closed 9/8/08	\$114,000	Apprehended by FSS independence for fishing in closed are and near submerge reef southeast of Woleai on June 22, 08
16	7/28/08	Kyungil Reefer	F/C				Citation issued for Non-display of License.
17	8/7/08	Shun Fa	F/C	Case settled out of court.	Case closed 8/15/08	\$50,500	Seized and Escorted into Pohnpei for Immigration Violation.
18	10/26/08	Shen Lian Cheng 805	LL	Bending on Court Decision	Bending		Misreporting on catch and not filling out the log sheet properly
19	11/4/08	Taiko Maru	LL	Case settled	Case Closed 11/08	\$200,000	Fishing inside the 12nm of Olimerau Atoll in Yap on October 2008.

Division of National Police

Strategic goals:

- To investigate violations and apprehend violators of national crimes in order to preserve the safety of persons and property.
- To detect, identify, interdict, and apprehend violators of FSM fisheries laws and regulations in order to protect the fisheries resources.
- To provide security for national government officials, the national capitol and for foreign dignitaries to preserve the property, safety and dignity of the national government.
- To control the use of firearms in order to promote firearms safety.

- To improve the capacity of officers in counter terrorism, transnational and organized crime prevention and detection, etc.
- Improve the efficiency of National Police Operations by increasing the level of interactions with other law enforcement agencies including coordination with state police agencies and liaison with regional and international law enforcement agencies.

Division of Immigration and Labor

Strategic goals:

- To monitor and control the entry, stay and exit of aliens into the FSM in order to prevent illegal entry and stay;
- To increase the security of FSM borders to prevent transborder criminal activity, including terrorism.
- To improve the quality of services provided to the public and to ensure effective application of immigration laws and procedures.

Some Progress

Establishment of the Transnational Crime Unit(TCU) in FSM

April 23, 2008 marked the opening of the TCU at the FSM Complex in Palikir Pohnpei. The FSM's new TCU is part of the Pacific Transnational Crime network established to effectively combat transnational crime in the region. The network includes units in Fiji, Papua New Guinea, Tonga, and Vanuatu, as well as the Pacific Transnational Crime Coordination Center in Samoa, which coordinates, analyses and disseminates law enforcement intelligence produced by the key regional stakeholders and clients. The new FSM facility is the culmination of joint efforts among the United States Government, the Commonwealth of Australia and the FSM National Government.

The Chief of the FSM National Police will exercise day-to-day administrative and operational control of the TCU, which will also include top law enforcement officers from the FSM, Palau, the Marshall Islands, and Kiribati. The TCU will enable Micronesia to leverage resources to combat transnational crimes, including terrorism, money laundering, human trafficking, drug trafficking, and sexual exploitation.

FSM Anti-terrorism Bill

The intent of the bill is to establish a comprehensive legal framework criminalizing all forms of terrorism and the financing of terrorism, whether domestic or international in nature, consistent with FSM international and regional commitments. The bill is pending before Congress.

UN Convention on Prohibition of the Use, stockpiling, production and transfer of anti-personnel mines and their destruction.

The government of the Federated States of Micronesia is very close to fulfilling its internal legal requirements in order to accede to the Mine Ban Convention. Presently, there is a draft resolution before the Congress of FSM seeking approval to accede to the Mine Ban Convention. It is expected that Congress will take favorable action on the resolution in upcoming January 2009 regular session.

Subsidiary Agreement to the Niue Treaty on Cooperation in Maritime Surveillance and Law Enforcement.

This is a multilateral agreement between the FSM, Marshalls, and Palau to maximize the effectiveness of maritime surveillance and law enforcement against Foreign Vessels which illegally exploit marine resources. The impetus of the agreement is that it grants authority to member party authority to detain a foreign vessel where there is probable cause that the vessel has committed an offense in the waters of requesting party.

Pacific Patrol Boat Operations

Operation Rei bolong and Big Eye. These are joint surveillance exercise between the United States Coast Guard, the Australian and New Zealand Navy, the Republics of the Marshall Islands, Palau and FSM in maritime Surveillances.

Some Challenges

- Continuing legal education and capacity building remains a need for government lawyers. Hands-on training in litigation, legal drafting and advocacy. Certain areas of law particularly captive insurance, maritime, money laundering, extradition, petroleum, climate change, and fisheries remain topical.
- Although the FSM has its own legal website (<http://www.fsmlaw.or>), there is a need to update the website. There is also a need to consolidate and update various laws in FSM.
- Policing of FSM EEZ remains a challenge for the FSM. Lack of adequate funding for fuel and maintenance of Patrol boats hindered complete surveillance operations leaving much of the FSM EEZ vulnerable to criminal activity.