

WORLD FACTBOOK of CRIMINAL JUSTICE SYSTEMS

Federated States of Micronesia

by

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GENERAL OVERVIEW

1. Political System.

The Constitution of the Federal States of Micronesia (FSM), provides for a separation of national government powers and the establishment of a federal nation. The President of the FSM is the highest law enforcement official of the land. The President and Vice President are selected from and by the members of the FSM Congress. There are fourteen members of Congress, five from Chuuk, three from Pohnpei, one from Yap, one from Kosrae, and three at-large. The members of Congress are selected by popular election. The national members serve four-year terms and the at-large members serve two-year terms.

The Attorney General of the FSM is the President's chief law enforcement officer. The Attorney General is a cabinet member and head of the largest department in the FSM government. The Attorney General is assisted by seven assistant attorney generals. Two of these assistants are responsible for the nation's civil and criminal litigation. The remaining assistants are assigned to either the law or international law divisions. The division of law drafts legislation, counsels the President and other executive officials on legal issues, and performs other legal tasks. The division of international law assists the Department of External Affairs in negotiations and the drafting of treaties and other documents.

The FSM Attorney General also oversees the Division of Security and Investigation (DSI). DSI

is the national government's police force which is charged with protecting national property and officials and with enforcing national law. Currently, all DSI officers are located at the capital on Pohnpei and traveling to the other islands as necessary.

In addition to DSI, the Attorney General oversees the Division of Marine Surveillance (DMS). DMS patrols the FSM waters, including the 200 mile Exclusive Economic Zone, making seizures and arrests. Every state has a territorial sea, within which it has jurisdiction to prosecute marine resource violations.

The Division of Immigration is also part of the Attorney General's Office. There are immigration officials in every state. Customs and tax enforcement are the responsibility of the FSM Department of Finance.

The FSM Supreme Court is the nation's highest judicial body. The President is responsible for making nominations to the Court. Congress must approve the nominations of the President with a 2/3 vote. The members of the Court sit both as trial and appellate judges.

The states employ a separation of powers, with a Governor at the apex of the executive branch. All four states have a state police that is responsible for enforcing the law. Generally, these officers are responsible for all law enforcement at the state level. However, a few municipal officers can be found on some islands.

Each state has a supreme court with judges who act in both trial and appellate capacities. However, the judges of Kosrae sit only at the trial level. In Kosrae, all appeals are taken to the FSM Supreme Court, where it acts as that State's court of last resort. Each state has a popularly elected legislature.

Geographically, the Federated States of Micronesia (FSM) is a nation of islands in the South Pacific located between 0 and 14 degrees north latitude and 136 and 166 degrees east longitude. There are nearly 620 islands and atolls. Sixty to seventy of these are regularly inhabited. The total population is approximately 120,000. Total land area is approximately 700 km<sup>2</sup> and total lagoon area is approximately 7200 km<sup>2</sup>. The geography of the islands and atolls varies dramatically. Some have elevations of only a few feet above sea level and others have mountains reaching nearly 3,000 feet.

The islands and atolls of the FSM are divided into four states, Pohnpei, Chuuk, Kosrae, and Yap. The national government sits at Palikir, Pohnpei. The state governments have their headquarters at: Kolonia, Pohnpei; Moen, Chuuk; Lelu, Kosrae; and Colonia, Yap. The main islands that house the

state capitols have varying degrees of electricity, water service, and paved roads. The outer islands lack this infrastructure. There are four hospitals located in the FSM, one on each of the four main islands. Generally, there are outreach programs (e.g., educational and medical services) on many of the outer islands. Each of the four main islands has an airport and a small number of the outer islands have landing strips.

The four languages of the FSM are Pohnpeian, Chuukese, Kosraen, and Yapese. There are also a number of dialects of these languages. English is spoken by many, particularly those over the age of 30. English is the official language of the national government.

## 2. Legal System.

Both the national and state legal systems are based on common law, having been largely designed by attorneys from the United States. However, the FSM Constitution and its state counterparts require the recognition of customs and traditions as law in some circumstances. Through these provisions, customary and traditional law has been made part of the common law system. Additionally, traditional leaders continue to engage in dispute resolution on many of the islands. Generally, the more removed an island is in proximity from its capital, the greater the role of the traditional leaders in dispute resolution.

The judiciary employs an adversarial process. This has been criticized by many as being inconsistent with the Micronesian non-confrontational way of life. Although the adversarial method is employed throughout the courts of the nation, it is most strictly adhered to by the FSM Supreme Court.

## 3. History of the Criminal Justice System.

Before becoming independent in 1986, the Micronesian islands had been under four consecutive colonial ruler-states, Spain, Germany, Japan, and the United States. The approaches of these colonial rulers to law and justice varied significantly. During each period traditional law and dispute resolution continued, with varying degrees of interference and influence by the colonial rulers. Traditional leaders continue to be recognized on all the islands today, except Kosrae.

Rule by the United States began after the Second World War when the United Nations created the Trust Territory of the Pacific Islands (TTPI) and declared the United States trustee of the islands. The people of the islands that make up

the FSM chose to establish a new and sovereign nation, while other Micronesian islands chose to continue to be part of the TTPI (e.g., Republic of Palau) or have opted for some other form of political relationship with the United States (e.g., Republic of the Marshall Islands and Commonwealth of the Northern Mariana Islands).

Through the Compact of Free Association with the United States, which became effective in 1986, the United States recognized the sovereignty of the FSM and agreed to continue to provide economic and technical assistance to this young, developing nation. The United States is also responsible for the military protection of the nation. The FSM became a member of the United Nations in 1991.

At present, the FSM employs a federal system. There are both national and state constitutions, as well as other forms of law. Until 1991, the national government was responsible for the prosecution of major crimes. However, through a 1991 amendment to the FSM Constitution, jurisdiction to prosecute most crimes was transferred to the states. Article IX, Section 2(p), which enumerates the powers of the FSM Congress, confers upon Congress the authority to "define national crimes and prescribe penalties, having due regard for local custom and tradition."

Whether the FSM Supreme Court will defer to Congress' determinations of what crimes are "national" in character remains to be seen. The Court, however, has judicial review and is likely to invalidate any excesses of power. As of 1994, serious crimes, such as murder, rape, and assault fall within the jurisdiction of the states, unless a particular crime has a national or international character, such as if it was committed against the national government or against one of its officials.

Even before the 1991 amendment to Article IX, Section 2(p), many serious crimes were prosecuted by state officials, in the name of the FSM government, in the FSM courts. Through joint law enforcement agreements, states agreed to investigate and prosecute crimes in exchange for financial support from the FSM. The FSM Attorney General, whose entire staff of Assistants Attorney General are located on Pohnpei, could select the cases that he wanted investigated and prosecuted and leave the remainder to state officials. Joint law enforcement agreements continue today, but are of less importance as a result of the 1991 constitutional amendment changing penal jurisdiction.

Because the islands are small, and familial relations are both common and strong among the inhabitants, the states occasionally request that the FSM Attorney General's Office assume a

"special prosecutor" role, investigating and prosecuting what is normally a state crime.

## CRIME

### 1. Classification of Crime.

\* Legal classification. The national government, as well as Kosrae, Pohnpei, and Chuuk continue to use the TTPI criminal code, subject to amendment. Kosrae has amended the code to incorporate the Model Penal Code's insanity provisions. Yap has adopted a modified version of the Model Penal Code.

Under both the TTPI and Model Penal Code, felonies are distinguished from misdemeanors. Felony crimes include murder, rape, aggravated assault, assault in some circumstances, certain marine laws violations (i.e. commercial fishing without a permit), and thefts of property exceeding a certain value.

\* Age of criminal responsibility. The age of criminal responsibility varies. Eighteen is the age of criminal responsibility in Chuuk and Kosrae. However, 16 year-old persons in Kosrae may be tried if the court determines that the person is of suitable physical and mental maturity.

\* Drug offenses. The FSM has adopted the controlled substances model of the United States. However, at this time drugs are not a problem in the FSM. Locally grown marijuana is common and law enforcement officials periodically seize and destroy crops. Prosecutions do not always follow and when they do, punishment is not severe.

### 2. Crime Statistics.

Reliable statistics are not maintained by the states or FSM. However, there is some information on crime provided by Kosrae.

\* Murder. There have been no murders on Kosrae since 1990.

\* Rape. There were four felony aggravated assault incidents and one complaint of sexual assault on Kosrae in 1993. This is fairly representative of the other three states.

\* Serious Property Crime. Information not available.

\* Serious drug offense. While drugs are generally

not a problem in the FSM, alcohol is a serious problem. There are no data to support the proposition, but law enforcement officials agree that alcohol is either the cause of, or a significant factor in, most crime in the FSM.

\* Criminal informations. In 1992, 81 criminal informations and 142 traffic informations were filed in Kosrae. In 1993, 180 criminal informations and 193 traffic informations were files. These figures do not include traffic violations that were uncontested. In 1993, a total of 511 incidents were reported in Kosrae, representing about 75% of the total number of incidents reported for all of FSM that year. The most common violations were disturbing the peace, illegal possession of alcohol (e.g., possession on a Sunday, holiday, or without a permit), traffic violations, assault and battery, and malicious mischief.

\* Crime regions. Information not available.

## VICTIMS

### 1. Groups Most Victimized by Crime.

There is no data available on what groups are most victimized. However, due to their traditional status and role, women are victimized to a greater degree than are men.

Also, many islands, such as Yap, continue to live under a caste system. Those of a lower caste are more often the subject of crime, such as assault, battery, and sexual assault, than are people of a higher caste.

### 2. Victims' Assistance Agencies.

The FSM is small and the life of its people continues to be largely traditional. The family relationship permeates life and transcends other obligations. There are no formal victims' assistance agencies in the FSM. Rather, victims rely on family support. Traditional leaders may also become involved in serious situations.

### 3. Role of Victim in Prosecution and Sentencing.

On most of the islands, traditional law gives the victim a significant role in prosecution and sentencing. There are traditional methods of resolving disputes between families. For example, on Pohnpei, traditional apology ceremonies continue to be common. An apology occurs when the family of the perpetrator tenders an apology,

following specific customary procedures, to the victim's family. If the apology is accepted, and it is customary to accept an apology, the matter is completely settled under traditional law.

The other islands have similar methods of dispute resolution. Many prosecutors will not pursue a case if the victim indicates that the matter has been resolved. If there is a prosecution, the Judicial Guidance Clause of the FSM Constitution (Article XI, Section 11) and similar state laws, require judges to take traditional settlements into consideration. In some instances, this may result in dismissal of a charge or a reduction of sentence. In all cases where prosecution occurs, statements from the victim, the victim's family, the perpetrator's family, and others are made part of the pre-sentence report.

#### 4. Victims' Rights Legislation.

There is no victims' rights legislation in the FSM. However, through custom and tradition, victims have significant rights.

### POLICE

#### 1. Administration.

At the national level, DSI, DMS, and Immigration are divisions of the Office of the FSM Attorney General. The Attorney General sits at the apex of the organization. The Attorney General is nominated by the President and must be confirmed by Congress. The Attorney General is assisted by Assistants Attorney General, particularly those responsible for prosecution. DSI is headed by a Chief, who is appointed by the Attorney General. There is a Deputy Chief, two lieutenants, a number of sergeants and corporals, and the remainder are officers. Similarly, DMS is headed by a Chief and Deputy Chief. There are two surveillance boats, each with a captain and crew.

All four states have a state police agency. Most of the nation's law enforcement is performed by these agencies. The structure and organization is similar between the states.

On Kosrae, the chief law enforcement officer, under the Governor, is the Attorney General. The Attorney General is nominated by the Governor and confirmed by the legislature. There is one Assistant Attorney General and two Micronesian trial counselors in the Attorney General's Office. Trial counselors are Micronesians who have learned the law through apprenticeship. Within that office, the state police are part of the Bureau of

Public Safety. The Chief of Police is accountable to the Attorney General, but is appointed by the Governor. The hierarchy under the Chief is similar to the other states. The Bureau of Public Safety is further divided into patrol, detective, corrections, traffic, and fire divisions.

In Chuuk, the Attorney General, who is nominated by the Governor and confirmed by the legislature, is the highest official. There are two Assistants Attorney General. Below the Attorney General is the Director of Public Safety. Below the Director is the Chief of State Police. The remainder of the organizational chart is similar to that of DSI. There are several divisions within the Chuuk State Police, such as investigation, traffic, and internal affairs.

Yap employs a similar organization. The Attorney General, who has undergone the nomination and confirmation process, oversees the state's law enforcement. There are two divisions to the Office of the Attorney General, the Division of Litigation and the Division of Public Safety. The Division of Litigation is headed by the Chief of Litigation, who is responsible for both civil and criminal litigation. In addition, there are two trial counselors who work in the office. A Chief of Police supervises the State Police who are part of the Division of Public Safety.

## 2. Resources.

\* Expenditures. Information not available.

\* Number of police. There are approximately 30 DSI and 35 DMS officers. Kosrae has 35 officers in its Bureau of Public Safety. Yap has 50 officers in its Division of Public Safety, which includes investigation, patrol, corrections, and fire officers. Chuuk has approximately 150 officers in its Division of Public Safety, which includes investigation, patrol, corrections, and fire officers. There are approximately 100-150 officers in Pohnpei's Department of Public Safety.

All law enforcement officers at both the national and state levels are Micronesian, with the exception of many of the prosecutors. The national agencies, DSI and DMS, employ individuals from across the islands. However, the states generally employ their own citizens as law enforcement officers. There are no women officers at the national level and only a few women can be found in the state agencies.

## 3. Technology.

\* Availability of police automobiles.  
Technological resources are not commonly used in



the islands, with the exception of DMS. DMS has two 100 foot surveillance boats, both with modern navigational equipment and a mounted machine gun. Occasional air surveillance is provided by Australia and New Zealand in coordination with DMS.

DSI has four vehicles, each equipped with a radio which permits the officers to contact their office in Palikir from most locations on Pohnpei.

Kosrae has a total of five vehicles. One is assigned to the Attorney General and the remaining four are used for patrol. The Bureau of Public Safety does not have any patrol boats and relies on either the DMS or the Kosrae Department of Marine Resources, which has one boat, for marine transport in emergencies.

Chuuk has approximately 12 patrol vehicles and two surveillance boats. All have radio communication.

Yap has four patrol vehicles, each with radio communication.

\* Electronic equipment. A few states have traffic radar equipment and a number of officers have received training in the use of the equipment through seminars sponsored by the United States Department of Interior. However the equipment is rarely used, is poorly maintained, and is of little significance on the islands.

An office may be equipped with one or more personal computers, but they do not play a significant role in the law enforcement function. Dispatch occurs either by radio or by a shout from a window. All the offices are equipped with a fax machine.

\* Weapons. DSI and state officers are provided sidearms. A few shotguns and rifles are available. Chuuk has one sub-machine gun. The two DMS surveillance boats have mounted machine guns and the crew have sidearms.

#### 4. Training and Qualifications.

There are no qualifications to be a law enforcement officer in the FSM, although many agencies prefer individuals who have graduated high school. A small number of officers have attended college. An even smaller number have attended the Federal Bureau of Investigation (FBI) Academy in the United States. A number of convicted felons are employed by state and national government law enforcement agencies.

Candidates previously attended the Micronesian Public Safety Academy, which was initially created and sponsored by the United States Department of Interior. The academy was

open to law enforcement officers from both the states and national government. Basic physical training, law enforcement techniques, and law were taught at the academy. The United States Department of Interior discontinued the Academy in 1992.

#### 5. Discretion.

\* Use of force. Only reasonable and necessary force may be used when making an arrest. Of course, reasonableness is determined by cultural context.

\* Stop/apprehend a suspect. Temporary detention based upon reasonable suspicion is permitted. Probable cause is required for arrests. Warrants are required, but are rarely sought. Cultural factors affect the methods of police. For example, cooperation and community harmony are essential, and as such, law enforcement officers are not likely to seek a warrant before approaching a suspect, and a suspect is not likely to resist a reasonable request of an officer.

\* Decision to arrest. In most cases, police dispose of situations informally. Strong familial, friendship, and acquaintance relationships increase the likelihood of an immediate, front-line, disposition.

\* Search and seizure. Probable cause is required for searches. While warrants are required, they are rarely sought.

\* Confessions. Confessions may be used. However, there are certain procedures that must be adhered to when extracting a confession. For instance, the accused has a right to counsel when subjected to a custodial interrogation.

#### 6. Accountability

Some departments, such as the Chuuk Department of Public Safety, have an internal affairs division. Otherwise, complaints may be made to an offending officer's supervisor or to the attorney general. Also, civil remedies are available to the victim of unlawful police conduct.

### PROSECUTORIAL AND JUDICIAL PROCESS

#### 1. Rights of the Accused.

\* Rights of the accused. A defendant has a right

to a trial, to confront his accusers, to representation by counsel, to due process, and to be free from cruel and unusual punishment. Also, defendants are entitled to the protection of custom and tradition in some situations.

\* Assistance to the accused. There is a public defender system, which has its headquarters at the FSM capitol in Palikir, Pohnpei. There is one public defender located on Yap and several, including trial counselors, on Pohnpei. They travel to the other islands, as necessary. All people, regardless of financial need, are entitled to representation by this office.

## 2. Procedures.

\* Preparatory procedures for bringing a suspect to trial. There are no grand juries in the FSM. Cases are investigated by law enforcement officials. With the exception of issuing warrants, judges are not involved in the investigatory process. Traditional resolution of disputes is a powerful legal force, preventing the filing of charges in many instances, leading to dismissal in others, and justifying reductions in sentences in cases where a prosecution and conviction occur.

\* Official who conducts prosecution. State and national attorney generals are responsible for prosecutions.

\* Alternatives to trial. Information not available.

\* Proportion of prosecuted cases going to trial. Information not available.

\* Pre-trial incarceration conditions. Pre-trial incarceration is permitted if there is a reasonable fear of flight or if the defendant poses a threat to others.

\* Bail Procedure. Bail may be ordered by a court. Release on a defendant's recognizance is common.

\* Proportion of pre-trial offenders incarcerated. Information not available.

## JUDICIAL SYSTEM

### 1. Administration.

The national government has one court, the Supreme Court, which is divided into two

divisions, trial and appellate. The members of the Court sit as both trial judges and appellate justices. Those judges that did not preside at the trial level act as the appellate judges in the same case.

An important feature of the national court is its use of Justice Ombudsmen. There is one ombudsman from each state. Each ombudsman is stationed at his home state and acts as parole officer, translator, advisor, and liaison to the people and their traditional leadership. In addition to these courts, there are a few municipal courts located on the islands.

## 2. Special Courts.

Information not available.

## 3. Judges.

\* Number of judges. The FSM Constitution provides that there shall be one Chief Justice and not more than five Associate Justices on the Court. Until 1992, there were only two judges on the Court and both were citizens of the United States. In 1992, two Micronesians joined the Court and one of the American judges resigned, leaving the Court with three judges. Three judges must preside on all appeals. Since the judge who sat at the trial level is disqualified to sit on the appeal, at least one temporary appointment must be made to fill an appellate panel. There are two judges on the Kosrae Court, four in Pohnpei, three in Chuuk, and three in Yap.

\* Appointment and qualifications. Information not available.

## PENALTIES AND SENTENCING

### 1. Sentencing Process.

\* Who determines the sentence? Judges determine both guilt and punishment in all courts.

\* Is there a special sentencing hearing? In the FSM Supreme Court, sentences for felonies and some misdemeanors are not determined until a pre-sentence report has been completed by the Justice Ombudsman. The states also follow the pre-sentence investigation and report model, but are more likely to eliminate this step than is the national court. If a pre-sentence report is required, a separate sentencing hearing is conducted after the report is completed. In other cases, judges may pronounce sentence immediately

after announcing their findings and rendering the judgment.

\* Which persons have input into the sentencing process? Family members of the victim and the offender, clergymen, friends, and others may be part of the sentencing hearing.

## 2. Types of Penalties.

\* Range of penalties. Penalties may include restitution, fines, imprisonment, and house arrest. The range of a sentence on Kosrae for murder is zero to ten years and a fine up to \$20,000. The penalty range for the sexual abuse of children is the same as for murder. However, sentences tend to fall to the lower end of the range and parole is often granted after completion of one-third of the sentence.

While there is technically no corporal punishment, traditional corporal punishments occur. The FSM Supreme Court held in *Tammed v. FSM*, 4 FSM Intrm. 266 (App. 1990) that punishments imposed pursuant to customary law must be considered in mitigation of a sentence.

\* Death penalty. The death penalty is prohibited by the FSM Constitution.

## PRISON

### 1. Description.

\* Number of prisons and type. There are no prisons in the FSM. There are four jails, one on each of the four main islands. These jails are not high security institutions.

\* Number of prison beds. The Kosrae Jail has fourteen beds. Chuuk's jail has a maximum capacity of approximately thirty-five inmates. The jail on Yap can house as many as forty inmates, but it is rare to have even half that number.

\* Number of annual admissions. Information not available.

\* Average daily population/number of prisoners. Information not available.

\* Actual or estimated proportions of inmates incarcerated. Information not available.

### 2. Administration.

\* Administration. The four jail facilities are owned and administered by the states. The FSM pays to board its prisoners in the state jails.

\* Number of prison guards. Information not available.

\* Training and qualifications. The guards are state police officers.

\* Expenditure on prison system. Information not available.

### 3. Prison Conditions.

\* Remissions. Statutes at the state and national levels outline the provisions of parole. An inmate is eligible for parole after one-third of the total sentence has been served. At the national level, the sentencing judge makes the parole decision. In Kosrae, parole decisions are made by the Governor.

\* Work/education. Inmates are occasionally assigned to a work crew.

\* Amenities/privileges. There are no special educational or therapeutic programs in the jails. However, there is an informal atmosphere at the jails and liberal visitation is routinely allowed in most cases.

In 1991 an inmate prevailed in a lawsuit alleging that the conditions of his confinement were violative of his right to be free from cruel punishment. As a result of that litigation, the states and national government have made an effort to improve the conditions of the four jails.

### EXTRADITION AND TREATIES

\* Extradition. The FSM has an extradition treaty with the United States and various law enforcement agreements with other pacific islands nations.

\* Exchange and transfer of prisoners. Information not available.

\* Specified conditions. Information not available.

### SOURCES

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