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United Nations Human Rights Council

Universal Periodic Review: Federated States of Micronesia (FSM)

Submission of the International Center for Advocates Against Discrimination (ICAAD)

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About ICAAD

ICAAD is a registered 501(c)(3) with special consultative status with the United Nations Economic and Social Council. Established in 2013, ICAAD works at the intersection of legal innovation and human-centered design to create evidence-based programs with organizations and communities to combat structural discrimination. By taking an integrated approach, we are able to improve resilience, safety, and equity across systems. ICAAD's key activities include:

- Partnering with local NGOs and governments to build capacity while using our expertise and resources as a means of enhancing their advocacy efforts.
- Leveraging legal and policy expertise to advocate and reform discriminatory laws, policies, and cultural norms.
- Exploring how emerging technologies can be effectively integrated into human rights practice.
- Providing data and research to fill gaps in knowledge for judiciaries, NGOs, governments, and other international bodies.

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INTRODUCTION

The following examples and recommendations derive from qualitative interviews between an ICAAD representative and various community leaders and activists as well as government officials in November and December 2019 in Pohnpei, Federated States of Micronesia (FSM). These organizations have opted to not be named in this submission; however, they did provide supplementary information that assisted in the drafting of this document including case law.

GENDER-BASED VIOLENCE AND ACCESS TO JUSTICE FOR WOMEN AND GIRLS

General Issue Statement

1. Information from interviews with key personnel in the Department of Justice and case law analysis from the Pohnpei State Court depicts some progress as well as remaining challenges in terms of reducing gender-based violence in the FSM. Progress has been made in terms of passing domestic violence legislation in Kosrae and Pohnpei, but the implementation has a long way to go. The three main systemic gaps we have identified are the criminal justice system capacity issues and consequent barriers to access, the resulting reliance on civil cases which illuminates the still out-dated family law legislation, and the lack of transparency around cases due to capacity issues like translation and data management.

Supporting Examples

2. **Assess and reduce judicial bias in human trafficking and gender-based violence cases.** Although Pohnpei state passed legislation criminalizing domestic violence in 2017 and the Trafficking in Persons Act (2012) now has Standard Operating Procedures, there are still reported sentences in human trafficking cases that are not proportional to the gravity of the crimes.¹ Qualitative data emerging from interviews and quantitative data from case law have exposed instances where perpetrators received a partial or fully suspended sentence for customary apologies even in severe cases of human trafficking.² These cases, however, are inaccessible to CSOs and advocates due to barriers such as the lack of a digital case management system, lack of translation from local languages to English at the state court level, and record-keeping.

¹ Pohnpei Domestic Issues Act (2017). Trafficking in Persons Act (2012).

² Interview in December 2019.

- 3. Lack of transparency due to capacity issues.** Gender-based violence cases, aside from human trafficking, are heard at the state court level. State court cases are rarely uploaded to the FSM law database and are primarily kept as paper documents. Since the system relies on common law and customary law is not codified, this presents accessibility challenges for retrieving and reviewing cases. This makes assessment of precedent and legislation implementation difficult for lawyers and local advocates because there are significant barriers to reviewing case law.³
- 4. Criminal justice system capacity barriers to accountability.** Although family protection legislation that criminalizes domestic violence has passed and is in the implementation process in Kosrae and now in Pohnpei, Yap and Chuuk have yet to pass legislation explicitly outlawing domestic violence. Further, there are other significant barriers for survivors to bring a case. For example, the overburdened and male-dominated domestic violence unit of the Police Department and Prosecutor's Office in Pohnpei have driven many survivors to proceed through the civil system in order to get a protection order efficiently.⁴
- 5. Civil system and divorce law.** In Pohnpei state, the barriers to the criminal justice system as stated above have often driven survivors to seek remedy, including protection orders, through civil suits. The Micronesian Legal Services Corporation (MLSC) offers free legal services for civil cases, and there is a private attorney with experience in women's rights and DV in Pohnpei available for taking on civil cases. However, civil law does not always aid in the protection of survivors. Domestic violence is not explicitly considered grounds for divorce, and the fault-based divorce system can put survivors' safety at risk if they can only access the civil system.⁵ Fault-based divorces require proof of a matrimonial offense such as habitual rape or desertion placing women in the difficult position of having to provide evidence that is often humiliating and affronting to their dignity. Consequently, women may choose not to attend a proceeding thereby increasing the difficulty of proving fault. The FSM court will not issue a decree of divorce if the injured party has forgiven the ground of divorce. Forgiveness, which can include restoration of marital rights, may prevent divorces from moving forward and can fail to account for possible power imbalances between spouses.

³ Interview in December 2019.

⁴ Charley v. Manuel (2017): PCA No. 387-17; Obed v. Fred (2016): PCA No. 71-17; Hadley v. Hadley (2018): PCA No. 89-18; Dison v. Peter (2018): PCA No. 87-18

⁵ FSMC Title 6, ch. 16, § 1626.

- 6. CEDAW reservations.** The reservations by the FSM government to CEDAW minimize the sense of urgency for reducing gender discrimination. The reservations include articles 2(f), 5, 11 (1) (d), 11 (2) (b), 16 and 29 (1) which involve critical areas of gender discrimination including marriage and family life (16), equal pay, and the reform of discriminatory laws. In light of the wide-ranging reservations on CEDAW, the object and purpose of the State's adoption of the treaty is being undermined. As such, without removing its reservations, the State cannot continue to represent in good faith that it is committed to ending gender discrimination.

Recommendations

- 7. Pass legislation criminalizing domestic violence in the states of Yap and Chuuk.** Continue implementation efforts in Pohnpei and Kosrae to ensure access to justice for women and girls.
- 8. Hire more female police officers through community outreach and training and expand the domestic violence unit in Pohnpei state.** The FSM government should also evaluate the police departments in Yap, Chuuk, and Kosrae to evaluate capacity to handle domestic violence and gender sensitivity issues.
- 9. Hire more staff in the Pohnpei Prosecutor's office to be able to handle domestic violence reports.** The FSM government should also evaluate the state Prosecutor's offices in the Yap, Chuuk, and Kosrae to evaluate capacity to efficiently handle gender-based violence cases.
- 10. Withdraw CEDAW reservations to prioritize the reduction of gender discrimination.** Current reservations include articles 2(f), 5, 11 (1) (d), 11 (2) (b), 16 and 29 (1).
- 11. Reform family law in accordance with CEDAW, including divorce law to a no-fault system.** Current family law is primarily adopted from the colonial legislation of the Trust Territory of the Pacific.⁶ The FSM government should work with the FSM Women's Council to proceed with family law reform in accordance with CEDAW.
- 12. Streamline court's data management and build capacity to translate and upload cases for greater transparency.** This will also allow for the analysis of judicial bias in sentencing decisions.

⁶ TTC §698 (1966); 39 TTC §201 (1970); 39 TTC §201 (1980)

ENVIRONMENTAL JUSTICE

General Issue Statement

13. Environmental justice is a growing issue in which the FSM faces particular barriers due to its free association agreement with the U.S. Interviews with conservation organizations throughout the Micronesian region on the intersection of environmental justice and the Compact of Free Association agreements have highlighted several of these issues around funding, oversight, and technical assistance.

Supporting Examples

14. Access to environmental funding under the Compact of Free Association (COFA).

Despite the agreements around environmental funding for state Environmental Protection Agencies (EPA) through the COFA, EPAs and other agencies that qualify for Compact Funds under the Environment Sector have opted to go with national and/or state revenue to avoid cumbersome U.S. Office of Insular Areas (OIA) proposal requirements. The structure of the funding process through the Joint Economic Management Committee demands 1 year projects with excessive oversight provisions that fail to meet the needs of climate adaptation and environmental protection projects amidst the climate crisis.

15. Inadequate environmental impact statements conducted by state EPAs. Enforcement of environmental protection is inadequate, and many infrastructure development projects capitalize on the lax environmental impact statements done by state EPAs.

Recommendations

16. The FSM government should work with state EPAs to build capacity around the enforcement of environmental protection laws. EPAs and other agencies involved in environmental impact assessments (EIA), in particular, require capacity building to conduct EIAs properly.

17. The FSM government should emphasize the importance of accessible environmental funding during the Compact of Free Association negotiations. Further, the FSM and its state government should allow conservation organizations to help them develop one year project-based proposals that can be accepted and funded by the OIA.