

THE DOMESTIC APPLICATION OF HUMAN RIGHTS IN THE FEDERATED STATES OF MICRONESIA

by Associate Justice Dennis K. Yamase
Supreme Court of the Federated States of Micronesia¹

I. Introduction

The domestic application of human rights is of paramount importance to the Federated States of Micronesia (FSM)² as the FSM recognizes and assures the universal human rights and individual dignity of each person. The FSM has done so by enshrining many of the international human rights standards and norms in its Constitution of the Federated States of Micronesia (FSM Constitution).³ The FSM has enacted national laws that help protect an individual's civil and constitutional rights, and the Supreme Court of the Federated States of Micronesia (FSM Supreme Court) has upheld the

¹ This paper was presented at the Pacific Regional Consultation for Judges and Magistrates on Human Rights Conventions and Standards held in Auckland, New Zealand at the Copthorne Hotel from December 13-15, 2010 conducted by the Secretariat of the Pacific Community (SPC), Pacific Regional Rights Resource Team (RRRT). The consultation was attended by judges, magistrates, and human rights experts from the North and South Pacific.

² The Federated States of Micronesia is a fully independent, sovereign nation made up of the four states of Chuuk, Kosrae, Pohnpei, and Yap. The FSM formed its own constitutional government on May 10, 1979. The FSM was admitted to the United Nations (U.N.) on September 17, 1991.

The FSM is in a relationship of free association with the United States (U.S.) pursuant to a Compact of Free Association (Compact)(included in U.S. Pub. Law 99-239, Compact of Free Assoc. Act of 1985, 48 USC 1681 note. 59 Stat. 1031 and amended Dec. 17, 2003 by House Jt. Res. 63; U.S. Pub. Law 108-188). Under the Compact, the U.S. handles matters pertaining to the defense of the FSM and provides financial assistance for FSM wide governmental operations and programs. Prior to its independence, the area was administered by the U.S. as part of the U.N. Trust Territory of the Pacific Islands (TTPI).

The FSM has diplomatic relations with various nations in the Pacific and Asia region, including Australia, New Zealand, Japan, People's Republic of China, Fiji, Papua New Guinea, Kingdom of Tonga, Solomon Islands, Vanuatu, Republic of the Marshall Islands, Republic of Palau, among others.

³ The full text of the FSM Constitution can be accessed through the FSM Legal Information System (LIS) website at <http://www.fsmlaw.org/constitution/index.htm>. The FSM LIS is a website containing basic legal information of the FSM and its four states. This includes constitutions, statutes, regulations, court rules and decisions, and other basic legal resource material. The FSM LIS was produced as part of an Improving Access to Laws Project funded by the Asian Development Bank (ADB).

rights of persons where there have been violations of those rights by the government.⁴ The FSM has also acceded to various international treaties which help to further assure human rights, especially with regard to women and children.

This paper analyzes the domestic application of human rights in the Federated States of Micronesia⁵ by examining conditions in the FSM and national action that has helped to ensure compliance with international human rights standards and norms, and international treaty obligations. These include, but are not limited to: the Declaration of Rights⁶ and other provisions⁷ included in the FSM Constitution; FSM national laws⁸ allowing the government to be sued for

⁴ The FSM Code (F.S.M.C.) and FSM Supreme Court decisions can be accessed on the FSM LIS at <http://www.fsmlaw.org/fsm/code/index.htm> and <http://www.fsmlaw.org/fsm/decisions/index.htm>, respectively.

⁵ The FSM is comprised of approximately 607 small islands in the western Pacific Ocean lying just north of the equator about 2,500 miles southwest of Hawai'i and about 1,800 miles north of eastern Australia above Papua New Guinea. Approximately 60 to 70 of these islands are inhabited with the FSM having a total population of about 140,000. While the land area of the FSM is relatively small and amounts to approximately 207 square miles, the FSM territory occupies more than a million square miles of Pacific Ocean. The FSM ranges east to west, from Kosrae furthest to the east, to Pohnpei, to Chuuk, and Yap furthest to the west, with an overall length of over 2,000 miles.

⁶ The full text of FSM Const., art. IV, Declaration of Rights can be accessed through the FSM LIS at <http://www.fsmlaw.org/fsm/constitution/article4.htm>.

The Declaration of Rights expresses ideals held sacred by all who cherish freedom and is the essential core of the FSM Constitution. *Louis v. Kutta*, 8 FSM Intrm. 208, 212 (Chk. 1997).

The Declaration of Rights protects persons from acts of governments, and those acting under them, established or recognized by the Constitution. *Pau v. Kansou*, 8 FSM Intrm. 524, 526 (Chk. 1998).

⁷ Other FSM Constitutional provisions dealing with human rights are found in art. III on Citizenship, art. V on Traditional Rights, art. VI on Suffrage, and art. XIII on General Provisions. The full text of the FSM Constitution can be accessed at <http://www.fsmlaw.org/fsm/constitution/index.htm>.

⁸ FSM national laws include provisions of the FSM Code, Title 1 on General Provisions, Chapter 1 on the Bill of Rights, 1 F.S.M.C. sec. 101 *et seq.* These statutory provisions track the rights provided for in FSM Const., art. IV in the Declaration of Rights.

Statutory provisions which carried over from the Trust Territory Code (TTC) and were reproduced and referred to as a "Bill of Rights" in 1 F.S.M.C. sec. 101-114, may retain some residual vitality in the unlikely event that they furnish protections beyond those available under the FSM Constitution's Declaration of Rights. *FSM v. George*, 1 FSM Intrm. 449, 454-55 (Kos. 1984).

violations of an individual's civil and constitutional rights; FSM Supreme Court decisions upholding the rights of individuals and interpreting treaty provisions; and international treaty obligations of the FSM. This article will focus on the FSM national government and its judicial branch, the FSM Supreme Court. The FSM Supreme Court is a court of limited jurisdiction with both trial and appellate divisions and is the highest appellate court for matters under its jurisdiction.⁹ It should be recognized at the outset that each of the FSM's four constituent states¹⁰ of Chuuk¹¹, Kosrae¹²,

FSM national laws are those enacted by the Congress of the Federated States of Micronesia (FSM Congress). FSM public laws and more information on the FSM Congress can be accessed at <http://www.fsmcongress.fm/>.

⁹ The national judiciary is known as the Supreme Court of the Federated States of Micronesia and is one of the three main branches of the FSM national government, along with the executive headed by the President and the legislature composed of the FSM Congress.

The FSM Supreme Court is the highest appellate court for matters under its jurisdiction which include the interpretation of any provision of the FSM Constitution, national laws, treaties, and matters involving foreign governments, disputes between states, national government agencies, diversity of citizenship, and admiralty and maritime. The court currently has a Chief Justice and three Associate Justices.

For a detailed description and report on the FSM Supreme Court, see "The Supreme Court of the Federated States of Micronesia: The First Twenty-Five Years," posted on the FSM LIS website at [http://www.fsmlaw.org/fsm/rules/FSMSupCt25YrsforPDF\[1\].pdf](http://www.fsmlaw.org/fsm/rules/FSMSupCt25YrsforPDF[1].pdf).

¹⁰ Each of the states of the FSM has its own constitution, state laws, three branch governments which include an executive (Governor), legislative (State Legislature), and judicial branches. The judicial branch is composed of a state court and sometimes also includes a land court, and other inferior courts such as municipal courts.

The State of Yap has what could be considered a fourth branch of government in its traditional Councils of Pilung and Tamol, which have the power to disapprove legislation dealing with traditions and customs. Yap Const., art. III and art. V, sec. 16-18.

¹¹ The Constitution of the State of Chuuk includes a Declaration of Rights in its art. III. A description of the State of Chuuk and its constitution, laws, and other legal information can be accessed at <http://www.fsmlaw.org/chuuk/index.htm>.

¹² The Constitution of the State of Kosrae includes an article on The Community and the Individual in its art. II. A description of the State of Kosrae and its constitution, laws and other legal information can be accessed at <http://www.fsmlaw.org/kosrae/index.htm>.

Pohnpei¹³, and Yap¹⁴ also have provisions in their respective constitutions and state laws which help to assure human rights similar to the national constitutional and statutory provisions.¹⁵ This paper will refer to state constitutional and statutory provisions in general terms and does not address municipal, local or land courts.¹⁶

II. The Universal Declaration of Human Rights and Related FSM Constitutional and Statutory Provisions, and Court Decisions

The Universal Declaration of Human Rights (UDHR),¹⁷ in its preamble, recognizes the inherent dignity and the equal and inalienable rights of all people as the foundation of freedom,

¹³ The Constitution of Pohnpei State includes an article on Fundamental Rights in its art. 4. A description of Pohnpei State and its constitution and other legal information can be accessed on the FSM LIS website at <http://www.fsmlaw.org/pohnpei/index.htm>.

¹⁴ The Constitution of the State of Yap includes an article on Fundamental Rights in its art. II. A description of the State of Yap and its constitution, laws, and other legal information can be accessed at <http://www.fsmlaw.org/yap/index.htm>.

¹⁵ The individual FSM states have the power to grant more rights than those enumerated in the FSM Constitution, but they cannot restrict or lessen the rights in the national constitution. See *Damarlane v. Pohnpei Legislature*, 15 FSM Intrm. 301, 307 (App. 2007).

The FSM Constitution contains a supremacy clause in its art. II, sec. 1, which states: “Section 1. 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.”

¹⁶ The State of Chuuk has 40 municipalities designated in Chuuk Const., art. XIII, sec. 2. Each municipality has a municipal court.

The State of Kosrae has a Kosrae Land Court, established by state law. Kosrae has no municipal courts.

The State of Pohnpei has a Court of Land Tenure, established by law and 11 municipalities designated in Pohnpei Const., art. 14, sec. 1, each with a municipal court.

Yap has 28 municipalities recognized under state law in 5 YSC sec. 301, each with a municipal court.

For a detailed description of the judiciaries of the FSM, see the Judicial Education Development Plan for the Judiciaries of the Federated States of Micronesia (FSM JEDP), Executive Summary and 10 Year Plan, Adopted by the FSM Judicial Education Council in 2009.

¹⁷ Adopted by Resolution 217(A)(III) of the United Nations General Assembly, Hundred and eighty-third plenary meeting, December 10, 1948.

justice and peace, and that human rights should be protected by the rule of law. The UDHR set forth 30 articles dealing with various aspects of human rights. The first 21 articles are generally related to civil and political rights, with the remaining articles related to economic, social, and cultural rights.

The following subsection discusses the articles of the UDHR that provide for recognition and protection of human rights that are ensured by FSM and state constitutional provisions, national and state laws, and decisions of the FSM Supreme Court. The FSM National Government and the state and local governments, operate under the principles of a democratic, representative government, and adhere to generally recognized practices of good governance and transparency. The FSM Supreme Court, and the state and local courts of the FSM, respect and abide by the principles of the rule of law,¹⁸ judicial independence, and adhere to the respective codes of judicial conduct and ethics that apply to them.¹⁹

Article 1 of the UDHR provides that all human beings are born free and equal in dignity and

¹⁸ “Human rights can be enforced in settings where the rule of law prevails. The American conference on world peace through the rule of law, . . . agreed that the effective protection of the fundamental human rights of the individual is the indispensable basis for achievement of a sound legal order based on peace and justice.” The Domestic Application of International Human Rights Norms, 1st in series of papers presented by Justice Haleem, 1981-1989, presented at the Judicial Colloquium held under the auspices of the Commonwealth Secretariat, at Bangalore, India, February 24-26, 1988.

¹⁹ The Justices of the FSM Supreme Court must adhere to the standards of the Code of Judicial Conduct of the American Bar Association (ABA). 4 F.S.M.C. sec. 122. The state courts all have similar requirements as the national court and must adhere to various versions of the ABA Model Code of Judicial Conduct (ABA Code) in effect at the time of the enactment of their judicial acts. For Chuuk, the 1990 ABA Code applies, see Chk. S. L. No. 190-08, sec. 25 (*In re Failure of Justice to Resign*, 7 FSM Intrm. 105, 108 (Chk. S. Ct. App. 1994)). For Kosrae, the 1984 ABA Code applies, see Kos. S. C. sec. 6.1201 (*Andon v. Cornelius*, 12 FSM Intrm. 280, 285-86 (App. 2003)). For Pohnpei, the 1990 ABA Code applies, see 4 Pon. Code, sec. 7-101 (enacted by the Pohnpei Judiciary Act of 1995, Pon. S. L. No. 3L-99-95, sec. 2-2). For Yap, the 1972 ABA Code applies, see 4 Y.S.C. sec. 155 (enacted by Yap S. L. No. 1-92, sec. 25).

rights. Article 2 provides that everyone is entitled to all rights and freedoms without distinction to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 7 provides that all are equal before the law and are entitled without any discrimination to equal protection of the law and equal protection against any discrimination in violation of this declaration.

Two sections within the Declaration of Rights of the FSM Constitution guarantee equal protection. FSM Const., art. IV, sec. 3 provides that no one shall be denied the equal protection of the laws. FSM Const., art. IV, sec. 4 provides that equal protection of the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language, or social status.²⁰ Numerous FSM Supreme Court decisions have been rendered interpreting various aspects of equal protection under these two sections of the Constitution.²¹ These court decisions assure the equality of persons, including noncitizens and aliens, before the law in the FSM.

Article 3 of the UDHR provides everyone the right to life, liberty, and the security of person.

²⁰ The constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated in art. IV, sec. 4, or if the discrimination affects a "fundamental right." The law is then subject to strict scrutiny review, and will be upheld only if the government can demonstrate that the classification upon which the law is based bears a close rational relationship to some compelling governmental interest. If the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. *FSM Social Security Admin. v. Weilbacher*, 7 FSM Intrm. 137, 146 (Pon. 1995).

²¹ In adopting the Declaration of Rights as part of the FSM Constitution and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, that determinations of guilt are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards. *Tammed v. FSM*, 4 FSM Intrm. 266, 281-82 (App. 1990).

Under the equal protection clause of the Declaration of Rights in the FSM Constitution, indigency alone should not disadvantage an accused in our system of criminal justice. *Gilmete v. FSM*, 4 FSM Intrm. 165, 169 (App. 1989).

FSM Const., art. IV, sec. 3 provides that a person shall not be deprived of life, liberty or property without due process of law. Numerous FSM Supreme Court decisions have been rendered interpreting various aspects of “due process of law”. The decisions assure requirements for procedural and substantive due process, and other protections against the taking of life, liberty or property without due process of law.²² Procedural due process includes, but is not limited to, notice and an opportunity to be heard and a fair trial before an impartial tribunal and adjudicator.

Article 4 of the UDHR provides that no one shall be held in slavery or servitude and that slavery and the slave trade are prohibited. FSM Const., art. IV, sec. 10 provides that slavery and involuntary servitude are prohibited, except to punish crime. The FSM Supreme Court has ruled on the parameters of the protections against slavery and involuntary servitude in the case of Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 384 (App. 2003).²³

Article 5 of the UDHR provides that no one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment. FSM Const., art. IV, sec. 8 provides that excessive fines or cruel and unusual punishments may not be imposed. Numerous court decisions have found

²² The fundamental concept of procedural due process is that the government may not be permitted to strip its citizens of life, liberty or property in an unfair, arbitrary manner. Where such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. *Suldan v. FSM (II)*, 1 FSM Intrm. 339, 354-55 (Pon. 1983).

Notice and an opportunity to be heard are the essence of due process of law. *Panuelo v. Amayo*, 12 FSM Intrm. 365, 374 (App. 2004).

²³ While the Constitution’s prohibition of slavery and involuntary servitude may have had its source in the TT Bill of Rights and the U.S. Constitution, it has particular meaning within the FSM’s historical context of forced labor by former administering authorities. Some still-living citizens of this Nation have experienced firsthand the evils of slavery and involuntary servitude, and the constitutional provision was meant to ban those types of atrocities forever. *Rodriguez v. Bank of the FSM*, 11 FSM Intrm. 367, 384 (App. 2003).

violations of this provision by various government public safety officers.²⁴ Additionally, FSM Const., art. IV, sec. 9 provides that capital punishment is prohibited. Three out of the four state constitutions also contain this prohibition.²⁵

Article 6 of the UDHR provides that everyone has the right to recognition everywhere as a person before the law. The FSM Supreme Court has ruled that aliens are persons protected by the due process and equal protection clauses of the FSM Constitution.²⁶

Article 8 of the UDHR provides that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by constitution or law. The FSM sovereign immunity law²⁷ provides that claims may be made in the FSM Supreme Court for any injuries suffered due to conduct of a national government employee or agent acting under color of authority which violates those individual rights secured under art. IV, Declaration of

²⁴ In interpreting the provision against cruel and unusual punishment in the FSM Constitution, the court should consider values and realities of Micronesia, but against the background of law concerning cruel and unusual punishment and international standards concerning human rights. *Plais v. Panuelo*, 5 FSM Intrm. 179, 196-97 (Pon. 1991).

In determining whether the constitutional line of due process has been crossed, a court must look to such factors as the need for the application of force, relationship between need and amount of force that was used, extent of injury inflicted, and whether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm. *Paul v. Celestine*, 4 FSM Intrm. 205, 208-09 (App. 1990).

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. *Tolenoa v. Alokoa*, 2 FSM Intrm. 247, 250 (Kos. 1986)

²⁵ Chuuk Const., art. III, sec. 8; Kosrae Const., art. II, sec. 1(h); and Pohnpei Const., art. 4, sec. 1.

²⁶ *Berman v. FSM Supreme Court (I)*, 5 FSM Intrm. 364, 366 (Pon. 1992).

The FSM has acceded to the Geneva Convention and Protocol Relating to the Status of Refugees. See next section of this report, III. International Treaty Obligations.

²⁷ FSM Code, Title 6 on Judicial Procedure, Chapter 7 on Actions Against the Federated States of Micronesia, 6 F.S.M.C. sec. 701, *et seq.*

Rights of the FSM Constitution.²⁸ Numerous cases have been brought before the FSM Supreme Court successfully claiming violations of rights insured to the claimants by the constitution or laws of the FSM. Many of these cases alleged excessive use of force, unlawful detention, and arrest by public safety or other law enforcement officers.²⁹

Article 9 of the UDHR provides that no one shall be subjected to arbitrary arrest, detention or exile. FSM Const., art. IV, sec. 8 provides that the writ of habeas corpus³⁰ may not be suspended unless required for public safety in cases of rebellion or invasion. The application for this writ provides the legal procedure allowing any person who is detained or imprisoned to challenge the legal basis of his detention before the court.

Article 10 of the UDHR provides that everyone is entitled to full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. These rights are assured by FSM Const., art. IV, sec. 3,

²⁸ Civil rights are guaranteed to all FSM citizens under the Declaration of Rights. The FSM Congress conferred a cause of action for violation of civil rights by enacting 11 F.S.M.C. 701 *et seq.*, pursuant to subsection (3). *Davis v. Kutta*, 9 FSM Intrm. 565, 568 (Chk. 2000).

It is a crime, under 11 F.S.M.C. 701(1) to wilfully, whether or not acting under color of law, deprive another of, or injure, oppress, threaten, or to intimidate another in his free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM's Constitution or laws. A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 is civilly liable to the party injured. The element of wilfulness is not required for civil liability. *Primo v. Pohnpei Transp. Auth.*, 9 FSM Intrm. 407, 411 (App. 2000).

²⁹ See, *P3 and Aniriko Hauk v. Emilio, et al.*, 15 FSM Intrm. 476 (Chk. 2008); *Warren v. Pohnpei State Dep't of Public Safety*, 13 FSM Intrm. 483 (Pon. 2005); *Primo v. Pohnpei Transp. Auth.*, 9 FSM Intrm. 407, 411 (App. 2000); *Davis v. Kutta*, 7 FSM Intrm. 536, 548 (Chk. 1996); *Plais v. Panuelo*, 5 FSM Intrm. 179, 205 (Pon. 1991); and *FSM v. Tipen*, 1 FSM Intrm. 79, 88 (Pon. 1981).

³⁰ This is a writ which is most commonly used to test the legality of the detention or imprisonment of a person. Black's Law Dictionary, 5th Ed. (1979), p. 638.

Art. XI, sec. 6(b) of the FSM Constitution requires that the FSM Supreme Court consider a petition for a writ of *habeas corpus* alleging imprisonment of a petitioner in violation of his rights of due process. Court must apply due process standards to actions of courts which have issued orders of commitment. *In re Iriarte (I)*, 1 FSM Intrm. 239, 243-44, 249 (Pon. 1983).

which provides that no person may be deprived of life, liberty or property without due process of law or be denied the equal protection of the laws. Numerous court cases have required that there be a fair and impartial proceeding, including fair, unbiased, and objective decision makers.³¹

Article 11(1) of the UDHR provides that everyone charged with a penal offence has the right to be presumed innocent until proved guilty in a public trial at which he has had all the guarantees necessary for his defense. FSM Const., art. IV, sec. 6 provides that the defendant in a criminal case has a right to a speedy public trial, to be informed of the nature of the accusation,³² to have counsel for his defense, to be confronted with the witnesses against him, and to compel attendance of witnesses on his behalf.³³

³¹ Due process demands impartiality on the part of adjudicators. There is a presumption that a judicial or quasi-judicial official is unbiased. The presumption of neutrality can be rebutted by a showing of conflict of interest or some other specific reason for disqualification. Where disqualification occurs, it is usually because the adjudicator has a pecuniary interest in the outcome or has been the target of personal abuse or criticism from the party before him. *Suldan v. FSM (II)*, 1 FSM Intrm. 339, 362-63 (Pon. 1983).

There are certain circumstances or relationships which, as a *per se* matter of due process, require almost automatic disqualification, and, if a judge has a direct, personal, substantial, pecuniary interest in the outcome of the case, recusal is constitutionally mandated. *Etscheit v. Santos*, 5 FSM Intrm. 35, 43 (App. 1991).

³² Right to be informed of the nature of the accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. The required degree of precision under the right to be informed of the nature of the accusation may be affected by considerations such as limits upon capacity for human expression and difficulties inherent in attempts to employ alternative methods of stating the concept. Some generality may be inescapable in proscribing conduct but standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. *Laion v. FSM*, 1 FSM Intrm. 503, 507-8 (App. 1984).

³³ A prisoner's rights to procedural due process have been violated when he received neither notice of the charges against him nor an opportunity to respond to those charges before or during confinement. *Plais v. Panuelo*, 5 FSM Intrm. 179, 212 (Pon. 1991).

Additionally, the government in any criminal case is required, as a matter of due process, to prove all elements of the offense beyond a reasonable doubt. *Ludwig v. FSM*, 2 FSM Intrm. 27, 35 (App. 1985).

Article 11(2) provides that no one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time it was committed. FSM Const., art. IV, sec. 11 provides that a bill of attainder or *ex post facto* law³⁴ may not be passed.

Article 12 of the UDHR provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation, and everyone shall have the right to the protection of law against such interference or attacks. FSM Const., art. IV, sec. 5 provides that the right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure, or invasion of privacy may not be violated and a warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.³⁵

Article 13 of the UDHR provides that everyone has the right to freedom of movement and residence within the borders of each state and has the right to leave the country, including his own,

³⁴ The concept of *ex post facto* law is limited to legislation which does any of the following: 1) makes criminal and punishable an act innocent when done; 2) aggravates a crime, or makes it greater than it was when committed; 3) increases the punishment for a crime and applies the increase to crimes committed before the enactment of the laws; 4) alters the legal rules of evidence so that testimony insufficient to convict for the offense when committed would be sufficient as to that particular offense and accused person. The ban on *ex post facto* law applies to criminal acts only. *Robert v. Mori*, 6 FSM Intrm. 394, 400 (App. 1994).

³⁵ No right is held more sacred, or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others unless by clear and unquestionable authority of law. The constitutional protection of the individual against unreasonable searches and the limitation of police powers apply wherever an individual may harbor a reasonable expectation of privacy. *FSM v. Tipen*, 1 FSM Intrm. 79, 86 (Pon. 1982).

Constitutional prohibitions against unreasonable searches, seizures or invasions of privacy must be applied with full vigor when a dwelling place is the object of the search. *FSM v. George*, 1 FSM Intrm. 449, 461 (Kos. 1984).

and to return to his country. FSM Const., art. IV, sec. 12 provides that a citizen may travel and migrate within the FSM. The FSM has not yet had any situations arise where the right to leave or return to the FSM has come into issue.

Article 14 of the UDHR provides that everyone has the right to seek and enjoy in other countries asylum from persecution. The FSM has not yet had many situations arise where the rights to asylum has come into issue.³⁶

Article 15 of the UDHR provides that everyone has a right to a nationality and that no one shall be arbitrarily deprived of his nationality nor be denied the right to change his nationality. The FSM has constitutional provisions in its art. III dealing with citizenship and national laws governing citizenship that address such matters as naturalization and loss of citizenship.³⁷

Article 16 of the UDHR provides all persons of age shall have the right to marry and to found a family, marriage shall be entered into only with the free and full consent of the spouses, and the family is the fundamental group unit of society and is entitled to protection by the State. The states of the FSM have various statutory provisions governing domestic relations, including, but not limited to, marriage and divorce, adoption, child abuse, reciprocal enforcement of support, and parental liability that help to assure the rights set forth in this article.³⁸

³⁶ The FSM has acceded to the Geneva Convention and Protocol Relating to the Status of Refugees. See next section of this report, III. International Treaty Obligations.

³⁷ FSM Code, Title 7 on Citizenship, Chapter 2 on Federated States of Micronesia Citizenship, 7 F.S.M.C. sec. 101 *et seq.*

³⁸ Chuuk State Code (unofficial), Title 23 on Family Law; Kosrae State Code, Title 16 on Family and Minors; and Pohnpei Code, Title 51 on Domestic Relations and Title 52 on Minors. The Yap State Code has a reserved Title 27 for Domestic Relations.

Article 17 of the UDHR provides that everyone has the right to own property alone as well as in association with others and no one shall be arbitrarily deprived of his property. FSM Const., art. IV, sec. 3 provides that no person may be deprived of life, liberty or property without due process of law.³⁹

Article 18 of the UDHR provides that everyone has the right to freedom of thought, conscience and religion, including the right to change his religion, and to manifest his religion or belief in teaching, practice, worship and observance. FSM Const., art. IV, sec. 4 provides that no law may be passed respecting an establishment of religion or impairing the free exercise of religion.

Article 19 of the UDHR provides that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media. FSM Const., art. IV, sec. 1 provides that no law may deny or impair freedom of expression.⁴⁰

³⁹ Where there is reason to believe that provisions of a public land lease may have been violated by lessee, and where another person has notified the Public Lands Authority of his claim of a right to have the land leased to him, the Public Lands Authority may not consider itself bound by lease's renewal provision but is required to consider whether it has a right to cancel the lease and, if so, whether the right should be exercised. These are decisions to be made after a rational decision-making process in compliance with procedural due process requirements of FSM Const., art. IV, 3. *Etpison v. Perman*, 1 FSM Intrm. 405, 421 (Pon. 1984).

Once it is determined that a statute establishes a property right subject to protection under Due Process Clause of FSM Constitution, constitutional principles determine what process is due as a minimum. *Semes v. FSM*, 4 FSM Intrm. 66, 74 (App. 1989).

⁴⁰ The right of citizens to express their views, including views critical of public officials, is fundamental to the development of a healthy political system. Therefore, courts are generally reluctant to find that expression of opinions asserted outside of the court itself, however intemperate or misguided, constitute contempt of court. *In re Iriarte (I)*, 1 FSM Intrm. 239, 247-48 (Pon. 1983).

The freedom to communicate is the rule and restraint is the exception. Censorship, a form of prior restraint, is the most suspect punishment in a free society; ideas do not even get to the marketplace to compete for recognition and acceptance. Censorship thus runs counter to the freedom of speech and press. *FSM v. Moses*, 9 FSM Intrm. 139, 146 n.2 (Pon. 1999).

Article 20 of the UDHR provides that everyone has the right to freedom of peaceful assembly and association, and that no one may be compelled to belong to an association. FSM Const., art. IV, sec. 1 provides that no law may deny or impair freedom of peaceable assembly, association or petition.

Article 21(1) and (2) of the UDHR provide that everyone has the right to take part in Government, directly or through freely chosen representatives and has the right of equal access to public service in his country. Article 21(3) provides that the will of the people shall be the basis of the authority of government and that this will shall be expressed in elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.⁴¹

FSM Const., art. VI, sec. 1 provides that a citizen 18 years of age may vote in national elections and that voting shall be secret.⁴² The FSM Congress has enacted detailed statutory provisions governing the conduct of national elections in Public Law No. 14-76.⁴³ Each of the states of the FSM have their own statutory procedures governing their state elections.⁴⁴

⁴¹ When election irregularities cannot be corrected by recount, a candidate may petition for an election to be set aside and done over, either in a district as a whole or in part where the irregularities took place. The procedures for filing a revote petition, action thereon, and appeal of its denial are the same as those for a recount petition. *Williander v. National Election Dir.*, 13 FSM Intrm. 199, 203 n.3 (App. 2005).

⁴² The innocent voter who has done everything right should not lose the right to vote and be counted because the election officials have disregarded the mandates and directions of the election law. *Braiel v. National Election Dir.*, 9 FSM Intrm. 133, 138 (App. 1999).

No resident entitled to vote may be denied the privilege to vote or be interfered with in voting. *Chipen v. Losap Election Comm'r*, 9 FSM Intrm. 46, 47 (Chk. S. Ct. Tr. 1999).

⁴³ To be codified in FSM Code, Title 9 on Elections, 9 F.S.M.C. sec. 101 *et seq.*

⁴⁴ Chuuk State Code (unofficial), Title 13 on Elections; Kosrae State Code, Title 3 on Suffrage and Elections; Pohnpei State Code, Title 10 on Elections; and Yap State Code, Title 7 on Elections.

Article 22 of the UDHR provides that everyone, as a member of society, has the right to social security and is entitled to the economic, social and cultural rights indispensable for his dignity and the free development of his personality. The FSM has statutory provisions on social security and prior service benefits⁴⁵ and public employment⁴⁶ that help address the rights outlined in this article. It should be noted that much of the population remains outside of the paid work force and thus is not covered (except for worker's dependents) by social security protections.

Article 23 of the UDHR provides that everyone has the rights to work, free choice of employment, just and favorable work conditions, equal pay for equal work, just remuneration insuring for himself and his family an existence worthy of human dignity, and the right to form and join trade unions for the protection of his interests. The FSM has statutory provisions on public employment, business regulations,⁴⁷ and labor⁴⁸ that help address the rights outlined in this article.

Article 24 of the UDHR provides that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. The FSM and the states have statutory provisions governing public and private sector employment, including working conditions. The national government has statutory provisions governing its public employment and labor.

Article 25(1) of the UDHR provides that everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment,

⁴⁵ FSM Code, Title 53 on Social Security and Prior Service Benefits.

⁴⁶ FSM Code, Title 52 on Public Employment.

⁴⁷ FSM Code, Title 32 on Business Regulations.

⁴⁸ FSM Code, Title 51 on Labor.

sickness, disability, widowhood, old age, or other lack of livelihood beyond his control. The FSM has statutory provisions governing its public employment, including provisions on salaries, health care plan, and early retirement program.⁴⁹ The FSM does not, however, provide universal health care and unemployment and other social service benefits for all of its citizens and residents. Each state has a public hospital in the state center and health dispensaries in outlying areas. The lack of some types of wide ranging programs and services are largely a limitation on available local resources and funding. Geographical isolation and difficulties in accessibility and in local infrastructure are other limiting factors.

Article 25(2) provides that motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock shall enjoy the same social protection. The FSM has acceded to the Convention on the Rights of the Child and three of its Optional Protocols all dealing with protecting the rights of the child.

Article 26(1) of the UDHR provides that everyone has the right to free, compulsory elementary education and technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Article 26(2) provides that education shall be directed to the full development of the human personality and to strengthening respect for human rights and fundamental freedoms and shall promote understanding, tolerance and friendship.

FSM Const., art. XIII on General Provisions, sec. 1 states in pertinent part that the FSM

⁴⁹ FSM Code, Title 52 on Public Employment, Chapter 1 on Public Service System, Chapter 2 on Public Service Salaries, Chapter 4 on Health Insurance Plan, and Chapter 5 on National Government Employees Early Retirement Program.

national government recognizes the right of the people to education and shall take every step reasonable and necessary to provide these services. The FSM has statutory provisions on education in its Title 40,⁵⁰ which include laws on the College of Micronesia – FSM,⁵¹ provisions for scholarship assistance,⁵² and teacher certification and minimum educational standards for the Nation.⁵³

Article 27 of the UDHR provides that everyone has the right to participate in the cultural life of the community, to enjoy the arts, and to share in scientific advancement and its benefits, including the right to the protection of moral and material interests resulting from any scientific, literary or artistic production of which he is the author. The FSM has statutory provisions on copyrights that help assure the aforementioned rights.⁵⁴ Whether the FSM is a party to the Bern Convention or other international copyright convention remains uncertain since the FSM hasn't stated which U.S. treaties it considers itself a party to as a successor state.

Article 28 of the UDHR provides that everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized. The FSM stands

⁵⁰ FSM Code, Title 40, Chapter 1 on Educational System, states in pertinent part in section 101 on policy and purposes (40 F.S.M.C. sec. 101) that the policy of the FSM's decentralized educational system shall be to enable its citizens to participate fully in the development of the islands, as well as to become familiar with the Pacific community and the world, and to this end, it shall prepare its students for participation in self-government, and economic and social development, to function as a unifying agent, to bring to the people a knowledge of their islands, the economy, the government, and the people who inhabit the islands, to preserve Micronesian culture and traditions, to convey essential information concerning health, safety, and protection of the island environment, and to provide its citizens with the social, political, professional, and vocational skills required to develop the Nation.

⁵¹ FSM Code, Title 40 on Education, Chapter 7 on the College of Micronesia – FSM.

⁵² FSM Code, Title 40 on Education, Chapter 3 on Student Assistance.

⁵³ FSM Code, Title 40 on Education, Chapter 2 on Educational Policies and Standards.

⁵⁴ FSM Code, Title 35 on Copyrights, Patents, and Trademarks, Chapter 1 on Copyrights, 35 F.S.M.C. sec. 101 *et seq.*

firmly behind this article and as this report examines, the FSM has taken significant steps so that its citizens and residents can fully realize and enjoy the rights and freedoms set forth in the UDHR.

Article 29(1) and (2) of the UDHR provides that everyone has duties to his community and shall be subject to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare of a democratic society. The FSM stands firmly behind this article of the UDHR and these principles are ingrained in its system of laws and governance at the national, state, and local levels.⁵⁵

Article 29(3) provides that the rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. As a member of the United Nations, the FSM stands firmly behind this article of the UDHR.

Article 30 of the UDHR provides that nothing in the Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein. The FSM stands firmly behind this article of the UDHR.

In the overall analysis of FSM compliance with the UDHR, the FSM stands in agreement with virtually all of its general principles, rights, and freedoms. Where it has not complied fully with various articles of the UDHR, it is largely a matter of a lack of resources that prevent full compliance. These involve programs in areas such as education, health, universal health care,

⁵⁵ Local levels include municipal governments, which often have a constitution of their own, which sets up a three branch local government including the executive (mayor), legislature (council), and judiciary (municipal court).

unemployment benefits, and other social services that are not accorded to all peoples of the FSM largely due to unavailability of local funding.

Other factors which contribute to the lack of compliance include, but are not limited to, difficulties related to geographical isolation, accessibility to remote atolls, lack of local resources and infrastructure, relating to such things as power, water, telecommunications, etc. Much more is still needed to be done to address these shortcomings in the FSM.

III. INTERNATIONAL TREATY OBLIGATIONS

The FSM has also acceded to numerous international treaties that impact the human rights of its citizens and residents. The FSM Supreme Court has the power to interpret and enforce treaty obligations and has done so in a number of cases, mostly dealing with extradition.⁵⁶

The treaties that the FSM has acceded to and that may have impacts on the human rights of its citizens and residents include, but are not limited to, the following: the U.N. Convention on the Rights of the Child (CRC);⁵⁷ the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography; the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; the

⁵⁶ The judicial branch has the power to interpret treaties. Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. *In re Extradition of Jano*, 6 FSM Intrm. 93, 103 (App. 1993), *In re Extradition of Benny Law Boon Leng*, 13 FSM Intrm. 370, 372 (Yap 2005).

⁵⁷ Acceded to by the FSM on May 5, 1993. The imposition of community service on a juvenile offender would not violate the provisions or spirit of the U.N. Convention on the Rights of the Child since community service could be considered as guidance, supervision, counseling, education and vocational training, which are all preferred alternatives to institutional care (detention), which is also explicitly permitted under the Convention. *Kosrae v. Ned*, 13 FSM Intrm. 351, 354 (Kos. S. Ct. Tr. 2005).

Geneva Convention and Protocol Relating to the Status of Refugees;⁵⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War;⁵⁹ the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW);⁶⁰ the Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others; and the International Convention on the Taking of Hostages.⁶¹

The following are three examples of treaties acceded to by the FSM that provide numerous human rights guarantees to citizens and residents of the FSM. The Convention on the Rights of the Child, contains numerous provisions relating to various articles of the UDHR ensuring that many of the basic human rights be applied specifically to children. These include, but are not limited to: a child's right not to be subject to torture, cruel or inhuman punishment (Art. 37); arrest or detention not in conformity with law; prompt access to legal or other assistance; and guarantees of due process for children in any proceeding before a court or local tribunal (Art. 40).

The Convention on the Elimination of all Forms of Discrimination Against Women contains numerous provisions relating to various human rights guarantees to women, including, but not

⁵⁸ The Convention was adopted by the General Assembly of the U.N. on July 28, 1951 and entered into force on April 22, 1954. The Protocol was adopted by the General Assembly of the U.N. on December 16, 1966, and entered into force on October 4, 1967. Ratification of accession by FSM Congress Resolution (Cong. Res.) No. 14-27 (September 19, 2005).

⁵⁹ Adopted on August 12, 1949, at the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War. Acceded to by the FSM on September 1, 1995 (Instrument of Accession).

⁶⁰ Adopted by the General Assembly of the U.N. in December 1979 and entered into force in September 1982. Acceded to by the FSM with reservations on December 31, 2003 (Instrument of Accession).

⁶¹ Adopted by the U.N. on December 17, 1979. Acceded to by the FSM on December 23, 2003 (Instrument of Accession).

limited to, the legal protection of the rights of women on an equal basis with men through competent national tribunals and other public institutions protecting women against any act of discrimination (Part I, Art. 2), suppression of all forms of trafficking in women and exploitation or prostitution of women (Part I, Art. 6), and guarantees for women in advancement through training, education (Part III, Art. 10), representation in government and to international organizations (Part II, Art. 8), employment (Part III, Art. 11), health care (Part III, Art. 12), equality in domestic relations (Part IV, Art. 16) and others.

The Geneva Convention and Protocol on Refugees provides certain human rights protections for refugees, including, but not limited to, the rights to non-discrimination based on race, religion, country of origin (Art. 3), reciprocal treatment as is accorded other aliens (Art. 7), free access to courts of law (Art. 16), freedom of movement (Art. 26), and other provisions governing such things as expulsion (Art. 32), rights of association (Art. 15), housing (Art. 21), and others.

The international treaties acceded to by the FSM provide further human rights guarantees many of whom are set forth and assured in the FSM and state constitutions, and state and national laws. While courts in the FSM have not dealt specifically with the issues of the legal status of treaties, whether or not a treaty's provisions are self-executing, and the need for the domestication of its terms, it would likely be argued that treaties should be accorded a similar status to other national statutes, and should be interpreted, applied, and enforced by the FSM Supreme Court in any court proceeding raising such issues.⁶²

⁶² One might support fully the relevance of international law to domestic courts where relevant: a human rights convention can be used to fill a lacuna, to resolve an ambiguity or to favour the person seeking the protection of human rights where there is room for interpretation. It cannot be used to directly contradict a clear, mandatory provision in domestic legislation, especially one designed to

IV. CONCLUSION

In becoming an independent, sovereign Nation and taking its place among the nations of the world, the FSM has taken necessary steps for the recognition, perpetuation, and enforcement of human rights. These steps directly or indirectly address almost all of the human rights standards and norms included in the 30 articles of the Universal Declaration of Human Rights. While much has been done, more should, and must be done, to assure in perpetuity the human rights of the people of the Federated States of Micronesia.

protect the rights of children. The cases illustrate some of the interesting contradictions between the rights of adult individuals versus the rights of children. Pacific Human Rights Law Digest, Vol. 2, PHRLD, Pacific RRRT, 2008, at page x.